

HB 3131 - H AMD 1020

By Representative Tom

1 Strike everything after the enacting clause and insert the
2 following:

3 "ARTICLE 1

4 GENERAL PROVISIONS

5 NEW SECTION. **Sec. 101.** DEFINITIONS. The definitions in this
6 section apply throughout this chapter unless the context clearly
7 requires otherwise.

8 (1) "Affiliate" has the meaning in RCW 64.34.020.

9 (2) "Association" has the meaning in RCW 64.34.020.

10 (3) "Building envelope" means the assemblies, components, and
11 materials of a building that are intended to separate and protect the
12 interior space of the building from the adverse effects of exterior
13 climatic conditions.

14 (4) "Common element" has the meaning in RCW 64.34.020.

15 (5) "Condominium" has the meaning in RCW 64.34.020.

16 (6) "Construction professional" has the meaning in RCW 64.50.010.

17 (7) "Declarant" has the meaning in RCW 64.34.020.

18 (8) "Defect" means any aspect of a condominium unit or common
19 element which constitutes a breach of the implied warranties set forth
20 in RCW 64.34.445.

21 (9) "Limited common element" has the meaning in RCW 64.34.020.

22 (10) "Material" means substantive, not simply formal; significant
23 to a reasonable person, not just a matter of subjective opinion; not
24 trivial or insignificant. When used with respect to a particular
25 construction defect, "material" does not require that the construction
26 defect render the unit or common element unfit for its intended purpose
27 or uninhabitable.

28 (11) "Mediation" means a collaborative process in which two or more

1 parties meet and attempt, with the assistance of a mediator, to resolve
2 issues in dispute between them.

3 (12) "Mediation session" means a meeting between two or more
4 parties to a dispute during which they are engaged in mediation.

5 (13) "Mediator" means a neutral and impartial facilitator with no
6 decision-making power who assists parties in negotiating a mutually
7 acceptable settlement of issues in dispute between them.

8 (14) "Person" has the meaning in RCW 64.34.020.

9 (15) "Public offering statement" has the meaning in RCW 64.34.410.

10 (16) "Qualified insurer" means an entity that holds a certificate
11 of authority under RCW 48.05.030, or an eligible insurer under chapter
12 48.15 RCW.

13 (17) "Qualified warranty" means an insurance policy issued by a
14 authorized insurer that complies with the requirements of this chapter.
15 A qualified warranty includes coverage for repair of physical damage
16 caused by the defects covered by the qualified warranty, except to the
17 extent of any exclusions and limitations under this chapter.

18 (18) "Resale certificate" means the statement to be delivered by
19 the association under RCW 64.34.425.

20 (19) "Transition date" means the date on which the declarant is
21 required to deliver to the association the property of the association
22 under RCW 64.34.312.

23 (20) "Unit" has the meaning in RCW 64.34.020.

24 (21) "Unit owner" has the meaning in RCW 64.34.020.

25 **ARTICLE 2**

26 **EXCLUSIVE REMEDY AND PROCEDURE**

27 **IN CASES WHERE A QUALIFIED WARRANTY IS PROVIDED**

28 NEW SECTION. **Sec. 201.** No declarant, affiliate of a declarant, or
29 construction professional is liable to a unit owner or an association
30 for a defect and resulting physical damage, and chapter 64.50 RCW shall
31 not apply if: (1) Every unit is the subject of a qualified warranty;
32 and (2) the association has been issued a qualified warranty with
33 respect to the common elements. If a construction professional agrees
34 on terms satisfactory to the qualified insurer to partially or fully
35 indemnify the qualified insurer with respect to a defect caused by the

1 construction professional, the liability of the construction
2 professional for the defect and resulting physical damage caused by him
3 or her shall not exceed damages recoverable under the terms of the
4 qualified warranty for the defect. Any indemnity claim by the
5 qualified insurer shall be by separate action or arbitration, and no
6 unit owner or association shall be joined therein.

7 **ARTICLE 3**
8 **DISCLOSURE**

9 NEW SECTION. **Sec. 301.** (1) Every public offering statement and
10 resale certificate shall affirmatively state whether or not the unit
11 and/or the common elements are covered by a qualified warranty, and
12 shall provide to the best knowledge of the person preparing the public
13 offering statement or resale certificate a history of claims under the
14 warranty.

15 (2) The history of claims must include, for each claim, not less
16 than the following information for the unit and/or the common elements,
17 as applicable, to the best knowledge of the person providing the
18 information:

- 19 (a) The type of claim that was made;
- 20 (b) The resolution of the claim;
- 21 (c) The type of repair performed;
- 22 (d) The date of the repair;
- 23 (e) The cost of the repair; and
- 24 (f) The name of the person or entity who performed the repair.

