
HOUSE BILL 2831

State of Washington

65th Legislature

2018 Regular Session

By Representatives Senn, Chapman, Clibborn, Vick, Springer, Appleton,
and Barkis

Read first time 01/17/18. Referred to Committee on Judiciary.

1 AN ACT Relating to construction defect actions; and amending RCW
2 64.50.040, 64.34.304, and 64.38.020.

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

4 **Sec. 1.** RCW 64.50.040 and 2002 c 323 s 5 are each amended to
5 read as follows:

6 (1)(a) In the event the board of directors, pursuant to RCW
7 64.34.304(1)(d) or 64.38.020(4), institutes an action asserting
8 defects in the construction of two or more residences, common
9 elements, or common areas, this section shall apply. For purposes of
10 this section, "action" has the same meaning as set forth in RCW
11 64.50.010.

12 (b) The board of directors shall substantially comply with the
13 provisions of this section.

14 (2)(a) Prior to the service of the summons and complaint on any
15 defendant with respect to an action governed by this section, the
16 board of directors shall mail or deliver written notice (~~of the~~
17 ~~commencement or anticipated commencement of such action~~) to each
18 homeowner at the last known address described in the association's
19 records and to the last known address of each construction
20 professional against whom an action is proposed; except that this
21 notice requirement does not apply to:

1 (i) Construction professionals identified after the notice is
2 mailed; or

3 (ii) Joined parties in an action previously approved by
4 homeowners under subsection (3) of this section.

5 (b) The notice required by (a) of this subsection shall state a
6 general description of the ~~((following:~~

7 ~~(i) The nature of the action and the relief sought; and~~

8 ~~(ii) The expenses and fees that the board of directors~~
9 ~~anticipates will be incurred in prosecuting the action)) process and~~

10 outcome following service of the notice of claim under RCW 64.50.020
11 and the nature of the action and the relief to be sought in the event
12 that the homeowners vote to authorize proceeding with an action.

13 ~~((3))~~ (c) The notice given under this subsection (2) must call
14 a meeting of the homeowners, which must be held no less than twenty
15 days and no more than thirty days after the mailing date of the
16 notice, to consider whether to bring an action. A failure to hold the
17 meeting within this time period voids the subsequent vote. A quorum
18 is not required at the meeting. In no event shall the time period for
19 providing the notice required under (a) of this subsection, holding
20 the meeting required under this subsection (2)(c), and voting as
21 required by subsection (3) of this section exceed ninety days. The
22 notice must state that:

23 (i) The conclusion of the meeting initiates the voting period,
24 during which the association will accept votes for and against
25 proceeding with the action. The disclosure and voting period shall
26 end ninety days after the mailing date of the meeting notice or when
27 the association determines that the action is either approved or
28 disapproved, whichever occurs first;

29 (ii) The construction professional against whom the construction
30 defect action is proposed will be invited to attend and will have an
31 opportunity to address the homeowners concerning the alleged
32 construction defect; and

33 (iii) The presentation at the meeting by the construction
34 professional or the construction professional's designee or designees
35 may, but is not required to, include an offer to remedy any defect in
36 accordance with this chapter.

37 (d) The notice given under this subsection (2) must also contain
38 a description of the nature of the action, which description
39 identifies alleged defects with reasonable specificity, the relief
40 sought, a good faith estimate of the benefits and risks involved, the

1 expenses and fees that the board of directors anticipates will be
2 incurred in prosecuting the action, and any other pertinent
3 information. The notice shall also include the following disclosures:

4 (i) The alleged construction defects might result in increased
5 costs to the association in maintenance or repair or cause an
6 increase in assessments or special assessments to cover the cost of
7 repairs.

8 (ii) If the association does not file a claim before the
9 applicable legal deadlines, the claim will expire.

10 (iii) Until the alleged defects are repaired, sellers of
11 residences might owe buyers a duty to disclose known defects.

12 (iv) If the association does not prevail on its claim, the
13 association may be responsible for paying its attorneys' fees.

14 (v) If the association does not prevail on its claim, a court or
15 arbitrator sometimes awards costs and attorneys' fees to the opposing
16 party. Should that happen in this case, the association may be
17 responsible for paying the opposing party's costs and fees as a
18 result of such award.

19 (vi) There is no guarantee that the association will recover
20 enough funds to repair the claimed construction defect(s). If the
21 claimed defects are not repaired, additional damage to property and a
22 reduction in the useful life of the common elements or common areas
23 might occur.

24 (vii) Until the claimed construction defects are repaired, or
25 until the action is concluded, the market value of the residences in
26 the association might be adversely affected.

