
HOUSE BILL 3131

State of Washington 58th Legislature 2004 Regular Session

By Representatives Tom, Priest and Lantz

Read first time 01/28/2004. Referred to Committee on Judiciary.

1 AN ACT Relating to providing for insured warranty standards for
2 condominiums; and adding a new chapter to Title 64 RCW.

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

4 **ARTICLE 1**

5 **GENERAL PROVISIONS**

6 NEW SECTION. **Sec. 101.** DEFINITIONS. The definitions in this
7 section apply throughout this chapter unless the context clearly
8 requires otherwise.

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

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

11 (3) "Authorized insurer" means an entity which holds a certificate
12 of authority under RCW 48.05.030, or an eligible insurer under chapter
13 48.15 RCW.

14 (4) "Common element" has the meaning in RCW 64.34.020.

15 (5) "Condominium" has the meaning in RCW 64.34.020.

16 (6) "Construction professional" has the meaning in RCW 64.50.010.

17 (7) "Declarant" has the meaning in RCW 64.34.020.

1 (8) "Defect" means any defect in the design or construction of a
2 condominium, and all physical damages arising from or in connection
3 with the defect.

4 (9) "Limited common element" has the meaning in RCW 64.34.020.

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

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

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

13 (13) "Person" has the meaning in RCW 64.34.020.

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

15 (15) "Qualified warranty" means a warranty issued by a qualified
16 insurer which complies with the requirements of this chapter.

17 (16) "Resale certificate" means the statement to be delivered by
18 the association under RCW 64.34.425.

19 (17) "Transition date" means the date on which the declarant is
20 required to deliver to the association the property of the association
21 under RCW 64.34.312.

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

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

24 **ARTICLE 2**

25 **EXCLUSIVE REMEDY AND PROCEDURE**

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

27 NEW SECTION. **Sec. 201.** No declarant, affiliate of a declarant, or
28 construction professional is liable to a unit owner or an association
29 for breach of any implied warranty set forth in RCW 64.34.445, or
30 otherwise with respect to a construction defect in the unit owner's
31 unit, or in the common or limited common elements in the condominium
32 if: (1) Every unit owned by a person other than a declarant has a
33 qualified warranty issued to the unit purchaser; and (2) the
34 association has been issued a qualified warranty with respect to the
35 common elements for the condominium on or before the transition date.
36 If a construction professional agrees on terms satisfactory to the

1 qualified insurer to partially or fully indemnify the qualified insurer
2 with respect to a construction defect caused by the construction
3 professional, and agrees with the declarant and the qualified insurer
4 to be joined in an arbitration under the terms of the qualified
5 warranty, the liability of the construction professional for the
6 construction defect caused by him or her is limited to damages
7 recoverable under the terms of the qualified warranty for the
8 construction defect.

9 **ARTICLE 3**
10 **DISCLOSURE**

11 NEW SECTION. **Sec. 301.** (1) Every Public offering statement and
12 resale certificate shall affirmatively state whether or not the unit
13 and/or the common elements are covered by a qualified warranty, and
14 shall provide to the best knowledge of the person preparing the public
15 offering statement or resale certificate a history of claims under the
16 warranty.

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

- 21 (a) The type of claim that was made;
- 22 (b) The resolution of the claim;
- 23 (c) The type of repair performed;
- 24 (d) The date of the repair;
- 25 (e) The cost of the repair; and
- 26 (f) The name of the person or entity who performed the repair.

27 **ARTICLE 4**
28 **MINIMUM COVERAGE STANDARDS FOR QUALIFIED WARRANTIES**

29 NEW SECTION. **Sec. 401.** TWO-YEAR MATERIALS AND LABOR WARRANTY.
30 (1) The minimum coverage for the two-year materials and labor warranty
31 is:
32 (a) In the first twelve months, for other than the common elements,
33 (i) coverage for any defect in materials and labor; and (ii) subject to

1 subsection (2) of this section, coverage for a violation of the
2 building code;

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

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

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

- 18 (a) Constitutes an unreasonable health or safety risk; or
- 19 (b) Has resulted in, or is likely to result in, material damage to
20 the unit or common elements.

