
SUBSTITUTE HOUSE BILL 2565

State of Washington

57th Legislature

2002 Regular Session

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 64.34.452; adding a new section to
3 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 resulting
9 in property loss or damage. It is the intent of the legislature that
10 this chapter apply to these types of civil actions while preserving
11 adequate rights and remedies for property owners who bring and maintain
12 such actions.

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

16 (1) "Action" means any civil action in contract or tort for damages
17 or indemnity brought against a construction professional to assert a
18 claim, whether by complaint, counterclaim, or cross-claim, for damage

1 or the loss of use of real or personal property caused by a defect in
2 the construction or remodel of more than half of a residence. "Action"
3 does not include any civil action in tort alleging physical injury or
4 wrongful death to a person or persons resulting from a construction
5 defect.

6 (2) "Association" means an association, master association, or
7 subassociation as defined and provided for in RCW 64.34.020(4),
8 64.34.276, 64.34.278, and 64.38.010(1).

9 (3) "Claimant" means a homeowner, association, or a construction
10 professional who asserts a claim against a construction professional
11 concerning a defect in the construction or remodel of more than half of
12 a residence.

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

20 (5) "Homeowner" means 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. "Homeowner" includes, but is not limited to, a subsequent
24 purchaser of a residence from any homeowner.

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

31 NEW SECTION. **Sec. 3.** (1) In every construction defect action
32 brought against a construction professional, the claimant shall, no
33 later than forty-five days before filing an action, serve written
34 notice on the construction professional, by registered mail or personal
35 service. The notice of claim shall state that the claimant asserts a
36 construction defect claim against the construction professional and
37 shall describe the claim in reasonable detail.

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

5 (a) Propose to inspect the residence that is the subject of the
6 claim within a specified time frame. The proposal shall include the
7 statement that the construction professional shall, based on the
8 inspection, offer to remedy the defect, compromise by payment, or
9 dispute the claim;

10 (b) Offer to compromise and settle the claim by monetary payment
11 without inspection. An offer made under this subsection (2)(b) to
12 compromise and settle a homeowner's claim includes, but is not limited
13 to, an express offer to purchase the claimant's residence that is the
14 subject of the claim, and to pay the claimant's reasonable relocation
15 costs; or

16 (c) State that the construction professional disputes the claim and
17 will neither remedy the construction defect nor compromise and settle
18 the claim.

19 (3)(a) If the construction professional disputes the claim or does
20 not respond to the claimant's notice of claim, the claimant may, in
21 accordance with this chapter, bring an action against the construction
22 professional for the claim described in the notice of claim.

23 (b) If the claimant rejects the inspection proposal or the
24 settlement offer made by the construction professional pursuant to
25 subsection (2) of this section, the claimant shall serve written notice
26 of the claimant's rejection on the construction professional by
27 registered mail or personal service. After service of the rejection,
28 the claimant may, in accordance with this chapter, bring an action
29 against the construction professional for the construction defect claim
30 described in the notice of claim.

31 (4)(a) If the claimant elects to consider the inspection proposal
32 of the construction professional made pursuant to subsection (2)(a) of
33 this section, the claimant shall provide the construction professional
34 and its contractors or other agents reasonable access to the claimant's
35 residence during normal working hours to inspect the premises and the
36 claimed defect so that the construction professional may verify the
37 claim.

1 (b) Within fourteen days following the inspection, the construction
2 professional shall serve on the claimant, by registered mail or
3 personal service:

4 (i) A written offer to remedy the construction defect at no cost to
5 the claimant, including a description of the additional construction
6 that the construction professional has determined from the inspection
7 will be necessary to remedy the defect, and a timetable for the
8 completion of such construction;

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

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

13 (c) If the construction professional does not proceed further to
14 remedy the construction defect, or if the construction professional
15 fails to comply with the provisions of (b) of this subsection, the
16 claimant may bring an action against the construction professional for
17 the claim described in the notice of claim.

18 (d) If the claimant rejects the offer made by the construction
19 professional pursuant to (b)(i) or (ii) of this subsection to either
20 remedy the construction defect or to compromise and settle the claim by
21 monetary payment, the claimant shall serve written notice of the
22 claimant's rejection on the construction professional by registered
23 mail or personal service. After service of the rejection notice, the
24 claimant may, in accordance with this chapter, bring an action against
25 the construction professional for the construction defect claim
26 described in the notice of claim.

