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SENATE BILL 6409

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State of Washington 57th Legislature

2002 Regular Session

By Senators Prentice, Hargrove, Johnson, Rossi, Rasmussen, Honeyford, Gardner, Finkbeiner and Hale

Read first time 01/16/2002. Referred to Committee on Labor, Commerce & Financial Institutions.

1 AN ACT Relating to construction defect claims asserting property  
2 loss and damage; adding a new section to chapter 64.34 RCW; adding a  
3 new section to chapter 4.16 RCW; and adding a new chapter to Title 64  
4 RCW.

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

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

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

17 (1) "Action" means any civil action in contract or tort for damages  
18 or indemnity brought against a construction professional to assert a

1 claim, whether by complaint, counterclaim, or cross-claim, for damage  
2 or the loss of use of real or personal property caused by a defect in  
3 the construction of a residence.

4 (2) "Claimant" means a homeowner or a construction professional who  
5 asserts a claim against a construction professional concerning a defect  
6 in the construction of a residence.

7 (3) "Construction professional" means an architect, builder,  
8 builder vendor, contractor, engineer, or inspector performing or  
9 furnishing the design, supervision, inspection, construction, or  
10 observation of the construction of any improvement to real property.

11 (4) "Homeowner" means any person, company, firm, partnership,  
12 corporation, or association including, but not limited to, a unit  
13 owners' association and master association, as defined in RCW 64.34.020  
14 who contracts with a construction professional for the construction,  
15 sale, or construction and sale of a residence. "Homeowner" includes,  
16 but is not limited to, a subsequent purchaser of a residence from any  
17 homeowner.

18 (5) "Residence" means a single-family house, duplex, triplex,  
19 quadraplex, or a unit in a multiunit residential structure in which  
20 title to each individual unit is transferred to the owner under a  
21 condominium or cooperative system.

22 NEW SECTION. **Sec. 3.** (1) In every construction defect action  
23 brought against a construction professional, the claimant shall, no  
24 later than forty-five days before filing an action under this chapter,  
25 serve written notice on the construction professional, by registered  
26 mail or personal service. The notice of claim shall state that the  
27 claimant asserts a construction defect claim against the construction  
28 professional and shall describe the claim in reasonable detail.

29 (2) Within twenty days after service of the notice of claim, the  
30 construction professional shall serve a written response on the  
31 claimant by registered mail or personal service. The written response  
32 shall:

33 (a) Propose to inspect the residence that is the subject of the  
34 claim within a specified time frame. The proposal shall include the  
35 statement that the construction professional shall, based on the  
36 inspection, offer to remedy the defect, compromise by payment, or  
37 dispute the claim;

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

7 (c) State that the construction professional disputes the claim and  
8 will neither remedy the construction defect nor compromise and settle  
9 the claim.

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

14 (b) If the claimant rejects the inspection proposal or the  
15 settlement offer made by the construction professional pursuant to  
16 subsection (2) of this section, the claimant shall, within ten days  
17 after receiving the construction professional's response, serve written  
18 notice of the claimant's rejection on the construction professional by  
19 registered mail or personal service. After service of the rejection,  
20 the claimant may, in accordance with this chapter, bring an action  
21 against the construction professional for the construction defect claim  
22 described in the notice of claim.

23 (4)(a) If the claimant elects to consider the inspection proposal  
24 of the construction professional made pursuant to subsection (2)(a) of  
25 this section, the claimant shall provide the construction professional  
26 and its contractors or other agents reasonable access to the claimant's  
27 residence during normal working hours to inspect the premises and the  
28 claimed defect so that the construction professional may verify the  
29 claim.

30 (b) Within ten days following the inspection, the construction  
31 professional shall serve on the claimant, by registered mail or  
32 personal service:

33 (i) A written offer to remedy the construction defect at no cost to  
34 the claimant, including a description of the additional construction  
35 that the construction professional has determined from the inspection  
36 will be necessary to remedy the defect, and a timetable for the  
37 completion of such construction;

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

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

3 (c) If the construction professional does not proceed further to  
4 remedy the construction defect, or if the construction professional  
5 fails to comply with the provisions of (b) of this subsection, the  
6 claimant may bring an action against the construction professional for  
7 the claim described in the notice of claim.

