
SUBSTITUTE SENATE BILL 5258

State of Washington

68th Legislature

2023 Regular Session

By Senate Law & Justice (originally sponsored by Senators Shewmake, Gildon, Billig, Lias, Lovick, Nguyen, Nobles, Randall, and Wellman)

READ FIRST TIME 02/17/23.

1 AN ACT Relating to increasing the supply and affordability of
2 condominium units and townhouses as an option for homeownership;
3 amending RCW 64.35.105, 64.50.010, 64.50.020, 64.50.040, 64.90.250,
4 64.90.605, 64.90.645, 64.90.665, 82.45.010, 82.45.010, 82.02.060,
5 58.17.060, and 64.55.160; reenacting and amending RCW 64.38.010;
6 creating a new section; providing effective dates; and providing an
7 expiration date.

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

9 **Sec. 1.** RCW 64.35.105 and 2004 c 201 s 101 are each amended to
10 read as follows:

11 The definitions in this section apply throughout this chapter
12 unless the context clearly requires otherwise.

13 (1) "Affiliate" has the meaning in RCW (~~(64.34.020)~~) 64.90.010.

14 (2) "Association" has the meaning in RCW (~~(64.34.020)~~) 64.90.010.

15 (3) "Building envelope" means the assemblies, components, and
16 materials of a building that are intended to separate and protect the
17 interior space of the building from the adverse effects of exterior
18 climatic conditions.

19 (4) "Common element" has the meaning in RCW (~~(64.34.020)~~)
20 64.90.010.

21 (5) "Condominium" has the meaning in RCW (~~(64.34.020)~~) 64.90.010.

- 1 (6) "Construction professional" has the meaning in RCW 64.50.010.
- 2 (7) "Conversion condominium" has the meaning in RCW (~~64.34.020~~)
3 64.90.010.
- 4 (8) "Declarant" has the meaning in RCW (~~64.34.020~~) 64.90.010.
- 5 (9) "Declarant control" has the meaning in RCW (~~64.34.020~~)
6 64.90.010.
- 7 (10) "Defect" means any aspect of a condominium unit or common
8 element which constitutes a breach of the implied warranties set
9 forth in RCW 64.34.445 or 64.90.670.
- 10 (11) "Limited common element" has the meaning in RCW
11 (~~64.34.020~~) 64.90.010.
- 12 (12) "Material" means substantive, not simply formal; significant
13 to a reasonable person; not trivial or insignificant. When used with
14 respect to a particular construction defect, "material" does not
15 require that the construction defect render the unit or common
16 element unfit for its intended purpose or uninhabitable.
- 17 (13) "Mediation" means a collaborative process in which two or
18 more parties meet and attempt, with the assistance of a mediator, to
19 resolve issues in dispute between them.
- 20 (14) "Mediation session" means a meeting between two or more
21 parties to a dispute during which they are engaged in mediation.
- 22 (15) "Mediator" means a neutral and impartial facilitator with no
23 decision-making power who assists parties in negotiating a mutually
24 acceptable settlement of issues in dispute between them.
- 25 (16) "Person" has the meaning in RCW (~~64.34.020~~) 64.90.010.
- 26 (17) "Public offering statement" has the meaning in (~~RCW~~
27 ~~64.34.410~~) chapter 64.90 RCW.
- 28 (18) "Qualified insurer" means an entity that holds a certificate
29 of authority under RCW 48.05.030, or an eligible insurer under
30 chapter 48.15 RCW.
- 31 (19) "Qualified warranty" means an insurance policy issued by a
32 qualified insurer that complies with the requirements of this
33 chapter. A qualified warranty includes coverage for repair of
34 physical damage caused by the defects covered by the qualified
35 warranty, except to the extent of any exclusions and limitations
36 under this chapter.
- 37 (20) "Resale certificate" means the statement to be delivered by
38 the association under (~~RCW 64.34.425~~) chapter 64.90 RCW.

1 (21) "Transition date" means the date on which the declarant is
2 required to deliver to the association the property of the
3 association under RCW ((64.34.312)) 64.90.420.

4 (22) "Unit" has the meaning in RCW ((64.34.020)) 64.90.010.

5 (23) "Unit owner" has the meaning in RCW ((64.34.020)) 64.90.010.

6 **Sec. 2.** RCW 64.38.010 and 2021 c 227 s 9 are each reenacted and
7 amended to read as follows:

8 For purposes of this chapter:

9 (1) "Assessment" means all sums chargeable to an owner by an
10 association in accordance with RCW 64.38.020.

11 (2) "Baseline funding plan" means establishing a reserve funding
12 goal of maintaining a reserve account balance above ((zero-dollars))
13 \$0 throughout the ((thirty-year)) 30-year study period described
14 under RCW 64.38.065.

15 (3) "Board of directors" or "board" means the body, regardless of
16 name, with primary authority to manage the affairs of the
17 association.

18 (4) "Common areas" means property owned, or otherwise maintained,
19 repaired or administered by the association.

20 (5) "Common expense" means the costs incurred by the association
21 to exercise any of the powers provided for in this chapter.

22 (6) "Contribution rate" means, in a reserve study as described in
23 RCW 64.38.065, the amount contributed to the reserve account so that
24 the association will have cash reserves to pay major maintenance,
25 repair, or replacement costs without the need of a special
26 assessment.

27 (7) "Effective age" means the difference between the estimated
28 useful life and remaining useful life.

29 (8) "Electronic transmission" or "electronically transmitted"
30 means any electronic communication not directly involving the
31 physical transfer of a writing in a tangible medium, but that may be
32 retained, retrieved, and reviewed by the sender and the recipient of
33 the communication, and that may be directly reproduced in a tangible
34 medium by a sender and recipient.

35 (9) "Full funding plan" means setting a reserve funding goal of
36 achieving one hundred percent fully funded reserves by the end of the
37 ((thirty-year)) 30-year study period described under RCW 64.38.065,
38 in which the reserve account balance equals the sum of the
39 deteriorated portion of all reserve components.

1 (10) "Fully funded balance" means the current value of the
2 deteriorated portion, not the total replacement value, of all the
3 reserve components. The fully funded balance for each reserve
4 component is calculated by multiplying the current replacement cost
5 of the reserve component by its effective age, then dividing the
6 result by the reserve component's useful life. The sum total of all
7 reserve components' fully funded balances is the association's fully
8 funded balance.

9 (11) "Governing documents" means the articles of incorporation,
10 bylaws, plat, declaration of covenants, conditions, and restrictions,
11 rules and regulations of the association, or other written instrument
12 by which the association has the authority to exercise any of the
13 powers provided for in this chapter or to manage, maintain, or
14 otherwise affect the property under its jurisdiction.

15 (12) "Homeowners' association" or "association" means a
16 corporation, unincorporated association, or other legal entity, each
17 member of which is an owner of residential real property located
18 within the association's jurisdiction, as described in the governing
19 documents, and by virtue of membership or ownership of property is
20 obligated to pay real property taxes, insurance premiums, maintenance
21 costs, or for improvement of real property other than that which is
22 owned by the member. "Homeowners' association" does not mean an
23 association created under chapter 64.32 (~~(06)~~), 64.34, or 64.90 RCW.

24 (13) "Lot" means a physical portion of the real property located
25 within an association's jurisdiction designated for separate
26 ownership.

27 (14) "Owner" means the owner of a lot, but does not include a
28 person who has an interest in a lot solely as security for an
29 obligation. "Owner" also means the vendee, not the vendor, of a lot
30 under a real estate contract.

31 (15) "Remaining useful life" means the estimated time, in years,
32 before a reserve component will require major maintenance, repair, or
33 replacement to perform its intended function.

34 (16) "Replacement cost" means the current cost of replacing,
35 repairing, or restoring a reserve component to its original
36 functional condition.

37 (17) "Reserve component" means a common element whose cost of
38 maintenance, repair, or replacement is infrequent, significant, and
39 impractical to include in an annual budget.

1 (18) "Reserve study professional" means an independent person who
2 is suitably qualified by knowledge, skill, experience, training, or
3 education to prepare a reserve study in accordance with RCW 64.38.065
4 and 64.38.070.

5 (19) "Residential real property" means any real property, the use
6 of which is limited by law, covenant or otherwise to primarily
7 residential or recreational purposes.

8 (20) "Significant assets" means that the current replacement
9 value of the major reserve components is (~~seventy-five~~) 75 percent
10 or more of the gross budget of the association, excluding the
11 association's reserve account funds.

12 (21) "Tangible medium" means a writing, copy of a writing,
13 facsimile, or a physical reproduction, each on paper or on other
14 tangible material.

15 (22) "Useful life" means the estimated time, between years, that
16 major maintenance, repair, or replacement is estimated to occur.

17 **Sec. 3.** RCW 64.50.010 and 2020 c 18 s 23 are each amended to
18 read as follows:

19 Unless the context clearly requires otherwise, the definitions in
20 this section apply throughout this chapter.

21 (1) "Action" means any civil lawsuit or action in contract or
22 tort for damages or indemnity brought against a construction
23 professional to assert a claim, whether by complaint, counterclaim,
24 or cross-claim, for damage or the loss of use of real or personal
25 property caused by a defect in the construction of a residence or in
26 the substantial remodel of a residence. "Action" does not include any
27 civil action in tort alleging personal injury or wrongful death to a
28 person or persons resulting from a construction defect.

