

To: House Committee on Housing and Homelessness
Re: Opposition to HB 3746
From: Lacey Sutton
Date: 5/14/2025

Dear Chair Pham, Vice-Chair Anderson, and Members of the Committee,

This bill was only recently brought to my attention, and I have read dozens of testimonies in support of it. Frankly, I am appalled by what developers like Habitat for Humanity are saying: *Shield us from accountability, and we'll build more houses*. As a Habitat homeowner, I thought you might be interested to know what a developer does when they are shielded from accountability.

I live in a 31-unit condominium complex called Cherry Blossom, which was built by Habitat Portland Region without fire access. Portland's Land Use Services approved Cherry Blossom to be multifamily apartments with required fire sprinklers. However, Habitat purchased the property and built residential condos without sprinklers. They failed to address critical fire access issues which sprinklers would have mitigated, including a dead-end road with no turnaround. Instead, they made things significantly worse by increasing building heights past 30' —triggering a need for aerial apparatus access— and decreasing road width below the required 26'.

During plan review, a fire inspector cited multiple items in violation of fire code, and another wrote to the architect to express concerns about the plans' "significant issues." But these plans were approved shortly thereafter without any required corrections, conditions of fire code, documentation, appeals, or alternative methods of fire safety, over a phone call, one day before the architect's deadline.

Lack of fire safety is not the only "defect" at Cherry Blossom. Despite vertical balcony railings being a Condition of Approval for land use, Habitat installed horizontal bars that pose a serious safety hazard to children due to climbing. During construction, they failed to patch up holes in our garage walls that should be fire-rated to prevent flames and smoke from entering our homes. Portland Permitting & Development has recently admitted these things were "missed" during inspections. Unfortunately, there is much more.

But if you ask Habitat to explain how this happened, they will say, "Everything passed inspections." In other words, *the city let us do it*. They continue to deny any wrongdoing.

Some Cherry Blossom homeowners have only recently become aware that the legal documents we signed significantly limit our ability to seek legal recourse, effectively waiving our right to sue for virtually any reason after the expiration of the express warranty (attached below).

Habitat Portland Region does not need incentivization to build more condominiums; they have already significantly increased construction of condominiums in recent years. Last year, they

broke ground on a 52-unit development, their largest to date. They don't need HB 3746 to build affordable housing — they need it to protect them from liability.

This bill takes away one of the few tools families like mine might have to protect ourselves when developers cut corners. Please vote NO on HB 3746.

Sincerely,

Lacey Sutton

Excerpt from our Sales Agreement:

7.1 Express Warranty. Pursuant to ORS 100.185, Seller warrants to Purchaser for a period of one year from date of possession that the Unit and related limited common elements sold under this Agreement will be free of defects in materials or workmanship. In addition, Seller warrants that the general common elements are free of defects in materials or workmanship and will be for a period of one year from the date of the first conveyance of a unit in the condominium to a Purchaser. This warranty applies only to those items that are integral component parts of the structure and is not applicable to “consumer products” as defined in the Magnuson-Moss Warranty Act. The latter items may be covered by manufacturer’s warranties, which are available for inspection at Seller’s office.

8.1 Release and Waiver of Past, Present, and Future Claims Other Than Statutory Warranty Claims Regarding Condition of Property. Except with respect to warranty claims under Section 7 above, **Purchaser hereby releases and waives any claim whenever arising against Seller or its agents, brokers, successors, employees, affiliates, contractors, representatives, officers, directors, members and managers, against any contractors, subcontractors, suppliers, consultants or design professionals of every tier performing any work or services in connection with the Condominium at any time pursuant to this Agreement, and their insurers and reinsurers, or against the Association or any board member thereof (collectively, the “Seller Parties”), relating to or arising from the condition of the Unit and common elements at any time.** This waiver is absolute and unconditional, and this release and waiver applies whether or not Purchaser has knowledge of any actual or potential cause of action for such claims. This waiver applies to claims under any legal theory, including but not limited to negligence, negligence per se, negligent misrepresentation, defective construction, breach of contract or express or implied warranty (except as set forth in Section 7 above), unlawful trade practice, breach of fiduciary duty, strict liability, nuisance, trespass or any other theory, whether arising from statute, contract, tort or otherwise. This waiver includes, without limitation, claims relating to construction defects, design defects, inspection defects, water intrusion, mold, mildew, dry rot, fungus and/or odors in the Unit or common elements; products or conditions in the Unit or common elements, including for example carbon monoxide, radon or carpet glue; noise or sound transmission; loss of use; emotional distress; incidental or consequential damages; attorneys’ fees and costs; or relocation expenses (temporary or otherwise). Purchaser acknowledges that Seller would have required a significantly higher purchase price for the Unit if Purchaser refused to accept the Property on such basis, required any further warranty, or declined to provide the foregoing release and waiver. This release and waiver will be binding upon Purchaser, all successor owners, Purchasers or occupants of the Unit, the association, and their respective employees, contractors, property managers, brokers, heirs, successors, assigns, guests and invitees. Purchaser agrees that claims of the association are derivative of claims of Unit owners and that the association will be bound by the foregoing waiver.

This waiver acts as a complete bar and defense against any released or waived claim. Purchaser agrees to require this release and waiver be included as a term in any future sale or

lease of the Unit, the project or the Property, and that Purchaser will indemnify, defend, reimburse and hold the Seller Parties harmless from any claim, suit, demand, damage, liability or expense resulting from the failure to do so. **Purchaser acknowledges that Purchaser has read and understands this waiver, that he or she has had an opportunity to seek and consult counsel regarding this waiver and will have further opportunity to do so until the expiration of Purchaser's five-day right of cancellation set forth in the Notice to Purchaser (Right of Cancellation) attached to the front of this Agreement.**

8.2 Time Within Which Claims Must be Asserted. It is the intent of the parties that the releases and waivers of claims in this Section 8 be comprehensive and final. To the extent that it is determined that any claim against any Seller Party, under any legal theory, including, without limitation, those claims listed in Section 8.1 above, survives the foregoing release and waiver for any reason, such claim must be brought under the initial dispute resolution procedures set forth in Section 10.2(a) of the Bylaws within 90 days after the date the Association or Purchaser knew or reasonably should have known of facts sufficient to put them on notice of the claim, **or if earlier**, with respect to the Unit by no later than the first anniversary of the Closing Date of this sale or, with respect to the general common elements, within 90 days after the date of the turnover meeting as described in Section 2.2 of the Bylaws. Any arbitration or litigation based on such claims must be instituted within 90 days after completion of the mediation proceedings under Section 10.2(b) of the Bylaws, or if shorter, the applicable statute of limitations. **Any and all such claims not brought within these time periods will be deemed time barred, regardless of when the Association or unit owners actually discovered the alleged basis for the claim.**