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**SUBSTITUTE HOUSE BILL 2475**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** House Judiciary (originally sponsored by Representative Ryu)

AN ACT Relating to the tolling of construction defect claims; and amending RCW 64.50.010, 64.50.020, 4.16.325, 4.16.310, and 64.34.452.

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

**Sec.**  RCW 64.50.010 and 2002 c 323 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Action" means any civil lawsuit or action in contract or tort for damages or indemnity brought against a construction professional to assert a claim, whether by complaint, counterclaim, or cross-claim, for damage or the loss of use of real or personal property caused by a defect in the construction of a residence or in the substantial remodel of a residence. "Action" does not include any civil action in tort alleging personal injury or wrongful death to a person or persons resulting from a construction defect.

(2) "Association" means an association, master association, or subassociation as defined and provided for in RCW 64.34.020(4), 64.34.276, 64.34.278, and 64.38.010((~~(1)~~)) (11).

(3) "Claimant" means a homeowner or association who asserts a claim against a construction professional concerning a defect in the construction of a residence or in the substantial remodel of a residence.

(4) "Construction professional" means an architect, builder, builder vendor, contractor, subcontractor, engineer, or inspector, including, but not limited to, a dealer as defined in RCW 64.34.020((~~(12)~~)) (14) and a declarant as defined in RCW 64.34.020((~~(13)~~)) (15), performing or furnishing the design, supervision, inspection, construction, or observation of the construction of any improvement to real property, whether operating as a sole proprietor, partnership, corporation, or other business entity.

(5) "Homeowner" means: (a) Any person, company, firm, partnership, corporation, or association who contracts with a construction professional for the construction, sale, or construction and sale of a residence; and (b) an "association" as defined in this section. "Homeowner" includes, but is not limited to, a subsequent purchaser of a residence from any homeowner.

(6) "Residence" means a single-family house, duplex, triplex, quadraplex, ((~~or~~)) a unit or lot in a ((~~multiunit residential structure in which title to each individual unit is transferred to the owner under a~~)) condominium ((~~or~~)), cooperative ((~~system~~)) or homeowner's association, ((~~and shall include~~)) common elements as defined in RCW 64.34.020((~~(6) and~~)) (7), common areas as defined in RCW 64.38.010(4), and common areas and facilities as defined in RCW 64.32.010(6).

(7) "Serve" or "service" means ((~~personal service or delivery by certified mail to the last known address of the addressee~~)): (a) Delivery in the manner provided for service of a summons under RCW 4.28.020; or (b) sending by first-class, registered, or certified mail to the last known address of the addressee, the addressee's registered agent, or any person designated by the addressee as authorized to accept service on their behalf. Service by mail shall be deemed effective three days after deposit into the mail.

(8) "Substantial remodel" means a remodel of a residence, for which the total cost exceeds one-half of the assessed value of the residence for property tax purposes at the time the contract for the remodel work was made.

**Sec.**  RCW 64.50.020 and 2002 c 323 s 3 are each amended to read as follows:

(1) In every construction defect action brought against a construction professional, the claimant shall((~~, no later than forty-five days before filing an action,~~)) serve written notice of claim on the construction professional. The notice of claim shall state that the claimant asserts a construction defect claim against the construction professional and shall describe the claim in reasonable detail sufficient to determine the general nature of the defect. The claimant shall not file any action alleging construction defects until after termination of the notice and opportunity to cure process as specified in this section. Once the notice and opportunity to cure process is terminated, the claimant may bring an action against the construction professional without further notice.

(2) Within twenty-one days after claimant's service of the notice of claim, the construction professional shall serve a written response on the claimant ((~~by registered mail or personal service~~)). The written response shall:

(a) Propose to inspect the residence that is the subject of the claim and to complete the inspection within a specified time frame. The proposal shall include the statement that the construction professional shall, based on the inspection, offer to remedy the defect, compromise by payment, or dispute the claim;

(b) Offer to compromise and settle the claim by monetary payment without inspection. A construction professional's offer under this subsection (2)(b) to compromise and settle a homeowner's claim may include, but is not limited to, an express offer to purchase the claimant's residence that is the subject of the claim, and to pay the claimant's reasonable relocation costs; ((~~or~~))

(c) State that the construction professional disputes the claim and will ((~~neither~~)) not remedy the construction defect ((~~nor~~)), compromise and settle the claim, or offer to mediate; or

(d) Offer to mediate the claim in accordance with subsection (5) of this section.