27 (viii) Until the claimed construction defect(s) are repaired, or
28 until the action is concluded, homeowners in the association might
29 have difficulty refinancing and prospective buyers might have
30 difficulty obtaining financing. In addition, certain federal
31 underwriting standards or regulations prevent refinancing or
32 obtaining a new loan in projects where a construction defect is
33 claimed, and certain lenders as a matter of policy will not refinance
34 or provide a new loan in projects where a construction defect is
35 claimed.

36 (e) The association shall maintain a verified homeowner mailing
37 list that identifies the homeowners to whom the association mailed
38 the notice required under this subsection (2). The verified homeowner
39 mailing list shall include, for each homeowner, the address, if any,
40 to which the association mailed the notice required under this

1 subsection (2). The association shall provide a copy of the verified
2 homeowner mailing list to each construction professional who is sent
3 a notice under this subsection (2) at the homeowner meeting required
4 under (c) of this subsection. The homeowner mailing list shall be
5 deemed verified if a specimen copy of the mailing list is certified
6 by an association officer or agent. If the association commences an
7 action against any construction professional, the association shall
8 file its verified homeowner mailing list and records of votes
9 received from homeowners during the voting period with the
10 appropriate court under seal.

11 (f) The substance of a proposed action may be amended or
12 supplemented after the meeting, but an amended or supplemented claim
13 does not extend the voting period. The board of directors shall give
14 notice to homeowners of any amended or supplemented claim and shall
15 maintain records of its communications with homeowners. Homeowner
16 approval under subsection (3) of this section is not required for
17 amendments or supplements to an action made after the notice under
18 this subsection (2) is sent.

19 (3)(a)(i) Notwithstanding any provision of law or any requirement
20 in the governing documents, the board of directors may initiate the
21 action only if authorized within the voting period by homeowners of
22 residences to which a majority of votes in the association are
23 allocated. Such approval is not required for an association to
24 proceed with an action if the alleged construction defect pertains to
25 a facility that is intended and used for nonresidential purposes and
26 if the cost to repair the alleged defect does not exceed one hundred
27 thousand dollars. Such approval is not required for an association to
28 proceed with an action when the association is the contracting party
29 for the performance of labor or purchase of services or materials.

30 (ii) Notwithstanding any other provision of law, a homeowner's
31 vote shall be submitted only once and may be obtained in any written
32 format confirming the homeowner's vote to approve or reject the
33 proposed action. The association shall maintain a record of all votes
34 until the conclusion of the action, including all appeals, if any.

35 (b) For purposes of calculating the required majority vote under
36 this subsection (3) only, the following votes are excluded:

37 (i) Any votes allocated to units owned by a development party. As
38 used in this subsection (3)(b)(i), "development party" means a
39 contractor, subcontractor, developer, or builder responsible for any
40 part of the design, construction, or repair of any portion of the

1 common interest community and any of that party's affiliates; and
2 "affiliate" includes an entity controlled or owned, in whole or in
3 part, by any person that controls or owns a development party or by
4 the spouse of a development party; and

5 (ii) Any votes allocated to units owned by banking institutions,
6 unless a vote from such an institution is actually received by the
7 association.

8 (4) At least five business days before the mailing of the notice
9 required by subsection (2) of this section, the association shall
10 notify each construction professional against whom a construction
11 defect action is proposed by mail, at its last known address, of the
12 date and time of the meeting called to consider the construction
13 defect action under subsection (2) of this section.

14 (5) Nothing in this section may be construed to:

15 (a) Require the disclosure in the notice or the disclosure to a
16 unit owner of attorney-client communications or other privileged
17 communications;

18 (b) Permit the notice to serve as a basis for any person to
19 assert the waiver of any applicable privilege or right of
20 confidentiality resulting from, or to claim immunity in connection
21 with, the disclosure of information in the notice; or

22 (c) Limit or impair the authority of the board of directors to
23 contract for legal services, or limit or impair the ability to
24 enforce such a contract for legal services.

25 **Sec. 2.** RCW 64.34.304 and 2008 c 115 s 9 are each amended to
26 read as follows:

27 (1) Except as provided in subsection (2) of this section, and
28 subject to the provisions of the declaration, the association may:

29 (a) Adopt and amend bylaws, rules, and regulations;

30 (b) Adopt and amend budgets for revenues, expenditures, and
31 reserves, and impose and collect assessments for common expenses from
32 unit owners;

33 (c) Hire and discharge or contract with managing agents and other
34 employees, agents, and independent contractors;

35 (d) Institute, defend, or intervene in litigation or
36 administrative proceedings in its own name on behalf of itself or two
37 or more unit owners on matters affecting the condominium. With
38 respect to construction defect actions under chapter 64.50 RCW, the
39 board of directors shall comply with RCW 64.50.040;

