

ESSB 5536 - H COMM AMD
By Committee on Judiciary

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

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 64.34 RCW
4 to read as follows:

5 (1) The legislature finds, declares, and determines that:

6 (a) Washington's cities and counties under the growth management
7 act are required to encourage urban growth in urban growth areas at
8 densities that accommodate twenty-year growth projections;

9 (b) One of the growth management act's planning goals is to
10 encourage the availability of affordable housing for all residents of
11 the state and promote a variety of housing types;

12 (c) Quality condominium construction needs to be encouraged to
13 achieve growth management act mandated urban densities and ensure that
14 residents of the state, particularly in urban growth areas, have a
15 broad range of ownership choices.

16 (2) It is the intent of the legislature that this act implement
17 changes in the condominium act that encourage insurance carriers to
18 provide liability insurance for condominium builders by: Providing for
19 arbitration of disputes; ensuring that material facts and claims are
20 presented as fully as possible in arbitration proceedings; confining
21 judicial review of arbitration decisions to the arbitration record,
22 except in very limited circumstances; requiring mandatory arbitration
23 of disputes involving construction defects; and eliminating litigation
24 over minor or insignificant problems, while continuing to protect
25 consumers' legitimate claims regarding condominium construction.

26 (3) It is the further intent of the legislature that these changes
27 in the condominium act ensure that a broad range of affordable
28 homeownership opportunities continue to be available to the residents
29 of the state and also assist cities' and counties' efforts to achieve
30 the density mandates of the growth management act.

1 **Sec. 2.** RCW 64.34.100 and 1989 c 43 s 1-113 are each amended to
2 read as follows:

3 (1) The remedies provided by this chapter shall be liberally
4 administered to the end that the aggrieved party is put in as good a
5 position as if the other party had fully performed. However,
6 consequential, special, or punitive damages may not be awarded except
7 as specifically provided in this chapter or by other rule of law.

8 (2) Any right or obligation declared by this chapter is enforceable
9 by arbitration or judicial proceeding. Arbitration may be provided for
10 in the declaration or by agreement of the parties. However, claims
11 under RCW 64.34.443, 64.34.445, or 64.34.450 shall be subject to
12 mandatory arbitration as set forth in this section. In any arbitration
13 of claims under RCW 64.34.443, 64.34.445, or 64.34.450, the arbitrator
14 may award reasonable attorneys' fees to the substantially prevailing
15 party as set forth in this section.

16 (3) Mandatory arbitration for claims under RCW 64.34.443,
17 64.34.445, or 64.34.450 shall comply with the following minimum
18 standards:

19 (a) All disputes shall be heard by one qualified arbitrator, unless
20 the parties agree that three arbitrators shall be used. When three
21 arbitrators are used, one shall be appointed by each of the disputing
22 parties and the first two arbitrators shall appoint the third, who will
23 chair the panel. If, within thirty days, the parties fail to agree on
24 an arbitrator or the required number of arbitrators fail to be
25 appointed, then an arbitrator shall be appointed by the presiding judge
26 of the superior court of the county in which the condominium is located
27 under RCW 7.04.050;

28 (b) An arbitrator must be a lawyer, retired judge, or have
29 experience with construction and engineering standards and practices,
30 written construction warranties, or construction dispute resolution and
31 a person shall not serve as an arbitrator in any arbitration in which
32 that person has any financial or personal interest;

33 (c) The arbitration hearing must be conducted in a manner that
34 permits full, fair, and expeditious presentation of the case by both
35 parties. The arbitrator shall be bound by the law of Washington state.
36 Parties may be, but are not required to be, represented by attorneys.
37 The arbitrator may permit discovery to ensure a fair hearing but may

1 limit the scope or manner of discovery for good cause to avoid
2 excessive delay and costs to the parties. Unless the parties agree
3 otherwise or the arbitrator grants an extension for good cause, the
4 arbitration hearing shall be completed within six months of the service
5 of the list of defects in accordance with RCW 64.50.030;

