
ENGROSSED SUBSTITUTE HOUSE BILL 2565

State of Washington

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By House Committee on Judiciary (originally sponsored by Representatives Fromhold, Benson, Miloscia, Quall, Carrell, Eickmeyer, Morell, Barlean, Chase, Rockefeller, Lantz, Simpson, Kessler and Haigh)

Read first time 02/01/2002. Referred to Committee on .

1 AN ACT Relating to construction defect claims asserting property
2 loss and damage; amending RCW 64.34.410 and 64.34.452; adding a new
3 section to chapter 4.16 RCW; and adding a new chapter to Title 64 RCW.

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

5 NEW SECTION. **Sec. 1.** The legislature finds, declares, and
6 determines that limited changes in the law are necessary and
7 appropriate concerning actions claiming damages, indemnity, or
8 contribution in connection with alleged construction defects. It is
9 the intent of the legislature that this chapter apply to these types of
10 civil actions while preserving adequate rights and remedies for
11 property owners who bring and maintain such actions.

12 NEW SECTION. **Sec. 2.** Unless the context clearly requires
13 otherwise, the definitions in this section apply throughout this
14 chapter.

15 (1) "Action" means any civil lawsuit or action in contract or tort
16 for damages or indemnity brought against a construction professional to
17 assert a claim, whether by complaint, counterclaim, or cross-claim, for
18 damage or the loss of use of real or personal property caused by a

1 defect in the construction of a residence or in the substantial remodel
2 of a residence. "Action" does not include any civil action in tort
3 alleging personal injury or wrongful death to a person or persons
4 resulting from a construction defect.

5 (2) "Association" means an association, master association, or
6 subassociation as defined and provided for in RCW 64.34.020(4),
7 64.34.276, 64.34.278, and 64.38.010(1).

8 (3) "Claimant" means a homeowner or association who asserts a claim
9 against a construction professional concerning a defect in the
10 construction of a residence or in the substantial remodel of a
11 residence.

12 (4) "Construction professional" means an architect, builder,
13 builder vendor, contractor, subcontractor, engineer, or inspector,
14 including, but not limited to, a dealer as defined in RCW 64.34.020(12)
15 and a declarant as defined in RCW 64.34.020(13), performing or
16 furnishing the design, supervision, inspection, construction, or
17 observation of the construction of any improvement to real property,
18 whether operating as a sole proprietor, partnership, corporation, or
19 other business entity.

20 (5) "Homeowner" means: (a) Any person, company, firm, partnership,
21 corporation, or association who contracts with a construction
22 professional for the construction, sale, or construction and sale of a
23 residence; and (b) an "association" as defined in this section.
24 "Homeowner" includes, but is not limited to, a subsequent purchaser of
25 a residence from any homeowner.

26 (6) "Residence" means a single-family house, duplex, triplex,
27 quadraplex, or a unit in a multiunit residential structure in which
28 title to each individual unit is transferred to the owner under a
29 condominium or cooperative system, and shall include common elements as
30 defined in RCW 64.34.020(6) and common areas as defined in RCW
31 64.38.010(4).

32 (7) "Serve" or "service" means personal service or delivery by
33 certified mail to the last known address of the addressee.

34 (8) "Substantial remodel" means a remodel of a residence, for which
35 the total cost exceeds one-half of the assessed value of the residence
36 for property tax purposes at the time the contract for the remodel work
37 was made.

1 NEW SECTION. **Sec. 3.** (1) In every construction defect action
2 brought against a construction professional, the claimant shall, no
3 later than forty-five days before filing an action, serve written
4 notice of claim on the construction professional, by registered mail or
5 personal service. The notice of claim shall state that the claimant
6 asserts a construction defect claim against the construction
7 professional and shall describe the claim in reasonable detail
8 sufficient to determine the general nature of the defect and the
9 problems resulting from the defect.