27 (5)(a) Any claimant accepting the offer of a construction
28 professional to remedy the construction defect pursuant to subsection
29 (4)(b)(i) of this section shall do so by serving the construction
30 professional with a written notice of acceptance, by personal service
31 or registered mail, within a reasonable time period after receipt of
32 the offer. The claimant shall promptly provide the construction
33 professional and its contractors or other agents reasonable access to
34 the claimant's residence during normal working hours to perform and
35 complete the construction by the timetable stated in the offer.

36 (b) The claimant and construction professional may, by written
37 mutual agreement, alter the extent of construction or the timetable for
38 completion of construction stated in the offer.

1 (6) No action may be commenced until after the claimant has
2 complied with the requirements of this section.

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

6 (a) The construction professional fails to perform the construction
7 agreed upon, fails to remedy the defect as defined by the terms of the
8 agreement under subsection (5) of this section, or fails to perform by
9 the timetable agreed upon pursuant to subsection (2)(a) or (5) of this
10 section; or

11 (b) Notwithstanding the completion of the construction agreed upon,
12 the claimant later discovers latent construction defects that the
13 claimant attributes to the construction professional, but that were not
14 discoverable by a reasonable person at the time of such completion.
15 Any claimant who intends to bring an action for such latent
16 construction defects may do so only after complying with the
17 requirements of this section.

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

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

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

30 (4) The list of defects must specify, to the extent known to the
31 claimant, the construction professional responsible for each alleged
32 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 file with the court and serve on the
36 defendant the list of construction defects in accordance with this
37 section within thirty days after service of the complaint against the

1 subcontractor or supplier or within such period as the court in its
2 discretion may allow.

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

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

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

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

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

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

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

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

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

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

32 NEW SECTION. **Sec. 6.** Nothing in this chapter shall be construed
33 to hinder or otherwise affect the employment relationship between and
34 among homeowners and construction professionals during the process of
35 construction or remodeling and does not preclude the termination of
36 those relationships as allowed under current law.

1 NEW SECTION. **Sec. 7.** A new section is added to chapter 4.16 RCW
2 to read as follows:

3 If a written notice is filed under section 3 of this act within the
4 time prescribed for the filing of an action under this chapter, the
5 period of time during which the filing of an action is barred under
6 section 3 of this act shall not be a part of the period limited for the
7 commencement of an action.

8 **Sec. 8.** RCW 64.34.452 and 1990 c 166 s 14 are each amended to read
9 as follows:

10 (1) A judicial proceeding for breach of any obligations arising
11 under RCW 64.34.443 and 64.34.445 must be commenced within four years
12 after the cause of action accrues: PROVIDED, That the period for
13 commencing an action for a breach accruing pursuant to subsection
14 (2)(b) of this section shall not expire prior to one year after
15 termination of the period of declarant control, if any, under RCW
16 64.34.308(4). Such period may not be reduced by either oral or written
17 agreement.

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

21 (a) As to a unit, the date the purchaser to whom the warranty is
22 first made enters into possession if a possessory interest was conveyed
23 or the date of acceptance of the instrument of conveyance if a
24 nonpossessory interest was conveyed; and

25 (b) As to each common element, at the latest of (i) the date the
26 first unit in the condominium was conveyed to a bona fide purchaser,
27 (ii) the date the common element was completed, or (iii) the date the
28 common element was added to the condominium.

29 (3) If a warranty of quality explicitly extends to future
30 performance or duration of any improvement or component of the
31 condominium, the cause of action accrues at the time the breach is
32 discovered or at the end of the period for which the warranty
33 explicitly extends, whichever is earlier.

34 (4) If a written notice is filed under section 3 of this act within
35 the time prescribed for the filing of an action under this chapter, the
36 period of time during which the filing of an action is barred under
37 section 3 of this act shall not be a part of the period limited for the
38 commencement of an action.

1 NEW SECTION. **Sec. 9.** Sections 1 through 6 of this act constitute
2 a new chapter in Title 64 RCW.

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