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Banking, Commerce and Insurance Committee November 15, 2019  
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**WILLIAMS:** It's 10:00, so welcome to the Banking, Commerce and Insurance Committee hearing. My name is Matt Williams. I'm from Gothenburg representing Legislative District 36 and I serve as Chair of the committee. Today, we are here to hear LR137. To better facilitate today's proceedings, we ask that you abide by the following rules: please silence or turn off your cell phones; move to the front row when you are ready to testify. The order of testimony for a legislative resolution is a little different. We will not have supporters or opposition. We will just take testimony in any order that you would like to come up and, and testify. I am going to ask approximately how many are here that are planning to testify at this point? OK, with that number and with your help, we will not use a light system today. And I mean, with your help. If you start running a little bit too long, we will help you come to a conclusion. Please be concise. If you will be testifying, please come to the microphone and please state and spell your name for the record, both first and last name. If you have written materials to distribute, please bring them and give them to our committee clerk and we will need ten copies. If you don't have that many copies, we can make them for you. To my immediate right is committee counsel, Bill Marienau; to the left at the end of the table is committee clerk, Natalie Schunk. And we are joined by numerous other senators that are on the committee and we'll have them introduce themselves, starting with Senator McCollister.

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**McCOLLISTER:** John McCollister, District 20, central Omaha.

**KOLTERMAN:** Mark Kolterman, District 24, Seward, York and Polk Counties.

**QUICK:** Dan Quick, District 35, Grand Island.

**La GRONE:** Andrew La Grone, District 49, Gretna and northwest Sarpy County.

**GRAGERT:** Tim Gragert, District 40, northeast Nebraska.

**WILLIAMS:** And thank you. And at this time, we would ask Senator Lindstrom to begin with his introduction of LR137.

**LINDSTROM:** Thank you, Chairman Williams and members of the committee. It's good to see you all again, kind of the calm before the January storm. You know this-- I don't do very many legislative resolutions or studies, but this one really hit home. And as I've been here over the last five years, we've talked a lot about different issues in the state of Nebraska when it comes to work force development, work force housing, and really that need to grow Nebraska. And what this resolution is intended to do is fill that gap between what we have now in statute dealing with your single-family home, right, and you have apartments and we have this gap in between. And so as I, as I have traveled across Nebraska and been to a lot of your communities, I've seen the need for the work force housing. Oftentimes, in those, those

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areas, you can't get builders to build those starter homes just because of the overhead cost. It's very difficult to build one to three to even five homes. And so as we tried to look at revitalization of Main Street in towns across Nebraska, I think this is one crucial piece of the puzzle. Oftentimes, you see-- Nebraska has opened it up to a lot of what I call the breweries, the tap houses, the restaurants. And people want to have the ability to access those, but in an affordable manner. And so this doesn't necessarily only address what I'll call the millennial age group that-- that's looking for housing, but this also addresses what I'll call the retirees who may not want to have a home that they lived in for a long time, not now, not do all the, the things that they have to do to keep up a home but still want to live in their, in their town. And so this provides, hopefully, a bill-- and a bill will come of this, but this is the resolution. And you'll hear from a lot of experts, from a lot of different industry today that can give you a better idea of what they're seeing in their backgrounds and, and what they see as far as what legislation we need to bring into the future and what we'll do in January. So with that, I'd be happy to answer any questions, but I'll let the experts fill you in on, on the specifics.

**WILLIAMS:** Are there any questions? Senator McCollister.

**McCOLLISTER:** Yeah. Thank you, Chairman Williams. Senator Lindstrom, one of my constituents Hugh McDowell, Hugh McDowell [PHONETIC] sent me

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a letter. Have you had a chance to review that, that letter or that email?

**LINDSTROM:** I will review it as I'm sitting in the back, but I did see the letter here.

**McCOLLISTER:** OK. Well, we'll--

**LINDSTROM:** But I have not read it specifically, no.

**McCOLLISTER:** Well, we'll, we'll ask those questions upon your return.

**LINDSTROM:** Very good.

**WILLIAMS:** Any additional questions? Seeing none, thank you.

**LINDSTROM:** Thank you.

**WILLIAMS:** And we would invite the first testifier to come up. Welcome, Mr. Perlman.

**HARVEY PERLMAN:** Thank you, Mr. Chairman. It's always good to be here. Although I'm not an expert, so I'll get that out of the way right away. Mr. Chairman, members of committee, I'm Harvey Perlman, H-a-r-v-e-y P-e-r-l-m-a-n. I live at 9101 Pioneer Court, Lincoln, Nebraska. I am currently a professor of law at the University of Nebraska College of Law. I serve as a life member of the Nebraska Commission on Uniform State Laws. My testimony is on behalf of the Nebraska Commission, does not necessarily reflect the views of the

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university. Let me take just a brief moment to remind you of the role of the Uniform Law Commission. The National Commission, of which our local Commission is a member, was established by the states in 1892 as a way to develop laws that could be adopted on a uniform basis, but did not depend on congressional action. The Legislature supports the National Commission through the payment of dues. Commissioners serve voluntarily. We essentially draft proposals for a uniform state legislation through a transparent process which allows outside stakeholders and interest groups to participate. If approved, our product is then returned to the state legislatures for your adoption, rejection, or modification. LR137 suggests there are several uncertainties in Nebraska law with regard to the functioning of planned unit developments and homeowners associations. I'm here to suggest that the committee consider recommending for adoption in Nebraska the Uniform Common Interest Ownership Act, a product of the Uniform Law Commission. That Act provides a stable, integrated, and uniform legal foundation for three types of common ownership models: condominiums, plan unit developments, and cooperatives. We believe that Act answers each of the questions posed by the study committee and would provide a modern legal framework for these types of developments. Some background: Nebraska's condominium law was originally enacted in 1983, amended in 1990-- '84 and 1993. It was based on the 1980 version of the Uniform Condominium Act developed by the Commission. But the Commission has since modernized that language

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related to condominiums and combined it with two other uniform acts governing other forms of shared interest in real property: planned communities with homeowners associations, and real estate cooperatives. The combined act was retitled as the Uniform Common Interest Ownership Act. As this committee recognizes, Nebraska currently has no statute regarding the formation and governance of homeowner associations. Adopting a new law based on the Uniform Common Interest Ownership Act to replace the outdated Nebraska Condominium Act would provide condominium associations, homeowner associations, and developers of both types of communities a modern legal framework. Whether there is interest in including provisions related to cooperatives in Nebraska could be determined, I have no idea whether they're used here or not. Nebraska was one of 16 states that originally adopted the 1980 Condominium Act, so it has experience with uniform legislation in this area. To date, nine states have adopted the Uniform Common Interest Ownership Act. That act has adopted modest revisions reflecting the experience in states adopting it. As far as we know, there's been no significant organized opposition, although bankers have raised concerns about a lien for homeowner assessments and its relationship to first mortgages. And I'm sure that could be worked out in Nebraska. The growing use of common interest property regimes without structural legislation inevitably produces legal issues. This would be an appropriate opportunity to consider a comprehensive enactment to eliminate some of these disputes and to

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provide more legal certainty to investment in these developments. I do not profess to be an expert in the details of the uniform acts at this point, but it does specifically address the questions raised by the committee. Briefly, a statute of limitations on actions by a homeowners association against the developer. The Uniform Act defers to enacting existing state backed law of civil procedure.