6 (d) Except as otherwise set forth in this section, arbitration
7 shall be conducted under chapter 7.04 RCW, unless the parties elect to
8 use the condominium or construction dispute resolution rules of the
9 American arbitration association, which are permitted to the extent not
10 inconsistent with this section. The expenses of witnesses including
11 expert witnesses shall be paid by the party producing the witnesses.
12 Each party shall pay its own reasonable attorneys' fees unless the
13 parties agree otherwise or unless the arbitrator awards reasonable
14 attorneys' fees or any part thereof to any specified party or parties.
15 All other expenses of arbitration shall be borne equally by the
16 parties, unless they agree otherwise or unless the arbitrator awards
17 such expenses or any part thereof to any specified party or parties;
18 and

19 (e) Filing of a demand for arbitration commences an arbitration for
20 purposes of RCW 64.34.452.

21 (4) Within twenty days after the arbitration decision and award is
22 served on the parties, any aggrieved party may file with the clerk of
23 the superior court in which the condominium is located a written notice
24 of appeal and request for a trial in the superior court. Such a trial
25 shall thereupon be held and shall include a right to a jury, if
26 demanded. Such a trial shall be commenced on an expedited schedule
27 within ninety days of the filing of the notice of appeal.

28 (a) Judicial review of an arbitration decision and award shall be
29 confined to the record created by the arbitrator, except that, upon
30 order of the court, the record may be supplemented by additional
31 evidence or claim only if the additional evidence or claim relates to:

32 (i) Claims for disqualification of an arbitrator, when such claims
33 were unknown to the appealing party at the time of arbitration;

34 (ii) Claims regarding matters that were improperly excluded from
35 the arbitration record after being offered by the appealing party;

36 (iii) Claims regarding matters that were outside the jurisdiction
37 of the arbitrator; or

1 (iv) Material facts regarding claims that have been arbitrated and
2 that: (A) Were unknown at the time of the arbitration hearing by the
3 party proposing their introduction where such a lack of knowledge was
4 not the result of the party's prior refusal or failure to exercise
5 reasonable diligence in the investigation of its claims or defenses;
6 and (B) could not have been reasonably discovered at the time of
7 arbitration where the failure to discover was not intentional or due to
8 inexcusable neglect.

9 (b) Except when the court has authorized the record to be
10 supplemented under this subsection (4), the parties may not conduct
11 pretrial discovery. When pretrial discovery is permitted, the court
12 shall, in its order regarding supplementing the record, establish the
13 scope, timing, and extent of permissible discovery and shall require
14 the moving party to disclose before trial the specific additional
15 evidence they intend to offer.

16 (c) Offers of compromise and the assessment of costs and reasonable
17 attorneys' fees shall be governed by RCW 7.06.050 and 7.06.060.

18 (d) The arbitration decision shall be in writing and must set forth
19 findings of fact and conclusions of law that support the decision.

20 (e) Unless the parties agree otherwise, a complete verbatim record
21 of the arbitration hearing shall be maintained that includes all
22 exhibits offered by the parties. Video recording of the arbitration
23 hearing is permissible only with the consent of the parties.

24 (f) Within forty-five days after entry of an order to submit the
25 record, or within such other time as the court allows or as the parties
26 agree, the arbitrator shall submit to the court a certified copy of the
27 record for judicial review of the decision, except that the petitioner
28 shall prepare at the petitioner's expense and submit the verbatim
29 hearing record required under (e) of this subsection. If the parties
30 agree, or upon order of the court, the record shall be shortened or
31 summarized to avoid reproduction and transcription of portions of the
32 record that are duplicative or not relevant to the issues to be
33 reviewed by the court. The petitioner shall pay the arbitrator the
34 cost of preparing the record before the arbitrator submits the record
35 to the court. Failure by the petitioner to timely pay the arbitrator
36 relieves the arbitrator of responsibility to submit the record and is
37 grounds for dismissal of the petition. If the relief sought by the

1 petitioner is granted in whole or in part, the court shall equitably
2 assess the costs of preparing the record among the parties. In
3 assessing costs, the court shall take into account the extent to which
4 each party prevailed and the reasonableness of the parties' conduct in
5 agreeing or not agreeing to shorten or summarize the record under this
6 subsection (4)(f).