29 (2) "Association" means an association, master association, or
30 subassociation as defined and provided for in RCW 64.34.020(4),
31 64.34.276, 64.34.278, (~~and~~) 64.38.010(~~((11))~~) (12), and
32 64.90.010(4).

33 (3) "Claimant" means a homeowner or association who asserts a
34 claim against a construction professional concerning a defect in the
35 construction of a residence or in the substantial remodel of a
36 residence.

37 (4) "Construction defect professional" means an architect,
38 builder, builder vendor, contractor, subcontractor, engineer,
39 inspector, or such other person with verifiable training and

1 experience related to the defects or conditions identified in any
2 report included with a notice of claim as set forth in RCW
3 64.50.020(1)(a).

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

12 ~~((+5))~~ (6) "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))~~ (7) "Residence" means a single-family house, duplex,
19 triplex, quadraplex, or a unit in a multiunit residential structure
20 in which title to each individual unit is transferred to the owner
21 under a condominium or cooperative system, and shall include common
22 elements as defined in RCW 64.34.020 and common areas as defined in
23 RCW 64.38.010(4).

24 ~~((+7))~~ (8) "Serve" or "service" means personal service or
25 delivery by certified mail to the last known address of the
26 addressee.

27 ~~((+8))~~ (9) "Substantial remodel" means a remodel of a residence,
28 for which the total cost exceeds one-half of the assessed value of
29 the residence for property tax purposes at the time the contract for
30 the remodel work was made.

31 **Sec. 4.** RCW 64.50.020 and 2002 c 323 s 3 are each amended to
32 read as follows:

33 (1) In every construction defect action brought against a
34 construction professional, the claimant shall, no later than ~~((forty-~~
35 ~~five))~~ 45 days before filing an action, serve written notice of claim
36 on the construction professional.

37 (a) The notice of claim shall state that the claimant asserts a
38 construction defect claim against the construction professional and

1 shall describe the claim in reasonable detail sufficient to determine
2 the general nature of the defect.

3 (b) If the claimant is a condominium association created after
4 the effective date of this section, the written notice of claim shall
5 include a written report from a construction defect professional. In
6 addition to describing the claim in reasonable detail sufficient to
7 determine the general nature of the defect the written report shall
8 state the construction defect professional's qualifications, the
9 manner and type of inspection upon which the report was based, and
10 the general location of the defect.

11 (2) Within (~~twenty-one~~) 14 days after service of the notice of
12 claim, the construction professional may serve a written response
13 demanding a meeting with the claimant and its expert, including the
14 construction defect professional who authored the report required in
15 subsection (1)(b) of this section to confer regarding the report and
16 its contents. The meeting shall take place within 14 days of service
17 of the construction professional's demand or at such later date as
18 mutually agreed to by the parties.

19 (3) Within 14 days after the meeting referenced in subsection (2)
20 of this section or, in the absence of a demand for such meeting,
21 within 21 days after service of the notice of claim, whichever is
22 later, the construction professional shall serve a written response
23 on the claimant by registered mail or personal service. The written
24 response shall:

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

30 (b) Offer to compromise and settle the claim by monetary payment
31 without inspection. A construction professional's offer under this
32 subsection (~~(2)~~) (3)(b) to compromise and settle a homeowner's
33 claim may include, but is not limited to, an express offer to
34 purchase the claimant's residence that is the subject of the claim,
35 and to pay the claimant's reasonable relocation costs; or

36 (c) State that the construction professional disputes the claim
37 and will neither remedy the construction defect nor compromise and
38 settle the claim.

39 (~~(3)~~) (4)(a) If the construction professional disputes the
40 claim or does not respond to the claimant's notice of claim within

1 the time stated in subsection (~~((2))~~) (3) of this section, the
2 claimant may bring an action against the construction professional
3 for the claim described in the notice of claim without further
4 notice.

5 (b) If the claimant rejects the inspection proposal or the
6 settlement offer made by the construction professional pursuant to
7 subsection (~~((2))~~) (3) of this section, the claimant shall serve
8 written notice of the claimant's rejection on the construction
9 professional. After service of the rejection, the claimant may bring
10 an action against the construction professional for the construction
11 defect claim described in the notice of claim. If the construction
12 professional has not received from the claimant, within (~~(thirty)~~) 30
13 days after the claimant's receipt of the construction professional's
14 response, either an acceptance or rejection of the inspection
15 proposal or settlement offer, then at anytime thereafter the
16 construction professional may terminate the proposal or offer by
17 serving written notice to the claimant, and the claimant may
18 thereafter bring an action against the construction professional for
19 the construction defect claim described in the notice of claim.

20 (~~((4))~~) (5)(a) If the claimant elects to allow the construction
21 professional to inspect in accordance with the construction
22 professional's proposal pursuant to subsection (~~((2))~~) (3)(a) of this
23 section, the claimant shall provide the construction professional and
24 its contractors or other agents reasonable access to the claimant's
25 residence during normal working hours to inspect the premises and the
26 claimed defect.

27 (b) Within (~~(fourteen)~~) 14 days following completion of the
28 inspection, the construction professional shall serve on the
29 claimant:

30 (i) A written offer to remedy the construction defect at no cost
31 to the claimant, including a report of the scope of the inspection,
32 the findings and results of the inspection, a description of the
33 additional construction necessary to remedy the defect described in
34 the claim, and a timetable for the completion of such construction;

35 (ii) A written offer to compromise and settle the claim by
36 monetary payment pursuant to subsection (~~((2))~~) (3)(b) of this
37 section; or

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

1 (c) If the construction professional does not proceed further to
2 remedy the construction defect within the agreed timetable, or if the
3 construction professional fails to comply with the provisions of (b)
4 of this subsection, the claimant may bring an action against the
5 construction professional for the claim described in the notice of
6 claim without further notice.

7 (d) If the claimant rejects the offer made by the construction
8 professional pursuant to (b)(i) or (ii) of this subsection to either
9 remedy the construction defect or to compromise and settle the claim
10 by monetary payment, the claimant shall serve written notice of the
11 claimant's rejection on the construction professional. After service
12 of the rejection notice, the claimant may bring an action against the
13 construction professional for the construction defect claim described
14 in the notice of claim. If the construction professional has not
15 received from the claimant, within (~~(thirty)~~) 30 days after the
16 claimant's receipt of the construction professional's response,
17 either an acceptance or rejection of the offer made pursuant to
18 (b)(i) or (ii) of this subsection, then at anytime thereafter the
19 construction professional may terminate the offer by serving written
20 notice to the claimant.

21 (~~(5)~~) (6)(a) Any claimant accepting the offer of a construction
22 professional to remedy the construction defect pursuant to subsection
23 (~~(4)~~) (5)(b)(i) of this section shall do so by serving the
24 construction professional with a written notice of acceptance within
25 a reasonable time period after receipt of the offer, and no later
26 than (~~(thirty)~~) 30 days after receipt of the offer. The claimant
27 shall provide the construction professional and its contractors or
28 other agents reasonable access to the claimant's residence during
29 normal working hours to perform and complete the construction by the
30 timetable stated in the offer.

31 (b) The claimant and construction professional may, by written
32 mutual agreement, alter the extent of construction or the timetable
33 for completion of construction stated in the offer, including, but
34 not limited to, repair of additional defects.

35 (~~(6)~~) (7) Any action commenced by a claimant prior to
36 compliance with the requirements of this section shall be subject to
37 dismissal without prejudice, and may not be recommenced until the
38 claimant has complied with the requirements of this section.

39 (~~(7)~~) (8) Nothing in this section may be construed to prevent a
40 claimant from commencing an action on the construction defect claim

1 described in the notice of claim if the construction professional
2 fails to perform the construction agreed upon, fails to remedy the
3 defect, or fails to perform by the timetable agreed upon pursuant to
4 subsection ~~((+2))~~ (3)(a) or ~~((+5))~~ (6) of this section.

5 ~~((+8))~~ (9) Prior to commencing any action alleging a
6 construction defect, or after the dismissal of any action without
7 prejudice pursuant to subsection ~~((+6))~~ (7) of this section, the
8 claimant may amend the notice of claim to include construction
9 defects discovered after the service of the original notice of claim,
10 and must otherwise comply with the requirements of this section for
11 the additional claims. The service of an amended notice of claim
12 shall relate back to the original notice of claim for purposes of
13 tolling statutes of limitations and repose. Claims for defects
14 discovered after the commencement or recommencement of an action may
15 be added to such action only after providing notice to the
16 construction professional of the defect and allowing for response
17 under subsection ~~((+2))~~ (3) of this section.

18 (10) If the claimant is an association, and notwithstanding any
19 contrary provisions in the association's governing documents, the
20 association's board of director's ability to incur expenses to
21 prepare and serve a notice of claim and any related reports and
22 otherwise comply with the requirements of this chapter shall not be
23 restricted.

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

26 (1)(a) In the event the board of directors, pursuant to RCW
27 64.34.304(1)(d) or 64.38.020(4), institutes an action asserting
28 defects in the construction of two or more residences, common
29 elements, or common areas, this section shall apply. For purposes of
30 this section, "action" has the same meaning as set forth in RCW
31 64.50.010.

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

34 (2)(a) Prior to the service of the summons and complaint on any
35 defendant with respect to an action governed by this section, the
36 board of directors shall mail or deliver written notice of the
37 commencement or anticipated commencement of such action to each
38 homeowner at the last known address described in the association's
39 records.

