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Nevada State Legislature
Assembly Committee on Judiciary
401 S. Carson Street
Carson City, NV 89701-4747

February 12, 2015

Sent via electronic transmission to committee at:

AsmJUD@asm.state.nv.us

RE: AB 125, Constructional Defects - NAMIC's Letter in Support of Proposed Legislation

Dear Representative Hansen, Chair; Representative Nelson, Vice-Chair; and members of the Assembly Committee on Judiciary:

Thank you for providing the National Association of Mutual Insurance Companies (NAMIC) an opportunity to submit written testimony to your committee for the February 13, 2015, public hearing. Unfortunately, I will not be able to attend the public hearing, because of a previously scheduled professional obligation.

NAMIC is the largest property/casualty insurance trade association in the country, serving regional and local mutual insurance companies on main streets across America as well as many of the country's largest national insurers.

The 1,400 NAMIC member companies serve more than 135 million auto, home and business policyholders and write more than \$196 billion in annual premiums, accounting for 50 percent of the automobile/homeowners market and 31 percent of the business insurance market. NAMIC has 69 members who write property/casualty and workers' compensation insurance in the State of Nevada, which represents 30% of the insurance marketplace.

Through our advocacy programs we promote public policy solutions that benefit NAMIC companies and the consumers we serve. Our educational programs enable us to become better leaders in our companies and the insurance industry for the benefit of our policyholders.

NAMIC's members are still in the process of reviewing all of the detailed provisions in this significant tort-reform legislative measure, so my letter of support will be limited to general statements about the comprehensive scope and laudable intent of the proposed legislation.

First of all, NAMIC would like to commend the bill sponsor and the supporters of the bill for recognizing that citizens of the State of Nevada need and deserve construction defect tort reform.

Although litigation is sometimes necessary to resolve construction defect disputes, a rush to costly litigation has unfortunately become the norm, and consumers have been saddled with the outrageous cost of legally frivolous and factually groundless litigation, and inappropriately inflated construction defect damages claims. Litigation, like warfare, should be judiciously entered into only after extensive informal dispute resolution has been undertaken, because the extensive societal costs to homeowners, insurance consumers, and small businesses are far-reaching and quite troubling. NAMIC appreciates this committee's commitment to addressing a number of important technical legal and procedural aspects related to construction defect claims investigation, defect remediation, and dispute resolution, including appropriate litigation reform.

Since NAMIC's members are still evaluating the insurance coverage and claims adjusting/settlement implications of the proposed legislation, my comments are limited to only conceptual supportive for this legislative endeavor. However, the proposed scope of AB 125 makes this bill one that has the potential of being more than just "feel good" tort-reform, but actual balanced and measured "do good" tort-reform for the benefit of insurance consumers, the construction industry, businesses community, and the judicial system.

Of specific interest to NAMIC members are the provisions relating to: 1) the narrowing of the definition of "constructional defect" so that it is consistent with common-sense and common-experience; 2) the proposed revisions to the construction defect notice requirements so as to improve the practical value and utility of the notices to all parties and so as to make sure that all parties and potentially interested stakeholders have a thorough statement of the claims being asserted; 3) the proposed changes to the law on the duty of subcontractors to indemnify, defend, and hold harmless controlling parties from certain liability, so that the law is fair and equitable to all parties and so as to eliminate the "moral hazard" that encourages some contractors to be less vigilant in their duty to perform services in a reasonable and workmanlike manner; 4) the proposed requirement to try and resolve a constructional defect claim through any applicable homeowner's warranties in force and effect before the claimant may commence a civil lawsuit that will create costly attorney's fees and legal expenses for litigants; 5) the proposed limitations on the length of any tolling of the statute of limitations and repose so that claims are timely litigated to avoid prejudicing a party's ability to tender a thorough defense – a lengthy passage of time before the commencement of a lawsuit hinders or prevents a party from being able to secure evidence and testimony necessary to establish a meaningful defense; 6) the proposed restrictions upon legal actions being filed by associations on behalf of common-interest community unit owners for claims that are *not* related to common ownership constructional defects; and 7) the proposed amendments to remove provisions in state law (an award of the claimant's attorney's fees and costs) that encourage protracted and costly litigation and discourage timely settlements of disputed claims.

Although, NAMIC does not have more detailed commentary to provide at this time to the Assembly Committee on Judiciary, NAMIC respectfully requests that this committee VOTE YES on AB 125 so that this necessary and appropriate tort-reform legislation continues to move forward in the legislative process where further discussion on the merits of specific provisions of this comprehensive bill may be undertaken.

Thank you for your time and consideration. Please feel free to contact me at 303.907.0587 or at crataj@namic.org, if you would like to discuss NAMIC's written testimony.

Respectfully,

A handwritten signature in black ink, appearing to read "Christian John Rataj". The signature is written in a cursive style with a large initial "C".

Christian John Rataj, Esq.
NAMIC Senior Director – State Affairs, Western Region