

HB 3746 -3 STAFF MEASURE SUMMARY

House Committee On Housing and Homelessness

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Meeting Dates: 3/12, 4/2, 4/7, 4/9

WHAT THE MEASURE DOES:

The measure reforms the process for handling construction defect claims, particularly for homeowners associations (HOAs) and condominium associations. It also creates a structured dispute resolution process, including extended inspection request periods, mediation for payment disputes, and strict timelines for contractor responses. The measure requires semiannual moisture intrusion inspections for condominiums.

Detailed Summary:

- Defines “substantial completion” as the earliest of the date when the contractee accepts in writing the construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose or, if there is no such written acceptance, the date of acceptance of the completed construction, alteration or repair of such improvement by the contractee; the date when a public body issues a certificate of occupancy for the improvement; or the date when the owner occupies the improvement or uses it for its intended purpose.
- Removes the exception for large commercial structures owned by homeowners associations (HOAs) or condo associations, directing claims be brought within six years, rather than ten.
- Sets period of limitation for a tort action by a homeowners association or association of unit owners arising from the defective construction, alteration or repair of a structure or unit to six years after substantial completion or abandonment of the construction, alteration or repair of the structure; or if a construction defect described in this subsection is discovered more than five but less than six years after substantial completion or abandonment, one year after discovery of the defect.
- Prohibits homeowners associations from initiating or intervening in litigation or administrative proceedings regarding a matter that results from a defect in, or damage arising from a defect in, common property unless the owners representing a majority of the lots approve in writing of the initiation or intervention within 60 days after the mailing date of the notice.
- Requires that the notice of a homeowners association to initiate or intervene in litigation or administrative proceedings be sent by certified mail.
- Requires that the homeowners association state that it believes a defect in the common property exists; provide a detailed description of the defect; identify the parties the association considers responsible for the defect; and state that the association may not institute litigation or an administrative proceeding unless owners representing a majority of the lots approve in writing of the initiation or intervention within 60 days after the mailing date of the notice.
- Directs the homeowners association to send a copy of the notice by certified mail to each person identified in the notice as a party the association considers responsible for the defect. The requirement for sending notice under this subsection is in addition to the notice of defect requirement.
- Prohibits homeowners associations from initiating or intervening in litigation or administrative proceedings regarding a matter that results from a defect in, or damage arising from a defect in, common elements of the condominium unless owners representing a majority of the units approve in writing of the initiation or intervention within 60 days after the mailing date of a notice to unit owners of intent of association to commence judicial or administrative proceedings.
- Requires that the notice to each affected owner of the association’s intent to seek damages on behalf of the owner must be sent by certified mail.

HB 3746 -3 STAFF MEASURE SUMMARY

- Requires said notice to state that the association believes that a defect in the common property exists; provide a detailed description of the defect; identify the parties the association considers responsible for the defect; and state that the association may not institute litigation or an administrative proceeding unless owners representing a majority of the units approve in writing of the initiation or intervention within 60 days after the mailing date of the notice.
- Directs the homeowners association to send a copy of the notice by certified mail to each person identified in the notice as a party the association considers responsible for the defect, in addition to the notice of defect requirement.
- Allows funds to be distributed from escrow before condominium declaration or supplemental declaration is recorded and legal title or other agreed-upon interest is transferred to the purchaser.
- Directs the board of directors of an association of unit owners to semiannually procure inspections of the condominium for moisture intrusion.
- Extends the timeframe for contractors to request inspections to 30 days after receiving a notice of defect if the owner sending a notice of defect is a homeowners association or an association of unit owners.
- Allows contractors, subcontractors, or suppliers to have technical or construction experts present at an inspection, with owner's permission.
- Directs owner to suggest an alternative if there is a disagreement over the expert's identity. Directs two rejected experts jointly select a third neutral expert if disagreement continues over electing experts in inspections.
- Directs contractors to respond to a defect notice within 14 days after an inspection or 90 days after receiving the defect notice if no inspection is conducted.
- Permits owner to take legal action without further compliance if contractor does not timely respond or does not provide a properly formatted response.
- Clarifies the acceptance and rejection process for offers directing owner that accepts an offer to send written acceptance within 30 days.
- Establishes a mediation process for disputes over payment amounts: if an offer includes monetary compensation, the contractor must finalize a firm payment amount within 30 days; if the owner disagrees with the amount, the parties can agree on a mediator; if parties cannot agree within 45 days, the Construction Contractors Board will help facilitate mediation.
- Requires owners that accept compensation to make a good faith effort to fix the defect using a licensed construction contractor.
- Limits scope of settlement to the specific defects covered in the offer, not any other defects.
- Resolves all related claims, including indemnity claims if a contractor who received a secondary notice makes an offer and fulfills their remediation or payment.
- Allow party who sent the secondary notice to step in to complete the remediation or payment. if contractor does not fulfil their remediation or payment.
- Makes any response made by the contractor inadmissible in court to prove that a defect exists, that the contractor is liable, or the amount of damages.
- Applies to notices of construction defect sent by an owner on or after the effective date of the measure and to any resulting secondary notices.