1 (b) The notice required by (a) of this subsection shall state a
2 general description of the following:

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

4 (ii) To the extent applicable, the existence of the report
5 required in RCW 64.50.020(1)(a), which shall be made available to
6 each homeowner upon request;

7 (iii) A summary of the construction professional's response
8 pursuant to RCW 64.50.020(3), if any; and

9 (iv) The expenses and fees that the board of directors
10 anticipates will be incurred in prosecuting the action.

11 (3) Nothing in this section may be construed to:

12 (a) Require the disclosure in the notice or the disclosure to a
13 unit owner of attorney-client communications or other privileged
14 communications;

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

19 (c) Limit or impair the authority of the board of directors to
20 contract for legal services, or limit or impair the ability to
21 enforce such a contract for legal services.

22 **Sec. 6.** RCW 64.90.250 and 2018 c 277 s 211 are each amended to
23 read as follows:

24 (1) To exercise any development right reserved under RCW
25 64.90.225(1)(~~(h)~~) (g), the declarant must prepare, execute, and
26 record any amendments to the declaration and map in accordance with
27 the requirements of RCW 64.90.245 and 64.90.285(3). The declarant is
28 the unit owner of any units created. The amendment to the declaration
29 must assign an identifying number to each new unit created and,
30 except in the case of subdivision, combination, or conversion of
31 units described in subsection (3) of this section, reallocate the
32 allocated interests among all units. The amendment must describe any
33 common elements and any limited common elements created and, in the
34 case of limited common elements, designate the unit to which each is
35 allocated to the extent required under RCW 64.90.240. The amendments
36 are effective upon recording.

37 (2) Development rights may be reserved within any real estate
38 added to the common interest community if the amendment to the
39 declaration adding that real estate includes all matters required

1 under RCW 64.90.225 and 64.90.230 and the amendment to the map
2 includes all matters required under RCW 64.90.245. This subsection
3 does not extend the time limit on the exercise of development rights
4 imposed by the declaration pursuant to RCW 64.90.225(1)(h).

5 (3) When a declarant exercises a development right to subdivide,
6 combine, or convert a unit previously created into additional units
7 or common elements, or both:

8 (a) If the declarant converts the unit entirely into common
9 elements, the amendment to the declaration must reallocate all the
10 allocated interests of that unit among the other units as if that
11 unit had been taken by condemnation under RCW 64.90.030; or

12 (b) If the declarant subdivides the unit into two or more units,
13 whether or not any part of the unit is converted into common
14 elements, the amendment to the declaration must reallocate all the
15 allocated interests of the unit among the units created by the
16 subdivision in any reasonable manner prescribed by the declarant.

17 (4) If the declaration provides, pursuant to RCW 64.90.225(1)(h),
18 that all or a portion of the real estate is subject to a right of
19 withdrawal:

20 (a) If all the real estate is subject to withdrawal, and the
21 declaration or map or amendment to the declaration or map does not
22 describe separate portions of real estate subject to that right, none
23 of the real estate may be withdrawn if a unit in that real estate has
24 been conveyed to a purchaser; or

25 (b) If any portion of the real estate is subject to withdrawal as
26 described in the declaration or map or amendment to the declaration
27 or map, none of that portion of the real estate may be withdrawn if a
28 unit in that portion has been conveyed to a purchaser.

29 (5) If the declarant combines two or more units into a lesser
30 number of units, whether or not any part of a unit is converted into
31 common elements or common elements are converted units, the amendment
32 to the declaration must reallocate all of the allocated interests of
33 the units being combined into the unit or units created by the
34 combination in any reasonable manner prescribed by the declarant.

35 (6) A unit conveyed to a purchaser may not be withdrawn pursuant
36 to subsection (4)(a) or (b) of this section without the consent of
37 the unit owner of that unit and the holder of a security interest in
38 the unit.

1 **Sec. 7.** RCW 64.90.605 and 2018 c 277 s 402 are each amended to
2 read as follows:

3 (1) Except as provided otherwise in subsection (2) of this
4 section, a declarant required to deliver a public offering statement
5 pursuant to subsection (3) of this section must prepare a public
6 offering statement conforming to the requirements of RCW 64.90.610,
7 64.90.615, and 64.90.620.

8 (2) A declarant may transfer responsibility for preparation of
9 all or a part of the public offering statement to a successor
10 declarant or to a dealer who intends to offer units in the
11 (~~condominium~~) common interest community.

12 (3)(a) Any declarant or dealer who offers to convey a unit for
13 the person's own account to a purchaser must provide the purchaser of
14 the unit with a copy of a public offering statement and all material
15 amendments to the public offering statement before conveyance of that
16 unit.

17 (b) Any agent, attorney, or other person assisting the declarant
18 or dealer in preparing the public offering statement may rely upon
19 information provided by the declarant or dealer without independent
20 investigation. The agent, attorney, or other person is not liable for
21 any material misrepresentation in or omissions of material facts from
22 the public offering statement unless the person had actual knowledge
23 of the misrepresentation or omission at the time the public offering
24 statement was prepared.

25 (c) The declarant or dealer is liable for any misrepresentation
26 contained in the public offering statement or for any omission of
27 material fact from the public offering statement if the declarant or
28 dealer had actual knowledge of the misrepresentation or omission or,
29 in the exercise of reasonable care, should have known of the
30 misrepresentation or omission.

31 (4) If a unit is part of a common interest community and is part
32 of any other real estate regime in connection with the sale of which
33 the delivery of a public offering statement is required under the
34 laws of this state, a single public offering statement conforming to
35 the requirements of RCW 64.90.610, 64.90.615, and 64.90.620 as those
36 requirements relate to each regime in which the unit is located, and
37 to any other requirements imposed under the laws of this state, may
38 be prepared and delivered in lieu of providing two or more public
39 offering statements.

1 (5) A declarant is not required to prepare and deliver a public
2 offering statement in connection with the sale of any unit owned by
3 the declarant, or to obtain for or provide to the purchaser a report
4 or statement required under RCW 64.90.610(1)(oo), 64.90.620(1), or
5 64.90.655, upon the later of:

6 (a) The termination or expiration of all special declarant
7 rights;

8 (b) The expiration of all periods within which claims or actions
9 for a breach of warranty arising from defects involving the common
10 elements under RCW 64.90.680 must be filed or commenced,
11 respectively, by the association against the declarant; or

12 (c) The time when the declarant ceases to meet the definition of
13 a dealer under RCW 64.90.010.

14 (6) After the last to occur of any of the events described in
15 subsection (5) of this section, a declarant must deliver to the
16 purchaser of a unit owned by the declarant a resale certificate under
17 RCW 64.90.640(2) together with:

18 (a) The identification of any real property not in the common
19 interest community that unit owners have a right to use and a
20 description of the terms of such use;

21 (b) A brief description or a copy of any express construction
22 warranties to be provided to the purchaser;

23 (c) A statement of any litigation brought by an owners'
24 association, unit owner, or governmental entity in which the
25 declarant or any affiliate of the declarant has been a defendant
26 arising out of the construction, sale, or administration of any
27 common interest community within the state of Washington within the
28 previous five years, together with the results of the litigation, if
29 known;

30 (d) Whether timesharing is permitted or prohibited, and, if
31 permitted, a statement that the purchaser of a time share unit is
32 entitled to receive the disclosure document required under chapter
33 64.36 RCW; and

34 (e) Any other information and cross-references that the declarant
35 believes will be helpful in describing the common interest community
36 to the purchaser, all of which may be included or not included at the
37 option of the declarant.

38 (7) A declarant is not liable to a purchaser for the failure or
39 delay of the association to provide the resale certificate in a
40 timely manner, but the purchase contract is voidable by the purchaser

1 of a unit sold by the declarant until the resale certificate required
2 under RCW 64.90.640(2) and the information required under subsection
3 (6) of this section have been provided and for five days thereafter
4 or until conveyance, whichever occurs first.

5 **Sec. 8.** RCW 64.90.645 and 2021 c 260 s 2 are each amended to
6 read as follows:

7 (1) Except as provided in subsection (2) of this section, any
8 earnest money deposit, as defined in RCW 64.04.005, made in
9 connection with the right to purchase a unit from a person required
10 to deliver a public offering statement pursuant to RCW 64.90.605(3)
11 must be placed in escrow and held in this state in an escrow or trust
12 account designated solely for that purpose by a licensed title
13 insurance company or agent, a licensed attorney, a real estate broker
14 or independent bonded escrow company, or an institution whose
15 accounts are insured by a governmental agency or instrumentality
16 until: (a) Delivered to the declarant at closing, (b) delivered to
17 the declarant because of the purchaser's default under a contract to
18 purchase the unit, (c) refunded to the purchaser, or (d) delivered to
19 a court in connection with the filing of an interpleader action.

20 (2)(a) If a purchase agreement for the sale of a unit provides
21 that deposit funds may be used for construction costs and the
22 declarant obtains and maintains a surety bond as required by this
23 section, the declarant may withdraw escrow funds when construction of
24 improvements has begun. The funds may be used only for actual
25 building and construction costs of the project in which the unit is
26 located.

27 (b) The bond must be issued by a surety insurer licensed in this
28 state in favor of the purchaser in an amount adequate to cover the
29 amount of the deposit to be withdrawn. The declarant may not withdraw
30 more than the face amount of the bond. The bond must be payable to
31 the purchaser if the purchaser obtains a final judgment against the
32 declarant requiring the declarant to return the deposit pursuant to
33 the purchase agreement. The bond may be either in the form of an
34 individual bond for each deposit accepted by the declarant or in the
35 form of a blanket bond assuring the return of all deposits received
36 by the declarant.

