
Judiciary Committee

HB 1045

Title: An act relating to residential real property.

Brief Description: Concerning residential real property.

Sponsors: Representatives Williams, Dunshee, Nelson, Simpson, Moeller, Hasegawa, Chase, Roberts, Kirby, Appleton, Hunt and Upthegrove.

Brief Summary of Bill

- Provides that the common law implied warranty of habitability may not be contractually disclaimed or limited and may be asserted by a purchaser subsequent to the first owner-occupant.
- Creates statutory implied warranties applicable to the construction of improvements to residential single family homes or owner-occupied duplexes.

Hearing Date: 2/4/09

Staff: Edie Adams (786-7180)

Background:

A homeowner who suffers losses due to defects in the construction of the home may be able to seek redress through a cause of action for breach of contract or for breach of an implied warranty of habitability. There are no statutory warranties governing residential construction, except in the case of condominiums.

Common Law Implied Warranty of Habitability

Under the common law, the buyer of a new home may sue the builder of the home for a breach of an implied warranty of habitability. This warranty covers structural defects in the house and its foundation that make the home unfit for its intended purpose. The warranty extends only to the first purchaser who occupies the home and it may not be assigned to subsequent purchasers.

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.

The sale must be of a commercial nature and the relative bargaining positions of the parties must be inherently unfair to the buyer. The implied warranty of habitability may be disclaimed by the seller if the disclaimer is conspicuous, known to the buyer, and specifically bargained for.

Statutory Warranties for Condominiums

There are no statutory warranties applicable to new home construction except in the case of condominiums. The Washington Condominium Act (WCA) establishes the following implied warranties: the condominium is suitable for the ordinary uses of real estate of its type and is free from defective materials; and the condominium has been constructed in accordance with sound engineering and construction standards, in a workmanlike manner, and in compliance with all applicable laws. Damages are recoverable only if the breach of the implied warranty had an adverse effect that is more than technical and that would be significant to a reasonable person. Damages that may be awarded for a breach are the cost of repairs. However, if those costs are clearly disproportionate to the diminution in the condominium's market value, damages are limited to the loss in market value.

A cause of action for breach of an implied warranty under the WCA must be brought within four years after the cause of action accrues. For an individual unit in a condominium, accrual occurs when the purchaser takes possession. For common areas, accrual occurs upon the later of occupancy of a unit or completion of the common area.

Right to Cure Statute

The contractor right to cure statute provides that a homeowner may not file suit against a construction professional for alleged construction defects until the homeowner has given the construction professional notice of the defects and an opportunity to cure the defects within time lines set out in the statute. A suit filed before the owner provides the right to cure notice must be dismissed by the court. "Construction professional" is defined as an architect, builder, builder vendor, contractor, subcontractor, engineer or inspector, performing or furnishing the design, supervision, inspection, construction, or observation of the construction of any improvement to real property.

Construction Statute of Repose

A cause of action must be brought within a specified time limit from when the action "accrues." A cause of action accrues when facts sufficient to allow a lawsuit exist. A statute of limitations says how long a plaintiff has to bring a lawsuit after a cause of action has accrued. A statute of repose sets a time limit within which a cause of action must accrue. Construction claims are governed by a six-year statute of repose, beginning on the later of substantial completion of construction or termination of the project. This means that any claim against a construction professional must accrue within that six-year period or it is barred.

Summary of Bill:

The common law implied warranty of habitability is modified in two respects. First, the implied warranty of habitability may not be contractually disclaimed, waived, or limited. Second, the implied warranty of habitability extends to any homeowner who purchases the property within

six years of its construction. A homeowner who purchases the property subsequent to the initial owner-occupant receives the same protections of the implied warranty of habitability as possessed by the person from whom the property was purchased.

Statutory implied warranties are created for the construction of improvements upon residential real property. "Residential real property" means a single-family house or a duplex occupied by the owner as a residence. A construction professional making improvements to residential real property warrants that the work will be:

- suitable for the ordinary uses of real estate of its type;
- free from defective materials;
- constructed in accordance with sound engineering and construction standards;
- constructed in a workmanlike manner; and
- constructed in compliance with all laws then applicable to the improvements.

A current owner may bring an action against a construction professional for a breach of any of these warranties. Absence of privity of contract is not a defense to an action for breach of the warranties. In order to recover damages, the owner must show that the breach adversely affects the performance of the property. An "adverse effect" must be more than technical and must be significant to a reasonable person, but need not render the property unfit for occupancy.

The damages that are awarded for a breach are the cost of repairs. However, if the cost of repairs is clearly disproportionate to the loss in market value, the damages are limited to loss in market value. The court may award costs and reasonable attorneys' fees to the prevailing party.

An action for breach of a warranty must be brought within four years after the date the cause of action accrues. The cause of action generally accrues: (1) In the case of newly constructed residential real property, on the date the first owner takes possession; and (2) in the case of improvements on existing residential real property, upon the later of substantial completion of construction or termination of the construction project. If the cause of action is for a breach based on a latent structural defect or latent water penetration defect, the discovery rule applies and the cause of action accrues when the claimant discovers or reasonably should have discovered the defect. However, the cause of action must be discovered within the six-year statute of repose period.

Condominiums and nonprofit housing developers are exempt from the act. The existing definition of "construction professional" in the right to cure statute, which is the definition that applies to the act, is amended to exclude local government inspectors.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.