Specifically, allows and incorporates-- would incorporate Nebraska's statute of limitations, which are four years for most tort claims, including fraud claims; four years for breach of warranty or defects in construction; five years for breach of written contract, including indemnification; and ten years for actions to quiet title to real property. The percentage of homeowners associations required to vote in favor prior to proceeding with litigation. Under Section 3-124(d) of the Uniform Act, the determination to begin a proceedings may be made by a majority of the executive board of a homeowners association without any specific percentage of unit owners voting in favor.

However, no proceeding may be instituted without first giving the developer notice and the intent to file a proceeding. The imposition of a mediation requirement prior to litigation. Section 3-124(d) of the Uniform Act requires a process similar to mediation, although a professional mediator is not required. Before filing a lawsuit against a developer, the homeowners association must basically give written notice of the claim, give the developer an opportunity to respond, give the, the developer an opportunity to cure. And then if they can't

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reach an agreement, litigation proceeds. The imposition of a requirement that the homeowners association adhere to preventive maintenance plans. Section 3-107 of the Uniform Act places responsibility on a homeowners association to maintain, replace, and repair common elements. The same section places responsibility on an individual unit owner to maintain, replace, and repair the unit. Note this section is equivalent to the Nebraska 76-865 associated with condominiums, except the current Nebraska statute applies only to condominiums and not to homeowners associations. And your fifth question, selling units of real estate while the homeowners association is involved in litigation. Section 4-103(a)(12) of the Uniform Act allows a developer to sell units while involved in litigation if the purchaser is informed in writing of an unsatisfied judgment or a pending litigation material to the development of which the developer has knowledge. The provision was added to the Uniform Act in 1994 and Nebraska's statute has no similar provision. So in conclusion, the Nebraska Condominium Act was based on a 1980 uniform law that is long outdated. Nebraska would benefit from adopting the current version of the Uniform Common Interest Ownership Act, which governs not only condominiums but also planned community developments and real estate cooperatives. The updated law would address many of the significant issues that arise in common interest communities in a manner that will help prevent or resolve legal disputes between unit owners, developers, and unit owner associations. If the committee were

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so inclined, both your Nebraska commissioners as well as the staff at the National Office would be available to provide support. Thank you, Mr. Chairman. Be happy to answer any questions.

**WILLIAMS:** Questions? Senator La Grone.

**La GRONE:** Thank you, Mr. Chairman. And thank you, Mr. Perlman, for being here.

**HARVEY PERLMAN:** Sure.

**La GRONE:** Just a couple of surface-level questions about the Uniform Act. How many-- do you know how many states have adopted it? And can you [INAUDIBLE]--

**HARVEY PERLMAN:** Nine so far.

**La GRONE:** OK. And what states are examples of that?

**HARVEY PERLMAN:** I-- I am sorry. I have the list.

**La GRONE:** [INAUDIBLE]

**HARVEY PERLMAN:** I know Alaska, Colorado, Kentucky, I think.

**La GRONE:** OK, that was--

**HARVEY PERLMAN:** I could certainly provide those to you.

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**La GRONE:** Well, that was going to my question of are we talking about states similar to Nebraska or not? It sounds like we are.

**HARVEY PERLMAN:** Yeah, Colorado certainly is one.

**La GRONE:** Right. And then have there-- and if you don't know the answer to this it's totally fine, we can look into it, but have there been any variations among the, the actual adopted statute? Obviously, sometimes when you see these uniform acts,--

**HARVEY PERLMAN:** Yeah.

**La GRONE:** --there can be variations at state level.

**HARVEY PERLMAN:** Right. There are-- there have been some modest variations, certainly. And that's one of the advantages of a uniform act is instead of getting a congressional statute with no modifications,--

**La GRONE:** Um-hum.

**HARVEY PERLMAN:** --states can accommodate any particular special interests that they have.

**La GRONE:** And then along those same lines, has there been a consistent area where those variations happen or is it just been on a state-by-state basis?

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**HARVEY PERLMAN:** You know, honestly, Senator, I don't know. But we'd certainly collect that for you if the committee was interested in pursuing the-- this as an answer.

**La GRONE:** And I can look into that, too. Those are just-- generally, when we're dealing with uniform acts, there's a few things I like to look into.

**HARVEY PERLMAN:** Right.

**La GRONE:** Thank you so much.

**HARVEY PERLMAN:** I don't blame you.

**WILLIAMS:** Additional questions? Seeing none, thank you for your testimony.

**HARVEY PERLMAN:** OK. Thank you.

**WILLIAMS:** Invite our next testifier.

**DAVID LEVY:** Thank you.

**WILLIAMS:** Good morning.

**DAVID LEVY:** Good morning, Mr. Chairman-- excuse me, members of the committee. David Levy, D-a-v-i-d L-e-v-y. Baird Holm Law Firm, appearing before you as registered lobbyist for Noddle Companies. Noddle Companies is a prominent developer in Omaha. You might be

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familiar with one of their excellent projects, Aksarben Village. They are also active in about 17 states around the country or have done projects in about 17 states around the country. Noddle Companies is interested in legislation to alleviate barriers to condominium development. In particular, they have seen a desire from their customers and client base for condominium development for multi-family ownership opportunities, and they have a desire to, to build those type of projects as well. But they've also observed that those type of projects are almost nonexistent in terms of new construction and new projects in the Omaha area. And they attribute that, as do many others, to barriers primarily being litigation related barriers, construction defect, warranty, litigation. Professor Perlman kind of stole my thunder, which is great. He addressed a lot of the things in describing the model act, at least us to condominiums that would address some of the problems. And, and I think the people behind me will talk to you about the benefits of condominiums. Again, multifamily ownership opportunities and, and the need for those. But a couple-- and, and I'll try and be brief here. I heed your warning, Senator, appreciate no lights here. But some of the issues, legal issues that we're talking about, that legislation would address, the litigation risk is, is, of course, significant. And there is always litigation risk. And, and litigation in some ways is a consumer protection mechanism, so there needs to be a balance. But with common interest developments, one of the big problems is sort of this tyranny

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of the minority issue where you could have 100 owners and a 100 unit condominium project, and let's say you have a seven member board of directors, a majority of those seven owners-- so four out of the hundred could throw all hundred owners into litigation. There might be 75, 80, 90 of those owners who are not interested in that litigation. They don't see it as an issue, they want, they want to resolve it differently. That's a significant issue. And it's a significant risk for the builder and it's a risk for owners. It's something you also hear from insurance companies and lenders who also are, are fearful of participating in, in condominium developments. Professor Perlman mentioned the four year statute of limitations. That's a fairly modest statute of limitations candidly in this arena. The bigger problem is what people refer to as the statute of repose or the time that elapses before the four year statute of limitations starts, starts running. And in Nebraska, under current law, when that starts running, is when the last owner purchases that unit. So if it takes a couple of years to, to sell all the units in the project, now you've effectively got a six year statute of limitations potentially for all of the units, not just for that, for that last unit. Vicarious liability is another issue. Am I'm an architect let's say, and, and I participate in a condominium project, the contractor makes a mistake or an engineer makes a mistake and there's litigation, I'll be brought into that litigation. So you have architects and engineers and you'll hear from, for example, the AIA about the concern and you'll hear from testifiers