10 (2) Within twenty-one days after service of the notice of claim,
11 the construction professional shall serve a written response on the
12 claimant by registered mail or personal service. The written response
13 shall:

14 (a) Propose to inspect the residence that is the subject of the
15 claim and to complete the inspection within a specified time frame.
16 The proposal shall include the statement that the construction
17 professional shall, based on the inspection, offer to remedy the
18 defect, compromise by payment, or dispute the claim;

19 (b) Offer to compromise and settle the claim by monetary payment
20 without inspection. A construction professional's offer under this
21 subsection (2)(b) to compromise and settle a homeowner's claim may
22 include, but is not limited to, an express offer to purchase the
23 claimant's residence that is the subject of the claim, and to pay the
24 claimant's reasonable relocation costs; or

25 (c) State that the construction professional disputes the claim and
26 will neither remedy the construction defect nor compromise and settle
27 the claim.

28 (3)(a) If the construction professional disputes the claim or does
29 not respond to the claimant's notice of claim within the time stated in
30 subsection (2) of this section, the claimant may bring an action
31 against the construction professional for the claim described in the
32 notice of claim without further notice.

33 (b) If the claimant rejects the inspection proposal or the
34 settlement offer made by the construction professional pursuant to
35 subsection (2) of this section, the claimant shall serve written notice
36 of the claimant's rejection on the construction professional. After
37 service of the rejection, the claimant may bring an action against the
38 construction professional for the construction defect claim described
39 in the notice of claim. If the construction professional has not

1 received from the claimant, within thirty days after the claimant's
2 receipt of the construction professional's response, either an
3 acceptance or rejection of the inspection proposal or settlement offer,
4 then at anytime thereafter the construction professional may terminate
5 the proposal or offer by written notice to the claimant, and the
6 claimant may thereafter bring an action against the construction
7 professional for the construction defect claim described in the notice
8 of claim.

9 (4)(a) If the claimant elects to allow the construction
10 professional to inspect in accordance with the construction
11 professional's proposal pursuant to subsection (2)(a) of this section,
12 the claimant shall provide the construction professional and its
13 contractors or other agents reasonable access to the claimant's
14 residence during normal working hours to inspect the premises and the
15 claimed defect.

16 (b) Within fourteen days following completion of the inspection,
17 the construction professional shall serve on the claimant:

18 (i) A written offer to remedy the construction defect at no cost to
19 the claimant, including a description of the additional construction
20 that the construction professional has determined from the inspection
21 will be necessary to remedy the defect described in the claim, and a
22 timetable for the completion of such construction;

23 (ii) A written offer to compromise and settle the claim by monetary
24 payment pursuant to subsection (2)(b) of this section; or

25 (iii) A written statement that the construction professional will
26 not proceed further to remedy the defect.

27 (c) If the construction professional does not proceed further to
28 remedy the construction defect within the agreed timetable, or if the
29 construction professional fails to comply with the provisions of (b) of
30 this subsection, the claimant may bring an action against the
31 construction professional for the claim described in the notice of
32 claim without further notice.

33 (d) If the claimant rejects the offer made by the construction
34 professional pursuant to (b)(i) or (ii) of this subsection to either
35 remedy the construction defect or to compromise and settle the claim by
36 monetary payment, the claimant shall serve written notice of the
37 claimant's rejection on the construction professional. After service
38 of the rejection notice, the claimant may, in accordance with this
39 chapter, bring an action against the construction professional for the

1 construction defect claim described in the notice of claim. If the
2 construction professional has not received from the claimant, within
3 thirty days after the claimant's receipt of the construction
4 professional's response, either an acceptance or rejection of the offer
5 made pursuant to (b)(i) or (ii) of this subsection, then at anytime
6 thereafter the construction professional may terminate the proposal or
7 offer by written notice to the claimant, and the claimant may
8 thereafter bring an action against the construction professional for
9 the construction defect claim described in the notice of claim.

