

SENATE BILL REPORT

ESSB 5550

As Passed Senate, March 8, 2007

Title: An act relating to real property.

Brief Description: Concerning real property.

Sponsors: Senate Committee on Consumer Protection & Housing (originally sponsored by Senators Weinstein, Kohl-Welles, Murray, Kauffman, Kastama, Tom, Rockefeller, Pridemore, Spanel, Marr, Haugen, Eide, McAuliffe, Hargrove, Hatfield, Fraser, Kilmer, Jacobsen, Brown, Keiser, Shin, Franklin, McCaslin, Poulsen, Oemig, Kline and Regala).

Brief History:

Committee Activity: Consumer Protection & Housing: 1/23/07, 2/15/07 [DPS, DNP].
Passed Senate: 3/08/07, 30-19.

SENATE COMMITTEE ON CONSUMER PROTECTION & HOUSING

Majority Report: That Substitute Senate Bill No. 5550 be substituted therefor, and the substitute bill do pass.

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

Minority Report: Do not pass.

Signed by Senators Honeyford, Ranking Minority Member; Delvin and Kilmer.

Staff: Alison Mendiola (786-7483)

Background: In Washington there is no statutory warranty for new home construction. There is also no right of action for negligent construction (*Stuart v. Coldwell Banker Comm'l Group, Inc.*, 109 Wn.2d 406), though Washington courts do recognize an implied warranty of habitability for new homes. The implied warranty of habitability applies only to the first purchaser who occupies the home (*Gay v. Cornwall*, 6 Wash. App. 595), only warrants that the foundations supporting the home are firm and secure, and that the house is safe for the buyers' intended purpose of living in it (*Stuart v. Coldwell*).

In some circumstances, if a buyer of a new home receives a warranty offered by the builder or a third party, the buyer may be unaware that they are waiving away any other rights that might exist, such as the limited warranty of habitability.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Engrossed Substitute Bill: New Home Warranties: Every contract for the sale or construction of a new home will include a warranty, from the builder that must warrant as follows:

- for 2 years, the home is free from defects in materials and workmanship;
- for 3 years, the home is free from defects in electrical, plumbing, heating, cooling and ventilating systems;
- for 5 years, the home is free from defects resulting from water penetration; and
- for 10 years, the home is free from structural defects.

For the purpose of the warranty, the definition of "new home" includes substantial remodels. New homes do not include condominiums, manufactured or mobile homes, timeshares, outbuildings or similar structures.

The warranty may not be waived and the warranty becomes effective on the first day the owner occupies the new home, closes on the new home, makes the final contract payment on the new home, or obtains an occupancy permit for the new home if the home is built on the owner's property, whichever is earlier.

The warranty excludes any defect in materials supplied or work performed by anyone other than the builder or the builder's subcontractors, any damage that the owner knew or had reason to know existed but did not take reasonable action to minimize, normal wear and tear, any loss that arises while the home is being used primarily for nonresidential purposes, any damage to the extent it is caused or made worse by anyone other than the builder or its subcontractors, and any loss or damage caused by acts of God.

The warranty entitles the owner to recover from the builder all costs associated with repairing the defect. However, the liability of the builder is limited to the fair market value of the house. The builder has a cause of action against a subcontractor if the subcontractor caused the defect.

The statute of limitations to enforce the warranty is six years from the time the defect is discovered or should have been discovered by the owner. However, the builder may only be sued under the warranty for up to ten years from the warranty date.

The warranty does not expire if the house is later sold by the first owner, but continues to apply to subsequent purchasers until the warranty time limits have expired.

The purchase and sale agreement between the builder and the buyer of a new home is to include a statement that informs the buyer that the home was built in compliance with the statutory warranty, and that the warranty may not be waived. This disclosure is not intended to create a separate cause of action, nor are class action lawsuits permitted under the warranty.

This warranty does not replace any other remedy that might otherwise exist, either at law or extending from an agreement that may exist between the parties.

A committee is created to study issues facing the residential construction industry. The committee consists of 16 members, four of which are legislators. The committee is to provide the Legislature with a report of their findings and any recommendation legislation by December 31, 2007.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: Yes.

Effective Date: Ninety days after adjournment of session in which bill is passed, except for Sections 1 and 2 which go into effect on July 1, 2008.

Staff Summary of Public Testimony on Original Bill: PRO: This bill will help homebuyers. Most problems don't show up right away and so it's hard to get a builder to fix a problem. This bill will drive the bad builders out of business. A home is often a person's biggest asset and he or she deserves at least some minimum warranties. The remedies at law are very minimal. It's pretty common for people to sell their houses soon after buying them, but subsequent purchasers don't have the benefit of even the limited warranties that are currently offered by some builders. This needs to change and the home warranty should be expanded to include subsequent purchasers. People presume that if there is a problem, they can turn to the state for help, but that isn't the case. Even when people take the time to research a builder, get recommendations, etc., that still isn't enough and there aren't enough protections for even the knowledgeable homebuyers. While people are concerned about housing prices going up, paying more on the front end is a lot better than ending up with a new home with defects, and no money or rights to get the problem fixed. The insurance argument is not a strong one; if a builder builds a good home, then the builder shouldn't have anything to worry about. Many of the warranties offered by builders border on unconscionable, in that they don't warrant anything or give the homebuyers any rights or remedies, but rather they take away what limited remedies the buyer might otherwise have.

CON: Creating a statutory warranty would put Washington at the extreme of other states, where there is litigation over nailgun patterns. Builders won't be able to get insurance and this will lead to an inflated housing market like California. Having a six year statute of limitations (repose) is adequate, while the problem is still fresh in the minds and results in a better quality lawsuit. Thousands of small businesses will be negatively impacted, people will lose their jobs, and housing prices will increase. We need a study bill to work out the problems. Also, building codes, regulations, and permits may have varying requirements so it would be hard to say what the builder must follow. There is a concern about subsequent purchasers having a home warranty since they won't have any relationship with the builder. We spend time educating the homeowner now and that will be lost with a subsequent homeowner. We support training of builders and (licensing of) contractors. There needs to be a worked out approach everyone can agree to such as the condo act which took four years to negotiate. Another remedy is to increase the inspections and education of inspectors. There needs to be arbitration language to satisfy the insurers.

Persons Testifying: PRO: Sandy Levy, citizen; Kate O'Neil, University of Washington School of Law; Bill LaBorde, Washington Public Interest Research Group; William Willard, Washington Homeowners Coalition; Karen George and MiJayne Freitag-Koontz, citizens; and Kelly Metz, Board of Environmental, Health and Safety Auditor Certification Corporation.

CON: Timothy Harris, Building Industry Association of Washington; Daimon Doyle, Doyle Custom Homes; Gary Young, Polygon Northwest Company; Greg Clark, Washington Defense

Trial Lawyers Association (WDTLA); Jeffrey Thomas, Contractors Bonding and Insurance Company; Mel Sorensen, Property Casualty Insurance Association, Professional Insurance Agents Association; Shelli Lucas Kennedy, American Insurance Association Brokers; Mike Nykreim, Kirkland Builders Group; Bill Riley, Washington Realtors; Scott Hildebrand, Master Builders Association of King-Snohomish County; and Jeff Homlett, American Institute of Architects/Washington Council.