- 1 (e) Make contracts and incur liabilities;
- 2 (f) Regulate the use, maintenance, repair, replacement, and
3 modification of common elements;
- 4 (g) Cause additional improvements to be made as a part of the
5 common elements;
- 6 (h) Acquire, hold, encumber, and convey in its own name any
7 right, title, or interest to real or personal property, but common
8 elements may be conveyed or subjected to a security interest only
9 pursuant to RCW 64.34.348;
- 10 (i) Grant easements, leases, licenses, and concessions through or
11 over the common elements and petition for or consent to the vacation
12 of streets and alleys;
- 13 (j) Impose and collect any payments, fees, or charges for the
14 use, rental, or operation of the common elements, other than limited
15 common elements described in RCW 64.34.204 (2) and (4), and for
16 services provided to unit owners;
- 17 (k) Impose and collect charges for late payment of assessments
18 pursuant to RCW 64.34.364(13) and, after notice and an opportunity to
19 be heard by the board of directors or by such representative
20 designated by the board of directors and in accordance with such
21 procedures as provided in the declaration or bylaws or rules and
22 regulations adopted by the board of directors, levy reasonable fines
23 in accordance with a previously established schedule thereof adopted
24 by the board of directors and furnished to the owners for violations
25 of the declaration, bylaws, and rules and regulations of the
26 association;
- 27 (l) Impose and collect reasonable charges for the preparation and
28 recording of amendments to the declaration, resale certificates
29 required by RCW 64.34.425, and statements of unpaid assessments;
- 30 (m) Provide for the indemnification of its officers and board of
31 directors and maintain directors' and officers' liability insurance;
- 32 (n) Assign its right to future income, including the right to
33 receive common expense assessments, but only to the extent the
34 declaration provides;
- 35 (o) Join in a petition for the establishment of a parking and
36 business improvement area, participate in the ratepayers' board or
37 other advisory body set up by the legislative authority for operation
38 of a parking and business improvement area, and pay special
39 assessments levied by the legislative authority on a parking and
40 business improvement area encompassing the condominium property for

1 activities and projects which benefit the condominium directly or
2 indirectly;

3 (p) Establish and administer a reserve account as described in
4 RCW 64.34.380;

5 (q) Prepare a reserve study as described in RCW 64.34.380;

6 (r) Exercise any other powers conferred by the declaration or
7 bylaws;

8 (s) Exercise all other powers that may be exercised in this state
9 by the same type of corporation as the association; and

10 (t) Exercise any other powers necessary and proper for the
11 governance and operation of the association.

12 (2) The declaration may not impose limitations on the power of
13 the association to deal with the declarant which are more restrictive
14 than the limitations imposed on the power of the association to deal
15 with other persons.

16 **Sec. 3.** RCW 64.38.020 and 1995 c 283 s 4 are each amended to
17 read as follows:

18 Unless otherwise provided in the governing documents, an
19 association may:

20 (1) Adopt and amend bylaws, rules, and regulations;

21 (2) Adopt and amend budgets for revenues, expenditures, and
22 reserves, and impose and collect assessments for common expenses from
23 owners;

24 (3) Hire and discharge or contract with managing agents and other
25 employees, agents, and independent contractors;

26 (4) Institute, defend, or intervene in litigation or
27 administrative proceedings in its own name on behalf of itself or two
28 or more owners on matters affecting the homeowners' association, but
29 not on behalf of owners involved in disputes that are not the
30 responsibility of the association. With respect to construction
31 defect actions under chapter 64.50 RCW, the board of directors shall
32 comply with RCW 64.50.040;

33 (5) Make contracts and incur liabilities;

34 (6) Regulate the use, maintenance, repair, replacement, and
35 modification of common areas;

36 (7) Cause additional improvements to be made as a part of the
37 common areas;

38 (8) Acquire, hold, encumber, and convey in its own name any
39 right, title, or interest to real or personal property;

1 (9) Grant easements, leases, licenses, and concessions through or
2 over the common areas and petition for or consent to the vacation of
3 streets and alleys;

4 (10) Impose and collect any payments, fees, or charges for the
5 use, rental, or operation of the common areas;

6 (11) Impose and collect charges for late payments of assessments
7 and, after notice and an opportunity to be heard by the board of
8 directors or by the representative designated by the board of
9 directors and in accordance with the procedures as provided in the
10 bylaws or rules and regulations adopted by the board of directors,
11 levy reasonable fines in accordance with a previously established
12 schedule adopted by the board of directors and furnished to the
13 owners for violation of the bylaws, rules, and regulations of the
14 association;

15 (12) Exercise any other powers conferred by the bylaws;

16 (13) Exercise all other powers that may be exercised in this
17 state by the same type of corporation as the association; and

18 (14) Exercise any other powers necessary and proper for the
19 governance and operation of the association.

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