7 (g) Unless the parties agree otherwise, an appeal of an
8 arbitrator's decision is an appeal of the full and complete decision.

9 **Sec. 3.** RCW 64.34.216 and 1992 c 220 s 7 are each amended to read
10 as follows:

11 (1) The declaration for a condominium must contain:

12 (a) The name of the condominium, which must include the word
13 "condominium" or be followed by the words "a condominium," and the name
14 of the association;

15 (b) A legal description of the real property included in the
16 condominium;

17 (c) A statement of the number of units which the declarant has
18 created and, if the declarant has reserved the right to create
19 additional units, the number of such additional units;

20 (d) The identifying number of each unit created by the declaration
21 and a description of the boundaries of each unit if and to the extent
22 they are different from the boundaries stated in RCW 64.34.204(1);

23 (e) With respect to each existing unit:

24 (i) The approximate square footage;

25 (ii) The number of bathrooms, whole or partial;

26 (iii) The number of rooms designated primarily as bedrooms;

27 (iv) The number of built-in fireplaces; and

28 (v) The level or levels on which each unit is located.

29 The data described in (ii), (iii), and (iv) of this subsection
30 (1)(e) may be omitted with respect to units restricted to
31 nonresidential use;

32 (f) The number of parking spaces and whether covered, uncovered, or
33 enclosed;

34 (g) The number of moorage slips, if any;

35 (h) A description of any limited common elements, other than those

1 specified in RCW 64.34.204 (2) and (4), as provided in RCW
2 64.34.232(2)(j);

3 (i) A description of any real property which may be allocated
4 subsequently by the declarant as limited common elements, other than
5 limited common elements specified in RCW 64.34.204 (2) and (4),
6 together with a statement that they may be so allocated;

7 (j) A description of any development rights and other special
8 declarant rights under RCW 64.34.020(29) reserved by the declarant,
9 together with a description of the real property to which the
10 development rights apply, and a time limit within which each of those
11 rights must be exercised;

12 (k) If any development right may be exercised with respect to
13 different parcels of real property at different times, a statement to
14 that effect together with: (i) Either a statement fixing the
15 boundaries of those portions and regulating the order in which those
16 portions may be subjected to the exercise of each development right, or
17 a statement that no assurances are made in those regards; and (ii) a
18 statement as to whether, if any development right is exercised in any
19 portion of the real property subject to that development right, that
20 development right must be exercised in all or in any other portion of
21 the remainder of that real property;

22 (l) Any other conditions or limitations under which the rights
23 described in (j) of this subsection may be exercised or will lapse;

24 (m) An allocation to each unit of the allocated interests in the
25 manner described in RCW 64.34.224;

26 (n) Any restrictions in the declaration on use, occupancy, or
27 alienation of the units;

28 (o) A cross-reference by recording number to the survey map and
29 plans for the units created by the declaration; and

30 (p) All matters required or permitted by RCW 64.34.220 through
31 64.34.232, 64.34.256, 64.34.260, 64.34.276, ~~((and))~~ 64.34.308(4), and
32 64.34.450.

33 (2) All amendments to the declaration shall contain a cross-
34 reference by recording number to the declaration and to any prior
35 amendments thereto. All amendments to the declaration adding units
36 shall contain a cross-reference by recording number to the survey map

1 and plans relating to the added units and set forth all information
2 required by RCW 64.34.216(1) with respect to the added units.

3 (3) The declaration may contain any other matters the declarant
4 deems appropriate.

