

2ESSB 5536 - H COMM AMD  
By Committee on Judiciary

NOT ADOPTED 03/05/2004

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) The growth management act's planning goals include encouraging  
10 the availability of affordable housing for all residents of the state  
11 and promoting a variety of housing types;

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

16 (2) It is the intent of the legislature that limited changes be  
17 made to the condominium act to ensure that a broad range of affordable  
18 homeownership opportunities continue to be available to the residents  
19 of the state, and to assist cities' and counties' efforts to achieve  
20 the density mandates of the growth management act.

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

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

28 (2) Except as otherwise provided in chapter 64.-- RCW (sections 101  
29 through 2002 of this act) or in this subsection, any right or

1 obligation declared by this chapter is enforceable by judicial  
2 proceeding or, if provided for in the declaration or by other agreement  
3 between the parties, by arbitration.

4 (3) If arbitration is provided for in the declaration with respect  
5 to claims arising under RCW 64.34.443, 64.34.445, or 64.34.450, such  
6 provision shall be binding on the association and all unit owners and  
7 may not be amended without the consent of the declarant. In any  
8 arbitration of claims arising under RCW 64.34.443, 64.34.445, or  
9 64.34.450, the arbitrator may award reasonable attorneys' fees and  
10 costs, and arbitration fees and costs of arbitration, to the  
11 substantially prevailing party. Arbitration for claims arising under  
12 RCW 64.34.443, 64.34.445, or 64.34.450 shall be in accordance with  
13 chapter 7.06 RCW, and the mandatory arbitration rules adopted by the  
14 supreme court, to the extent consistent with this section, and except  
15 as follows:

16 (a) Chapter 7.06 RCW shall apply regardless of whether a county has  
17 authorized mandatory arbitration under RCW 7.06.010. No suit need be  
18 commenced in order to commence the arbitration.

19 (b) The monetary limitations and limitations on type of relief in  
20 RCW 7.06.020 shall not apply.

21 (c) Notwithstanding RCW 7.06.040, the compensation of the  
22 arbitrator shall be at the normal rate for such arbitrator in similar  
23 matters.

24 (d) All filings under RCW 7.06.050 shall be on the parties, not  
25 with the clerk of the court.

26 (e) Unless otherwise agreed by the parties, the arbitration hearing  
27 shall be conducted in the county in which the condominium is located.

28 **Sec. 3.** RCW 64.34.324 and 1992 c 220 s 16 are each amended to read  
29 as follows:

30 (1) Unless provided for in the declaration, the bylaws of the  
31 association shall provide for:

32 (a) The number, qualifications, powers and duties, terms of office,  
33 and manner of electing and removing the board of directors and officers  
34 and filling vacancies;

35 (b) Election by the board of directors of such officers of the  
36 association as the bylaws specify;

1 (c) Which, if any, of its powers the board of directors or officers  
2 may delegate to other persons or to a managing agent;

3 (d) Which of its officers may prepare, execute, certify, and record  
4 amendments to the declaration on behalf of the association; (~~and~~)

5 (e) The method of amending the bylaws; and

6 (f) A statement of the standard of care for officers and members of  
7 the board of directors imposed by RCW 64.34.308(1).

8 (2) Subject to the provisions of the declaration, the bylaws may  
9 provide for any other matters the association deems necessary and  
10 appropriate.

11 (3) In determining the qualifications of any officer or director of  
12 the association, notwithstanding the provision of RCW 64.34.020(32) the  
13 term "unit owner" in such context shall, unless the declaration or  
14 bylaws otherwise provide, be deemed to include any director, officer,  
15 partner in, or trustee of any person, who is, either alone or in  
16 conjunction with another person or persons, a unit owner. Any officer  
17 or director of the association who would not be eligible to serve as  
18 such if he or she were not a director, officer, partner in, or trustee  
19 of such a person shall be disqualified from continuing in office if he  
20 or she ceases to have any such affiliation with that person, or if that  
21 person would have been disqualified from continuing in such office as  
22 a natural person.

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

25 (1) Except in the case of a sale where delivery of a public  
26 offering statement is required, or unless exempt under RCW  
27 64.34.400(2), a unit owner shall furnish to a purchaser before  
28 execution of any contract for sale of a unit, or otherwise before  
29 conveyance, a resale certificate, signed by an officer or authorized  
30 agent of the association and based on the books and records of the  
31 association and the actual knowledge of the person signing the  
32 certificate, containing:

33 (a) A statement disclosing any right of first refusal or other  
34 restraint on the free alienability of the unit contained in the  
35 declaration;

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

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

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

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

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

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

19 (h) The annual financial statement of the association, including  
20 the audit report if it has been prepared, for the year immediately  
21 preceding the current year.

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

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

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

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

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

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

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

4 (p) A statement of the remaining term of any leasehold estate  
5 affecting the condominium and the provisions governing any extension or  
6 renewal thereof; and

7 (q) A copy of the declaration, the bylaws, the rules or regulations  
8 of the association, and any other information reasonably requested by  
9 mortgagees of prospective purchasers of units. Information requested  
10 generally by the federal national mortgage association, the federal  
11 home loan bank board, the government national mortgage association, the  
12 veterans administration and the department of housing and urban  
13 development shall be deemed reasonable, provided such information is  
14 reasonably available to the association.

