

FINAL BILL REPORT

2ESSB 5536

C 201 L 04

Synopsis as Enacted

Brief Description: Resolving claims relating to condominium construction.

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Finkbeiner, Reardon, Roach, Hale, Horn, Benton, Morton, Hewitt, Schmidt, Kastama, Sheahan, Mulliken, Johnson, Parlette, Stevens, West and Esser).

Senate Committee on Judiciary
House Committee on Judiciary

Background: The Washington Condominium Act (WCA) creates a system of warranties of quality, both implied and express. Implied warranties may be waived in writing, except that, in the case of a residential unit, any waiver must be specific as to the defect waived and must be "a part of the basis of the bargain." In addition to implied warranties by a vendor or dealer, any seller of a unit makes an express warranty of quality by any written statement relating to the condition of the unit or the legality of its use or by any model or written description that purports to show the unit's physical characteristics. Under the act, any right or obligation is enforceable by judicial proceeding. Nothing in the act prevents parties from mediating or otherwise settling their disputes as they wish, but the act restricts the parties' ability to contractually foreclose enforcement by judicial proceeding.

Summary: Implied warranties extend to the extent of defective materials, sound engineering and construction, workmanship, and compliance with all laws. The condo owner must show that the defect adversely affected the performance of the condo. An adverse effect must be more than technical, and must be significant to a reasonable person. It need not render the condo uninhabitable or unfit for use. Proof of breach is not proof of damages. Damages for a breach are cost of repairs, unless cost of repair is grossly disproportionate to the loss in market value, then damages are limited to loss in market value.

A seven-member committee (three Senate, three House, one Governor-appointed) is created to study third party water penetration inspections and arbitration as an alternative to court action. The due date for the report is December 31, 2004.

The declaration of condominium or bylaws of the condominium must include a statement of the board's decision-making standards. Resale certificates must disclose the status of any legal proceedings in which the association is a plaintiff or defendant.

A warranty insurance program is established as an alternative to the implied warranty provisions of the WCA. The public offering statement must include a statement as to whether a qualified warranty applies to the condo and the history of claims. If a condominium declarant purchases warranty insurance that meets certain requirements, the declarant and any construction professional are no longer liable to a condo unit owner for breach of a warranty under the WCA. Instead, the condo owner's recourse for a warranty breach is to file a claim

under the warranty insurance policy. If a construction professional agrees to indemnify the insurer for loss due to construction defects caused by the construction professional, the liability of the construction professional is limited to the insurance limits of the warranty.

Votes on Final Passage:

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|--------|----|---|----------------------------|
| Senate | 46 | 3 | |
| House | 94 | 0 | (House amended) |
| Senate | | | (Senate refused to concur) |
| House | 97 | 0 | (House amended) |
| Senate | 49 | 0 | (Senate concurred) |

Effective: June 10, 2004
July 1, 2004 (Sections 1-13)