
SUBSTITUTE HOUSE BILL 2790

State of Washington 65th Legislature 2018 Regular Session

By House Judiciary (originally sponsored by Representative Kraft)

READ FIRST TIME 02/02/18.

1 AN ACT Relating to the condominium and homeowners' association
2 dispute resolution program; adding a new section to chapter 34.12
3 RCW; adding a new chapter to Title 64 RCW; prescribing penalties; and
4 providing an expiration date.

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

6 NEW SECTION. **Sec. 1.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires
8 otherwise.

9 (1) "Association" has the same meaning as provided in RCW
10 64.34.020 and also includes "association of apartment owners" as
11 defined in RCW 64.32.010 and "homeowners' association" or
12 "association" as provided in RCW 64.38.010.

13 (2) "Complainant" means an owner or association filing a
14 complaint alleging a violation of chapter 64.32, 64.34, or 64.38 RCW.

15 (3) "Dispute resolution program" means the pilot program
16 established in this act.

17 (4) "Owner" has the same meaning as provided in RCW 64.38.010 and
18 also includes "unit owner" as defined in RCW 64.34.020 and "apartment
19 owner" as defined in RCW 64.32.010.

20 (5) "Respondent" means an association or owner alleged to have
21 committed a violation of chapter 64.32, 64.34, or 64.38 RCW.

1 NEW SECTION. **Sec. 2.** (1) The attorney general shall establish a
2 pilot program for the resolution of condominium and homeowners'
3 association disputes in Clark, King, and Spokane counties.

4 (2) The purpose of the dispute resolution program is to provide
5 owners and associations with a cost-effective and time-efficient
6 process to resolve disputes regarding alleged violations of chapters
7 64.32, 64.34, and 64.38 RCW.

8 (3) The attorney general shall:

9 (a) Exercise reasonable diligence to identify the names and
10 addresses of all associations within the pilot counties;

11 (b) Produce educational materials regarding chapters 64.32,
12 64.34, and 64.38 RCW and the dispute resolution program, including a
13 notice in a format capable of being posted that:

14 (i) Summarizes rights and responsibilities;

15 (ii) Includes information on how to file a complaint with the
16 attorney general;

17 (iii) Encourages mediation prior to the filing of a complaint and
18 includes contact information regarding dispute resolution centers and
19 other free or low-cost mediation services available in the pilot
20 counties; and

21 (iv) Includes a toll-free telephone number and web site address
22 that owners and associations can use to seek additional information
23 and communicate complaints;

24 (c) Distribute the educational materials described in (b) of this
25 subsection to the associations identified pursuant to (a) of this
26 subsection, together with information alerting associations that:

27 (i) All associations must post, in a clearly visible location,
28 the notice described in (b) of this subsection;

29 (ii) The attorney general may visually confirm that the notice is
30 appropriately posted; and

31 (iii) The attorney general may issue a fine or other penalty if
32 the attorney general discovers that the association has not
33 appropriately posted the notice or that the association has not
34 maintained the posted notice so that it is clearly visible to owners;

35 (d) Distribute the educational materials described in (b) of this
36 subsection to any complainants and respondents, as requested;

37 (e) Perform dispute resolution activities, including
38 investigations, negotiations, determinations of violations, and
39 imposition of fines or other penalties as described in section 3 of
40 this act;

1 (f) Create and maintain a database of condominium and homeowners'
2 associations that have had complaints filed against them. With
3 respect to each, the following information must be included, at a
4 minimum:

- 5 (i) The number of complaints received;
- 6 (ii) The nature and extent of the complaints received;
- 7 (iii) The violation of law complained of; and
- 8 (iv) The dispute resolution program outcomes for each complaint;
- 9 and

10 (g) Submit, in compliance with RCW 43.01.036, the following
11 reports to the governor and the legislature:

12 (i) By December 1, 2018, a brief progress report describing the
13 status of implementation in each of the three pilot counties
14 including, for each pilot county, the number of associations, the
15 number of complaints received from owners, the number of complaints
16 received from associations, the number of complaints resolved in
17 favor of owners, and the number of complaints resolved in favor of
18 associations.