8 (d) If the claimant rejects the offer made by the construction  
9 professional pursuant to (b)(i) or (ii) of this subsection to either  
10 remedy the construction defect or to compromise and settle the claim by  
11 monetary payment, the claimant shall, within five days after receiving  
12 such offer, serve written notice of the claimant's rejection on the  
13 construction professional by registered mail or personal service.  
14 After service of the rejection notice, the claimant may, in accordance  
15 with this chapter, bring an action against the construction  
16 professional for the construction defect claim described in the notice  
17 of claim.

18 (5)(a) Any claimant accepting the offer of a construction  
19 professional to remedy the construction defect pursuant to subsection  
20 (4)(b)(i) of this section shall do so by serving the construction  
21 professional with a written notice of acceptance, by personal service  
22 or registered mail, within seven days after receipt of the offer. The  
23 claimant shall promptly provide the construction professional and its  
24 contractors or other agents reasonable access to the claimant's  
25 residence during normal working hours to perform and complete the  
26 construction by the timetable stated in the offer.

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

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

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

35 (a) The construction professional fails to perform the construction  
36 agreed upon or fails to perform by the timetable agreed upon pursuant  
37 to subsection (5) of this section; or

38 (b) Notwithstanding the completion of the construction agreed upon,  
39 the claimant later discovers latent construction defects that the

1 claimant attributes to the construction professional, but that were not  
2 discoverable by a reasonable person at the time of such completion.  
3 Any claimant who intends to bring an action for such latent  
4 construction defects may do so only after complying with the  
5 requirements of this section.

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

10 (2) The list of construction defects shall contain a description of  
11 the construction that the claimant alleges to be defective. The list  
12 of construction defects shall be filed with the court and served on the  
13 defendant concurrent with the commencement of the action or within such  
14 longer period as the court in its discretion may allow.

15 (3) The list of construction defects may be amended by the claimant  
16 to identify additional construction defects as they become known to the  
17 claimant. In no event shall the court allow the case to be set for  
18 trial before the list of construction defects is filed and served.

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

22 (5) If a subcontractor or supplier is added as a party to an action  
23 under this section, the claimant making the claim against such  
24 subcontractor or supplier shall file with the court and serve on the  
25 defendant the list of construction defects in accordance with this  
26 section concurrent with service of the complaint against the  
27 subcontractor or supplier or within such period as the court in its  
28 discretion may allow.

29 NEW SECTION. **Sec. 5.** A new section is added to chapter 64.34 RCW  
30 to read as follows:

31 (1)(a) In the event the board of directors, pursuant to RCW  
32 64.34.304(1)(d), institutes an action asserting defects in the  
33 construction of two or more units, this section shall apply. For  
34 purposes of this section, "action" has the same meaning as set forth in  
35 section 2 of this act.

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

1 (2)(a) Prior to the service of the summons and complaint on any  
2 defendant with respect to an action governed by this section, the board  
3 of directors shall mail or deliver written notice of the commencement  
4 or anticipated commencement of such action to each unit owner at the  
5 last known address described in the association's records.

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

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

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

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

12 (a) Require the disclosure in the notice or the disclosure to a  
13 unit owner of attorney-client communications or other privileged  
14 communications;

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

19 (c) Limit or impair the authority of the board of directors to  
20 contract for legal services, or limit or impair the ability to enforce  
21 such a contract for legal services.

22 NEW SECTION. **Sec. 6.** A new section is added to chapter 4.16 RCW  
23 to read as follows:

24 If a written notice is filed under section 3 of this act within the  
25 time prescribed for the filing of an action under this chapter, the  
26 period of time during which the filing of an action is barred under  
27 section 3 of this act shall not be a part of the period limited for the  
28 commencement of an action.

29 NEW SECTION. **Sec. 7.** Sections 1 through 4 of this act constitute  
30 a new chapter in Title 64 RCW.

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