

2ESSB 5536 - H AMD 1187

By Representative Lantz

WITHDRAWN 03/10/2004

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), any right or obligation declared by this
30 chapter is enforceable by judicial proceeding.

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

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

5 (a) The number, qualifications, powers and duties, terms of office,
6 and manner of electing and removing the board of directors and officers
7 and filling vacancies;

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

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

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

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

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

17 (2) Subject to the provisions of the declaration, the bylaws may
18 provide for any other matters the association deems necessary and
19 appropriate.

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

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

34 (1) Except in the case of a sale where delivery of a public
35 offering statement is required, or unless exempt under RCW
36 64.34.400(2), a unit owner shall furnish to a purchaser before
37 execution of any contract for sale of a unit, or otherwise before
38 conveyance, a resale certificate, signed by an officer or authorized

1 agent of the association and based on the books and records of the
2 association and the actual knowledge of the person signing the
3 certificate, containing:

4 (a) A statement disclosing any right of first refusal or other
5 restraint on the free alienability of the unit contained in the
6 declaration;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (p) A statement of the remaining term of any leasehold estate
8 affecting the condominium and the provisions governing any extension or
9 renewal thereof; (~~and~~)

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

18 (r) A statement, as required by section 301 of this act, as to
19 whether the units or common elements of the condominium are covered by
20 a qualified warranty, and a history of claims under any such warranty.

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

34 (3) A purchaser is not liable for any unpaid assessment or fee
35 against the unit as of the date of the certificate greater than the
36 amount set forth in the certificate prepared by the association unless
37 and to the extent such purchaser had actual knowledge thereof. A unit
38 owner is not liable to a purchaser for the failure or delay of the
39 association to provide the certificate in a timely manner, but the

1 purchaser's contract is voidable by the purchaser until the certificate
2 has been provided and for five days thereafter or until conveyance,
3 whichever occurs first.

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

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

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

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

15 (b) Constructed in accordance with sound engineering and
16 construction standards(~~, and~~);

17 (c) Constructed in a workmanlike manner; and

18 (d) Constructed in compliance with all laws then applicable to such
19 improvements.

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

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

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

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

31 (7) In a judicial proceeding for breach of any of the obligations
32 arising under this section, the plaintiff must show that the alleged
33 breach has adversely affected or will adversely affect the performance
34 of that portion of the unit or common elements alleged to be in breach.
35 As used in this subsection, an "adverse effect" must be more than
36 technical and must be significant to a reasonable person. To establish
37 an adverse effect, the person alleging the breach is not required to

1 prove that the breach renders the unit or common element uninhabitable
2 or unfit for its intended purpose.

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

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

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

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

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

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

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

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

37 (1) A judicial proceeding for breach of any obligations arising

1 under RCW 64.34.443 (~~and~~), 64.34.445, and 64.34.450 must be commenced
2 within four years after the cause of action accrues: PROVIDED, That
3 the period for commencing an action for a breach accruing pursuant to
4 subsection (2)(b) of this section shall not expire prior to one year
5 after termination of the period of declarant control, if any, under RCW
6 64.34.308(4). Such periods may not be reduced by either oral or
7 written agreement, or through the use of contractual claims or notice
8 procedures that require the filing or service of any claim or notice
9 prior to the expiration of the period specified in this section.

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

13 (a) As to a unit, the date the purchaser to whom the warranty is
14 first made enters into possession if a possessory interest was conveyed
15 or the date of acceptance of the instrument of conveyance if a
16 nonpossessory interest was conveyed; and

17 (b) As to each common element, at the latest of (i) the date the
18 first unit in the condominium was conveyed to a bona fide purchaser,
19 (ii) the date the common element was completed, or (iii) the date the
20 common element was added to the condominium.

21 (3) If a warranty of quality explicitly extends to future
22 performance or duration of any improvement or component of the
23 condominium, the cause of action accrues at the time the breach is
24 discovered or at the end of the period for which the warranty
25 explicitly extends, whichever is earlier.

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

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

34 NEW SECTION. Sec. 8. (1) A committee is established to study:

35 (a) The required use of independent third-party inspections of
36 residential condominiums as a way to reduce the problem of water
37 penetration in residential condominiums; and

1 (b) The use of arbitration or other forms of alternative dispute
2 resolution to resolve disputes involving alleged breaches of implied or
3 express warranties under chapter 64.34 RCW.

