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ENGROSSED HOUSE BILL 1848

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By Representatives Springer, Tom, Lantz, Priest, Hunter, Jarrett, Clibborn, Serben, Fromhold, Rodne, Williams, Flannigan, Kessler, O'Brien and Simpson

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1 AN ACT Relating to managing construction defect disputes involving  
2 multiunit residential buildings; amending RCW 64.34.415, 64.34.410, and  
3 64.34.100; adding a new section to chapter 64.34 RCW; adding a new  
4 chapter to Title 64 RCW; creating a new section; and providing an  
5 effective date.

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

7 NEW SECTION. **Sec. 1.** APPLICABILITY. (1) Sections 2 through 10 of  
8 this chapter apply to any multiunit residential building for which the  
9 permit for construction or rehabilitative construction of such building  
10 was issued on or after the effective date of this act.

11 (2) Sections 2 and 11 through 18 of this act apply to any action  
12 that alleges breach of an implied or express warranty under chapter  
13 64.34 RCW or that seeks relief that could be awarded for such breach,  
14 regardless of the legal theory pled, except that sections 11 through 18  
15 of this act shall not apply to:

16 (a) Actions filed or served prior to the effective date of this  
17 act;

18 (b) Actions for which a notice of claim was served pursuant to  
19 chapter 64.50 RCW prior to the effective date of this act;

1 (c) Actions asserting any claim regarding a building that is not a  
2 multiunit residential building;

3 (d) Actions asserting any claim regarding a multiunit residential  
4 building that was permitted on or after the effective date of this act  
5 unless the letter required by section 7 of this act has been submitted  
6 to the appropriate building department or the requirements of section  
7 10 of this act have been satisfied.

8 (3) Other than the requirements imposed by sections 2 through 10 of  
9 this act, nothing in this chapter amends or modifies the provisions of  
10 RCW 64.34.050.

11 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly  
12 requires otherwise, the definitions in RCW 64.34.020 and in this  
13 section apply throughout this chapter.

14 (1) "Attached dwelling units" means any dwelling unit that is  
15 attached to another dwelling unit by a wall, floor, or ceiling that  
16 separates heated living spaces. A garage is not a heated living space.

17 (2) "Building enclosure" means that part of any building, above or  
18 below grade, that physically separates the outside or exterior  
19 environment from interior environments and which weatherproofs,  
20 waterproofs, or otherwise protects the building or its components from  
21 water or moisture intrusion. Interior environments consist of both  
22 heated and unheated enclosed spaces. The building enclosure includes,  
23 but is not limited to, that portion of roofs, walls, balcony support  
24 columns, decks, windows, doors, vents, and other penetrations through  
25 exterior walls, which waterproof, weatherproof, or otherwise protect  
26 the building or its components from water or moisture intrusion.

27 (3) "Building enclosure design documents" means plans, details, and  
28 specifications for the building enclosure that have been stamped by a  
29 licensed engineer or architect. The building enclosure design  
30 documents shall include details and specifications that are appropriate  
31 for the building in the professional judgment of the architect or  
32 engineer which prepared the same to waterproof, weatherproof, and  
33 otherwise protect the building or its components from water or moisture  
34 intrusion, including details of flashing, intersections at roof, eaves  
35 or parapets, means of drainage, water-resistive membrane, and details  
36 around openings.

37 (4) "Developer" means:

1 (a) With respect to a condominium or a conversion condominium, the  
2 declarant; and

3 (b) With respect to all other buildings, an individual, group of  
4 individuals, partnership, corporation, association, municipal  
5 corporation, state agency, or other entity or person that obtains a  
6 building permit for the construction or rehabilitative reconstruction  
7 of a multiunit residential building. If a permit is obtained by  
8 service providers such as architects, contractors, and consultants who  
9 obtain permits for others as part of services rendered for a fee, the  
10 person for whom the permit is obtained shall be the developer, not the  
11 service provider.

12 (5) "Dwelling unit" has the meaning given to that phrase or similar  
13 phrases in the ordinances of the jurisdiction issuing the permit for  
14 construction of the building enclosure but if such ordinances do not  
15 provide a definition, then "dwelling unit" means a residence containing  
16 living, cooking, sleeping, and sanitary facilities.

17 (6) "Multiunit residential building" means:

18 (a) A building containing more than two attached dwelling units,  
19 including a building containing nonresidential units if the building  
20 also contains more than two attached dwelling units, but excluding the  
21 following classes of buildings:

22 (i) Hotels and motels;

23 (ii) Dormitories;

24 (iii) Care facilities;

25 (iv) Floating homes;

26 (v) A building that contains attached dwelling units that are each  
27 located on a single platted lot, except as provided in (b) of this  
28 subsection.

29 (vi) A building in which all of the dwelling units are held under  
30 one ownership and is subject to a recorded irrevocable sale prohibition  
31 covenant.

