



March 14, 2025

Oregon House of Representatives
Committee on Housing and Homelessness
By Electronic Submission

RE: HB 3746 is Based on False Promises

Dear Chair Marsh, Vice-Chair Andersen, Vice-Chair Breese-Iverson, and Members of the Committee:

My firm represents thousands of homeowners associations, condominium associations, and other common interest communities in Oregon, Washington, Colorado, Idaho, and Arizona. I devote a substantial portion of my practice to helping associations and their members navigate expensive repair projects, which are often necessary due to construction and design defects. I am writing on behalf of my association clients and their members in opposition to HB 3746.

There are a host of reasons to oppose this bill, but I will focus on two of the most obvious problems. First, the proposed solution of shortening the statute of repose for construction defect claims and the other limitations on owner rights in the bill will do nothing to improve Oregon's lack of affordable housing. Second, stripping away consumer rights will hurt the very people that the proponents of the bill claim that they want to help.

Restricting Consumer Rights Doesn't Result in Affordable Housing Construction

The proponents of HB 3746 claim that developers are more willing to build condominium and townhome projects in states with shorter statutes of repose and additional limitations on consumer rights. They have cited Colorado and Nevada, as examples of states that improved housing affordability by adopting legislation similar to HB 3746 that shortened statutes of repose to 6 years, and imposed various owner approval requirements.

The proponents claims are demonstrably false. The argument is always the same. "We'll build affordable condos if you protect us from construction defect litigation." Developer, Realtor, and insurance interests convinced the Colorado and Nevada legislatures to adopt their own versions of HB 3746, using the same arguments that they have made to this committee. In 2015, Nevada shortened its statute of repose to 6 years and added statutory barriers to litigation. Colorado did the same in stages in 2003 and 2017.



Developers and insurance companies were the only beneficiaries of this legislation in both states. There was no increase in condominium and townhome construction, the affordable housing crisis only got worse, and homebuyers were stuck paying for developer negligence.

Colorado. Protecting developers from litigation didn't boost housing availability. Colorado's housing crisis has continued to deepen. <https://www.denverpost.com/2024/03/10/affordable-housing-zoning-code-fix-front-range/> Colorado condominium construction never recovered from the 2009 financial crisis, despite multiple rounds of construction defect "reform." A tiny (1%) increase in condominium construction following the adoption of its 2017 legislation didn't last. Business journal Sum & Substance reported that "New condo starts rose slightly in the next few years but never even reached a double-digit percentage, and they fell again in 2022 to just 3% of new housing stock" <https://tsscolorado.com/construction-defects-reform-efforts-will-return-in-2024/>

Nevada. Nevada lawmakers are still waiting for the affordable new homes the developers promised in 2015. Condo and townhome prices hit all-time highs in 2024. <https://www.8newsnow.com/news/local-news/condo-townhome-prices-in-southern-nevada-reach-all-time-high-in-april/> As of January 2025, 10 years after the legislature adopted their version of HB 3746, Nevada was suffering from the worst housing shortage in the entire nation. <https://www.ktnv.com/news/nevada-facing-worst-housing-crisis-in-the-nation-how-local-leaders-plan-to-fix-this-issue> Rather than building affordable condos in Nevada, developers opted for luxury projects with prices starting at \$2,000,000 per unit. <https://www.multifamilydive.com/news/luxury-condos-underway-in-the-las-vegas-valley/625643/>

Other States. 28 states, including Oregon, agree that developers and their insurers should have some liability exposure for damages caused by shoddy construction for at least 10 years. However, there's no evidence showing any connection between state-level construction defect laws and housing production.

Condominium construction has been dead almost everywhere since 2009, except for Texas and Florida. Both states built massive numbers of condominiums within the last decade, despite having 10 year statutes of repose throughout these condo building booms. Both states also had plenty of construction defect litigation, and punishing weather that tends to expose construction errors.

The Texas condo boom started in 1999, resulting in the addition of thousands of units new units every year. Construction only started to slow down in 2024 due to oversupply and falling prices. See <https://www.austinmonthly.com/boom-town/> and https://www.huduser.gov/portal/publications/pdf/AustinRoundRock_TX-CHMA-21.pdf

The Florida condo boom kicked off in 2014, with over 400 condominium towers, containing over 50,000 individual units planned or under construction. <https://www.miamirealestateguy.com/miami-new-condominium-construction-update/> The boom finally faded in 2023, due to oversupply, with only 6,791 condo units built state-wide that year. <https://www.news.ufl.edu/2025/02/shimberg-report/>

Stripping owners of their rights didn't kickstart affordable condo construction in Nevada, Colorado, or anywhere else it's been tried. Likewise, Texas and Florida built so many condominium units that they reached a point of oversupply, despite having 10 year statutes of repose and liberal construction defect laws.

Please don't impose financial hardships on associations and their members in the hope that solutions that failed in other states will work here.

Unreasonable to Shift Risk to Associations and Owners

There's no evidence that passing this bill will result in even one more additional unit of housing being built, but we can be certain that it will cause foreclosures and financial ruin for at least some lower income buyers.

Developers can mitigate their risks during construction, and insure against any remaining exposure. Associations and owners can't do either.

Developers can prevent common defects with convenient and inexpensive third-party inspections during construction, as described by building envelope consultants Alika Nee and Justin Barnhart in their written testimony.

Developers also can and do buy insurance that insulates them from the consequences of their carelessness when associations are forced to file construction defect suits in order to pay for repairs. If the cost of that insurance is the problem, then insurers could easily require third-party inspections in exchange for lower premiums.

In contrast, there is no insurance that covers developer negligence for associations or their members, nor is there a reliable way for associations or owners to identify latent defects before they cause damage, short of dismantling parts of the building exterior. When associations have no legal recourse, they are forced to pay for repairs by levying special assessments on the owners. These special assessments often run into the mid to high tens of thousands of dollars to repair catastrophic damage to their homes.

The obligation to pay these massive repair costs destroys owner equity for all entry level buyers, and especially members of traditionally marginalized communities who often buy these homes as the first rung on the wealth building ladder. The proponents of this bill are asking you to pull the ladder out from under these people by passing legislation that has failed to achieve its goals wherever it has been tried.

Sincerely,

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