4 (2) The committee consists of the following members who shall be
5 persons with experience and expertise in condominium law and
6 condominium construction:

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

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

11 (c) Two members to be appointed by the speaker of the house of
12 representatives.

13 (3) The committee shall:

14 (a) Examine the problem of water penetration of condominiums and
15 the efficacy of requiring independent third-party inspections of
16 condominiums, including plan inspection and inspection during
17 construction, as a way to reduce the problem of water penetration;

18 (b) Examine issues relating to alternative dispute resolution,
19 including but not limited to:

20 (i) When and how the decision to use alternative dispute resolution
21 is made;

22 (ii) The procedures to be used in an alternative dispute
23 resolution;

24 (iii) The nature of the right of appeal from an alternative dispute
25 resolution decision; and

26 (iv) The allocation of costs and fees associated with an
27 alternative dispute resolution proceeding or appeal;

28 (c) Deliver to the judiciary committees of the senate and house of
29 representatives, not later than December 31, 2004, a report of the
30 findings and conclusions of the committee, and any proposed legislation
31 implementing third-party water penetration inspections or providing for
32 alternative dispute resolution for warranty issues.

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

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

37 (1) "Affiliate (~~(of a declarant)~~)" means any person who controls,
38 is controlled by, or is under common control with (~~(a declarant)~~) the

1 referenced person. A person "controls" (~~((a-declarant))~~) another person
2 if the person: (a) Is a general partner, officer, director, or
3 employer of the (~~((declarant))~~) referenced person; (b) directly or
4 indirectly or acting in concert with one or more other persons, or
5 through one or more subsidiaries, owns, controls, holds with power to
6 vote, or holds proxies representing, more than twenty percent of the
7 voting interest in the (~~((declarant))~~) referenced person; (c) controls in
8 any manner the election of a majority of the directors of the
9 (~~((declarant))~~) referenced person; or (d) has contributed more than
10 twenty percent of the capital of the (~~((declarant))~~) referenced person.

11 A person "is controlled by" (~~((a-declarant))~~) another person if the
12 (~~((declarant))~~) other person: (i) Is a general partner, officer,
13 director, or employer of the person; (ii) directly or indirectly or
14 acting in concert with one or more other persons, or through one or
15 more subsidiaries, owns, controls, holds with power to vote, or holds
16 proxies representing, more than twenty percent of the voting interest
17 in the person; (iii) controls in any manner the election of a majority
18 of the directors of the person; or (iv) has contributed more than
19 twenty percent of the capital of the person. Control does not exist if
20 the powers described in this subsection are held solely as security for
21 an obligation and are not exercised.

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

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

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

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

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

38 (7) "Common expenses" means expenditures made by or financial

1 liabilities of the association, together with any allocations to
2 reserves.

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

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

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

29 (11) "Conveyance" means any transfer of the ownership of a unit,
30 including a transfer by deed or by real estate contract and, with
31 respect to a unit in a leasehold condominium, a transfer by lease or
32 assignment thereof, but shall not include a transfer solely for
33 security.

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

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

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

3 ~~((reserves or succeeds to any special declarant right under))~~
4 Any person who reserves any special declarant right in the declaration;
5 or

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

8 (d) Any person who is the owner of a fee interest in the real
9 property which is subjected to the declaration at the time of the
10 recording of an instrument pursuant to RCW 64.34.316 and who directly
11 or through one or more affiliates is materially involved in the
12 construction, marketing, or sale of units in the condominium created by
13 the recording of the instrument.

14 (14) "Declarant control" means the right of the declarant or
15 persons designated by the declarant to appoint and remove officers and
16 members of the board of directors, or to veto or approve a proposed
17 action of the board or association, pursuant to RCW 64.34.308 (4) or
18 (5).

19 (15) "Declaration" means the document, however denominated, that
20 creates a condominium by setting forth the information required by RCW
21 64.34.216 and any amendments to that document.

