



December 11, 2020

Sen. Michael J. Rodrigues, Chairman
Senate Committee on Ways and Means
Room 212, State House
Boston, Massachusetts 02133

RE: H. 4605, An Act Relative to Construction Defect Claims by Condominium Owners

Dear Chairman Rodrigues:

On behalf of the Home Builders and Remodelers Association of Massachusetts, Inc. (HBRAMA), I respectfully submit this letter to register our opposition to House Bill No. 4605, and to elaborate our concerns regarding the impacts of the proposed legislation on our members.

The proposed legislation will significantly alter the long-established standards regarding the statute of limitations and statute of repose as they apply to condominiums. Our builder members are actively involved in large-scale construction projects in order to achieve denser housing development within strategic planning areas and to help address the significant housing shortage that is prevalent statewide. Many of these residential construction projects are designed for homeownership, made subject to the provisions of the Massachusetts Condominium Statute (G.L. c. 183A), and will, therefore, be negatively impacted by this bill.

H. 4605 drastically expands the time period of the statute of limitations by tolling the date that an action accrues until such date as a declarant (builder) relinquishes control of the condominium through its organization of unit owners (the “Declarant Control Termination Date”).

More importantly, the proposed legislation would significantly alter the scope of the statute of repose. The statute of repose was first enacted in Massachusetts in 1968 (G.L. c. 260, §2), when the Legislature placed an absolute outer limit on the duration of liability for construction defect claims. The statute of repose currently provides that a claim must be made within six (6) years of the earlier of: (1) the opening of the improvement to use; or (2) substantial completion of the improvement and taking the taking of possession for occupancy by the owner. This absolute outer limit was specifically intended to protect builders and other professionals involved in construction from possible liability throughout their professional lives and into retirement. Since 1968, and despite constitutional challenges, the Supreme Judicial Court has consistently recognized a substantial public purpose in the statute of repose and has upheld its plain terms.

H. 4605 would gut the absolute outer limit of the statute of repose. The proposed legislation would significantly extend the outside date of six (6) years based upon circumstances and events that may

have no connection to an alleged defect. These events not only include the Declarant Control Termination Date, but substantial completion of all phases of a condominium or the expiration of phasing rights within a condominium. These phasing milestones might not have any significance to the completion and/or use of a common area improvement.

Moreover, within certain large projects, phases may be contemplated over many years (in excess of 10+ years in some instances). Over such long phasing projects, a developer may transfer rights from one party to another, multiple construction lenders may be involved, and the completion or incompletion of any one phase may have no impact or connection to an alleged defect in a prior completed phase.

Under the proposed legislation, the six (6) year statute of repose applicable to a defect claim in the construction of the first phase of a large condominium project would not run until six years after the last unit in the last phase of the condominium is completed. Practically speaking, such an amendment to the statute of repose would add tremendous indefiniteness and lack of predictability to construction defect claims, with potentially drastic impacts to the ability to construct and finance large condominium projects.

At a time when housing of all types is a social justice, public health and economic imperative, H. 4605 would put its development at risk. We strongly urge you not to support this legislation.

Thank you for your consideration of our views.

Respectfully,



Matthew Anderson
President

cc: Senate President Karen Spilka