25 **ARTICLE 4**
26 **MINIMUM COVERAGE STANDARDS FOR QUALIFIED WARRANTIES**

27 NEW SECTION. **Sec. 401.** TWO-YEAR MATERIALS AND LABOR WARRANTY.

28 (1) The minimum coverage for the two-year materials and labor warranty
29 is:

- 30 (a) In the first twelve months, for other than the common elements,
31 (i) coverage for any defect in materials and labor; and (ii) subject to
32 subsection (2) of this section, coverage for a violation of the
33 building code;

1 (b) In the first fifteen months, for the common elements, (i)
2 coverage for any defect in materials and labor; and (ii) subject to
3 subsection (2) of this section, coverage for a violation of the
4 building code;

5 (c) In the first twenty-four months, (i) coverage for any defect in
6 materials and labor supplied for the electrical, plumbing, heating,
7 ventilation, and air conditioning delivery and distribution systems;
8 (ii) coverage for any defect in materials and labor supplied for the
9 exterior cladding, caulking, windows, and doors that may lead to
10 detachment or material damage to the unit or common elements; (iii)
11 coverage for any defect in materials and labor which renders the unit
12 unfit to live in; and (iv) subject to subsection (2) of this section,
13 coverage for a violation of the building code.

14 (2) Noncompliance with the building code is considered a defect
15 covered by a qualified warranty if the noncompliance:

16 (a) Constitutes an unreasonable health or safety risk; or

17 (b) Has resulted in, or is likely to result in, material damage to
18 the unit or common elements.

19 NEW SECTION. **Sec. 402.** FIVE-YEAR BUILDING ENVELOPE WARRANTY. The
20 minimum coverage for the building envelope warranty is five years for
21 defects in the building envelope of a condominium, including a defect
22 which permits unintended water penetration so that it causes, or is
23 likely to cause, material damage to the unit or common elements.

24 NEW SECTION. **Sec. 403.** TEN-YEAR STRUCTURAL DEFECTS WARRANTY. The
25 minimum coverage for the structural defects warranty is ten years for:

26 (1) Any defect in materials and labor that results in the failure
27 of a load-bearing part of the condominium; and

28 (2) Any defect which causes structural damage that materially and
29 adversely affects the use of the condominium for residential occupancy.

30 NEW SECTION. **Sec. 404.** BEGINNING DATES FOR WARRANTY COVERAGE.

31 (1) For the unit, the beginning date of the qualified warranty coverage
32 is the earlier of:

33 (a) Actual occupancy of the unit; or

34 (b) Transfer of legal title to the unit.

1 (2) For the common elements, the beginning date of a qualified
2 warranty is the date a temporary or final certificate of occupancy is
3 issued for the common elements in each separate multiunit building,
4 comprised by the condominium.

5 NEW SECTION. Sec. 405. BEGINNING DATES FOR SPECIAL CASES;
6 DECLARANT CONTROL. (1) If an unsold unit is occupied as a rental unit,
7 the qualified warranty beginning date for such unit is the date the
8 unit is first occupied.

9 (2) If the declarant subsequently offers to sell a unit which is
10 rented, the declarant must disclose, in writing, to each prospective
11 purchaser, the date on which the qualified warranty expires.

12 (3) If the declarant retains any control over the association on
13 the date that is fourteen full calendar months following the month in
14 which the beginning date for common element warranty coverage
15 commences, the declarant shall within thirty days thereafter cause an
16 election to be held in which the declarant may not vote, for the
17 purpose of electing one or more board members who are empowered to make
18 warranty claims. If at such time, one or more independent board
19 members hold office, no additional election need be held, and such
20 independent board members are empowered to make warranty claims. The
21 declarant shall inform all independent board members of their right to
22 make warranty claims at no later than sixteen full calendar months
23 following the beginning date of the common element warranty.

24 NEW SECTION. Sec. 406. LIVING EXPENSE ALLOWANCE. (1) If repairs
25 are required under the qualified warranty and damage to the unit, or
26 the extent of the repairs renders the unit uninhabitable, the qualified
27 warranty must cover reasonable living expenses incurred by the owner to
28 live elsewhere in an amount commensurate with the nature of the unit.

29 (2) If a qualified insurer establishes a maximum amount per day for
30 claims for living expenses, the limit must be the greater of one
31 hundred dollars per day or a reasonable amount commensurate with the
32 nature of the unit for the complete reimbursement of the actual
33 accommodation expenses incurred by the owner at a hotel, motel, or
34 other rental accommodation up to the day the unit is ready for

1 occupancy, subject to the owner receiving twenty-four hours' advance
2 notice.