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about architects simply forgoing this area of business, even though it could be something that they could do because of the risk of, of liability of, of something that they may not even have ultimately been responsible for. I mentioned insurance can be higher or unavailable. Lending also can be a significant issue. Banks are uncertain about lending on these projects. I'll just mention one other thing, sort of a personal anecdote, but I, I think it goes to what Senator Lindstrom talked about with affordable and work force housing. I have the honor of serving as chairman of the Omaha Housing Authority Board of Commissioners. And one of the programs we have and one of our goals is, is homeownership. It is very difficult to take somebody from public housing to owning a single-family detached home. If we have more condominium development, more multifamily ownership opportunity, that's one area where now instead of trying to take somebody from public housing and get them into owning a single-family detached home, which they may not want to do, they may not be able to afford, they may not want to take care of whatever it might be. More condominium development provides more opportunity for homeownership for what fundamentally is, is somewhat a narrow segment. But it's a great example, I think, of the opportunities that we're missing. I think the, the, the housing shortage and really crisis throughout Nebraska is well known and anything in my view that contributes another type of housing that we really don't have now is important to that. And legislation to address condominiums and the construction defect risk,

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litigation risk that is keeping those from being developed at this time would, would contribute positively to addressing that significant issue. So with that, I'll stop there and happy to answer any questions.

**WILLIAMS:** Senator La Grone.

**La GRONE:** Thank you, Mr. Chairman. Thank you, Mr. Levy, for being here.

**DAVID LEVY:** Of course.

**La GRONE:** And thank for your work on this. I think you really touched on some of the key issues here of-- without this type of housing, there's a generation of wealth gap that can occur, especially with the student loan crisis going on.

**DAVID LEVY:** Yeah.

**La GRONE:** But I wanted to touch real quick on the statute of repose issue you brought up. I'm not familiar with how the law currently operates in this area. So my question is, basically, if you were to do a uniform act in this area would it address-- what it sounded like would be fairness issue of-- you know, there's one unit left, it takes six years to sell. Now someone who had problem with the development that happened two years into, into them moving in, but that last unit didn't sell for six years. Suddenly you're-- you know, ten years out

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at this point and this person suddenly decides to sue. Is that an accurate description of how-- where it currently stands?

**DAVID LEVY:** Yes.

**La GRONE:** So would that be addressed in a uniform type act?

**DAVID LEVY:** You know, I, I can't say specifically as to the Uniform Act that Professor Perlman testified about. I, I do think in, in legislation that would follow on this interim study in this hearing today, absolutely, that is something we should address. And, you know, again, there is a fairness issue and a consumer protection issue. And you want to make sure that that owner of the unit can protect themselves as to their unit. But you also want to-- the, the balance in that is protecting the developer and the architect and, and the owner of the first unit who bought it day one many years ago who may be very happy with the project and all of the common elements of that project at that point should be protected from litigation. You know, if you're the developer, you're waiting and waiting and waiting for that last unit. And that's a significant deterrent right now to building these projects.

**La GRONE:** Thank you.

**DAVID LEVY:** Um-hum.

**WILLIAMS:** Additional questions? Senator McCollister.

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**McCOLLISTER:** Yeah, thank you, Mr. Chairman. Mr. Levy, has Nebraska experienced excessive litigation in this area more than you'd expect in our state our size?

**DAVID LEVY:** At one time, yes. More recently, no. Because, again, these projects are very, very uncommon. And, and when they are built any more, at least in my sort of anecdotal experience, they're built on a sort of family and friends basis. So it's a fairly small project and the developer literally may know each of the people ahead of time to whom he or she is gonna sell the condominiums. In Colorado, I talked to a construction defect attorney there, there were no condominium developments built in the Denver area between 2007 and 2014 because of this issue and because of the litigation that had gone on prior to that, they passed a law in 2014 that sort of opened things back up. But, you know, through-- this is, this is an odd thing a little bit. We're kind of trying to prove the negative here by saying these aren't happening. You know, where all the people saying these aren't happening. We can tell you, though, from that experience and, and you'll hear from folks again in the industry who have just forgone this line of business.

**McCOLLISTER:** Thank you.

**DAVID LEVY:** Um-hum.

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**WILLIAMS:** Additional questions? Seeing none, thank you for your testimony, Mr. Levy.

**DAVID LEVY:** Thank you all very much.

**WILLIAMS:** Invite the next testifier. Welcome.

**KEVIN ANDERSEN:** Thank you, Mr. Chair, members of the committee. My name is Kevin Andersen, K-e-v-i-n A-n-d-e-r-s-e-n, deputy chief of staff for Mayor Jean Stothert in the city of Omaha. My focus is economic development in the Mayor's Office. And I'm here in support of this effort because I agree with Senator Lindstrom that this is a work force housing, work force development attraction and retention. It's a quality of life issue and it is an economic development issue. I'll be here to talk about a few focuses and priorities of the city of Omaha and our partners. But, I think, all of these elements are things that can be scaled across the state of Nebraska and communities across the state of Nebraska. I'm gonna bring up a few things that, that we have been working on in conjunction with our partners. First, is a renewed effort and priority on development and redevelopment of our urban core, by which I mean our downtown/midtown area. We are working very closely with the Greater Omaha Chamber of Commerce, who has established a urban core committee chaired by Mr. Jay Noddle, and, and some of this effort in recognition of some of the needs and opportunities facing Omaha and its, its core downtown/midtown

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especially. That effort will include a strategic planning process, which will include a very in-depth housing study, which will give us some really good numbers of what I observe anecdotally as a huge need in gap for condominium development across the city of Omaha, whether it's downtown or in the more suburban areas, we're just not seeing that kind of development. And it could be very beneficial to a number of things that we're working on, especially redevelopment of the core. We are in the middle of construction of a \$300 million revitalization of our Riverfront, which includes 90 acres and 3 parks in the downtown area: the Gene Leahy Mall, Heartland of America Park, and Lewis & Clark Landing. That effort is already bringing a lot of excitement and development potential in the core of our community, especially immediately adjacent to those three parks. And it is something that could see a lot of benefit by additional condominium development, because condominium development provides that ownership in investment and stability in the housing market and some of these areas to help fulfill a lot of the jobs that we expect in, in office and, and retail development that we expect to occur as a result, or at least catalyzed by the investment in our Riverfront and truly providing a front door for the community, a front door and, and playground for families living in the downtown area. So we're very excited about what's happening in the core of our community in, in the city of Omaha. We're also working on efforts relating to transit-oriented development. This has been catalyzed by the implementation and ongoing construction of

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our bus rapid transit line running east and west on the Dodge spine corridor. And what transit-oriented development is, it's a, it's a effort in a curation of development and a very dense, walkable style that best leverages transit and transportation infrastructure. And what the city is responding to that investment with is a, a TOD zoning and entitlement overlay district to really encourage the, the types of density, whether it be in, in commercial uses or especially residential uses along that transit line. And this is another thing that can really benefit from the density that can be encouraged by condominium development. And so to best leverage the investment that is Omaha Bus Rapid Transit, I think condominium developed can go a long way. And again, providing the stability within that, that core area to really support what we're doing in the public investment, that will be bus rapid transit. And finally, again, I wholeheartedly agree with Senator Lindstrom, this is a talent attraction and retention tool. You know, the connotation for condominium development that we're talking-- you know, higher end, high rise condos in a, in a downtown market. You know, 300, 400,000-plus units. And it's simply not the case. It, it can be, it, it can be affordable and often has been an affordable housing and work force housing issue. Anecdotally and personal-- personally, my first place outside of school was-- it was a condo. It allowed for that level of, of ownership and investment in an affordable manner that, that-- you know, a, a humble servant of the state of Nebraska at the time was, was able to afford and get invested