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

26 NEW SECTION. **Sec. 403.** TEN-YEAR STRUCTURAL DEFECTS WARRANTY. The
27 minimum coverage for the structural defects warranty is ten years for:
28 (1) Any defect in materials and labor that results in the failure
29 of a load-bearing part of the condominium; and
30 (2) Any defect which causes structural damage that materially and
31 adversely affects the use of the condominium for residential occupancy.

32 NEW SECTION. **Sec. 404.** BEGINNING DATES FOR WARRANTY COVERAGE.
33 (1) For the unit, the beginning date of the qualified warranty coverage
34 is the earlier of:
35 (a) Actual occupancy of the unit; or

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

2 (2) For the common elements, the beginning date of a qualified
3 warranty is the later of:

4 (a) Actual occupancy of the last available unit in each separate
5 multiunit building, comprised by the condominium;

6 (b) Transfer of legal title to the last available unit in each
7 separate multiunit building, comprised by the condominium; or

8 (c) Final completion of all the common elements in each separate
9 multiunit building, comprised by the condominium.

10 NEW SECTION. Sec. 405. BEGINNING DATES FOR SPECIAL CASES. (1) If
11 an unsold unit is occupied as a rental unit, the qualified warranty
12 beginning date is the date the unit is first occupied.

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

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

21 (2) If a qualified insurer establishes a maximum amount per day for
22 claims for living expenses, the limit must be the greater of one
23 hundred dollars per day or a reasonable amount commensurate with the
24 nature of the unit for the complete reimbursement of the actual
25 accommodation expenses incurred by the owner at a hotel, motel, or
26 other rental accommodation up to the day the unit is ready for
27 occupancy, subject to the owner receiving twenty-four hours' advance
28 notice.

29 NEW SECTION. Sec. 407. WARRANTY ON REPAIRS AND REPLACEMENTS. (1)
30 all repairs and replacements made under a qualified warranty must be
31 warranted against defects in materials and labor until the later of:

32 (a) The first anniversary of the date of completion of the repair
33 or replacement; or

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

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

4 **ARTICLE 5**

5 **PERMITTED TERMS FOR QUALIFIED WARRANTIES**

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

8 (1) If the qualified insurer makes a payment or assumes liability
9 for any payment or repair under a qualified warranty:

10 (a) The qualified insurer is subrogated to all rights of recovery
11 of an owner or association against the declarant;

12 (b) The qualified insurer may bring an action at its own expense,
13 in the name of the owner or of the qualified insurer, to enforce the
14 rights; and

15 (c) The owner and association must fully support and assist the
16 qualified insurer in pursuing subrogated rights if the qualified
17 insurer pursues them.

18 (2) Warranties or representations made by a declarant which are in
19 addition to the implied warranties set forth in this chapter are not
20 binding on the qualified insurer unless and to the extent specifically
21 provided in the text of the warranty; and disclaimers of specific
22 defects made by agreement between the declarant and the unit purchaser
23 under RCW 64.34.450 act as an exclusion of the specified defect from
24 the warranty coverage.

25 (3) An owner and the association must permit the qualified insurer
26 or declarant, or both, to enter the unit at all reasonable times, after
27 reasonable notice to the owner and the association:

28 (a) To monitor the unit or its components;

29 (b) To inspect for required maintenance;

30 (c) To investigate complaints or claims; or

31 (d) To undertake repairs under the qualified warranty.

32 If any reports are produced as a result of any of the activities
33 referred to in (a) through (d) of this subsection, the reports must be
34 provided to the owner and the association on request.

35 (4) An owner and the association must provide to the qualified
36 insurer all information and documentation that the owner and the

1 association have available, as reasonably required by the qualified
2 insurer to investigate a claim or maintenance requirement, or to
3 undertake repairs under the qualified warranty.