Fiscal impact: May have fiscal impact, but no statement yet issued

Revenue impact: May have revenue impact, but no statement yet issued

ISSUES DISCUSSED:

- Condo defect liability laws and decline of condo building
- HB 3432 (2019) intent and history
- Statute of limitation for condo defects and litigation impacts
- Preventative inspections by different entities, schedules, and cost

- Consumer warranties and quality of housing
- Setting income levels threshold
- Prerequisites for litigation for homeowners associations

EFFECT OF AMENDMENT:

-3 The amendment extends the period to seven years to file a lawsuit over construction defects in common property, with an extra year allowed if the defect is discovered late in that period. It outlines steps for HOAs to follow when considering legal action, including required notices to homeowners and responsible parties, and specific timelines for holding meetings to discuss these actions. The amendment calls for specialized moisture inspections at set intervals after a building's completion.

Detailed Summary:

Extends limitation for a tort action for homeowners associations to seven years for construction defects, but if the defect is discovered in the final year, between year six and seven, they have one additional year from the discovery date to file the suit.

Removes prohibition on homeowners associations from initiating or intervening in litigation or administrative proceedings regarding a matter that results from a defect in, or damage arising from a defect in, common property or common elements unless the owners representing a majority of the lots approve in writing of the initiation or intervention within 60 days after the mailing date of the notice.

Modifies process and requirements for a homeowners association (HOA) to initiate or intervene in litigation or administrative proceedings related to construction defects.

Allows HOA to file or get involved in a lawsuit or administrative proceeding to recover damages for construction defects if:

- The defect is a deficiency, an inadequacy or an insufficiency arising out of or relating to the construction, alteration, or repair of a residence.
- The HOA board approves the decision at a formal meeting.

Requires the formal meeting to occur:

- at least 90 days after the HOA sends the first notice to all property owners.
- after sending a second notice by first class mail with a certificate of mailing.
- after sending a third notice by first class mail, at least 15 days before the meeting.

Requires notice sent to homeowners to include:

- statement that the HOA believes there is a defect in the common property,
- detailed description of the defect,
- identification of the parties that the HOA believes are responsible for the defect,
- names of each board member and a way to contact each of them electronically or by mail, and
- warning on potential limitations to sale.

Provides language for warning on potential limitations to sale.

Directs HOA to send a copy of notice by certified mail to all parties considered responsible for the defect in addition to any notice of defect.

Directs board of directors to cause an independent inspection of the condominium for moisture intrusion during the second and fifth year following the condominium's substantial completion instead of semiannually.

Removes provisions on inspections by experts and remediation of defects.

Requires declarant to deliver at the turnover meeting results from an independent inspection for moisture intrusion and the name of the person who performed the inspection.

BACKGROUND:

In Oregon, condominiums are primarily governed by the Oregon Condominium Act, codified in Oregon Revised Statutes (ORS) Chapter 100. This comprehensive legislation outlines the creation, ownership, and management of condominium properties within the state. To establish a condominium, a declaration must be recorded, detailing property descriptions, unit boundaries, common elements, and any restrictions. Upon forming a condominium, an Association of Unit Owners (AUO) is created to manage and operate the property. All unit owners automatically become members of this association. The AUO must adopt bylaws that govern its operations, including procedures for meetings, voting rights, and the election of a board of directors. Developers must provide purchasers with a condominium disclosure statement and a unit sales agreement, ensuring buyers are informed about the property and their rights. When existing buildings are converted into condominiums, developers must follow specific procedures to protect the rights of existing tenants, as outlined in the Oregon Condominium Act. Condominium unit owner associations are required to file Annual Reports with the Oregon Real Estate Agency. These reports are filed online through the Agency's eLicense system, with reminders sent to the association's registered agent. The board of directors must hold regular meetings, which are open to all unit owners. Owners have the right to attend and participate in these meetings, ensuring transparency and involvement in decision-making processes.