
SECOND ENGROSSED SUBSTITUTE SENATE BILL 5536

State of Washington

58th Legislature

2003 Regular Session

By 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)

READ FIRST TIME 02/21/03.

1 AN ACT Relating to condominiums; amending RCW 64.34.100, 64.34.216,
2 64.34.324, 64.34.410, 64.34.417, 64.34.425, 64.34.445, 64.34.450, and
3 64.34.452; adding new sections to chapter 64.34 RCW; creating a new
4 section; and providing an effective date.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 64.34 RCW
7 to read as follows:

8 (1) The legislature finds, declares, and determines that:

9 (a) Washington's cities and counties under the growth management
10 act are required to encourage urban growth in urban growth areas at
11 densities that accommodate twenty-year growth projections;

12 (b) One of the growth management act's planning goals is to
13 encourage the availability of affordable housing for all residents of
14 the state and promote a variety of housing types;

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

1 (2) It is the intent of the legislature that this act implement
2 changes in the condominium act that encourage insurance carriers to
3 provide liability insurance for condominium builders by: Providing for
4 arbitration of disputes; ensuring that material facts and claims are
5 presented as fully as possible in arbitration proceedings; confining
6 judicial review of arbitration decisions to the arbitration record,
7 except in very limited circumstances; requiring mandatory arbitration
8 of disputes involving construction defects; and eliminating litigation
9 over minor or insignificant problems, while continuing to protect
10 consumers' legitimate claims regarding condominium construction.

11 (3) It is the further intent of the legislature that these changes
12 in the condominium act ensure that a broad range of affordable
13 homeownership opportunities continue to be available to the residents
14 of the state and also assist cities' and counties' efforts to achieve
15 the density mandates of the growth management act.

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

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

23 (2) Any right or obligation declared by this chapter is enforceable
24 by arbitration or judicial proceeding. Arbitration may be provided for
25 by agreement of the parties. However, all claims arising under or
26 relating to RCW 64.34.443, 64.34.445, or 64.34.450 shall be subject to
27 mandatory arbitration as set forth in this section. In any arbitration
28 of claims arising under or relating to RCW 64.34.443, 64.34.445, or
29 64.34.450, the arbitrator may award reasonable attorneys' fees to the
30 substantially prevailing party as set forth in this section.

31 (3) Mandatory arbitration for claims arising under or relating to
32 RCW 64.34.443, 64.34.445, or 64.34.450 shall comply with the following
33 minimum standards:

34 (a) All disputes shall be heard by one qualified arbitrator, unless
35 the parties agree that three arbitrators shall be used. When three
36 arbitrators are used, one shall be appointed by each of the disputing
37 parties and the first two arbitrators shall appoint the third, who will

1 chair the panel. The parties shall select the identity and number of
2 the arbitrator(s) after service of the request, notice, or petition to
3 arbitrate. If, within thirty days after service of the request,
4 notice, or petition to arbitrate, the parties fail to agree on an
5 arbitrator or the required number of arbitrators fail to be appointed,
6 then an arbitrator shall be appointed under RCW 7.04.050 by the
7 presiding judge of the superior court of the county in which the
8 condominium is located;

9 (b) In any arbitration, at least one arbitrator must be a lawyer or
10 retired judge. Any additional arbitrator must be either a lawyer or
11 retired judge or a person who has experience with construction and
12 engineering standards and practices, written construction warranties,
13 or construction dispute resolution and a person shall not serve as an
14 arbitrator in any arbitration in which that person has any financial or
15 personal interest;

16 (c) The arbitration hearing must be conducted in a manner that
17 permits full, fair, and expeditious presentation of the case by both
18 parties. The arbitrator shall be bound by the law of Washington state.
19 Parties may be, but are not required to be, represented by attorneys.
20 The arbitrator may permit discovery to ensure a fair hearing but may
21 limit the scope or manner of discovery for good cause to avoid
22 excessive delay and costs to the parties. Unless the parties agree
23 otherwise or the arbitrator grants an extension for good cause, the
24 arbitration hearing shall be completed within six months of the service
25 of the request, notice, or petition to arbitrate or, when applicable
26 the service of the list of defects in accordance with RCW 64.50.030;

