

Opposition to House Bill 3746: Protecting Homeowners' Rights to Remedy Construction Defects

Dear Chair Representative Pam Marsh, Vice-Chairs Representative Tom Andersen and Representative Vikki Breese-Iverson, and Members of the Housing and Houseless Committee,

I am testifying on behalf of the Western Oregon Chapter of CAI (Community Associations Institute) and Oregon Operations Manager of Evolution Architecture.

Construction defect statutes in Oregon would benefit from revisions and added clarity. Specifically improving the details of documentation at developer to board handover, specific timelines for inspections, increased definition of what inspections are required and who is qualified to conduct them, and documenting and communicating long term maintenance plans would all be beneficial. This bill as drafted does not address those issues and would disadvantage home owners in several ways.

Overall, restricting consumer rights will not result in delivering affordable housing to Oregonians

HB 3746 includes provisions that would severely restrict homeowners' ability to seek adequate remedies for construction defects in their communities. Under the proposed bill, certain claims would be difficult to pursue, particularly by requiring overly burdensome approval thresholds for homeowners, such as requiring a supermajority of homeowners in a community to support the filing of a construction defect claim. This provision could prevent homeowners from taking necessary legal action, even if their homes or common areas suffer from significant defects.

Homeowners have a reasonable expectation that the homes they purchase will be constructed with good workmanship and free from material defects. However, under HB 3746, homeowners would face significant hurdles in addressing these defects. For example, the bill's language could allow developers or contractors to make repairs that are merely cosmetic or inadequate, without the ability for homeowners or associations to demand more comprehensive fixes. This "right to remedy" could potentially leave defective issues unresolved, leading to long-term damage and safety concerns.

The current bill also mandates the use of alternative dispute resolution (ADR) prior to pursuing legal action, potentially delaying the resolution of critical issues for extended periods, while shorting the statute of limitation to resolve these issues. As shown in previous studies and surveys from CAI, many construction deficiencies take years to identify, and forcing lengthy ADR processes could allow serious defects to go unresolved until they worsen, exacerbating risks to health, safety, and property values.

Moreover, the bill's requirement for a high threshold of homeowner approval to move forward with a construction defect claim, combined with the inability to take collective legal action if just one homeowner is time-barred, creates further obstacles. Community associations are often made up of diverse groups of residents, including absentee owners, renters, and those with limited ability to respond to official communications.

Requiring a supermajority to take

action places a disproportionate burden on communities that are already challenged by the logistics of managing collective decision-making.

It is critical to note that a large portion of the construction deficiencies reported in Oregon (especially in multi-family and condominium developments) are caused by poor workmanship, including issues like water intrusion, structural cracks, and roofing deficiencies. The current provisions that allow homeowners and associations to take legal action against negligent developers are crucial for protecting their investments and ensuring the safety and stability of their communities.

Reducing the ability of homeowners to hold builders accountable will only serve to increase the financial burden on homeowners, as they will be forced to pay for repairs out of pocket, potentially through special assessments or by using reserve funds.

As drafted this bill would serve to reduce the quality of housing construction in Oregon and will deliver buildings that require significant repairs and maintenance over the long term reducing the affordability of housing in Oregon. We recommend that this bill be revised to incorporate meaningful provisions to increase the quality of construction and preserve consumer protections.