

HOUSE BILL REPORT

ESSB 5024

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to reducing barriers to condominium construction.

Brief Description: Reducing barriers to condominium construction.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Padden, Pedersen, Brown, Gildon, Holy, Mullet, Short and Van De Wege).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/17/21, 3/26/21 [DPA].

**Brief Summary of Engrossed Substitute Bill
(As Amended By Committee)**

- Specifies that a qualified building enclosure inspector under the Washington Condominium Act must be the architect or engineer of record or another person with substantial training and experience.
- Allows deposit funds for the purchase of a unit in a common interest community under the Washington Uniform Common Interest Ownership Act (WUCIOA) to be withdrawn from escrow and used for construction costs if a surety bond is maintained in favor of the purchaser in the amount of the deposit to be withdrawn.
- Relieves the party holding escrow funds from the obligation to monitor the expenditure of funds and liability to any purchaser for the release of funds for construction.
- Limits earnest money deposits under the WUCIOA to no more than 5 percent of the purchase price.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: Do pass as amended. Signed by 17 members: Representatives Hansen, Chair; Simmons, Vice Chair; Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno, Davis, Entenman, Goodman, Kirby, Klippert, Orwall, Peterson, Thai, Valdez, Walen and Ybarra.

Staff: Yelena Baker (786-7301).

Background:

A condominium consists of real property that has individually owned units and also has commonly held elements in which all the individual unit owners have an undivided common interest. Two main statutes that govern the creation, construction, management, and termination of condominiums are the Washington Uniform Common Interest Ownership Act (WUCIOA) and the Washington Condominium Act (WCA).

The WUCIOA took effect on July 1, 2018, and is applicable to residential common interest communities (CIC) created after that date. A CIC includes condominiums, cooperatives, leasehold CICs, miscellaneous communities, and plat communities. A CIC created prior to July 1, 2018, may choose to opt in to the WUCIOA. The WCA controls the creation, construction, management, and termination of condominiums created after July 1, 1990, but before the effective date of the WUCIOA.

Under both the WUCIOA and the WCA, a condominium is created by the recording of a "declaration," and the person creating a condominium is referred to as the "declarant." A condominium may be created by the construction of a new condominium building, or by the conversion of an existing building, such as an existing apartment building.

Building Enclosure Design and Inspection Requirements.

Specific requirements with regard to building enclosure apply when constructing or rehabilitating a multiunit residential building, or when converting a multiunit residential building to a condominium ownership. For purposes of these requirements, a multiunit residential building is a building with more than two attached dwelling units, but does not include hotels, motels, dormitories, care facilities, floating homes, or buildings with attached dwelling units each on a single platted lot.

Building enclosure design documents must be submitted with any application for a building permit for the construction of a multiunit residential building. The documents must be stamped by an architect or engineer and must address waterproofing, weatherproofing, and other protections of the building from water or moisture intrusion. A building department may not issue a building permit unless the design documents have been submitted, but the department need not review or approve the documents.

The building enclosures of all multiunit residential buildings must be inspected during the course of construction. The inspection must determine through periodic review whether

construction is in compliance with the enclosure design documents. In addition, the inspection must include testing windows and window installations for water penetration problems. The inspections must be performed by a person who has training and experience in the design and construction of building envelopes, who is free of improper interference or influence, and who has not been an employee of the developer. Notwithstanding these restrictions, the inspections may be done by the architect or engineer who prepared the design documents or who is the architect or engineer of record on the project.

A building department may not issue a certificate of occupancy for a multiunit residential building until a building enclosure inspection report has been submitted. However, the department need not determine the adequacy of the inspection.

No condominium unit may be sold without the required enclosure design documents and inspection report. In addition, in the case of a conversion of a building to residential condominium units, special inspection provisions apply. Every condominium conversion must undergo an intrusive inspection of the building envelope. The inspection is to include testing, such as removing siding to check for construction quality and for water penetration. A conversion inspection must include a report of the findings of the inspection and must include any recommended repairs. The report must be made a part of the public offering statement for the condominium.

Earnest Money Deposits Under the Washington Uniform Common Interest Ownership Act. Many contracts for the purchase and sale of real estate use an earnest money forfeiture provision in which one party, typically the purchaser, agrees to deposit a sum of money. A party forfeits the deposit by breaching the contract, allowing the other party to keep the money.

Under the WUCIOA, any deposit made in connection with the right to purchase a unit from the declarant or dealer of the CIC must be placed in escrow until delivered to the declarant at closing or because of the purchaser's default under the purchase contract, refunded to the purchaser, or delivered to a court in connection with certain actions.

Summary of Amended Bill:

Current requirements applicable to building enclosure inspectors under the WCA are revised to specify that a qualified building enclosure inspector must be the architect or engineer of record or another person with substantial and verifiable training and experience in building enclosure design and construction.

