

CERTIFICATION OF ENROLLMENT
SECOND ENGROSSED SUBSTITUTE SENATE BILL 5536

58th Legislature
2004 Regular Session

Passed by the Senate March 11, 2004
YEAS 41 NAYS 8

President of the Senate

Passed by the House March 10, 2004
YEAS 97 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr.,
Secretary of the Senate of the
State of Washington, do hereby
certify that the attached is
**SECOND ENGROSSED SUBSTITUTE SENATE
BILL 5536** as passed by the Senate
and the House of Representatives
on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SECOND ENGROSSED SUBSTITUTE SENATE BILL 5536

AS AMENDED BY THE HOUSE

Passed Legislature - 2004 Regular Session

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, 64.34.324,
2 64.34.425, 64.34.445, 64.34.450, 64.34.452, 64.34.020, 64.34.312, and
3 64.34.410; adding a new section to chapter 64.34 RCW; adding a new
4 chapter to Title 64 RCW; creating new sections; and providing an
5 effective date.

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

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

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

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

13 (b) The growth management act's planning goals include encouraging
14 the availability of affordable housing for all residents of the state
15 and promoting a variety of housing types;

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

1 (2) It is the intent of the legislature that limited changes be
2 made to the condominium act to ensure that a broad range of affordable
3 homeownership opportunities continue to be available to the residents
4 of the state, and to assist cities' and counties' efforts to achieve
5 the density mandates of the growth management act.

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

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

13 (2) Except as otherwise provided in chapter 64.-- RCW (sections 101
14 through 2002 of this act), any right or obligation declared by this
15 chapter is enforceable by judicial proceeding.

16 **Sec. 3.** RCW 64.34.324 and 1992 c 220 s 16 are each amended to read
17 as follows:

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

20 (a) The number, qualifications, powers and duties, terms of office,
21 and manner of electing and removing the board of directors and officers
22 and filling vacancies;

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

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

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

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

30 (f) A statement of the standard of care for officers and members of
31 the board of directors imposed by RCW 64.34.308(1).

32 (2) Subject to the provisions of the declaration, the bylaws may
33 provide for any other matters the association deems necessary and
34 appropriate.

35 (3) In determining the qualifications of any officer or director of
36 the association, notwithstanding the provision of RCW 64.34.020(32) the

1 term "unit owner" in such context shall, unless the declaration or
2 bylaws otherwise provide, be deemed to include any director, officer,
3 partner in, or trustee of any person, who is, either alone or in
4 conjunction with another person or persons, a unit owner. Any officer
5 or director of the association who would not be eligible to serve as
6 such if he or she were not a director, officer, partner in, or trustee
7 of such a person shall be disqualified from continuing in office if he
8 or she ceases to have any such affiliation with that person, or if that
9 person would have been disqualified from continuing in such office as
10 a natural person.

11 **Sec. 4.** RCW 64.34.425 and 1992 c 220 s 23 are each amended to read
12 as follows:

13 (1) Except in the case of a sale where delivery of a public
14 offering statement is required, or unless exempt under RCW
15 64.34.400(2), a unit owner shall furnish to a purchaser before
16 execution of any contract for sale of a unit, or otherwise before
17 conveyance, a resale certificate, signed by an officer or authorized
18 agent of the association and based on the books and records of the
19 association and the actual knowledge of the person signing the
20 certificate, containing:

21 (a) A statement disclosing any right of first refusal or other
22 restraint on the free alienability of the unit contained in the
23 declaration;

24 (b) A statement setting forth the amount of the monthly common
25 expense assessment and any unpaid common expense or special assessment
26 currently due and payable from the selling unit owner and a statement
27 of any special assessments that have been levied against the unit which
28 have not been paid even though not yet due;

29 (c) A statement, which shall be current to within forty-five days,
30 of any common expenses or special assessments against any unit in the
31 condominium that are past due over thirty days;

32 (d) A statement, which shall be current to within forty-five days,
33 of any obligation of the association which is past due over thirty
34 days;

35 (e) A statement of any other fees payable by unit owners;

36 (f) A statement of any anticipated repair or replacement cost in

1 excess of five percent of the annual budget of the association that has
2 been approved by the board of directors;

3 (g) A statement of the amount of any reserves for repair or
4 replacement and of any portions of those reserves currently designated
5 by the association for any specified projects;

6 (h) The annual financial statement of the association, including
7 the audit report if it has been prepared, for the year immediately
8 preceding the current year.

9 (i) A balance sheet and a revenue and expense statement of the
10 association prepared on an accrual basis, which shall be current to
11 within one hundred twenty days;

12 (j) The current operating budget of the association;

13 (k) A statement of any unsatisfied judgments against the
14 association and the status of any pending suits or legal proceedings in
15 which the association is a plaintiff or defendant;

16 (l) A statement describing any insurance coverage provided for the
17 benefit of unit owners;

18 (m) A statement as to whether there are any alterations or
19 improvements to the unit or to the limited common elements assigned
20 thereto that violate any provision of the declaration;

21 (n) A statement of the number of units, if any, still owned by the
22 declarant, whether the declarant has transferred control of the
23 association to the unit owners, and the date of such transfer;

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

27 (p) A statement of the remaining term of any leasehold estate
28 affecting the condominium and the provisions governing any extension or
29 renewal thereof; (~~and~~)

30 (q) A copy of the declaration, the bylaws, the rules or regulations
31 of the association, and any other information reasonably requested by
32 mortgagees of prospective purchasers of units. Information requested
33 generally by the federal national mortgage association, the federal
34 home loan bank board, the government national mortgage association, the
35 veterans administration and the department of housing and urban
36 development shall be deemed reasonable, provided such information is
37 reasonably available to the association; and

1 (r) A statement, as required by section 301 of this act, as to
2 whether the units or common elements of the condominium are covered by
3 a qualified warranty, and a history of claims under any such warranty.

4 (2) The association, within ten days after a request by a unit
5 owner, and subject to payment of any fee imposed pursuant to RCW
6 64.34.304(1)(1), shall furnish a resale certificate signed by an
7 officer or authorized agent of the association and containing the
8 information necessary to enable the unit owner to comply with this
9 section. For the purposes of this chapter, a reasonable charge for the
10 preparation of a resale certificate may not exceed one hundred fifty
11 dollars. The association may charge a unit owner a nominal fee for
12 updating a resale certificate within six months of the unit owner's
13 request. The unit owner shall also sign the certificate but the unit
14 owner is not liable to the purchaser for any erroneous information
15 provided by the association and included in the certificate unless and
16 to the extent the unit owner had actual knowledge thereof.