27 (d) Except as otherwise set forth in this section, arbitration
28 shall be conducted under chapter 7.04 RCW, unless the parties elect to
29 use the condominium or construction dispute resolution rules of the
30 American arbitration association, which are permitted to the extent not
31 inconsistent with this section. The expenses of witnesses including
32 expert witnesses shall be paid by the party producing the witnesses.
33 Each party shall pay its own reasonable attorneys' fees unless the
34 parties agree otherwise or unless the arbitrator awards reasonable
35 attorneys' fees or any part thereof to any specified party or parties.
36 All other expenses of arbitration shall be borne equally by the
37 parties, unless they agree otherwise or unless the arbitrator awards

1 such expenses or any part thereof to any specified party or parties;
2 and

3 (e) Service of a request, notice, or petition to arbitrate
4 commences an arbitration for purposes of RCW 64.34.452.

5 (4) Within twenty days after the arbitration decision and award is
6 served on the parties, any aggrieved party may file with the clerk of
7 the superior court in which the condominium is located a written notice
8 of appeal and request for a trial in the superior court. Such a trial
9 shall thereupon be held and shall include a right to a jury, if
10 demanded. Such a trial shall be commenced on an expedited schedule
11 within ninety days of the filing of the notice of appeal.

12 (a) Judicial review of an arbitration decision and award shall be
13 confined to the record created by the arbitrator, except that, upon
14 order of the court, the record may be supplemented by additional
15 evidence or claim only if the additional evidence or claim relates to:

16 (i) Claims for disqualification of an arbitrator, when such claims
17 were unknown to the appealing party at the time of arbitration;

18 (ii) Claims regarding matters that were improperly excluded from
19 the arbitration record after being offered by the appealing party;

20 (iii) Claims regarding matters that were outside the jurisdiction
21 of the arbitrator; or

22 (iv) Material facts regarding claims that have been arbitrated and
23 that: (A) Were unknown at the time of the arbitration hearing by the
24 party proposing their introduction where such a lack of knowledge was
25 not the result of the party's prior refusal or failure to exercise
26 reasonable diligence in the investigation of its claims or defenses;
27 and (B) could not have been reasonably discovered at the time of
28 arbitration where the failure to discover was not intentional or due to
29 inexcusable neglect.

30 (b) Except when the court has authorized the record to be
31 supplemented under this subsection (4), the parties may not conduct
32 pretrial discovery. When pretrial discovery is permitted, the court
33 shall, in its order regarding supplementing the record, establish the
34 scope, timing, and extent of permissible discovery and shall require
35 the moving party to disclose before trial the specific additional
36 evidence they intend to offer.

37 (c) Offers of compromise and the assessment of costs and reasonable
38 attorneys' fees shall be governed by RCW 7.06.050 and 7.06.060.

1 (d) The arbitration decision shall be in writing and must set forth
2 findings of fact and conclusions of law that support the decision.

3 (e) Unless the parties agree otherwise, a complete verbatim record
4 of the arbitration hearing shall be maintained that includes all
5 exhibits offered by the parties. Video recording of the arbitration
6 hearing is permissible.

7 (f) Within forty-five days after entry of an order to submit the
8 record, or within such other time as the court allows or as the parties
9 agree, the arbitrator shall submit to the court a certified copy of the
10 record for judicial review of the decision, except that the petitioner
11 shall prepare at the petitioner's expense and submit the verbatim
12 hearing record required under (e) of this subsection. If the parties
13 agree, or upon order of the court, the record shall be shortened or
14 summarized to avoid reproduction and transcription of portions of the
15 record that are duplicative or not relevant to the issues to be
16 reviewed by the court. The petitioner shall pay the arbitrator the
17 cost of preparing the record before the arbitrator submits the record
18 to the court. Failure by the petitioner to timely pay the arbitrator
19 relieves the arbitrator of responsibility to submit the record and is
20 grounds for dismissal of the petition. If the relief sought by the
21 petitioner is granted in whole or in part, the court shall equitably
22 assess the costs of preparing the record among the parties. In
23 assessing costs, the court shall take into account the extent to which
24 each party prevailed and the reasonableness of the parties' conduct in
25 agreeing or not agreeing to shorten or summarize the record under this
26 subsection (4)(f).