10 (5)(a) Any claimant accepting the offer of a construction
11 professional to remedy the construction defect pursuant to subsection
12 (4)(b)(i) of this section shall do so by serving the construction
13 professional with a written notice of acceptance within a reasonable
14 time period after receipt of the offer, and no later than thirty days
15 after receipt of the offer. The claimant shall provide the
16 construction professional and its contractors or other agents
17 reasonable access to the claimant's residence during normal working
18 hours to perform and complete the construction by the timetable stated
19 in the offer.

20 (b) The claimant and construction professional may, by written
21 mutual agreement, alter the extent of construction or the timetable for
22 completion of construction stated in the offer, including, but not
23 limited to, repair of additional defects.

24 (6) Any action commenced by a claimant prior to compliance with the
25 requirements of this section shall be subject to dismissal without
26 prejudice, and may not be recommenced until the claimant has complied
27 with the requirements of this section.

28 (7) Nothing in this section may be construed to prevent a claimant
29 from commencing an action on the construction defect claim described in
30 the notice of claim if:

31 (a) The construction professional fails to perform the construction
32 agreed upon, fails to remedy the defect, or fails to perform by the
33 timetable agreed upon pursuant to subsection (2)(a) or (5) of this
34 section; or

35 (b) Notwithstanding the completion of the construction agreed upon,
36 the claimant later discovers latent construction defects that the
37 claimant attributes to the construction professional, but that were not
38 discoverable by a reasonable person at the time of such completion.
39 Any claimant who intends to bring an action for such latent

1 construction defects may do so only after complying with the
2 requirements of this section.

3 (8) Prior to commencing any action alleging a construction defect,
4 or after the dismissal of any action without prejudice pursuant to
5 subsection (6) of this section, the claimant may amend the notice of
6 claim to include construction defects discovered after the service of
7 the original notice of claim but not discoverable by a reasonable
8 person at the time of the original claim, and must otherwise comply
9 with the requirements of this section for the additional claims. The
10 service of an amended notice of claim shall relate back to the original
11 notice of claim for purposes of tolling the statute of limitations.
12 Claims for defects discovered after the commencement or recommencement
13 of an action may be added to such action only after complying with the
14 requirements of this section with respect to such subsequently
15 discovered defects.

16 NEW SECTION. **Sec. 4.** (1) In every action brought against a
17 construction professional, the claimant, including a construction
18 professional asserting a claim against another construction
19 professional, shall file with the court and serve on the defendant a
20 list of known construction defects in accordance with this section.

21 (2) The list of known construction defects shall contain a
22 description of the construction that the claimant alleges to be
23 defective. The list of known construction defects shall be filed with
24 the court and served on the defendant within thirty days after the
25 commencement of the action or within such longer period as the court in
26 its discretion may allow.

27 (3) The list of known construction defects may be amended by the
28 claimant to identify additional construction defects as they become
29 known to the claimant.

30 (4) The list of known construction defects must specify, to the
31 extent known to the claimant, the construction professional responsible
32 for each alleged defect identified by the claimant.

33 (5) If a subcontractor or supplier is added as a party to an action
34 under this section, the claimant making the claim against such
35 subcontractor or supplier shall serve on the defendant the list of
36 construction defects in accordance with this section within thirty days
37 after service of the complaint against the subcontractor or supplier or
38 within such period as the court in its discretion may allow.

1 NEW SECTION. **Sec. 5.** (1)(a) In the event the board of directors,
2 pursuant to RCW 64.34.304(1)(d) or 64.38.020(4), institutes an action
3 asserting defects in the construction of two or more residences, common
4 elements, or common areas, this section shall apply. For purposes of
5 this section, "action" has the same meaning as set forth in section 2
6 of this act.

7 (b) The board of directors shall substantially comply with the
8 provisions of this section.

9 (2)(a) Prior to the service of the summons and complaint on any
10 defendant with respect to an action governed by this section, the board
11 of directors shall mail or deliver written notice of the commencement
12 or anticipated commencement of such action to each homeowner at the
13 last known address described in the association's records.

