

HB 3746 A -A5 STAFF MEASURE SUMMARY
Senate Committee On Housing and Development

Prepared By: Kaia Maclaren, LPRO Analyst

Meeting Dates: 5/5, 5/12, 5/19

WHAT THE MEASURE DOES:

The measure reforms the process for handling construction defect claims, particularly for homeowners associations (HOAs) and condominium associations. It sets time limits within which a homeowners or condominium association may bring a tort claim for construction defects. The measure also mandates independent inspections for moisture intrusion at two key milestones, two years and six years after substantial completion, and requires the developer to provide inspection results to the association.

Detailed Summary:

- Defines “substantial completion” as the earliest of the following events:
 - The date when the contractee, in writing, accepts that the construction, alteration, or repair of the improvement—or its designated part—has reached a state fit for its intended use. If there is no written acceptance, then the date when acceptance is given for the completed work.
 - The date a public body issues a certificate of occupancy for the improvement.
 - The date when the owner begins to occupy or use the improvement for its intended purpose.
- Sets the time limits within which a tort action must be initiated by a HOA or association of unit owners
 - Requires a claim to be filed within seven years after either substantial completion, alteration, repair, or abandonment; or
 - If defect is discovered later—more than six but less than seven years after substantial completion or abandonment—one year from the date of discovery to initiate the action.
- Requires approval at a board of directors meeting before a homeowners or condominium association starts or intervenes in litigation concerning a defect.
- Specifies board of directors meeting requirements and the contents and timelines for sending a notice to each owner and every person it considers responsible for the defect.
- Directs board of directors to cause an independent inspection of the condominium for moisture intrusion before the end of the second year following the condominium’s substantial completion (paid for from the reserve account for maintaining, repairing, and replacing common elements) and before the end of the sixth year following the condominium’s substantial completion.
- Requires declarant to deliver to the association results from an independent inspection for moisture intrusion and the name of the person who performed the inspection.

Fiscal impact: Has minimal fiscal impact

Revenue impact: No revenue impact

HOUSE VOTES: Ayes, 46; Nays, 10

ISSUES DISCUSSED:

- Provisions of the measure

EFFECT OF AMENDMENT:

-A5 The amendment defines that the measure applies only to those condominiums whose declaration was filed after the effective date of the measure, and excluding those for which each unit owner is responsible for their own maintenance, both interior and exterior. The amendment sets out specifications for inspection timelines and requirements, and allows the owner of the condominium a choice to have the contractor, subcontractor or

supplier in question pay an amount equal to the cost of remediation rather than performing the remediation.

Detailed Summary:

States that provisions of the measure defining the period of limitation for a tort claim to be filed after substantial completion applies **only** to those condominiums whose declaration was filed after the effective date of the measure. Excludes condominiums for which each unit owner is responsible for the interior and exterior of their own unit.

Defines procedures for actions following a notice of defect, including that the period following receipt of notice that a contractor, subcontract or supplier may send a written request to conduct an inspection of the residence in question is extended from 14 to 30 days; and that the contractor, subcontractor, or supplier may have a technical or construction expert attend an inspection.

Requires that, upon receipt of the notice of defect, the contractor, subcontractor, or supplier must send the owner a written response no later than 14 days after conduction the above inspection of the residence; or if no inspection is conducted, 90 days after receiving the notice of defect. Requires that in this written response, the contractor, subcontractor, or supplier must:

- offer to pay an amount of monetary compensation to the owner for some or all of the acknowledged defects and any incidental damage; and
- send, within 30 days of the initial response, a firm payment amount for consideration by the owner; and
- must allow the owner a choice between accepting the payment or allowing the contractor, subcontractor, or supplier to perform the remediation.

Provides that if the owner wishes to accept the offer for payment, but disputes the amount, the parties may select a mediator to resolve the dispute; if no mediator can be agreed upon, the administrator of the Contruction Contractors Board may inform a professional mediation association or service to select a mediator.

Provides that if the owner selects the payment, the owner shall make a good faith effort to have a construction contractor complete the remediation; this acceptance by the owner satisfies claims for remediation.

Retains the right of the owner to commence a court action against the contractor, subcontractor, or supplier, even as remediation is in process, up until the statute of limitations as defined in the measure.

BACKGROUND:

In Oregon, condominiums are primarily governed by the Oregon Condominium Act, codified in Oregon Revised Statutes (ORS) Chapter 100. This comprehensive statute 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.