15 (2) The association, within ten days after a request by a unit  
16 owner, and subject to payment of any fee imposed pursuant to RCW  
17 64.34.304(1)(1), shall furnish a resale certificate signed by an  
18 officer or authorized agent of the association and containing the  
19 information necessary to enable the unit owner to comply with this  
20 section. For the purposes of this chapter, a reasonable charge for the  
21 preparation of a resale certificate may not exceed one hundred fifty  
22 dollars. The association may charge a unit owner a nominal fee for  
23 updating a resale certificate within six months of the unit owner's  
24 request. The unit owner shall also sign the certificate but the unit  
25 owner is not liable to the purchaser for any erroneous information  
26 provided by the association and included in the certificate unless and  
27 to the extent the unit owner had actual knowledge thereof.

28 (3) A purchaser is not liable for any unpaid assessment or fee  
29 against the unit as of the date of the certificate greater than the  
30 amount set forth in the certificate prepared by the association unless  
31 and to the extent such purchaser had actual knowledge thereof. A unit  
32 owner is not liable to a purchaser for the failure or delay of the  
33 association to provide the certificate in a timely manner, but the  
34 purchaser's contract is voidable by the purchaser until the certificate  
35 has been provided and for five days thereafter or until conveyance,  
36 whichever occurs first.

1       **Sec. 5.** RCW 64.34.445 and 1992 c 220 s 26 are each amended to read  
2 as follows:

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

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

11       (a) Free from defective materials; (~~and~~)

12       (b) Constructed in accordance with sound engineering and  
13 construction standards(~~, and~~);

14       (c) Constructed in a workmanlike manner; and

15       (d) Constructed in compliance with all laws then applicable to such  
16 improvements.

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

21       (4) Warranties imposed by this section may be excluded or modified  
22 as specified in RCW 64.34.450.

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

26       (6) Any conveyance of a unit transfers to the purchaser all of the  
27 declarant's implied warranties of quality.

28       (7) In a judicial proceeding or arbitration for breach of any of  
29 the obligations arising under this section, the plaintiff must show  
30 that the alleged breach has adversely affected or will adversely affect  
31 the performance of that portion of the unit or common elements alleged  
32 to be in breach. As used in this subsection, an "adverse effect" is  
33 one that is substantive, not simply technical, significant to a  
34 reasonable person, and not trivial. To establish an adverse effect,  
35 the person alleging the breach is not required to prove that the breach  
36 renders the unit or common element uninhabitable or unfit for its  
37 intended purpose.

1       (8) Proof of breach of any obligation arising under this section is  
2 not proof of damages. Damages awarded for a breach of an obligation  
3 arising under this section are the cost of repairs. However, if it is  
4 established that the cost of such repairs is grossly disproportionate  
5 to the loss in market value caused by the breach, then damages shall be  
6 limited to the loss in market value.

7       **Sec. 6.** RCW 64.34.450 and 1989 c 43 s 4-113 are each amended to  
8 read as follows:

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

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

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

16       (2) ~~((With respect to a purchaser of a unit that may be occupied))~~  
17 For units intended for residential use, no ((general)) disclaimer of  
18 implied warranties of quality is effective, ((but)) except that a  
19 declarant ((and any)) or dealer may disclaim liability in ((an  
20 instrument)) writing, in type that is bold faced, capitalized,  
21 underlined, or otherwise set out from surrounding material so as to be  
22 conspicuous, and separately signed by the purchaser, for a specified  
23 defect or specified failure to comply with applicable law, if: (a) The  
24 declarant or dealer knows or has reason to know that the specific  
25 defect or failure ((entered into and became a part of the basis of the  
26 bargain)) exists at the time of disclosure; (b) the disclaimer  
27 specifically describes the defect or failure; and (c) the disclaimer  
28 includes a statement as to the effect of the defect or failure.

29       (3) A declarant or dealer may offer an express written warranty of  
30 quality only if the express written warranty does not reduce  
31 protections provided to the purchaser by the implied warranty set forth  
32 in RCW 64.34.445.

33       **Sec. 7.** RCW 64.34.452 and 2002 c 323 s 11 are each amended to read  
34 as follows:

35       (1) A judicial proceeding or arbitration for breach of any

1 obligations arising under RCW 64.34.443 (~~and~~), 64.34.445, and  
2 64.34.450 must be commenced within four years after the cause of action  
3 accrues: PROVIDED, That the period for commencing (~~an action~~) a  
4 judicial proceeding or arbitration for a breach accruing pursuant to  
5 subsection (2)(b) of this section shall not expire prior to one year  
6 after termination of the period of declarant control, if any, under RCW  
7 64.34.308(4). Such periods may not be reduced by either oral or  
8 written agreement, or through the use of contractual claims or notice  
9 procedures that require the filing or service of any claim or notice  
10 prior to the expiration of the period specified in this section. An  
11 arbitration is deemed commenced on delivery of a demand for  
12 arbitration. Any demand for arbitration shall be delivered by  
13 certified mail, return receipt requested, and by ordinary first class  
14 mail, or, in the case of persons not resident in the United States of  
15 America, by such other comparable form of mailed notice as is  
16 reasonably available. The party initiating the arbitration shall  
17 address such a notice to the address last known to the initiating party  
18 in the exercise of reasonable diligence, and also, in the case of any  
19 entity that is required to have a registered agent in the state of  
20 Washington, to the address of such a registered agent. Demand for  
21 arbitration shall be deemed delivered three days after the postmark  
22 date.