37 (c) The party holding escrow funds who releases all or any
38 portion of the funds to the declarant has no obligation to monitor
39 the progress of construction or the expenditure of the funds by the

1 declarant and is not liable to any purchaser for the release of funds
2 pursuant to this section.

3 (3) ((A)) The amount of deposit ((under)) funds that may be used
4 pursuant to subsection (2) of this section may not exceed five
5 percent of the purchase price.

6 **Sec. 9.** RCW 64.90.665 and 2018 c 277 s 414 are each amended to
7 read as follows:

8 (1) Subject to subsections (2) and (3) of this section, express
9 warranties made by any declarant or dealer to a purchaser of a unit
10 in a condominium, if relied upon by the purchaser in purchasing the
11 unit, are created as follows:

12 (a) Any written affirmation of fact or written promise that
13 relates to the unit, its use, or rights appurtenant to the unit or
14 its use, improvements to the condominium that would directly benefit
15 the unit, or the right to use or have the benefit of facilities not
16 located in the condominium creates an express warranty that the unit
17 and related rights and uses will not materially deviate from the
18 affirmation or promise.

19 (b) Any written description of the physical characteristics of
20 the condominium at the time the purchase agreement is executed,
21 including plans and specifications of or for improvements, creates an
22 express warranty that the condominium will conform to the written
23 description in all material respects.

24 (c) Any written description of the quantity or extent of the real
25 estate comprising the condominium, including plats or surveys,
26 creates an express warranty that the condominium will conform to the
27 description, subject to customary tolerances.

28 (d) A written statement that a purchaser may put a unit only to a
29 specified use is an express warranty that the specified use is
30 lawful.

31 (2) Subject to subsection (3) of this section, neither formal
32 words, such as "warranty" or "guarantee," nor a specific intention to
33 make a warranty are necessary to create an express warranty, but a
34 statement of opinion or a commendation of the real estate, its
35 quality, or its value does not create a warranty, and a statement,
36 promise, model, depiction, or description does not create a warranty
37 if it discloses that it is only proposed, is not representative, or
38 is subject to change.

1 (3) A purchaser may not rely on any (~~statement,~~) affirmation,
2 promise, (~~model, depiction, or~~) description, plans, specifications,
3 plat, survey, statement, or other item unless it is contained in the
4 public offering statement delivered to the purchaser or made in a
5 record signed by the declarant or dealer, or the declarant's or
6 dealer's agent identified in the public offering statement.

7 (4) Any conveyance of a unit transfers to the purchaser all
8 express warranties of quality made by the declarant or dealer.

9 **Sec. 10.** RCW 82.45.010 and 2022 c 199 s 3 are each amended to
10 read as follows:

11 (1) As used in this chapter, the term "sale" has its ordinary
12 meaning and includes any conveyance, grant, assignment, quitclaim, or
13 transfer of the ownership of or title to real property, including
14 standing timber, or any estate or interest therein for a valuable
15 consideration, and any contract for such conveyance, grant,
16 assignment, quitclaim, or transfer, and any lease with an option to
17 purchase real property, including standing timber, or any estate or
18 interest therein or other contract under which possession of the
19 property is given to the purchaser, or any other person at the
20 purchaser's direction, and title to the property is retained by the
21 vendor as security for the payment of the purchase price. The term
22 also includes the grant, assignment, quitclaim, sale, or transfer of
23 improvements constructed upon leased land.

24 (2)(a) The term "sale" also includes the transfer or acquisition
25 within any (~~thirty-six~~) 36 month period of a controlling interest
26 in any entity with an interest in real property located in this state
27 for a valuable consideration.

28 (b) For the sole purpose of determining whether, pursuant to the
29 exercise of an option, a controlling interest was transferred or
30 acquired within a (~~thirty-six~~) 36 month period, the date that the
31 option agreement was executed is the date on which the transfer or
32 acquisition of the controlling interest is deemed to occur. For all
33 other purposes under this chapter, the date upon which the option is
34 exercised is the date of the transfer or acquisition of the
35 controlling interest.

36 (c) For purposes of this subsection, all acquisitions of persons
37 acting in concert must be aggregated for purposes of determining
38 whether a transfer or acquisition of a controlling interest has taken
39 place. The department must adopt standards by rule to determine when

1 persons are acting in concert. In adopting a rule for this purpose,
2 the department must consider the following:

3 (i) Persons must be treated as acting in concert when they have a
4 relationship with each other such that one person influences or
5 controls the actions of another through common ownership; and

6 (ii) When persons are not commonly owned or controlled, they must
7 be treated as acting in concert only when the unity with which the
8 purchasers have negotiated and will consummate the transfer of
9 ownership interests supports a finding that they are acting as a
10 single entity. If the acquisitions are completely independent, with
11 each purchaser buying without regard to the identity of the other
12 purchasers, then the acquisitions are considered separate
13 acquisitions.

14 (3) The term "sale" does not include:

15 (a) A transfer by gift, devise, or inheritance.

16 (b) A transfer by transfer on death deed, to the extent that it
17 is not in satisfaction of a contractual obligation of the decedent
18 owed to the recipient of the property.

19 (c) A transfer of any leasehold interest other than of the type
20 mentioned above.

21 (d) A cancellation or forfeiture of a vendee's interest in a
22 contract for the sale of real property, whether or not such contract
23 contains a forfeiture clause, or deed in lieu of foreclosure of a
24 mortgage.

25 (e) The partition of property by tenants in common by agreement
26 or as the result of a court decree.

27 (f) The assignment of property or interest in property from one
28 spouse or one domestic partner to the other spouse or other domestic
29 partner in accordance with the terms of a decree of dissolution of
30 marriage or state registered domestic partnership or in fulfillment
31 of a property settlement agreement.

32 (g) The assignment or other transfer of a vendor's interest in a
33 contract for the sale of real property, even though accompanied by a
34 conveyance of the vendor's interest in the real property involved.

35 (h) Transfers by appropriation or decree in condemnation
36 proceedings brought by the United States, the state or any political
37 subdivision thereof, or a municipal corporation.

38 (i) A mortgage or other transfer of an interest in real property
39 merely to secure a debt, or the assignment thereof.

1 (j) Any transfer or conveyance made pursuant to a deed of trust
2 or an order of sale by the court in any mortgage, deed of trust, or
3 lien foreclosure proceeding or upon execution of a judgment, or deed
4 in lieu of foreclosure to satisfy a mortgage or deed of trust.

5 (k) A conveyance to the federal housing administration or
6 veterans administration by an authorized mortgagee made pursuant to a
7 contract of insurance or guaranty with the federal housing
8 administration or veterans administration.

9 (l) A transfer in compliance with the terms of any lease or
10 contract upon which the tax as imposed by this chapter has been paid
11 or where the lease or contract was entered into prior to the date
12 this tax was first imposed.

13 (m) The sale of any grave or lot in an established cemetery.

14 (n) A sale by the United States, this state or any political
15 subdivision thereof, or a municipal corporation of this state.

16 (o) A sale to a regional transit authority or public corporation
17 under RCW 81.112.320 under a sale/leaseback agreement under RCW
18 81.112.300.

19 (p) A transfer of real property, however effected, if it consists
20 of a mere change in identity or form of ownership of an entity where
21 there is no change in the beneficial ownership. These include
22 transfers to a corporation or partnership which is wholly owned by
23 the transferor and/or the transferor's spouse or domestic partner or
24 children of the transferor or the transferor's spouse or domestic
25 partner. However, if thereafter such transferee corporation or
26 partnership voluntarily transfers such real property, or such
27 transferor, spouse or domestic partner, or children of the transferor
28 or the transferor's spouse or domestic partner voluntarily transfer
29 stock in the transferee corporation or interest in the transferee
30 partnership capital, as the case may be, to other than (i) the
31 transferor and/or the transferor's spouse or domestic partner or
32 children of the transferor or the transferor's spouse or domestic
33 partner, (ii) a trust having the transferor and/or the transferor's
34 spouse or domestic partner or children of the transferor or the
35 transferor's spouse or domestic partner as the only beneficiaries at
36 the time of the transfer to the trust, or (iii) a corporation or
37 partnership wholly owned by the original transferor and/or the
38 transferor's spouse or domestic partner or children of the transferor
39 or the transferor's spouse or domestic partner, within three years of
40 the original transfer to which this exemption applies, and the tax on

1 the subsequent transfer has not been paid within (~~sixty~~) 60 days of
2 becoming due, excise taxes become due and payable on the original
3 transfer as otherwise provided by law.

4 (q)(i) A transfer that for federal income tax purposes does not
5 involve the recognition of gain or loss for entity formation,
6 liquidation or dissolution, and reorganization, including but not
7 limited to nonrecognition of gain or loss because of application of
8 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal
9 revenue code of 1986, as amended.

10 (ii) However, the transfer described in (q)(i) of this subsection
11 cannot be preceded or followed within a (~~thirty-six~~) 36 month
12 period by another transfer or series of transfers, that, when
13 combined with the otherwise exempt transfer or transfers described in
14 (q)(i) of this subsection, results in the transfer of a controlling
15 interest in the entity for valuable consideration, and in which one
16 or more persons previously holding a controlling interest in the
17 entity receive cash or property in exchange for any interest the
18 person or persons acting in concert hold in the entity. This
19 subsection (3)(q)(ii) does not apply to that part of the transfer
20 involving property received that is the real property interest that
21 the person or persons originally contributed to the entity or when
22 one or more persons who did not contribute real property or belong to
23 the entity at a time when real property was purchased receive cash or
24 personal property in exchange for that person or persons' interest in
25 the entity. The real estate excise tax under this subsection
26 (3)(q)(ii) is imposed upon the person or persons who previously held
27 a controlling interest in the entity.