5 **Sec. 4.** RCW 64.34.410 and 2002 c 323 s 10 are each amended to read
6 as follows:

7 (1) A public offering statement shall contain the following
8 information:

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

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

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

12 (d) The relationship of the management company to the declarant, if
13 any;

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

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

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

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

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

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

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

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

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

1 (z) A brief description of any construction warranties to be
2 provided to the purchaser and a brief statement as to whether any
3 express written warranty replaces or other document excludes or
4 modifies the implied warranties of quality provided in RCW 64.34.445;

5 (aa) Any building code violation citations received by the
6 declarant in connection with the condominium which have not been
7 corrected;

8 (bb) A statement of any unsatisfied judgments or pending suits
9 against the association, a statement of the status of any pending suits
10 material to the condominium of which the declarant has actual
11 knowledge, and a statement of any litigation brought by an owners'
12 association, unit owner, or governmental entity in which the declarant
13 or any affiliate of the declarant has been a defendant, arising out of
14 the construction, sale, or administration of any condominium within the
15 previous five years, together with the results thereof, if known;

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

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

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

23 (ff) Any reports or statements required by RCW 64.34.415 or
24 64.34.440(6)(a). RCW 64.34.415 shall apply to the public offering
25 statement of a condominium in connection with which a final certificate
26 of occupancy was issued more than sixty calendar months prior to the
27 preparation of the public offering statement whether or not the
28 condominium is a conversion condominium as defined in RCW
29 64.34.020(10);

30 (gg) A list of the documents which the prospective purchaser is
31 entitled to receive from the declarant before the rescission period
32 commences;

33 (hh) A notice which states: A purchaser may not rely on any
34 representation or express warranty unless it is contained in the public
35 offering statement or made in writing signed by the declarant or by any
36 person identified in the public offering statement as the declarant's
37 agent;

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

6 (jj) Any other information and cross-references which the declarant
7 believes will be helpful in describing the condominium to the
8 recipients of the public offering statement, all of which may be
9 included or not included at the option of the declarant;

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

13 (ll) A notice that is substantially in the form required by RCW
14 64.50.050.

15 (2) The public offering statement shall include copies of each of
16 the following documents: The declaration, the survey map and plans,
17 the articles of incorporation of the association, bylaws of the
18 association, rules and regulations, if any, current or proposed budget
19 for the association, (~~and~~) the balance sheet of the association
20 current within ninety days if assessments have been collected for
21 ninety days or more, and any express written warranty or other document
22 disclosed pursuant to subsection (1)(z) of this section.

23 If any of the foregoing documents listed in this subsection are not
24 available because they have not been executed, adopted, or recorded,
25 drafts of such documents shall be provided with the public offering
26 statement, and, before closing the sale of a unit, the purchaser shall
27 be given copies of any material changes between the draft of the
28 proposed documents and the final documents.

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

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

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

4 **Sec. 5.** RCW 64.34.425 and 1992 c 220 s 23 are each amended to read
5 as follows:

6 (1) Except in the case of a sale where delivery of a public
7 offering statement is required, or unless exempt under RCW
8 64.34.400(2), a unit owner shall furnish to a purchaser before
9 execution of any contract for sale of a unit, or otherwise before
10 conveyance, a resale certificate, signed by an officer or authorized
11 agent of the association and based on the books and records of the
12 association and the actual knowledge of the person signing the
13 certificate, containing:

14 (a) A statement disclosing any right of first refusal or other
15 restraint on the free alienability of the unit contained in the
16 declaration;

17 (b) A statement setting forth the amount of the monthly common
18 expense assessment and any unpaid common expense or special assessment
19 currently due and payable from the selling unit owner and a statement
20 of any special assessments that have been levied against the unit which
21 have not been paid even though not yet due;

22 (c) A statement, which shall be current to within forty-five days,
23 of any common expenses or special assessments against any unit in the
24 condominium that are past due over thirty days;

25 (d) A statement, which shall be current to within forty-five days,
26 of any obligation of the association which is past due over thirty
27 days;

28 (e) A statement of any other fees payable by unit owners;

29 (f) A statement of any anticipated repair or replacement cost in
30 excess of five percent of the annual budget of the association that has
31 been approved by the board of directors;

32 (g) A statement of the amount of any reserves for repair or
33 replacement and of any portions of those reserves currently designated
34 by the association for any specified projects;

35 (h) The annual financial statement of the association, including

1 the audit report if it has been prepared, for the year immediately
2 preceding the current year.

