
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 64.34.308, 64.34.410, 64.34.425, 64.34.445, 64.34.450, and 64.34.452;
3 creating a new section; providing an effective date; and declaring an
4 emergency.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds, declares, and
7 determines that:

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

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

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

18 (d) Ambiguity in the condominium act, particularly relating to
19 implied warranties of quality, has led to legal actions and threats of

1 legal action that allege minor or immaterial defects and deviations in
2 construction that have no effect on the structure, safety, or
3 marketability of condominiums;

4 (e) The result of these legal challenges is that many home builders
5 cannot obtain insurance to build condominiums and as further result
6 condominium construction is declining thereby reducing rather than
7 expanding home ownership opportunities for the residents of Washington
8 state; and

9 (f) Legislative action is needed to encourage residential
10 condominium construction by:

11 (i) Requiring alternative methods of dispute resolution such as
12 arbitration and setting standards to allow resolution of disputes in an
13 expeditious and fair manner;

14 (ii) Requiring expanded disclosure to owners if implied warranties
15 are excluded, modified, or replaced with an express warranty of
16 quality;

17 (iii) Protecting associations, boards, and officers from liability
18 for deciding to not commence a judicial proceeding or arbitration;

19 (iv) Requiring expanded disclosure to purchasers of legal
20 proceeding;

21 (v) Clarifying that an express written warranty applies to claims
22 against the declarant brought by the association or subsequent unit
23 owners;

24 (vi) Clarifying that implied warranties of quality extend only to
25 defects or deviations that affect the structural integrity of the unit;
26 the safety of unit owners; or substantially impair the marketability of
27 the unit for its intended purpose. Defects or deviations that can be
28 discovered through normal purchaser inspections are not intended to be
29 covered by the implied warranty of quality; and

30 (vii) Allowing an express written warranty of quality to replace
31 implied warranties;

32 (2) It is the intent of the legislature that this act improve and
33 clarify procedures for resolving claims relating to condominium
34 construction and ensure that both a broad range of homeownership
35 opportunities continue to be available to the residents of the state
36 and that cities and counties can achieve density mandates of the growth
37 management act.

1 (3) It is the further intent of the legislature that this act
2 eliminate litigation over minor defects and deviations that have no
3 material effect on the use of a condominium for its intended purpose.

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

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

11 (2) Except as set forth in this chapter, any right or obligation
12 declared by this chapter is enforceable by judicial proceeding. Any
13 claim by an association and/or its board of directors relating to
14 construction defects or deviations or claims by more than one unit
15 owner relating to the same defects or deviations shall be resolved
16 through binding arbitration under chapter 7.04 RCW.

17 (3) Binding arbitration involving construction defects or
18 deviations under RCW 64.34.445 or 64.34.450 shall comply with the
19 following minimum standards:

20 (a) Unless the parties agree otherwise, all disputes must be heard
21 by one qualified arbitrator. When three arbitrators are used, one
22 shall be appointed by each of the disputing parties and the third, who
23 will chair the panel, appointed by the first two arbitrators. Should
24 the required number of arbitrators fail to be appointed, then an
25 arbitrator or arbitrators shall be appointed by the superior court of
26 the county in which the condominium is located pursuant to RCW
27 7.04.050;

28 (b) Arbitrators must have experience with construction and
29 engineering standards and practices, written construction warranties,
30 or construction dispute resolution and a person shall not serve as an
31 arbitrator in any arbitration in which that person has any financial or
32 personal interest;

33 (c) The arbitration hearing must be conducted in a manner that
34 permits full, fair, and expeditious presentation of the case by both
35 parties. The arbitrators are bound by the law of Washington state.
36 Parties may but are not required to be represented by attorneys. The
37 arbitrators may permit discovery to ensure a fair hearing but may limit

1 the scope or manner of discovery for good cause to avoid excessive
2 delay and costs to the parties. Unless the parties agree otherwise or
3 the arbitrator or arbitrators grant an extension for good cause, the
4 arbitration hearing shall be completed within one year of the initial
5 demand for arbitration;

6 (d) Arbitration shall be conducted under the condominium or
7 construction dispute resolution rules of the American arbitration
8 association and chapter 7.04 RCW unless the parties elect to use the
9 rules of the superior court. The expenses of witnesses including
10 expert witnesses shall be paid by the party producing such witnesses.
11 All other expenses of arbitration shall be borne equally by the
12 parties, unless they agree otherwise or unless the arbitrator or
13 arbitrators award such expenses or any part thereof to any specified
14 party or parties; and

15 (e) Arbitration may be used only if the parties first attempt to
16 resolve the dispute through mediation. Mediation shall be before a
17 mediator who may not serve subsequently also as an arbitrator for the
18 same dispute. All cost of mediation shall be borne equally by the
19 parties.

