
HOUSE BILL 1902

State of Washington 58th Legislature 2003 Regular Session

By Representatives Kessler, Carrell and Lantz

Read first time 02/13/2003. Referred to Committee on Judiciary.

1 AN ACT Relating to implied warranties under the condominium act;
2 and amending RCW 64.34.410 and 64.34.450.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 64.34.410 and 2002 c 323 s 10 are each amended to read
5 as follows:

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

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

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

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

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

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

19 (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 in substantially the following form:

8 STATUTORY WARRANTIES:

9 Pursuant to RCW 64.34.445(2), the declarant warrants as follows:

10 (1) A unit will be in at least as good condition at the earlier of
11 the time of the conveyance or delivery of possession as it was at the
12 time of contracting, reasonable wear and tear and damage by casualty or
13 condemnation excepted; and

14 (2) A unit and the common elements in the condominium are suitable
15 for the ordinary uses of real estate of its type and that any
16 improvements made or contracted for by the declarant or dealer will be:

17 (a) Free from defective materials; and

18 (b) Constructed in accordance with sound engineering and
19 construction standards, and in a workmanlike manner in compliance with
20 all laws then applicable to such improvements. Notwithstanding
21 anything contained in this statement to the contrary, these warranties
22 may not be varied, altered, or waived. However, the declarant may
23 disclaim liability for specific defects or specific failures to comply
24 with applicable law, known by the declarant or the dealer to be in
25 existence at the time of the purchase and listed as required by (ii) of
26 this subsection.

27 (ii) A notice which states in substantially the following form:

28 ITEMS EXCLUDED FROM WARRANTY:

29 The following specific defects or failures to comply with
30 applicable law are currently known by the declarant or the dealer to be
31 in existence at the time of your purchase. As such, the declarant
32 provides no warranty as to the following items and buyer acknowledges
33 that no statutory warranty exists as to the following defects:

34 1.

35 2.

36 (jj) A purchaser may not rely on any representation or express

1 warranty unless it is contained in the public offering statement or
2 made in writing signed by the declarant or by any person identified in
3 the public offering statement as the declarant's agent;

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

10 ~~((+jj))~~ (ll) Any other information and cross-references which the
11 declarant believes will be helpful in describing the condominium to the
12 recipients of the public offering statement, all of which may be
13 included or not included at the option of the declarant;

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

17 ~~((+ll))~~ (nn) A notice that is substantially in the form required
18 by RCW 64.50.050.

19 (2) The public offering statement shall include copies of each of
20 the following documents: The declaration, the survey map and plans,
21 the articles of incorporation of the association, bylaws of the
22 association, rules and regulations, if any, current or proposed budget
23 for the association, and the balance sheet of the association current
24 within ninety days if assessments have been collected for ninety days
25 or more.

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

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

36 (4) The disclosures required by subsection (1)(ee), ~~((+hh), +ii),~~
37 ~~and +ll))~~ (jj), (kk), and (nn) of this section shall be located at the

1 top of the first page of the public offering statement and be typed or
2 printed in ten-point bold face type size.

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

6 **Sec. 2.** RCW 64.34.450 and 1989 c 43 s 4-113 are each amended to
7 read as follows:

8 (1) Except as limited by subsection (2) of this section, implied
9 warranties of quality:

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

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

15 (2) With respect to a purchaser of a unit that may be occupied for
16 residential use, no general disclaimer of implied warranties of quality
17 is effective, but a declarant and any dealer may disclaim liability
18 ~~((in an instrument signed by the purchaser for a specified defect or
19 specified failure to comply with applicable law, if the defect or
20 failure entered into and became a part of the basis of the bargain))~~
21 if, the dealer or declarant fully discloses a specific defect or
22 specific failure to comply with applicable law, known by the declarant
23 or dealer to be in existence at the time of the purchase, in the public
24 offering statement pursuant to RCW 64.34.410(1)(ii).

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