3 (i) A balance sheet and a revenue and expense statement of the
4 association prepared on an accrual basis, which shall be current to
5 within one hundred twenty days;

6 (j) The current operating budget of the association;

7 (k) A statement of any unsatisfied judgments against the
8 association and the status of any pending suits or legal proceedings in
9 which the association is a plaintiff or defendant;

10 (l) A statement describing any insurance coverage provided for the
11 benefit of unit owners;

12 (m) A statement as to whether there are any alterations or
13 improvements to the unit or to the limited common elements assigned
14 thereto that violate any provision of the declaration;

15 (n) A statement of the number of units, if any, still owned by the
16 declarant, whether the declarant has transferred control of the
17 association to the unit owners, and the date of such transfer;

18 (o) A statement as to whether there are any violations of the
19 health or building codes with respect to the unit, the limited common
20 elements assigned thereto, or any other portion of the condominium;

21 (p) A statement of the remaining term of any leasehold estate
22 affecting the condominium and the provisions governing any extension or
23 renewal thereof; and

24 (q) A copy of the declaration, the bylaws, the rules or regulations
25 of the association, and any other information reasonably requested by
26 mortgagees of prospective purchasers of units. Information requested
27 generally by the federal national mortgage association, the federal
28 home loan bank board, the government national mortgage association, the
29 veterans administration and the department of housing and urban
30 development shall be deemed reasonable, provided such information is
31 reasonably available to the association.

32 (2) The association, within ten days after a request by a unit
33 owner, and subject to payment of any fee imposed pursuant to RCW
34 64.34.304(1)(1), shall furnish a resale certificate signed by an
35 officer or authorized agent of the association and containing the
36 information necessary to enable the unit owner to comply with this
37 section. For the purposes of this chapter, a reasonable charge for the

1 preparation of a resale certificate may not exceed one hundred fifty
2 dollars. The association may charge a unit owner a nominal fee for
3 updating a resale certificate within six months of the unit owner's
4 request. The unit owner shall also sign the certificate but the unit
5 owner is not liable to the purchaser for any erroneous information
6 provided by the association and included in the certificate unless and
7 to the extent the unit owner had actual knowledge thereof.

8 (3) A purchaser is not liable for any unpaid assessment or fee
9 against the unit as of the date of the certificate greater than the
10 amount set forth in the certificate prepared by the association unless
11 and to the extent such purchaser had actual knowledge thereof. A unit
12 owner is not liable to a purchaser for the failure or delay of the
13 association to provide the certificate in a timely manner, but the
14 purchaser's contract is voidable by the purchaser until the certificate
15 has been provided and for five days thereafter or until conveyance,
16 whichever occurs first.

17 **Sec. 6.** RCW 64.34.445 and 1992 c 220 s 26 are each amended to read
18 as follows:

19 (1) A declarant and any dealer warrants that a unit will be in at
20 least as good condition at the earlier of the time of the conveyance or
21 delivery of possession as it was at the time of contracting, reasonable
22 wear and tear and damage by casualty or condemnation excepted.

23 (2)(a) A declarant and any dealer impliedly warrants that a unit
24 and the common elements in the condominium are suitable for the
25 ordinary uses of real estate of its type and that any improvements made
26 or contracted for by such declarant or dealer will be:

27 ~~((a))~~ (i) Free from defective materials; ~~((and~~
28 ~~(b))~~ (ii) Constructed in accordance with sound engineering and
29 construction standards(~~(, and))~~;
30 (iii) Constructed in a workmanlike manner; and
31 (iv) Constructed in compliance with all laws then applicable to
32 such improvements.

33 (b) The implied warranty is applicable only if a failure under (a)
34 of this subsection either does or will, or both: (i) Have a material
35 adverse effect on the structural integrity of a unit or common element;
36 (ii) result in a unit or common element being unsafe in any material

1 respect when used for its intended purposes; (iii) substantially
2 impair the sale of the unit if the defect were known; or (iv)
3 materially impair the use of the unit or common element for its
4 intended purpose.