14 (b) The notice required by (a) of this subsection shall state a
15 general description of the following:

16 (i) The nature of the action and the relief sought; and

17 (ii) The expenses and fees that the board of directors anticipates
18 will be incurred in prosecuting the action.

19 (3) Nothing in this section may be construed to:

20 (a) Require the disclosure in the notice or the disclosure to a
21 unit owner of attorney-client communications or other privileged
22 communications;

23 (b) Permit the notice to serve as a basis for any person to assert
24 the waiver of any applicable privilege or right of confidentiality
25 resulting from, or to claim immunity in connection with, the disclosure
26 of information in the notice; or

27 (c) Limit or impair the authority of the board of directors to
28 contract for legal services, or limit or impair the ability to enforce
29 such a contract for legal services.

30 NEW SECTION. **Sec. 6.** (1) The construction professional shall
31 provide notice to each homeowner upon entering into a contract for
32 sale, construction, or substantial remodel of a residence, for which
33 the cost of the remodel exceeds half of the appraised value of the
34 existing residence, of the construction professional's right to offer
35 to cure construction defects before a homeowner may commence litigation
36 against the construction professional. Such notice shall be
37 conspicuous and may be included as part of the underlying contract
38 signed by the homeowner. In the sale of a condominium unit, the

1 requirement for delivery of such notice shall be deemed satisfied if
2 contained in a public offering statement delivered in accordance with
3 chapter 64.34 RCW.

4 (2) The notice required by this subsection shall be in
5 substantially the following form:

6 CHAPTER 64.-- RCW (sections 1 through 7 of this act) CONTAINS
7 IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A
8 LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST THE SELLER OR
9 BUILDER OF YOUR HOME. FORTY-FIVE DAYS BEFORE YOU FILE YOUR
10 LAWSUIT, YOU MUST DELIVER TO THE SELLER OR BUILDER A WRITTEN
11 NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE
12 AND PROVIDE YOUR SELLER OR BUILDER THE OPPORTUNITY TO MAKE AN
13 OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED
14 TO ACCEPT ANY OFFER MADE BY THE BUILDER OR SELLER. THERE ARE
15 STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO
16 FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT.

17 (3) This chapter shall not preclude or bar any action if notice is
18 not given to the homeowner as required by this section.

19 NEW SECTION. **Sec. 7.** Nothing in this chapter shall be construed
20 to hinder or otherwise affect the employment, agency, or contractual
21 relationship between and among homeowners and construction
22 professionals during the process of construction or remodeling and does
23 not preclude the termination of those relationships as allowed under
24 current law. Nothing in this chapter shall negate or otherwise
25 restrict a construction professional's right to access or inspection
26 provided by law, covenant, easement, or contract.

27 NEW SECTION. **Sec. 8.** A new section is added to chapter 4.16 RCW
28 to read as follows:

29 If a written notice of claim is served under section 3 of this act
30 within the time prescribed for the filing of an action under this
31 chapter, all statutes of limitation and statutes of repose for
32 construction-related claims are tolled until sixty days after the
33 period of time during which the filing of an action is barred under
34 section 3 of this act.

1 **Sec. 9.** RCW 64.34.410 and 1997 c 400 s 1 are each amended to read
2 as follows:

3 (1) A public offering statement shall contain the following
4 information:

5 (a) The name and address of the condominium;

6 (b) The name and address of the declarant;

7 (c) The name and address of the management company, if any;

8 (d) The relationship of the management company to the declarant, if
9 any;

10 (e) A list of up to the five most recent condominium projects
11 completed by the declarant or an affiliate of the declarant within the
12 past five years, including the names of the condominiums, their
13 addresses, and the number of existing units in each. For the purpose
14 of this section, a condominium is "completed" when any one unit therein
15 has been rented or sold;

16 (f) The nature of the interest being offered for sale;

17 (g) A brief description of the permitted uses and use restrictions
18 pertaining to the units and the common elements;