17 (3) A purchaser is not liable for any unpaid assessment or fee
18 against the unit as of the date of the certificate greater than the
19 amount set forth in the certificate prepared by the association unless
20 and to the extent such purchaser had actual knowledge thereof. A unit
21 owner is not liable to a purchaser for the failure or delay of the
22 association to provide the certificate in a timely manner, but the
23 purchaser's contract is voidable by the purchaser until the certificate
24 has been provided and for five days thereafter or until conveyance,
25 whichever occurs first.

26 **Sec. 5.** RCW 64.34.445 and 1992 c 220 s 26 are each amended to read
27 as follows:

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

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

36 (a) Free from defective materials; (~~and~~)

1 (b) Constructed in accordance with sound engineering and
2 construction standards(~~(, and)~~);

3 (c) Constructed in a workmanlike manner; and

4 (d) Constructed in compliance with all laws then applicable to such
5 improvements.

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

10 (4) Warranties imposed by this section may be excluded or modified
11 as specified in RCW 64.34.450.

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

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

17 (7) In a judicial proceeding for breach of any of the obligations
18 arising under this section, the plaintiff must show that the alleged
19 breach has adversely affected or will adversely affect the performance
20 of that portion of the unit or common elements alleged to be in breach.
21 As used in this subsection, an "adverse effect" must be more than
22 technical and must be significant to a reasonable person. To establish
23 an adverse effect, the person alleging the breach is not required to
24 prove that the breach renders the unit or common element uninhabitable
25 or unfit for its intended purpose.

26 (8) Proof of breach of any obligation arising under this section is
27 not proof of damages. Damages awarded for a breach of an obligation
28 arising under this section are the cost of repairs. However, if it is
29 established that the cost of such repairs is clearly disproportionate
30 to the loss in market value caused by the breach, then damages shall be
31 limited to the loss in market value.

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

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

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

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

4 (2) ~~((With respect to a purchaser of a unit that may be occupied))~~
5 For units intended for residential use, no ~~((general))~~ disclaimer of
6 implied warranties of quality is effective, ~~((but))~~ except that a
7 declarant ~~((and any))~~ or dealer may disclaim liability in ~~((an~~
8 ~~instrument))~~ writing, in type that is bold faced, capitalized,
9 underlined, or otherwise set out from surrounding material so as to be
10 conspicuous, and separately signed by the purchaser, for a specified
11 defect or specified failure to comply with applicable law, if: (a) The
12 declarant or dealer knows or has reason to know that the specific
13 defect or failure ~~((entered into and became a part of the basis of the~~
14 ~~bargain))~~ exists at the time of disclosure; (b) the disclaimer
15 specifically describes the defect or failure; and (c) the disclaimer
16 includes a statement as to the effect of the defect or failure.

17 (3) A declarant or dealer may offer an express written warranty of
18 quality only if the express written warranty does not reduce
19 protections provided to the purchaser by the implied warranty set forth
20 in RCW 64.34.445.

21 **Sec. 7.** RCW 64.34.452 and 2002 c 323 s 11 are each amended to read
22 as follows:

23 (1) A judicial proceeding for breach of any obligations arising
24 under RCW 64.34.443 ~~((and)),~~ 64.34.445, and 64.34.450 must be commenced
25 within four years after the cause of action accrues: PROVIDED, That
26 the period for commencing an action for a breach accruing pursuant to
27 subsection (2)(b) of this section shall not expire prior to one year
28 after termination of the period of declarant control, if any, under RCW
29 64.34.308(4). Such periods may not be reduced by either oral or
30 written agreement, or through the use of contractual claims or notice
31 procedures that require the filing or service of any claim or notice
32 prior to the expiration of the period specified in this section.

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

36 (a) As to a unit, the date the purchaser to whom the warranty is

1 first made enters into possession if a possessory interest was conveyed
2 or the date of acceptance of the instrument of conveyance if a
3 nonpossessory interest was conveyed; and

4 (b) As to each common element, at the latest of (i) the date the
5 first unit in the condominium was conveyed to a bona fide purchaser,
6 (ii) the date the common element was completed, or (iii) the date the
7 common element was added to the condominium.

8 (3) If a warranty of quality explicitly extends to future
9 performance or duration of any improvement or component of the
10 condominium, the cause of action accrues at the time the breach is
11 discovered or at the end of the period for which the warranty
12 explicitly extends, whichever is earlier.

13 (4) If a written notice of claim is served under RCW 64.50.020
14 within the time prescribed for the filing of an action under this
15 chapter, the statutes of limitation in this chapter and any applicable
16 statutes of repose for construction-related claims are tolled until
17 sixty days after the period of time during which the filing of an
18 action is barred under RCW 64.50.020.

19 (5) Nothing in this section affects the time for filing a claim
20 under chapter 64.-- RCW (sections 101 through 2002 of this act).

21 NEW SECTION. Sec. 8. (1) A committee is established to study:

22 (a) The required use of independent third-party inspections of
23 residential condominiums as a way to reduce the problem of water
24 penetration in residential condominiums; and

25 (b) The use of arbitration or other forms of alternative dispute
26 resolution to resolve disputes involving alleged breaches of implied or
27 express warranties under chapter 64.34 RCW.

28 (2) The committee consists of the following members who shall be
29 persons with experience and expertise in condominium law or condominium
30 construction:

31 (a) A member, who shall be the chair of the committee, to be
32 appointed by the governor;

33 (b) Three members to be appointed by the majority leader of the
34 senate; and

35 (c) Three members to be appointed by the speaker of the house of
36 representatives.

37 (3) The committee shall:

1 (a) Examine the problem of water penetration of condominiums and
2 the efficacy of requiring independent third-party inspections of
3 condominiums, including plan inspection and inspection during
4 construction, as a way to reduce the problem of water penetration;

5 (b) Examine issues relating to alternative dispute resolution,
6 including but not limited to:

7 (i) When and how the decision to use alternative dispute resolution
8 is made;

9 (ii) The procedures to be used in an alternative dispute
10 resolution;

11 (iii) The nature of the right of appeal from an alternative dispute
12 resolution decision; and

13 (iv) The allocation of costs and fees associated with an
14 alternative dispute resolution proceeding or appeal;

15 (c) Deliver to the judiciary committees of the senate and house of
16 representatives, not later than December 31, 2004, a report of the
17 findings and conclusions of the committee, and any proposed legislation
18 implementing third-party water penetration inspections or providing for
19 alternative dispute resolution for warranty issues.