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

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

23 (a) The name of the condominium, which must include the word
24 "condominium" or be followed by the words "a condominium," and the name
25 of the association;

26 (b) A legal description of the real property included in the
27 condominium;

28 (c) A statement of the number of units which the declarant has
29 created and, if the declarant has reserved the right to create
30 additional units, the number of such additional units;

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

34 (e) With respect to each existing unit:

35 (i) The approximate square footage;

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

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

1 (iv) The number of built-in fireplaces; and
2 (v) The level or levels on which each unit is located.
3 The data described in (ii), (iii), and (iv) of this subsection
4 (1)(e) may be omitted with respect to units restricted to
5 nonresidential use;
6 (f) The number of parking spaces and whether covered, uncovered, or
7 enclosed;
8 (g) The number of moorage slips, if any;
9 (h) A description of any limited common elements, other than those
10 specified in RCW 64.34.204 (2) and (4), as provided in RCW
11 64.34.232(2)(j);
12 (i) A description of any real property which may be allocated
13 subsequently by the declarant as limited common elements, other than
14 limited common elements specified in RCW 64.34.204 (2) and (4),
15 together with a statement that they may be so allocated;
16 (j) A description of any development rights and other special
17 declarant rights under RCW 64.34.020(29) reserved by the declarant,
18 together with a description of the real property to which the
19 development rights apply, and a time limit within which each of those
20 rights must be exercised;
21 (k) If any development right may be exercised with respect to
22 different parcels of real property at different times, a statement to
23 that effect together with: (i) Either a statement fixing the
24 boundaries of those portions and regulating the order in which those
25 portions may be subjected to the exercise of each development right, or
26 a statement that no assurances are made in those regards; and (ii) a
27 statement as to whether, if any development right is exercised in any
28 portion of the real property subject to that development right, that
29 development right must be exercised in all or in any other portion of
30 the remainder of that real property;
31 (l) Any other conditions or limitations under which the rights
32 described in (j) of this subsection may be exercised or will lapse;
33 (m) An allocation to each unit of the allocated interests in the
34 manner described in RCW 64.34.224;
35 (n) Any restrictions in the declaration on use, occupancy, or
36 alienation of the units;
37 (o) A cross-reference by recording number to the survey map and
38 plans for the units created by the declaration; and

1 (p) All matters required or permitted by RCW 64.34.220 through
2 64.34.232, 64.34.256, 64.34.260, 64.34.276, ~~((and))~~ 64.34.308(4), and
3 64.34.450.

4 (2) All amendments to the declaration shall contain a cross-
5 reference by recording number to the declaration and to any prior
6 amendments thereto. All amendments to the declaration adding units
7 shall contain a cross-reference by recording number to the survey map
8 and plans relating to the added units and set forth all information
9 required by RCW 64.34.216(1) with respect to the added units.

10 (3) The declaration may contain any other matters the declarant
11 deems appropriate.

12 **Sec. 4.** RCW 64.34.308 and 1992 c 220 s 15 are each amended to read
13 as follows:

14 (1) Except as provided in the declaration, the bylaws, subsection
15 ~~((+2))~~ (3) of this section, or other provisions of this chapter, the
16 board of directors shall act in all instances on behalf of the
17 association. In the performance of their duties, the officers and
18 members of the board of directors are required to exercise: (a) If
19 appointed by the declarant, the care required of fiduciaries of the
20 unit owners; or (b) if elected by the unit owners, ordinary and
21 reasonable care.

22 (2) Neither an association nor its directors or officers or
23 managing agents shall be liable for a decision, including a decision
24 not to commence a judicial proceeding under any section of this
25 chapter, if such a decision has been made by a board of directors
26 elected pursuant to subsection (7) of this section which does not
27 include any members who are affiliates of a declarant, and if, in
28 reaching such a decision, the directors and officers and managing
29 agents have acted in good faith, in a manner such directors and
30 officers and managing agents believe to be in the best interests of the
31 corporation, and with such care, including reasonable inquiry, as an
32 ordinarily prudent person in a like position would use under similar
33 circumstances.

34 (3) The board of directors shall not act on behalf of the
35 association to amend the declaration in any manner that requires the
36 vote or approval of the unit owners pursuant to RCW 64.34.264, to
37 terminate the condominium pursuant to RCW 64.34.268, or to elect

1 members of the board of directors or determine the qualifications,
2 powers, and duties, or terms of office of members of the board of
3 directors pursuant to subsection ~~((6))~~ (7) of this section; but the
4 board of directors may fill vacancies in its membership for the
5 unexpired portion of any term.