27 (g) Unless the parties agree otherwise, an appeal of an
28 arbitrator's decision is an appeal of the full and complete decision.

29 **Sec. 3.** RCW 64.34.216 and 1992 c 220 s 7 are each amended to read
30 as follows:

31 (1) The declaration for a condominium must contain:

32 (a) The name of the condominium, which must include the word
33 "condominium" or be followed by the words "a condominium," and the name
34 of the association;

35 (b) A legal description of the real property included in the
36 condominium;

1 (c) A statement of the number of units which the declarant has
2 created and, if the declarant has reserved the right to create
3 additional units, the number of such additional units;

4 (d) The identifying number of each unit created by the declaration
5 and a description of the boundaries of each unit if and to the extent
6 they are different from the boundaries stated in RCW 64.34.204(1);

7 (e) With respect to each existing unit:

8 (i) The approximate square footage;

9 (ii) The number of bathrooms, whole or partial;

10 (iii) The number of rooms designated primarily as bedrooms;

11 (iv) The number of built-in fireplaces; and

12 (v) The level or levels on which each unit is located.

13 The data described in (ii), (iii), and (iv) of this subsection
14 (1)(e) may be omitted with respect to units restricted to
15 nonresidential use;

16 (f) The number of parking spaces and whether covered, uncovered, or
17 enclosed;

18 (g) The number of moorage slips, if any;

19 (h) A description of any limited common elements, other than those
20 specified in RCW 64.34.204 (2) and (4), as provided in RCW
21 64.34.232(2)(j);

22 (i) A description of any real property which may be allocated
23 subsequently by the declarant as limited common elements, other than
24 limited common elements specified in RCW 64.34.204 (2) and (4),
25 together with a statement that they may be so allocated;

26 (j) A description of any development rights and other special
27 declarant rights under RCW 64.34.020(29) reserved by the declarant,
28 together with a description of the real property to which the
29 development rights apply, and a time limit within which each of those
30 rights must be exercised;

31 (k) If any development right may be exercised with respect to
32 different parcels of real property at different times, a statement to
33 that effect together with: (i) Either a statement fixing the
34 boundaries of those portions and regulating the order in which those
35 portions may be subjected to the exercise of each development right, or
36 a statement that no assurances are made in those regards; and (ii) a
37 statement as to whether, if any development right is exercised in any

1 portion of the real property subject to that development right, that
2 development right must be exercised in all or in any other portion of
3 the remainder of that real property;

4 (l) Any other conditions or limitations under which the rights
5 described in (j) of this subsection may be exercised or will lapse;

6 (m) An allocation to each unit of the allocated interests in the
7 manner described in RCW 64.34.224;

8 (n) Any restrictions in the declaration on use, occupancy, or
9 alienation of the units;

10 (o) A cross-reference by recording number to the survey map and
11 plans for the units created by the declaration; and

12 (p) All matters required or permitted by RCW 64.34.220 through
13 64.34.232, 64.34.256, 64.34.260, 64.34.276, (~~and~~) 64.34.308(4), and
14 64.34.450.

15 (2) All amendments to the declaration shall contain a cross-
16 reference by recording number to the declaration and to any prior
17 amendments thereto. All amendments to the declaration adding units
18 shall contain a cross-reference by recording number to the survey map
19 and plans relating to the added units and set forth all information
20 required by RCW 64.34.216(1) with respect to the added units.

21 (3) The declaration may contain any other matters the declarant
22 deems appropriate.

23 **Sec. 4.** RCW 64.34.324 and 1992 c 220 s 16 are each amended to read
24 as follows:

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

27 (a) The number, qualifications, powers and duties, terms of office,
28 and manner of electing and removing the board of directors and officers
29 and filling vacancies;

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

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

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

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

1 (f) A statement regarding the decision-making standards to which
2 the board of directors or officers will be held.

3 (2) Subject to the provisions of the declaration, the bylaws may
4 provide for any other matters the association deems necessary and
5 appropriate.