20 **Sec. 9.** RCW 64.34.020 and 1992 c 220 s 2 are each amended to read
21 as follows:

22 In the declaration and bylaws, unless specifically provided
23 otherwise or the context requires otherwise, and in this chapter:

24 (1) "Affiliate (~~of a declarant~~)" means any person who controls,
25 is controlled by, or is under common control with (~~a declarant~~) the
26 referenced person. A person "controls" (~~a declarant~~) another person
27 if the person: (a) Is a general partner, officer, director, or
28 employer of the (~~declarant~~) referenced person; (b) directly or
29 indirectly or acting in concert with one or more other persons, or
30 through one or more subsidiaries, owns, controls, holds with power to
31 vote, or holds proxies representing, more than twenty percent of the
32 voting interest in the (~~declarant~~) referenced person; (c) controls in
33 any manner the election of a majority of the directors of the
34 (~~declarant~~) referenced person; or (d) has contributed more than
35 twenty percent of the capital of the (~~declarant~~) referenced person.
36 A person "is controlled by" (~~a declarant~~) another person if the
37 (~~declarant~~) other person: (i) Is a general partner, officer,

1 director, or employer of the person; (ii) directly or indirectly or
2 acting in concert with one or more other persons, or through one or
3 more subsidiaries, owns, controls, holds with power to vote, or holds
4 proxies representing, more than twenty percent of the voting interest
5 in the person; (iii) controls in any manner the election of a majority
6 of the directors of the person; or (iv) has contributed more than
7 twenty percent of the capital of the person. Control does not exist if
8 the powers described in this subsection are held solely as security for
9 an obligation and are not exercised.

10 (2) "Allocated interests" means the undivided interest in the
11 common elements, the common expense liability, and votes in the
12 association allocated to each unit.

13 (3) "Assessment" means all sums chargeable by the association
14 against a unit including, without limitation: (a) Regular and special
15 assessments for common expenses, charges, and fines imposed by the
16 association; (b) interest and late charges on any delinquent account;
17 and (c) costs of collection, including reasonable attorneys' fees,
18 incurred by the association in connection with the collection of a
19 delinquent owner's account.

20 (4) "Association" or "unit owners' association" means the unit
21 owners' association organized under RCW 64.34.300.

22 (5) "Board of directors" means the body, regardless of name, with
23 primary authority to manage the affairs of the association.

24 (6) "Common elements" means all portions of a condominium other
25 than the units.

26 (7) "Common expenses" means expenditures made by or financial
27 liabilities of the association, together with any allocations to
28 reserves.

29 (8) "Common expense liability" means the liability for common
30 expenses allocated to each unit pursuant to RCW 64.34.224.

31 (9) "Condominium" means real property, portions of which are
32 designated for separate ownership and the remainder of which is
33 designated for common ownership solely by the owners of those portions.
34 Real property is not a condominium unless the undivided interests in
35 the common elements are vested in the unit owners, and unless a
36 declaration and a survey map and plans have been recorded pursuant to
37 this chapter.

1 (10) "Conversion condominium" means a condominium (a) that at any
2 time before creation of the condominium was lawfully occupied wholly or
3 partially by a tenant or subtenant for residential purposes pursuant to
4 a rental agreement, oral or written, express or implied, for which the
5 tenant or subtenant had not received the notice described in (b) of
6 this subsection; or (b) that, at any time within twelve months before
7 the conveyance of, or acceptance of an agreement to convey, any unit
8 therein other than to a declarant or any affiliate of a declarant, was
9 lawfully occupied wholly or partially by a residential tenant of a
10 declarant or an affiliate of a declarant and such tenant was not
11 notified in writing, prior to lawfully occupying a unit or executing a
12 rental agreement, whichever event first occurs, that the unit was part
13 of a condominium and subject to sale. "Conversion condominium" shall
14 not include a condominium in which, before July 1, 1990, any unit
15 therein had been conveyed or been made subject to an agreement to
16 convey to any transferee other than a declarant or an affiliate of a
17 declarant.

18 (11) "Conveyance" means any transfer of the ownership of a unit,
19 including a transfer by deed or by real estate contract and, with
20 respect to a unit in a leasehold condominium, a transfer by lease or
21 assignment thereof, but shall not include a transfer solely for
22 security.

23 (12) "Dealer" means a person who, together with such person's
24 affiliates, owns or has a right to acquire either six or more units in
25 a condominium or fifty percent or more of the units in a condominium
26 containing more than two units.

27 (13) "Declarant" means (~~(any person or group of persons acting in~~
28 ~~concert who)):~~

29 (a) Any person who executes as declarant a declaration as defined
30 in subsection (15) of this section(~~(7))~~; or

31 (b) (~~reserves or succeeds to any special declarant right under~~)
32 Any person who reserves any special declarant right in the declaration;
33 or

34 (c) Any person who exercises special declarant rights or to whom
35 special declarant rights are transferred; or

36 (d) Any person who is the owner of a fee interest in the real
37 property which is subjected to the declaration at the time of the
38 recording of an instrument pursuant to RCW 64.34.316 and who directly

1 or through one or more affiliates is materially involved in the
2 construction, marketing, or sale of units in the condominium created by
3 the recording of the instrument.

4 (14) "Declarant control" means the right of the declarant or
5 persons designated by the declarant to appoint and remove officers and
6 members of the board of directors, or to veto or approve a proposed
7 action of the board or association, pursuant to RCW 64.34.308 (4) or
8 (5).

9 (15) "Declaration" means the document, however denominated, that
10 creates a condominium by setting forth the information required by RCW
11 64.34.216 and any amendments to that document.

12 (16) "Development rights" means any right or combination of rights
13 reserved by a declarant in the declaration to: (a) Add real property
14 or improvements to a condominium; (b) create units, common elements, or
15 limited common elements within real property included or added to a
16 condominium; (c) subdivide units or convert units into common elements;
17 (d) withdraw real property from a condominium; or (e) reallocate
18 limited common elements with respect to units that have not been
19 conveyed by the declarant.

20 (17) "Dispose" or "disposition" means a voluntary transfer or
21 conveyance to a purchaser or lessee of any legal or equitable interest
22 in a unit, but does not include the transfer or release of a security
23 interest.

24 (18) "Eligible mortgagee" means the holder of a mortgage on a unit
25 that has filed with the secretary of the association a written request
26 that it be given copies of notices of any action by the association
27 that requires the consent of mortgagees.

28 (19) "Foreclosure" means a forfeiture or judicial or nonjudicial
29 foreclosure of a mortgage or a deed in lieu thereof.

30 (20) "Identifying number" means the designation of each unit in a
31 condominium.

32 (21) "Leasehold condominium" means a condominium in which all or a
33 portion of the real property is subject to a lease, the expiration or
34 termination of which will terminate the condominium or reduce its size.

