



BUILDING INDUSTRY ASSOCIATION
of Philadelphia

**Testimony on Residential Construction Consumer Protection Bill Package
(HB 691, HB 692, HB 693, and HB 694)
The Housing and Community Development Committee
August 30, 2023**

My name is Mary Collins, Portfolio & Operations Manager at US Development LLC. I am testifying today in my role as Co-Chair of the Government Affairs Committee for the Building Industry Association of Philadelphia. I want to thank the members of the Housing and Community Development Committee for allowing me to testify today.

The BIA is a trade association of mostly residential developers working throughout Philadelphia. We support and promote safe, code compliant construction among our membership and we recognize the intent of these bills to ultimately reduce deficient and unsafe construction work that negatively impacts consumers and builders alike. We offer our comments with that shared goal and intention.

HB 691: Residential Building Construction Defect Remedies

The BIA supports the effort in this legislation to hold builders accountable for code compliance and safety and would appreciate a pathway for resolution outside of litigation; however, we would like the bill's language revised to reduce ambiguity and provide clearly defined parameters.

For example, the term "defect" can be subjective in nature and expanding its meaning to include "any other problem, which 'substantially' impairs the use, value or safety" of the building makes the term open to even greater interpretation. Requiring a builder to correct *any* perceived defect is problematic. The bill should reflect the builder's specific responsibility to build to the Uniform Construction Code as adopted in Pennsylvania and the locally required building code inspections. Additionally, this bill should offer protection to the builder against future litigation after a successful repair.

HB 691 effectively mandates that any residential builder repair defects that are "brought to the attention of the builder" within two years of "actual delivery." BIA suggests that the start of this two-year period be defined as the completion date or issuance of the Certificate of Occupancy, regardless of the actual settlement date. The language should also clearly reflect that the two-year term applies only to the initial buyer and would not cover any alterations made by that buyer or a contractor hired by that buyer after settlement. Specific language is also needed to define how such defects are "brought to the attention of the builder." The BIA recommends requiring a

certifiable path “in writing” with details and photographs of the perceived defect. Consideration should also be given to remedies and corrections that cannot be completed within six months due to supply chain or other delays beyond the builder’s control.

The legislation also requires the builder be responsible for 150% of the cost of the repair. If a defect is not resolved and a claim is filed in court, the BIA recommends the total financial responsibility be determined by the facts of the claim and the actual liable parties involved, which may involve subcontractors and/or design professionals. Additionally, the bill creates a new process of filing a claim in court that does not currently exist. Owners already have a right to file a claim within the statute of repose, so this additional claim process should be removed from the bill.

HB 692: Owner/Home Improvement Contractor

The BIA understands HB 692 is targeting “house flippers,” but such contractors are already regulated by HICPA and can be better enforced under that Act.

HB 693: Adjacent Neighbors’ Bill of Rights

The City of Philadelphia recently enacted neighbor notification and excavation licensing requirements (Ordinance #'s 210389 and 220008) which address many of the same considerations for the protection of adjacent property that are presented in HB 693. The BIA suggests the following changes:

- Section 2. Definitions. In lieu of defining “Developer” as the sole responsible party, “the person causing construction” should be responsible for neighbor notifications and negotiation of any access licenses. This allows a general contractor, developer, or owner of the project to negotiate access agreements in accordance with their contractual obligations.
- Section (b) (4) entitles the homeowner to an “engineering survey,” which is an overly broad term. BIA suggests a “preconstruction survey” of existing, visible conditions of the exterior of the property adjacent to planned construction.
- Section (b) (6) suggests “a homeowner should seek representation from a construction attorney.” For minor access agreements, such as placing roof protection on a neighboring property, the builder and neighbor may be able to negotiate access terms without the added cost of attorneys. The bill should simply state that complex access licenses may warrant the review of an attorney, in lieu of the State making a blanket recommendation to retain legal counsel.
- Section (b) (7). The determination to use crack gauges or vibration monitors should be made by a licensed Professional Engineer (PE). The City of Philadelphia requires that the Preconstruction Survey be accompanied by a Monitoring Plan as prepared by the PE. This language ensures the most appropriate measures are determined by a qualified professional. A monitoring plan may require use of crack gauges or vibration monitoring, for example, or visual inspections may be more appropriate.

HB 694: Continuing Education for Building Inspectors

The BIA supports ongoing education for construction inspectors but proposed training in “the laws and legal liability of builders in faulty construction practices” or “the remedies available under Federal or State law for homeowners” exceeds the purview of code enforcement. Building Code Officials are not qualified to provide legal counsel on faulty construction practices or the remedies available to correct them.

The BIA appreciates the opportunity to testify today. We remain open and willing to collaborate with the Committee on legislation that will complement existing code requirements and promote best building practices.