

HOUSE BILL REPORT

SSB 6409

As Reported by House Committee On:
Judiciary

Title: An act relating to construction defect claims asserting property loss and damage.

Brief Description: Requiring an opportunity for a cure before an action on a construction defect may be filed.

Sponsors: Senate Committee on Labor, Commerce & Financial Institutions (originally sponsored by Senators Prentice, Hargrove, Johnson, Rossi, Rasmussen, Honeyford, Gardner, Finkbeiner and Hale).

Brief History:

Committee Activity:

Judiciary: 2/28/02 [DPA].

Brief Summary of Substitute Bill
(As Amended by House Committee)

- Provides that the builder or substantial remodeler of a residence must be given an opportunity to cure a construction defect before a lawsuit may be filed against the builder.
- Provides that the time required for an opportunity to cure a defect extends the period of time otherwise allowed for filing a lawsuit.
- Provides that when filing a suit against a builder, the plaintiff must list the alleged defect and must identify which construction professional is responsible for the defect.
- Provides that the purchaser of a residence must be notified at the time of purchase of the builder's rights to notice and an opportunity to cure under the act.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 9 members: Representatives Lantz, Chair; Hurst, Vice Chair; Carrell, Ranking Minority Member; Boldt, Dickerson, Esser, Jarrett, Lovick and Lysen.

Staff: Bill Perry (786-7123).

Background:

In most instances, a lawsuit may be commenced by filing a complaint or serving the defendant with a summons within the period of the applicable statute of limitation. Generally, a plaintiff is not required to take other specific steps prior to commencing the suit. One exception to this general rule is found in the requirement that a tort lawsuit against a state or local government must be preceded by the presentment of the claim to the government at least 60 days before a suit may be commenced.

Generally, the complaint that commences a lawsuit need only contain a "short and plain statement of the claim" and a showing that the plaintiff is entitled to the relief sought. Procedures are available for the defendant to seek clarification and more specificity in the statement of the claim. Once a lawsuit is commenced, both parties also may use various forms of discovery to better understand the nature and strength of a claim.

Various statutes of limitations control the periods of time within which a lawsuit may be brought. These periods begin after a cause of action has accrued. For instance, a lawsuit for breach of contract must be brought within six years of the breach. For most tort cases, the statute of limitations is three years. If one of the many specific statutes of limitations does not apply to a particular kind of case, the default period is two years from accrual.

In some kinds of cases, a statute of "repose" may apply in addition to a statute of "limitations." While a statute of limitations requires an action to be brought within a certain time of its accrual, a statute of repose says that the accrual itself must occur within a certain time. A statute of repose applies to claims against building contractors. It provides that a cause of action must accrue within six years after substantial completion of a project, or no lawsuit can be brought. If the period of repose has expired, the statute of limitations never even begins to run. If a cause of action does accrue within those six years, however, then the statute of limitations that applies begins to run from the time of the accrual.

Under the state's condominium law, a four year statute of limitations generally applies to lawsuits for breaches of express or implied warranties as to the quality of construction. Express warranties are assertions that a builder has made with respect to the condominium and that were relied upon by the buyer. Implied warranties are statutorily created and generally may not be waived by the buyer of a residential unit unless the waiver is specified in writing and has become a part of the bargain for purchase of the unit. Implied warranties by the seller of a condominium include warranties that:

- The units and common areas are suitable for ordinary uses of real estate of that type;
- any construction is free from defective materials; and

- construction is in accordance with sound engineering and construction standards, and has been done in a workmanlike manner and in compliance with applicable laws.

Summary of Amended Bill:

Several requirements are placed on a homeowner who wishes to bring a lawsuit against a builder or others for property damage due to alleged defects in the construction of a residence. These requirements apply to the new construction of a residence and to any remodel that costs more than half of the assessed value of the residence. These requirements must be met before a lawsuit can be filed. Requirements are also placed on condominium association boards of directors when they do bring such a lawsuit.

Requirements Before a Lawsuit Can Be Filed.