32 (b) If the developer submits to the appropriate building department  
33 when applying for the building permit described in section 3 of this  
34 act a statement that the developer elects to treat the improvement for  
35 which a permit is sought as a multiunit residential building for all  
36 purposes under this chapter, then "multiunit residential building" also  
37 means the following buildings for which such election has been made:

38 (i) A building containing only two attached dwelling units;

1 (ii) A condominium that does not contain attached dwelling units;  
2 and

3 (iii) Any building that contains attached dwelling units each of  
4 which is located on a single platted lot.

5 (7) "Qualified building inspector" means a person satisfying the  
6 requirements of section 5 of this act.

7 (8) "Rehabilitative construction" means construction work on the  
8 building enclosure of a multiunit residential building if the cost of  
9 such construction work is more than five percent of the assessed value  
10 of the building.

11 (9) "Sale prohibition covenant" means a covenant that prohibits the  
12 sale or other disposition of individual dwelling units as or as part of  
13 a condominium for five years or more from the date of first occupancy  
14 except as otherwise provided in section 10 of this act, and the  
15 developer has submitted to the appropriate building department a  
16 certified copy of the recorded covenant; provided such covenant shall  
17 not apply to sales or dispositions listed in RCW 64.34.400(2). The  
18 covenant must be recorded in the county in which the building is  
19 located and must be in substantially the following form:

20 This covenant has been recorded in the real property records of  
21 . . . . . County, Washington, in satisfaction of the  
22 requirements of sections 2 through 10 of this act. The  
23 undersigned is the owner of the property described on Exhibit  
24 A (the "Property"). Until termination of this covenant, no  
25 dwelling unit in or on the Property may be sold as a  
26 condominium unit except for sales listed in RCW 64.34.400(2).

27 This covenant terminates on the earlier of either: (a)  
28 Compliance with the requirements of section 10 of this act, as  
29 certified by the owner of the Property in a recorded supplement  
30 hereto; or (b) the fifth anniversary of the date of first  
31 occupancy of a dwelling unit as certified by the Owner in a  
32 recorded supplement hereto.

33 All title insurance companies and persons acquiring an interest in the  
34 Property may rely on the forgoing certifications without further  
35 inquiry in issuing any policy of title insurance or in acquiring an  
36 interest in the Property.

1 (10) "Stamped" means bearing the stamp and signature of the  
2 responsible licensed architect or engineer on the title page and every  
3 sheet of the documents, drawings, or specifications, including  
4 modifications to the documents, drawings, and specifications that  
5 become part of change orders or addenda to alter those documents,  
6 drawings, or specifications.

7 NEW SECTION. **Sec. 3.** DESIGN DOCUMENTS. (1) Any person applying  
8 for a building permit for construction or rehabilitative construction  
9 of the building enclosure of a multiunit residential building shall  
10 submit building enclosure design documents to the appropriate building  
11 department prior to the start of construction or rehabilitative  
12 construction. If construction work on a building enclosure is not  
13 rehabilitative construction because the cost thereof is not more than  
14 five percent of the assessed value of the building, then the person  
15 applying for a building permit shall submit to the building department  
16 a letter so certifying. Any changes to the building enclosure design  
17 documents that alter the manner in which the building or its components  
18 is waterproofed, weatherproofed, and otherwise protected from water or  
19 moisture intrusion shall be stamped by the architect or engineer and  
20 shall be provided to the building department and to the person  
21 conducting the course of construction inspection in a timely manner to  
22 permit such person to inspect for compliance therewith, and may be  
23 provided through individual updates, cumulative updates, or as-built  
24 updates.

25 (2) The building department shall not issue a building permit for  
26 construction of the building enclosure of a multiunit residential  
27 building or for rehabilitative construction unless the building  
28 enclosure design documents contain a stamped statement by the person  
29 stamping the building enclosure design documents in substantially the  
30 following form: "The undersigned has provided building enclosure  
31 documents that in my professional judgment are appropriate to satisfy  
32 the requirements of sections 1 through 10 of this act."

33 (3) The building department is not charged with determining whether  
34 the building enclosure design documents are adequate or appropriate to  
35 satisfy the requirements of sections 1 through 10 of this act. Nothing  
36 in sections 1 through 10 of this act requires a building department to  
37 review, approve, or disapprove enclosure design documents.

1        NEW SECTION.    **Sec. 4.**    INSPECTIONS.    All multiunit residential  
2 buildings shall have the building enclosure inspected by a qualified  
3 inspector during the course of initial construction and during all  
4 rehabilitative construction.

5        NEW SECTION.    **Sec. 5.**    INSPECTORS--QUALIFICATIONS--INDEPENDENCE.

6        (1) A qualified building enclosure inspector:

7            (a) Must be either:    (i) A licensed architect or engineer with  
8 verifiable training and experience in building enclosure design and  
9 construction; or (ii) any person with substantial and verifiable  
10 training and experience in building enclosure design and construction;

11            (b) Shall be free from improper interference or influence relating  
12 to the inspections; and

13            (c) May not be an employee, officer, or director of, nor have any  
14 pecuniary interest in, the declarant, developer, association, or any  
15 party providing services or materials for the project, or any of their  
16 respective affiliates, except that the qualified inspector may be the  
17 architect or engineer who approved the building enclosure design  
18 documents or the architect or engineer of record.    The qualified  
19 inspector may, but is not required to, assist with the preparation of  
20 such design documents.