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into the community here, here in Lincoln. So it isn't always a-- you know, high end housing issue, though it can be. And we know that's a market need in, in our community is we're working with new corporations into the community providing that executive level of housing is just as much an opportunity as the work force and affordable housing issue. And, you know, just encouraging housing choice is an imperative function of work force attraction and retention. Whether it's the city of Omaha or across the state of Nebraska, I, I think it's a huge priority and go a long way with some of our economic development efforts. So that being said, I'll, I'll be happy to answer any questions you might have.

**WILLIAMS:** Questions for Mr. Andersen?

**KEVIN ANDERSEN:** Thank you very much.

**WILLIAMS:** I have one. You've talked at some length about the, the need in Omaha. We certainly have housing issues all across our state and especially in the area of work force and work force development. Do you have any opinion on the, the improvement that we'd have across the whole state if we were to adopt legislation along this line?

**KEVIN ANDERSEN:** Yeah, I, I think what Mr. Levy had, had alluded to is removing any barriers that we can for the investment that could go towards affordable housing is, is an extremely important to make that, that investment by developers, by builders, by insurers, whoever it

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might be, that much more attractive. And as, as I mentioned, it, it can be an affordable housing opportunity because you are able to share a lot of the overhead that goes with the mobilization, the-- you know, shared utilities that come with condominium development. And by spreading those costs across, you can make these units more affordable, whether it's downtown Omaha or anywhere in a smaller community across the state, this is just as much a, a rural issue as it is an urban issue, in my opinion.

**WILLIAMS:** Thank you. Any additional questions? Senator Quick.

**QUICK:** Thank you, Chairman Williams. And, and thank you for being here. I just have one question. Maybe I should know this already, but are there like zoning, like zoning for condominiums? Is it different than zoning for single homes or is, it is-- does it really matter?

**KEVIN ANDERSEN:** Yeah, typically not. I, I think as it relates to the entitlement process, multifamily is multifamily.

**QUICK:** OK.

**KEVIN ANDERSEN:** And so when we're getting the, the investment that we are seeing in multifamily and we're not seeing it-- rental multifamily, and we're not seeing in that condo development is, is kind of one of those even anecdotal observations that say something is preventing the investment into this type of development.

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**QUICK:** OK. All right. Thank you.

**WILLIAMS:** Seeing no more questions, thank you for your testimony.

**KEVIN ANDERSEN:** Thank you.

**WILLIAMS:** Invite the next testifier. Welcome, Mayor.

**JOSH MOENNING:** Morning. Morning, Chairman Williams, members of the committee. My name is Josh Moenning, J-o-s-h M-o-e-n-n-i-n-g. I'm the mayor of the city of Norfolk here to offer a municipal perspective outside of the Omaha and Lincoln metros. Norfolk is in a strong growth pattern and housing development across the community reflects that. If current projects under planning or construction come to fruition, we're looking at adding about 1,000 new housing units over the next 12 to 24 months. Much of this new housing comes in the form of multifamily apartment units. This follows a larger trend, people are looking for smaller dwellings in more highly dense and downtown neighborhoods. And many of these people would prefer an option to buy, not to rent such units. To accommodate this pattern and help our communities retain youth and attract newcomers, Nebraska should consider adjusting its current policies. Existing Nebraska law, as we've talked about, thwarts or hinders condo development, alleviating these barriers would help Norfolk in these areas. Work force housing, this type of housing can be less expensive to construct than traditional single-family housing, and more units can be constructed

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in a shorter time frame. A condominium tends to be around 10 to 15 percent cheaper than the same single-family home. Secondly, housing for diverse markets, including younger and older demographics. Young professionals and older adults, in particular, tend to benefit from multifamily development, where home ownership is also an option. Young professionals may not be able to afford to buy a home, but they, they may want to start building equity or establishing roots in the community. Similarly, older adults may not want to give up the independence, control, or financial benefits of home, home ownership, but they may very well want to give up the burdens like yard work and snow removal. And both cohorts may well want to live in a dense, urban, exciting, walkable environment with choices for entertainment and other recreation. Condominiums provide this exact opportunity. The current, current barriers leave our communities not meeting this demand. Third, municipal costs of infrastructure: more ownership in a denser product that helps take the burden off of increased road maintenance, fire, police, sewer, and expansion costs greatly benefits the community. More dense development both vertically and horizontally makes better and more efficient use of existing infrastructure instead of requiring new or extended infrastructure. This saves substantially on municipal costs and helps municipalities maintain or reduce property tax burdens. It also drives retail and entertainment development because there are more customers in closer proximity and that, too, helps the city's economy and tax base. And related to that,

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in Norfolk, our downtown district is evolving and eclectic. New businesses are popping up left and right and downtown housing is in high demand. Our developing downtown riverfront project, which is surrounded by an abundance of underlized-- underutilized property that's conducive to new housing, is a prime candidate for condo housing if we had that option, smaller units and a dense urban setting proximate to natural and social amenities. Finally, Norfolk lacks significant availability of condominiums currently because of the, the policy environment. And while people may not talk about it much because it is absent, it is most definitely a need and something that would benefit our city. Anything that can be done to remove the existing barriers to this type of development is necessary and welcome. Thank you.

**WILLIAMS:** Questions for Mr. Moenning? Seeing none, thank you for your testimony.

**JOSH MOENNING:** Thank you.

**WILLIAMS:** Invite our next testifier. Welcome.

**SCOTT DOBBE:** Thank you. Good morning, Mr. Chairman and members of the committee. My name is Scott Dobbe, S-c-o-t-t D-o-b-b-e. I am the executive director of Omaha by Design. We are a local nonprofit founded in 2001 with the express purpose of convening, engaging, educating, and advocating for excellence in people centered urban

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design and policy. What brings me here today to speak with you is the recognition of the housing shortage that exists both in our metro communities and across the, the state. We recognize that to address this issue effectively, our, our construction and our growth can't merely be in sort of a traditional greenfield manner, but also must make best use of infill development opportunities for which condominiums are particularly well suited. We recognize that there is certainly a trend that we are seeing towards infill development. Speaking in our own backyard, the City of Omaha Planning Department's recent numbers from 2018 show that for the first time in-- well, anybody's memory, there were more housing units permitted for inside the Interstate 680 loop than outside, which has been traditionally a marker of central Omaha versus suburban Omaha. So what that shows is there is a demand for housing that is more central to the city. I think it's a multigenerational demand. But what I can also tell you is that the predominance of those units are not ownership units, but they are for rent. And, and for rent is fine and good, but as we know, home ownership comes with many, many benefits, both for individuals and communities. And although-- you know, I can speak most directly for the Omaha metro, I also recognize that this is not just a metro issue for the cities of the metropolitan size. It's also something that affects main streets across the state. There is a demand-- or that we know that homeownership products strengthen communities. The investment that they spur, both financial and civic, has an impact on