22 (16) "Development rights" means any right or combination of rights
23 reserved by a declarant in the declaration to: (a) Add real property
24 or improvements to a condominium; (b) create units, common elements, or
25 limited common elements within real property included or added to a
26 condominium; (c) subdivide units or convert units into common elements;
27 (d) withdraw real property from a condominium; or (e) reallocate
28 limited common elements with respect to units that have not been
29 conveyed by the declarant.

30 (17) "Dispose" or "disposition" means a voluntary transfer or
31 conveyance to a purchaser or lessee of any legal or equitable interest
32 in a unit, but does not include the transfer or release of a security
33 interest.

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

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

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

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

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

10 (23) "Master association" means an organization described in RCW
11 64.34.276, whether or not it is also an association described in RCW
12 64.34.300.

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

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

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

23 (27) "Real property" means any fee, leasehold or other estate or
24 interest in, over, or under land, including structures, fixtures, and
25 other improvements thereon and easements, rights and interests
26 appurtenant thereto which by custom, usage, or law pass with a
27 conveyance of land although not described in the contract of sale or
28 instrument of conveyance. "Real property" includes parcels, with or
29 without upper or lower boundaries, and spaces that may be filled with
30 air or water.

31 (28) "Residential purposes" means use for dwelling or recreational
32 purposes, or both.

33 (29) "Special declarant rights" means rights reserved for the
34 benefit of a declarant to: (a) Complete improvements indicated on
35 survey maps and plans filed with the declaration under RCW 64.34.232;
36 (b) exercise any development right under RCW 64.34.236; (c) maintain
37 sales offices, management offices, signs advertising the condominium,
38 and models under RCW 64.34.256; (d) use easements through the common
39 elements for the purpose of making improvements within the condominium

1 or within real property which may be added to the condominium under RCW
2 64.34.260; (e) make the condominium part of a larger condominium or a
3 development under RCW 64.34.280; (f) make the condominium subject to a
4 master association under RCW 64.34.276; or (g) appoint or remove any
5 officer of the association or any master association or any member of
6 the board of directors, or to veto or approve a proposed action of the
7 board or association, during any period of declarant control under RCW
8 64.34.308(4).

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

11 (31) "Unit" means a physical portion of the condominium designated
12 for separate ownership, the boundaries of which are described pursuant
13 to RCW 64.34.216(1)(d). "Separate ownership" includes leasing a unit
14 in a leasehold condominium under a lease that expires contemporaneously
15 with any lease, the expiration or termination of which will remove the
16 unit from the condominium.

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

24 **Sec. 10.** RCW 64.34.312 and 1989 c 43 s 3-104 are each amended to
25 read as follows:

26 (1) Within sixty days after the termination of the period of
27 declarant control provided in RCW 64.34.308(4) or, in the absence of
28 such period, within sixty days after the first conveyance of a unit in
29 the condominium, the declarant shall deliver to the association all
30 property of the unit owners and of the association held or controlled
31 by the declarant including, but not limited to:

32 (a) The original or a photocopy of the recorded declaration and
33 each amendment to the declaration;

34 (b) The certificate of incorporation and a copy or duplicate
35 original of the articles of incorporation of the association as filed
36 with the secretary of state;

37 (c) The bylaws of the association;

- 1 (d) The minute books, including all minutes, and other books and
2 records of the association;
- 3 (e) Any rules and regulations that have been adopted;
- 4 (f) Resignations of officers and members of the board who are
5 required to resign because the declarant is required to relinquish
6 control of the association;
- 7 (g) The financial records, including canceled checks, bank
8 statements, and financial statements of the association, and source
9 documents from the time of incorporation of the association through the
10 date of transfer of control to the unit owners;
- 11 (h) Association funds or the control of the funds of the
12 association;
- 13 (i) All tangible personal property of the association, represented
14 by the declarant to be the property of the association or ostensibly
15 the property of the association, and an inventory of the property;
- 16 (j) Except for alterations to a unit done by a unit owner other
17 than the declarant, a copy of the declarant's plans and specifications
18 utilized in the construction or remodeling of the condominium, with a
19 certificate of the declarant or a licensed architect or engineer that
20 the plans and specifications represent, to the best of their knowledge
21 and belief, the actual plans and specifications utilized by the
22 declarant in the construction or remodeling of the condominium;
- 23 (k) Insurance policies or copies thereof for the condominium and
24 association;
- 25 (l) Copies of any certificates of occupancy that may have been
26 issued for the condominium;
- 27 (m) Any other permits issued by governmental bodies applicable to
28 the condominium in force or issued within one year before the date of
29 transfer of control to the unit owners;
- 30 (n) All written warranties that are still in effect for the common
31 elements, or any other areas or facilities which the association has
32 the responsibility to maintain and repair, from the contractor,
33 subcontractors, suppliers, and manufacturers and all owners' manuals or
34 instructions furnished to the declarant with respect to installed
35 equipment or building systems;
- 36 (o) A roster of unit owners and eligible mortgagees and their
37 addresses and telephone numbers, if known, as shown on the declarant's
38 records and the date of closing of the first sale of each unit sold by
39 the declarant;

