

# HOUSE BILL REPORT

## HB 2475

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**As Reported by House Committee On:**  
Judiciary

**Title:** An act relating to the tolling of construction defect claims.

**Brief Description:** Concerning the tolling of construction defect claims.

**Sponsors:** Representative Ryu.

**Brief History:**

**Committee Activity:**

Judiciary: 1/23/18, 2/1/18 [DPS].

**Brief Summary of Substitute Bill**

- Revises the notice and opportunity to cure process in a construction defect action, adding a mediation process and further detail with respect to the termination of this process.
- Extends tolling provisions and provides for tolling in the context of claims by one construction professional against another.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Jinkins, Chair; Graves, Assistant Ranking Minority Member; Goodman, Hansen, Kirby, Orwall and Valdez.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Haler, Klippert, Muri and Shea.

**Staff:** Cece Clynch (786-7195).

**Background:**

**Construction Defect Action.**

In 2002 a mandatory prelitigation claim process was adopted for claims brought against a construction professional for property damage due to alleged defects in the construction of a

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*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.*

residence. These requirements apply to the new construction of a residence and to any remodel that costs more than half of the assessed value of the residence and must be met before a lawsuit can be filed.

Requirements Before Suit is Filed: Notice and Opportunity to Cure.

Before a lawsuit can be filed alleging a defect in the construction or substantial remodel of a residence, a claimant must serve notice on the construction professional alleged to be responsible for the defect. The claimant's notice must be given at least 45 days before a suit is filed and must describe the claim in reasonable detail. The notice must be served by personal service or certified mail.

Within 21 days of receiving the notice, the construction professional must respond to the claimant. In the response, the construction professional must do one of the following:

- offer to inspect the alleged defect and then, based on the inspection, either remedy the defect, pay for it, or dispute the claim;
- offer to settle the claim by paying for the defect, including possibly buying the residence back from the homeowner; or
- dispute the claim.

If the construction professional fails to respond, or disputes the claim, or the claimant rejects an offer of inspection or settlement, then the claimant may file a lawsuit. Procedures are also laid out for situations in which the claimant agrees to an inspection or agrees to an offer of settlement. If the construction professional fails to perform agreed repairs, or fails to meet an agreed timetable, the claimant may file the lawsuit.

If a claimant discovers another defect after a suit has been commenced, the claimant must notify the construction professional and give the construction professional an opportunity to respond in the manner described previously. The new claim may then be added to a pending lawsuit.

The timely serving of a notice of claim tolls any applicable statutes of limitations and repose until 60 days after the end of the notice and opportunity to cure period during which bringing a lawsuit is barred.

Additional Requirements Before a Condominium or Homeowners' Association Can File Suit.

Before the board of directors of a condominium or homeowners' association may sue a construction professional on behalf of two or more owners, the board must notify all residents regarding the intended suit. The notice must state the nature of the suit and the expected expenses and fees to be incurred in bringing the suit.

Definitions.

- "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.
- "Serve" or "service" means personal service or delivery by certified mail.
- "Homeowner" includes any person or entity, including a homeowners' or condominium association, that contracts with a construction professional for the

construction, sale, or construction and sale of a residence. The term also includes a subsequent purchaser from an original homeowner.

- "Residence" means a single-family house, duplex, triplex, quadraplex, or a unit in a multiunit residential structure in which title to each individual unit is transferred to the owner under a condominium or cooperative system and shall include common elements as defined in the Condominium Act and common areas as defined in the Homeowners' Association Act.
- "Construction professional" includes builders, architects, builder vendors, contractors, subcontractors, engineers and others.

### **Statutes of Limitation.**

The goal or policy behind statutes of limitation is to require claims to be brought when the evidence is still available and while witnesses can still recall the events. There are numerous statutes of limitations and which one applies depends upon the cause of action. Generally, a limitations period begins to run when the cause of action "accrues," which is such time as all elements of the cause of action are susceptible of proof and the injured party has a right to apply to a court for relief.

### **Statute of Repose for Improvements to Real Property.**

Claims arising from the construction, alteration, or repair of improvements to real property, as well as those arising out of a variety of related services such as design and engineering, are also subject to the statute of repose, which provides that claims accrue, and the applicable statute of limitations begins 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, whichever is later. Any cause of action which has not accrued within this period of time is barred.

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### **Summary of Substitute Bill:**

The notice and opportunity to cure process is revised, including the addition of a mediation process and further specific detail with respect to the termination of the process. Offering to mediate is added to the options available to a construction professional served with a claimant's notice. If a claimant accepts the offer, the claimant and construction professional select a mediator and agree on various deadlines. Either party may terminate the mediation process.

The tolling provisions are also revised. If a claimant serves a timely written notice of claim on a construction professional, the applicable statutes of limitation and repose for all claims relating to the residence are tolled from the time of service until 105 days after termination of the notice and opportunity to cure process. 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 professional within 60 days of receipt.

Definitions are amended as follows:

- "Residence" means a single-family house, duplex, triplex, quadraplex, a unit or lot in a condominium, cooperative or homeowner's association, common elements as

defined in the Condominium Act, common areas as defined in the Homeowners' Association Act, and common areas as defined in the Horizontal Property Regimes Act.

- "Serve" or "service" is defined to mean delivery in the manner provided for service of a summons under RCW 4.28.020 or 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 is deemed effective three days after deposit into the mail.

### **Substitute Bill Compared to Original Bill:**

Language is reinserted in the tolling provision that was amended in the original bill to provide that the notice of claim must be served within the time prescribed for the filing of an action. Two additional sections of current law regarding tolling are brought in and amended to be consistent with the original bill's tolling provision.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

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

### **Staff Summary of Public Testimony:**

(In support) There is a need for more condominium units to be built. Developers have been focused on building more apartments, but that is slowing now, and the hope is that they will turn their focus to condominiums. Condominiums provide a good option for many persons. One of the barriers identified by the Ruckelshaus study as an impediment to building more condominiums is the tolling issue. There is not a simple, single solution to the housing issue. However, this bill will address at least one issue and help in that respect. This balances the rights of all. Like legislation in this arena from years' past, this should cut down on litigation. The current statute of limitations puts associations in a bind by imposing a hard and fast deadline. This will provide a softening of that line. The goal of a condominium defect action is not litigation. Rather, what is being sought with condominium defect actions is to protect the owners' investments. This will reduce litigation. It will keep a downstream subcontractor who refuses to enter a tolling agreement from preventing resolution.

(Opposed) This legislation will have especially unwelcome effects on single-family home construction. Drawing out the time to 105 days will only make things worse. This extension will extend insurance liability exposure and could lead to a hardening of the insurance market. This is a good conversation to start. House Bill 2790 regarding the pilot program for dispute resolution between owners and associations is seen as a better option.

**Persons Testifying:** (In support) Representative Ryu, prime sponsor; Larry Shannon, Washington State Association for Justice; and Jeremy Stilwell, Washington State Community Associations Institute Legislative Actions Committee.

(Opposed) Bill Stauffacher, Building Industry Association of Washington; and Janet McKague, Washington Realtors.

**Persons Signed In To Testify But Not Testifying:** None.