5 (3) A declarant and any dealer warrants to a purchaser of a unit
6 that may be used for residential use that an existing use, continuation
7 of which is contemplated by the parties, does not violate applicable
8 law at the earlier of the time of conveyance or delivery of possession.

9 (4) Warranties imposed by this section may be replaced, excluded,
10 or modified as specified in RCW 64.34.450.

11 (5) For purposes of this section, improvements made or contracted
12 for by an affiliate of a declarant, as defined in RCW 64.34.020(1), are
13 made or contracted for by the declarant.

14 (6) Any conveyance of a unit transfers to the purchaser all of the
15 declarant's implied warranties of quality, including as they may be
16 replaced, excluded, or modified by an express written warranty as
17 specified in RCW 64.34.450.

18 **Sec. 7.** RCW 64.34.450 and 1989 c 43 s 4-113 are each amended to
19 read as follows:

20 (1) (~~Except as limited by subsection (2) of this section~~) For
21 units intended for nonresidential use, implied warranties of quality:

22 (a) May be excluded or modified by written agreement of the
23 parties; and

24 (b) Are excluded by written expression of disclaimer, such as "as
25 is," "with all faults," or other language which in common understanding
26 calls the buyer's attention to the exclusion of warranties.

27 (2) (~~With respect to a purchaser of a unit that may be occupied~~)
28 For units intended for residential use, no (~~general~~) disclaimer of
29 implied warranties of quality is effective, (~~but a~~) except that:

30 (a) A declarant (~~and any~~) or dealer may disclaim liability in an
31 instrument signed by the purchaser for a specified defect or specified
32 failure to comply with applicable law, if the specific defect or
33 failure is known to exist at the time of disclosure and is disclosed in
34 the public offering statement as required by RCW 64.34.410, or in
35 another instrument signed by the buyer, and the disclaimer entered into
36 and became a part of the basis of the bargain; and/or

1 (b) A declarant or dealer may replace or modify the implied
2 warranties of quality provided under RCW 64.34.445 with an express
3 written warranty of quality only if each of the following conditions
4 are met:

5 (i) The express written warranty does not reduce protections
6 provided to the purchaser by the implied warranty set forth in RCW
7 64.34.445;

8 (ii) The disclosure required by RCW 64.34.410(1)(z) is contained in
9 a public offering statement as provided by RCW 64.34.410(3) and such
10 disclosure is set forth in twelve-point bold face type in the
11 declaration or amendment thereto;

12 (iii) The express written warranty is set forth in full in the
13 declaration, an amendment to the declaration, or another recorded
14 document; and

15 (iv) The unit purchaser who initially acquires the unit from the
16 declarant expressly acknowledges in a recorded written conveyance or
17 another recorded written instrument that the implied warranties of
18 quality have been replaced or modified by the express written warranty.

19 **Sec. 8.** RCW 64.34.452 and 2002 c 323 s 11 are each amended to read
20 as follows:

21 (1) A judicial proceeding or arbitration for breach of any
22 obligations arising under RCW 64.34.443 ~~((and))~~, 64.34.445, and
23 64.34.450 must be commenced within four years after the cause of action
24 accrues: PROVIDED, That the period for commencing an action for a
25 breach accruing pursuant to subsection (2)(b) of this section shall not
26 expire prior to one year after termination of the period of declarant
27 control, if any, under RCW 64.34.308(4). Such periods may not be
28 reduced by either oral or written agreement, or through the use of
29 contractual claims or notice procedures that require the filing or
30 service of any claim or notice prior to the expiration of the period
31 specified in this section.

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

35 (a) As to a unit, the date the purchaser to whom the warranty is

1 first made enters into possession if a possessory interest was conveyed
2 or the date of acceptance of the instrument of conveyance if a
3 nonpossessory interest was conveyed; and

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

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

13 (4) If a written notice of claim is served under RCW 64.50.020
14 within the time prescribed for the filing of an action under this
15 chapter, the statutes of limitation in this chapter and any applicable
16 statutes of repose for construction-related claims are tolled until
17 sixty days after the period of time during which the filing of an
18 action is barred under RCW 64.50.020.