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the neighborhoods. People are active in neighborhood associations and at the civic level. And there's also an opportunity there-- and I think others have spoken, and so I'll be very brief, but for a mixed income, multigenerational neighborhoods. Others will speak on it I'm sure, but with-- we see this intersecting with respect to affordability with low maintenance lifestyles that are desired both by those who maybe are moving into a later stage of life and would like to kind of age in, in the community that they, they know best, but without the, the upkeep required with a single-family home and as well for those new young professionals that we want to attract and keep in our state. I know anecdotally many of them are choosing to as a, as a young couple go with only a single car and, and a condominium is a way for them to have an ownership stake, begin to build some wealth, but to live in a way-- you know, that they don't have an extra car payment that would really limit that. Also, as, as Mayor Moenning so well put it, it's not only helping with density and walkability and many of the factors that we appreciate for the quality of life standpoint, but this is also an issue that's effectively property tax relief because of the more efficient use of the existing infrastructure that it allows. And then finally, I would just in a bit of an anecdotal note, I would mention that prior to my role as executive director in this capacity, I am a registered architect. I spent twelve years practicing. Most recently, seven years at one of the ten largest architecture firms in the nation, which happens to be headquartered in

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Omaha. And there, although we worked in many, many market sectors, we were the nation's largest builder of K-12 schools. One sector that we would not touch with a ten-foot pole, unfortunately, was condominium housing because we had seen the risk. And in that case, it was the firm's decision to voluntarily exit the market because of that risk that we felt was out of, out of whack with what the opportunity presented. So with that, I'll close my comments and open for any questions. Thank you.

**WILLIAMS:** Questions? Seeing none, thank you for your testimony.

**SCOTT DOBBE:** Thank you very much.

**WILLIAMS:** Invite our next testifier. Good morning.

**JEAN PETSCH:** Good morning, Senators, committee. I'm Jean Petsch with the Associated General Contractors, the Building Chapter.

**WILLIAMS:** Would you please spell your name?

**JEAN PETSCH:** Yes. I was coming to that. J-e-a-n P-e-t-s-c-h. The Building Chapter represents 130 of Nebraska top commercial contractors. Additionally, we're affiliated with AGC of America and that group has chapters in every state. A lot of those chapters have district offices in Nebraska as our members have district offices in other states. The issue that's being discussed here has across state line implications. So this is a big issue for the construction

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community. We support overall the efforts here and we see and agree with everything that's been mentioned, so I'm not gonna repeat any of that. We think there's a lot of potential if changes are made in the current Condominium Act. One of the things I wanted to bring up was, what are the barriers right now that keep contractors from pursuing condominium projects? And basically there's two major barriers that give contractors major concerns when considering working on condo projects. One, is that undefined, open-ended risk; and then the other is the cost of addressing the risk through insurance. And so those are the two issues I'm going to address here. Contractors assess risk like other businesses and consider the level of risk, length of time the risk exists, and what amount the risk can be managed or to what extent the risk could be managed by insurance as they determine which projects their companies are going to pursue and the cost to build those projects. The current Condominium Act lacks a definition of construction defect, defect litigation, nor does it address any definition of risk management for a unique building structure that has many independent owners and is managed by a board of owners. So that generates that high risk factor. The reluctance to pursue or build condo projects is often driven by unavailable or cost pricing of their general liability and errors in emission policies from their commercial insurance carriers. So consequently, on the insurance side of things, they're forced to purchase additional specialized insurance policies if they do-- you know, whether in Nebraska or in other

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states, if they do decide to take on a condo project, they end up having to purchase additional insurances for that particular project. So what happens is it drives up the cost of the project. And just for a specific-- I'm just gonna give one example that one of my members had shared. This was on a project in another state, but it was a \$30 million condominium project in an urban area. But the owner controlled insurance policy, which protected all the contractors, GC, and the subcontractor from all the owners for the additional liability, ended up adding \$250,000 to the project over and above the cost of the general liability project. And eventually, especially where we've been talking about affordability pro-- you know, affordability housing that extra costs does get passed on to likely the owners, somewhere it ends up having to be paid. So we, we support any efforts to improve our legislation. Right now, none of our members are too excited about pursuing condominium projects. But if the, if the atmosphere improved on the liability side and the insurance side, I think everybody would be happy to be building them. So with that, I'll answer your questions.

**WILLIAMS:** Questions?

**JEAN PETSCH:** Thank you.

**WILLIAMS:** Miss Petsch, you, you mentioned early in your testimony that of the across state lines issues. Can you explain about that?

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**JEAN PETSCH:** Oh, I'm just saying-- you know, just because-- you know, there are Nebraska members, they're, they're doing projects in Colorado and Minnesota and other states. And so-- and by the same token, there's AGC members that belong to AGC chapters in other states, but they're also doing work here in Nebraska and vice versa. So--

**WILLIAMS:** Got you. I just wanted to be sure I understood what you were saying there.

**JEAN PETSCH:** Yes. Yes. I'm sorry.

**WILLIAMS:** Any additional questions? Thank you for your testimony. Next testifier, please. Welcome.

**SARA KAY:** Hi. Thank you, Chairman Williams, members of the committee. My name is Sara Kay, and it's spelled S-a-r-a K-a-y, and I'm the executive director for the American Institute of Architects here in Nebraska. And we have approximately 600 members across the state. As Mr. Dobbe expressed earlier, we have two to three of the largest A&E firms in the country based in Omaha. And then we also have sole practitioners, just a variety of firm sizes across the state. I, I am not aware at this point in time of any firms that are doing condo work right now in Nebraska due to the liability issue currently existing. This is not an issue that's occurring just in Nebraska either. There are problems across the country as well. As I reached out to some of

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my counterparts with the AIA chapters across the country, I found out that this is going on all over. So it's not nothing unusual. As Jean indicated to you about the liability issue, that's huge as far as insurance. It's difficult to obtain insurance. If a firm actually is doing more than 25 percent of their portfolio is condo work, it's impossible to even get insurance. So through a variety of issues, and AI-- we like to be part of the solution and be part of the affordable housing discussion that's going on in the state of Nebraska now.

**WILLIAMS:** Thank you. Questions?

**SARA KAY:** Yes.

**WILLIAMS:** Senator McCollister.

**McCOLLISTER:** Yeah, thank you, Chairman Williams. As you look at Nebraska, current Nebraska condominium law, what particular aspects of our statutes give, give folks heartburn?

**SARA KAY:** Well, from what I understand it's, it's really the, the lawsuits that are going on as far as the liability. I do know as far as across the country, there was a fairly large lawsuit relating to a, a kitchen countertop. So, yes, believe it or not. We're going that deep into some of these, these minor details that-- some of the minor details that really have nothing to do with the actual project.

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**McCOLLISTER:** So it's your position if we went to a more uniform kind of approach, those lawsuits would stop?

**SARA KAY:** I, I can't answer that right now. I, I was really curious about what Mr. Perlman had to say because I'm not familiar with, with that as a process. So I'd like to learn more about, more about that,--

**McCOLLISTER:** Thank you.

**SARA KAY:** --and figure out if that's a good solution or not. But we just really feel that with the affordable housing issue, especially in some of the smaller communities across Nebraska, this potentially could be a solution.