Before a lawsuit can be filed alleging a defect in the construction or substantial remodel of a residence, the homeowner must serve notice on the construction professional alleged to be responsible for the defect. The following terms are defined:

- "Homeowner" includes any person or entity, including a condominium association, that contracts with a construction professional for the construction or sale of a residence. The term also includes a subsequent purchaser from an original homeowner.
- "Residence" includes single family houses, residential structures of four or less units, and condominium units.
- "Construction professional" includes builders, architects, builder vendors, contractors, subcontractors, engineers and others.

The claimant's notice must be given at least 45 days before a suit is filed and must describe the claim in "reasonable detail." The notice must be served by personal service or registered mail. This notice requirement applies to any property damage claim by a homeowner against a construction professional.

Within 21 days of receiving the notice, the construction professional must respond to the homeowner. In the response, the construction professional must do one of the following:

- Offer to inspect the alleged defect and then, based on the inspection, either remedy the defect, pay for it, or dispute the homeowner's claim;
- offer to settle the claim by paying for the defect, including possibly buying the residence back from the homeowner; or
- dispute the claim.

If the construction professional fails to respond, or disputes the claim, or the homeowner rejects an offer of inspection or settlement, then the homeowner may file a lawsuit.

Procedures are also laid out for situations in which the homeowner agrees to an

inspection or agrees to an offer of settlement.

If the construction professional fails to perform agreed to repairs, or fails to meet an agreed to timetable, the homeowner may file the lawsuit.

If a homeowner discovers another defect after a suit has been commenced, the homeowner must notify the builder and given the builder the 21 days to respond in the manner described previously. However, in such a case, there is no requirement that the notice to the builder be made at least 45 days before commencing a suit. The new claim may be added to the pending lawsuit.

The serving of notices required by the act tolls any applicable statute of limitations or repose until 60 days after the end of the period during which bringing a lawsuit is barred under this act.

Requirements When a Lawsuit is Filed.

After a homeowner has served the required notice on the construction professional, if the matter has not been resolved and a lawsuit has been commenced, the homeowner must file with the court and serve on the defendant a list of the alleged construction defects. The list must be filed and served within 30 days after the lawsuit has been commenced and must specify the construction professional responsible for each alleged defect.

Additional Requirements Before a Condominium or Homeowners' Association Can File a Lawsuit.

Before the board of directors of a condominium or homeowners' association may sue a construction professional on behalf of two or more owners, the board must notify all residents regarding the intended suit. The notice must state the nature of the suit and the expected expenses and fees to be incurred in bringing the suit.

Notice to Homeowners of Obligations and Rights Under the Act.

Construction professionals are required to provide homeowners with a notice at the time of entering a contract for the purchase or remodel of a residence. The notice must inform the homeowner of the requirement that 45 days notice and an opportunity to cure is to be given to the construction professional before a lawsuit can be filed for a construction defect.

The notice may be included as part of the contract for sale, and in the case of a condominium sale may be contained in the public offering statement.

Amended Bill Compared to Substitute Bill:

The amendment:

- Adds the requirement that purchasers be notified at the time of purchase of their obligations and rights under the act;

- clarifies the definition of substantial remodel;
- specifically tolls applicable statutes of limitations and repose during, and for 60 days after, the period of notice and opportunity for cure provided by the bill;
- allows adding newly discovered defects to an existing lawsuit if the builder is given notice and 21 days to respond; and
- places the burden on the builder to seek dismissal of a lawsuit if the homeowner has not complied with the notice requirements of the act.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: The bill will allow contractors to get the insurance they need to carry on business. It will reduce court congestion, and increase housing affordability and availability. The bill will encourage multi-family housing and development where it belongs within urban growth areas. It balances consumers' rights with the needs of the industry for certainty. The bill appropriately places the burden on builders to notify purchasers of their rights and obligations under the act and does not deny any homeowner of the right to bring a lawsuit.

Testimony Against: The real problem in the industry is bad construction and lack of adequate inspection during construction. Under the bill, every time a new defect is found, it may result in a lawsuit being dismissed and the homeowner having to start all over from the beginning again. The whole balance of the bill can be destroyed by a builder simply burying changes to the bill's provisions in a multi-page contract at the time of purchase that then becomes a binding agreement on the homeowner.

Testified: (In support) Jodi Slavik, Building Industry Association of Washington; Larry Stout, Washington Association of Realtors; and Steve Stuart, 1,000 Friends of Washington.

(Opposed) Marlyn Hawkins, Community Association Institute.