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

26 (a) As to a unit, the date the purchaser to whom the warranty is  
27 first made enters into possession if a possessory interest was conveyed  
28 or the date of acceptance of the instrument of conveyance if a  
29 nonpossessory interest was conveyed; and

30 (b) As to each common element, at the latest of (i) the date the  
31 first unit in the condominium was conveyed to a bona fide purchaser,  
32 (ii) the date the common element was completed, or (iii) the date the  
33 common element was added to the condominium.

34 (3) If a warranty of quality explicitly extends to future  
35 performance or duration of any improvement or component of the  
36 condominium, the cause of action accrues at the time the breach is

1 discovered or at the end of the period for which the warranty  
2 explicitly extends, whichever is earlier.

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

9 (5) Nothing in this section affects the time for filing a claim  
10 under chapter 64.-- RCW (sections 101 through 2002 of this act).

11 NEW SECTION. **Sec. 8.** (1) A committee is established to study the  
12 required use of independent third-party inspections of residential  
13 condominiums as a way to reduce the problem of water penetration in  
14 residential condominiums.

15 (2) The committee consists of the following members who shall be  
16 persons with experience and expertise in condominium law and  
17 condominium construction:

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

20 (b) Two members to be appointed by the majority leader of the  
21 senate; and

22 (c) Two members to be appointed by the speaker of the house of  
23 representatives.

24 (3) The committee shall:

25 (a) Examine the problem of water penetration of condominiums and  
26 the efficacy of requiring independent third-party inspections of  
27 condominiums, including plan inspection and inspection during  
28 construction, as a way to reduce the problem of water penetration;

29 (b) Deliver to the judiciary committees of the senate and house of  
30 representatives, not later than December 31, 2004, a report of the  
31 findings and conclusions of the committee, and any proposed legislation  
32 implementing third-party water penetration inspections.

33 **Sec. 9.** RCW 64.34.020 and 1992 c 220 s 2 are each amended to read  
34 as follows:

1 In the declaration and bylaws, unless specifically provided  
2 otherwise or the context requires otherwise, and in this chapter:

3 (1) "Affiliate (~~(of a declarant)~~)" means any person who controls,  
4 is controlled by, or is under common control with (~~(a declarant)~~) the  
5 referenced person. A person "controls" (~~(a declarant)~~) another person  
6 if the person: (a) Is a general partner, officer, director, or  
7 employer of the (~~(declarant)~~) referenced person; (b) directly or  
8 indirectly or acting in concert with one or more other persons, or  
9 through one or more subsidiaries, owns, controls, holds with power to  
10 vote, or holds proxies representing, more than twenty percent of the  
11 voting interest in the (~~(declarant)~~) referenced person; (c) controls in  
12 any manner the election of a majority of the directors of the  
13 (~~(declarant)~~) referenced person; or (d) has contributed more than  
14 twenty percent of the capital of the (~~(declarant)~~) referenced person.  
15 A person "is controlled by" (~~(a declarant)~~) another person if the  
16 (~~(declarant)~~) other person: (i) Is a general partner, officer,  
17 director, or employer of the person; (ii) directly or indirectly or  
18 acting in concert with one or more other persons, or through one or  
19 more subsidiaries, owns, controls, holds with power to vote, or holds  
20 proxies representing, more than twenty percent of the voting interest  
21 in the person; (iii) controls in any manner the election of a majority  
22 of the directors of the person; or (iv) has contributed more than  
23 twenty percent of the capital of the person. Control does not exist if  
24 the powers described in this subsection are held solely as security for  
25 an obligation and are not exercised.

26 (2) "Allocated interests" means the undivided interest in the  
27 common elements, the common expense liability, and votes in the  
28 association allocated to each unit.

29 (3) "Assessment" means all sums chargeable by the association  
30 against a unit including, without limitation: (a) Regular and special  
31 assessments for common expenses, charges, and fines imposed by the  
32 association; (b) interest and late charges on any delinquent account;  
33 and (c) costs of collection, including reasonable attorneys' fees,  
34 incurred by the association in connection with the collection of a  
35 delinquent owner's account.

36 (4) "Association" or "unit owners' association" means the unit  
37 owners' association organized under RCW 64.34.300.

1 (5) "Board of directors" means the body, regardless of name, with  
2 primary authority to manage the affairs of the association.

3 (6) "Common elements" means all portions of a condominium other  
4 than the units.

5 (7) "Common expenses" means expenditures made by or financial  
6 liabilities of the association, together with any allocations to  
7 reserves.

8 (8) "Common expense liability" means the liability for common  
9 expenses allocated to each unit pursuant to RCW 64.34.224.

10 (9) "Condominium" means real property, portions of which are  
11 designated for separate ownership and the remainder of which is  
12 designated for common ownership solely by the owners of those portions.  
13 Real property is not a condominium unless the undivided interests in  
14 the common elements are vested in the unit owners, and unless a  
15 declaration and a survey map and plans have been recorded pursuant to  
16 this chapter.

