

April 30, 2019

House Rules Committee
Oregon House of Representatives
900 Court St. NE
Salem, Oregon 97301

Re: Oregon H.B. 3432 (2019)

Dear Members of the House Rules Committee:

We are volunteer board members with the Orenco Gardens Homeowners Association, a 139-unit townhome complex located in Hillsboro, Oregon. We are writing to express our concerns regarding Oregon House Bill 3432.

In 2010, our association engaged a forensic company to inspect the construction of the Orenco Gardens rowhomes after receiving reports of isolated leaks at certain units. To our shock and dismay, we learned that not only did these units suffer from construction defects, but that our entire complex did as well. Those defects had led to widespread property damage, including dry rotted sheathing and framing. The majority of the defects and damage were hidden behind brick and siding components, making these issues incapable of being detected by the average homeowner/consumer. Photographs of some of the conditions we encountered are enclosed with this letter.

The rowhomes were built by a local well-known builder who has built many large-scale developments throughout Oregon. Construction was completed on the buildings between 2002 and 2004. The association consistently maintained the buildings post-turnover (the time period when the builder/developer turns over control of the association to its members and homeowners). In fact, the association had recently undertaken to paint all of the buildings just before learning of the major defects and damage described above. We solicited input from local contractors about the anticipated cost to correct the defects and damage. Unfortunately, the preliminary estimates far exceeded the association's available funds in reserves - reserves which were set by the original builder/developer. Faced with either assessing homeowners the full cost of repairs or trying to seek compensation from the original builder, the association chose to file a construction defect lawsuit. That lawsuit was filed in 2011 and has since been resolved.

Following the lawsuit, the association sought to repair the rowhomes. Those repairs would not have been possible had the association been unable to have made a timely claim for construction defects against the original builder. Had our association not been able to pursue a claim for negligent construction, owners in the community could have paid more than \$30,000/unit to achieve repairs. Many homeowners would not have been able to afford this cost and some may have even lost their homes.

We appreciate the legislature's efforts to bring more affordable housing options to Oregon. We also appreciate that the proposed bill, H.B. 3432, ties a reduced timeframe to bring a negligent construction claim against a builder or developer with a more robust inspection process on the front end of

construction. However, as currently drafted, the inspection requirements for a builder to seek a 6-year statute of repose remain vague and undefined. We have no idea whether the carrot that is being used to entice builders to build more affordable condominiums and townhomes will actually result in safer building practices and better constructed homes. We believe the bill would therefore benefit from more precise requirements when it comes to the proposed special inspections process, as opposed to leaving this important and critical item "to-be-determined."

Additionally, we have concerns about the added hurdle this bill is placing on homeowner associations before they may be permitted to file a construction defect lawsuit. As we understand it, the bill requires an association to get a majority vote of its membership before it may be permitted to pursue a construction defect claim. We have two primary concerns with this added requirement. First, there is no mechanism to toll an association's claims while it seeks to gather the requisite majority votes. We expect most homeowner associations are set up similar to ours, which means the process to hold any kind of vote of the membership is timely and cannot happen overnight. Often we must engage general counsel to have a written ballot with proxies prepared. We must also send out notice to all owners before ballots are mailed, informing them of the upcoming vote and deadline for response. Then, once all the pre-voting materials have been sent, we have to wait a specified number of days before we can deem the voting period closed. All the while, the statute of limitations/repose could be continuing to run on viable claims (and that's assuming enough homeowners even review their mail and respond in time to vote). If an association achieves a majority vote of lot owners who vote but not a majority of all lots, the process would have to begin all over again, with new ballots, new notice, and a new deadline for votes to be received and counted. And again, all the while the statute of limitations/repose is continuing to run.

Second, and this is more of a general policy concern, it seems unfair to treat voluntary board members of a non-profit organization, such as a condominium or townhome association, differently than paid or voluntary board members of a for-profit company when it comes to being able to act on behalf of their organization. The reason our association has a board of directors at all is so that we can effectively manage the affairs of the association without having to constantly get a majority vote approval of the entire membership. To that end, we need to be able to act swiftly. If the larger membership does not support the board's decision to file litigation, the remedy is to vote in a new board at the next annual election who will end the litigation. We see no reason why the board's decision to act on behalf of its membership needs to be put through the added hurdle of a majority lot owner vote. The only basis to require such a vote is to add yet another hoop homeowners must jump through to preserve their rights and claims against a negligent contractor or developer.

Thank you for your time and attention in reviewing our concerns. Should you have further questions regarding the contents of this letter, you may contact the board members via the email addresses provided below.

Sincerely,

Orenco Gardens Homeowners Association Board of Directors
Enc.

Board of Directors: Russell Sherrell: russsherrell@gmail.com, Phil Lehwalder: mtr90@hotmail.com, Dennis Hurlbut: atlasaxe@gmail.com, Norma Fetherolf: normainmaz@hotmail.com, Jon Boehm: jon.s.boehm@gmail.com.