**McCOLLISTER:** Thank you, Miss Kay.

**SARA KAY:** Thank you.

**WILLIAMS:** Additional questions? Seeing none, thank you for your testimony.

**SARA KAY:** Yeah.

**WILLIAMS:** Invite our next witness. Welcome, Mr. Hallstrom.

**ROBERT HALLSTROM:** Chairman Williams, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today on behalf of the Nebraska Bankers Association. The NBA takes no issues with modernizing or updating the laws that relate to condominiums and

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other types of entities in the areas that are noted in LR137. I certainly didn't intend to testify today. I was going to listen intently and then I listened to Professor Perlman's comments in which he recommended adoption of the Uniform Common Interest Ownership Act, and also noted that in some states there had been issues involving liens for homeowners association assessments vis-a-vis first mortgage liens. I am aware of those concerns and would have raised them if I'd known that was gonna be part of this. None of the other witnesses have, have mentioned that, but I would note that under existing law there are sufficient by design, sufficient protections for first mortgage lien holders and also for liens recorded before a declaration of a homeowners association is recorded. Those are found in 76-856 and 76-874, respectively. There's been some court decisions in Nebraska in which the declarations attempted to supersede the statutory priority rights of first mortgage lien holders by having the assessment liens relate back to the time of filing the declaration, or by trying to say in the declaration that those homeowners association assessment liens had priority. Those were rejected by those court decisions. And 76-857 codifies that clarification that there is no relation pact doctrine. We would certainly, if there's going to be any changes, particularly along the lines of adopting the Uniform Common Interest Ownership Act, to preserve those protections going forward. I'm not specifically have looked in great detail at the Uniform Common Interest Ownership Act, but I knew-- do know they have lien priority provisions with a six

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month super priority lien for those homeowners assessment liens, which we would take exception to. There have been court decisions out of Nevada, in particular, that have given the foreclosure of, say, a couple thousand dollar homeowners assessment dues, [INAUDIBLE] the ability to completely wipe out a first mortgage lien in the hundreds, thousands of dollars range. And we would certainly not want that type of result in Nebraska. Certainly willing to work on any efforts to modernize and update and provide incentives for condominium regimes, but the lien priority issue is gonna be a major one for the bankers. Be happy to address any questions.

**WILLIAMS:** Questions? Senator La Grone.

**La GRONE:** Thank you, Mr. Chairman. Thank you, Mr. Hallstrom, for being here. Touching on the-- an issue you brought up and its relation to the, the Uniform Act. And if this is something you're not aware of, that's totally fine. Are you aware of anything that would prevent-- obviously, with the Uniform Act you can edit it for a specific state. Are you aware of anything that would prevent you're concerns from being addressed through an edited version of that Act, so to speak?

**ROBERT HALLSTROM:** No, Senator. In fact, my, my suggestion that the two approaches that would come to mind would be either taking the suggestions out of the Uniform Act to statutory citations that Mr. Perlman had referenced and put them into our existing Act, if that's

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workable, or in the alternative to consider enacting that Uniform Act and preserving the lien priority provisions that we've put into statute in Nebraska under existing law.

**La GRONE:** Thank you.

**WILLIAMS:** Any additional questions? Thank you, Mr. Hallstrom.

**ROBERT HALLSTROM:** Thank you.

**WILLIAMS:** Any additional testifiers today? Seeing none, Senator Lindstrom. Whoops, excuse me. One more here. Come on up.

**MARK HUNZEKER:** Mr. Chairman, members of the committee, I'm Mark Hunzeker. I'm a lawyer. I've practiced real estate law and represented developers of all kinds of real estate, including condominiums for about 40 years.

**WILLIAMS:** And would you please spell your name for the record?

**MARK HUNZEKER:** Yes. H-u-n-z-e-k-e-r.

**WILLIAMS:** Thank you.

**MARK HUNZEKER:** The reason I'm here is just to suggest to you that there may be some other issues with respect to the Condominium Act that you may want to look at that I think would go a long way toward helping provide a little bit of flexibility for condominiums, particularly those that have been around while. The Act was amended, I

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think the last time, about 24 years ago. There's a lot of things that have happened since. There are a lot of condominiums out there that were great ideas when they were established and, and everybody had, had great expectations and things have changed and it would be beneficial for the condominium, as a whole, to be able to modify, say, some of the common elements or unit boundaries in ways that are virtually impossible under the terms of the current Act. Things like-- there, there are a number of things in the Act that, that require unanimous consent of all unit holders. And those include things like, things like-- obvious things like creating or increasing special declarant rights or increasing the number of units, changing unit boundaries, allocated interests of any unit, or the uses to which any of those-- any units are, are restricted. Now for the most part, I mean, you don't-- certainly don't want to be able to easily increase special declarant rights, for example. However, imagine a situation where you have a building that has a single condominium unit, a main floor which was originally dedicated to a retail space, and the remainder of the units above it are residential. If it came to a point where it was desirable for that unit holder who owned the retail space to divide that unit or to modify its boundaries in a way that incorporated some, some of the outdoor common area in order to provide for a restaurant that had a liquor license, for example, and it was beneficial to the owners of the entire condominium to do so with it-- with an appropriate number of, of consents. It seems to me that's a

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desirable kind of change. Now what that number is, is it, is it-- is open for debate, I suppose, but unanimous is a number that is almost impossible to reach. If there were more than two people in a condominium, you can, you can be sure that it's gonna be difficult for anything that has any significant change to reach even more than two-thirds. Many of the things that we-- over, over the years, I've done a lot of, of, of homeowners association documents. We always use two-thirds because getting beyond that point-- getting to that point is very, very difficult. Getting beyond two-thirds is really almost impossible. The current requirement to have some of these things need unanimous consent by all unit holders is demonstrably, virtually impossible in that the number of units that are required to consent to dissolution of the condominium is 80 percent. So even if you've dropped it to that level, at least there would be a chance for some of those things-- some, some things like that to happen with a unanimous requirement, it's virtually impossible. So a little bit of flexibility on the ability of the condominium to change with current conditions and to adopt to, to new things would be very helpful and appreciated. And I'd be happy to work with, with Bill or any other of your aides to, to come up with language. There was a bill introduced, I think, in 2015 that would have addressed some of these issues. And there were a couple of things that probably need to be tweaked a little bit as with

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that bill, but I think it's something that is worthy of your consideration while you've got this on the, on the agenda.

**WILLIAMS:** Mr. Hunzeker, do you have an idea, based on your experience, whether the Uniform Common Ownership Act that Professor Perlman talked about addresses those particular concerns that you have?