1 (p) Any leases of the common elements or areas and other leases to
2 which the association is a party;

3 (q) Any employment contracts or service contracts in which the
4 association is one of the contracting parties or service contracts in
5 which the association or the unit owners have an obligation or a
6 responsibility, directly or indirectly, to pay some or all of the fee
7 or charge of the person performing the service; (~~and~~)

8 (r) A copy of any qualified warranty issued to the association as
9 provided for in section 1001 of this act; and

10 (s) All other contracts to which the association is a party.

11 (2) Upon the transfer of control to the unit owners, the records of
12 the association shall be audited as of the date of transfer by an
13 independent certified public accountant in accordance with generally
14 accepted auditing standards unless the unit owners, other than the
15 declarant, by two-thirds vote elect to waive the audit. The cost of
16 the audit shall be a common expense unless otherwise provided in the
17 declaration. The accountant performing the audit shall examine
18 supporting documents and records, including the cash disbursements and
19 related paid invoices, to determine if expenditures were for
20 association purposes and the billings, cash receipts, and related
21 records to determine if the declarant was charged for and paid the
22 proper amount of assessments.

23 **Sec. 11.** RCW 64.34.410 and 2002 c 323 s 10 are each amended to
24 read as follows:

25 (1) A public offering statement shall contain the following
26 information:

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

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

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

30 (d) The relationship of the management company to the declarant, if
31 any;

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

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

- 1 (g) A brief description of the permitted uses and use restrictions
2 pertaining to the units and the common elements;
- 3 (h) A brief description of the restrictions, if any, on the renting
4 or leasing of units by the declarant or other unit owners, together
5 with the rights, if any, of the declarant to rent or lease at least a
6 majority of units;
- 7 (i) The number of existing units in the condominium and the maximum
8 number of units that may be added to the condominium;
- 9 (j) A list of the principal common amenities in the condominium
10 which materially affect the value of the condominium and those that
11 will or may be added to the condominium;
- 12 (k) A list of the limited common elements assigned to the units
13 being offered for sale;
- 14 (l) The identification of any real property not in the condominium,
15 the owner of which has access to any of the common elements, and a
16 description of the terms of such access;
- 17 (m) The identification of any real property not in the condominium
18 to which unit owners have access and a description of the terms of such
19 access;
- 20 (n) The status of construction of the units and common elements,
21 including estimated dates of completion if not completed;
- 22 (o) The estimated current common expense liability for the units
23 being offered;
- 24 (p) An estimate of any payment with respect to the common expense
25 liability for the units being offered which will be due at closing;
- 26 (q) The estimated current amount and purpose of any fees not
27 included in the common expenses and charged by the declarant or the
28 association for the use of any of the common elements;
- 29 (r) Any assessments which have been agreed to or are known to the
30 declarant and which, if not paid, may constitute a lien against any
31 units or common elements in favor of any governmental agency;
- 32 (s) The identification of any parts of the condominium, other than
33 the units, which any individual owner will have the responsibility for
34 maintaining;
- 35 (t) If the condominium involves a conversion condominium, the
36 information required by RCW 64.34.415;
- 37 (u) Whether timesharing is restricted or prohibited, and if
38 restricted, a general description of such restrictions;

