
ENGROSSED SUBSTITUTE SENATE BILL 5550

State of Washington

60th Legislature

2007 Regular Session

By 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)

READ FIRST TIME 02/16/07.

1 AN ACT Relating to real property; amending RCW 4.16.300; adding a
2 new chapter to Title 64 RCW; creating a new section; providing an
3 effective date; and providing an expiration date.

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

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires otherwise.

7 (1) "Appliances, fixtures, and items of equipment" means furnaces,
8 boilers, oil tanks and fittings, air purifiers, air handling equipment,
9 ventilating fans, ceiling fans, air conditioning equipment, water
10 heaters, pumps, stoves, ranges, ovens, refrigerators, garbage
11 disposals, compactors, dishwashers, automatic door openers, washers and
12 dryers, bathtubs, sinks, toilets, faucets and fittings, lighting
13 fixtures, lighting control and energy management systems, security
14 systems, circuit breakers, and other similar items.

15 (2) "Builder" means any person, corporation, general contractor, or
16 other legal entity that:

17 (a) Is engaged in the business of erecting or otherwise
18 constructing a new home; or

1 (b) Purchases a completed new home for resale in the course of its
2 business.

3 (3) "Defect" means any violation or nonconformity with applicable
4 building codes, regulations, or permits that has an adverse effect or
5 will have an adverse effect on the new home or component of the new
6 home alleged to be in violation of the new home warranty. As used in
7 this subsection, an "adverse effect" must be more than technical and
8 must be significant to a reasonable person. To establish an adverse
9 effect, the person alleging the breach is not required to prove that
10 the breach renders the new home uninhabitable or unfit for its intended
11 purpose.

12 (4) "Electrical systems" means all wiring, electrical boxes,
13 switches, outlets, and connections to the public utility system.

14 (5) "Heating, cooling, and ventilating systems" means all duct
15 work, gas, steam, water and refrigerant lines, registers, convectors,
16 solar panels, radiation elements, and dampers.

17 (6) "Load-bearing portions of the home" means the load-bearing
18 portions of the:

19 (a) Foundation system and footings;

20 (b) Beams;

21 (c) Girders;

22 (d) Lintels;

23 (e) Columns;

24 (f) Walls and partitions;

25 (g) Floor systems; and

26 (h) Roof framing systems.

27 (7)(a) "New home" means every newly constructed private dwelling
28 unit in the state and the appliances, fixtures, and items of equipment
29 and structure that are made a part of a newly constructed private
30 dwelling unit at the time of construction. Newly constructed private
31 dwelling units include substantial remodels. "Substantial remodel"
32 means a remodel of a residence, for which the total cost exceeds one-
33 half of the assessed value of the improvements for property tax
34 purposes at the time the contract for remodel was made.

35 (b) "New home" does not include:

36 (i) A condominium, as defined in RCW 64.34.020, used for
37 residential purposes, as defined in RCW 64.34.020;

38 (ii) A residential timeshare as defined in RCW 64.36.010;

1 (iii) A manufactured home or mobile home as defined in RCW
2 65.20.020;

3 (iv) Outbuildings, including detached garages and carports, except
4 outbuildings that contain plumbing, electrical, heating, cooling, or
5 ventilation systems serving the new home, and then only to the extent
6 that defects to the outbuildings could affect these systems;

7 (v) Driveways;

8 (vi) Walkways;

9 (vii) Boundary walls;

10 (viii) Retaining walls not necessary for the structural stability
11 of the new home;

12 (ix) Landscaping;

13 (x) Sprinkler or irrigation systems;

14 (xi) Fences;

15 (xii) Off-site improvements;

16 (xiii) Appurtenant recreational facilities; and

17 (xiv) Other similar items as determined by the director of the
18 department of labor and industries by rule.

19 (8) "New home warranty" means the warranty created in section 2 of
20 this act.

21 (9) "Owner" means the purchaser of a new home or any subsequent
22 owner of a home to which the warranty created in section 2 of this act
23 applies.

24 (10) "Plumbing systems" means:

25 (a) Gas supply lines and fittings;

26 (b) Water supply, waste, and vent pipes and their fittings;

27 (c) Septic tanks and their drain fields; and

28 (d) Water, gas, and sewer service piping and their extensions to
29 the tie-in of a public utility connection, or on-site wells and sewage
30 disposal systems.

31 (11)(a) "Structural defect" means any defect in the load-bearing
32 portions of a new home that adversely affects its load-bearing function
33 to the extent that the home becomes or is in danger of becoming unsafe,
34 unsanitary, or otherwise not reasonably safely inhabitable.

35 (b) "Structural defect" also includes damage due to subsidence,
36 expansion, or lateral movement of soil that has been disturbed or
37 relocated by the builder.