(3)(a) If the construction professional disputes the claim ((~~or does not respond to the claimant's notice of claim within the time stated in subsection (2) of this section, the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.~~

~~(b) If the claimant rejects the inspection proposal or the settlement offer made by the construction professional pursuant to subsection (2) of this section, the claimant shall serve written notice of the claimant's rejection on the construction professional. After service of the rejection, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim. If the construction professional has not received from the claimant, within thirty days after the claimant's receipt of the construction professional's response, either an acceptance or rejection of the inspection proposal or settlement offer, then at anytime thereafter the construction professional may terminate the proposal or offer by serving written notice to the claimant, and the claimant may thereafter bring an action against the construction professional for the construction defect claim described in the notice of claim~~)) under subsection (2)(c) of this section, such dispute shall constitute termination of the notice and opportunity to cure process.

(b) If the construction professional does not respond to the claimant's notice of claim within the time stated in subsection (2) of this section, then the claimant may serve written notice of termination upon the construction professional, which shall terminate the notice and opportunity to cure process.

(c) If the claimant rejects the inspection proposal or the settlement offer made by the construction professional pursuant to subsection (2) of this section, the claimant shall serve written notice of the claimant's rejection on the construction professional, which shall terminate the notice and opportunity to cure process.

(d) If the construction professional has not been served with the claimant's acceptance or rejection of the inspection proposal or settlement offer within thirty days after service of the construction professional's response, then the construction professional may terminate the notice and opportunity to cure process by serving written notice of termination on the claimant.

(4)(a) If the claimant elects to allow the construction professional to inspect in accordance with the construction professional's proposal pursuant to subsection (2)(a) of this section, the claimant shall provide the construction professional and its contractors or other agents reasonable access to the claimant's residence during normal working hours to inspect the ((~~premises~~)) residence and the claimed defect.

(b) Within fourteen days following completion of the inspection, the construction professional shall serve on the claimant:

(i) A written offer to remedy the construction defect at no cost to the claimant, including a report of the scope of the inspection, the findings and results of the inspection, a description of the additional construction necessary to remedy the defect described in the claim, and a timetable for the completion of such construction;

(ii) A written offer to compromise and settle the claim by monetary payment pursuant to subsection (2)(b) of this section; or

(iii) A written statement that the construction professional will not proceed further to remedy the defect.

(c) If the construction professional does not proceed further to remedy the construction defect within the agreed timetable, or if the construction professional fails to comply with the provisions of (b) of this subsection, the claimant may ((~~bring an action against the construction professional for the claim described in the notice of claim without further notice~~)) serve written notice of termination upon the construction professional, which shall terminate the notice and opportunity to cure process.

(d) If the claimant rejects the offer made by the construction professional pursuant to (b)(i) or (ii) of this subsection to either remedy the construction defect or to compromise and settle the claim by monetary payment, the claimant shall serve written notice of the claimant's rejection on the construction professional, which shall terminate the notice and opportunity to cure process. ((~~After service of the rejection notice, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim.~~)) If the construction professional has not ((~~received from the claimant, within thirty days after the claimant's receipt of the construction professional's response, either an acceptance or rejection of the offer made pursuant to (b)(i) or (ii) of this subsection, then at anytime thereafter the construction professional may terminate the offer by serving written notice to the claimant~~)) been served with the claimant's acceptance or rejection of the offer made pursuant to subsection (b)(i) or (ii) of this subsection within thirty days after the service of the construction professional's response, then the construction professional may serve written notice of termination upon the claimant, which shall terminate the notice and opportunity to cure process.

(5)(a) If the construction professional offers to mediate pursuant to subsection (2)(d) of this section, the claimant shall, within thirty days of service of the offer, serve its acceptance or rejection of the offer to mediate.

(b) If the claimant rejects the offer to mediate, service of the rejection on the construction professional shall terminate the notice and opportunity to cure process.

(c) If the claimant accepts the offer to mediate, the claimant and the construction professional that offered to mediate shall, within thirty days after service of claimant's acceptance of the offer to mediate, select a mediator and agree on deadlines for the

following:

(i) Commencement of the mediation and submission of mediation materials;

(ii) Completion of each party's investigations;

(iii) Disclosure of each party's proposed repair plan;

(iv) Disclosure of each party's estimated costs of repair;

(v) Disclosure of each party's settlement demand or response; and

(vi) Any other deadlines mutually agreed to by the claimant and construction professional.

The events and deadlines in this subsection (5)(c) may be modified by mutual agreement of the claimant and the construction professional that offered to mediate. Once selected, the mediator may unilaterally extend any of the foregoing deadlines by no more than ninety days.

(d) Either the claimant or the construction professional that offered to mediate may terminate the mediation process and any related deadlines without cause by serving written notice of termination on the other, which shall constitute termination of the notice and opportunity to cure process.

(6)(a) Any claimant accepting the offer of a construction professional to remedy the construction defect pursuant to subsection (4)(b)(i) of this section shall do so by serving the construction professional with a written notice of acceptance within a reasonable time period after receipt of the offer, and no later than thirty days after receipt of the offer. The claimant shall provide the construction professional and its contractors or other agents reasonable access to the claimant's residence during normal working hours to perform and complete the construction by the timetable stated in the offer.