17 (10) "Conversion condominium" means a condominium (a) that at any  
18 time before creation of the condominium was lawfully occupied wholly or  
19 partially by a tenant or subtenant for residential purposes pursuant to  
20 a rental agreement, oral or written, express or implied, for which the  
21 tenant or subtenant had not received the notice described in (b) of  
22 this subsection; or (b) that, at any time within twelve months before  
23 the conveyance of, or acceptance of an agreement to convey, any unit  
24 therein other than to a declarant or any affiliate of a declarant, was  
25 lawfully occupied wholly or partially by a residential tenant of a  
26 declarant or an affiliate of a declarant and such tenant was not  
27 notified in writing, prior to lawfully occupying a unit or executing a  
28 rental agreement, whichever event first occurs, that the unit was part  
29 of a condominium and subject to sale. "Conversion condominium" shall  
30 not include a condominium in which, before July 1, 1990, any unit  
31 therein had been conveyed or been made subject to an agreement to  
32 convey to any transferee other than a declarant or an affiliate of a  
33 declarant.

34 (11) "Conveyance" means any transfer of the ownership of a unit,  
35 including a transfer by deed or by real estate contract and, with  
36 respect to a unit in a leasehold condominium, a transfer by lease or

1 assignment thereof, but shall not include a transfer solely for  
2 security.

3 (12) "Dealer" means a person who, together with such person's  
4 affiliates, owns or has a right to acquire either six or more units in  
5 a condominium or fifty percent or more of the units in a condominium  
6 containing more than two units.

7 (13) "Declarant" means (~~(any person or group of persons acting in~~  
8 ~~concert who)):~~

9 (a) Any person who executes as declarant a declaration as defined  
10 in subsection (15) of this section(~~(7))~~; or

11 (b) (~~reserves or succeeds to any special declarant right under~~)  
12 Any person who reserves any special declarant right in the declaration;  
13 or

14 (c) Any person who exercises special declarant rights or to whom  
15 special declarant rights are transferred; or

16 (d) Any person who is the owner of a fee interest in the real  
17 property which is subjected to the declaration at the time of the  
18 recording of an instrument pursuant to RCW 64.34.316 and who directly  
19 or through one or more affiliates is materially involved in the  
20 construction, marketing, or sale of units in the condominium created by  
21 the recording of the instrument.

22 (14) "Declarant control" means the right of the declarant or  
23 persons designated by the declarant to appoint and remove officers and  
24 members of the board of directors, or to veto or approve a proposed  
25 action of the board or association, pursuant to RCW 64.34.308 (4) or  
26 (5).

27 (15) "Declaration" means the document, however denominated, that  
28 creates a condominium by setting forth the information required by RCW  
29 64.34.216 and any amendments to that document.

30 (16) "Development rights" means any right or combination of rights  
31 reserved by a declarant in the declaration to: (a) Add real property  
32 or improvements to a condominium; (b) create units, common elements, or  
33 limited common elements within real property included or added to a  
34 condominium; (c) subdivide units or convert units into common elements;  
35 (d) withdraw real property from a condominium; or (e) reallocate  
36 limited common elements with respect to units that have not been  
37 conveyed by the declarant.

1 (17) "Dispose" or "disposition" means a voluntary transfer or  
2 conveyance to a purchaser or lessee of any legal or equitable interest  
3 in a unit, but does not include the transfer or release of a security  
4 interest.

5 (18) "Eligible mortgagee" means the holder of a mortgage on a unit  
6 that has filed with the secretary of the association a written request  
7 that it be given copies of notices of any action by the association  
8 that requires the consent of mortgagees.

9 (19) "Foreclosure" means a forfeiture or judicial or nonjudicial  
10 foreclosure of a mortgage or a deed in lieu thereof.

11 (20) "Identifying number" means the designation of each unit in a  
12 condominium.

13 (21) "Leasehold condominium" means a condominium in which all or a  
14 portion of the real property is subject to a lease, the expiration or  
15 termination of which will terminate the condominium or reduce its size.

16 (22) "Limited common element" means a portion of the common  
17 elements allocated by the declaration or by operation of RCW 64.34.204  
18 (2) or (4) for the exclusive use of one or more but fewer than all of  
19 the units.

20 (23) "Master association" means an organization described in RCW  
21 64.34.276, whether or not it is also an association described in RCW  
22 64.34.300.

23 (24) "Mortgage" means a mortgage, deed of trust or real estate  
24 contract.

25 (25) "Person" means a natural person, corporation, partnership,  
26 limited partnership, trust, governmental subdivision or agency, or  
27 other legal entity.

28 (26) "Purchaser" means any person, other than a declarant or a  
29 dealer, who by means of a disposition acquires a legal or equitable  
30 interest in a unit other than (a) a leasehold interest, including  
31 renewal options, of less than twenty years at the time of creation of  
32 the unit, or (b) as security for an obligation.

33 (27) "Real property" means any fee, leasehold or other estate or  
34 interest in, over, or under land, including structures, fixtures, and  
35 other improvements thereon and easements, rights and interests  
36 appurtenant thereto which by custom, usage, or law pass with a  
37 conveyance of land although not described in the contract of sale or

1 instrument of conveyance. "Real property" includes parcels, with or  
2 without upper or lower boundaries, and spaces that may be filled with  
3 air or water.

4 (28) "Residential purposes" means use for dwelling or recreational  
5 purposes, or both.

6 (29) "Special declarant rights" means rights reserved for the  
7 benefit of a declarant to: (a) Complete improvements indicated on  
8 survey maps and plans filed with the declaration under RCW 64.34.232;  
9 (b) exercise any development right under RCW 64.34.236; (c) maintain  
10 sales offices, management offices, signs advertising the condominium,  
11 and models under RCW 64.34.256; (d) use easements through the common  
12 elements for the purpose of making improvements within the condominium  
13 or within real property which may be added to the condominium under RCW  
14 64.34.260; (e) make the condominium part of a larger condominium or a  
15 development under RCW 64.34.280; (f) make the condominium subject to a  
16 master association under RCW 64.34.276; or (g) appoint or remove any  
17 officer of the association or any master association or any member of  
18 the board of directors, or to veto or approve a proposed action of the  
19 board or association, during any period of declarant control under RCW  
20 64.34.308(4).