- 1 (v) A list of all development rights reserved to the declarant and
2 all special declarant rights reserved to the declarant, together with
3 the dates such rights must terminate, and a copy of or reference by
4 recording number to any recorded transfer of a special declarant right;
- 5 (w) A description of any material differences in terms of
6 furnishings, fixtures, finishes, and equipment between any model unit
7 available to the purchaser at the time the agreement for sale is
8 executed and the unit being offered;
- 9 (x) Any liens on real property to be conveyed to the association
10 required to be disclosed pursuant to RCW 64.34.435(2)(b);
- 11 (y) A list of any physical hazards known to the declarant which
12 particularly affect the condominium or the immediate vicinity in which
13 the condominium is located and which are not readily ascertainable by
14 the purchaser;
- 15 (z) A brief description of any construction warranties to be
16 provided to the purchaser;
- 17 (aa) Any building code violation citations received by the
18 declarant in connection with the condominium which have not been
19 corrected;
- 20 (bb) A statement of any unsatisfied judgments or pending suits
21 against the association, a statement of the status of any pending suits
22 material to the condominium of which the declarant has actual
23 knowledge, and a statement of any litigation brought by an owners'
24 association, unit owner, or governmental entity in which the declarant
25 or any affiliate of the declarant has been a defendant, arising out of
26 the construction, sale, or administration of any condominium within the
27 previous five years, together with the results thereof, if known;
- 28 (cc) Any rights of first refusal to lease or purchase any unit or
29 any of the common elements;
- 30 (dd) The extent to which the insurance provided by the association
31 covers furnishings, fixtures, and equipment located in the unit;
- 32 (ee) A notice which describes a purchaser's right to cancel the
33 purchase agreement or extend the closing under RCW 64.34.420, including
34 applicable time frames and procedures;
- 35 (ff) Any reports or statements required by RCW 64.34.415 or
36 64.34.440(6)(a). RCW 64.34.415 shall apply to the public offering
37 statement of a condominium in connection with which a final certificate
38 of occupancy was issued more than sixty calendar months prior to the

1 preparation of the public offering statement whether or not the
2 condominium is a conversion condominium as defined in RCW
3 64.34.020(10);

4 (gg) A list of the documents which the prospective purchaser is
5 entitled to receive from the declarant before the rescission period
6 commences;

7 (hh) A notice which states: A purchaser may not rely on any
8 representation or express warranty unless it is contained in the public
9 offering statement or made in writing signed by the declarant or by any
10 person identified in the public offering statement as the declarant's
11 agent;

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

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

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

24 (ll) A notice that is substantially in the form required by RCW
25 64.50.050; and

26 (mm) A statement, as required by section 301 of this act, as to
27 whether the units or common elements of the condominium are covered by
28 a qualified warranty, and a history of claims under any such warranty.

29 (2) The public offering statement shall include copies of each of
30 the following documents: The declaration, the survey map and plans,
31 the articles of incorporation of the association, bylaws of the
32 association, rules and regulations, if any, current or proposed budget
33 for the association, and the balance sheet of the association current
34 within ninety days if assessments have been collected for ninety days
35 or more.

36 If any of the foregoing documents listed in this subsection are not
37 available because they have not been executed, adopted, or recorded,
38 drafts of such documents shall be provided with the public offering

1 statement, and, before closing the sale of a unit, the purchaser shall
2 be given copies of any material changes between the draft of the
3 proposed documents and the final documents.

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

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

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

15 NEW SECTION. **Sec. 12.** Sections 2, 5, and 6 of this act apply only
16 to condominiums created by declarations recorded on or after July 1,
17 2004.

18 NEW SECTION. **Sec. 13.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

22 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act take
23 effect July 1, 2004.

24 **ARTICLE 1**

25 **GENERAL PROVISIONS**

26 NEW SECTION. **Sec. 101.** DEFINITIONS. The definitions in this
27 section apply throughout this chapter unless the context clearly
28 requires otherwise.

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

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

31 (3) "Building envelope" means the assemblies, components, and
32 materials of a building that are intended to separate and protect the
33 interior space of the building from the adverse effects of exterior
34 climatic conditions.