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

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

20 (1) A public offering statement shall contain the following
21 information:

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

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

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

25 (d) The relationship of the management company to the declarant, if
26 any;

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

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

34 (g) A brief description of the permitted uses and use restrictions
35 pertaining to the units and the common elements;

36 (h) A brief description of the restrictions, if any, on the renting

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

1 the dates such rights must terminate, and a copy of or reference by
2 recording number to any recorded transfer of a special declarant right;

3 (w) A description of any material differences in terms of
4 furnishings, fixtures, finishes, and equipment between any model unit
5 available to the purchaser at the time the agreement for sale is
6 executed and the unit being offered;

7 (x) Any liens on real property to be conveyed to the association
8 required to be disclosed pursuant to RCW 64.34.435(2)(b);

9 (y) A list of any physical hazards known to the declarant which
10 particularly affect the condominium or the immediate vicinity in which
11 the condominium is located and which are not readily ascertainable by
12 the purchaser;

13 (z) A brief description of any construction warranties to be
14 provided to the purchaser and a brief statement as to whether any
15 express written warranty replaces or other document excludes or
16 modifies the implied warranties of quality provided in RCW 64.34.445;

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.

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

33 If any of the foregoing documents listed in this subsection are not
34 available because they have not been executed, adopted, or recorded,
35 drafts of such documents shall be provided with the public offering
36 statement, and, before closing the sale of a unit, the purchaser shall
37 be given copies of any material changes between the draft of the
38 proposed documents and the final documents.

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

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

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

12 **Sec. 6.** RCW 64.34.417 and 1990 c 166 s 11 are each amended to read
13 as follows:

14 (1) Except under subsection (2) of this section, if a unit is
15 offered for sale for which the delivery of a public offering statement
16 or other disclosure document is required under the laws of any state or
17 the United States, a single disclosure document conforming to the
18 requirements of RCW 64.34.410 and 64.34.415 and conforming to any other
19 requirement imposed under such laws, may be prepared and delivered in
20 lieu of providing two or more disclosure documents.

21 (2) The disclosure documents conforming to the requirements of RCW
22 64.34.410 and 64.34.415 shall disclose in a separate document, using
23 twelve-point bold face type, that the purchaser may agree to
24 arbitration of any right or obligation declared under this chapter, but
25 that by doing so the purchaser is waiving the constitutional right to
26 seek a de novo trial by jury in the superior court.

27 **Sec. 7.** RCW 64.34.425 and 1992 c 220 s 23 are each amended to read
28 as follows:

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

- 1 (a) A statement disclosing any right of first refusal or other
2 restraint on the free alienability of the unit contained in the
3 declaration;
- 4 (b) A statement setting forth the amount of the monthly common
5 expense assessment and any unpaid common expense or special assessment
6 currently due and payable from the selling unit owner and a statement
7 of any special assessments that have been levied against the unit which
8 have not been paid even though not yet due;
- 9 (c) A statement, which shall be current to within forty-five days,
10 of any common expenses or special assessments against any unit in the
11 condominium that are past due over thirty days;
- 12 (d) A statement, which shall be current to within forty-five days,
13 of any obligation of the association which is past due over thirty
14 days;
- 15 (e) A statement of any other fees payable by unit owners;
- 16 (f) A statement of any anticipated repair or replacement cost in
17 excess of five percent of the annual budget of the association that has
18 been approved by the board of directors;
- 19 (g) A statement of the amount of any reserves for repair or
20 replacement and of any portions of those reserves currently designated
21 by the association for any specified projects;
- 22 (h) The annual financial statement of the association, including
23 the audit report if it has been prepared, for the year immediately
24 preceding the current year.
- 25 (i) A balance sheet and a revenue and expense statement of the
26 association prepared on an accrual basis, which shall be current to
27 within one hundred twenty days;
- 28 (j) The current operating budget of the association;
- 29 (k) A statement of any unsatisfied judgments against the
30 association and the status of any pending suits or legal proceedings in
31 which the association is a plaintiff or defendant;
- 32 (l) A statement describing any insurance coverage provided for the
33 benefit of unit owners;
- 34 (m) A statement as to whether there are any alterations or
35 improvements to the unit or to the limited common elements assigned
36 thereto that violate any provision of the declaration;
- 37 (n) A statement of the number of units, if any, still owned by the