35 (22) "Limited common element" means a portion of the common
36 elements allocated by the declaration or by operation of RCW 64.34.204
37 (2) or (4) for the exclusive use of one or more but fewer than all of
38 the units.

1 (23) "Master association" means an organization described in RCW
2 64.34.276, whether or not it is also an association described in RCW
3 64.34.300.

4 (24) "Mortgage" means a mortgage, deed of trust or real estate
5 contract.

6 (25) "Person" means a natural person, corporation, partnership,
7 limited partnership, trust, governmental subdivision or agency, or
8 other legal entity.

9 (26) "Purchaser" means any person, other than a declarant or a
10 dealer, who by means of a disposition acquires a legal or equitable
11 interest in a unit other than (a) a leasehold interest, including
12 renewal options, of less than twenty years at the time of creation of
13 the unit, or (b) as security for an obligation.

14 (27) "Real property" means any fee, leasehold or other estate or
15 interest in, over, or under land, including structures, fixtures, and
16 other improvements thereon and easements, rights and interests
17 appurtenant thereto which by custom, usage, or law pass with a
18 conveyance of land although not described in the contract of sale or
19 instrument of conveyance. "Real property" includes parcels, with or
20 without upper or lower boundaries, and spaces that may be filled with
21 air or water.

22 (28) "Residential purposes" means use for dwelling or recreational
23 purposes, or both.

24 (29) "Special declarant rights" means rights reserved for the
25 benefit of a declarant to: (a) Complete improvements indicated on
26 survey maps and plans filed with the declaration under RCW 64.34.232;
27 (b) exercise any development right under RCW 64.34.236; (c) maintain
28 sales offices, management offices, signs advertising the condominium,
29 and models under RCW 64.34.256; (d) use easements through the common
30 elements for the purpose of making improvements within the condominium
31 or within real property which may be added to the condominium under RCW
32 64.34.260; (e) make the condominium part of a larger condominium or a
33 development under RCW 64.34.280; (f) make the condominium subject to a
34 master association under RCW 64.34.276; or (g) appoint or remove any
35 officer of the association or any master association or any member of
36 the board of directors, or to veto or approve a proposed action of the
37 board or association, during any period of declarant control under RCW
38 64.34.308(4).

1 (30) "Timeshare" shall have the meaning specified in the timeshare
2 act, RCW 64.36.010(11).

3 (31) "Unit" means a physical portion of the condominium designated
4 for separate ownership, the boundaries of which are described pursuant
5 to RCW 64.34.216(1)(d). "Separate ownership" includes leasing a unit
6 in a leasehold condominium under a lease that expires contemporaneously
7 with any lease, the expiration or termination of which will remove the
8 unit from the condominium.

9 (32) "Unit owner" means a declarant or other person who owns a unit
10 or leases a unit in a leasehold condominium under a lease that expires
11 simultaneously with any lease, the expiration or termination of which
12 will remove the unit from the condominium, but does not include a
13 person who has an interest in a unit solely as security for an
14 obligation. "Unit owner" means the vendee, not the vendor, of a unit
15 under a real estate contract.

16 **Sec. 10.** RCW 64.34.312 and 1989 c 43 s 3-104 are each amended to
17 read as follows:

18 (1) Within sixty days after the termination of the period of
19 declarant control provided in RCW 64.34.308(4) or, in the absence of
20 such period, within sixty days after the first conveyance of a unit in
21 the condominium, the declarant shall deliver to the association all
22 property of the unit owners and of the association held or controlled
23 by the declarant including, but not limited to:

24 (a) The original or a photocopy of the recorded declaration and
25 each amendment to the declaration;

26 (b) The certificate of incorporation and a copy or duplicate
27 original of the articles of incorporation of the association as filed
28 with the secretary of state;

29 (c) The bylaws of the association;

30 (d) The minute books, including all minutes, and other books and
31 records of the association;

32 (e) Any rules and regulations that have been adopted;

33 (f) Resignations of officers and members of the board who are
34 required to resign because the declarant is required to relinquish
35 control of the association;

36 (g) The financial records, including canceled checks, bank

1 statements, and financial statements of the association, and source
2 documents from the time of incorporation of the association through the
3 date of transfer of control to the unit owners;

4 (h) Association funds or the control of the funds of the
5 association;

6 (i) All tangible personal property of the association, represented
7 by the declarant to be the property of the association or ostensibly
8 the property of the association, and an inventory of the property;

9 (j) Except for alterations to a unit done by a unit owner other
10 than the declarant, a copy of the declarant's plans and specifications
11 utilized in the construction or remodeling of the condominium, with a
12 certificate of the declarant or a licensed architect or engineer that
13 the plans and specifications represent, to the best of their knowledge
14 and belief, the actual plans and specifications utilized by the
15 declarant in the construction or remodeling of the condominium;

16 (k) Insurance policies or copies thereof for the condominium and
17 association;

18 (l) Copies of any certificates of occupancy that may have been
19 issued for the condominium;

20 (m) Any other permits issued by governmental bodies applicable to
21 the condominium in force or issued within one year before the date of
22 transfer of control to the unit owners;

23 (n) All written warranties that are still in effect for the common
24 elements, or any other areas or facilities which the association has
25 the responsibility to maintain and repair, from the contractor,
26 subcontractors, suppliers, and manufacturers and all owners' manuals or
27 instructions furnished to the declarant with respect to installed
28 equipment or building systems;

29 (o) A roster of unit owners and eligible mortgagees and their
30 addresses and telephone numbers, if known, as shown on the declarant's
31 records and the date of closing of the first sale of each unit sold by
32 the declarant;

33 (p) Any leases of the common elements or areas and other leases to
34 which the association is a party;

35 (q) Any employment contracts or service contracts in which the
36 association is one of the contracting parties or service contracts in
37 which the association or the unit owners have an obligation or a

1 responsibility, directly or indirectly, to pay some or all of the fee
2 or charge of the person performing the service; (~~and~~)

3 (r) A copy of any qualified warranty issued to the association as
4 provided for in section 1001 of this act; and

5 (s) All other contracts to which the association is a party.

6 (2) Upon the transfer of control to the unit owners, the records of
7 the association shall be audited as of the date of transfer by an
8 independent certified public accountant in accordance with generally
9 accepted auditing standards unless the unit owners, other than the
10 declarant, by two-thirds vote elect to waive the audit. The cost of
11 the audit shall be a common expense unless otherwise provided in the
12 declaration. The accountant performing the audit shall examine
13 supporting documents and records, including the cash disbursements and
14 related paid invoices, to determine if expenditures were for
15 association purposes and the billings, cash receipts, and related
16 records to determine if the declarant was charged for and paid the
17 proper amount of assessments.

