
SENATE BILL 6701

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By Senators Kline, Kohl-Welles, Jacobsen, Keiser, Gordon, Tom, Fraser,
and McAuliffe

Read first time 01/22/10. Referred to Committee on Labor, Commerce &
Consumer Protection.

1 AN ACT Relating to real property warranties; and adding new
2 sections to chapter 64.50 RCW.

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

4 NEW SECTION. **Sec. 1.** A new section is added to chapter 64.50 RCW
5 to read as follows:

6 (1) The legislature intends by this section to modify the common
7 law implied warranty of habitability to provide that this warranty may
8 not be contractually disclaimed, waived, modified, or limited. The
9 legislature does not intend to modify any other aspect of the common
10 law implied warranty of habitability as developed through case law.

11 (2) The common law implied warranty of habitability may not be
12 disclaimed, waived, modified, or limited by contractual agreement. A
13 provision of any contract for the purchase or sale of newly constructed
14 residential property that purports to disclaim, waive, modify, or limit
15 the implied warranty of habitability is void and unenforceable.

16 NEW SECTION. **Sec. 2.** A new section is added to chapter 64.50 RCW
17 to read as follows:

18 (1) For the purposes of this section:

1 (a) "Builder vendor" means a person, natural or otherwise, engaged
2 in the business of erecting or constructing a new home or who purchases
3 a new home for purposes of resale in the course of its business.

4 (b) "Construction professional" means an architect, builder,
5 builder vendor, contractor, subcontractor, engineer, or inspector,
6 performing or furnishing the design, supervision, inspection,
7 construction, or observation of the construction, of any improvement to
8 residential real property, whether operating as a sole proprietor,
9 partnership, corporation, or other business entity.

10 (c) "Inspector" means a person licensed under chapter 18.280 RCW.

11 (d) "Residential real property" means a single-family home, a
12 duplex, a triplex, or a quadraplex and does not include a manufactured
13 or mobile home as defined in RCW 65.20.020.

14 (e) "Substantial completion of construction" means the state of
15 completion reached when an improvement upon real property may be used
16 or occupied for its intended use.

17 (2) A construction professional involved in the construction of new
18 residential real property, or the substantial remodel of existing
19 residential real property, warrants that the work, and any part
20 thereof, will be suitable for the ordinary uses of real property of its
21 type and that the work will be:

22 (a) Free from defective materials;

23 (b) Constructed in accordance with sound engineering and
24 construction standards;

25 (c) Constructed in a work-like manner; and

26 (d) Constructed in compliance with all laws then applicable to the
27 improvements.

28 (3) If a construction professional breaches a warranty arising
29 under this section and the breach results in damage to any portion of
30 the residential real property, the current owner of the residential
31 real property may bring a cause of action for damages against the
32 construction professional. Absence of privity of contract between the
33 owner and the construction professional is not a defense to the
34 enforcement of a warranty arising under this section.

35 (4) In a judicial proceeding for breach of a warranty arising under
36 this section, the plaintiff must show that the alleged breach has
37 adversely affected or will adversely affect the performance of that
38 portion of the property alleged to be in breach. To establish an

1 adverse effect, the person alleging the breach is not required to prove
2 that the breach renders the property unfit for occupancy. As used in
3 this subsection, "adverse effect" must be more than technical and must
4 be significant to a reasonable person.

5 (5) Proof of breach of a warranty arising under this section is not
6 proof of damages. Damages awarded for a breach of a warranty arising
7 under this section are the cost of repairs. However, if it is
8 established that the cost of repairs is clearly disproportionate to the
9 loss in market value caused by the breach, damages are limited to the
10 loss in market value.

11 (6)(a) A judicial proceeding for breach of a warranty arising under
12 this section must be commenced within four years after the cause of
13 action accrues. This period may not be reduced by either oral or
14 written agreement, or through the use of contractual claims or notice
15 procedures that require the filing or service of any claim or notice
16 prior to the expiration of the period specified in this section.

17 (b) Except as provided under (c) of this subsection, a cause of
18 action for breach of a warranty arising under this section accrues,
19 regardless of the owner's lack of knowledge of the breach:

20 (i) In the case of the purchase of newly constructed residential
21 real property, on the date the initial owner enters into possession of
22 the property; or

23 (ii) In the case of the substantial remodel of existing residential
24 real property, on the date of substantial completion of construction or
25 termination of the construction project, whichever is later.

26 (c) A cause of action for breach of a warranty arising under this
27 section that is based on a latent structural defect or a latent water
28 penetration defect accrues when the claimant discovers or reasonably
29 should have discovered the latent structural defect or latent water
30 penetration defect.

31 (d) An action for breach of warranty under this section is subject
32 to the time limitations provided in RCW 4.16.310.

33 (7) If a written notice of claim is served under RCW 64.50.020
34 within the time prescribed for the filing of an action under this
35 section, the statute of limitations in this section and any applicable
36 statute of repose for construction-related claims are tolled until
37 sixty days after the period of time during which the filing of an
38 action is barred under RCW 64.50.020.

1 (8) The warranties provided under this section are in addition to
2 any other rights or remedies available under statutory law or common
3 law or provided for under contract. The warranties provided under this
4 section may not be waived, disclaimed, modified, or limited.

5 (9) In a judicial proceeding under this section, the court may
6 award reasonable attorneys' fees and costs to the prevailing party.

7 (10) This section is not intended to create an independent right to
8 maintain a class action against any construction professional.

9 (11) This section does not apply to condominiums subject to chapter
10 64.34 RCW.

11 (12) This section does not affect the application of the notice and
12 opportunity to cure requirements and procedures imposed under RCW
13 64.50.010 through 64.50.050.

14 (13) An action for breach of a warranty created under this section
15 is subject to any requirements for mandatory arbitration imposed under
16 chapter 7.06 RCW or state or local court rules.

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