19 (ii) By December 1, 2019, a report: Describing the status of
20 implementation in each of the three pilot counties including, for
21 each pilot county, the number of associations, the number of
22 complaints received from owners, the number of complaints received
23 from associations, the number of complaints resolved in favor of
24 owners, and the number of complaints resolved in favor of
25 associations; discussing the effectiveness of the dispute resolution
26 pilot program in resolving disputes in a cost-effective and time-
27 efficient manner; and making recommendations with respect to whether
28 the pilot program should be continued or not and, if so, whether it
29 should be modified, continued in its current form, or expanded.

30 NEW SECTION. **Sec. 3.** (1) An aggrieved party has the right to
31 file a complaint with the attorney general alleging a violation of
32 chapter 64.32, 64.34, or 64.38 RCW. Owners and associations are
33 encouraged to first pursue mediation prior to filing a complaint, and
34 to participate in good faith in any mediation efforts regardless of
35 whether they are the ones initiating or responding to the mediation
36 request.

37 (2) Upon receiving a complaint under this chapter, the attorney
38 general shall:

1 (a) Inquire whether the complainant has participated in mediation
2 and, if the response is no, encourage the complainant to first pursue
3 mediation;

4 (b) Inform the complainant of any statutory notification
5 requirements and encourage the complainant to appropriately notify
6 the respondent of the complaint; and

7 (c) If a statutory time period is applicable, inform the
8 complainant of the time frame that the respondent has to remedy the
9 complaint.

10 (3) After receiving a complaint under this chapter, the attorney
11 general shall exercise discretion as to whether to investigate the
12 alleged violations and, if appropriate, facilitate negotiations
13 between the complainant and the respondent.

14 (4)(a) Complainants and respondents shall cooperate with the
15 attorney general in the course of an investigation by: (i) Responding
16 to subpoenas issued by the attorney general, which may consist of
17 providing access to papers or other documents; and (ii) providing
18 access to any facilities relevant to the investigation. Complainants
19 and respondents must respond to attorney general subpoenas within
20 thirty days.

21 (b) Failure to cooperate with the attorney general in the course
22 of an investigation is a violation of this chapter.

23 (5) If after an investigation the attorney general determines
24 that an agreement cannot be negotiated between the parties, the
25 attorney general shall make a written determination on whether a
26 violation of chapter 64.32, 64.34, or 64.38 RCW has occurred.

27 (a) If the attorney general finds by a written determination that
28 a violation of chapter 64.32, 64.34, or 64.38 RCW has occurred, the
29 attorney general shall deliver a written notice of violation to the
30 respondent who committed the violation by certified mail. The notice
31 of violation must specify the violation, the corrective action
32 required, the time within which the corrective action must be taken,
33 the penalties including fines, other penalties, and actions that will
34 result if corrective action is not taken within the specified time
35 period, and the process for contesting the determination, fines,
36 penalties, and other actions included in the notice of violation
37 through an administrative hearing. The attorney general must deliver
38 to the complainant a copy of the notice of violation by certified
39 mail.

1 (b) If the attorney general finds by a written determination that
2 a violation of chapter 64.32, 64.34, or 64.38 RCW has not occurred,
3 the attorney general shall deliver a written notice of nonviolation
4 to both the complainant and the respondent by certified mail. The
5 notice of nonviolation must include the process for contesting the
6 determination included in the notice of nonviolation through an
7 administrative hearing.

8 (6) Corrective action must take place within fifteen business
9 days of the respondent's receipt of a notice of violation, except as
10 required otherwise by the attorney general, unless the respondent has
11 submitted a timely request for an administrative hearing to contest
12 the notice of violation as required under subsection (8) of this
13 section. If a respondent, which includes either an association or an
14 owner, fails to take corrective action within the required time
15 period and the attorney general has not received a timely request for
16 an administrative hearing, the attorney general may impose a fine, up
17 to a maximum of one hundred dollars per violation per day, for each
18 day that a violation remains uncorrected. The attorney general must
19 consider the severity and duration of the violation and the
20 violation's impact on other owners when determining the appropriate
21 amount of a fine or the appropriate penalty to impose on a
22 respondent. If the respondent shows upon timely application to the
23 attorney general that a good faith effort to comply with the
24 corrective action requirements of the notice of violation has been
25 made and that the corrective action has not been completed because of
26 mitigating factors beyond the respondent's control, the attorney
27 general may delay the imposition of a fine or penalty.