3 NEW SECTION. **Sec. 407.** WARRANTY ON REPAIRS AND REPLACEMENTS. (1)

4 All repairs and replacements made under a qualified warranty must be
5 warranted by the qualified warranty against defects in materials and
6 labor until the later of:

7 (a) The first anniversary of the date of completion of the repair
8 or replacement; or

9 (b) The expiration of the applicable qualified warranty coverage.

10 (2) All repairs and replacements made under a qualified warranty
11 must be completed in a reasonable manner using materials and labor
12 conforming to the building code and industry standards.

13 **ARTICLE 5**
14 **PERMITTED TERMS FOR QUALIFIED WARRANTIES**

15 NEW SECTION. **Sec. 501.** A qualified insurer may include any of the
16 following provisions in a qualified warranty:

17 (1) If the qualified insurer makes a payment or assumes liability
18 for any payment or repair under a qualified warranty:

19 (a) The qualified insurer is subrogated to all rights of recovery
20 of the declarant against all construction professionals owing a duty to
21 the declarant;

22 (b) The qualified insurer may bring an action at its own expense,
23 in the name of the owner or of the qualified insurer, to enforce the
24 rights; and

25 (c) The owner and association must fully support and assist the
26 qualified insurer in pursuing subrogated rights if the qualified
27 insurer pursues them.

28 (2) Warranties or representations made by a declarant which are in
29 addition to the warranties set forth in this chapter are not binding on
30 the qualified insurer unless and to the extent specifically provided in
31 the text of the warranty; and disclaimers of specific defects made by
32 agreement between the declarant and the unit purchaser under RCW
33 64.34.450 act as an exclusion of the specified defect from the warranty
34 coverage.

1 (3) An owner and the association must permit the qualified insurer
2 or declarant, or both, to enter the unit at all reasonable times, after
3 reasonable notice to the owner and the association:

4 (a) To monitor the unit or its components;

5 (b) To inspect for required maintenance;

6 (c) To investigate complaints or claims; or

7 (d) To undertake repairs under the qualified warranty.

8 If any reports are produced as a result of any of the activities
9 referred to in (a) through (d) of this subsection, the reports must be
10 provided to the owner and the association.

11 (4) An owner and the association must provide to the qualified
12 insurer all information and documentation that the owner and the
13 association have available, as reasonably required by the qualified
14 insurer to investigate a claim or maintenance requirement, or to
15 undertake repairs under the qualified warranty.

16 (5) To the extent any damage to a unit is caused or made worse by
17 the unreasonable refusal of the association, or an owner or occupant to
18 permit the qualified insurer or declarant access to the unit for the
19 reasons in subsection (3) of this section, or to provide the
20 information required by subsection (4) of this section, that damage is
21 excluded from the qualified warranty.

22 (6) In any claim under a qualified warranty issued to the
23 association, the association shall have the sole right to prosecute and
24 settle any claim with respect to the common elements.

25 ARTICLE 6

26 PERMITTED EXCLUSIONS FROM QUALIFIED WARRANTIES--GENERAL

27 NEW SECTION. **Sec. 601.** (1) A qualified insurer may exclude from
28 a qualified warranty:

29 (a) Landscaping, both hard and soft, including plants, fencing,
30 detached patios, planters not forming a part of the building envelope,
31 gazebos, and similar structures;

32 (b) Any commercial use area and any construction associated with a
33 commercial use area;

34 (c) Roads, curbs, and lanes;

- 1 (d) Subject to subsection (2) of this section, site grading and
2 surface drainage except as required by the building code;
- 3 (e) Municipal services operation, including sanitary and storm
4 sewer;
- 5 (f) Septic tanks or septic fields;
- 6 (g) The quality or quantity of water, from either a piped municipal
7 water supply or a well;
- 8 (h) A water well, but excluding equipment installed for the
9 operation of a water well used exclusively for a unit, which equipment
10 is part of the plumbing system for that unit for the purposes of the
11 qualified warranty.
- 12 (2) The exclusions permitted by subsection (1) of this section do
13 not include any of the following:
- 14 (a) A driveway or walkway;
- 15 (b) Recreational and amenity facilities situated in, or included as
16 the common property of, a unit;
- 17 (c) A parking structure in a multiunit building;
- 18 (d) A retaining wall that:
- 19 (i) An authority with jurisdiction requires to be designed by a
20 professional engineer; or
- 21 (ii) Is reasonably required for the direct support of, or retaining
22 soil away from, a unit, driveway, or walkway.