21        (2) Nothing in this section alters requirements for licensure of  
22 any architect, engineer, or other professional, or alters the  
23 jurisdiction, authority, or scope of practice of architects, engineers,  
24 other professionals, or general contractors.

25        NEW SECTION.    **Sec. 6.**    SCOPE OF INSPECTION.    (1) Any inspection  
26 required by this chapter shall include, at a minimum, the following:

27            (a) Water penetration resistance testing of a representative sample  
28 of windows and window installations.    Such tests shall be conducted  
29 according to industry standards.    Where appropriate, tests shall be  
30 conducted with an induced air pressure difference across the window and  
31 window installation.    Additional testing is not required if the same  
32 assembly has previously been tested in situ within the previous two  
33 years in the project under construction by the builder, by another  
34 member of the construction team such as an architect or engineer, or by  
35 an independent testing laboratory; and

1 (b) An independent periodic review of the building enclosure during  
2 the course of construction or rehabilitative construction to ascertain  
3 whether the multiunit residential building has been constructed, or the  
4 rehabilitative construction has been performed, in substantial  
5 compliance with the building enclosure design documents.

6 (2) Subsection (1)(a) of this section shall not apply to  
7 rehabilitative construction if the windows and adjacent cladding are  
8 not altered in the rehabilitative construction.

9 (3) "Project" means one or more parcels of land in a single  
10 ownership, which are under development pursuant to a single land use  
11 approval or building permit, where window installation is performed by  
12 the owner with its own forces, or by the same general contractor, or,  
13 if the owner is contracting directly with trade contractors, is  
14 performed by the same trade contractor.

15 NEW SECTION. **Sec. 7.** CERTIFICATION--CERTIFICATE OF OCCUPANCY.

16 Upon completion of an inspection required by this chapter, the  
17 qualified inspector shall prepare and submit to the appropriate  
18 building department a signed letter certifying that the building  
19 enclosure has been inspected during the course of construction or  
20 rehabilitative construction and that it has been constructed or  
21 reconstructed in substantial compliance with the building enclosure  
22 design documents, as updated pursuant to section 3 of this act. The  
23 building department shall not issue a final certificate of occupancy or  
24 other equivalent final acceptance until the letter required by this  
25 section has been submitted. The building department is not charged  
26 with and has no responsibility for determining whether the building  
27 enclosure inspection is adequate or appropriate to satisfy the  
28 requirements of this chapter.

29 NEW SECTION. **Sec. 8.** INSPECTOR, ARCHITECT, AND ENGINEER  
30 LIABILITY. (1) Nothing in this act is intended to, or does:

31 (a) Create a private right of action against any inspector,  
32 architect, or engineer based upon compliance or noncompliance with its  
33 provisions; or

34 (b) Create any independent basis for liability against an  
35 inspector, architect, or engineer.

1 (2) The qualified inspector, architect, or engineer and the  
2 developer that retained the inspector, architect, or engineer may  
3 contractually agree to the amount of their liability to the developer.

4 NEW SECTION. **Sec. 9.** NO EVIDENTIARY PRESUMPTION--ADMISSIBILITY.

5 A qualified inspector's report or testimony regarding an inspection  
6 conducted pursuant to this chapter is not entitled to any evidentiary  
7 presumption in any arbitration or court proceeding. Nothing in this  
8 chapter restricts the admissibility of such a report or testimony, and  
9 questions of the admissibility of such a report or testimony shall be  
10 determined under the rules of evidence.

11 NEW SECTION. **Sec. 10.** NO SALE OF CONDOMINIUM UNIT ABSENT

12 COMPLIANCE. (1) Except for sales or other dispositions listed in RCW  
13 64.34.400(2), no declarant may convey a condominium unit that may be  
14 occupied for residential use in a multiunit residential building  
15 without first complying with the requirements of sections 1 through 10  
16 of this act unless:

17 (a) With respect to original building construction, the stamped  
18 documents required by section 3 of this act and the letter required by  
19 section 7 of this act have been submitted to the appropriate building  
20 department; provided this subsection (1)(a) does not apply to  
21 conversion condominiums; or

22 (b) The building enclosure of the building in which such unit is  
23 included is inspected by a qualified building enclosure inspector, and:

24 (i) The inspection includes such intrusive or other testing, such  
25 as the removal of siding or other building enclosure materials, that  
26 the inspector believes, in his or her professional judgment, is  
27 necessary to ascertain the manner in which the building enclosure was  
28 constructed;

29 (ii) The inspection evaluates, to the extent reasonably  
30 ascertainable and in the professional judgment of the inspector, the  
31 present condition of the building enclosure including whether such  
32 condition has adversely affected or will adversely affect the  
33 performance of the building enclosure to waterproof, weatherproof, or  
34 otherwise protect the building or its components from water or moisture  
35 intrusion. "Adversely affect" has the same meaning as provided in RCW  
36 64.34.445(7);