4 (5) If damage to a unit is caused by the unreasonable refusal of
5 the association, or an owner or occupant to permit the qualified
6 insurer or declarant access to the unit for the reasons in subsection
7 (3) of this section, or to provide the information required by
8 subsection (4) of this section, that damage is excluded from the
9 qualified warranty.

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

13 ARTICLE 6

14 PERMITTED EXCLUSIONS FROM QUALIFIED WARRANTIES--GENERAL

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

17 (a) Landscaping, both hard and soft, including plants, fencing,
18 detached patios, planters, gazebos, and similar structures;

19 (b) Any commercial use area and any construction associated with a
20 commercial use area;

21 (c) Roads, curbs, and lanes;

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

24 (e) Municipal services operation, including sanitary and storm
25 sewer;

26 (f) Septic tanks or septic fields;

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

29 (h) A water well, but excluding equipment installed for the
30 operation of a water well used exclusively for a unit, which equipment
31 is part of the plumbing system for that unit for the purposes of the
32 qualified warranty.

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

35 (a) A driveway or walkway;

- 1 (b) Recreational and amenity facilities situated in, or included as
2 the common property of, a unit;
- 3 (c) A parking structure in a multiunit building;
- 4 (d) A retaining wall that:
- 5 (i) An authority with jurisdiction requires to be designed by a
6 professional engineer; or
- 7 (ii) Is reasonably required for the direct support of, or retaining
8 soil away from, a unit, driveway, or walkway.

9 **ARTICLE 7**

10 **PERMITTED EXCLUSIONS--DEFECTS**

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

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

15 (2) Normal shrinkage of materials caused by drying after
16 construction;

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

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

20 (5) Any damage caused by an owner or third party, including:

21 (a) Negligent or improper maintenance or improper operation by
22 anyone other than the declarant or its employees, agents, or
23 subcontractors;

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

27 (c) Alterations to the unit, including converting nonliving space
28 into living space or converting a unit into two or more units, by
29 anyone other than the declarant or its employees, agents, or
30 subcontractors while undertaking their obligations under the sales
31 contract; and

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

34 (6) An owner failing to take timely action to prevent or minimize
35 loss or damage, including failing to give prompt notice to the

1 qualified insurer of a defect or discovered loss, or a potential defect
2 or loss;

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

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

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

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

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

21 (12) Contaminated soil;

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

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

26 **ARTICLE 8**
27 **MONETARY LIMITS ON QUALIFIED WARRANTY COVERAGE**

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

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

33 (b) For common elements, the lesser of (i) the total original
34 purchase price for all components of the multiunit building, or (ii)
35 one hundred thousand dollars times the number of units of the
36 condominium.

1 (2) If a condominium consists of a number of buildings, the limit
2 under subsection (1)(b) of this section applies to each building.

3 (3) When calculating the cost of warranty claims under the standard
4 limits under a qualified warranty, a qualified insurer may include:

5 (a) The cost of repairs;

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

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

10 (4) The minimum amounts in subsections (1) through (3) of this
11 section shall be adjusted at the end of each calendar year after the
12 effective date by an amount equal to the percentage change in the
13 consumer price index for all urban consumers, all items, as published
14 from time to time by the United States department of labor. The
15 adjustment does not affect any qualified warranty issued before the
16 adjustment date.

17 ARTICLE 9

18 PROHIBITED POLICY PROVISIONS

19 NEW SECTION. **Sec. 901.** (1) A qualified insurer must not include
20 in a qualified warranty any provision that requires an owner:

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

23 (b) To pay a deductible for the repair of any defect covered by the
24 qualified warranty.