- 1 (4) "Common element" has the meaning in RCW 64.34.020.
- 2 (5) "Condominium" has the meaning in RCW 64.34.020.
- 3 (6) "Construction professional" has the meaning in RCW 64.50.010.
- 4 (7) "Conversion condominium" has the meaning in RCW 64.34.020.
- 5 (8) "Declarant" has the meaning in RCW 64.34.020.
- 6 (9) "Declarant control" has the meaning in RCW 64.34.020.
- 7 (10) "Defect" means any aspect of a condominium unit or common
8 element which constitutes a breach of the implied warranties set forth
9 in RCW 64.34.445.
- 10 (11) "Limited common element" has the meaning in RCW 64.34.020.
- 11 (12) "Material" means substantive, not simply formal; significant
12 to a reasonable person; not trivial or insignificant. When used with
13 respect to a particular construction defect, "material" does not
14 require that the construction defect render the unit or common element
15 unfit for its intended purpose or uninhabitable.
- 16 (13) "Mediation" means a collaborative process in which two or more
17 parties meet and attempt, with the assistance of a mediator, to resolve
18 issues in dispute between them.
- 19 (14) "Mediation session" means a meeting between two or more
20 parties to a dispute during which they are engaged in mediation.
- 21 (15) "Mediator" means a neutral and impartial facilitator with no
22 decision-making power who assists parties in negotiating a mutually
23 acceptable settlement of issues in dispute between them.
- 24 (16) "Person" has the meaning in RCW 64.34.020.
- 25 (17) "Public offering statement" has the meaning in RCW 64.34.410.
- 26 (18) "Qualified insurer" means an entity that holds a certificate
27 of authority under RCW 48.05.030, or an eligible insurer under chapter
28 48.15 RCW.
- 29 (19) "Qualified warranty" means an insurance policy issued by a
30 qualified insurer that complies with the requirements of this chapter.
31 A qualified warranty includes coverage for repair of physical damage
32 caused by the defects covered by the qualified warranty, except to the
33 extent of any exclusions and limitations under this chapter.
- 34 (20) "Resale certificate" means the statement to be delivered by
35 the association under RCW 64.34.425.
- 36 (21) "Transition date" means the date on which the declarant is
37 required to deliver to the association the property of the association
38 under RCW 64.34.312.
- 39 (22) "Unit" has the meaning in RCW 64.34.020.

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

2 **ARTICLE 2**

3 **EXCLUSIVE REMEDY AND PROCEDURE**

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

5 NEW SECTION. **Sec. 201.** No declarant, affiliate of a declarant, or
6 construction professional is liable to a unit owner or an association
7 for damages awarded for repair of construction defects and resulting
8 physical damage, and chapter 64.50 RCW shall not apply if: (1) Every
9 unit is the subject of a qualified warranty; and (2) the association
10 has been issued a qualified warranty with respect to the common
11 elements. If a construction professional agrees on terms satisfactory
12 to the qualified insurer to partially or fully indemnify the qualified
13 insurer with respect to a defect caused by the construction
14 professional, the liability of the construction professional for the
15 defect and resulting physical damage caused by him or her shall not
16 exceed damages recoverable under the terms of the qualified warranty
17 for the defect. Any indemnity claim by the qualified insurer shall be
18 by separate action or arbitration, and no unit owner or association
19 shall be joined therein. A qualified warranty may also be provided in
20 the case of improvements made or contracted for by a declarant as part
21 of a conversion condominium, and in such case, declarant's liability
22 with respect to such improvements shall be limited as set forth in this
23 section.

24 **ARTICLE 3**

25 **DISCLOSURE**

26 NEW SECTION. **Sec. 301.** (1) Every public offering statement and
27 resale certificate shall affirmatively state whether or not the unit
28 and/or the common elements are covered by a qualified warranty, and
29 shall provide to the best knowledge of the person preparing the public
30 offering statement or resale certificate a history of claims under the
31 warranty.

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

- 1 (a) The type of claim that was made;
- 2 (b) The resolution of the claim;
- 3 (c) The type of repair performed;
- 4 (d) The date of the repair;
- 5 (e) The cost of the repair; and
- 6 (f) The name of the person or entity who performed the repair.

