



November 16, 2020

The Honorable Andrew M. Cuomo
Governor of New York State
New York State Capitol Building
Albany, NY 12224

Re: Scaffold Law Reform and 2021-22 Executive Budget

Dear Governor Cuomo:

On behalf of the following signatory organizations, we are writing to respectfully request that you include reform of Labor Law §§ 240/241 (herein the “Scaffold Law”) in your 2021-22 Executive budget proposal, as it is a “zero cost” proposal that could encourage development of thousands of additional housing units at a period when New Yorkers are facing an unprecedented housing affordability crisis.

The Scaffold Law imposes “absolute liability” upon contractors and property owners for elevation-related injuries involving construction, repair, or demolition work. It was enacted into law in 1885 and predates more than 135 years of laws and protections which ensure worker safety on construction sites. New York is the last state in the nation to have this codified legal standard, and it is a leading culprit in the substantially higher insurance premiums for New York construction projects and development costs compared to those in other states. While it may have served a purpose prior to enactment of today’s comprehensive worker protections, that time is passed and New York should trust the modern approach to worker safety that does not primarily rely on litigation.

Moreover, you have long understood that housing is fundamental to the success and well-being of New York State. The fundamentals of a just and advanced society - a safe community, a productive workforce, improved health outcomes and educational progress - are enhanced if families have safe and secure housing. The COVID-19 pandemic has put each of these crucial social and economic bases at significant risk and housing can be a stabilizing force as we withstand and recover from the adverse effects of the pandemic.

Prior to the pandemic, New York was suffering through a prolonged housing crisis, but we were making progress due to the 5-year housing plan and other forward-looking housing policies

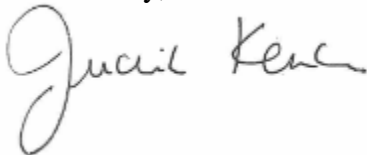
championed by your administration and the Legislature. Unfortunately, the housing crisis has grown worse since March. Thousands of New York's families facing unemployment or underemployment are struggling to secure the resources for basic necessities such as housing. For those who were - or are today - considered low-income, the affordable housing crisis has worsened. And, even with an improving economy, the impacts of the economic downturn are expected to reverberate for several years as low-income families seek to recover from increased debt and loss of wages. The crisis will undermine New York's ability to restore its economy and social progress to pre-pandemic levels unless New York acts aggressively and creatively.

Accordingly, we urge you to strongly consider reform of the Scaffold Law, as it will not require any State funding to do so and, as importantly, will result in savings that developers can invest in building and preserving more affordable housing units – which has been a policy priority for your administration. The Scaffold Law's strict liability standard has contributed to high insurance premiums, which have driven most construction insurance companies out of the New York market, and increased affordable housing and other development costs by an estimated 7 percent. If these excessive costs had instead been invested in housing during the current 5-year housing plan, an **additional 12,600 affordable housing units** could have been created and preserved. Simply put, thousands of families that are currently homeless or living in temporary or uninhabitable housing could be living in safe, quality homes if the Scaffold Law were reformed.

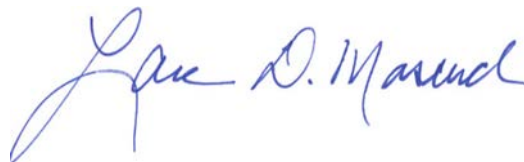
Notably, we are not recommending the *repeal* of the Scaffold Law, rather we support replacement of the existing strict liability standard with the more common-sense comparative negligence standard that considers the respective negligence of the property owner, employer, contractor and/or injured party in determining compensation and damages. Under this approach, the injured party would still have the right to legal counsel and to sue his or her employer, the contractor or the property owner, but the liability would be apportioned based on the actual negligence of the parties. And, the owner, employer or contractor would remain obligated to comply with the appropriate worker protections and would be subject to penalties pursuant to federal and state labor laws and increased liability (even under a *reformed* Scaffold Law) for any negligence resulting from the failure to comply with such laws.

The time is now to finally resolve this longstanding unjust and costly issue. We appreciate your consideration of this common-sense proposal to reform the Scaffold Law and its promise to help address the housing crisis while avoiding additional costs to the State of New York.

Sincerely,



Judi Kende, Vice President and New York Market Leader
Enterprise Community Partners, Inc.



Laura Mascuch, Executive Director
The Supportive Housing Network of New York



Jolie Milstein, President and CEO
New York State Association for Affordable Housing



Andrew Rein, President
Citizens Budget Commision

Cc: R. Mujica
B. Garvey
S. Subotic