1 (iii) The inspection report includes recommendations for repairs to  
2 the building envelope that, in the professional judgment of the  
3 qualified building inspector, are necessary to: (A) Repair a design or  
4 construction defect in the building envelope that results in the  
5 failure of the building envelope to perform its intended function and  
6 allows unintended water penetration not caused by flooding; and (B)  
7 repair damage caused by such a defect that has an adverse effect as  
8 provided in RCW 64.34.445(7);

9 (iv) With respect to a building that would be a multiunit  
10 residential building but for the recording of a sale prohibition  
11 covenant and unless more than five years have elapsed since the date  
12 such covenant was recorded, all repairs to the building enclosure  
13 recommended pursuant to (b)(iii) of this subsection have been made; and

14 (v) The declarant provides as part of the public offering  
15 statement, consistent with RCW 64.34.410 (1)(nn) and (2), an inspection  
16 and repair report signed by the qualified building enclosure inspector  
17 that identifies:

18 (A) The extent of the inspection performed pursuant to this  
19 section;

20 (B) The information obtained as a result of that inspection; and

21 (C) The manner in which any repairs required by this section were  
22 performed, the scope of those repairs, and the names of the persons  
23 performing those repairs.

24 (2) Failure to deliver the inspection and repair report in  
25 violation of this section constitutes a failure to deliver a public  
26 offering statement for purposes of chapter 64.34 RCW.

27 NEW SECTION. **Sec. 11.** ARBITRATION--ELECTION--NUMBER OF  
28 ARBITRATORS--QUALIFICATIONS--TRIAL DE NOVO. (1) If the declarant, an  
29 association, or a unit owner demands an arbitration by filing such  
30 demand with the court not less than thirty and not more than ninety  
31 days after filing or service of the complaint, whichever is later, the  
32 parties shall participate in a private arbitration hearing. The  
33 declarant, the association, and the unit owner do not have the right to  
34 compel arbitration without giving timely notice in compliance with this  
35 subsection. Unless otherwise agreed by the parties, the arbitration  
36 hearing shall commence no more than fourteen months from the later of  
37 the filing or service of the complaint.

1 (2) Unless otherwise agreed by the parties, claims that in  
2 aggregate are for less than one million dollars shall be heard by a  
3 single arbitrator and all other claims shall be heard by three  
4 arbitrators. As used in this chapter, arbitrator also means  
5 arbitrators where applicable.

6 (3) Unless otherwise agreed by the parties, the court shall appoint  
7 the arbitrator, who shall be a current or former attorney with  
8 experience as an attorney, judge, arbitrator, or mediator in  
9 construction defect disputes involving the application of Washington  
10 law.

11 (4) Upon conclusion of the arbitration hearing, the arbitrator  
12 shall file the decision and award with the clerk of the superior court,  
13 together with proof of service thereof on the parties. Within twenty  
14 days after the filing of the decision and award, any aggrieved party  
15 may file with the clerk a written notice of appeal and demand for a  
16 trial de novo in the superior court on all claims between the appealing  
17 party and an adverse party. As used in this section, "adverse party"  
18 means the party who either directly asserted or defended claims against  
19 the appealing party. The demand shall identify the adverse party or  
20 parties and all claims between those parties shall be included in the  
21 trial de novo. The right to a trial de novo includes the right to a  
22 jury, if demanded. The court shall give priority to the trial date for  
23 the trial de novo.

24 (5) If the judgment for damages, not including awards of fees and  
25 costs, in the trial de novo is not more favorable to the appealing  
26 party than the damages awarded by the arbitrator, not including awards  
27 of fees and costs, the appealing party shall pay the nonappealing  
28 adverse party's costs and fees incurred after the filing of the appeal,  
29 including reasonable attorneys' fees so incurred.

30 (6) If the judgment for damages, not including awards of fees and  
31 costs, in the trial de novo is more favorable to the appealing party  
32 than the damages awarded by the arbitrator, not including awards of  
33 fees and costs, then the court may award costs and fees, including  
34 reasonable attorneys' fees, incurred after the filing of the request  
35 for trial de novo in accordance with applicable law; provided if such  
36 a judgment is not more favorable to the appealing party than the most  
37 recent offer of judgment, if any, made pursuant to section 17 of this

1 act, the court shall not make an award of fees and costs to the  
2 appealing party.

3 (7) If a party is entitled to an award with respect to the same  
4 fees and costs pursuant to this section and section 17 of this act,  
5 then the party shall only receive an award of fees and costs as  
6 provided in and limited by section 17 of this act. Any award of fees  
7 and costs pursuant to subsections (5) or (6) of this section is subject  
8 to review in the event of any appeal thereof otherwise permitted by  
9 applicable law or court rule.

