Testimony of Brian Matise

Chairman Ryden and committee members, thank you for permitting me to testify. My name is Brian Matise, and I am currently a Board member and secretary/treasurer of Tollgate Crossing Homeowners Association in Aurora, Colorado. Tollgate Crossing is a subdivision of about 1,030 homes in far SE Aurora – in fact, Rep. Ryden, it is in HD 36. It is a single family community with a HOA organized under the Colorado Common Interest Ownership Act, CCIOA.

Prior to living in Tollgate Crossing, I served on another HOA board in Aurora, The Flats at Fulton Court Condominium Association, as Treasurer, President, and Director. Altogether, I have served on the boards of homeowner associations and metropolitan districts for more than 12 years.

My testimony is from the standpoint of an HOA board member in opposition to SB 177. SB 177 would impose unreasonable and unnecessary roadblocks on an HOA board's ability to remedy construction defects of common elements.

Both the Flats at Fulton Court and the Tollgate Crossing HOA's experienced significant construction defects in the common elements. In the case of the Flats at Fulton Court, the HOA experienced water intrusion issues on some units, waterproofing issues with exterior, venting of gas fireplaces of interior units right back into the units, and artificial rock/brick façade among others. I was involved in the notice of claim stages of gathering information, notifying homeowners, preparing and signing the notice of claim and sending it by certified mail as required by CDARA.

At Tollgate Crossing, the HOA is presently in the notice of claim process due to underdrains that are defective and non-maintainable. These are the drains that divert water from the perimeter drains, and if properly maintained, water flows away from the foundations to nearby creek beds. Homeowners have reported basement flooding and sump pumps that run 24 hours a day until they overheat or burn out. For some homes with non-functioning under drains, the clay soil that is so saturated trees and landscaping will not grow, water flowing almost like a spring from an

elevated water table over sidewalks and out from landscaping as water tries to find a way to lower ground.

The HOA boards that I have served on are elected representatives of their fellow homeowners. For most of these homeowners, their homes are their largest investment. Defects in the common elements such as water intrusion in a condominium, nauseous gases from fireplaces entering living quarters, and flooding basements are serious and can wipe out the entire investment of new homeowners. HOA's in the first few years of a community are not well funded, and rarely have reserves to correct construction defects that were the fault of the developer. For example, The Flats HOA was adding $50,000 a year to reserves and had built up a surplus of about $250,000 but that's not even close to enough to repair CD's that may cost $1 million or more. A special assessment to make the repairs that the developer should have made would cost $7,000 to $10,000 or more per homeowner. Most of these young families that have just purchased a $150,000 to $200,000 condo, that's an amount comparable to their original down payment.

Both HOA boards that I served on decided to pursue a notice of claim only after extreme deliberation and a lengthy investigation process. Numerous public meetings were held before the decision was made to proceed.The Construction Defect Action Reform Act already requires that the developer or other construction professional be put on notice of the defect 75 days before any legal action is filed. In the case of the Flats at Fulton Court, I was the President of the Association that prepared the original notice. The construction professional then has at least 30 days to inspect and decide if they will make repairs. So they have an opportunity to correct the problem. It's only when they ignore the notice or refuse to correct the problem that further legal action is needed. In the case of The Flats at Fulton Court, the construction professionals ignored the initial notice of claim. By contrast, in a metropolitan district that I serve as a Board member, the builder honored our district's notice of claim regarding clubhouse and pool heater repairs and there was no need for further action.

As a practical matter, requiring written consent from a majority of homeowners to a CD action would make it almost impossible to bring a CD action. Tollgate Crossing has 1,030 homes – would require collecting about 515 signed, written consents. Several of our owners are in the military and may be stationed overseas, renting out their homes; difficult or impossible for them to timely consent. Many of our owners are speak English as a second language. Mailings of annual meeting and budget meetings get less than 10% proxy response, even going door to door difficult to get more than 10-20% of people home. Imagine if Colorado required an automatic referendum on ALL legislation before it could take effect, with a majority of all REGISTERED VOTERS required before it could take effect. Virtually no legislation could ever be passed if there were such a requirement.

The disclosure requirement would unnecessarily polarize communities and scare HOA members. CCIOA already requires that HOA boards must notify homeowners of the costs and risks of construction defect litigation. If homeowners are dissatisfied with the decision of their elected representatives, they can replace the Board after receiving the notice. In my experience, HOA board members represent the good of the entire community, as opposed to their own individual interests. For example, at the Flats, my particular unit – and the units of some of the other board members, did not experience any defects. But about half the units did and those units, in some cases, were catastrophically affected. Similarly, at Tollgate Crossing, my home has not experienced the effects nearly as much as other homeowners who reported flooded basements and burned out sump pumps. Requiring boards to obtain written consent from more than 50% of units will make it difficult for boards to act for the good of the entire community by scaring those owners whose properties are not as affected by defects as their neighbors.

And, in my experience, much of the required content of the "scare letter" to residents are false, especially paragraphs 6 and 7. Units at the Flats, including my unit, sold after the notice of claim was filed and the claim for defects was disclosed. When buyers and lenders understand that the HOA is bringing the construction defect claim in order to obtain

necessary funding to repair the common elements, in my experience it becomes a non-issue.

If it is your intention to make it practically impossible for HOA's to hold builders responsible for defective common elements, this bill will accomplish that.

If it is your intention to force innocent HOA's and individual homeowners to bear the costs of shoddy construction then this bill will accomplish that.

If it is your intention to practically immunize developers and builders of shoddy common elements from liability, this bill will accomplish that.

But if you vote for SB177, that is the burden you are placing on HOA's and your constituents who reside in HOA's with defective common elements.

Thank you for allowing me to address the committee.