23 **ARTICLE 7**
24 **PERMITTED EXCLUSIONS--DEFECTS**

25 NEW SECTION. **Sec. 701.** A qualified insurer may exclude any or all
26 of the following items from a qualified warranty:

- 27 (1) Weathering, normal wear and tear, deterioration, or deflection
28 consistent with normal industry standards;
- 29 (2) Normal shrinkage of materials caused by drying after
30 construction;
- 31 (3) Any loss or damage which arises while a unit is being used
32 primarily or substantially for nonresidential purposes;
- 33 (4) Materials, labor, or design supplied by an owner;
- 34 (5) Any damage to the extent caused or made worse by an owner or
35 third party, including:

- 1 (a) Negligent or improper maintenance or improper operation by
2 anyone other than the declarant or its employees, agents, or
3 subcontractors;
- 4 (b) Failure of anyone, other than the declarant or its employees,
5 agents, or subcontractors, to comply with the warranty requirements of
6 the manufacturers of appliances, equipment, or fixtures;
- 7 (c) Alterations to the unit, including converting nonliving space
8 into living space or converting a unit into two or more units, by
9 anyone other than the declarant or its employees, agents, or
10 subcontractors while undertaking their obligations under the sales
11 contract; and
- 12 (d) Changes to the grading of the ground by anyone other than the
13 declarant or its employees, agents, or subcontractors;
- 14 (6) An owner failing to take timely action to prevent or minimize
15 loss or damage, including failing to give prompt notice to the
16 qualified insurer of a defect or discovered loss, or a potential defect
17 or loss;
- 18 (7) Any damage caused by insects, rodents, or other animals, unless
19 the damage results from noncompliance with the building code by the
20 declarant or its employees, agents, or subcontractors;
- 21 (8) Accidental loss or damage from acts of nature including, but
22 not limited to, fire, explosion, smoke, water escape, glass breakage,
23 windstorm, hail, lightning, falling trees, aircraft, vehicles, flood,
24 earthquake, avalanche, landslide, and changes in the level of the
25 underground water table which are not reasonably foreseeable by the
26 declarant;
- 27 (9) Bodily injury or damage to personal property or real property
28 which is not part of a unit;
- 29 (10) Any defect in, or caused by, materials or work supplied by
30 anyone other than the declarant, an affiliate of a declarant, or their
31 respective contractors, employees, agents, or subcontractors;
- 32 (11) Changes, alterations, or additions made to a unit by anyone
33 after initial occupancy, except those performed by the declarant or its
34 employees, agents, or subcontractors as required by the qualified
35 warranty or under the construction contract or sales agreement;
- 36 (12) Contaminated soil;

1 (13) Subsidence of the land around a unit or along utility lines,
2 other than subsidence beneath footings of a unit or under driveways or
3 walkways;

4 (14) Diminution in the value of the unit.

5 **ARTICLE 8**

6 **MONETARY LIMITS ON QUALIFIED WARRANTY COVERAGE**

7 NEW SECTION. **Sec. 801.** (1) A qualified insurer may establish a
8 monetary limit on the amount of the warranty. Any limit must not be
9 less than:

10 (a) For a unit, the lesser of (i) the original purchase price paid
11 by the owner, or (ii) one hundred thousand dollars;

12 (b) For common elements, the lesser of (i) the total original
13 purchase price for all components of the multiunit building, or (ii)
14 one hundred thousand dollars times the number of units of the
15 condominium.

16 (2) When calculating the cost of warranty claims under the standard
17 limits under a qualified warranty, a qualified insurer may include:

18 (a) The cost of repairs;

19 (b) The cost of any investigation, engineering, and design required
20 for the repairs; and

21 (c) The cost of supervision of repairs, including professional
22 review, but excluding legal costs.

23 (3) The minimum amounts in subsections (1) and (2) of this section
24 shall be adjusted at the end of each calendar year after the effective
25 date by an amount equal to the percentage change in the consumer price
26 index for all urban consumers, all items, as published from time to
27 time by the United States department of labor. The adjustment does not
28 affect any qualified warranty issued before the adjustment date.

29 **ARTICLE 9**

30 **PROHIBITED POLICY PROVISIONS**

31 NEW SECTION. **Sec. 901.** (1) A qualified insurer must not include
32 in a qualified warranty any provision that requires an owner or the
33 association:

1 (a) To sign a release before repairs are performed under the
2 qualified warranty; or

3 (b) To pay a deductible in excess of two thousand five hundred
4 dollars for the repair of any defect in a unit covered by the qualified
5 warranty, or in excess of ten thousand dollars for any defect in the
6 common elements.