10 NEW SECTION. **Sec. 12.** CASE SCHEDULE PLAN. (1) Not less than  
11 sixty days after the later of filing or service of the complaint, the  
12 parties shall confer to create a proposed case schedule plan for  
13 submission to the court that includes the following deadlines:

- 14 (a) Selection of a mediator;
- 15 (b) Commencement of the mandatory mediation and submission of  
16 mediation materials required by this chapter;
- 17 (c) Selection of the arbitrator by the parties, where applicable;
- 18 (d) Joinder of additional parties in the action;
- 19 (e) Completion of each party's investigation;
- 20 (f) Disclosure of each party's proposed repair plan;
- 21 (g) Disclosure of each party's estimated costs of repair;
- 22 (h) Meeting of parties and experts to confer in accordance with  
23 section 13 of this act; and
- 24 (i) Disclosure of each party's settlement demand or response.

25 (2) If the parties agree upon a proposed case schedule plan, they  
26 shall move the court for the entry of the proposed case schedule plan.  
27 If the parties cannot agree, either party may move the court for entry  
28 of a case schedule plan that includes the above deadlines.

29 NEW SECTION. **Sec. 13.** MANDATORY MEDIATION. (1) The parties to an  
30 action subject to this act shall engage in mediation. Unless the  
31 parties agree otherwise, the mediation required by this section shall  
32 commence within seven months of the later of the filing or service of  
33 the complaint. If the parties cannot agree upon a mediator, the court  
34 shall appoint a mediator.

35 (2) Prior to the mediation required by this section, the parties

1 and their experts shall meet and confer in good faith to attempt to  
2 resolve or narrow the scope of the disputed issues, including issues  
3 related to the parties' repair plans.

4 (3) Prior to the mandatory mediation, the parties or their  
5 attorneys shall file and serve a declaration that:

6 (a) A decision maker with authority to settle will be available for  
7 the duration of the mandatory mediation; and

8 (b) The decision maker has been provided with and has reviewed the  
9 mediation materials provided by the party to which the decision maker  
10 is affiliated as well as the materials submitted by the opposing  
11 parties.

12 (4) Completion of the mediation required by this section occurs  
13 upon written notice of termination by any party. The provisions of  
14 section 17 of this act shall not apply to any later mediation conducted  
15 following such notice.

16 NEW SECTION. **Sec. 14.** NEUTRAL EXPERT. (1) If, after meeting and  
17 conferring as required by section 13(2) of this act, disputed issues  
18 remain, a party may file a motion with the court, or arbitrator if an  
19 arbitrator has been appointed, requesting the appointment of a neutral  
20 expert to address any or all of the disputed issues. Unless otherwise  
21 agreed to by the parties or upon a showing of exceptional  
22 circumstances, including a material adverse change in a party's  
23 litigation risks due to a change in allegations, claims, or defenses by  
24 an adverse party following the appointment of the neutral expert, any  
25 such motion shall be filed no later than sixty days after the first day  
26 of the meeting required by section 13(2) of this act. Upon such a  
27 request, the court or arbitrator shall decide whether or not to appoint  
28 a neutral expert or experts. A party may only request more than one  
29 neutral expert if the particular expertise of the additional neutral  
30 expert or experts is necessary to address disputed issues.

31 (2) The neutral expert shall be a licensed architect or engineer,  
32 or any other person, with substantial experience relevant to the issue  
33 or issues in dispute. The neutral expert shall not have been employed  
34 as an expert by a party to the present action within three years before  
35 the commencement of the present action, unless the parties agree  
36 otherwise.

1 (3) All parties shall be given an opportunity to recommend neutral  
2 experts to the court or arbitrator and shall have input regarding the  
3 appointment of a neutral expert.

4 (4) Unless the parties agree otherwise on the following matters,  
5 the court, or arbitrator if then appointed, shall determine:

6 (a) Who shall serve as the neutral expert;

7 (b) Subject to the requirements of this section, the scope of the  
8 neutral expert's duties;

9 (c) The number and timing of inspections of the property;

10 (d) Coordination of inspection activities with the parties'  
11 experts;

12 (e) The neutral expert's access to the work product of the parties'  
13 experts;

14 (f) The product to be prepared by the neutral expert;

15 (g) Whether the neutral expert may participate personally in the  
16 mediation required by section 13 of this act; and

17 (h) Other matters relevant to the neutral expert's assignment.

18 (5) Unless the parties agree otherwise, the neutral expert shall  
19 not make findings or render opinions regarding the amount of damages to  
20 be awarded, or the cost of repairs, or absent exceptional circumstances  
21 any matters that are not in dispute as determined in the meeting  
22 described in section 13(2) of this act or otherwise.

23 (6) A party may, by motion to the court, or to the arbitrator if  
24 then appointed, object to the individual appointed to serve as the  
25 neutral expert and to determinations regarding the neutral expert's  
26 assignment.

27 (7) The neutral expert shall have no liability to the parties for  
28 the performance of his or her duties as the neutral expert.

29 (8) Except as otherwise agreed by the parties, the parties have a  
30 right to review and comment on the neutral expert's report before it is  
31 made final.