18 **Sec. 11.** RCW 64.34.410 and 2002 c 323 s 10 are each amended to
19 read 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;

15 (aa) Any building code violation citations received by the
16 declarant in connection with the condominium which have not been
17 corrected;

18 (bb) A statement of any unsatisfied judgments or pending suits
19 against the association, a statement of the status of any pending suits
20 material to the condominium of which the declarant has actual
21 knowledge, and a statement of any litigation brought by an owners'
22 association, unit owner, or governmental entity in which the declarant
23 or any affiliate of the declarant has been a defendant, arising out of
24 the construction, sale, or administration of any condominium within the
25 previous five years, together with the results thereof, if known;

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

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

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

33 (ff) Any reports or statements required by RCW 64.34.415 or
34 64.34.440(6)(a). RCW 64.34.415 shall apply to the public offering
35 statement of a condominium in connection with which a final certificate
36 of occupancy was issued more than sixty calendar months prior to the
37 preparation of the public offering statement whether or not the

1 condominium is a conversion condominium as defined in RCW
2 64.34.020(10);

3 (gg) A list of the documents which the prospective purchaser is
4 entitled to receive from the declarant before the rescission period
5 commences;

6 (hh) A notice which states: A purchaser may not rely on any
7 representation or express warranty unless it is contained in the public
8 offering statement or made in writing signed by the declarant or by any
9 person identified in the public offering statement as the declarant's
10 agent;

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

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

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

23 (ll) A notice that is substantially in the form required by RCW
24 64.50.050; and

25 (mm) A statement, as required by section 301 of this act, as to
26 whether the units or common elements of the condominium are covered by
27 a qualified warranty, and a history of claims under any such warranty.

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

35 If any of the foregoing documents listed in this subsection are not
36 available because they have not been executed, adopted, or recorded,
37 drafts of such documents shall be provided with the public offering

1 statement, and, before closing the sale of a unit, the purchaser shall
2 be given copies of any material changes between the draft of the
3 proposed documents and the final documents.

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

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

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

15 NEW SECTION. **Sec. 12.** Sections 5 and 6 of this act apply only to
16 condominiums created by declarations recorded on or after July 1, 2004.

17 NEW SECTION. **Sec. 13.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act take
22 effect July 1, 2004.

23 **ARTICLE 1**

24 **GENERAL PROVISIONS**

25 NEW SECTION. **Sec. 101.** DEFINITIONS. The definitions in this
26 section apply throughout this chapter unless the context clearly
27 requires otherwise.

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

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

30 (3) "Building envelope" means the assemblies, components, and
31 materials of a building that are intended to separate and protect the
32 interior space of the building from the adverse effects of exterior
33 climatic conditions.

1 (4) "Common element" has the meaning in RCW 64.34.020.
2 (5) "Condominium" has the meaning in RCW 64.34.020.
3 (6) "Construction professional" has the meaning in RCW 64.50.010.
4 (7) "Conversion condominium" has the meaning in RCW 64.34.020.
5 (8) "Declarant" has the meaning in RCW 64.34.020.
6 (9) "Declarant control" has the meaning in RCW 64.34.020.
7 (10) "Defect" means any aspect of a condominium unit or common
8 element which constitutes a breach of the implied warranties set forth
9 in RCW 64.34.445.
10 (11) "Limited common element" has the meaning in RCW 64.34.020.
11 (12) "Material" means substantive, not simply formal; significant
12 to a reasonable person; not trivial or insignificant. When used with
13 respect to a particular construction defect, "material" does not
14 require that the construction defect render the unit or common element
15 unfit for its intended purpose or uninhabitable.
16 (13) "Mediation" means a collaborative process in which two or more
17 parties meet and attempt, with the assistance of a mediator, to resolve
18 issues in dispute between them.
19 (14) "Mediation session" means a meeting between two or more
20 parties to a dispute during which they are engaged in mediation.
21 (15) "Mediator" means a neutral and impartial facilitator with no
22 decision-making power who assists parties in negotiating a mutually
23 acceptable settlement of issues in dispute between them.
24 (16) "Person" has the meaning in RCW 64.34.020.
25 (17) "Public offering statement" has the meaning in RCW 64.34.410.
26 (18) "Qualified insurer" means an entity that holds a certificate
27 of authority under RCW 48.05.030, or an eligible insurer under chapter
28 48.15 RCW.
29 (19) "Qualified warranty" means an insurance policy issued by a
30 qualified insurer that complies with the requirements of this chapter.
31 A qualified warranty includes coverage for repair of physical damage
32 caused by the defects covered by the qualified warranty, except to the
33 extent of any exclusions and limitations under this chapter.
34 (20) "Resale certificate" means the statement to be delivered by
35 the association under RCW 64.34.425.
36 (21) "Transition date" means the date on which the declarant is
37 required to deliver to the association the property of the association
38 under RCW 64.34.312.

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

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

3 **ARTICLE 2**

4 **EXCLUSIVE REMEDY AND PROCEDURE**

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

6 NEW SECTION. **Sec. 201.** No declarant, affiliate of a declarant, or
7 construction professional is liable to a unit owner or an association
8 for damages awarded for repair of construction defects and resulting
9 physical damage, and chapter 64.50 RCW shall not apply if: (1) Every
10 unit is the subject of a qualified warranty; and (2) the association
11 has been issued a qualified warranty with respect to the common
12 elements. If a construction professional agrees on terms satisfactory
13 to the qualified insurer to partially or fully indemnify the qualified
14 insurer with respect to a defect caused by the construction
15 professional, the liability of the construction professional for the
16 defect and resulting physical damage caused by him or her shall not
17 exceed damages recoverable under the terms of the qualified warranty
18 for the defect. Any indemnity claim by the qualified insurer shall be
19 by separate action or arbitration, and no unit owner or association
20 shall be joined therein. A qualified warranty may also be provided in
21 the case of improvements made or contracted for by a declarant as part
22 of a conversion condominium, and in such case, declarant's liability
23 with respect to such improvements shall be limited as set forth in this
24 section.

25 **ARTICLE 3**

26 **DISCLOSURE**

27 NEW SECTION. **Sec. 301.** (1) Every public offering statement and
28 resale certificate shall affirmatively state whether or not the unit
29 and/or the common elements are covered by a qualified warranty, and
30 shall provide to the best knowledge of the person preparing the public
31 offering statement or resale certificate a history of claims under the
32 warranty.

