

SENATE BILL REPORT

SSB 6385

As Passed Senate, February 1, 2008

Title: An act relating to real property.

Brief Description: Concerning real property.

Sponsors: Senate Committee on Consumer Protection & Housing (originally sponsored by Senators Weinstein, Kauffman, Fraser, Marr, Pridemore, Fairley, Brown, McAuliffe and Kohl-Welles).

Brief History:

Committee Activity: Consumer Protection & Housing: 1/24/08, 1/25/08 [DPS, DNP, w/oRec].

Passed Senate: 2/01/08, 27-20.

SENATE COMMITTEE ON CONSUMER PROTECTION & HOUSING

Majority Report: That Substitute Senate Bill No. 6385 be substituted therefor, and the substitute bill do pass.

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

Minority Report: Do not pass.

Signed by Senators Honeyford, Ranking Minority Member; Delvin.

Minority Report: That it be referred without recommendation.

Signed by Senator Kilmer.

Staff: Alison Mendiola (786-7483)

Background: Under common law, there is a limited implied warranty of habitability for new homes, which 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. In other limited circumstances, a homeowner may seek redress for construction defects through a breach of contract claim. No right of action for negligent construction exists.

Generally if a buyer of a new home receives a warranty offered by the builder or a third party, the warranty requires that the buyer waive any other legal remedies including the implied warranty of habitability.

The Condominium Act establishes certain implied warranties with respect to condominiums. The seller of a new condominium warrants that the condominium is suitable for the ordinary uses of real estate of its type and that it is free from defective materials. The seller also

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warrants that the condominium has been constructed in accordance with sound engineering and construction standards, in a workmanlike manner, and in compliance with all applicable laws. In order to recover damages, a condominium owner must show that any breach of this implied warranty has had an adverse effect that is more than technical and that would be significant to a reasonable person.

Summary of Bill: A construction professional involved in the construction of improvements upon residential real property has a duty, which may not be waived, to exercise reasonable care in the construction of the improvement. If a breach of this duty results in damage to the real property, the current owner has a right to recover damages. This duty of reasonable care does not extend to condominiums governed by the Condominium Act.

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 on Substitute Bill: PRO: When people purchase a new home, they presume that if something goes wrong with the home, that the problem will be remedied. However, this is often not the case. Homebuyers are generally offered a third party warranty and in order to address any defects, the warranty is the homeowner's only remedy and whether or not anything will be fixed is up to the builder. It is very hard to try and sue for construction defects. The Legislature has a duty to ensure an aggrieved homeowner can seek some sort of redress.

CON: The Legislature has done a lot in the last five years to advance the building industry and passing this bill will only send things backwards. This bill brings unpredictability. There are already sufficient remedies available. We should go after unregistered contractors instead. Hardly any contractors have claims against them so this bill isn't necessary.

Persons Testifying: PRO: M. Jayne Freitag-Koontz; Sandy Levy; Karen Veldheer; Rick Hegdahl, Northwest Progressive Institute.

CON: Bob Gee, Western Building Material Association; Timothy Harris, Building Industry Association of Washington; Daimon Doyle, Doyle Custom Homes; Greg Clark, Foster Pepper, Master Builders Association, Washington Defense Trial Lawyers Association; Margaret Hyneman, National Association of Credit Managers; Cliff Webster, Architects and Engineers Legislative Council; Mel Sorensen, Property Casualty Insurers Association; Tammy Fellin, Association of Washington Cities; Chris McCabe, Association of Washington Business.