21 (30) "Timeshare" shall have the meaning specified in the timeshare  
22 act, RCW 64.36.010(11).

23 (31) "Unit" means a physical portion of the condominium designated  
24 for separate ownership, the boundaries of which are described pursuant  
25 to RCW 64.34.216(1)(d). "Separate ownership" includes leasing a unit  
26 in a leasehold condominium under a lease that expires contemporaneously  
27 with any lease, the expiration or termination of which will remove the  
28 unit from the condominium.

29 (32) "Unit owner" means a declarant or other person who owns a unit  
30 or leases a unit in a leasehold condominium under a lease that expires  
31 simultaneously with any lease, the expiration or termination of which  
32 will remove the unit from the condominium, but does not include a  
33 person who has an interest in a unit solely as security for an  
34 obligation. "Unit owner" means the vendee, not the vendor, of a unit  
35 under a real estate contract.



1 respect to a particular construction defect, "material" does not  
2 require that the construction defect render the unit or common element  
3 unfit for its intended purpose or uninhabitable.

4 (13) "Mediation" means a collaborative process in which two or more  
5 parties meet and attempt, with the assistance of a mediator, to resolve  
6 issues in dispute between them.

7 (14) "Mediation session" means a meeting between two or more  
8 parties to a dispute during which they are engaged in mediation.

9 (15) "Mediator" means a neutral and impartial facilitator with no  
10 decision-making power who assists parties in negotiating a mutually  
11 acceptable settlement of issues in dispute between them.

12 (16) "Person" has the meaning in RCW 64.34.020.

13 (17) "Public offering statement" has the meaning in RCW 64.34.410.

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

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

22 (20) "Resale certificate" means the statement to be delivered by  
23 the association under RCW 64.34.425.

24 (21) "Transition date" means the date on which the declarant is  
25 required to deliver to the association the property of the association  
26 under RCW 64.34.312.

27 (22) "Unit" has the meaning in RCW 64.34.020.

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

## 29 **ARTICLE 2**

### 30 **EXCLUSIVE REMEDY AND PROCEDURE**

#### 31 **IN CASES WHERE A QUALIFIED WARRANTY IS PROVIDED**

32 NEW SECTION. **Sec. 201.** No declarant, affiliate of a declarant, or  
33 construction professional is liable to a unit owner or an association  
34 for damages awarded for repair of construction defects and resulting  
35 physical damage, and chapter 64.50 RCW shall not apply if: (1) Every

1 unit is the subject of a qualified warranty; and (2) the association  
2 has been issued a qualified warranty with respect to the common  
3 elements. If a construction professional agrees on terms satisfactory  
4 to the qualified insurer to partially or fully indemnify the qualified  
5 insurer with respect to a defect caused by the construction  
6 professional, the liability of the construction professional for the  
7 defect and resulting physical damage caused by him or her shall not  
8 exceed damages recoverable under the terms of the qualified warranty  
9 for the defect. Any indemnity claim by the qualified insurer shall be  
10 by separate action or arbitration, and no unit owner or association  
11 shall be joined therein. A qualified warranty may also be provided in  
12 the case of improvements made or contracted for by a declarant as part  
13 of a conversion condominium, and in such case, declarant's liability  
14 with respect to such improvements shall be limited as set forth in this  
15 section.

16 **ARTICLE 3**  
17 **DISCLOSURE**

18 NEW SECTION. **Sec. 301.** (1) Every public offering statement and  
19 resale certificate shall affirmatively state whether or not the unit  
20 and/or the common elements are covered by a qualified warranty, and  
21 shall provide to the best knowledge of the person preparing the public  
22 offering statement or resale certificate a history of claims under the  
23 warranty.

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

- 28 (a) The type of claim that was made;  
29 (b) The resolution of the claim;  
30 (c) The type of repair performed;  
31 (d) The date of the repair;  
32 (e) The cost of the repair; and  
33 (f) The name of the person or entity who performed the repair.

34 **ARTICLE 4**

1                   **MINIMUM COVERAGE STANDARDS FOR QUALIFIED WARRANTIES**

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

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

5       (a) In the first twelve months, for other than the common elements,  
6 (i) coverage for any defect in materials and labor; and (ii) subject to  
7 subsection (2) of this section, coverage for a violation of the  
8 building code;

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

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

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

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

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

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

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

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

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

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

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

8 (a) Actual occupancy of the unit; or

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

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

14 NEW SECTION. **Sec. 405.** BEGINNING DATES FOR SPECIAL CASES;

15 DECLARANT CONTROL. (1) If an unsold unit is occupied as a rental unit,  
16 the qualified warranty beginning date for such unit is the date the  
17 unit is first occupied.

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

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

33 NEW SECTION. **Sec. 406.** LIVING EXPENSE ALLOWANCE. (1) If repairs  
34 are required under the qualified warranty and damage to the unit, or

1 the extent of the repairs renders the unit uninhabitable, the qualified  
2 warranty must cover reasonable living expenses incurred by the owner to  
3 live elsewhere in an amount commensurate with the nature of the unit.