32 (9) A neutral expert's report or testimony is not entitled to any  
33 evidentiary presumption in any arbitration or court proceeding.  
34 Nothing in this act restricts the admissibility of such a report or  
35 testimony, provided it is within the scope of the neutral expert's  
36 assigned duties, and questions of the admissibility of such a report or  
37 testimony shall be determined under the rules of evidence.

1 (10) The court, or arbitrator if then appointed, shall determine  
2 the significance of the neutral expert's report and testimony with  
3 respect to parties joined after the neutral expert's appointment and  
4 shall determine whether additional neutral experts should be appointed  
5 or other measures should be taken to protect such joined parties from  
6 undue prejudice.

7 NEW SECTION. **Sec. 15.** PAYMENT OF ARBITRATORS, MEDIATORS, AND  
8 NEUTRAL EXPERTS. (1) Where the building permit that authorized  
9 commencement of construction of a building was issued on or after the  
10 effective date of this act:

11 (a)(i) If the action is referred to arbitration under section 11 of  
12 this act, the party who demands arbitration shall advance the fees of  
13 any arbitrator and any mediator appointed under section 13 of this act;  
14 and

15 (ii) A party who requests the appointment of a neutral expert  
16 pursuant to section 14 of this act shall advance any appointed neutral  
17 expert's fees incurred up to the issuance of a final report.

18 (b) If the action has not been referred to arbitration, the court  
19 shall determine liability for the fees of any mediator appointed under  
20 section 13 of this act, unless the parties agree otherwise.

21 (c) Ultimate liability for any fees or costs advanced pursuant to  
22 this subsection (1) is subject to the fee- and cost-shifting provisions  
23 of section 17 of this act.

24 (2) Where the building permit that authorized commencement of  
25 construction of a building was issued before the effective date of this  
26 act:

27 (a)(i) If the action is referred to arbitration under section 11 of  
28 this act, the party who demands arbitration is liable for and shall pay  
29 the fees of any appointed arbitrator and any mediator appointed under  
30 section 13 of this act; and

31 (ii) A party who requests the appointment of a neutral expert  
32 pursuant to section 14 of this act is liable for and shall pay any  
33 appointed neutral expert's fees incurred up to the issuance of a final  
34 report.

35 (b) If the action has not been referred to arbitration, the court  
36 shall determine liability for the fees of any mediator appointed under  
37 section 13 of this act, unless the parties agree otherwise.

1 (c) Fees and costs paid under this subsection (2) are not subject  
2 to the fee- and cost-shifting provisions of section 17 of this act.

3 NEW SECTION. **Sec. 16.** SUBCONTRACTORS. Upon the demand of a party  
4 to an arbitration demanded under section 11 of this act, any  
5 subcontractor or supplier against whom such party has a legal claim and  
6 whose work or performance on the building in question becomes an issue  
7 in the arbitration may be joined in and become a party to the  
8 arbitration. However, joinder of such parties shall not be allowed if  
9 such joinder would require the arbitration hearing date to be continued  
10 beyond the date established pursuant to section 11 of this act, unless  
11 the existing parties to the arbitration agree otherwise. Nothing in  
12 sections 2 through 10 of this act shall be construed to release,  
13 modify, or otherwise alleviate the liabilities or responsibilities that  
14 any party may have towards any other party, contractor, or  
15 subcontractor.

16 NEW SECTION. **Sec. 17.** OFFERS OF JUDGMENT--COSTS AND FEES. (1)  
17 For purposes of this section, "unit owner" means a unit owner who is a  
18 party to the litigation, and does not include any unit owners whose  
19 involvement with the litigation stems solely from their membership in  
20 the association. If the association is a party to the litigation, then  
21 for purposes of this section, as between the association and the unit  
22 owner or unit owners, the association shall have sole responsibility  
23 for decisions and actions with respect to making and accepting all  
24 offers of judgment and determining the adequacy of a declarant's offer  
25 of judgment with respect to common elements and such decisions made and  
26 actions taken by the association shall be binding on the association  
27 and unit owners.

28 (2) On or before the sixtieth day following completion of the  
29 mediation pursuant to section 13(4) of this act, the declarant or  
30 association, or a unit owner may serve on an adverse party an offer to  
31 allow judgment to be entered. The offer of judgment shall specify the  
32 amount of damages, not including costs or fees, that the declarant,  
33 association, or unit owner is offering to pay or receive. A  
34 declarant's offer shall also include its commitment to pay costs and  
35 fees that may be awarded as provided in this section. The declarant,  
36 association, and unit owner may make more than one offer of judgment so

1 long as each offer is timely made. Each subsequent offer supersedes  
2 and replaces the previous offer. Any offer not accepted within twenty-  
3 one days of the service of that offer is deemed rejected and withdrawn  
4 and evidence thereof is not admissible and may not be provided to the  
5 court or arbitrator except in a proceeding to determine costs and fees  
6 or as part of the motion identified in subsection (3) of this section.