7 (2) All exclusions must be permitted by this chapter and stated in
8 the qualified warranty.

9 **ARTICLE 10**

10 **CONSEQUENCES OF NOT PROVIDING INFORMATION**

11 NEW SECTION. **Sec. 1001.** (1) If coverage under a qualified
12 warranty is conditional on an owner undertaking proper maintenance, or
13 if coverage is excluded for damage caused by negligence by the owner or
14 association with respect to maintenance or repair by the owner or
15 association, the conditions or exclusions apply only to maintenance
16 requirements or procedures: (a) Provided to the original owner or
17 association by the declarant and with an estimation of the required
18 cost thereof provided in the budget prepared by the declarant; or (b)
19 that would be obvious to a reasonable and prudent layperson.
20 Recommended maintenance requirements and procedures are sufficient for
21 purposes of this subsection if consistent with knowledge generally
22 available in the construction industry at the time the qualified
23 warranty is issued.

24 (2) If an original owner has not been provided with the
25 manufacturer's documentation or warranty information, or both, or with
26 recommended maintenance and repair procedures for any component of a
27 unit, the relevant exclusion does not apply.

28 **ARTICLE 11**

29 **MANDATORY NOTICE OF EXPIRATION OF WARRANTY**

30 NEW SECTION. **Sec. 1101.** (1) A qualified insurer must, as soon as
31 reasonably possible after the beginning date for the qualified
32 warranty, provide an owner and association with a schedule of the

1 expiration dates for coverages under the qualified warranty as
2 applicable to the unit and the common elements, respectively.

3 (2) The expiration date schedule for a unit must set out all the
4 required dates on an adhesive label that is a minimum size of four
5 inches by four inches and is suitable for affixing by the owner in a
6 conspicuous location in the unit.

7 **ARTICLE 12**

8 **DUTY TO MITIGATE**

9 NEW SECTION. **Sec. 1201.** (1) The qualified insurer may require an
10 owner or association to mitigate any damage to a unit or the common
11 elements, including damage caused by defects or water penetration, as
12 set out in the qualified warranty.

13 (2) Subject to subsection (3) of this section, for defects covered
14 by the qualified warranty, the duty to mitigate is met through timely
15 notice in writing to the qualified insurer.

16 (3) The owner must take all reasonable steps to restrict damage to
17 the unit if the defect requires immediate attention.

18 (4) The owner's duty to mitigate survives even if:

- 19 (a) The unit is unoccupied;
- 20 (b) The unit is occupied by someone other than the owner;
- 21 (c) Water penetration does not appear to be causing damage; or
- 22 (d) The owner advises the homeowners' association corporation about
23 the defect.

24 (5) If damage to a unit is caused or made worse by the failure of
25 an owner to take reasonable steps to mitigate as set out in this
26 section, the damage may, at the option of the qualified insurer, be
27 excluded from qualified warranty coverage.

28 **ARTICLE 13**

29 **NOTICE OF CLAIM**

30 NEW SECTION. **Sec. 1301.** (1) Within a reasonable time after the
31 discovery of a defect and before the expiration of the applicable
32 qualified warranty coverage, a claimant must give to the qualified

1 insurer and the declarant written notice in reasonable detail that
2 provides particulars of any specific defects covered by the qualified
3 warranty.

4 (2) The qualified insurer may require the notice under subsection
5 (1) of this section to include:

- 6 (a) The qualified warranty number; and
- 7 (b) Copies of any relevant documentation and correspondence between
8 the claimant and the declarant.

9 **ARTICLE 14**

10 **HANDLING OF CLAIMS**

11 NEW SECTION. **Sec. 1401.** A qualified insurer must, on receipt of
12 a notice of a claim under a qualified warranty, promptly make
13 reasonable attempts to contact the claimant to arrange an evaluation of
14 the claim. Claims shall be handled in accordance with the claims
15 procedures set forth in rules by the insurance commissioner, and as
16 follows:

17 (1) The qualified insurer must make all reasonable efforts to avoid
18 delays in responding to a claim under a qualified warranty, evaluating
19 the claim, and scheduling any required repairs.

20 (2) If, after evaluating a claim under a qualified warranty, the
21 qualified insurer determines that the claim is not valid, or not
22 covered under the qualified warranty, the qualified insurer must: (a)
23 Notify the claimant of the decision in writing; (b) set out the reasons
24 for the decision; and (c) set out the rights of the parties under the
25 third-party dispute resolution process for the warranty.