33 (2) The history of claims must include, for each claim, not less

1 than the following information for the unit and/or the common elements,
2 as applicable, to the best knowledge of the person providing the
3 information:

- 4 (a) The type of claim that was made;
- 5 (b) The resolution of the claim;
- 6 (c) The type of repair performed;
- 7 (d) The date of the repair;
- 8 (e) The cost of the repair; and
- 9 (f) The name of the person or entity who performed the repair.

10 **ARTICLE 4**

11 **MINIMUM COVERAGE STANDARDS FOR QUALIFIED WARRANTIES**

12 NEW SECTION. **Sec. 401.** TWO-YEAR MATERIALS AND LABOR WARRANTY.

13 (1) The minimum coverage for the two-year materials and labor warranty
14 is:

15 (a) In the first twelve months, for other than the common elements,
16 (i) coverage for any defect in materials and labor; and (ii) subject to
17 subsection (2) of this section, coverage for a violation of the
18 building code;

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

23 (c) In the first twenty-four months, (i) coverage for any defect in
24 materials and labor supplied for the electrical, plumbing, heating,
25 ventilation, and air conditioning delivery and distribution systems;
26 (ii) coverage for any defect in materials and labor supplied for the
27 exterior cladding, caulking, windows, and doors that may lead to
28 detachment or material damage to the unit or common elements; (iii)
29 coverage for any defect in materials and labor which renders the unit
30 unfit to live in; and (iv) subject to subsection (2) of this section,
31 coverage for a violation of the building code.

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

34 (a) Constitutes an unreasonable health or safety risk; or

35 (b) Has resulted in, or is likely to result in, material damage to
36 the unit or common elements.

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

6 NEW SECTION. **Sec. 403.** TEN-YEAR STRUCTURAL DEFECTS WARRANTY. The
7 minimum coverage for the structural defects warranty is ten years for:

8 (1) Any defect in materials and labor that results in the failure
9 of a load-bearing part of the condominium; and

10 (2) Any defect which causes structural damage that materially and
11 adversely affects the use of the condominium for residential occupancy.

12 NEW SECTION. **Sec. 404.** BEGINNING DATES FOR WARRANTY COVERAGE.

13 (1) For the unit, the beginning date of the qualified warranty coverage
14 is the earlier of:

15 (a) Actual occupancy of the unit; or

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

17 (2) For the common elements, the beginning date of a qualified
18 warranty is the date a temporary or final certificate of occupancy is
19 issued for the common elements in each separate multiunit building,
20 comprised by the condominium.

21 NEW SECTION. **Sec. 405.** BEGINNING DATES FOR SPECIAL CASES;
22 DECLARANT CONTROL. (1) If an unsold unit is occupied as a rental unit,
23 the qualified warranty beginning date for such unit is the date the
24 unit is first occupied.

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

28 (3) If the declarant retains any declarant control over the
29 association on the date that is fourteen full calendar months following
30 the month in which the beginning date for common element warranty
31 coverage commences, the declarant shall within thirty days thereafter
32 cause an election to be held in which the declarant may not vote, for
33 the purpose of electing one or more board members who are empowered to
34 make warranty claims. If at such time, one or more independent board
35 members hold office, no additional election need be held, and such

1 independent board members are empowered to make warranty claims. The
2 declarant shall inform all independent board members of their right to
3 make warranty claims at no later than sixteen full calendar months
4 following the beginning date of the common element warranty.

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

10 (2) If a qualified insurer establishes a maximum amount per day for
11 claims for living expenses, the limit must be the greater of one
12 hundred dollars per day or a reasonable amount commensurate with the
13 nature of the unit for the complete reimbursement of the actual
14 accommodation expenses incurred by the owner at a hotel, motel, or
15 other rental accommodation up to the day the unit is ready for
16 occupancy, subject to the owner receiving twenty-four hours' advance
17 notice.

18 NEW SECTION. **Sec. 407.** WARRANTY ON REPAIRS AND REPLACEMENTS. (1)
19 All repairs and replacements made under a qualified warranty must be
20 warranted by the qualified warranty against defects in materials and
21 labor until the later of:

22 (a) The first anniversary of the date of completion of the repair
23 or replacement; or

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

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

28 **ARTICLE 5**

29 **PERMITTED TERMS FOR QUALIFIED WARRANTIES**

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

32 (1) If the qualified insurer makes a payment or assumes liability
33 for any payment or repair under a qualified warranty, the owner and
34 association must fully support and assist the qualified insurer in

1 pursuing any rights that the qualified insurer may have against the
2 declarant, and any construction professional that has contractual or
3 common law obligations to the declarant, whether such rights arose by
4 contract, subrogation, or otherwise.

5 (2) Warranties or representations made by a declarant which are in
6 addition to the warranties set forth in this chapter are not binding on
7 the qualified insurer unless and to the extent specifically provided in
8 the text of the warranty; and disclaimers of specific defects made by
9 agreement between the declarant and the unit purchaser under RCW
10 64.34.450 act as an exclusion of the specified defect from the warranty
11 coverage.

12 (3) An owner and the association must permit the qualified insurer
13 or declarant, or both, to enter the unit at reasonable times, after
14 reasonable notice to the owner and the association:

- 15 (a) To monitor the unit or its components;
- 16 (b) To inspect for required maintenance;
- 17 (c) To investigate complaints or claims; or
- 18 (d) To undertake repairs under the qualified warranty.

19 If any reports are produced as a result of any of the activities
20 referred to in (a) through (d) of this subsection, the reports must be
21 provided to the owner and the association.

22 (4) An owner and the association must provide to the qualified
23 insurer all information and documentation that the owner and the
24 association have available, as reasonably required by the qualified
25 insurer to investigate a claim or maintenance requirement, or to
26 undertake repairs under the qualified warranty.

27 (5) To the extent any damage to a unit is caused or made worse by
28 the unreasonable refusal of the association, or an owner or occupant to
29 permit the qualified insurer or declarant access to the unit for the
30 reasons in subsection (3) of this section, or to provide the
31 information required by subsection (4) of this section, that damage is
32 excluded from the qualified warranty.

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

36 **ARTICLE 6**

1 **PERMITTED EXCLUSIONS FROM QUALIFIED WARRANTIES--GENERAL**

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

4 (a) Landscaping, both hard and soft, including plants, fencing,
5 detached patios, planters not forming a part of the building envelope,
6 gazebos, and similar structures;

7 (b) Any commercial use area and any construction associated with a
8 commercial use area;

9 (c) Roads, curbs, and lanes;

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

12 (e) Municipal services operation, including sanitary and storm
13 sewer;

14 (f) Septic tanks or septic fields;

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

17 (h) A water well, but excluding equipment installed for the
18 operation of a water well used exclusively for a unit, which equipment
19 is part of the plumbing system for that unit for the purposes of the
20 qualified warranty.