7 (3) A declarant's offer must include a demonstration of ability to  
8 pay damages, costs, and fees, including reasonable attorneys' fees,  
9 within thirty days of acceptance of the offer of judgment. The  
10 demonstration of ability to pay shall include a sworn statement signed  
11 by the declarant, the attorney representing the declarant, and, if any  
12 insurance proceeds will be used to fund any portion of the offer, an  
13 authorized representative of the insurance company. If the association  
14 or unit owner disputes the adequacy of the declarant's demonstration of  
15 ability to pay, the association or unit owner may file a motion with  
16 the court requesting a ruling on the adequacy of the declarant's  
17 demonstration of ability to pay. Upon filing of such motion, the  
18 deadline for a response to the offer shall be tolled from the date the  
19 motion is filed until the court has ruled.

20 (4) An association or unit owner that accepts the declarant's offer  
21 of judgment shall be deemed the prevailing party and, in addition to  
22 recovery of the amount of the offer, shall be entitled to a costs and  
23 fees award, including reasonable attorneys' fees, in an amount to be  
24 determined by the court in accordance with applicable law.

25 (5) If the amount of the final nonappealable or nonappealed  
26 judgment, exclusive of costs or fees, is not more favorable to the  
27 offeree than the offer of judgment, then the offeror is deemed the  
28 prevailing party for purposes of this section only and is entitled to  
29 an award of costs and fees, including reasonable attorneys' fees,  
30 incurred after the date the last offer of judgment was rejected and  
31 through the date of entry of a final nonappealable or nonappealed  
32 judgment, in an amount to be determined by the court in accordance with  
33 applicable law. The nonprevailing party shall not be entitled to  
34 receive any award of costs and fees.

35 (6) If the final nonappealable or nonappealed judgment on damages,  
36 not including costs or fees, is more favorable to the offeree than the  
37 last offer of judgment, then the court shall determine which party is

1 the prevailing party and shall determine the amount of the costs and  
2 fees award, including reasonable attorneys' fees, in accordance with  
3 applicable law.

4 (7) Notwithstanding any other provision in this section, with  
5 respect to claims brought by an association or unit holder, the  
6 liability for declarant's costs and fees, including reasonable  
7 attorneys' fees, shall:

8 (a) With respect to claims brought by an association, not exceed  
9 five percent of the assessed value of the condominium as a whole, which  
10 is determined by the aggregate tax-assessed value of all units at the  
11 time of the award; and

12 (b) With respect to claims brought by a unit owner, not exceed five  
13 percent of the assessed value of the unit at the time of the award.

14 **Sec. 18.** RCW 64.34.415 and 1992 c 220 s 22 are each amended to  
15 read as follows:

16 (1) The public offering statement of a conversion condominium shall  
17 contain, in addition to the information required by RCW 64.34.410:

18 (a) Either a copy of a report prepared by an independent, licensed  
19 architect or engineer, or a statement by the declarant based on such  
20 report, which report or statement describes, to the extent reasonably  
21 ascertainable, the present condition of the building enclosure and of  
22 all structural components and mechanical and electrical installations  
23 material to the use and enjoyment of the condominium except that the  
24 portion of the report pertaining to the building enclosure may be  
25 prepared by a qualified building inspector who satisfies the  
26 requirements of section 5 of this act;

27 (b) A statement by the declarant of the expected useful life of  
28 each item reported on in (a) of this subsection or a statement that no  
29 representations are made in that regard; and

30 (c) A list of any outstanding notices of uncured violations of  
31 building code or other municipal regulations, together with the  
32 estimated cost of curing those violations. Unless the purchaser waives  
33 in writing the curing of specific violations, the extent to which the  
34 declarant will cure such violations prior to the closing of the sale of  
35 a unit in the condominium shall be included.

36 (2) With respect to a conversion condominium to which section 10 of

1 this act applies, the declarant shall perform building enclosure  
2 repairs if required to do so by section 10(1)(b)(iv) of this act.

3 (3) This section applies only to condominiums containing units that  
4 may be occupied for residential use.

5 **Sec. 19.** RCW 64.34.410 and 2004 c 201 s 11 are each amended to  
6 read as follows:

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

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

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

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

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

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

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

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

23 (h) A brief description of the restrictions, if any, on the renting  
24 or leasing of units by the declarant or other unit owners, together  
25 with the rights, if any, of the declarant to rent or lease at least a  
26 majority of units;

27 (i) The number of existing units in the condominium and the maximum  
28 number of units that may be added to the condominium;

29 (j) A list of the principal common amenities in the condominium  
30 which materially affect the value of the condominium and those that  
31 will or may be added to the condominium;

32 (k) A list of the limited common elements assigned to the units  
33 being offered for sale;

34 (l) The identification of any real property not in the condominium,  
35 the owner of which has access to any of the common elements, and a  
36 description of the terms of such access;