19 (h) A brief description of the restrictions, if any, on the renting
20 or leasing of units by the declarant or other unit owners, together
21 with the rights, if any, of the declarant to rent or lease at least a
22 majority of units;

23 (i) The number of existing units in the condominium and the maximum
24 number of units that may be added to the condominium;

25 (j) A list of the principal common amenities in the condominium
26 which materially affect the value of the condominium and those that
27 will or may be added to the condominium;

28 (k) A list of the limited common elements assigned to the units
29 being offered for sale;

30 (l) The identification of any real property not in the condominium,
31 the owner of which has access to any of the common elements, and a
32 description of the terms of such access;

33 (m) The identification of any real property not in the condominium
34 to which unit owners have access and a description of the terms of such
35 access;

36 (n) The status of construction of the units and common elements,
37 including estimated dates of completion if not completed;

38 (o) The estimated current common expense liability for the units
39 being offered;

- 1 (p) An estimate of any payment with respect to the common expense
2 liability for the units being offered which will be due at closing;
- 3 (q) The estimated current amount and purpose of any fees not
4 included in the common expenses and charged by the declarant or the
5 association for the use of any of the common elements;
- 6 (r) Any assessments which have been agreed to or are known to the
7 declarant and which, if not paid, may constitute a lien against any
8 units or common elements in favor of any governmental agency;
- 9 (s) The identification of any parts of the condominium, other than
10 the units, which any individual owner will have the responsibility for
11 maintaining;
- 12 (t) If the condominium involves a conversion condominium, the
13 information required by RCW 64.34.415;
- 14 (u) Whether timesharing is restricted or prohibited, and if
15 restricted, a general description of such restrictions;
- 16 (v) A list of all development rights reserved to the declarant and
17 all special declarant rights reserved to the declarant, together with
18 the dates such rights must terminate, and a copy of or reference by
19 recording number to any recorded transfer of a special declarant right;
- 20 (w) A description of any material differences in terms of
21 furnishings, fixtures, finishes, and equipment between any model unit
22 available to the purchaser at the time the agreement for sale is
23 executed and the unit being offered;
- 24 (x) Any liens on real property to be conveyed to the association
25 required to be disclosed pursuant to RCW 64.34.435(2)(b);
- 26 (y) A list of any physical hazards known to the declarant which
27 particularly affect the condominium or the immediate vicinity in which
28 the condominium is located and which are not readily ascertainable by
29 the purchaser;
- 30 (z) A brief description of any construction warranties to be
31 provided to the purchaser;
- 32 (aa) Any building code violation citations received by the
33 declarant in connection with the condominium which have not been
34 corrected;
- 35 (bb) A statement of any unsatisfied judgments or pending suits
36 against the association, a statement of the status of any pending suits
37 material to the condominium of which the declarant has actual
38 knowledge, and a statement of any litigation brought by an owners'
39 association, unit owner, or governmental entity in which the declarant

1 or any affiliate of the declarant has been a defendant, arising out of
2 the construction, sale, or administration of any condominium within the
3 previous five years, together with the results thereof, if known;

4 (cc) Any rights of first refusal to lease or purchase any unit or
5 any of the common elements;

6 (dd) The extent to which the insurance provided by the association
7 covers furnishings, fixtures, and equipment located in the unit;

8 (ee) A notice which describes a purchaser's right to cancel the
9 purchase agreement or extend the closing under RCW 64.34.420, including
10 applicable time frames and procedures;

11 (ff) Any reports or statements required by RCW 64.34.415 or
12 64.34.440(6)(a). RCW 64.34.415 shall apply to the public offering
13 statement of a condominium in connection with which a final certificate
14 of occupancy was issued more than sixty calendar months prior to the
15 preparation of the public offering statement whether or not the
16 condominium is a conversion condominium as defined in RCW
17 64.34.020(10);

18 (gg) A list of the documents which the prospective purchaser is
19 entitled to receive from the declarant before the rescission period
20 commences;