26 (3) Repairs must be undertaken in a timely manner, with reasonable
27 consideration given to weather conditions and the availability of
28 materials and labor.

29 (4) On completing any repairs, the qualified insurer must deliver
30 a copy of the repair specifications to the claimant along with a letter
31 confirming the date the repairs were completed and referencing the
32 repair warranty provided for in section 407 of this act.

33 **ARTICLE 15**

34 **MEDIATION OF DISPUTED CLAIMS**

1 NEW SECTION. **Sec. 1501.** (1) If a dispute between a qualified
2 insurer and a claimant arising under a qualified warranty cannot be
3 resolved by informal negotiation within a reasonable time, the claimant
4 or qualified insurer may require that the dispute be referred to
5 mediation by delivering written notice to the other to mediate.

6 (2) If a party delivers a request to mediate under subsection (1)
7 of this section, the qualified insurer and the party must attend a
8 mediation session in relation to the dispute and may invite to
9 participate in the mediation any other party to the dispute who may be
10 liable.

11 (3) Within twenty-one days after the party has delivered a request
12 to mediate under subsection (1) of this section, the parties must,
13 directly or with the assistance of an independent, neutral person or
14 organization, jointly appoint a mutually acceptable mediator.

15 (4) If the parties do not jointly appoint a mutually acceptable
16 mediator within the time required by subsection (3) of this section,
17 the party may apply to the superior court of the county where the
18 project is located, which must appoint a mediator taking into account:

- 19 (a) The need for the mediator to be neutral and independent;
- 20 (b) The qualifications of the mediator;
- 21 (c) The mediator's fees;
- 22 (d) The mediator's availability; and
- 23 (e) Any other consideration likely to result in the selection of an
24 impartial, competent, and effective mediator.

25 (5) After selecting the mediator under subsection (4) of this
26 section, the superior court must promptly notify the parties in writing
27 of that selection.

28 (6) The mediator selected by the superior court is deemed to be
29 appointed by the parties effective the date of the notice sent under
30 subsection (5) of this section.

31 (7) The first mediation session must occur within twenty-one days
32 of the appointment of the mediator at the date, time, and place
33 selected by the mediator.

- 34 (8) A party may attend a mediation session by representative if:
 - 35 (a) The party is under a legal disability and the representative is
36 that party's guardian ad litem;
 - 37 (b) The party is not an individual; or

1 (c) The party is a resident of a jurisdiction other than Washington
2 and will not be in Washington at the time of the mediation session.

3 (9) A representative who attends a mediation session in the place
4 of a party as permitted by subsection (8) of this section:

5 (a) Must be familiar with all relevant facts on which the party, on
6 whose behalf the representative attends, intends to rely; and

7 (b) Must have full authority to settle, or have immediate access to
8 a person who has full authority to settle, on behalf of the party on
9 whose behalf the representative attends.

10 (10) A party or a representative who attends the mediation session
11 may be accompanied by counsel.

12 (11) Any other person may attend a mediation session on consent of
13 all parties or their representatives.

14 (12) At least seven days before the first mediation session is to
15 be held, each party must deliver to the mediator a statement briefly
16 setting out:

17 (a) The facts on which the party intends to rely; and

18 (b) The matters in dispute.

19 (13) The mediator must promptly send each party's statement to each
20 of the other parties.

21 (14) Before the first mediation session, the parties must enter
22 into a retainer agreement with the mediator which must:

23 (a) Disclose the cost of the mediation services; and

24 (b) Provide that the cost of the mediation will be paid:

25 (i) Equally by the parties; or

26 (ii) On any other specified basis agreed by the parties.

27 (15) The mediator may conduct the mediation in any manner he or she
28 considers appropriate to assist the parties to reach a resolution that
29 is timely, fair, and cost-effective.

30 (16) A person may not disclose, or be compelled to disclose, in any
31 proceeding, oral or written information acquired or an opinion formed,
32 including, without limitation, any offer or admission made in
33 anticipation of or during a mediation session.

34 (17) Nothing in subsection (16) of this section precludes a party
35 from introducing into evidence in a proceeding any information or
36 records produced in the course of the mediation that are otherwise
37 producible or compellable in those proceedings.

1 (18) A mediation session is concluded when:

2 (a) All issues are resolved;

3 (b) The mediator determines that the process will not be productive
4 and so advises the parties or their representatives; or

5 (c) The mediation session is completed and there is no agreement to
6 continue.