28 (r) A qualified sale of a manufactured/mobile home community, as
29 defined in RCW 59.20.030.

30 (s)(i) A transfer of a qualified low-income housing development
31 or controlling interest in a qualified low-income housing
32 development, unless, due to noncompliance with federal statutory
33 requirements, the seller is subject to recapture, in whole or in
34 part, of its allocated federal low-income housing tax credits within
35 the four years prior to the date of transfer.

36 (ii) For purposes of this subsection (3)(s), "qualified low-
37 income housing development" means real property and improvements in
38 respect to which the seller or, in the case of a transfer of a
39 controlling interest, the owner or beneficial owner, was allocated
40 federal low-income housing tax credits authorized under 26 U.S.C.

1 Sec. 42 or successor statute, by the Washington state housing finance
2 commission or successor state-authorized tax credit allocating
3 agency.

4 (iii) This subsection (3)(s) does not apply to transfers of a
5 qualified low-income housing development or controlling interest in a
6 qualified low-income housing development occurring on or after July
7 1, 2035.

8 (iv) The Washington state housing finance commission, in
9 consultation with the department, must gather data on: (A) The fiscal
10 savings, if any, accruing to transferees as a result of the exemption
11 provided in this subsection (3)(s); (B) the extent to which
12 transferors of qualified low-income housing developments receive
13 consideration, including any assumption of debt, as part of a
14 transfer subject to the exemption provided in this subsection (3)(s);
15 and (C) the continued use of the property for low-income housing. The
16 Washington state housing finance commission must provide this
17 information to the joint legislative audit and review committee. The
18 committee must conduct a review of the tax preference created under
19 this subsection (3)(s) in calendar year 2033, as required under
20 chapter 43.136 RCW.

21 (t)(i) A qualified transfer of residential property by a legal
22 representative of a person with developmental disabilities to a
23 qualified entity subject to the following conditions:

24 (A) The adult child with developmental disabilities of the
25 transferor of the residential property must be allowed to reside in
26 the residence or successor property so long as the placement is safe
27 and appropriate as determined by the department of social and health
28 services;

29 (B) The title to the residential property is conveyed without the
30 receipt of consideration by the legal representative of a person with
31 developmental disabilities to a qualified entity;

32 (C) The residential property must have no more than four living
33 units located on it; and

34 (D) The residential property transferred must remain in continued
35 use for (~~fifty~~) 50 years by the qualified entity as supported
36 living for persons with developmental disabilities by the qualified
37 entity or successor entity. If the qualified entity sells or
38 otherwise conveys ownership of the residential property the proceeds
39 of the sale or conveyance must be used to acquire similar residential
40 property and such similar residential property must be considered the

1 successor for continued use. The property will not be considered in
2 continued use if the department of social and health services finds
3 that the property has failed, after a reasonable time to remedy, to
4 meet any health and safety statutory or regulatory requirements. If
5 the department of social and health services determines that the
6 property fails to meet the requirements for continued use, the
7 department of social and health services must notify the department
8 and the real estate excise tax based on the value of the property at
9 the time of the transfer into use as residential property for persons
10 with developmental disabilities becomes immediately due and payable
11 by the qualified entity. The tax due is not subject to penalties,
12 fees, or interest under this title.

13 (ii) For the purposes of this subsection (3)(t) the definitions
14 in RCW 71A.10.020 apply.

15 (iii) A "qualified entity" is:

16 (A) A nonprofit organization under Title 26 U.S.C. Sec. 501(c)(3)
17 of the federal internal revenue code of 1986, as amended, as of June
18 7, 2018, or a subsidiary under the same taxpayer identification
19 number that provides residential supported living for persons with
20 developmental disabilities; or

21 (B) A nonprofit adult family home, as defined in RCW 70.128.010,
22 that exclusively serves persons with developmental disabilities.

23 (iv) In order to receive an exemption under this subsection
24 (3)(t) an affidavit must be submitted by the transferor of the
25 residential property and must include a copy of the transfer
26 agreement and any other documentation as required by the department.

27 (u)(i) The sale by an affordable homeownership facilitator of
28 self-help housing to a low-income household.

29 (ii) The definitions in this subsection (3)(u) apply to this
30 subsection (3)(u) unless the context clearly requires otherwise.

31 (A) "Affordable homeownership facilitator" means a nonprofit
32 community or neighborhood-based organization that is exempt from
33 income tax under Title 26 U.S.C. Sec. 501(c) of the internal revenue
34 code of 1986, as amended, as of October 1, 2019, and that is the
35 developer of self-help housing.

36 (B) "Low-income" means household income as defined by the
37 department, provided that the definition may not exceed eighty
38 percent of median household income, adjusted for household size, for
39 the county in which the dwelling is located.

1 (C) "Self-help housing" means dwelling residences provided for
2 ownership by low-income individuals and families whose ownership
3 requirement includes labor participation. "Self-help housing" does
4 not include residential rental housing provided on a commercial basis
5 to the general public.

6 (v)(i) A sale or transfer of real property to a qualifying
7 grantee that uses the property for housing for low-income persons and
8 receives or otherwise qualifies the property for an exemption from
9 real and personal property taxes under RCW 84.36.560, 84.36.049,
10 35.82.210, 35.21.755, or 84.36.010. For purposes of this subsection
11 (3)(v), "qualifying grantee" means a nonprofit entity as defined in
12 RCW 84.36.560, a nonprofit entity or qualified cooperative
13 association as defined in RCW 84.36.049, a housing authority created
14 under RCW 35.82.030 or 35.82.300, a public corporation established
15 under RCW 35.21.660 or 35.21.730, or a county or municipal
16 corporation. A qualifying grantee that is a county or municipal
17 corporation must record a covenant at the time of transfer that
18 prohibits using the property for any purpose other than for low-
19 income housing for a period of at least 10 years. At a minimum, the
20 covenant must address price restrictions and household income limits
21 for the low-income housing. A qualifying grantee must comply with the
22 requirements described in (v)(i)(A), (B), or (C) of this subsection
23 and must also certify, by affidavit at the time of sale or transfer,
24 that it intends to comply with those requirements.

25 (A) If the qualifying grantee intends to operate existing housing
26 on the property, within one year of the sale or transfer:

27 (I) The qualifying grantee must receive or qualify the property
28 for a tax exemption under RCW 84.36.560, 84.36.049,
29 35.82.210, 35.21.755, or 84.36.010; and

30 (II) The property must be used as housing for low-income persons.

31 (B) If the qualifying grantee intends to develop new housing on
32 the site, within five years of the sale or transfer:

33 (I) The qualifying grantee must receive or qualify the property
34 for a tax exemption under RCW 84.36.560, 84.36.049,
35 35.82.210, 35.21.755, or 84.36.010; and

36 (II) The property must be used as housing for low-income persons.

37 (C) If the qualifying grantee intends to substantially
38 rehabilitate the premises as defined in RCW 59.18.200, within three
39 years:

1 (I) The qualifying grantee must receive or qualify the property
2 for a tax exemption under RCW 84.36.560, 84.36.049,
3 35.82.210, 35.21.755, or 84.36.010; and

4 (II) The property must be used as housing for low-income persons.

5 (ii) If the qualifying grantee fails to satisfy the requirements
6 described in (v)(i)(A), (B), or (C) of this subsection, within the
7 timelines described in (v)(i)(A), (B), or (C) of this subsection, the
8 qualifying grantee must pay the tax that would have otherwise been
9 due at the time of initial transfer, plus interest calculated from
10 the date of initial transfer pursuant to RCW 82.32.050.

11 (iii) If a qualifying grantee transfers the property to a
12 different qualifying grantee within the original timelines described
13 in (v)(i)(A), (B), or (C) of this subsection, neither the original
14 qualifying grantee nor the new qualifying grantee is required to pay
15 the tax, so long as the new qualifying grantee satisfies the
16 requirements as described in (v)(i)(A), (B), or (C) of this
17 subsection within the exemption period of the initial transfer. If
18 the new qualifying grantee fails to satisfy the requirements
19 described in (v)(i)(A), (B), or (C) of this subsection, only the new
20 qualifying grantee is liable for the payment of taxes required by
21 (v)(ii) of this subsection. There is no limit on the number of
22 transfers between qualifying grantees within the original timelines.

23 (iv) Each affidavit must be filed with the department upon
24 completion of the sale or transfer of property, including transfers
25 from a qualifying grantee to a different qualifying grantee. The
26 qualifying grantee must provide proof to the department as required
27 by the department once the requirements as described in (v)(i)(A),
28 (B), or (C) of this subsection have been satisfied.

29 (v) For the purposes of this subsection (3)(v), "low-income" has
30 the same meaning as in (u) of this subsection.

31 (w) A sale of a condominium or townhouse to a person who uses a
32 down payment assistance program offered by the Washington state
33 housing finance commission. In such a case, the tax will be paid by
34 the seller and then remitted by the state to the Washington state
35 housing finance commission as payment against the person's down
36 payment assistance amount. For the purposes of this subsection
37 (3)(w), "townhouse" means dwelling units constructed in a row of two
38 or more attached units where each dwelling unit shares at least one
39 common wall with an adjacent unit and is accessed by a separate
40 outdoor entrance.

