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Via Federal Express

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House Committee on Rules
Oregon House of Representatives
900 Court Street, NE
Salem, Oregon 97301

*Re:* Opposition to HB 3432 (2019)

Dear Members of the House Committee on Rules:

As I and many others were present but unable to speak in opposition to HB 3432 at the committee hearing on May 6th due to a lack of available time, I hereby respectfully submit my summary comments in writing.

As homeowner advocates, my firm and I have represented thousands of homeowners through dozens of community associations in construction defect litigation in the Pacific Northwest. Our prototypical client is an entry-level or affordable housing community comprised of first-time owners, new families, and downsizing retirees. This market for affordable, production type housing has been particularly vulnerable to construction defects. Affordable multifamily communities very often require multimillion dollar repairs to make water damaged homes healthy (free of mold and other contaminants), safe (free of rotted structural members), and marketable (free of the stigma of construction defects).

I join industry leaders such as the Community Association Institute and Oregon Trial Lawyers Association, as well as other homeowner advocates, in opposing the community voting requirements in HB 3432 as highly impractical, and the changes to the notice and right to cure process as unnecessary. However, I am particularly concerned about the substantial reduction in the statute of repose from ten years to just six, notably without *any* data to support that such a major change to the consumer protection landscape will benefit affordable housing.

From a practical perspective, the proposed forty percent reduction in the time Oregon new homeowners would have to bring claims makes little sense. Most often, the defects at issue involve the weatherproofing components and systems hidden behind the siding. Such

components are designed to make sure that no water gets to the water sensitive framing, sheathing, and interior spaces. Due to the nature of the components at issue, for a period of time most damage occurs between the interior side of the siding and the back side of the drywall. Thus, the defects and damage are hidden from view until the damage gets so bad over a period of years that it becomes visible even within the unit.

In my experience, for these reasons, most claims are made in the *second half* of the current ten-year statute of repose, between years five and ten, since this is when latent defects and damage are discovered. This is the critical time period HB 3432 proposes to eliminate, leaving Oregon homeowners with no recourse. Unable to bring claims, a much greater number of homeowners will become saddled with huge special assessments to cover their share of needed repairs. Selling homes in such communities will become impossible. Those unable to pay or sell will be foreclosed upon.

I have included with this letter photographs from two local communities, among those who discovered hidden construction defects and damage more than six years from construction. Both brought successful claims to offset multimillion repair costs on behalf of their owner members. It would have been no help to them or other similarly situated communities to have *somehow* made their homes marginally more affordable if the result was to eliminate their right to pursue claims.

Contrary to Representative Meek's testimony on May 6th, condominium construction did not decrease because the statute of repose was changed or increased in 2007. The very premise is incorrect since the repose period had been ten years since well before 2007. Rather, condominium construction largely dried up in 2008 during the financial crises when the bottom fell out of the housing market. This was a *national* trend.

Finally, as detailed by others, the so-called design requirements in the new bill may be laudable in concept but they are wholly inadequate as written. The costs of such a requirement (if adequately written) will surely be passed on to the owners in contradiction to any goal to make housing more affordable. Unfortunately, and perhaps most important, the focus on design requirements ignores the reality that most cases have little to do with weatherproofing *design*, which is relatively simple and well understood in the most vulnerable an affordable type of communities, and have everything to do with poor *execution* of fundamental weatherproofing design and workmanship in the field. Nothing in the bill mitigates bad work.

For the sake of Oregon affordable homeowners, I urge the committee to preserve Oregon's current robust and consumer friendly legal framework supporting valid construction defect claims. Such claims will continue to drive beneficial improvements in the construction of affordable housing and thereby preserve generational wealth for working families. Please resist realtor, mortgage and contractor interests' efforts to undercut owner rights. Thank you for your consideration.

Sincerely,

Dan Webert

Enclosure

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