6 ~~((3))~~ (4) Within thirty days after adoption of any proposed
7 budget for the condominium, the board of directors shall provide a
8 summary of the budget to all the unit owners and shall set a date for
9 a meeting of the unit owners to consider ratification of the budget not
10 less than fourteen nor more than sixty days after mailing of the
11 summary. Unless at that meeting the owners of units to which a
12 majority of the votes in the association are allocated or any larger
13 percentage specified in the declaration reject the budget, the budget
14 is ratified, whether or not a quorum is present. In the event the
15 proposed budget is rejected or the required notice is not given, the
16 periodic budget last ratified by the unit owners shall be continued
17 until such time as the unit owners ratify a subsequent budget proposed
18 by the board of directors.

19 ~~((4))~~ (5)(a) Subject to subsection ~~((5))~~ (6) of this section,
20 the declaration may provide for a period of declarant control of the
21 association, during which period a declarant, or persons designated by
22 the declarant, may: (i) Appoint and remove the officers and members of
23 the board of directors; or (ii) veto or approve a proposed action of
24 the board or association. A declarant's failure to veto or approve
25 such proposed action in writing within thirty days after receipt of
26 written notice of the proposed action shall be deemed approval by the
27 declarant.

28 (b) Regardless of the period provided in the declaration, a period
29 of declarant control terminates no later than the earlier of: (i)
30 Sixty days after conveyance of seventy-five percent of the units which
31 may be created to unit owners other than a declarant; (ii) two years
32 after the last conveyance or transfer of record of a unit except as
33 security for a debt; (iii) two years after any development right to add
34 new units was last exercised; or (iv) the date on which the declarant
35 records an amendment to the declaration pursuant to which the declarant
36 voluntarily surrenders the right to further appoint and remove officers
37 and members of the board of directors. A declarant may voluntarily
38 surrender the right to appoint and remove officers and members of the

1 board of directors before termination of that period pursuant to (i),
2 (ii), and (iii) of this subsection (~~((+4))~~) (5)(b), but in that event
3 the declarant may require, for the duration of the period of declarant
4 control, that specified actions of the association or board of
5 directors, as described in a recorded instrument executed by the
6 declarant, be approved by the declarant before they become effective.

7 ~~((+5))~~ (6) Not later than sixty days after conveyance of twenty-
8 five percent of the units which may be created to unit owners other
9 than a declarant, at least one member and not less than twenty-five
10 percent of the members of the board of directors must be elected by
11 unit owners other than the declarant. Not later than sixty days after
12 conveyance of fifty percent of the units which may be created to unit
13 owners other than a declarant, not less than thirty-three and one-third
14 percent of the members of the board of directors must be elected by
15 unit owners other than the declarant.

16 ~~((+6))~~ (7) Within thirty days after the termination of any period
17 of declarant control, the unit owners shall elect a board of directors
18 of at least three members, at least a majority of whom must be unit
19 owners. The number of directors need not exceed the number of units
20 then in the condominium. The board of directors shall elect the
21 officers. Such members of the board of directors and officers shall
22 take office upon election.

23 ~~((+7))~~ (8) Notwithstanding any provision of the declaration or
24 bylaws to the contrary, the unit owners, by a two-thirds vote of the
25 voting power in the association present and entitled to vote at any
26 meeting of the unit owners at which a quorum is present, may remove any
27 member of the board of directors with or without cause, other than a
28 member appointed by the declarant. The declarant may not remove any
29 member of the board of directors elected by the unit owners. Prior to
30 the termination of the period of declarant control, the unit owners,
31 other than the declarant, may remove by a two-thirds vote, any director
32 elected by the unit owners.

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

35 (1) A public offering statement shall contain the following
36 information:

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

- 1 (b) The name and address of the declarant;
- 2 (c) The name and address of the management company, if any;
- 3 (d) The relationship of the management company to the declarant, if
4 any;
- 5 (e) A list of up to the five most recent condominium projects
6 completed by the declarant or an affiliate of the declarant within the
7 past five years, including the names of the condominiums, their
8 addresses, and the number of existing units in each. For the purpose
9 of this section, a condominium is "completed" when any one unit therein
10 has been rented or sold;
- 11 (f) The nature of the interest being offered for sale;
- 12 (g) A brief description of the permitted uses and use restrictions
13 pertaining to the units and the common elements;
- 14 (h) A brief description of the restrictions, if any, on the renting
15 or leasing of units by the declarant or other unit owners, together
16 with the rights, if any, of the declarant to rent or lease at least a
17 majority of units;
- 18 (i) The number of existing units in the condominium and the maximum
19 number of units that may be added to the condominium;
- 20 (j) A list of the principal common amenities in the condominium
21 which materially affect the value of the condominium and those that
22 will or may be added to the condominium;
- 23 (k) A list of the limited common elements assigned to the units
24 being offered for sale;
- 25 (l) The identification of any real property not in the condominium,
26 the owner of which has access to any of the common elements, and a
27 description of the terms of such access;
- 28 (m) The identification of any real property not in the condominium
29 to which unit owners have access and a description of the terms of such
30 access;
- 31 (n) The status of construction of the units and common elements,
32 including estimated dates of completion if not completed;
- 33 (o) The estimated current common expense liability for the units
34 being offered;
- 35 (p) An estimate of any payment with respect to the common expense
36 liability for the units being offered which will be due at closing;
- 37 (q) The estimated current amount and purpose of any fees not

1 included in the common expenses and charged by the declarant or the
2 association for the use of any of the common elements;

3 (r) Any assessments which have been agreed to or are known to the
4 declarant and which, if not paid, may constitute a lien against any
5 units or common elements in favor of any governmental agency;

6 (s) The identification of any parts of the condominium, other than
7 the units, which any individual owner will have the responsibility for
8 maintaining;

9 (t) If the condominium involves a conversion condominium, the
10 information required by RCW 64.34.415;

11 (u) Whether timesharing is restricted or prohibited, and if
12 restricted, a general description of such restrictions;

13 (v) A list of all development rights reserved to the declarant and
14 all special declarant rights reserved to the declarant, together with
15 the dates such rights must terminate, and a copy of or reference by
16 recording number to any recorded transfer of a special declarant right;

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

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

23 (y) A list of any physical hazards known to the declarant which
24 particularly affect the condominium or the immediate vicinity in which
25 the condominium is located and which are not readily ascertainable by
26 the purchaser;

27 (z)(i) A brief description of any construction warranties to be
28 provided to the purchaser;

29 (ii) A brief statement as to whether any express written warranty
30 replaces or other document excludes or modifies the implied warranties
31 of quality provided in RCW 64.34.445;

32 (aa) Any building code violation citations received by the
33 declarant in connection with the condominium which have not been
34 corrected;

35 (bb) A statement of any unsatisfied judgments or pending suits
36 against the association, a statement of the status of any pending suits
37 material to the condominium of which the declarant has actual
38 knowledge, and a statement of any litigation brought by an owners'

1 association, unit owner, or governmental entity in which the declarant
2 or any affiliate of the declarant has been a defendant, arising out of
3 the construction, sale, or administration of any condominium within the
4 previous five years, together with the results thereof, if known;

5 (cc) Any rights of first refusal to lease or purchase any unit or
6 any of the common elements;

7 (dd) The extent to which the insurance provided by the association
8 covers furnishings, fixtures, and equipment located in the unit;

9 (ee) A notice which describes a purchaser's right to cancel the
10 purchase agreement or extend the closing under RCW 64.34.420, including
11 applicable time frames and procedures;

12 (ff) Any reports or statements required by RCW 64.34.415 or
13 64.34.440(6)(a). RCW 64.34.415 shall apply to the public offering
14 statement of a condominium in connection with which a final certificate
15 of occupancy was issued more than sixty calendar months prior to the
16 preparation of the public offering statement whether or not the
17 condominium is a conversion condominium as defined in RCW
18 64.34.020(10);

19 (gg) A list of the documents which the prospective purchaser is
20 entitled to receive from the declarant before the rescission period
21 commences;

22 (hh) A notice which states: A purchaser may not rely on any
23 representation or express warranty unless it is contained in the public
24 offering statement or made in writing signed by the declarant or by any
25 person identified in the public offering statement as the declarant's
26 agent;

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

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

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

1 (11) A notice that is substantially in the form required by RCW
2 64.50.050.

3 (2) The public offering statement shall include copies of each of
4 the following documents: The declaration, the survey map and plans,
5 the articles of incorporation of the association, bylaws of the
6 association, rules and regulations, if any, current or proposed budget
7 for the association, (~~and~~) the balance sheet of the association
8 current within ninety days if assessments have been collected for
9 ninety days or more, and any express written warranty or other document
10 disclosed pursuant to subsection (1)(z) of this section.

