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SENATE BILL 6523

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State of Washington

65th Legislature

2018 Regular Session

By Senator Mullet

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

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

4 **Sec. 1.** RCW 64.50.010 and 2002 c 323 s 2 are each amended to  
5 read as follows:

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

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

16 (2) "Association" means an association, master association, or  
17 subassociation as defined and provided for in RCW 64.34.020(4),  
18 64.34.276, 64.34.278, and 64.38.010(~~(+1)~~) (11).

19 (3) "Claimant" means a homeowner or association who asserts a  
20 claim against a construction professional concerning a defect in the

1 construction of a residence or in the substantial remodel of a  
2 residence.

3 (4) "Construction professional" means an architect, builder,  
4 builder vendor, contractor, subcontractor, engineer, or inspector,  
5 including, but not limited to, a dealer as defined in RCW  
6 64.34.020(~~((+12+))~~) (14) and a declarant as defined in RCW  
7 64.34.020(~~((+13+))~~) (15), performing or furnishing the design,  
8 supervision, inspection, construction, or observation of the  
9 construction of any improvement to real property, whether operating  
10 as a sole proprietor, partnership, corporation, or other business  
11 entity.

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

18 (6) "Residence" means a single-family house, duplex, triplex,  
19 quadraplex, (~~((or))~~) a unit or lot in a (~~((multiunit residential~~  
20 ~~structure in which title to each individual unit is transferred to~~  
21 ~~the owner under a))~~ condominium (~~((or))~~), cooperative ((system)) or  
22 homeowner's association, ((and shall include)) common elements as  
23 defined in RCW 64.34.020(~~((+6) and))~~) (7), common areas as defined in  
24 RCW 64.38.010(4), and common areas and facilities as defined in RCW  
25 64.32.010(6).

26 (7) "Serve" or "service" means (~~((personal service or delivery by~~  
27 ~~certified mail to the last known address of the addressee))~~): (a)  
28 Delivery in the manner provided for service of a summons under RCW  
29 4.28.020; or (b) sending by first-class, registered, or certified  
30 mail to the last known address of the addressee, the addressee's  
31 registered agent, or any person designated by the addressee as  
32 authorized to accept service on their behalf. Service by mail shall  
33 be deemed effective three days after deposit into the mail.

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

38 **Sec. 2.** RCW 64.50.020 and 2002 c 323 s 3 are each amended to  
39 read as follows:

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

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

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

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

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

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

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

38 (~~(b) If the claimant rejects the inspection proposal or the~~  
39 ~~settlement offer made by the construction professional pursuant to~~  
40 ~~subsection (2) of this section, the claimant shall serve written~~

1 ~~notice of the claimant's rejection on the construction professional.~~  
2 ~~After service of the rejection, the claimant may bring an action~~  
3 ~~against the construction professional for the construction defect~~  
4 ~~claim described in the notice of claim. If the construction~~  
5 ~~professional has not received from the claimant, within thirty days~~  
6 ~~after the claimant's receipt of the construction professional's~~  
7 ~~response, either an acceptance or rejection of the inspection~~  
8 ~~proposal or settlement offer, then at anytime thereafter the~~  
9 ~~construction professional may terminate the proposal or offer by~~  
10 ~~serving written notice to the claimant, and the claimant may~~  
11 ~~thereafter bring an action against the construction professional for~~  
12 ~~the construction defect claim described in the notice of claim))~~  
13 under subsection (2)(c) of this section, such dispute shall  
14 constitute termination of the notice and opportunity to cure process.

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

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

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

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

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

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

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

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

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

18 (d) If the claimant rejects the offer made by the construction  
19 professional pursuant to (b)(i) or (ii) of this subsection to either  
20 remedy the construction defect or to compromise and settle the claim  
21 by monetary payment, the claimant shall serve written notice of the  
22 claimant's rejection on the construction professional, which shall  
23 terminate the notice and opportunity to cure process. (~~After service~~  
24 ~~of the rejection notice, the claimant may bring an action against the~~  
25 ~~construction professional for the construction defect claim described~~  
26 ~~in the notice of claim.~~) If the construction professional has not  
27 (~~received from the claimant, within thirty days after the claimant's~~  
28 ~~receipt of the construction professional's response, either an~~  
29 ~~acceptance or rejection of the offer made pursuant to (b)(i) or (ii)~~  
30 ~~of this subsection, then at anytime thereafter the construction~~  
31 ~~professional may terminate the offer by serving written notice to the~~  
32 ~~claimant~~) been served with the claimant's acceptance or rejection of  
33 the offer made pursuant to subsection (b)(i) or (ii) of this  
34 subsection within thirty days after the service of the construction  
35 professional's response, then the construction professional may serve  
36 written notice of termination upon the claimant, which shall  
37 terminate the notice and opportunity to cure process.

38 (5)(a) If the construction professional offers to mediate  
39 pursuant to subsection (2)(d) of this section, the claimant shall,

1 within thirty days of service of the offer, serve its acceptance or  
2 rejection of the offer to mediate.

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

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

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

13 (ii) Completion of each party's investigations;

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

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

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

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

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

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

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

39 (b) The claimant and construction professional may, by written  
40 mutual agreement, alter the extent of construction or the timetable

1 for completion of construction stated in the offer, including, but  
2 not limited to, repair of additional defects.

3 ~~((+6+))~~ (7) Any action commenced by a claimant prior to  
4 compliance with the requirements of this section shall be subject to  
5 dismissal without prejudice, and may not be recommenced until the  
6 claimant has complied with the requirements of this section.

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

13 ~~((+8+))~~ (9) Prior to commencing any action alleging a  
14 construction defect, or after the dismissal of any action without  
15 prejudice pursuant to subsection ~~((+6+))~~ (7) of this section, the  
16 claimant may amend the notice of claim to include construction  
17 defects discovered after the service of the original notice of claim,  
18 and must otherwise comply with the requirements of this section for  
19 the additional claims. The service of an amended notice of claim  
20 shall relate back to the original notice of claim for purposes of  
21 tolling statutes of limitations and repose. Claims for defects  
22 discovered after the commencement or recommencement of an action may  
23 be added to such action only after providing notice to the  
24 construction professional of the defect and allowing for response  
25 under subsection (2) of this section.

26 **Sec. 3.** RCW 4.16.325 and 2002 c 323 s 8 are each amended to read  
27 as follows:

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

1 serves the claimant's notice of claim upon the other construction  
2 professional within sixty days of receipt of the claimant's notice of  
3 claim or amended notice of claim.

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