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

27 ARTICLE 10

28 CONSEQUENCES OF NOT PROVIDING INFORMATION

29 NEW SECTION. **Sec. 1001.** (1) If coverage under a qualified
30 warranty is conditional on an owner undertaking proper maintenance, or
31 if coverage is excluded for damage caused by negligence by the owner or
32 association with respect to maintenance or repair by the owner or
33 association, the conditions or exclusions apply only to maintenance
34 requirements or procedures: (a) Provided to the original owner or

1 association by the declarant or qualified insurer, including an
2 estimation of dues as provided in the budget; (b) recommended to the
3 association by its professional management, if any; or (c) which would
4 be obvious to a reasonable and prudent layperson. Recommended
5 maintenance requirements and procedures are sufficient for purposes of
6 this subsection if consistent with knowledge generally available in the
7 construction industry at the time the qualified warranty is issued.

8 (2) If an original owner has not been provided with the
9 manufacturer's documentation or warranty information, or both, or with
10 recommended maintenance and repair procedures for any component of a
11 unit, the relevant exclusion does not apply.

12 **ARTICLE 11**

13 **MANDATORY NOTICE OF EXPIRATION OF WARRANTY**

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

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

23 **ARTICLE 12**

24 **DUTY TO MITIGATE**

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

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

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

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

- 1 (a) The unit is unoccupied;
2 (b) The unit is occupied by someone other than the owner;
3 (c) Water penetration does not appear to be causing damage; or
4 (d) The owner advises the homeowners' association corporation about
5 the defect.

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

10 **ARTICLE 13**
11 **NOTICE OF CLAIM**

12 NEW SECTION. **Sec. 1301.** (1) Within a reasonable time after the
13 discovery of a defect and before the expiration of the applicable
14 qualified warranty coverage, a claimant must give to the qualified
15 insurer and the declarant written notice in reasonable detail that
16 provides particulars of any specific defects covered by the qualified
17 warranty.

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

- 20 (a) The qualified warranty number; and
21 (b) Copies of any relevant documentation and correspondence between
22 the claimant and the declarant.

23 **ARTICLE 14**
24 **HANDLING OF CLAIMS**

25 NEW SECTION. **Sec. 1401.** (1) A qualified insurer must, on receipt
26 of a notice of a claim under a qualified warranty, promptly make
27 reasonable attempts to contact the claimant to arrange an evaluation of
28 the claim.

29 (2) The qualified insurer must make all reasonable efforts to avoid
30 delays in responding to a claim under a qualified warranty, evaluating
31 the claim, and scheduling any required repairs.

32 (3) If, after evaluating a claim under a qualified warranty, the
33 qualified insurer determines that the claim is not valid, or not
34 covered under the qualified warranty, the qualified insurer must: (a)

1 Notify the claimant of the decision in writing; (b) set out the reasons
2 for the decision; and (c) set out the rights of the parties under the
3 third-party dispute resolution process for the warranty.

4 (4) Repairs must be undertaken in a timely manner, with reasonable
5 consideration given to weather conditions and the availability of
6 materials and labor.

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

11 **ARTICLE 15**

12 **MEDIATION OF DISPUTED CLAIMS**

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

18 (2) If a party delivers a request to mediate under subsection (1)
19 of this section, the qualified insurer and the party must attend a
20 mediation session in relation to the dispute and may invite to
21 participate in the mediation any other party to the dispute who may be
22 liable.

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

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

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

32 (b) The qualifications of the mediator;

33 (c) The mediator's fees;

34 (d) The mediator's availability; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (b) The matters in dispute.

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

34 (14) Before the first mediation session, the parties must enter
35 into a retainer with the mediator which must:

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

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

38 (i) Equally by the parties; or

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

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

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

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

13 (18) A mediation session is concluded when:

14 (a) All issues are resolved;

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

17 (c) The mediation session is completed and there is no agreement to
18 continue.

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

24 (a) Facts;

25 (b) Issues; and

26 (c) Future procedural steps.

