



# Oregon

Tina Kotek, Governor

## HPAC Work Group Recommendation Template

Last Update: June 21, 2023

### Work Group

- Availability of land
- Land development permit applications
- Codes and design
- Workforce shortages
- Financing

### Recommendation

Update existing regulations and requirements for condominiums to make them easier to build and expand the types of construction that qualify to include smaller middle housing concepts.

- Reduce statute of ultimate repose to 6 years. BCD to develop on envelope inspection standards to be inspected by local jurisdictions as part of the building inspection process to help reduce risk of defects.
- Clarify rules and roles for condominium documentation to keep out of local jurisdiction (HB 3395). Provide information to cities and help amending code to remove local guidance (Real Estate Agency).
- Release of earnest money for construction
- Provide more state resources for approval and training/code amendment (more staff)
- Do not require individual Limited Common Elements to be measured as part of the condo plat (outer boundary to be measured with individual elements within it to be listed, rather than measured).
- Air space condominiums shall be permitted for detached single family and townhomes.

### Related Work Plan Topics

Evaluate policy changes to support the production of condominiums, especially for smaller scale projects and middle housing.

Envelope inspection requirement performed by third party to help reduce state of repose.

### Adoption of Recommendation

*Describe if the adoption was a vote, by consensus, etc.; the date the recommendation was adopted by the work group; and any other needed context.*

## Co-chairs Guidance: Standards for Analysis

1. Clearly describe the housing production issue that the recommended action(s) will address.

The liability associated with the long statute of repose reduces the desirability of developing condos. More routine maintenance issues that show up near the end of the (existing) 10 year statute can pose an increased risk of litigation for developers. Shortening the statute of repose will help to lower insurance costs for condo units (insurance can cost between \$10,000-\$20,000 per unit). This will help increase affordability.

The difficulty in meeting the legal requirements for the creation of condominiums along with restrictions or requirements regarding what types of structures can qualify for being turned into condominiums limits their use in Oregon. These limitations restrict the overall production of housing.

In addition, limited staff at the state level could limit the approval of condos, especially if the volume of projects were to increase.

Additional guidance needs to be provided to the cities regarding their role in the approval of condos, with an emphasis on leaving the review to the state.

2. Provide an overview of the housing production issue, including quantitative/qualitative context if available.

Limitations on the types of housing can restrict production or force the use of less cost effective ownership structures or project types. By limiting or restricting the types of projects that can be created, developers have fewer options and may be forced to use a more expensive alternative or not follow through with a project at all due to cost considerations. This constraint on housing negatively impacts housing affordability, reduces the types of housing available and contributes to decreased production of housing.

Condos provide an opportunity for home ownership that can be more affordable than traditional single family homes. Increased liability and limits on funding make developing condos less attractive and because of this, there aren't as many available.

The liability associated with the long statute of repose reduces the desirability of developing condos. More routine maintenance issues that show up near the end of the (existing) 10 year statute can pose an increased risk of litigation for developers. The cost of liability defect insurance is approximately \$10,000-20,000 per housing unit. This is a considerable added cost for the development of condos.

3. To assess the issue and potential action(s), include subject matter experts representing all sides of the issue in work group meetings, including major government, industry, and stakeholder associations.

Karna Gustafson, Real Estate Attorney and senior vice president of government affairs, Central Oregon Builders Association

Rebecca Tom, Real Estate Attorney

Michael Hanifin, Land Development Manager and Legislative Coordinator, Oregon Real Estate Agency

Michelle DeRosa, Real Estate Attorney

Ben Bryant, Assistant City Manager for City of Happy Valley

Eric Schmidt, Assistant City Manager for City of Gresham

Ariel Nelson, League of Oregon Cities

SMEs were invited to HPAC to discuss the challenges with the condo process, what is different in neighboring states, and provided examples of some projects where challenges have resulted in considerable costs and delays. The work group drafted up the recommendation, circulated it to all members and SMEs prior to a second meeting. All SMEs were invited to discuss the proposed recommendation. All work group members supported moving it forward and some SMEs agreed on the content within the recommendation.

There was no negative feedback.

4. Provide an overview of the expected outcome of the recommended action(s), including quantitative/qualitative context if available.

Specifically, this recommendation will reduce the risk of litigation and lower the cost of liability insurance.

The recommended actions would result in development of more housing, and specifically paving the way for more middle housing. It would also result in more opportunities for home ownership, and avoid the need for costly and sometimes unpredictable land divisions or other strategies to fit more units onto single parcels.

Providing more resources for the state would allow for projects to get approved quicker. Providing guidance to jurisdictions regarding their role in the approval process will cut down on delays caused by reviews that are not statutorily required.

5. Estimate of the time frame (*immediate, short, medium, long-term*), feasibility (*low, medium, high*), and cost (*low, medium, high*) for implementation of the recommended action(s).

**Time Frame**

Long-term

Medium-term

Short-term

Immediate

**Feasibility**

High

Medium

Low

**Cost**

High

Medium

Low

Reducing the statute of repose matches the statute of repose in Washington and other states.

HB 3395B included some language about clarifying Cities' role in the condo process, but provided the funding and assistance from the Real Estate board would ensure consistent codes and implementation across the state. This is where the most cost would come with this recommendation.

6. Provide a general overview of implementation, the who and how for the recommended action(s).

Implementation would happen through a state level statutory change.

Additional staffing at the Real Estate Agency would help change city code.

7. Outline the data and information needed for reporting to track the impact and implementation of the recommended action(s).

Data regarding the number of condominiums created before and after statutory changes will be needed to track the impact of those statutory changes. Housing prices can also be used to track if the comparative costs of condominiums change a different rate than comparable non-condominium housing units.

8. Identify any major externalities, unknowns, tradeoffs, or potential unintended consequences.

It is unknown how the changing of condominium regulations would impact overall housing supply and pricing. The condominium model is unique and expanding it to include smaller buildings, or middle housing concepts may not result in enough association members to operate the entity responsible for the common areas. This could result in deferred maintenance issues or other negative impacts on the condominiums or the condominium association.

*Please include any relevant reports, data analyses, presentations, or other documents that would be informative and useful for the full HPAC as the recommendation is discussed and considered.*