

SENATE BILL REPORT

SB 5048

As Reported By Senate Committee On:
Consumer Protection & Housing, February 1, 2007

Title: An act relating to tolling the statute of limitations for construction defect actions.

Brief Description: Concerning construction defect actions.

Sponsors: Senators Weinstein, Kauffman, Brown, Eide, Pridemore, Fraser, Franklin, Rockefeller, Murray, Keiser, Oemig, Regala, Jacobsen, Kohl-Welles and Kline.

Brief History:

Committee Activity: Consumer Protection & Housing: 1/25/07, 2/01/07 [DP, DNP].

SENATE COMMITTEE ON CONSUMER PROTECTION & HOUSING

Majority Report: Do pass.

Signed by Senators Weinstein, Chair; Kauffman, Vice Chair; Jacobsen, Kilmer, McCaslin and Tom.

Minority Report: Do not pass.

Signed by Senators Honeyford, Ranking Minority Member and Delvin.

Staff: Alison Mendiola (786-7483)

Background: In 2002, SSB 6049 passed, creating the "contractor's right to cure." This law (RCW 64.50) applies to construction defect claims of residential buildings, including condominiums. Under this statute, before a lawsuit can be filed alleging a defect in construction or substantial remodels, the homeowner must first serve notice on the construction professional responsible for the defect.

This notice must be provided 45 days before a suit is filed and describe the defect in reasonable detail. The construction professional then has 21 days to respond. Service during the 45-day right to cure notice tolls any applicable statute of limitations or repose during the right to cure period and until 60 days after the end of that period.

RCW 64.50.050 states that buyers must be told they are required to give notice prior to filing a construction defect claim, and if the appropriate notice is not given to the homeowner and the homeowner subsequently fails to give the appropriate 45-day notice, that homeowner's claim shall not be barred.

Recent litigation involving the interpretation of this statute has resulted in some confusion. It has been argued that the Legislature's intent is that the failure to comply with the statute does

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not forever bar claims, but only suspends the claim while the builder is given the opportunity to cure the problem.

Summary of Bill: The statute of limitations involving construction defect cases is clarified.

If a homeowner's case is dismissed without prejudice for failure to give notice and opportunity to cure, the statute of limitations for the construction defect action will toll from the earlier of: (1) commencement of the dismissed action or (2) service of summons.

The action will remain tolled for 60 days, which are to be calculated from the date that any subsequent action, such as re-filing, is barred.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill addresses an area that has been confusing for the Courts. The intent of the legislation was never to prevent homeowners from bringing a timely action, but that has been the result. This change would clarify the law.

CON: This bill would provide lawyers and homeowners a second bite at the apple and allows attorneys to commit malpractice.

Persons Testifying: PRO: Senator Weinstein, prime sponsor; Marlyn Hawkins, Washington Homeowner's Coalition; Bill LaBorde, Washington State Public Interest Research Group.

CON: Timothy Harris, Building Industry Association of Washington.