7 (19) If the mediation resolves some but not all issues, the
8 mediator may, at the request of all parties, complete a report setting
9 out any agreements made as a result of the mediation, including,
10 without limitation, any agreements made by the parties on any of the
11 following:

12 (a) Facts;

13 (b) Issues; and

14 (c) Future procedural steps.

15 **ARTICLE 16**
16 **ARBITRATION**

17 NEW SECTION. **Sec. 1601.** A qualified warranty may include
18 mandatory binding arbitration of all disputes arising out of or in
19 connection with a qualified warranty. The provision may provide that
20 all claims for a single condominium be heard by the same arbitrator,
21 but shall not permit the joinder or consolidation of any other person
22 or entity. The arbitration shall comply with the following minimum
23 procedural standards:

24 (1) Any demand for arbitration shall be delivered by certified mail
25 return receipt requested, and by ordinary first class mail. The party
26 initiating the arbitration shall address the notice to the address last
27 known to the initiating party in the exercise of reasonable diligence,
28 and also, for any entity which is required to have a registered agent
29 in the state of Washington, to the address of the registered agent.
30 Demand for arbitration is deemed effective three days after the date
31 deposited in the mail;

32 (2) All disputes shall be heard by one qualified arbitrator, unless
33 the parties agree to use three arbitrators. If three arbitrators are
34 used, one shall be appointed by each of the disputing parties and the
35 first two arbitrators shall appoint the third, who will chair the

1 panel. The parties shall select the identity and number of the
2 arbitrator or arbitrators after the demand for arbitration is made.
3 If, within thirty days after the effective date of the demand for
4 arbitration, the parties fail to agree on an arbitrator or the agreed
5 number of arbitrators fail to be appointed, then an arbitrator or
6 arbitrators shall be appointed under RCW 7.04.050 by the presiding
7 judge of the superior court of the county in which the condominium is
8 located;

9 (3) In any arbitration, at least one arbitrator must be a lawyer or
10 retired judge. Any additional arbitrator must be either a lawyer or
11 retired judge or a person who has experience with construction and
12 engineering standards and practices, written construction warranties,
13 or construction dispute resolution. No person may serve as an
14 arbitrator in any arbitration in which that person has any past or
15 present financial or personal interest;

16 (4) The arbitration hearing must be conducted in a manner that
17 permits full, fair, and expeditious presentation of the case by both
18 parties. The arbitrator is bound by the law of Washington state.
19 Parties may be, but are not required to be, represented by attorneys.
20 The arbitrator may permit discovery to ensure a fair hearing, but may
21 limit the scope or manner of discovery for good cause to avoid
22 excessive delay and costs to the parties. The parties and the
23 arbitrator shall use all reasonable efforts to complete the arbitration
24 within six months of the effective date of the demand for arbitration
25 or, when applicable, the service of the list of defects in accordance
26 with RCW 64.50.030;

27 (5) Except as otherwise set forth in this section, arbitration
28 shall be conducted under chapter 7.04 RCW, unless the parties elect to
29 use the construction industry arbitration rules of the American
30 arbitration association, which are permitted to the extent not
31 inconsistent with this section. The expenses of witnesses including
32 expert witnesses shall be paid by the party producing the witnesses.
33 All other expenses of arbitration shall be borne equally by the
34 parties, unless all parties agree otherwise or unless the arbitrator
35 awards expenses or any part thereof to any specified party or parties.
36 The parties shall pay the fees of the arbitrator as and when specified
37 by the arbitrator;

1 (6) Service of a request, notice, or petition to arbitrate
2 commences an arbitration for purposes of RCW 64.34.452;

3 (7) The arbitration decision shall be in writing and must set forth
4 findings of fact and conclusions of law that support the decision.

5 **ARTICLE 17**
6 **ATTORNEYS' FEES**

7 NEW SECTION. **Sec. 1701.** In any judicial proceeding or arbitration
8 brought to enforce the terms of a qualified warranty, the court or
9 arbitrator shall award reasonable attorneys' fees to the substantially
10 prevailing party. In no event may such fees exceed the reasonable
11 hourly value of the attorney's work.

12 **ARTICLE 18**
13 **TRANSFER**

14 NEW SECTION. **Sec. 1801.** (1) A qualified warranty pertains solely
15 to the unit and common elements for which it provides coverage and no
16 notice to the qualified insurer is required on a change of ownership.

17 (2) All of the applicable unused benefits under a qualified
18 warranty with respect to a unit are automatically transferred to any
19 subsequent owner on a change of ownership.