27 **ARTICLE 16**
28 **ARBITRATION**

29 NEW SECTION. **Sec. 1601.** A qualified warranty may include
30 mandatory binding arbitration of all disputes arising out of or in
31 connection with a qualified warranty. The provision may provide that
32 all claims for a single condominium be heard by the same arbitrator,
33 and may permit the joinder of any other person or entity which has
34 agreed by contract to be joined in arbitration. The arbitration shall
35 comply with the following minimum procedural standards:

1 (1) Any demand for arbitration shall be delivered by certified mail
2 return receipt requested, and by ordinary first class mail. The party
3 initiating the arbitration shall address the notice to the address last
4 known to the initiating party in the exercise of reasonable diligence,
5 and also, for any entity which is required to have a registered agent
6 in the state of Washington, to the address of the registered agent.
7 Demand for arbitration is deemed effective three days after the date
8 deposited in the mail;

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

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

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

1 (5) Except as otherwise set forth in this section, arbitration
2 shall be conducted under chapter 7.04 RCW, unless the parties elect to
3 use the construction industry arbitration rules of the American
4 arbitration association, which are permitted to the extent not
5 inconsistent with this section. The expenses of witnesses including
6 expert witnesses shall be paid by the party producing the witnesses.
7 Each party shall pay its own attorneys' fees unless the arbitrator
8 awards reasonable attorneys' fees or any part thereof to any specified
9 party or parties. No contingent fee may be awarded or charged in any
10 such arbitration. All other expenses of arbitration shall be borne
11 equally by the parties, unless all parties agree otherwise or unless
12 the arbitrator awards expenses or any part thereof to any specified
13 party or parties. The parties shall pay the fees of the arbitrator as
14 and when specified by the arbitrator;

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

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

19 **ARTICLE 17**
20 **TRANSFER**

21 NEW SECTION. **Sec. 1701.** (1) A qualified warranty pertains solely
22 to the unit and common elements for which it provides coverage and no
23 notice to the qualified insurer is required on a change of ownership.

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

27 **ARTICLE 18**
28 **ACCEPTANCE OF DECLARANT FOR QUALIFIED WARRANTY**

29 NEW SECTION. **Sec. 1801.** (1) No insurer is bound to offer a
30 qualified warranty to any person. Except as specifically set forth in
31 this section, the terms of any qualified warranty are set in the sole
32 discretion of the qualified insurer. Without limiting the generality
33 of this subsection, a qualified insurer may make inquiries about the
34 applicant as follows:

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

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

8 (c) Does the applicant and its directors and officers have
9 sufficient experience in business management to properly manage the
10 unit construction process;

11 (d) Does the applicant and its directors, officers, and employees
12 have sufficient practical experience to undertake the proposed unit
13 construction;

14 (e) Does the past conduct of the applicant and its directors,
15 officers, employees, and consultants provide a reasonable indication of
16 good business practices, and reasonable grounds for belief that its
17 undertakings will be carried on in accordance with all legal
18 requirements; and

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

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

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

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

30 (b) To determine if the applicant or, in the case of a corporation,
31 its directors, officers, employees, and consultants possess reasonable
32 technical expertise to construct the proposed unit, including specific
33 technical knowledge or expertise in any building systems, construction
34 methods, products, treatments, technologies, and testing and inspection
35 methods proposed to be employed;

36 (c) To determine if the applicant or, in the case of a corporation,
37 its directors, officers, employees, and consultants have sufficient

1 practical experience in the specific types of construction to undertake
2 construction of the proposed unit;

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

7 (e) To determine if:

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

11 (ii) The general contractor meets the criteria set out in this
12 section;

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

15 (g) Establishing or requiring compliance with specific construction
16 standards for the unit;

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

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

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

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

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

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

29 (n) Requiring that the declarant or any of the design
30 professionals, engineering professionals, consultants, general
31 contractors, or subcontractors maintain minimum levels of insurance,
32 bonding, or other security naming the potential owners and qualified
33 insurer as loss payees or beneficiaries of the insurance, bonding, or
34 security to the extent possible;

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

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

4 **ARTICLE 19**
5 **MISCELLANEOUS**

6 NEW SECTION. **Sec. 1901.** Captions and part headings used in this
7 act are not any part of the law.

8 NEW SECTION. **Sec. 1902.** Sections 101 through 1901 of this act
9 constitute a new chapter in Title 64 RCW.

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