



July 16, 2019

Sen. James Eldridge, Senate Chair
Rep. Claire Cronin, House Chair
Joint Committee on the Judiciary
State House
Boston, Massachusetts 02133

RE: H. 3260, An Act Relative to Construction Defect Claims by Condominium Owners

Dear Senator Eldridge, Rep. Cronin and Members of the Committee:

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. 3260 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. 3260 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"). While we can debate whether such a tolling period is a consideration in matters where there are alleged defects in the design, planning, construction or general administration of a common area improvement, *such tolling should not apply to claims that are specific to an individual unit and within the control of an individual unit owner*. The proposed legislation makes no distinction between a unit specific claim and a common area claim.

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 statue of repose and has upheld its plain terms.

H. 3260 would gut the absolute outer limit of the statute of repose. Similar to the criticisms above, 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. None of these phasing milestones have any significance to a defect within an individual unit and within the control of an individual unit owner.

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.

We urge the Joint Committee on the Judiciary to recommend the bill "ought not to pass."

Thank you for your consideration of our views.

Respectfully,

A handwritten signature in black ink, appearing to read "Hunter Marosits".

Hunter Marosits
President