28 (7) The attorney general may issue an order requiring the
29 respondent, or its assignee or agent, to cease and desist from an
30 unlawful practice and take affirmative actions that in the judgment
31 of the attorney general will carry out the purposes of this chapter.
32 The affirmative actions may include, but are not limited to, the
33 following:

34 (a) Refunds of improper fees, charges, and assessments collected
35 in violation of chapters 64.32, 64.34, or 64.38 RCW or this chapter;

36 (b) Filing and utilization of documents that correct a statutory
37 or rule violation; and

38 (c) Reasonable action necessary to correct a statutory or rule
39 violation.

1 (8) A complainant or respondent may request an administrative
2 hearing before an administrative law judge under chapter 34.05 RCW to
3 contest:

4 (a) A notice of violation issued under subsection (5)(a) of this
5 section or a notice of nonviolation issued under subsection (5)(b) of
6 this section;

7 (b) A fine or other penalty imposed under subsection (6) of this
8 section; or

9 (c) An order to cease and desist or an order to take affirmative
10 actions under subsection (7) of this section.

11 The complainant or respondent must request an administrative
12 hearing within fifteen business days of receipt of a notice of
13 violation, notice of nonviolation, fine, other penalty, order, or
14 action. If an administrative hearing is not requested within this
15 time period, the notice of violation, notice of nonviolation, fine,
16 other penalty, order, or action constitutes a final order of the
17 attorney general and is not subject to review by any court or agency.

18 (9) If an administrative hearing is initiated, the respondent and
19 complainant shall each bear the cost of his or her own legal
20 expenses.

21 (10) The administrative law judge appointed under chapter 34.12
22 RCW shall:

23 (a) Hear and receive pertinent evidence and testimony;

24 (b) Decide whether the evidence supports the attorney general
25 finding by a preponderance of the evidence; and

26 (c) Enter an appropriate order within thirty days after the close
27 of the hearing and immediately mail copies of the order to the
28 affected parties.

29 The order of the administrative law judge constitutes the final
30 agency order of the attorney general and may be appealed to the
31 superior court under chapter 34.05 RCW.

32 (11) When the attorney general imposes a fine, refund, or other
33 penalty against a respondent, the respondent may not seek any
34 recovery or reimbursement of the fine, refund, or other penalty from
35 a complainant.

36 (12) All receipts from the imposition of fines or other penalties
37 collected under this section other than those due to a complainant
38 must be deposited into the state general fund.

39 (13) This section is not exclusive and does not limit the right
40 of owners or associations to take legal action against another party.

1 Exhaustion of the administrative remedy provided in this chapter is
2 not required before a legal action may be brought.

3 NEW SECTION. **Sec. 4.** The attorney general or individuals acting
4 on behalf of the attorney general are immune from suit in any action,
5 civil or criminal, based upon any disciplinary actions or other
6 official acts performed in the course of their duties under this
7 chapter, except their intentional or willful misconduct.

8 NEW SECTION. **Sec. 5.** This act does not apply to any disputes
9 between owners and associations regarding construction defect actions
10 under chapter 64.50 RCW.

11 NEW SECTION. **Sec. 6.** A new section is added to chapter 34.12
12 RCW to read as follows:

13 When requested by the attorney general, the chief administrative
14 law judge shall assign an administrative law judge to conduct
15 proceedings under chapter 64.--- RCW (the new chapter created in
16 section 7 of this act).

17 NEW SECTION. **Sec. 7.** Sections 1 through 5 of this act
18 constitute a new chapter in Title 64 RCW.

19 NEW SECTION. **Sec. 8.** This act expires June 30, 2020.

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