1 declarant, whether the declarant has transferred control of the
2 association to the unit owners, and the date of such transfer;

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

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

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

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

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

1 **Sec. 8.** RCW 64.34.445 and 1992 c 220 s 26 are each amended to read
2 as follows:

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

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

11 ~~((a))~~ (i) Free from defective materials; ~~((and~~
12 ~~(b))~~ (ii) Constructed in accordance with sound engineering and
13 construction standards~~((, and))~~;
14 (iii) Constructed in a workmanlike manner; and
15 (iv) Constructed in compliance with all laws then applicable to
16 such improvements.

17 (b) The implied warranty is applicable only to the extent that a
18 failure under (a) of this subsection: (i) Has had or will have a
19 materially adverse effect on the structural integrity of a unit or
20 common element; (ii) has resulted or will result in a unit or common
21 element being unsafe in any material respect when used for its intended
22 purpose; (iii) would have substantially reduced the fair market value
23 of the unit on the date of initial conveyance by the declarant or
24 dealer had the defect been disclosed at the date of initial conveyance;
25 or (iv) materially impairs or will impair the use of a unit or common
26 element for its intended purpose.

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

31 (4) Warranties imposed by this section may be replaced, excluded,
32 or modified as specified in RCW 64.34.450.

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

36 (6) Any conveyance of a unit transfers to the purchaser all of the
37 declarant's implied warranties of quality, as they may be replaced,

1 excluded, or modified by an express written warranty as specified in
2 RCW 64.34.450.

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

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

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

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

12 (2) (~~With respect to a purchaser of a unit that may be occupied~~)
13 For units intended for residential use, no (~~general~~) disclaimer of
14 implied warranties of quality is effective, (~~but a~~) except that:

15 (a) A declarant (~~and any~~) or dealer may disclaim liability in
16 (~~an~~) a separate recorded instrument signed by the purchaser for a
17 specified defect or specified failure to comply with applicable law,
18 if: (i) The specific defect or failure (~~entered into and became~~) is
19 known to exist at the time of disclosure; (ii) the disclaimer
20 specifically describes the defect or failure; (iii) the disclaimer
21 includes a statement as to the effect of the defect or failure; and
22 (iv) the disclaimer is clearly a part of the basis of the bargain;
23 and/or

24 (b) A declarant or dealer may replace or modify the implied
25 warranties of quality provided under RCW 64.34.445 with an express
26 written warranty of quality only if each of the following conditions
27 are met:

28 (i) The express written warranty does not reduce protections
29 provided to the purchaser by the implied warranty set forth in RCW
30 64.34.445;

31 (ii) The disclosure required by RCW 64.34.410(1)(z) is contained in
32 a public offering statement as provided by RCW 64.34.410(3) and such
33 disclosure is set forth in twelve-point bold face type in the
34 declaration or amendment thereto;

35 (iii) The express written warranty is set forth in full in the
36 declaration, an amendment to the declaration, or another recorded
37 document; and

1 (iv) The unit purchaser who initially acquires the unit from the
2 declarant expressly acknowledges in a recorded written conveyance or
3 another recorded written instrument that the implied warranties of
4 quality have been replaced or modified by the express written warranty.

5 **Sec. 10.** RCW 64.34.452 and 2002 c 323 s 11 are each amended to
6 read as follows:

7 (1) A judicial proceeding or arbitration for breach of any
8 obligations arising under or relating to RCW 64.34.443 (~~and~~),
9 64.34.445, and 64.34.450 must be commenced within four years after the
10 cause of action accrues: PROVIDED, That the period for commencing an
11 action for a breach accruing pursuant to subsection (2)(b) of this
12 section shall not expire prior to one year after termination of the
13 period of declarant control, if any, under RCW 64.34.308(4). Such
14 periods may not be reduced by either oral or written agreement, or
15 through the use of contractual claims or notice procedures that require
16 the filing or service of any claim or notice prior to the expiration of
17 the period specified in this section. Arbitration under this chapter
18 shall be deemed commenced when a request, notice, or petition is served
19 on a party that is necessary to the resolution of the claim.

