
SUBSTITUTE SENATE BILL 5923

State of Washington

56th Legislature

2000 Regular Session

By Senate Committee on Commerce, Trade, Housing & Financial
Institutions (originally sponsored by Senators Kohl-Welles and Snyder)

Read first time 02/04/2000.

1 AN ACT Relating to home warranties; amending RCW 4.16.300; and
2 adding a new chapter to Title 64 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The definitions in this section apply
5 throughout this chapter unless the context clearly requires otherwise:

6 (1) "Appliances, fixtures, and items of equipment" means furnaces,
7 boilers, oil tanks and fittings, air purifiers, air handling equipment,
8 ventilating fans, ceiling fans, air conditioning equipment, water
9 heaters, pumps, stoves, ranges, ovens, refrigerators, garbage
10 disposals, compactors, dishwashers, automatic door openers, washers and
11 dryers, bathtubs, sinks, toilets, faucets and fittings, lighting
12 fixtures, lighting control and energy management systems, security
13 systems, circuit breakers, and other similar items.

14 (2) "Residential builder" means any person, corporation,
15 partnership, general contractor, or other legal entity that:

16 (a) Is engaged in the business of erecting or otherwise
17 constructing a new home; or

18 (b) Purchases a completed new home for resale in the course of its
19 business.

1 (3) "Electrical systems" means all wiring, electrical boxes,
2 switches, outlets, and connections up to the public utility connection.

3 (4) "Heating, cooling, and ventilating systems" means all duct
4 work, gas, steam, water and refrigerant lines, registers, convectors,
5 solar panels, radiation elements, and dampers.

6 (5) "Load-bearing portions of the home" means the load-bearing
7 portions of the:

8 (a) Foundation system and footings;

9 (b) Beams;

10 (c) Girders;

11 (d) Lintels;

12 (e) Columns;

13 (f) Walls and partitions;

14 (g) Floor systems; and

15 (h) Roof framing systems.

16 (6)(a) "New home" means:

17 (i) Every newly constructed private dwelling unit in the state and
18 the fixtures and structure that are made a part of a newly constructed
19 private dwelling unit at the time of construction; and

20 (ii) A condominium, as defined in RCW 64.34.020, used for
21 residential purposes, as defined in RCW 64.34.020.

22 (b) "New home" does not mean:

23 (i) A residential timeshare, as defined in RCW 64.36.010;

24 (ii) A manufactured home or mobile home, as defined in RCW
25 65.20.020;

26 (iii) Outbuildings, including detached garages and detached
27 carports, except outbuildings that contain plumbing, electrical,
28 heating, cooling, or ventilation systems serving the new home, and then
29 only to the extent that defects would affect these systems;

30 (iv) Driveways;

31 (v) Walkways;

32 (vi) Boundary walls;

33 (vii) Retaining walls not necessary for the structural stability of
34 the new home;

35 (viii) Landscaping;

36 (ix) Sprinkler or irrigation systems;

37 (x) Fences;

38 (xi) Off-site improvements;

39 (xii) Appurtenant recreational facilities; and

1 (xiii) Other similar items as determined by the director of the
2 department of labor and industries by rule.

3 (7) "New home warranty" means the warranty created in section 2 of
4 this act.

5 (8) "Owner" means the purchaser of a new home.

6 (9) "Plumbing systems" means:

7 (a) Gas supply lines and fittings;

8 (b) Water supply, waste, and vent pipes and their fittings;

9 (c) Septic tanks and their drain fields; and

10 (d) Water, gas, and sewer service piping and their extensions to
11 the tie-in of a public utility connection; or on-site wells and sewage
12 disposal systems.

13 (10)(a) "Structural defect" means any defect in the load-bearing
14 portions of a new home that adversely affects its load-bearing function
15 to the extent that the home becomes or is in serious danger of becoming
16 unsafe, unsanitary, or otherwise not reasonably safely inhabitable.

17 (b) "Structural defect" includes damage due to subsidence,
18 expansion, or lateral movement of soil that has been disturbed or
19 relocated by the residential builder.

20 (c) "Structural defect" does not include damage caused by movement
21 of the soil:

22 (i) Resulting from a flood or earthquake; or

23 (ii) For which compensation has been provided.

24 (11) "Warranty date" means the first day that the owner occupies
25 the new home, closes on the new home, makes the final contract payment
26 on the new home, or obtains an occupancy permit for the new home if the
27 home is built on the owner's property, whichever is earlier.

28 NEW SECTION. **Sec. 2.** (1)(a) Except as excluded under (b) of this
29 subsection, every contract for the construction or sale of a new home
30 includes, as a matter of law, a warranty from the residential builder
31 that shall warrant at a minimum that:

32 (i) For one year, beginning on the warranty date, the new home is
33 free from any defects in materials and workmanship;

34 (ii) For three years, beginning on the warranty date, the new home
35 is free from any defects in the electrical, plumbing, heating, cooling,
36 and ventilating systems, except that in the case of appliances,
37 fixtures, and items of equipment, the warranty need not exceed the
38 length and scope of the warranty offered by the manufacturer, and the

1 warranty of merchantability, fitness and all other implied warranties
2 with respect to appliances, fixtures, and items of equipment shall be
3 governed by the Washington uniform commercial code;

4 (iii) For five years, beginning on the warranty date, the new home
5 is free from any defects resulting in water penetration; and

6 (iv) For ten years, beginning on the warranty date, the new home is
7 free from any structural defects.