- 1 (m) The identification of any real property not in the condominium  
2 to which unit owners have access and a description of the terms of such  
3 access;
- 4 (n) The status of construction of the units and common elements,  
5 including estimated dates of completion if not completed;
- 6 (o) The estimated current common expense liability for the units  
7 being offered;
- 8 (p) An estimate of any payment with respect to the common expense  
9 liability for the units being offered which will be due at closing;
- 10 (q) The estimated current amount and purpose of any fees not  
11 included in the common expenses and charged by the declarant or the  
12 association for the use of any of the common elements;
- 13 (r) Any assessments which have been agreed to or are known to the  
14 declarant and which, if not paid, may constitute a lien against any  
15 units or common elements in favor of any governmental agency;
- 16 (s) The identification of any parts of the condominium, other than  
17 the units, which any individual owner will have the responsibility for  
18 maintaining;
- 19 (t) If the condominium involves a conversion condominium, the  
20 information required by RCW 64.34.415;
- 21 (u) Whether timesharing is restricted or prohibited, and if  
22 restricted, a general description of such restrictions;
- 23 (v) A list of all development rights reserved to the declarant and  
24 all special declarant rights reserved to the declarant, together with  
25 the dates such rights must terminate, and a copy of or reference by  
26 recording number to any recorded transfer of a special declarant right;
- 27 (w) A description of any material differences in terms of  
28 furnishings, fixtures, finishes, and equipment between any model unit  
29 available to the purchaser at the time the agreement for sale is  
30 executed and the unit being offered;
- 31 (x) Any liens on real property to be conveyed to the association  
32 required to be disclosed pursuant to RCW 64.34.435(2)(b);
- 33 (y) A list of any physical hazards known to the declarant which  
34 particularly affect the condominium or the immediate vicinity in which  
35 the condominium is located and which are not readily ascertainable by  
36 the purchaser;
- 37 (z) A brief description of any construction warranties to be  
38 provided to the purchaser;

1 (aa) Any building code violation citations received by the  
2 declarant in connection with the condominium which have not been  
3 corrected;

4 (bb) A statement of any unsatisfied judgments or pending suits  
5 against the association, a statement of the status of any pending suits  
6 material to the condominium of which the declarant has actual  
7 knowledge, and a statement of any litigation brought by an owners'  
8 association, unit owner, or governmental entity in which the declarant  
9 or any affiliate of the declarant has been a defendant, arising out of  
10 the construction, sale, or administration of any condominium within the  
11 previous five years, together with the results thereof, if known;

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

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

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

19 (ff) Any reports or statements required by RCW 64.34.415 or  
20 64.34.440(6)(a). RCW 64.34.415 shall apply to the public offering  
21 statement of a condominium in connection with which a final certificate  
22 of occupancy was issued more than sixty calendar months prior to the  
23 preparation of the public offering statement whether or not the  
24 condominium is a conversion condominium as defined in RCW  
25 64.34.020(10);

26 (gg) A list of the documents which the prospective purchaser is  
27 entitled to receive from the declarant before the rescission period  
28 commences;

29 (hh) A notice which states: A purchaser may not rely on any  
30 representation or express warranty unless it is contained in the public  
31 offering statement or made in writing signed by the declarant or by any  
32 person identified in the public offering statement as the declarant's  
33 agent;

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

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

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

8 (ll) A notice that is substantially in the form required by RCW  
9 64.50.050; (~~and~~)

10 (mm) A statement, as required by RCW 64.35.210, as to whether the  
11 units or common elements of the condominium are covered by a qualified  
12 warranty, and a history of claims under any such warranty; and

13 (nn) A statement that the building enclosure has been designed and  
14 inspected as required by sections 2 through 10 of this act, and, if  
15 required, repaired in accordance with the requirements of section 10 of  
16 this act.

17 (2) The public offering statement shall include copies of each of  
18 the following documents: The declaration, the survey map and plans,  
19 the articles of incorporation of the association, bylaws of the  
20 association, rules and regulations, if any, current or proposed budget  
21 for the association, (~~and~~) the balance sheet of the association  
22 current within ninety days if assessments have been collected for  
23 ninety days or more, and the inspection and repair report or reports  
24 prepared in accordance with the requirements of section 10 of this act.

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

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

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

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

4 **Sec. 20.** RCW 64.34.100 and 2004 c 201 s 2 are each amended to read  
5 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 otherwise provided in sections 11 through 17 of this  
12 act or chapter 64.35 RCW, any right or obligation declared by this  
13 chapter is enforceable by judicial proceeding. The arbitration  
14 proceedings provided for in sections 11 through 17 of this act shall be  
15 considered judicial proceedings for the purposes of this chapter.

16 NEW SECTION. **Sec. 21.** A new section is added to Article 1 of  
17 chapter 64.34 RCW to read as follows:

18 Chapter 64.-- RCW (sections 1 through 17 of this act) includes  
19 requirements for the inspection of the building envelopes of multiunit  
20 residential buildings and for the resolution of disputes regarding  
21 defects therein.

22 NEW SECTION. **Sec. 22.** CAPTIONS. Captions used in this act are  
23 not any part of the law.

24 NEW SECTION. **Sec. 23.** Sections 1 through 17 of this act  
25 constitute a new chapter in Title 64 RCW.

26 NEW SECTION. **Sec. 24.** EFFECTIVE DATE. This act takes effect  
27 August 1, 2005.

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