11 If any of the foregoing documents listed in this subsection are not
12 available because they have not been executed, adopted, or recorded,
13 drafts of such documents shall be provided with the public offering
14 statement, and, before closing the sale of a unit, the purchaser shall
15 be given copies of any material changes between the draft of the
16 proposed documents and the final documents.

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

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

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

28 **Sec. 6.** RCW 64.34.425 and 1992 c 220 s 23 are each amended to read
29 as follows:

30 (1) Except in the case of a sale where delivery of a public
31 offering statement is required, or unless exempt under RCW
32 64.34.400(2), a unit owner shall furnish to a purchaser before
33 execution of any contract for sale of a unit, or otherwise before
34 conveyance, a resale certificate, signed by an officer or authorized
35 agent of the association and based on the books and records of the
36 association and the actual knowledge of the person signing the
37 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. 7.** 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 declarant and any dealer impliedly warrants that a unit and
8 the common elements in the condominium are suitable for the ordinary
9 uses of real estate of its type and that any improvements made or
10 contracted for by such declarant or dealer will be:

11 (a) Free from defective materials; and

12 (b) Constructed in accordance with sound engineering and
13 construction standards, and in a workmanlike manner in compliance with
14 all laws then applicable to such improvements. However, an implied
15 warranty of quality applies only to substantial defects or deviations.
16 The implied warranty extends only to defective materials or deviations
17 in construction practices that have a material effect on the structural
18 integrity of a unit or common area; or have a material effect on the
19 safety of unit owners; or substantially impair the marketability of the
20 unit for its intended purpose. Defects or deviations that are
21 discoverable through the purchaser's normal and prudent inspection are
22 not covered by the implied warranty of quality. The burden of
23 demonstrating that a defect or deviation is not material shall be borne
24 by the declarant or the party making such a claim. As used in this
25 chapter, "material defect," "substantial," and "substantially impair"
26 refer to a defect or deviation that prevents the unit or common element
27 from being used for its intended purpose.

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

32 (4) Warranties imposed by this section may be replaced, excluded,
33 or modified as specified in RCW 64.34.450 and an express written
34 warranty between a declarant and a unit purchaser applies to claims
35 against the declarant that may be brought by the association or
36 subsequent purchasers.

37 (5) For purposes of this section, improvements made or contracted

1 for by an affiliate of a declarant, as defined in RCW 64.34.020(1), are
2 made or contracted for by the declarant.

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

5 **Sec. 8.** RCW 64.34.450 and 1989 c 43 s 4-113 are each amended to
6 read as follows:

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

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

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

14 (2) (~~With respect to a purchaser of a unit that may be occupied~~
15 ~~for residential use,~~) For units intended for residential use:

16 (a) No general disclaimer of implied warranties of quality is
17 effective, but a declarant and any dealer may disclaim liability in an
18 instrument signed by the purchaser for a specified defect or specified
19 failure to comply with applicable law, if the defect or failure entered
20 into and became a part of the basis of the bargain;

21 (b) The implied warranties of quality under RCW 64.34.445 may be
22 replaced with an express written warranty of quality if:

23 (i) The disclosure required by RCW 64.34.410(1)(z) is contained in
24 a public offering statement as provided by RCW 64.34.410(3) and such
25 disclosure is set forth in ten-point bold face type in the declaration
26 or amendment thereto;

27 (ii) The express written warranty is set forth in full in the
28 declaration, an amendment to the declaration, or a document recorded
29 with the declaration; and

30 (iii) The unit purchaser who initially acquires the unit from the
31 declarant expressly acknowledges in a recorded written conveyance or
32 another recorded written instrument that the implied warranties of
33 quality have been replaced by the express written warranty; and

34 (c) An express written warranty approved by the United States
35 veterans administration or the United States department of housing and
36 urban development shall be deemed to have satisfied the requirements of
37 (b) of this subsection.

1 **Sec. 9.** RCW 64.34.452 and 2002 c 323 s 11 are each amended to read
2 as follows:

3 (1) A judicial proceeding or arbitration for breach of any
4 obligations arising under RCW 64.34.443 and 64.34.445 must be commenced
5 within four years after the cause of action accrues: PROVIDED, That
6 the period for commencing an action for a breach accruing pursuant to
7 subsection (2)(b) of this section shall not expire prior to one year
8 after termination of the period of declarant control, if any, under RCW
9 64.34.308(~~(+4)~~) (5). Such period may not be reduced by either oral or
10 written agreement.

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

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

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

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

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

33 NEW SECTION. **Sec. 10.** If any provision of this act or its
34 application to any person or circumstance is held invalid, the
35 remainder of the act or the application of the provision to other
36 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and takes effect
4 July 1, 2003.

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