4 (2) If a qualified insurer establishes a maximum amount per day for  
5 claims for living expenses, the limit must be the greater of one  
6 hundred dollars per day or a reasonable amount commensurate with the  
7 nature of the unit for the complete reimbursement of the actual  
8 accommodation expenses incurred by the owner at a hotel, motel, or  
9 other rental accommodation up to the day the unit is ready for  
10 occupancy, subject to the owner receiving twenty-four hours' advance  
11 notice.

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

13 All repairs and replacements made under a qualified warranty must be  
14 warranted by the qualified warranty against defects in materials and  
15 labor until the later of:

16 (a) The first anniversary of the date of completion of the repair  
17 or replacement; or

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

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

22 **ARTICLE 5**

23 **PERMITTED TERMS FOR QUALIFIED WARRANTIES**

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

26 (1) If the qualified insurer makes a payment or assumes liability  
27 for any payment or repair under a qualified warranty, the owner and  
28 association must fully support and assist the qualified insurer in  
29 pursuing any rights that the qualified insurer may have against the  
30 declarant, and any construction professional that has contractual or  
31 common law obligations to the declarant, whether such rights arose by  
32 contract, subrogation, or otherwise.

33 (2) Warranties or representations made by a declarant which are in  
34 addition to the warranties set forth in this chapter are not binding on

1 the qualified insurer unless and to the extent specifically provided in  
2 the text of the warranty; and disclaimers of specific defects made by  
3 agreement between the declarant and the unit purchaser under RCW  
4 64.34.450 act as an exclusion of the specified defect from the warranty  
5 coverage.

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

- 9 (a) To monitor the unit or its components;
- 10 (b) To inspect for required maintenance;
- 11 (c) To investigate complaints or claims; or
- 12 (d) To undertake repairs under the qualified warranty.

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

16 (4) An owner and the association must provide to the qualified  
17 insurer all information and documentation that the owner and the  
18 association have available, as reasonably required by the qualified  
19 insurer to investigate a claim or maintenance requirement, or to  
20 undertake repairs under the qualified warranty.

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

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

30 **ARTICLE 6**

31 **PERMITTED EXCLUSIONS FROM QUALIFIED WARRANTIES--GENERAL**

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

- 34 (a) Landscaping, both hard and soft, including plants, fencing,

1 detached patios, planters not forming a part of the building envelope,  
2 gazebos, and similar structures;

3 (b) Any commercial use area and any construction associated with a  
4 commercial use area;

5 (c) Roads, curbs, and lanes;

6 (d) Subject to subsection (2) of this section, site grading and  
7 surface drainage except as required by the building code;

8 (e) Municipal services operation, including sanitary and storm  
9 sewer;

10 (f) Septic tanks or septic fields;

11 (g) The quality or quantity of water, from either a piped municipal  
12 water supply or a well;

13 (h) A water well, but excluding equipment installed for the  
14 operation of a water well used exclusively for a unit, which equipment  
15 is part of the plumbing system for that unit for the purposes of the  
16 qualified warranty.

17 (2) The exclusions permitted by subsection (1) of this section do  
18 not include any of the following:

19 (a) A driveway or walkway;

20 (b) Recreational and amenity facilities situated in, or included as  
21 the common property of, a unit;

22 (c) A parking structure in a multiunit building;

23 (d) A retaining wall that:

24 (i) An authority with jurisdiction requires to be designed by a  
25 professional engineer; or

26 (ii) Is reasonably required for the direct support of, or retaining  
27 soil away from, a unit, driveway, or walkway.

28 **ARTICLE 7**  
29 **PERMITTED EXCLUSIONS--DEFECTS**

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

32 (1) Weathering, normal wear and tear, deterioration, or deflection  
33 consistent with normal industry standards;

34 (2) Normal shrinkage of materials caused by drying after  
35 construction;

1 (3) Any loss or damage which arises while a unit is being used  
2 primarily or substantially for nonresidential purposes;

3 (4) Materials, labor, or design supplied by an owner;

4 (5) Any damage to the extent caused or made worse by an owner or  
5 third party, including:

6 (a) Negligent or improper maintenance or improper operation by  
7 anyone other than the declarant or its employees, agents, or  
8 subcontractors;

9 (b) Failure of anyone, other than the declarant or its employees,  
10 agents, or subcontractors, to comply with the warranty requirements of  
11 the manufacturers of appliances, equipment, or fixtures;

12 (c) Alterations to the unit, including converting nonliving space  
13 into living space or converting a unit into two or more units, by  
14 anyone other than the declarant or its employees, agents, or  
15 subcontractors while undertaking their obligations under the sales  
16 contract; and

17 (d) Changes to the grading of the ground by anyone other than the  
18 declarant or its employees, agents, or subcontractors;

19 (6) An owner failing to take timely action to prevent or minimize  
20 loss or damage, including failing to give prompt notice to the  
21 qualified insurer of a defect or discovered loss, or a potential defect  
22 or loss;

23 (7) Any damage caused by insects, rodents, or other animals, unless  
24 the damage results from noncompliance with the building code by the  
25 declarant or its employees, agents, or subcontractors;

26 (8) Accidental loss or damage from acts of nature including, but  
27 not limited to, fire, explosion, smoke, water escape, glass breakage,  
28 windstorm, hail, lightning, falling trees, aircraft, vehicles, flood,  
29 earthquake, avalanche, landslide, and changes in the level of the  
30 underground water table which are not reasonably foreseeable by the  
31 declarant;