1 (x) A sale of condominiums and townhouses that are constructed in
2 buildings qualifying for the tax exemption in chapter 84.14 RCW and
3 that meet the definition of permanently affordable homeownership, as
4 that term is defined in RCW 84.14.021(6). For the purposes of this
5 subsection (3)(x), "townhouse" has the same meaning as in (w) of this
6 subsection.

7 **Sec. 11.** RCW 82.45.010 and 2022 c 199 s 4 are each amended to
8 read as follows:

9 (1) As used in this chapter, the term "sale" has its ordinary
10 meaning and includes any conveyance, grant, assignment, quitclaim, or
11 transfer of the ownership of or title to real property, including
12 standing timber, or any estate or interest therein for a valuable
13 consideration, and any contract for such conveyance, grant,
14 assignment, quitclaim, or transfer, and any lease with an option to
15 purchase real property, including standing timber, or any estate or
16 interest therein or other contract under which possession of the
17 property is given to the purchaser, or any other person at the
18 purchaser's direction, and title to the property is retained by the
19 vendor as security for the payment of the purchase price. The term
20 also includes the grant, assignment, quitclaim, sale, or transfer of
21 improvements constructed upon leased land.

22 (2)(a) The term "sale" also includes the transfer or acquisition
23 within any (~~thirty-six~~) 36 month period of a controlling interest
24 in any entity with an interest in real property located in this state
25 for a valuable consideration.

26 (b) For the sole purpose of determining whether, pursuant to the
27 exercise of an option, a controlling interest was transferred or
28 acquired within a (~~thirty-six~~) 36 month period, the date that the
29 option agreement was executed is the date on which the transfer or
30 acquisition of the controlling interest is deemed to occur. For all
31 other purposes under this chapter, the date upon which the option is
32 exercised is the date of the transfer or acquisition of the
33 controlling interest.

34 (c) For purposes of this subsection, all acquisitions of persons
35 acting in concert must be aggregated for purposes of determining
36 whether a transfer or acquisition of a controlling interest has taken
37 place. The department must adopt standards by rule to determine when
38 persons are acting in concert. In adopting a rule for this purpose,
39 the department must consider the following:

1 (i) Persons must be treated as acting in concert when they have a
2 relationship with each other such that one person influences or
3 controls the actions of another through common ownership; and

4 (ii) When persons are not commonly owned or controlled, they must
5 be treated as acting in concert only when the unity with which the
6 purchasers have negotiated and will consummate the transfer of
7 ownership interests supports a finding that they are acting as a
8 single entity. If the acquisitions are completely independent, with
9 each purchaser buying without regard to the identity of the other
10 purchasers, then the acquisitions are considered separate
11 acquisitions.

12 (3) The term "sale" does not include:

13 (a) A transfer by gift, devise, or inheritance.

14 (b) A transfer by transfer on death deed, to the extent that it
15 is not in satisfaction of a contractual obligation of the decedent
16 owed to the recipient of the property.

17 (c) A transfer of any leasehold interest other than of the type
18 mentioned above.

19 (d) A cancellation or forfeiture of a vendee's interest in a
20 contract for the sale of real property, whether or not such contract
21 contains a forfeiture clause, or deed in lieu of foreclosure of a
22 mortgage.

23 (e) The partition of property by tenants in common by agreement
24 or as the result of a court decree.

25 (f) The assignment of property or interest in property from one
26 spouse or one domestic partner to the other spouse or other domestic
27 partner in accordance with the terms of a decree of dissolution of
28 marriage or state registered domestic partnership or in fulfillment
29 of a property settlement agreement.

30 (g) The assignment or other transfer of a vendor's interest in a
31 contract for the sale of real property, even though accompanied by a
32 conveyance of the vendor's interest in the real property involved.

33 (h) Transfers by appropriation or decree in condemnation
34 proceedings brought by the United States, the state or any political
35 subdivision thereof, or a municipal corporation.

36 (i) A mortgage or other transfer of an interest in real property
37 merely to secure a debt, or the assignment thereof.

38 (j) Any transfer or conveyance made pursuant to a deed of trust
39 or an order of sale by the court in any mortgage, deed of trust, or

1 lien foreclosure proceeding or upon execution of a judgment, or deed
2 in lieu of foreclosure to satisfy a mortgage or deed of trust.

3 (k) A conveyance to the federal housing administration or
4 veterans administration by an authorized mortgagee made pursuant to a
5 contract of insurance or guaranty with the federal housing
6 administration or veterans administration.

7 (l) A transfer in compliance with the terms of any lease or
8 contract upon which the tax as imposed by this chapter has been paid
9 or where the lease or contract was entered into prior to the date
10 this tax was first imposed.

11 (m) The sale of any grave or lot in an established cemetery.

12 (n) A sale by the United States, this state or any political
13 subdivision thereof, or a municipal corporation of this state.

14 (o) A sale to a regional transit authority or public corporation
15 under RCW 81.112.320 under a sale/leaseback agreement under RCW
16 81.112.300.

17 (p) A transfer of real property, however effected, if it consists
18 of a mere change in identity or form of ownership of an entity where
19 there is no change in the beneficial ownership. These include
20 transfers to a corporation or partnership which is wholly owned by
21 the transferor and/or the transferor's spouse or domestic partner or
22 children of the transferor or the transferor's spouse or domestic
23 partner. However, if thereafter such transferee corporation or
24 partnership voluntarily transfers such real property, or such
25 transferor, spouse or domestic partner, or children of the transferor
26 or the transferor's spouse or domestic partner voluntarily transfer
27 stock in the transferee corporation or interest in the transferee
28 partnership capital, as the case may be, to other than (i) the
29 transferor and/or the transferor's spouse or domestic partner or
30 children of the transferor or the transferor's spouse or domestic
31 partner, (ii) a trust having the transferor and/or the transferor's
32 spouse or domestic partner or children of the transferor or the
33 transferor's spouse or domestic partner as the only beneficiaries at
34 the time of the transfer to the trust, or (iii) a corporation or
35 partnership wholly owned by the original transferor and/or the
36 transferor's spouse or domestic partner or children of the transferor
37 or the transferor's spouse or domestic partner, within three years of
38 the original transfer to which this exemption applies, and the tax on
39 the subsequent transfer has not been paid within (~~sixty~~) 60 days of

1 becoming due, excise taxes become due and payable on the original
2 transfer as otherwise provided by law.

3 (q) (i) A transfer that for federal income tax purposes does not
4 involve the recognition of gain or loss for entity formation,
5 liquidation or dissolution, and reorganization, including but not
6 limited to nonrecognition of gain or loss because of application of
7 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal
8 revenue code of 1986, as amended.

9 (ii) However, the transfer described in (q) (i) of this subsection
10 cannot be preceded or followed within a (~~thirty-six~~) 36 month
11 period by another transfer or series of transfers, that, when
12 combined with the otherwise exempt transfer or transfers described in
13 (q) (i) of this subsection, results in the transfer of a controlling
14 interest in the entity for valuable consideration, and in which one
15 or more persons previously holding a controlling interest in the
16 entity receive cash or property in exchange for any interest the
17 person or persons acting in concert hold in the entity. This
18 subsection (3) (q) (ii) does not apply to that part of the transfer
19 involving property received that is the real property interest that
20 the person or persons originally contributed to the entity or when
21 one or more persons who did not contribute real property or belong to
22 the entity at a time when real property was purchased receive cash or
23 personal property in exchange for that person or persons' interest in
24 the entity. The real estate excise tax under this subsection
25 (3) (q) (ii) is imposed upon the person or persons who previously held
26 a controlling interest in the entity.

27 (r) A qualified sale of a manufactured/mobile home community, as
28 defined in RCW 59.20.030, that takes place on or after June 12, 2008,
29 but before December 31, 2018.

30 (s) (i) A transfer of a qualified low-income housing development
31 or controlling interest in a qualified low-income housing
32 development, unless, due to noncompliance with federal statutory
33 requirements, the seller is subject to recapture, in whole or in
34 part, of its allocated federal low-income housing tax credits within
35 the four years prior to the date of transfer.

36 (ii) For purposes of this subsection (3) (s), "qualified low-
37 income housing development" means real property and improvements in
38 respect to which the seller or, in the case of a transfer of a
39 controlling interest, the owner or beneficial owner, was allocated
40 federal low-income housing tax credits authorized under 26 U.S.C.

1 Sec. 42 or successor statute, by the Washington state housing finance
2 commission or successor state-authorized tax credit allocating
3 agency.

4 (iii) This subsection (3)(s) does not apply to transfers of a
5 qualified low-income housing development or controlling interest in a
6 qualified low-income housing development occurring on or after July
7 1, 2035.

8 (iv) The Washington state housing finance commission, in
9 consultation with the department, must gather data on: (A) The fiscal
10 savings, if any, accruing to transferees as a result of the exemption
11 provided in this subsection (3)(s); (B) the extent to which
12 transferors of qualified low-income housing developments receive
13 consideration, including any assumption of debt, as part of a
14 transfer subject to the exemption provided in this subsection (3)(s);
15 and (C) the continued use of the property for low-income housing. The
16 Washington state housing finance commission must provide this
17 information to the joint legislative audit and review committee. The
18 committee must conduct a review of the tax preference created under
19 this subsection (3)(s) in calendar year 2033, as required under
20 chapter 43.136 RCW.