1 (c) "Structural defect" does not include damage caused by movement
2 of the soil:

3 (i) Resulting from a flood or earthquake; or

4 (ii) For which compensation has been provided.

5 (12) "Warranty date" means the first day on which the owner
6 occupies the new home, closes on the new home, makes the final contract
7 payment on the new home, or obtains an occupancy permit for the new
8 home if the home is built on the owner's property, whichever is
9 earlier.

10 NEW SECTION. **Sec. 2.** (1)(a) Except as excluded under (b) of this
11 subsection, every contract for the construction or sale of a new home
12 includes, as a matter of law, a warranty from the residential builder
13 that shall warrant at a minimum that:

14 (i) For two years, beginning on the warranty date, the new home is
15 free from any defects in materials and workmanship;

16 (ii) For three years, beginning on the warranty date, the new home
17 is free from any defects in the electrical, plumbing, heating, cooling,
18 and ventilating systems, except that in the case of appliances,
19 fixtures, and items of equipment, the warranty need not exceed the
20 length and scope of the warranty offered by the manufacturer, and the
21 warranty of merchantability, fitness, and all other implied warranties
22 with respect to appliances, fixtures, and items of equipment shall be
23 governed by the Washington uniform commercial code;

24 (iii) For five years, beginning on the warranty date, the new home
25 is free from any defects that permit or, without repair, will lead to
26 water penetration; and

27 (iv) For ten years, beginning on the warranty date, the new home is
28 free from any structural defects.

29 (b) The new home warranty excludes the following:

30 (i) Damage to real property that is not part of the home covered by
31 the warranty or that is not included in the purchase price of the home;

32 (ii) Bodily injury or damage to personal property;

33 (iii) Any defect in materials supplied or work performed by anyone
34 other than the builder or the builder's employees, agents, or
35 subcontractors;

36 (iv) Any damage that the owner knew or had reason to know existed
37 but has not taken reasonable action to mitigate;

1 (v) Normal wear and tear or expiration of normal useful life;

2 (vi) Insect damage, except where the builder has failed to use
3 proper materials or construction methods designed to prevent insect
4 infestation;

5 (vii) Any loss or damage that arises while the home is being used
6 primarily for nonresidential purposes;

7 (viii) Any damage to the extent it is caused or made worse by
8 negligence, improper maintenance, or improper operations by anyone
9 other than the builder or its employees, agents, or subcontractors;

10 (ix) Any damage to the extent it is caused or made worse by changes
11 of the grading of the ground by anyone other than the builder, its
12 employees, agents, or subcontractors; and

13 (x) Any loss or damage caused by acts of God.

14 (2) The warranty created by this section runs from the builder to
15 the owner. This warranty entitles the owner to recover from the
16 builder all costs associated with repairing the defects, including all
17 economic incidental and consequential damages. The liability of a
18 builder under the new home warranty shall be limited to the fair market
19 value of the home. Absence of privity of contract between the owner
20 and the builder is not a defense to the enforcement of this warranty.

21 (3) If the defect is the result of work performed by a
22 subcontractor, the builder has a right of contribution from that
23 subcontractor for amounts paid to the owner as a result of the new home
24 warranty.

25 (4) No action to enforce the new home warranty created by this
26 section may be commenced after six years have passed from the time the
27 defect is discovered or, with reasonable diligence, should have been
28 discovered. However, an action may not be brought under this section
29 more than ten years after the warranty date. Providing written notice
30 and a reasonable description of a defect to the builder has the effect
31 of tolling the limitation periods established by this subsection and
32 subsection (5) of this section. Tolling continues until the builder
33 completes the repair to the owner's satisfaction, or the builder gives
34 the owner written notice that the builder refuses to make the repair or
35 has completed as much of the repair as the builder intends to complete.

36 (5) Except as provided in subsection (4) of this section, no action
37 to enforce the new home warranty created by this section may be filed

1 later than the time periods described in subsection (1)(a) of this
2 section.

3 (6) The new home warranty is a cumulative remedy, and shall not
4 have the effect of diminishing or replacing any other remedy or
5 warranty created by law or equity or agreement between the parties.

6 (7) The new home warranty does not expire on the subsequent sale of
7 a new home by the owner to a subsequent purchaser, but continues to
8 protect later purchasers until the warranties provided in subsection
9 (1)(a) of this section expire.

10 (8) The new home warranty created in this section may not be
11 omitted, waived, or disclaimed in any way.