32 (9) Bodily injury or damage to personal property or real property  
33 which is not part of a unit;

34 (10) Any defect in, or caused by, materials or work supplied by  
35 anyone other than the declarant, an affiliate of a declarant, or their  
36 respective contractors, employees, agents, or subcontractors;

1 (11) Changes, alterations, or additions made to a unit by anyone  
2 after initial occupancy, except those performed by the declarant or its  
3 employees, agents, or subcontractors as required by the qualified  
4 warranty or under the construction contract or sales agreement;

5 (12) Contaminated soil;

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

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

10 **ARTICLE 8**

11 **MONETARY LIMITS ON QUALIFIED WARRANTY COVERAGE**

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

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

17 (b) For common elements, the lesser of (i) the total original  
18 purchase price for all components of the multiunit building, or (ii)  
19 one hundred fifty thousand dollars times the number of units of the  
20 condominium.

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

23 (a) The cost of repairs;

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

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

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

34 **ARTICLE 9**



1 **ARTICLE 11**

2 **MANDATORY NOTICE OF EXPIRATION OF WARRANTY**

3 NEW SECTION. **Sec. 1101.** (1) A qualified insurer must, as soon as  
4 reasonably possible after the beginning date for the qualified  
5 warranty, provide an owner and association with a schedule of the  
6 expiration dates for coverages under the qualified warranty as  
7 applicable to the unit and the common elements, respectively.

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

12 **ARTICLE 12**

13 **DUTY TO MITIGATE**

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

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

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

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

24 (a) The unit is unoccupied;

25 (b) The unit is occupied by someone other than the owner;

26 (c) Water penetration does not appear to be causing damage; or

27 (d) The owner advises the homeowners' association corporation about  
28 the defect.

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

33 **ARTICLE 13**

1 **NOTICE OF CLAIM**

2 NEW SECTION. **Sec. 1301.** (1) Within a reasonable time after the  
3 discovery of a defect and before the expiration of the applicable  
4 qualified warranty coverage, a claimant must give to the qualified  
5 insurer and the declarant written notice in reasonable detail that  
6 provides particulars of any specific defects covered by the qualified  
7 warranty.

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

10 (a) The qualified warranty number; and

11 (b) Copies of any relevant documentation and correspondence between  
12 the claimant and the declarant, to the extent any such documentation  
13 and correspondence is in the control or possession of the claimant.

14 **ARTICLE 14**

15 **HANDLING OF CLAIMS**

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

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

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

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

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

5 **ARTICLE 15**

6 **MEDIATION OF DISPUTED CLAIMS**

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

12 (2) If a party delivers a request to mediate under subsection (1)  
13 of this section, the qualified insurer and the party must attend a  
14 mediation session in relation to the dispute and may invite to  
15 participate in the mediation any other party to the dispute who may be  
16 liable.

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

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

25 (a) The need for the mediator to be neutral and independent;

26 (b) The qualifications of the mediator;

27 (c) The mediator's fees;

28 (d) The mediator's availability; and

29 (e) Any other consideration likely to result in the selection of an  
30 impartial, competent, and effective mediator.

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

34 (6) The mediator selected by the superior court is deemed to be

1 appointed by the parties effective the date of the notice sent under  
2 subsection (5) of this section.

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

6 (8) A party may attend a mediation session by representative if:

7 (a) The party is under a legal disability and the representative is  
8 that party's guardian ad litem;

9 (b) The party is not an individual; or

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

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

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

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

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

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

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

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

27 (b) The matters in dispute.

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

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

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

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

34 (i) Equally by the parties; or

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

36 (15) The mediator may conduct the mediation in any manner he or she

1 considers appropriate to assist the parties to reach a resolution that  
2 is timely, fair, and cost-effective.

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

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

11 (18) A mediation session is concluded when:

12 (a) All issues are resolved;

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

15 (c) The mediation session is completed and there is no agreement to  
16 continue.

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

22 (a) Facts;

23 (b) Issues; and

24 (c) Future procedural steps.

25 **ARTICLE 16**  
26 **ARBITRATION**

27 NEW SECTION. **Sec. 1601.** A qualified warranty may include  
28 mandatory binding arbitration of all disputes arising out of or in  
29 connection with a qualified warranty. The provision may provide that  
30 all claims for a single condominium be heard by the same arbitrator,  
31 but shall not permit the joinder or consolidation of any other person  
32 or entity. The arbitration shall comply with the following minimum  
33 procedural standards:

34 (1) Any demand for arbitration shall be delivered by certified mail  
35 return receipt requested, and by ordinary first class mail. The party

1 initiating the arbitration shall address the notice to the address last  
2 known to the initiating party in the exercise of reasonable diligence,  
3 and also, for any entity which is required to have a registered agent  
4 in the state of Washington, to the address of the registered agent.  
5 Demand for arbitration is deemed effective three days after the date  
6 deposited in the mail;

7 (2) All disputes shall be heard by one qualified arbitrator, unless  
8 the parties agree to use three arbitrators. If three arbitrators are  
9 used, one shall be appointed by each of the disputing parties and the  
10 first two arbitrators shall appoint the third, who will chair the  
11 panel. The parties shall select the identity and number of the  
12 arbitrator or arbitrators after the demand for arbitration is made.  
13 If, within thirty days after the effective date of the demand for  
14 arbitration, the parties fail to agree on an arbitrator or the agreed  
15 number of arbitrators fail to be appointed, then an arbitrator or  
16 arbitrators shall be appointed under RCW 7.04.050 by the presiding  
17 judge of the superior court of the county in which the condominium is  
18 located;