21 (t)(i) A qualified transfer of residential property by a legal
22 representative of a person with developmental disabilities to a
23 qualified entity subject to the following conditions:

24 (A) The adult child with developmental disabilities of the
25 transferor of the residential property must be allowed to reside in
26 the residence or successor property so long as the placement is safe
27 and appropriate as determined by the department of social and health
28 services;

29 (B) The title to the residential property is conveyed without the
30 receipt of consideration by the legal representative of a person with
31 developmental disabilities to a qualified entity;

32 (C) The residential property must have no more than four living
33 units located on it; and

34 (D) The residential property transferred must remain in continued
35 use for (~~fifty~~) 50 years by the qualified entity as supported
36 living for persons with developmental disabilities by the qualified
37 entity or successor entity. If the qualified entity sells or
38 otherwise conveys ownership of the residential property the proceeds
39 of the sale or conveyance must be used to acquire similar residential
40 property and such similar residential property must be considered the

1 successor for continued use. The property will not be considered in
2 continued use if the department of social and health services finds
3 that the property has failed, after a reasonable time to remedy, to
4 meet any health and safety statutory or regulatory requirements. If
5 the department of social and health services determines that the
6 property fails to meet the requirements for continued use, the
7 department of social and health services must notify the department
8 and the real estate excise tax based on the value of the property at
9 the time of the transfer into use as residential property for persons
10 with developmental disabilities becomes immediately due and payable
11 by the qualified entity. The tax due is not subject to penalties,
12 fees, or interest under this title.

13 (ii) For the purposes of this subsection (3)(t) the definitions
14 in RCW 71A.10.020 apply.

15 (iii) A "qualified entity" is:

16 (A) A nonprofit organization under Title 26 U.S.C. Sec. 501(c)(3)
17 of the federal internal revenue code of 1986, as amended, as of June
18 7, 2018, or a subsidiary under the same taxpayer identification
19 number that provides residential supported living for persons with
20 developmental disabilities; or

21 (B) A nonprofit adult family home, as defined in RCW 70.128.010,
22 that exclusively serves persons with developmental disabilities.

23 (iv) In order to receive an exemption under this subsection
24 (3)(t) an affidavit must be submitted by the transferor of the
25 residential property and must include a copy of the transfer
26 agreement and any other documentation as required by the department.

27 (u)(i) A sale or transfer of real property to a qualifying
28 grantee that uses the property for housing for low-income persons and
29 receives or otherwise qualifies the property for an exemption from
30 real and personal property taxes under RCW 84.36.560, 84.36.049,
31 35.82.210, 35.21.755, or 84.36.010. For purposes of this subsection
32 (3)(u), "qualifying grantee" means a nonprofit entity as defined in
33 RCW 84.36.560, a nonprofit entity or qualified cooperative
34 association as defined in RCW 84.36.049, a housing authority created
35 under RCW 35.82.030 or 35.82.300, a public corporation established
36 under RCW 35.21.660 or 35.21.730, or a county or municipal
37 corporation. A qualifying grantee that is a county or municipal
38 corporation must record a covenant at the time of transfer that
39 prohibits using the property for any purpose other than for low-
40 income housing for a period of at least 10 years. At a minimum, the

1 covenant must address price restrictions and household income limits
2 for the low-income housing. A qualifying grantee must comply with the
3 requirements described in (u) (i) (A), (B), or (C) of this subsection
4 and must also certify, by affidavit at the time of sale or transfer,
5 that it intends to comply with those requirements.

6 (A) If the qualifying grantee intends to operate existing housing
7 on the property, within one year of the sale or transfer:

8 (I) The qualifying grantee must receive or qualify the property
9 for a tax exemption under RCW 84.36.560, 84.36.049,
10 35.82.210, 35.21.755, or 84.36.010; and

11 (II) The property must be used as housing for low-income persons.

12 (B) If the qualifying grantee intends to develop new housing on
13 the site, within five years of the sale or transfer:

14 (I) The qualifying grantee must receive or qualify the property
15 for a tax exemption under RCW 84.36.560, 84.36.049,
16 35.82.210, 35.21.755, or 84.36.010; and

17 (II) The property must be used as housing for low-income persons.

18 (C) If the qualifying grantee intends to substantially
19 rehabilitate the premises as defined in RCW 59.18.200, within three
20 years:

21 (I) The qualifying grantee must receive or qualify the property
22 for a tax exemption under RCW 84.36.560, 84.36.049,
23 35.82.210, 35.21.755, or 84.36.010; and

24 (II) The property must be used as housing for low-income persons.

25 (ii) If the qualifying grantee fails to satisfy the requirements
26 described in (u) (i) (A), (B), or (C) of this subsection, within the
27 timelines described in (u) (i) (A), (B), or (C) of this subsection, the
28 qualifying grantee must pay the tax that would have otherwise been
29 due at the time of initial transfer, plus interest calculated from
30 the date of initial transfer pursuant to RCW 82.32.050.

31 (iii) If a qualifying grantee transfers the property to a
32 different qualifying grantee within the original timelines described
33 in (u) (i) (A), (B), or (C) of this subsection, neither the original
34 qualifying grantee nor the new qualifying grantee is required to pay
35 the tax, so long as the new qualifying grantee satisfies the
36 requirements as described in (u) (i) (A), (B), or (C) of this
37 subsection within the exemption period of the initial transfer. If
38 the new qualifying grantee fails to satisfy the requirements
39 described in (u) (i) (A), (B), or (C) of this subsection, only the new
40 qualifying grantee is liable for the payment of taxes required by

1 (u)(ii) of this subsection. There is no limit on the number of
2 transfers between qualifying grantees within the original timelines.

3 (iv) Each affidavit must be filed with the department upon
4 completion of the sale or transfer of property, including transfers
5 from a qualifying grantee to a different qualifying grantee. The
6 qualifying grantee must provide proof to the department as required
7 by the department once the requirements as described in (u)(i)(A),
8 (B), or (C) of this subsection have been satisfied.

9 (v) For the purposes of this subsection (3)(u), "low-income"
10 means household income as defined by the department, provided that
11 the definition may not exceed 80 percent of median household income,
12 adjusted for household size, for the county in which the dwelling is
13 located.

14 (v) A sale of a condominium or townhouse to a person who uses a
15 down payment assistance program offered by the Washington state
16 housing finance commission. In such a case, the tax will be paid by
17 the seller and then remitted by the state to the Washington state
18 housing finance commission as payment against the person's down
19 payment assistance amount. For the purposes of this subsection
20 (3)(v), "townhouse" means dwelling units constructed in a row of two
21 or more attached units where each dwelling unit shares at least one
22 common wall with an adjacent unit and is accessed by a separate
23 outdoor entrance.

24 (w) A sale of condominiums and townhouses that are constructed in
25 buildings qualifying for the tax exemption in chapter 84.14 RCW and
26 that meet the definition of permanently affordable homeownership, as
27 that term is defined in RCW 84.14.021(6). For the purposes of this
28 subsection (3)(w), "townhouse" has the same meaning as in (v) of this
29 subsection.

30 **Sec. 12.** RCW 82.02.060 and 2021 c 72 s 1 are each amended to
31 read as follows:

32 The local ordinance by which impact fees are imposed:

33 (1) Shall include a schedule of impact fees which shall be
34 adopted for each type of development activity that is subject to
35 impact fees, specifying the amount of the impact fee to be imposed
36 for each type of system improvement. The schedule shall be based upon
37 a formula or other method of calculating such impact fees. The
38 schedule shall reflect the proportionate impact of new housing units,
39 including multifamily and condominium units, based on the square

1 footage and number of bedrooms, or trips generated, in the housing
2 unit in order to produce a proportionally lower impact fee for
3 smaller housing units. In determining proportionate share, the
4 formula or other method of calculating impact fees shall incorporate,
5 among other things, the following:

6 (a) The cost of public facilities necessitated by new
7 development;

8 (b) An adjustment to the cost of the public facilities for past
9 or future payments made or reasonably anticipated to be made by new
10 development to pay for particular system improvements in the form of
11 user fees, debt service payments, taxes, or other payments earmarked
12 for or proratable to the particular system improvement;

13 (c) The availability of other means of funding public facility
14 improvements;

15 (d) The cost of existing public facilities improvements; and

16 (e) The methods by which public facilities improvements were
17 financed;

18 (2) May provide an exemption for low-income housing, and other
19 development activities with broad public purposes, including
20 development of an early learning facility, from these impact fees,
21 provided that the impact fees for such development activity shall be
22 paid from public funds other than impact fee accounts;

23 (3) (a) May not impose an impact fee on development activities of
24 an early learning facility greater than that imposed on commercial
25 retail or commercial office development activities that generate a
26 similar number, volume, type, and duration of vehicle trips;

27 (b) When a facility or development has more than one use, the
28 limitations in this subsection (3) or the exemption applicable to an
29 early learning facility in subsections (2) and (4) of this section
30 only apply to that portion that is developed as an early learning
31 facility. The impact fee assessed on an early learning facility in
32 such a development or facility may not exceed the least of the impact
33 fees assessed on comparable businesses in the facility or
34 development;

35 (4) May provide an exemption from impact fees for low-income
36 housing or for early learning facilities. Local governments that
37 grant exemptions for low-income housing or for early learning
38 facilities under this subsection (4) may either: Grant a partial
39 exemption of not more than eighty percent of impact fees, in which
40 case there is no explicit requirement to pay the exempted portion of

1 the fee from public funds other than impact fee accounts; or provide
2 a full waiver, in which case the remaining percentage of the exempted
3 fee must be paid from public funds other than impact fee accounts,
4 except as provided in (b) of this subsection. These exemptions are
5 subject to the following requirements:

6 (a) An exemption for low-income housing granted under subsection
7 (2) of this section or this subsection (4) must be conditioned upon
8 requiring the developer to record a covenant that, except as provided
9 otherwise by this subsection, prohibits using the property for any
10 purpose other than for low-income housing. At a minimum, the covenant
11 must address price restrictions and household income limits for the
12 low-income housing, and that if the property is converted to a use
13 other than for low-income housing, the property owner must pay the
14 applicable impact fees in effect at the time of conversion;

15 (b) An exemption for early learning facilities granted under
16 subsection (2) of this section or this subsection (4) may be a full
17 waiver without an explicit requirement to pay the exempted portion of
18 the fee from public funds other than impact fee accounts if the local
19 government requires the developer to record a covenant that requires
20 that at least 25 percent of the children and families using the early
21 learning facility qualify for state subsidized child care, including
22 early childhood education and assistance under chapter 43.216 RCW,
23 and that provides that if the property is converted to a use other
24 than for an early learning facility, the property owner must pay the
25 applicable impact fees in effect at the time of conversion, and that
26 also provides that if at no point during a calendar year does the
27 early learning facility achieve the required percentage of children
28 and families qualified for state subsidized child care using the
29 early learning facility, the property owner must pay 20 percent of
30 the impact fee that would have been imposed on the development had
31 there not been an exemption within 90 days of the local government
32 notifying the property owner of the breach, and any balance remaining
33 thereafter shall be a lien on the property; and

34 (c) Covenants required by (a) and (b) of this subsection must be
35 recorded with the applicable county auditor or recording officer. A
36 local government granting an exemption under subsection (2) of this
37 section or this subsection (4) for low-income housing or an early
38 learning facility may not collect revenue lost through granting an
39 exemption by increasing impact fees unrelated to the exemption. A
40 school district who receives school impact fees must approve any

1 exemption under subsection (2) of this section or this subsection
2 (4);

3 (5) Shall provide a credit for the value of any dedication of
4 land for, improvement to, or new construction of any system
5 improvements provided by the developer, to facilities that are
6 identified in the capital facilities plan and that are required by
7 the county, city, or town as a condition of approving the development
8 activity;

9 (6) Shall allow the county, city, or town imposing the impact
10 fees to adjust the standard impact fee at the time the fee is imposed
11 to consider unusual circumstances in specific cases to ensure that
12 impact fees are imposed fairly;

13 (7) Shall include a provision for calculating the amount of the
14 fee to be imposed on a particular development that permits
15 consideration of studies and data submitted by the developer to
16 adjust the amount of the fee;

17 (8) Shall establish one or more reasonable service areas within
18 which it shall calculate and impose impact fees for various land use
19 categories per unit of development; and

20 (9) May provide for the imposition of an impact fee for system
21 improvement costs previously incurred by a county, city, or town to
22 the extent that new growth and development will be served by the
23 previously constructed improvements provided such fee shall not be
24 imposed to make up for any system improvement deficiencies.

25 For purposes of this section, "low-income housing" means housing
26 with a monthly housing expense, that is no greater than thirty
27 percent of eighty percent of the median family income adjusted for
28 family size, for the county where the project is located, as reported
29 by the United States department of housing and urban development.

30 For the purposes of this section, "early learning facility" has
31 the same meaning as in RCW 43.31.565.

32 **Sec. 13.** RCW 58.17.060 and 1990 1st ex.s. c 17 s 51 are each
33 amended to read as follows:

34 (1) The legislative body of a city, town, or county shall adopt
35 regulations and procedures, and appoint administrative personnel for
36 the summary approval of short plats and short subdivisions or
37 alteration or vacation thereof. When an alteration or vacation
38 involves a public dedication, the alteration or vacation shall be
39 processed as provided in RCW 58.17.212 or 58.17.215. Such regulations

1 shall be adopted by ordinance and shall provide that a short plat and
2 short subdivision may be approved only if written findings that are
3 appropriate, as provided in RCW 58.17.110, are made by the
4 administrative personnel, and may contain wholly different
5 requirements than those governing the approval of preliminary and
6 final plats of subdivisions and may require surveys and
7 monumentations and shall require filing of a short plat, or
8 alteration or vacation thereof, for record in the office of the
9 county auditor: PROVIDED, That such regulations must contain a
10 requirement that land in short subdivisions may not be further
11 divided in any manner within a period of five years without the
12 filing of a final plat, except that when the short plat contains
13 fewer than four parcels, nothing in this section shall prevent the
14 owner who filed the short plat from filing an alteration within the
15 five-year period to create up to a total of four lots within the
16 original short plat boundaries: PROVIDED FURTHER, That such
17 regulations are not required to contain a penalty clause as provided
18 in RCW 36.32.120 and may provide for wholly injunctive relief.

19 An ordinance requiring a survey shall require that the survey be
20 completed and filed with the application for approval of the short
21 subdivision.

22 (2) Cities, towns, and counties shall include in their short plat
23 regulations and procedures pursuant to subsection (1) of this section
24 provisions for considering sidewalks and other planning features that
25 assure safe walking conditions for students who walk to and from
26 school.

27 (3) All cities, towns, and counties shall include in their short
28 plat regulations procedures for unit lot subdivisions allowing
29 division of a parent lot into separately owned unit lots. Portions of
30 the parent lot not subdivided for individual unit lots shall be owned
31 in common by the owners of the individual unit lots, or by a
32 homeowners' association comprised of the owners of the individual
33 unit lots.

34 **Sec. 14.** RCW 64.55.160 and 2005 c 456 s 17 are each amended to
35 read as follows:

36 (1) (~~On or before the sixtieth day following completion of the~~
37 ~~mediation pursuant to RCW 64.55.120(4)) Following filing and service~~
38 of the complaint, the declarant, association, or party unit owner may
39 serve on an adverse party an offer to allow judgment to be entered.

1 The offer of judgment shall specify the amount of damages, not
2 including costs or fees, that the declarant, association, or party
3 unit owner is offering to pay or receive. A declarant's offer shall
4 also include its commitment to pay costs and fees that may be awarded
5 as provided in this section. The declarant, association, or party
6 unit owner may make more than one offer of judgment so long as each
7 offer is timely made. Each subsequent offer supersedes and replaces
8 the previous offer. Any offer not accepted within (~~twenty-one~~) 21
9 days of the service of that offer is deemed rejected and withdrawn
10 and evidence thereof is not admissible and may not be provided to the
11 court or arbitrator except in a proceeding to determine costs and
12 fees or as part of the motion identified in subsection (2) of this
13 section.

14 (2) A declarant's offer must include a demonstration of ability
15 to pay damages, costs, and fees, including reasonable attorneys'
16 fees, within thirty days of acceptance of the offer of judgment. The
17 demonstration of ability to pay shall include a sworn statement
18 signed by the declarant, the attorney representing the declarant,
19 and, if any insurance proceeds will be used to fund any portion of
20 the offer, an authorized representative of the insurance company. If
21 the association or party unit owner disputes the adequacy of the
22 declarant's demonstration of ability to pay, the association or party
23 unit owner may file a motion with the court requesting a ruling on
24 the adequacy of the declarant's demonstration of ability to pay. Upon
25 filing of such motion, the deadline for a response to the offer shall
26 be tolled from the date the motion is filed until the court has
27 ruled.

28 (3) An association or party unit owner that accepts the
29 declarant's offer of judgment shall be deemed the prevailing party
30 and, in addition to recovery of the amount of the offer, shall be
31 entitled to a costs and fees award, including reasonable attorneys'
32 fees, in an amount to be determined by the court in accordance with
33 applicable law.

34 (4) If the amount of the final nonappealable or nonappealed
35 judgment, exclusive of costs or fees, is not more favorable to the
36 offeree than the offer of judgment, then the offeror is deemed the
37 prevailing party for purposes of this section only and is entitled to
38 an award of costs and fees, including reasonable attorneys' fees,
39 incurred after the date the last offer of judgment was rejected and
40 through the date of entry of a final nonappealable or nonappealed

1 judgment, in an amount to be determined by the court in accordance
2 with applicable law. The nonprevailing party shall not be entitled to
3 receive any award of costs and fees.

4 (5) If the final nonappealable or nonappealed judgment on
5 damages, not including costs or fees, is more favorable to the
6 offeree than the last offer of judgment, then the court shall
7 determine which party is the prevailing party and shall determine the
8 amount of the costs and fees award, including reasonable attorneys'
9 fees, in accordance with applicable law.

10 (6) Notwithstanding any other provision in this section, with
11 respect to claims brought by an association or unit owner, the
12 liability for declarant's costs and fees, including reasonable
13 attorneys' fees, shall:

14 (a) With respect to claims brought by an association, not exceed
15 five percent of the assessed value of the condominium as a whole,
16 which is determined by the aggregate tax-assessed value of all units
17 at the time of the award; and

18 (b) With respect to claims brought by a party unit owner, not
19 exceed five percent of the assessed value of the unit at the time of
20 the award.

21 NEW SECTION. **Sec. 15.** Sections 3 through 5 of this act apply
22 only to construction defect claims commenced after the effective date
23 of this section.

24 NEW SECTION. **Sec. 16.** Section 10 of this act takes effect
25 January 1, 2024.

26 NEW SECTION. **Sec. 17.** Section 10 of this act expires January 1,
27 2030.

28 NEW SECTION. **Sec. 18.** Section 11 of this act takes effect
29 January 1, 2030.

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