7 **ARTICLE 4**

8 **MINIMUM COVERAGE STANDARDS FOR QUALIFIED WARRANTIES**

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

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

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

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

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

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

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

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

34 NEW SECTION. **Sec. 402.** FIVE-YEAR BUILDING ENVELOPE WARRANTY. The
35 minimum coverage for the building envelope warranty is five years for

1 defects in the building envelope of a condominium, including a defect
2 which permits unintended water penetration so that it causes, or is
3 likely to cause, material damage to the unit or common elements.

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

- 6 (1) Any defect in materials and labor that results in the failure
7 of a load-bearing part of the condominium; and
- 8 (2) Any defect which causes structural damage that materially and
9 adversely affects the use of the condominium for residential occupancy.

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

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

- 13 (a) Actual occupancy of the unit; or
- 14 (b) Transfer of legal title to the unit.

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

19 NEW SECTION. **Sec. 405.** BEGINNING DATES FOR SPECIAL CASES;
20 DECLARANT CONTROL. (1) If an unsold unit is occupied as a rental unit,

21 the qualified warranty beginning date for such unit is the date the
22 unit is first occupied.

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

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

1 make warranty claims at no later than sixteen full calendar months
2 following the beginning date of the common element warranty.

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

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

16 NEW SECTION. **Sec. 407.** WARRANTY ON REPAIRS AND REPLACEMENTS. (1)
17 All repairs and replacements made under a qualified warranty must be
18 warranted by the qualified warranty against defects in materials and
19 labor until the later of:

20 (a) The first anniversary of the date of completion of the repair
21 or replacement; or

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

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

26 **ARTICLE 5**

27 **PERMITTED TERMS FOR QUALIFIED WARRANTIES**

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

30 (1) If the qualified insurer makes a payment or assumes liability
31 for any payment or repair under a qualified warranty, the owner and
32 association must fully support and assist the qualified insurer in
33 pursuing any rights that the qualified insurer may have against the
34 declarant, and any construction professional that has contractual or

1 common law obligations to the declarant, whether such rights arose by
2 contract, subrogation, or otherwise.

3 (2) Warranties or representations made by a declarant which are in
4 addition to the warranties set forth in this chapter are not binding on
5 the qualified insurer unless and to the extent specifically provided in
6 the text of the warranty; and disclaimers of specific defects made by
7 agreement between the declarant and the unit purchaser under RCW
8 64.34.450 act as an exclusion of the specified defect from the warranty
9 coverage.

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

- 13 (a) To monitor the unit or its components;
- 14 (b) To inspect for required maintenance;
- 15 (c) To investigate complaints or claims; or
- 16 (d) To undertake repairs under the qualified warranty.

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

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

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

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

34 ARTICLE 6

35 PERMITTED EXCLUSIONS FROM QUALIFIED WARRANTIES--GENERAL

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

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

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

6 (c) Roads, curbs, and lanes;

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

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

11 (f) Septic tanks or septic fields;

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

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

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

20 (a) A driveway or walkway;

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

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

24 (d) A retaining wall that:

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

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

29 ARTICLE 7

30 PERMITTED EXCLUSIONS--DEFECTS

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

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

35 (2) Normal shrinkage of materials caused by drying after
36 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;

37 (11) Changes, alterations, or additions made to a unit by anyone
38 after initial occupancy, except those performed by the declarant or its

1 employees, agents, or subcontractors as required by the qualified
2 warranty or under the construction contract or sales agreement;

3 (12) Contaminated soil;

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

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

8 **ARTICLE 8**

9 **MONETARY LIMITS ON QUALIFIED WARRANTY COVERAGE**

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

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

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

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

21 (a) The cost of repairs;

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

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

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

32 **ARTICLE 9**

33 **PROHIBITED POLICY PROVISIONS**

34 NEW SECTION. **Sec. 901.** (1) A qualified insurer must not include

1 in a qualified warranty any provision that requires an owner or the
2 association:

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

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

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

11 **ARTICLE 10**
12 **CONSEQUENCES OF NOT PROVIDING INFORMATION**

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

27 (2) If an original owner or the association has not been provided
28 with the manufacturer's documentation or warranty information, or both,
29 or with recommended maintenance and repair procedures for any component
30 of a unit, the relevant exclusion does not apply. The common element
31 warranty is included in the written warranty to be provided to the
32 association under RCW 64.34.312.