**MARK HUNZEKER:** I do not. I'm sorry.

**WILLIAMS:** They do not.

**MARK HUNZEKER:** I, I do not--

**WILLIAMS:** Oh, you do not, excuse me.

**MARK HUNZEKER:** --I, I don't have a-- I-- I'm not sure I can comment on that.

**WILLIAMS:** OK, thank you. Additional questions? Thank you, Mr. Hunzeker,--

**MARK HUNZEKER:** Thank you.

**WILLIAMS:** --for your testimony. Next testifier. Seeing none, Senator Lindstrom. Whoops. Welcome.

**PHOEBE NESETH:** Good morning. Thank you, Senator Williams. I have information for the committee as well.

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**WILLIAMS:** We'll get our-- we're short a clerk right now. If you would just--

**NATALIE SCHUNK:** I'll do it.

**WILLIAMS:** She'll grab it. Thank you.

**PHOEBE NESETH:** Thank you.

**NATALIE SCHUNK:** Yep.

**PHOEBE NESETH:** Good morning, Senator Williams and the members of the senate Banking, Commerce and Insurance Committee. On behalf of the Community Associations Institute, thank you for the opportunity to share comments related to LR137, an interim study to examine the Nebraska Condominium Act. CAI represents the interests of homeowners, community association managers, and businesses that support more than 73.5 million Americans who live in homeowners associations, planned communities, condominiums, and cooperatives. Approximately 26 percent of the housing stock today is in a community association, and this number is projected to reach 50 percent by 2040.

**WILLIAMS:** And would you please state and spell your name for us, please.

**PHOEBE NESETH:** Oh, my apologies.

**WILLIAMS:** Thank you.

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**PHOEBE NESETH:** Phoebe Neseth, P-h-o-e-b-e N-e-s-e-t-h, and I'm senior manager of government affairs with the Community Associations Institute.

**WILLIAMS:** Go ahead.

**PHOEBE NESETH:** Thank you. Since 1973, CAI has been working with state legislatures and the federal government to provide input on sensible public policy for the community association housing model. CAI is honored to provide specific information to the committee to address the policy areas in LR137. CAI supports and recommends consideration and adoption of one or more of the Uniform Community Association Acts. The Uniform Condominium Act contains comprehensive provisions for creation, management, and termination of condominium associations, including point of sale consumer protection. Currently, 14 states have the Uniform Condominium Act, including Nebraska. The current Nebraska Condominium Act is based on the 1980 Uniform Law, which pre-dates the 2008 amendment by the Uniform Law Commission adding Section 3-124, which governs litigation involving the declarant. Section 3-124 provides the requirements an association needs to follow to institute and maintain a proceeding which alleges a construction defect with respect to the condominium. Whether by litigation, mediation, arbitration, or administratively against declarant or an employee, independent contractor, and other person directly or indirectly provides labor or materials to a declarant. This new section responds

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to the concerns of the homebuilding industry and to many condominium advocates who believe that policies designed to resolve construction disputes without resorting to litigation are preferable to the existing common pattern of litigation following turnover of control of the association. It also recognizes the broad support that various groups have expressed for this approach to dispute resolution, as well as the extent to which similar statutes have adopted in many states. Updating the Nebraska Condominium Act to include these provisions would address many of the concerns in LR137. LR137 requests this committee to specifically examine the statute of limitations on actions by a homeowners association against a developer. Legislation should provide reasonable time periods for community associations to bring these construction defect claims. Repose periods may account for the fact that latent defects often take over years to discover. Limitation periods give community associations reasonable time after the discovery of defects to investigate the defects, work with the builders to informally resolve the dispute, and if necessary, to retain counsel. Repose periods of less than ten years after substantial completion of the community do not provide sufficient periods for community associations to discover latent defects. Limitation periods less than two years after the discovery of the nature of the defect do not-- less than two years do not provide community associations with sufficient time to investigate the defects, work with the builder to informally resolve the dispute, and

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to retain legal counsel. Time periods in which the board of directors of the community association is under control of the declarant or other builder entity should not be counted towards any period of limitations or repose. Finally, the general contractor or construction affiliate's statute of limitations should be coextensive with the statute of limitations during which the association can bring claim against a developer. CAI recognizes the importance that homeowners have reasonable expectations of the quality of construction of their homes. Unfortunately, 53.7 percent of new condominiums experience some form of construction deficiency, and these deficiencies negatively impact owners' property values and their ability to sell their homes. Most-- the most common cause of these deficiencies stem from poor workmanship nearly 50 percent of the time. CAI supports legislation and regulations concerning construction defects that adequately balance the rights and responsibilities of community associations, their governing boards, homeowners, builders, and construction affiliates. Recognizing that CAI's diverse membership is affected in different ways by construction defect issues, our policy balances the interests and needs of our members with those of the development community to provide an equitable approach to construction defect legislation and regulations in the states. CAI advocates for every perspective to balance their approaches to issues related to construction defects and embrace the best interests of community associations as a whole. LR137 also asks your committee to examine the

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imposition of mediation requirements prior to litigation. CAI recognizes the need and support for these alternative dispute resolution mechanisms to resolve disputes arising in community associations and appropriate cases. CAI supports legislation that encourages alternative dispute resolution, otherwise known as ADR, as an acceptable alternative to construction defect litigation when consent to ADR is truly voluntary and occurs after a dispute arises. Either party should be allowed to request the use of ADR mechanisms as long as it is performed within a reasonable time frame and under terms agreeable to all parties. Lengthier mandatory ADR processes may cause a community's ability to file a suit within its statute of repose to lapse hurting community association residents. Legislators should not require mandatory ADR prior to litigation or shortened statutory periods of repose. Any legislatively directed ADR processes must also provide for the tolling of statute of limitation to repose that could jeopardize a community association's claim if the ADR process ends up being unsuccessful. CAI advocates that communities adopt policy resolutions pertaining to ADR. Boards make craft resolutions that further elaborate on these ADR procedures that are already established statutorily, or have their governing documents help lend further guidance and transparency of the ADR process to their residents. Several methods of ADR may be offered, such as mediation or nonbinding or binding arbitration, and communities are encouraged to establish ADR committees that are independent from the board and utilize only

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neutral parties for conducting these forms of mediation or arbitration. We hope CAI's comments provided in our comment letter are helpful to the committee and will assist developing public policy that is sensible for the 99,000 residents living in Nebraska as community associations. Thank you.

**WILLIAMS:** Questions? Senator La Grone.

**La GRONE:** Thank you, Mr. Chairman. And thank you, Miss Neseth, for being here.

**PHOEBE NESETH:** Thank you.

**La GRONE:** Just real quick, we-- so you talked about the Uniform Condominium Act,--

**PHOEBE NESETH:** Um-hum.

**La GRONE:** --and earlier we heard about the Uniform Common Interest Ownership Act.

**PHOEBE NESETH:** Um-hum.

**La GRONE:** This is the first time I've ever dealt with either of those. And so my question is mainly are, are these two acts governing the same area of law or basically what's the interplay between them?

**PHOEBE NESETH:** Many states have both and they use the Uniform Common-- Common Interest Ownership Act more so to focus on HOAs and then they

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leave the Condominium Act just for condominiums. Some states, however, only have a Uniform Common Interest Ownership Act that oversees all common interest communities. So with your state already having a Condominium Act in place, you might bifurcate the two, but you can obviously look at that down the road as you continue to draft legislation on that topic. I know last month I spoke in front of the Urban Affairs Committee. They had another resolution, I believe it's LR140, just reviewing homeowners association statutory framework. And I did encourage them to consider UCIOA when it comes to formal homeowners association. So many states do have both within their codes.