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

23 (a) A driveway or walkway;

24 (b) Recreational and amenity facilities situated in, or included as
25 the common property of, a unit;

26 (c) A parking structure in a multiunit building;

27 (d) A retaining wall that:

28 (i) An authority with jurisdiction requires to be designed by a
29 professional engineer; or

30 (ii) Is reasonably required for the direct support of, or retaining
31 soil away from, a unit, driveway, or walkway.

32 **ARTICLE 7**

33 **PERMITTED EXCLUSIONS--DEFECTS**

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

- 1 (1) Weathering, normal wear and tear, deterioration, or deflection
2 consistent with normal industry standards;
- 3 (2) Normal shrinkage of materials caused by drying after
4 construction;
- 5 (3) Any loss or damage which arises while a unit is being used
6 primarily or substantially for nonresidential purposes;
- 7 (4) Materials, labor, or design supplied by an owner;
- 8 (5) Any damage to the extent caused or made worse by an owner or
9 third party, including:
- 10 (a) Negligent or improper maintenance or improper operation by
11 anyone other than the declarant or its employees, agents, or
12 subcontractors;
- 13 (b) Failure of anyone, other than the declarant or its employees,
14 agents, or subcontractors, to comply with the warranty requirements of
15 the manufacturers of appliances, equipment, or fixtures;
- 16 (c) Alterations to the unit, including converting nonliving space
17 into living space or converting a unit into two or more units, by
18 anyone other than the declarant or its employees, agents, or
19 subcontractors while undertaking their obligations under the sales
20 contract; and
- 21 (d) Changes to the grading of the ground by anyone other than the
22 declarant or its employees, agents, or subcontractors;
- 23 (6) An owner failing to take timely action to prevent or minimize
24 loss or damage, including failing to give prompt notice to the
25 qualified insurer of a defect or discovered loss, or a potential defect
26 or loss;
- 27 (7) Any damage caused by insects, rodents, or other animals, unless
28 the damage results from noncompliance with the building code by the
29 declarant or its employees, agents, or subcontractors;
- 30 (8) Accidental loss or damage from acts of nature including, but
31 not limited to, fire, explosion, smoke, water escape, glass breakage,
32 windstorm, hail, lightning, falling trees, aircraft, vehicles, flood,
33 earthquake, avalanche, landslide, and changes in the level of the
34 underground water table which are not reasonably foreseeable by the
35 declarant;
- 36 (9) Bodily injury or damage to personal property or real property
37 which is not part of a unit;

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

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

8 (12) Contaminated soil;

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

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

13 **ARTICLE 8**

14 **MONETARY LIMITS ON QUALIFIED WARRANTY COVERAGE**

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

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

20 (b) For common elements, the lesser of (i) the total original
21 purchase price for all components of the multiunit building, or (ii)
22 one hundred fifty thousand dollars times the number of units of the
23 condominium.

24 (2) When calculating the cost of warranty claims under the standard
25 limits under a qualified warranty, a qualified insurer may include:

26 (a) The cost of repairs;

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

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

31 (3) The minimum amounts in subsections (1) and (2) of this section
32 shall be adjusted at the end of each calendar year after the effective
33 date by an amount equal to the percentage change in the consumer price
34 index for all urban consumers, all items, as published from time to
35 time by the United States department of labor. The adjustment does not
36 affect any qualified warranty issued before the adjustment date.

1 **ARTICLE 11**

2 **MANDATORY NOTICE OF EXPIRATION OF WARRANTY**

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

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

12 **ARTICLE 12**

13 **DUTY TO MITIGATE**

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

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

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

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

24 (a) The unit is unoccupied;

25 (b) The unit is occupied by someone other than the owner;

26 (c) Water penetration does not appear to be causing damage; or

27 (d) The owner advises the homeowners' association corporation about
28 the defect.

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

33 **ARTICLE 13**

34 **NOTICE OF CLAIM**

1 **ARTICLE 15**

2 **MEDIATION OF DISPUTED CLAIMS**

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

8 (2) If a party delivers a request to mediate under subsection (1)
9 of this section, the qualified insurer and the party must attend a
10 mediation session in relation to the dispute and may invite to
11 participate in the mediation any other party to the dispute who may be
12 liable.

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

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

- 21 (a) The need for the mediator to be neutral and independent;
- 22 (b) The qualifications of the mediator;
- 23 (c) The mediator's fees;
- 24 (d) The mediator's availability; and
- 25 (e) Any other consideration likely to result in the selection of an
26 impartial, competent, and effective mediator.

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

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

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

- 36 (8) A party may attend a mediation session by representative if:
37 (a) The party is under a legal disability and the representative is
38 that party's guardian ad litem;

1 (b) The party is not an individual; or
2 (c) The party is a resident of a jurisdiction other than Washington
3 and will not be in Washington at the time of the mediation session.
4 (9) A representative who attends a mediation session in the place
5 of a party as permitted by subsection (8) of this section:
6 (a) Must be familiar with all relevant facts on which the party, on
7 whose behalf the representative attends, intends to rely; and
8 (b) Must have full authority to settle, or have immediate access to
9 a person who has full authority to settle, on behalf of the party on
10 whose behalf the representative attends.
11 (10) A party or a representative who attends the mediation session
12 may be accompanied by counsel.
13 (11) Any other person may attend a mediation session on consent of
14 all parties or their representatives.
15 (12) At least seven days before the first mediation session is to
16 be held, each party must deliver to the mediator a statement briefly
17 setting out:
18 (a) The facts on which the party intends to rely; and
19 (b) The matters in dispute.
20 (13) The mediator must promptly send each party's statement to each
21 of the other parties.
22 (14) Before the first mediation session, the parties must enter
23 into a retainer agreement with the mediator which must:
24 (a) Disclose the cost of the mediation services; and
25 (b) Provide that the cost of the mediation will be paid:
26 (i) Equally by the parties; or
27 (ii) On any other specified basis agreed by the parties.
28 (15) The mediator may conduct the mediation in any manner he or she
29 considers appropriate to assist the parties to reach a resolution that
30 is timely, fair, and cost-effective.
31 (16) A person may not disclose, or be compelled to disclose, in any
32 proceeding, oral or written information acquired or an opinion formed,
33 including, without limitation, any offer or admission made in
34 anticipation of or during a mediation session.
35 (17) Nothing in subsection (16) of this section precludes a party
36 from introducing into evidence in a proceeding any information or
37 records produced in the course of the mediation that are otherwise
38 producible or compellable in those proceedings.

1 (18) A mediation session is concluded when:

2 (a) All issues are resolved;

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

5 (c) The mediation session is completed and there is no agreement to
6 continue.

