



May 4, 2025

Oregon Senate  
Committee on Housing and Homelessness  
By Electronic Submission

**Re: Support for Retaining the Ten-Year Statute of Repose for Construction Defect Claims**

Dear Chair Pham, Vice-Chair Andersen, and members of the committee,

I am writing to express my strong support for retaining Oregon's current ten-year statute of repose for construction defect claims, and to respectfully oppose any proposal to shorten it to six or seven years. As a licensed engineer in the State of Oregon, with extensive experience in building envelope assessment and design, and as someone who has spent many years supporting homeowner claims arising from construction and design defects, I have seen firsthand the long-term nature of these problems and the importance of preserving a realistic timeframe for recourse.

Several key considerations support the need to maintain the current statute:

**1. Homeowner Insurance Limitations**

It is a common misconception that homeowners association (HOA) insurance policies cover repair costs associated with construction defects. In reality, these policies are primarily written to cover sudden and accidental losses, such as those caused by fire, wind, or other insurable events. They explicitly exclude damages stemming from faulty workmanship, defective materials, or improper design.

This exclusion exists because construction defects typically involve gradual deterioration or hidden flaws that don't immediately cause visible damage. Insurers generally do not cover such latent conditions under standard property policies. As a result, when defects emerge after the statute of repose has expired, homeowners are often left without any avenue for recovery, neither through insurance nor legal action. Preserving a ten-year statute of repose is essential to ensure homeowners have a fair opportunity to identify defects and seek appropriate remedies before it's too late.

**2. Scheduled Inspections Are Not Enough**

Inspections at project completion and at two- and six-year intervals are insufficient to detect many construction defects, especially those concealed within walls, roofs, and other building assemblies. These inspections, unless they are invasive or destructive, cannot reliably uncover hidden issues.

Moreover, even if defects are detected early, insurance typically requires actual damage to trigger coverage. Discovering a defect without associated damage, especially at the two-year mark, may not provide any immediate recourse. This creates a troubling gap where defects are known but uninsurable and unremediated, and a shortened statute of repose may expire before the damage becomes visible or actionable.

### **3. Nature and Progression of Latent Defects**

Many construction defects, especially in envelope systems, are latent. They only become evident after prolonged exposure to weather or wear. Better-maintained buildings may delay this process, making it even more likely that damage emerges beyond a six- or seven-year window. In addition, systemic defects often do not manifest uniformly across a building, meaning they may be missed in limited inspections, especially if those inspections are limited in scope or purely visual.

### **4. Broader Types of Defects Beyond Water Intrusion**

Construction defects are not limited to water intrusion. Improper installation of structural (life safety), mechanical, electrical, or plumbing components can also result in premature failure or unsafe conditions. These types of latent defects may take years to surface, as installation errors accelerate material deterioration in subtle and often undetectable ways early in a building's life. Shortening the repose period reduces the time window homeowners have to discover and recover for these significant failures.

### **5. Lack of Evidence Supporting Economic Benefit**

There is no clear, demonstrable data showing that reducing developer/builder liability window leads to increased housing production or affordability. If the goal is to reduce liability and insurance premiums for contractors, a more effective and balanced approach would be to require third-party quality control, through peer design review and in-progress inspections, rather than shortening the timeline in which responsible parties can be held accountable. Reducing the statute of repose simply increases the financial burden on homeowners while doing nothing to prevent defects in the first place.

### **6. Lessons from Washington State**

Washington's reduction of its statute of repose did not result in fewer construction defects. What it did was limit homeowners' ability to seek recovery. Recognizing this, the State later adopted the Condominium Act (RCW 64.55), which mandates third-party design review and inspections during construction. These practices have been proven to reduce defects and offer a proactive alternative to limiting owner rights.

### **7. Lessons from Similar Legislation in Colorado and Nevada**

Colorado and Nevada have both passed laws that shortened the statute of repose and introduced other barriers to litigation related to construction defects. These state's legislation has been referenced by proponents of HB3746 here in Oregon. However, data from both these states demonstrated that shortening statutes of repose and limiting legal remedies for homeowners did not result in the promised increase in affordable housing as housing production continued to remain stagnant or even reduced. Instead, these changes have led to fewer consumer protections and higher financial burdens for homeowners and community associations.

## **8. Practical Barriers to Legal Recourse**

Although the “right to cure” is an important concept, it is often impractical in real-world construction defect cases. The cost of repairs often exceeds what contractors can pay out-of-pocket, requiring insurers to step in via litigation or mediation. Furthermore, requiring supermajority votes from HOA members to initiate legal action poses a significant barrier. Many HOAs include absentee or investor-owned units, making it extremely difficult to meet participation thresholds, even when major defects are at issue.

## **9. Disproportionate Impact on Lower-Income and First-Time Homeowners**

Construction defects often have the most devastating impact on lower-income and first-time homeowners, who typically lack the financial resources to absorb unexpected repair costs. These homeowners are more likely to purchase entry-level or production-built homes, which may be constructed under tighter budgets and with less oversight. When defects emerge, often years after purchase, these owners are left with few options. Reducing the statute of repose would strip away one of the few protections available to these vulnerable buyers, making it harder for them to seek justice or recoup their losses. Retaining the ten-year statute ensures that all homeowners, regardless of income, have a meaningful opportunity to hold builders accountable and protect what is often their most significant investment.

## **Conclusion**

I urge you to look at the impact that reducing the statute of liability has actually had in other states and to put the rights and protection of Oregon homeowners first. Shortening the statute of repose would severely limit the rights of homeowners to identify and recover for serious construction defects. It would not improve construction quality, nor would it significantly lower costs. Instead, it would shift the burden of poor construction onto homeowners and limit their ability to hold builders and developers accountable. I urge you to maintain the ten-year statute of repose and to consider stronger quality assurance requirements during design and construction as the more effective and equitable solution.

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