33 **ARTICLE 11**
34 **MANDATORY NOTICE OF EXPIRATION OF WARRANTY**

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

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

- 6 (a) The qualified warranty number; and
- 7 (b) Copies of any relevant documentation and correspondence between
8 the claimant and the declarant, to the extent any such documentation
9 and correspondence is in the control or possession of the claimant.

10 **ARTICLE 14**

11 **HANDLING OF CLAIMS**

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

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

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

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

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

34 **ARTICLE 15**

35 **MEDIATION OF DISPUTED CLAIMS**

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

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

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

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

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

20 (b) The qualifications of the mediator;

21 (c) The mediator's fees;

22 (d) The mediator's availability; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (b) The matters in dispute.

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

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

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

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

23 (i) Equally by the parties; or

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

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

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

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

36 (18) A mediation session is concluded when:

37 (a) All issues are resolved;

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

1 (c) The mediation session is completed and there is no agreement to
2 continue.

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

8 (a) Facts;

9 (b) Issues; and

10 (c) Future procedural steps.

11 **ARTICLE 16**
12 **ARBITRATION**

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

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

28 (2) All disputes shall be heard by one qualified arbitrator, unless
29 the parties agree to use three arbitrators. If three arbitrators are
30 used, one shall be appointed by each of the disputing parties and the
31 first two arbitrators shall appoint the third, who will chair the
32 panel. The parties shall select the identity and number of the
33 arbitrator or arbitrators after the demand for arbitration is made.
34 If, within thirty days after the effective date of the demand for
35 arbitration, the parties fail to agree on an arbitrator or the agreed
36 number of arbitrators fail to be appointed, then an arbitrator or

1 arbitrators shall be appointed under RCW 7.04.050 by the presiding
2 judge of the superior court of the county in which the condominium is
3 located;

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

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

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

33 (6) Demand for arbitration given pursuant to subsection (1) of this
34 section commences an arbitration for purposes of RCW 64.34.452;

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

37 **ARTICLE 17**
38 **ATTORNEYS' FEES**

1 (e) Does the past conduct of the applicant and its directors,
2 officers, employees, and consultants provide a reasonable indication of
3 good business practices, and reasonable grounds for belief that its
4 undertakings will be carried on in accordance with all legal
5 requirements; and

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

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

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

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

17 (b) To determine if the applicant or, in the case of a corporation,
18 its directors, officers, employees, and consultants possess reasonable
19 technical expertise to construct the proposed unit, including specific
20 technical knowledge or expertise in any building systems, construction
21 methods, products, treatments, technologies, and testing and inspection
22 methods proposed to be employed;

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

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

31 (e) To determine if:

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

35 (ii) The general contractor meets the criteria set out in this
36 section;

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

- 1 (g) Establishing or requiring compliance with specific construction
2 standards for the unit;
- 3 (h) Restricting the applicant from constructing some types of units
4 or using some types of construction or systems;
- 5 (i) Requiring the use of specific types of systems, consultants, or
6 personnel for the construction;
- 7 (j) Requiring an independent review of the unit building plans or
8 consultants' reports or any part thereof;
- 9 (k) Requiring third-party verification or certification of the
10 construction of the unit or any part thereof;
- 11 (l) Providing for inspection of the unit or any part thereof during
12 construction;
- 13 (m) Requiring ongoing monitoring of the unit, or one or more of its
14 components, following completion of construction;
- 15 (n) Requiring that the declarant or any of the design
16 professionals, engineering professionals, consultants, general
17 contractors, or subcontractors maintain minimum levels of insurance,
18 bonding, or other security naming the potential owners and qualified
19 insurer as loss payees or beneficiaries of the insurance, bonding, or
20 security to the extent possible;
- 21 (o) Requiring that the declarant provide a list of all design
22 professionals and other consultants who are involved in the design or
23 construction inspection, or both, of the unit;
- 24 (p) Requiring that the declarant provide a list of trades employed
25 in the construction of the unit, and requiring evidence of their
26 current trade's certification, if applicable.

27 **ARTICLE 20**
28 **MISCELLANEOUS**

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

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

34 NEW SECTION. **Sec. 2003.** Sections 101 through 2002 of this act

1 constitute a new chapter in Title 64 RCW."

2 Correct the title.

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