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

12 (a) Facts;

13 (b) Issues; and

14 (c) Future procedural steps.

15 **ARTICLE 16**
16 **ARBITRATION**

17 NEW SECTION. **Sec. 1601.** A qualified warranty may include
18 mandatory binding arbitration of all disputes arising out of or in
19 connection with a qualified warranty. The provision may provide that
20 all claims for a single condominium be heard by the same arbitrator,
21 but shall not permit the joinder or consolidation of any other person
22 or entity. The arbitration shall comply with the following minimum
23 procedural standards:

24 (1) Any demand for arbitration shall be delivered by certified mail
25 return receipt requested, and by ordinary first class mail. The party
26 initiating the arbitration shall address the notice to the address last
27 known to the initiating party in the exercise of reasonable diligence,
28 and also, for any entity which is required to have a registered agent
29 in the state of Washington, to the address of the registered agent.
30 Demand for arbitration is deemed effective three days after the date
31 deposited in the mail;

32 (2) All disputes shall be heard by one qualified arbitrator, unless
33 the parties agree to use three arbitrators. If three arbitrators are
34 used, one shall be appointed by each of the disputing parties and the
35 first two arbitrators shall appoint the third, who will chair the
36 panel. The parties shall select the identity and number of the

1 arbitrator or arbitrators after the demand for arbitration is made.
2 If, within thirty days after the effective date of the demand for
3 arbitration, the parties fail to agree on an arbitrator or the agreed
4 number of arbitrators fail to be appointed, then an arbitrator or
5 arbitrators shall be appointed under RCW 7.04.050 by the presiding
6 judge of the superior court of the county in which the condominium is
7 located;

8 (3) In any arbitration, at least one arbitrator must be a lawyer or
9 retired judge. Any additional arbitrator must be either a lawyer or
10 retired judge or a person who has experience with construction and
11 engineering standards and practices, written construction warranties,
12 or construction dispute resolution. No person may serve as an
13 arbitrator in any arbitration in which that person has any past or
14 present financial or personal interest;

15 (4) The arbitration hearing must be conducted in a manner that
16 permits full, fair, and expeditious presentation of the case by both
17 parties. The arbitrator is bound by the law of Washington state.
18 Parties may be, but are not required to be, represented by attorneys.
19 The arbitrator may permit discovery to ensure a fair hearing, but may
20 limit the scope or manner of discovery for good cause to avoid
21 excessive delay and costs to the parties. The parties and the
22 arbitrator shall use all reasonable efforts to complete the arbitration
23 within six months of the effective date of the demand for arbitration
24 or, when applicable, the service of the list of defects in accordance
25 with RCW 64.50.030;

26 (5) Except as otherwise set forth in this section, arbitration
27 shall be conducted under chapter 7.04 RCW, unless the parties elect to
28 use the construction industry arbitration rules of the American
29 arbitration association, which are permitted to the extent not
30 inconsistent with this section. The expenses of witnesses including
31 expert witnesses shall be paid by the party producing the witnesses.
32 All other expenses of arbitration shall be borne equally by the
33 parties, unless all parties agree otherwise or unless the arbitrator
34 awards expenses or any part thereof to any specified party or parties.
35 The parties shall pay the fees of the arbitrator as and when specified
36 by the arbitrator;

37 (6) Demand for arbitration given pursuant to subsection (1) of this
38 section commences a judicial proceeding for purposes of RCW 64.34.452;

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

3 **ARTICLE 17**
4 **ATTORNEYS' FEES**

5 NEW SECTION. **Sec. 1701.** In any judicial proceeding or arbitration
6 brought to enforce the terms of a qualified warranty, the court or
7 arbitrator may award reasonable attorneys' fees to the substantially
8 prevailing party. In no event may such fees exceed the reasonable
9 hourly value of the attorney's work.

10 **ARTICLE 18**
11 **TRANSFER**

12 NEW SECTION. **Sec. 1801.** (1) A qualified warranty pertains solely
13 to the unit and common elements for which it provides coverage and no
14 notice to the qualified insurer is required on a change of ownership.

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

18 **ARTICLE 19**
19 **ACCEPTANCE OF DECLARANT FOR QUALIFIED WARRANTY**

20 NEW SECTION. **Sec. 1901.** (1) No insurer is bound to offer a
21 qualified warranty to any person. Except as specifically set forth in
22 this section, the terms of any qualified warranty are set in the sole
23 discretion of the qualified insurer. Without limiting the generality
24 of this subsection, a qualified insurer may make inquiries about the
25 applicant as follows:

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

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

1 (c) Does the applicant and its directors and officers have
2 sufficient experience in business management to properly manage the
3 unit construction process;

4 (d) Does the applicant and its directors, officers, and employees
5 have sufficient practical experience to undertake the proposed unit
6 construction;

7 (e) Does the past conduct of the applicant and its directors,
8 officers, employees, and consultants provide a reasonable indication of
9 good business practices, and reasonable grounds for belief that its
10 undertakings will be carried on in accordance with all legal
11 requirements; and

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

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

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

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

23 (b) To determine if the applicant or, in the case of a corporation,
24 its directors, officers, employees, and consultants possess reasonable
25 technical expertise to construct the proposed unit, including specific
26 technical knowledge or expertise in any building systems, construction
27 methods, products, treatments, technologies, and testing and inspection
28 methods proposed to be employed;

29 (c) To determine if the applicant or, in the case of a corporation,
30 its directors, officers, employees, and consultants have sufficient
31 practical experience in the specific types of construction to undertake
32 construction of the proposed unit;

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

37 (e) To determine if:

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

4 (ii) The general contractor meets the criteria set out in this
5 section;

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

8 (g) Establishing or requiring compliance with specific construction
9 standards for the unit;

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

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

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

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

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

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

22 (n) Requiring that the declarant or any of the design
23 professionals, engineering professionals, consultants, general
24 contractors, or subcontractors maintain minimum levels of insurance,
25 bonding, or other security naming the potential owners and qualified
26 insurer as loss payees or beneficiaries of the insurance, bonding, or
27 security to the extent possible;

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

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

34 **ARTICLE 20**
35 **MISCELLANEOUS**

1 NEW SECTION. **Sec. 2001.** All qualified warrantees shall be deemed
2 to be "insurance" for purposes of RCW 48.01.040, and shall be regulated
3 as such.

4 NEW SECTION. **Sec. 2002.** Captions and part headings used in this
5 act are not any part of the law.

6 NEW SECTION. **Sec. 2003.** Sections 101 through 2002 of this act
7 constitute a new chapter in Title 64 RCW.

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