(b) The claimant and construction professional may, by written mutual agreement, alter the extent of construction or the timetable for completion of construction stated in the offer, including, but not limited to, repair of additional defects.

((~~(6)~~)) (7) Any action commenced by a claimant prior to compliance with the requirements of this section shall be subject to dismissal without prejudice, and may not be recommenced until the claimant has complied with the requirements of this section.

((~~(7)~~)) (8) Nothing in this section may be construed to prevent a claimant from commencing an action on the construction defect claim described in the notice of claim if the construction professional fails to perform the construction agreed upon, fails to remedy the defect, or fails to perform by the timetable agreed upon pursuant to ((~~subsection (2)(a) or (5) of~~)) this section.

((~~(8)~~)) (9) Prior to commencing any action alleging a construction defect, or after the dismissal of any action without prejudice pursuant to subsection ((~~(6)~~)) (7) of this section, the claimant may amend the notice of claim to include construction defects discovered after the service of the original notice of claim, and must otherwise comply with the requirements of this section for the additional claims. The service of an amended notice of claim shall relate back to the original notice of claim for purposes of tolling statutes of limitations and repose. Claims for defects discovered after the commencement or recommencement of an action may be added to such action only after providing notice to the construction professional of the defect and allowing for response under subsection (2) of this section.

**Sec.**  RCW 4.16.325 and 2002 c 323 s 8 are each amended to read as follows:

If a claimant serves a written notice of claim ((~~is served under RCW 64.50.020 within the time prescribed for the filing of an action under this chapter, the statutes of limitations for construction-related claims are tolled until sixty days after the period of time during which the filing of an action is barred under RCW 64.50.020~~)) on a construction professional under RCW 64.50.020 within the time prescribed for the filing of an action under this chapter, the applicable statutes of limitation and repose for all claims relating to the residence are tolled from claimant's service of the original notice of claim until one hundred five days after termination of the notice and opportunity to cure process as provided in RCW 64.50.020; however, the foregoing tolling applies to claims by one construction professional against another only if the construction professional serves the claimant's notice of claim upon the other construction professional within sixty days of receipt of the claimant's notice of claim or amended notice of claim.

**Sec.**  RCW 4.16.310 and 2002 c 323 s 9 are each amended to read as follows:

All claims or causes of action as set forth in RCW 4.16.300 shall accrue, and the applicable statute of limitation shall begin to run only during the period within six years after substantial completion of construction, or during the period within six years after the termination of the services enumerated in RCW 4.16.300, whichever is later. The phrase "substantial completion of construction" shall mean the state of completion reached when an improvement upon real property may be used or occupied for its intended use. Any cause of action which has not accrued within six years after such substantial completion of construction, or within six years after such termination of services, whichever is later, shall be barred: PROVIDED, That this limitation shall not be asserted as a defense by any owner, tenant or other person in possession and control of the improvement at the time such cause of action accrues. The limitations prescribed in this section apply to all claims or causes of action as set forth in RCW 4.16.300 brought in the name or for the benefit of the state which are made or commenced after June 11, 1986.

((~~If a written notice is filed under RCW 64.50.020 within the time prescribed for the filing of an action under this chapter, the period of time during which the filing of an action is barred under RCW 64.50.020 plus sixty days shall not be a part of the period limited for the commencement of an action, nor for the application of this section.~~))

**Sec.**  RCW 64.34.452 and 2004 c 201 s 7 are each amended to read as follows:

(1) A judicial proceeding for breach of any obligations arising under RCW 64.34.443, 64.34.445, and 64.34.450 must be commenced within four years after the cause of action accrues: PROVIDED, That the period for commencing an action for a breach accruing pursuant to subsection (2)(b) of this section shall not expire prior to one year after termination of the period of declarant control, if any, under RCW 64.34.308((~~(4)~~)) (5). Such periods may not be reduced by either oral or written agreement, or through the use of contractual claims or notice procedures that require the filing or service of any claim or notice prior to the expiration of the period specified in this section.

(2) Subject to subsection (3) of this section, a cause of action ((~~or [for]~~)) for breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

(a) As to a unit, the date the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or the date of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and

(b) As to each common element, at the latest of (i) the date the first unit in the condominium was conveyed to a bona fide purchaser, (ii) the date the common element was completed, or (iii) the date the common element was added to the condominium.

(3) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

(4) If a written notice of claim is served under RCW 64.50.020 within the time prescribed for the filing of an action under this chapter, the statutes of limitation in this chapter and any applicable statutes of repose for construction-related claims are tolled ((~~until sixty days after the period of time during which the filing of an action is barred under RCW 64.50.020~~)) in accordance with section 3 of this act.

(5) Nothing in this section affects the time for filing a claim under chapter 64.35 RCW.

**--- END ---**