12 (9) All new homes must include in the purchase and sale agreement
13 between the builder and the buyer the following statement: "This home
14 was built in accordance with the statutory warranty set forth in
15 chapter 64.-- RCW (sections 1 and 2 of this act), which representation
16 and warranty may not be omitted, waived, or disclaimed in any way."
17 This subsection is intended to provide notice to owners of their rights
18 under the new home warranty created under sections 1 and 2 of this act
19 and is not intended to create a separate cause of action under this
20 act.

21 (10) This chapter is not intended to create an independent right to
22 maintain a class action against any builder.

23 **Sec. 3.** RCW 4.16.300 and 2004 c 257 s 1 are each amended to read
24 as follows:

25 (1) Except as provided in subsection (2) of this section, RCW
26 4.16.300 through 4.16.320 shall apply to all claims or causes of action
27 of any kind against any person, arising from such person having
28 constructed, altered or repaired any improvement upon real property, or
29 having performed or furnished any design, planning, surveying,
30 architectural or construction or engineering services, or supervision
31 or observation of construction, or administration of construction
32 contracts for any construction, alteration or repair of any improvement
33 upon real property. This section is specifically intended to benefit
34 persons having performed work for which the persons must be registered
35 or licensed under RCW 18.08.310, 18.27.020, 18.43.040, 18.96.020, or
36 19.28.041, and shall not apply to claims or causes of action against
37 persons not required to be so registered or licensed.

1 (2) RCW 4.16.300 through 4.16.320 shall not apply to chapter 64.--
2 RCW (sections 1 and 2 of this act).

3 **NEW SECTION.** **Sec. 4.** (1) A committee on residential construction
4 is created. The committee consists of the following members who have
5 experience and expertise in residential construction law or residential
6 construction:

7 (a) One member from each caucus of the senate, appointed by the
8 president of the senate;

9 (b) One member from each caucus of the house of representatives,
10 appointed by the speaker of the house of representatives;

11 (c) The following eleven members jointly appointed by the speaker
12 of the house of representatives and the president of the senate:

13 (i) One builder of single-family homes, based upon the
14 recommendation of the statewide building industry association;

15 (ii) One residential construction defense attorney with experience
16 representing builders in single-family construction defect actions;

17 (iii) One residential construction plaintiff attorney with
18 experience representing homeowners in single-family construction defect
19 actions;

20 (iv) Three representatives of the Washington homeowners coalition;

21 (v) One third-party private building inspector;

22 (vi) One architect;

23 (vii) One representative of the statewide building industry
24 association;

25 (viii) One representative of the insurance industry; and

26 (ix) One expert in water penetration issues affecting residential
27 construction; and

28 (d) One person appointed by the governor to serve as chair of the
29 committee.

30 (2) The committee shall:

31 (a) Study the cause, extent, and type of construction defects
32 currently existing with single-family residential construction;

33 (b) Evaluate the existing remedies for homeowners in Washington for
34 single-family residential construction defects;

35 (c) Examine what contractors and their industry groups can do to
36 improve the quality of construction to minimize construction defects

1 and, as a result, reduce contractors' liability costs as well as reduce
2 problems for their customers;

3 (d) Examine the issue of contractor licensing including, but not
4 limited to, whether contractors should be licensed and what education
5 and training requirements should exist;

6 (e) Evaluate whether current surety bond requirements are
7 sufficient or if increased or additional bonding requirements are
8 necessary to protect both construction professionals and homebuyers;

9 (f) Determine whether there should be increased standards for city
10 and county building inspectors and examine if changes are needed to the
11 permit sign off process;

12 (g) Assess whether changes to the building code are necessary to
13 avoid water penetration problems; and

14 (h) Examine the costs and benefits of the statutory warranty
15 created in section 2 of this act, including availability of insurance,
16 efficient access to justice, and potential application of alternative
17 dispute resolution, and evaluate whether there is a more cost-effective
18 way to protect both the homeowners and the residential construction
19 industry in Washington state. Within this evaluation, the committee
20 shall examine other states that have implemented statutory home
21 warranties including, at a minimum, Maryland and California.

22 (3) Staff support for the committee must be provided by senate
23 committee services and the house of representatives office of program
24 research.

25 (4) Legislative members of the committee must be reimbursed for
26 travel expenses in accordance with RCW 44.04.120.

27 (5) By December 31, 2007, the committee shall deliver to the
28 consumer protection and housing committee of the senate and the
29 judiciary committee of the house of representatives a report of the
30 findings and conclusions of the committee and any proposed legislation.

31 (6) This section expires on January 1, 2008.

32 NEW SECTION. **Sec. 5.** Sections 1 and 2 of this act constitute a
33 new chapter in Title 64 RCW.

34 NEW SECTION. **Sec. 6.** Sections 1 and 2 of this act take effect

1 July 1, 2008.

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