20 **ARTICLE 19**
21 **ACCEPTANCE OF DECLARANT FOR QUALIFIED WARRANTY**

22 NEW SECTION. **Sec. 1901.** (1) No insurer is bound to offer a
23 qualified warranty to any person. Except as specifically set forth in
24 this section, the terms of any qualified warranty are set in the sole
25 discretion of the qualified insurer. Without limiting the generality
26 of this subsection, a qualified insurer may make inquiries about the
27 applicant as follows:

28 (a) Does the applicant have the financial resources to undertake
29 the construction of the number of units being proposed by the
30 applicant's business plan for the following twelve months;

1 (b) Does the applicant and its directors, officers, employees, and
2 consultants possess the necessary technical expertise to adequately
3 perform their individual functions with respect to their proposed role
4 in the construction and sale of units;

5 (c) Does the applicant and its directors and officers have
6 sufficient experience in business management to properly manage the
7 unit construction process;

8 (d) Does the applicant and its directors, officers, and employees
9 have sufficient practical experience to undertake the proposed unit
10 construction;

11 (e) Does the past conduct of the applicant and its directors,
12 officers, employees, and consultants provide a reasonable indication of
13 good business practices, and reasonable grounds for belief that its
14 undertakings will be carried on in accordance with all legal
15 requirements; and

16 (f) Is the applicant reasonably able to provide, or to cause to be
17 provided, after-sale customer service for the units to be constructed.

18 (2) A qualified insurer may charge a fee to make the inquiries
19 permitted by subsection (1) of this section.

20 (3) Before approving a qualified warranty for a condominium, a
21 qualified insurer may make such inquiries and impose such conditions as
22 it deems appropriate in its sole discretion, including without
23 limitation the following:

24 (a) To determine if the applicant has the necessary capitalization
25 or financing in place, including any reasonable contingency reserves,
26 to undertake construction of the proposed unit;

27 (b) To determine if the applicant or, in the case of a corporation,
28 its directors, officers, employees, and consultants possess reasonable
29 technical expertise to construct the proposed unit, including specific
30 technical knowledge or expertise in any building systems, construction
31 methods, products, treatments, technologies, and testing and inspection
32 methods proposed to be employed;

33 (c) To determine if the applicant or, in the case of a corporation,
34 its directors, officers, employees, and consultants have sufficient
35 practical experience in the specific types of construction to undertake
36 construction of the proposed unit;

- 1 (d) To determine if the applicant has sufficient personnel and
2 other resources to adequately undertake the construction of the
3 proposed unit in addition to other units which the applicant may have
4 under construction or is currently marketing;
- 5 (e) To determine if:
- 6 (i) The applicant is proposing to engage a general contractor to
7 undertake all or a significant portion of the construction of the
8 proposed unit; and
- 9 (ii) The general contractor meets the criteria set out in this
10 section;
- 11 (f) Requiring that a declarant provide security in a form suitable
12 to the qualified insurer;
- 13 (g) Establishing or requiring compliance with specific construction
14 standards for the unit;
- 15 (h) Restricting the applicant from constructing some types of units
16 or using some types of construction or systems;
- 17 (i) Requiring the use of specific types of systems, consultants, or
18 personnel for the construction;
- 19 (j) Requiring an independent review of the unit building plans or
20 consultants' reports or any part thereof;
- 21 (k) Requiring third-party verification or certification of the
22 construction of the unit or any part thereof;
- 23 (l) Providing for inspection of the unit or any part thereof during
24 construction;
- 25 (m) Requiring ongoing monitoring of the unit, or one or more of its
26 components, following completion of construction;
- 27 (n) Requiring that the declarant or any of the design
28 professionals, engineering professionals, consultants, general
29 contractors, or subcontractors maintain minimum levels of insurance,
30 bonding, or other security naming the potential owners and qualified
31 insurer as loss payees or beneficiaries of the insurance, bonding, or
32 security to the extent possible;
- 33 (o) Requiring that the declarant provide a list of all design
34 professionals and other consultants who are involved in the design or
35 construction inspection, or both, of the unit;
- 36 (p) Requiring that the declarant provide a list of trades employed

1 in the construction of the unit, and requiring evidence of their
2 current trade's certification, if applicable.

3 **ARTICLE 20**
4 **MISCELLANEOUS**

5 NEW SECTION. **Sec. 2001.** All qualified warrantees shall be deemed
6 to be "insurance" for purposes of RCW 48.01.040, and shall be regulated
7 as such.

8 NEW SECTION. **Sec. 2002.** Captions and part headings used in this
9 act are not any part of the law.

10 NEW SECTION. **Sec. 2003.** Sections 101 through 2002 of this act
11 constitute a new chapter in Title 64 RCW."

12 Correct the title.

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