8 (b) The new home warranty excludes the following:

9 (i) Damage to real property that is not part of the home covered by
10 the warranty or that is not included in the purchase price of the home;

11 (ii) Bodily injury or damage to personal property;

12 (iii) Any defect in materials supplied or work performed by anyone
13 other than the residential builder or the residential builder's
14 employees, agents, or subcontractors;

15 (iv) Any damage that the owner has not taken timely action to
16 minimize;

17 (v) Normal wear and tear or normal deterioration;

18 (vi) Insect damage, except where the residential builder has failed
19 to use proper materials or construction methods designed to prevent
20 insect infestation;

21 (vii) Any loss or damage that arises while the home is being used
22 primarily for nonresidential purposes;

23 (viii) Any damage to the extent it is caused or made worse by
24 negligence, improper maintenance, or improper operations by anyone
25 other than the residential builder or its employees, agents, or
26 subcontractors;

27 (ix) Any damage to the extent it is caused or made worse by changes
28 of the grading of the ground by anyone other than the residential
29 builder, its employees, agents, or subcontractors; and

30 (x) Any loss or damage caused by acts of God.

31 (2) The warranty created by this section runs from the residential
32 builder to the owner. This warranty entitles the owner to recover from
33 the residential builder all costs associated with repairing the defect,
34 together with the cost of repair of damage proximately caused by the
35 defect, including the cost of repairing driveways, sidewalks, lawns,
36 landscaping, or similar associated facilities and fixtures necessarily
37 damaged as a result of the required repairs. The liability of a
38 residential builder under the new home warranty shall be limited to the
39 purchase price of the home in the first good faith sale thereof or the

1 fair market value of the home on its completion date if there is no
2 good faith sale. Absence of privity of contract between the owner and
3 the residential builder is not a defense to the enforcement of this
4 warranty.

5 (3) If the defect is the result of work performed by a
6 subcontractor, the residential builder has a right of contribution from
7 that subcontractor for amounts paid to the owner as a result of the new
8 home warranty.

9 (4) No action to enforce the new home warranty created by this
10 section may be commenced after one hundred eighty days from the time
11 the defect is discovered, or with reasonable diligence, should have
12 been discovered. Providing written notice and reasonable description
13 of a defect to the residential builder has the effect of tolling the
14 limitation periods established by this subsection and subsection (5) of
15 this section. Such tolling shall continue until the residential
16 builder completes the repair to the satisfaction of the owner, or the
17 residential builder gives the owner written notice that the residential
18 builder refuses to make the repair or has completed as much of the
19 repair as the residential builder intends to complete.

20 (5) Except as provided in subsection (4) of this section, no action
21 to enforce the new home warranty created by this section may be filed
22 later than the time periods described in subsection (1)(a) of this
23 section.

24 (6) The new home warranty is a cumulative remedy, and shall not
25 have the effect of diminishing or replacing any other remedy or
26 warranty created by law or equity or agreement between the parties.
27 The new home warranty is in addition to the warranties created under
28 chapter 64.34 RCW.

29 (7) The new home warranty does not expire on the subsequent sale of
30 a new home by the owner to subsequent purchaser, but continues to
31 protect subsequent purchasers until the warranties provided in
32 subsection (1)(a) of this section expire.

33 (8) A general disclaimer of the new home warranty is not effective
34 except that a purchaser of real property consisting of, or improved by,
35 more than four dwelling units may make a written disclaimer of the new
36 home warranty. A residential builder and any owner or any successor in
37 title to the owner may disclaim liability in a written instrument
38 signed by the purchaser for a specified defect, if the defect entered
39 into and became a part of the basis of the bargain.

1 **Sec. 3.** RCW 4.16.300 and 1986 c 305 s 703 are each amended to read
2 as follows:

3 RCW 4.16.300 through 4.16.320 shall apply to all claims or causes
4 of action of any kind against any person, arising from such person
5 having constructed, altered or repaired any improvement upon real
6 property, or having performed or furnished any design, planning,
7 surveying, architectural or construction or engineering services, or
8 supervision or observation of construction, or administration of
9 construction contracts for any construction, alteration or repair of
10 any improvement upon real property. This section is intended to
11 benefit only those persons referenced herein and shall not apply to
12 claims or causes of action against manufacturers. This section does
13 not apply to a new home warranty under chapter 64.-- RCW (sections 1
14 and 2 of this act).

15 NEW SECTION. **Sec. 4.** Sections 1 and 2 of this act constitute a
16 new chapter in Title 64 RCW.

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