**La GRONE:** Well, thank you.

**PHOEBE NESETH:** Yeah.

**WILLIAMS:** Senator Kolterman.

**KOLTERMAN:** Thank you, Senator Williams. Thank you for coming, Miss Neseth. Can you-- and I, I know this happened before you got here because you came and kind of late, but did-- we talked a lot about the liability insurance products that are available to people that are either building or people that own condominiums after the fact. Is that a real problem throughout the country? Are there limited markets for that type of insurance? Because I-- I'm under the impression that it's hard to get liability insurance or the type of riders that are

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necessary, or endorsements to really build these types of-- because of the liabilities that exist. Are, are there certain companies that are redlining our state and say, no, we aren't gonna do that? Or-- I mean, you deal with this on a national basis. What can you tell us about that?

**PHOEBE NESETH:** Right. I'm not an insurance expert either. I would like to make that clear to begin with. There's obviously a lot going on when a community is developed between developers and then transitioning over to the association taking it over. So I'm sure communities do experience the lack of insurance and liability insurance, especially with budgetary constraints. I'd have to look more into that for you, though, and see which states deal with that type of issues. But I'm happy to follow up with you on where other states might be experiencing a lack of these types of insurance policies.

**KOLTERMAN:** I just thought you-- because you deal with national, there might be an opportunity for-- you might know of something, so.

**PHOEBE NESETH:** Not off the top of my head, but I can follow up.

**KOLTERMAN:** OK. Thank you very much.

**PHOEBE NESETH:** Thank you.

**WILLIAMS:** Senator McCollister.

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**McCOLLISTER:** Yeah, thank you, Chairman Williams. And thank you, counselor, for being here. Your organization is national in scope, right?

**PHOEBE NESETH:** Correct.

**McCOLLISTER:** And you mentioned 19 states have--

**PHOEBE NESETH:** Fourteen states.

**McCOLLISTER:** --14 states have, have updated their condominium statutes. Have you been generally supportive of what the, the result has been in those 14 states?

**PHOEBE NESETH:** Yeah. We always encourage a uniform act of some type when it comes to our condominiums. So the 14 states that have it, we absolutely encourage. And then we also are big advocates of the Uniform Common Interest Ownership Act as well. So they-- these uniform acts that are specific to our industry govern our industry much more efficiently than real property acts do because they understand how our communities are structured.

**McCOLLISTER:** So what I think I hear you saying is if we did something very similar to that, your organization probably would be supportive.

**PHOEBE NESETH:** Correct.

**McCOLLISTER:** OK, thank you very much.

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**WILLIAMS:** Additional questions? Seeing none, thank you for being here and sharing your expertise. Any additional witnesses? Seeing none, Senator Lindstrom.

**LINDSTROM:** Thank you, Chairman Williams and members the committee. I'd first like to thank all the experts and testimony that were here today. I was pretty impressed with the information that I heard today and, and I heard more about things that we can do versus where we are apart on issues, I think, based on what Mr. Hallstrom's testimony of working with AGC. And then I think my next step will be to meet with Director Ränge and some of the insurance folks to have that discussion as well. You know, I did read the letter as I was sitting there. One of the words that kept coming up in a lot of testimony is the mediation aspect of it and that was one of his-- what he included in a suggestion of mediation versus the litigation and doing fee-based mediation, mediation. And then the other aspect of that was having a five-year capital plan with reserve minimums and some protections for next generation owners. I think all those are important. We'll continue to work to, to craft this legislation and make sure we cover all of our bases and all the people that testified today. Having Mr. Hunzeker, I might not be pronouncing that right, and bringing his expertise, I would like to work with him as well to, to craft this in bill, of course. But I appreciate the committee's time and attention to this. One last thing, I was thinking, Senator La Grone, you brought

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up an interesting point with the student loan aspect of the younger millennials and professionals. And I think about as they-- say, you get a 23-year-old, 24-year-old who has a good job or got their degree starting wage of, call it \$36 to \$50,000, wants to build equity in having an ownership in some type of condominium in this, in this case. One of things that when you're a first homeowner, you don't anticipate the upkeep and that usually can, can put some strain on, on the budget. And so as you have this predictability and predictable income that comes in and trying to build equity in paying off student loans, I think that's a, a bigger issue than maybe we-- if we dove a little deeper in that, that would come about. And as I look at the senators that are here and looking at certain businesses that have come into communities. Senator Kolterman, you have a new company coming in and has about a hundred jobs. I know in Grand Island, Chief Industries is growing rapidly and is it Hornady also is growing quite rapidly as well. So it's not just an Omaha issue, this is all across the state of Nebraska. And I believe that this legislation that will come about will address a lot of that. And I will be more than willing to work with all interested parties in making sure we have the best legislation. So thank you for your time today.

**WILLIAMS:** Questions for Senator Lindstrom? Whoop, Senator La Grone, I was looking the wrong way.

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**La GRONE:** Thank you, Mr. Chairman. Thank you, Senator Lindstrom. Just real quick one, and I'm assuming the answer to this is, yes, otherwise, you probably wouldn't be bringing this. But as we've heard today on the encouraging investment in this area and, and the primary barrier being liability, would the liability provisions of the Uniform Act or anything like that in terms of statute of limitations or limitations on that level of liability, would that be enough to encourage investment in that area or is it more so that the, the possible liability is so high in this area that it might still not do that? I'm assuming it would sense otherwise I doubt people would be making a push for this.

**LINDSTROM:** Yeah, I think it would-- you know, with the statute of limitations, we talked about that before the, the meeting today. And I think that's-- there's a balance there that we can work on. But it does have to be cost effective. And we'll make sure that in this discussion that we make sure that this doesn't just stop where it's at, but making sure that's economically feasible to do some of these things. You know, it reminds me-- this, this-- the discussion today reminded me a little bit-- I think, four of us were here at the time, coming with, with the discussion of liability and liens. I don't know if you remember the shared ride service bill from years ago, those are the two biggest hurdles that we had to overcome. But we got a little creative and we were able to address that. And I'd-- you know, so what

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I-- when we talked about those two aspects of, of this potential provision, I think that we can overcome some of those things and make sure we put together the best legislation.

**WILLIAMS:** Senator Kolterman.

**KOLTERMAN:** Yeah, thank you. Senator Lindstrom, I, I appreciate the fact you're gonna reach out to, to Director Rame. At the same time, I would encourage you to reach out to some of the insur-- like the Nebraska Insurance Federation to make sure that the markets are there. I mean, we can change the regulations all we want, but if nobody's gonna come to the state--

**LINDSTROM:** Right.

**KOLTERMAN:** --that doesn't help us any. And so Robert Bell is with them and he's previously with-- you might want to reach out to some of them as well. I think this is a-- you're bringing a really good, valid bill. And we need to get this right.

**LINDSTROM:** Yeah, I'm glad you brought that up, Senator Kolterman. Actually, our, our meeting prior to this, I did talk about talk-- a meeting with Robert.

**KOLTERMAN:** Yeah.

**LINDSTROM:** And what's nice about meeting with Robert, he used to work in the department. So there's a lot of good correlation there. So we

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make sure all of our bases are covered. So I appreciate that feedback.

Thank you.

**WILLIAMS:** Any additional questions? Well, seeing none, thanks to all the people that took their time to testify today on this important issue for Nebraska, and thank you, Senator Lindstrom. And that will close our hearing on LR137.