21 (hh) A notice which states: A purchaser may not rely on any
22 representation or express warranty unless it is contained in the public
23 offering statement or made in writing signed by the declarant or by any
24 person identified in the public offering statement as the declarant's
25 agent;

26 (ii) A notice which states: This public offering statement is only
27 a summary of some of the significant aspects of purchasing a unit in
28 this condominium and the condominium documents are complex, contain
29 other important information, and create binding legal obligations. You
30 should consider seeking the assistance of legal counsel;

31 (jj) Any other information and cross-references which the declarant
32 believes will be helpful in describing the condominium to the
33 recipients of the public offering statement, all of which may be
34 included or not included at the option of the declarant; ~~((and))~~

35 (kk) A notice that addresses compliance or noncompliance with the
36 housing for older persons act of 1995, P.L. 104-76, as enacted on
37 December 28, 1995; and

38 (ll) A notice that is substantially in the form required by section
39 6 of this act.

1 (2) The public offering statement shall include copies of each of
2 the following documents: The declaration, the survey map and plans,
3 the articles of incorporation of the association, bylaws of the
4 association, rules and regulations, if any, current or proposed budget
5 for the association, and the balance sheet of the association current
6 within ninety days if assessments have been collected for ninety days
7 or more.

8 If any of the foregoing documents listed in this subsection are not
9 available because they have not been executed, adopted, or recorded,
10 drafts of such documents shall be provided with the public offering
11 statement, and, before closing the sale of a unit, the purchaser shall
12 be given copies of any material changes between the draft of the
13 proposed documents and the final documents.

14 (3) The disclosures required by subsection (1)(g), (k), (s), (u),
15 (v), and (cc) of this section shall also contain a reference to
16 specific sections in the condominium documents which further explain
17 the information disclosed.

18 (4) The disclosures required by subsection (1)(ee), (hh), ~~((and))~~
19 ~~(ii), and (ll)~~ of this section shall be located at the top of the first
20 page of the public offering statement and be typed or printed in ten-
21 point bold face type size.

22 (5) A declarant shall promptly amend the public offering statement
23 to reflect any material change in the information required by this
24 section.

25 **Sec. 10.** RCW 64.34.452 and 1990 c 166 s 14 are each amended to
26 read as follows:

27 (1) A judicial proceeding for breach of any obligations arising
28 under RCW 64.34.443 and 64.34.445 must be commenced within four years
29 after the cause of action accrues: PROVIDED, That the period for
30 commencing an action for a breach accruing pursuant to subsection
31 (2)(b) of this section shall not expire prior to one year after
32 termination of the period of declarant control, if any, under RCW
33 64.34.308(4). Such period may not be reduced by either oral or written
34 agreement.

35 (2) Subject to subsection (3) of this section, a cause of action or
36 breach of warranty of quality, regardless of the purchaser's lack of
37 knowledge of the breach, accrues:

1 (a) As to a unit, the date the purchaser to whom the warranty is
2 first made enters into possession if a possessory interest was conveyed
3 or the date of acceptance of the instrument of conveyance if a
4 nonpossessory interest was conveyed; and

5 (b) As to each common element, at the latest of (i) the date the
6 first unit in the condominium was conveyed to a bona fide purchaser,
7 (ii) the date the common element was completed, or (iii) the date the
8 common element was added to the condominium.

9 (3) If a warranty of quality explicitly extends to future
10 performance or duration of any improvement or component of the
11 condominium, the cause of action accrues at the time the breach is
12 discovered or at the end of the period for which the warranty
13 explicitly extends, whichever is earlier.

14 (4) If a written notice of claim is served under section 3 of this
15 act within the time prescribed for the filing of an action under this
16 chapter, the statutes of limitation in this chapter and any applicable
17 statutes of repose for construction-related claims are tolled until
18 sixty days after the period of time during which the filing of an
19 action is barred under section 3 of this act.

20 NEW SECTION. Sec. 11. Sections 1 through 7 of this act constitute
21 a new chapter in Title 64 RCW.

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