

SENATE BILL REPORT

SB 5428

As of February 15, 2017

Title: An act relating to the costs of litigation for condominium associations.

Brief Description: Addressing the costs of litigation for condominium associations.

Sponsors: Senators Padden and Rossi.

Brief History:

Committee Activity: Law & Justice: 2/15/17.

Brief Summary of Bill

- Defines construction defect as a defect that presents an unreasonable risk of injury or is not completed in a good and workmanlike manner and proximately causes physical damage to the property.
- Restricts the board of directors of a condominium from participating in litigation without approval from the unit owners.
- Requires the plaintiff to show that the breach caused or is likely to cause actual damage and the damages must be material in actions for breach of an implied warranty.
- Requires mandatory binding arbitration for construction defect disputes regarding multiple residential units..

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Aldo Melchiori (786-7439)

Background: Among the powers of a condominium unit owner's association (Association) is, subject to the provisions of the declaration, the power to institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium. Generally, the boards of directors act on behalf of a condominium association, but they may not do so to amend the declaration in any manner that requires the vote or approval of the unit owners, to terminate the condominium, or to elect members of the board of directors or determine the qualifications, powers, and duties, or terms of office of members of the board of directors.

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.

A declarant and any dealer impliedly warrants that a unit and the common elements in the condominium are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by such declarant or dealer will be:

- 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 such improvements.

In a judicial proceeding for breach of any of the obligations, the plaintiff must show that the alleged breach has adversely affected or will adversely affect the performance of that portion of the unit or common elements alleged to be in breach. An adverse effect must be more than technical and must be significant to a reasonable person. To establish an adverse effect, the person alleging the breach is not required to prove that the breach renders the unit or common element uninhabitable or unfit for its intended purpose.

Proof of breach of any obligation arising under this section is not proof of damages. Damages awarded for a breach of an obligation are the cost of repairs. However, if it is established that the cost of repairs is clearly disproportionate to the loss in market value caused by the breach, then damages shall be limited to the loss in market value.

Summary of Bill: Constructional defect means a defect in the design, construction, manufacture, repair, or landscaping of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance including, without limitation, the design, construction, manufacture, repair, or landscaping of a new residence, of an alteration of or addition to an existing residence, or of an appurtenance that:

- presents an unreasonable risk of injury to a person or property; or
- is not completed in a good and workmanlike manner and proximately causes physical damage to the residence, an appurtenance, or the real property to which the residence or appurtenance is affixed.

In a judicial proceeding for breach of any of the obligations, the plaintiff must show that the alleged breach has actually damaged or is likely to cause actual damages of that portion of the unit or common elements alleged to be in breach.

The board of directors may not act on behalf of the association to institute, defend, or intervene in litigation or administrative hearings. The parties to a construction defect dispute must engage in mandatory binding arbitration.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The intent of the bill is to increase home ownership. Builders want to make good quality homes. The current liability and risk

management issues discourage condominium development. Unit owners should vote before instigating litigation, but not to defend lawsuits.

CON: This will not decrease litigation costs but it will decrease homeowner protections. Current law should not be changed. When disputes arise, the parties should be able to agree on the proper venue. Many declarations of condominium already provide for the process of how to instigate lawsuits.

Persons Testifying: PRO: Senator Mike Padden, Prime Sponsor; Jan Himebaugh, Building Industry Assoc. of WA; Bob Mitchell, Washington Realtors.

CON: Kathryn Henrick, WA State Community Assoc. Institute; Dean Martin, Bark & Martin, PS; Joseph Grace, citizen.

Persons Signed In To Testify But Not Testifying: CON: Larry Shannon, Washington State Association for Justice.