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

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

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

31 (3) If a warranty of quality explicitly extends to future
32 performance or duration of any improvement or component of the
33 condominium, the cause of action accrues at the time the breach is
34 discovered or at the end of the period for which the warranty
35 explicitly extends, whichever is earlier.

36 (4) If a written notice of claim is served under RCW 64.50.020
37 within the time prescribed for the filing of an action under this

1 chapter, the statutes of limitation in this chapter and any applicable
2 statutes of repose for construction-related claims are tolled until
3 sixty days after the period of time during which the filing of an
4 action is barred under RCW 64.50.020.

5 NEW SECTION. **Sec. 11.** A new section is added to chapter 64.34 RCW
6 to read as follows:

7 (1) Effective January 1, 2006, all condominiums shall be inspected
8 by a qualified third party independent inspector during the course of
9 construction. Condominiums inspected that are granted a certification
10 of inspection shall be presumed to be constructed in accordance with
11 sound engineering and construction standards; constructed in a
12 workmanlike manner; and constructed in compliance with all laws then
13 applicable to improvements.

14 (2)(a) The inspections shall be performed by qualified inspectors.
15 To be qualified, the person performing the inspection shall have at
16 least five years of verifiable experience in construction; have
17 certification as a building inspector, combination inspector or
18 combination dwelling inspector from the international code council; and
19 have successfully passed the technical written examination promulgated
20 by the international code council for those certification categories.

21 (b) Nothing in this section, as it relates to qualified inspectors,
22 shall be construed to alter the requirements for licensure, or the
23 jurisdiction, authority, or scope of practice of architects,
24 professional engineers, or general contractors.

25 (c) A qualified inspector shall be free from any interference or
26 influence relating to the inspections under this chapter. An inspector
27 shall not engage in any design or construction activities relating to
28 the condominium for which the inspector is engaged to inspect. Nor may
29 a qualified inspector be engaged by the declarant or agents of the
30 declarant in any other activity except qualified inspections.

31 (3)(a) Any inspection during the course of construction of a
32 condominium shall include at a minimum the following:

33 (i) An independent review of all plans and specifications for the
34 condominium to determine compliance with all laws then applicable to
35 improvements and to ensure that the plans and specifications are in
36 accordance with sound engineering and construction standards.

1 (ii) An independent periodic review of all construction activities
2 during the course of construction to ensure that the condominium has
3 been constructed in a workmanlike manner.

4 (b) A qualified inspector shall prepare a certificate certifying
5 that the condominium has been inspected during the course of
6 construction in compliance with this chapter. The certificate of
7 inspection shall be provided to each purchaser at or prior to closing
8 of the sale of a unit.

9 (4)(a) A qualified inspector shall have no monetary liability and
10 no cause of action for damages shall arise against a qualified
11 inspector for the inspections required by this chapter.

12 (b) The immunity provided under this section does not inure to the
13 benefit of the qualified inspector for damages caused to the declarant
14 solely by the negligence or willful misconduct of the qualified
15 inspector resulting from the provision of services under the contract
16 with the declarant.

17 (c) Except for qualified inspectors, this section shall not relieve
18 from, excuse, or lessen in any manner, the responsibility or liability
19 of any person, company, contractor, builder, developer, architect,
20 engineer, designer, or other individual or entity who develops,
21 improves, owns, operates, or manages any condominium for any damages to
22 persons or property caused by construction or design defects. The fact
23 that an inspection by a qualified inspector has taken place may be
24 introduced as evidence in a construction defect action, including any
25 reports or other items generated by the qualified inspector.

26 NEW SECTION. **Sec. 12.** Sections 3, 5, and 9 of this act apply only
27 to condominiums created by declarations recorded on or after July 1,
28 2004.

29 NEW SECTION. **Sec. 13.** If any provision of this act or its
30 application to any person or circumstance is held invalid, the
31 remainder of the act or the application of the provision to other
32 persons or circumstances is not affected.

33 NEW SECTION. **Sec. 14.** This act takes effect July 1, 2004.

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