19 (3) In any arbitration, at least one arbitrator must be a lawyer or  
20 retired judge. Any additional arbitrator must be either a lawyer or  
21 retired judge or a person who has experience with construction and  
22 engineering standards and practices, written construction warranties,  
23 or construction dispute resolution. No person may serve as an  
24 arbitrator in any arbitration in which that person has any past or  
25 present financial or personal interest;

26 (4) The arbitration hearing must be conducted in a manner that  
27 permits full, fair, and expeditious presentation of the case by both  
28 parties. The arbitrator is bound by the law of Washington state.  
29 Parties may be, but are not required to be, represented by attorneys.  
30 The arbitrator may permit discovery to ensure a fair hearing, but may  
31 limit the scope or manner of discovery for good cause to avoid  
32 excessive delay and costs to the parties. The parties and the  
33 arbitrator shall use all reasonable efforts to complete the arbitration  
34 within six months of the effective date of the demand for arbitration  
35 or, when applicable, the service of the list of defects in accordance  
36 with RCW 64.50.030;

1 (5) Except as otherwise set forth in this section, arbitration  
2 shall be conducted under chapter 7.04 RCW, unless the parties elect to  
3 use the construction industry arbitration rules of the American  
4 arbitration association, which are permitted to the extent not  
5 inconsistent with this section. The expenses of witnesses including  
6 expert witnesses shall be paid by the party producing the witnesses.  
7 All other expenses of arbitration shall be borne equally by the  
8 parties, unless all parties agree otherwise or unless the arbitrator  
9 awards expenses or any part thereof to any specified party or parties.  
10 The parties shall pay the fees of the arbitrator as and when specified  
11 by the arbitrator;

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

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

16 **ARTICLE 17**  
17 **ATTORNEYS' FEES**

18 NEW SECTION. **Sec. 1701.** In any judicial proceeding or arbitration  
19 brought to enforce the terms of a qualified warranty, the court or  
20 arbitrator may award reasonable attorneys' fees to the substantially  
21 prevailing party. In no event may such fees exceed the reasonable  
22 hourly value of the attorney's work.

23 **ARTICLE 18**  
24 **TRANSFER**

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

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

31 **ARTICLE 19**  
32 **ACCEPTANCE OF DECLARANT FOR QUALIFIED WARRANTY**

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

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

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

14        (c) Does the applicant and its directors and officers have  
15 sufficient experience in business management to properly manage the  
16 unit construction process;

17        (d) Does the applicant and its directors, officers, and employees  
18 have sufficient practical experience to undertake the proposed unit  
19 construction;

20        (e) Does the past conduct of the applicant and its directors,  
21 officers, employees, and consultants provide a reasonable indication of  
22 good business practices, and reasonable grounds for belief that its  
23 undertakings will be carried on in accordance with all legal  
24 requirements; and

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

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

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

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

36        (b) To determine if the applicant or, in the case of a corporation,  
37 its directors, officers, employees, and consultants possess reasonable

1 technical expertise to construct the proposed unit, including specific  
2 technical knowledge or expertise in any building systems, construction  
3 methods, products, treatments, technologies, and testing and inspection  
4 methods proposed to be employed;

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

9 (d) To determine if the applicant has sufficient personnel and  
10 other resources to adequately undertake the construction of the  
11 proposed unit in addition to other units which the applicant may have  
12 under construction or is currently marketing;

13 (e) To determine if:

14 (i) The applicant is proposing to engage a general contractor to  
15 undertake all or a significant portion of the construction of the  
16 proposed unit; and

17 (ii) The general contractor meets the criteria set out in this  
18 section;

19 (f) Requiring that a declarant provide security in a form suitable  
20 to the qualified insurer;

21 (g) Establishing or requiring compliance with specific construction  
22 standards for the unit;

23 (h) Restricting the applicant from constructing some types of units  
24 or using some types of construction or systems;

25 (i) Requiring the use of specific types of systems, consultants, or  
26 personnel for the construction;

27 (j) Requiring an independent review of the unit building plans or  
28 consultants' reports or any part thereof;

29 (k) Requiring third-party verification or certification of the  
30 construction of the unit or any part thereof;

31 (l) Providing for inspection of the unit or any part thereof during  
32 construction;

33 (m) Requiring ongoing monitoring of the unit, or one or more of its  
34 components, following completion of construction;

35 (n) Requiring that the declarant or any of the design  
36 professionals, engineering professionals, consultants, general  
37 contractors, or subcontractors maintain minimum levels of insurance,

1 bonding, or other security naming the potential owners and qualified  
2 insurer as loss payees or beneficiaries of the insurance, bonding, or  
3 security to the extent possible;

4 (o) Requiring that the declarant provide a list of all design  
5 professionals and other consultants who are involved in the design or  
6 construction inspection, or both, of the unit;

7 (p) Requiring that the declarant provide a list of trades employed  
8 in the construction of the unit, and requiring evidence of their  
9 current trade's certification, if applicable.

10  
11

**ARTICLE 20**  
**MISCELLANEOUS**

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

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

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

19 Correct the title.

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