Deposits made in connection with the right to purchase a unit from a declarant or dealer under the WUCIOA are not to exceed 5 percent of the purchase price. Deposits may be withdrawn from escrow when construction of improvements has begun if:

- the purchase agreement provides that deposit funds may be used for construction; and

- the declarant obtains and maintains a surety bond in favor of the purchaser in an amount adequate to cover the amount of the deposit to be withdrawn.

The declarant may not withdraw more than the face amount of the bond. The bond must be payable to the purchaser if the purchaser obtains a final judgment against the declarant requiring the declarant to return the deposit pursuant to the purchase agreement. The bond may be either in the form of an individual bond for each deposit accepted by the declarant or in the form of a blanket bond assuring the return of all deposits received by the declarant.

The party holding escrow funds who releases all or any portion of the funds to the declarant has no obligation to monitor the progress of construction or the expenditure of the funds by the declarant and is not liable to any purchaser for the release of funds.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill:

- strikes the provisions that temporarily exempt certain smaller buildings from building enclosure design and inspection requirements and thereby restores current law applicable to these smaller buildings;
- specifies that a qualified building enclosure inspector under the WCA must be the architect or engineer of record or another person with substantial training and experience;
- relieves the party holding escrow funds from the obligation to monitor the expenditure of funds and liability to any purchaser for the release of funds for construction; and
- modifies, from 10 percent to 5 percent of the purchasing price, the cap on deposits made in connection with purchasing a unit from a declarant or dealer under the WUCIOA and strikes the provisions excepting these deposits from state law that guarantees the enforcement of earnest money forfeiture provisions.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended 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) This bill brings condominium projects more in line with other stick frame constructions, such as single-family homes or duplexes, and reduces the cost of condominiums by allowing the inspection to be done as if it was a traditional stick home type of construction. Condominiums will still be required to meet all the building codes,

there will still be inspections during the construction, and the condo units will still be subject to the warranty provisions that exist in current statute. This bill does not remove any of these important consumer protections, but simply allows small condominium projects to be exempt from third-party inspection and certification requirements, which are extremely expensive. Removing these requirements will allow for these smaller condominiums to be brought to the housing market sooner.

The purpose of the bill is to have better opportunities for home ownership at a reasonable price. This bill is aimed to help people who are trying to buy their first home or who are downsizing from a larger home.

The bill also helps out with capital development for condominium builders and ensures that they have access to that money at more reasonable prices. If the escrow money is made available to builders and protected by a surety bond, it would be easier to develop condos, particularly lower-priced condos.

(Opposed) The proponents of this bill claim that this will benefit lower-income people, but water intrusion issues are very expensive to fix and frequently require litigation. Low-income families do not have the money to sue their condominium association that refuses to restore and repair the water damage. The Legislature should be considering laws that strengthen the housing laws and protect communities instead of making things easier for builders and developers.

By removing small condominiums from the definition of "multiunit residential building," the bill would reverse the clear progress that the current statute has achieved in improving construction and reducing lawsuits. It is much less expensive to protect the building envelope by following the current requirements during construction than it is to repair a leaking building after the fact. Building enclosure design documents are inexpensive and available in a copy-paste format. By contrast, in some cases, condominium owners may be forced to pay tens of thousands of dollars to correct defects that could have easily been prevented during construction. After-the-fact warranty lawsuits do not adequately protect homeowners, given the cost and uncertainty of litigation. The law is working and should not be changed.

The idea that a smaller construction project is going to be better built is a myth. This law should be strengthened, not weakened, and there needs to be an insurance requirement for builders and more protections for homeowners. It is false to think that only large corporations are unscrupulous and that small builders are not. It is also a myth to think that a builder will sell a unit based on the builder's cost. The builder will sell based on the market value, and that has nothing to do with building costs.

(Other) Companies holding deposits in escrow normally ask both parties for consent prior to releasing earnest money deposits. This bill provides for the release of funds at the request of a builder and allows the builder to use the funds for construction, which is something that

escrow companies cannot monitor. The bill should be amended to shield escrow companies from liability when they release earnest money pursuant to this bill.

Persons Testifying: (In support) Senator Mike Padden, prime sponsor; Steve Gano, Building Industry Association of Washington; Luke Esser, City of Spokane; and Jim Frank, Greenstone Homes.

(Opposed) Raelene Schifano, Home Owners Association Fightclub; Anthony Rafel, Washington State Chapter of Community Associations Institute; and Daniel Levine.

(Other) Sean Holland, Washington Land Title Association.

Persons Signed In To Testify But Not Testifying: Kyle Moore, City of SeaTac; and Eddie Chang.