19 NEW SECTION. **Sec. 9.** (1) The condominium construction defect
20 dispute resolution committee is established. The committee consists of
21 the following members:

22 (a) A member, who shall be the chair of the committee, to be
23 appointed by the governor;

24 (b) Two members from the judiciary committee of the Washington
25 state senate, one from each of the two largest caucuses in the senate,
26 to be appointed by the president of the senate;

27 (c) Two members from the judiciary committee of the Washington
28 state house of representatives, one from each of the two largest
29 caucuses in the house of representatives, to be appointed by the
30 speaker of the house of representatives;

31 (d) A member to be appointed by the building industry association
32 of Washington;

33 (e) A member to be appointed by the master builders association of
34 King/Snohomish counties;

35 (f) A member to be appointed by the Washington chapter of the
36 community association institute;

- 1 (g) A member to be appointed by the Washington homeowners'
2 coalition;
- 3 (h) A member to be appointed by the condominium alliance;
- 4 (i) A member to be appointed by the association of Washington
5 cities;
- 6 (j) A member to be appointed by the Washington state association of
7 counties;
- 8 (k) A member to be appointed by the insurance commissioner;
- 9 (l) A member to be appointed by the American insurance association;
- 10 (m) A member to be appointed by the Washington association of
11 consulting engineers;
- 12 (n) A member to be appointed by the real property, probate, and
13 trust section of the Washington state bar association;
- 14 (o) A member from the consumer protection division of the attorney
15 general's office to be appointed by the attorney general;
- 16 (p) A member to be appointed by the Washington public interest
17 research group; and
- 18 (q) An ex officio member from the department of community, trade,
19 and economic development, to be appointed by the governor.
- 20 (2) The committee members shall:
- 21 (a) Select a person to serve as a facilitator of meetings,
22 determine the procedures for effective communication, and meet
23 periodically, not less than monthly, at such times and places as the
24 committee shall determine;
- 25 (b) Draft legislation necessary to implement mandatory third-party
26 inspections of building envelopes not later than July 1, 2005;
- 27 (c) Analyze issues and make recommendations regarding a shared
28 insurance pool or other mechanism for providing additional insurance to
29 declarants;
- 30 (d) Analyze issues and make recommendations regarding the use of
31 single-entity corporations for condominium development;
- 32 (e) Analyze and make recommendations regarding such other issues as
33 the committee considers appropriate;
- 34 (f) In good faith seek a consensus of opinion to the extent
35 reasonably possible regarding the issues listed in this subsection, but
36 also to articulate conflicting opinions and the reasons therefor; and

1 (g) Deliver to the judiciary committees of the Washington state
2 senate and house of representatives, not later than December 31, 2003,
3 a report of the findings and conclusions of the committee and its
4 members, and any proposed legislative action.

5 NEW SECTION. **Sec. 10.** A new section is added to chapter 64.34 RCW
6 to read as follows:

7 Effective July 1, 2005, all improvements included in condominiums
8 created in the state of Washington shall be required to undergo
9 third-party independent inspections related to water penetration
10 prevention during the course of construction. The inspections shall be
11 conducted in accordance with laws enacted in 2004 by the legislature
12 after its receipt of the findings and recommendations, if any, of the
13 condominium construction defect dispute resolution committee
14 established in section 9 of this act. In the event no such law is
15 enacted, the inspections shall be conducted in accordance with rules
16 adopted by the office of community development.

17 NEW SECTION. **Sec. 11.** This act applies only to condominiums
18 created by declarations recorded on or after July 1, 2003.

19 NEW SECTION. **Sec. 12.** If any provision of this act or its
20 application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.

23 NEW SECTION. **Sec. 13.** This act is necessary for the immediate
24 preservation of the public peace, health, or safety, or support of the
25 state government and its existing public institutions, and takes effect
26 July 1, 2003."

27 Correct the title.

--- END ---