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**SECOND SUBSTITUTE SENATE BILL 5258**

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**State of Washington****68th Legislature****2023 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Shewmake, Gildon, Billig, Liiias, Lovick, Nguyen, Nobles, Randall, and Wellman)

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, 82.45.010, 82.45.010, 82.45.230, 82.02.060,  
5 58.17.060, and 64.55.160; reenacting and amending RCW 64.38.010;  
6 adding a new section to chapter 82.45 RCW; creating new sections;  
7 providing effective dates; and providing expiration dates.

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 82.45.010 and 2022 c 199 s 3 are each amended to  
7 read as follows:

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

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

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

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

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

35 (ii) For purposes of this subsection (3) (s), "qualified low-  
36 income housing development" means real property and improvements in  
37 respect to which the seller or, in the case of a transfer of a  
38 controlling interest, the owner or beneficial owner, was allocated  
39 federal low-income housing tax credits authorized under 26 U.S.C.  
40 Sec. 42 or successor statute, by the Washington state housing finance

1 commission or successor state-authorized tax credit allocating  
2 agency.

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

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

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

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

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

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

33 (D) The residential property transferred must remain in continued  
34 use for (~~fifty~~) 50 years by the qualified entity as supported  
35 living for persons with developmental disabilities by the qualified  
36 entity or successor entity. If the qualified entity sells or  
37 otherwise conveys ownership of the residential property the proceeds  
38 of the sale or conveyance must be used to acquire similar residential  
39 property and such similar residential property must be considered the  
40 successor for continued use. The property will not be considered in

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

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

14 (iii) A "qualified entity" is:

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

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

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

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

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

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

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

39 (C) "Self-help housing" means dwelling residences provided for  
40 ownership by low-income individuals and families whose ownership

1 requirement includes labor participation. "Self-help housing" does  
2 not include residential rental housing provided on a commercial basis  
3 to the general public.

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

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

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

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

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

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

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

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

38 (I) The qualifying grantee must receive or qualify the property  
39 for a tax exemption under RCW 84.36.560, 84.36.049,  
40 35.82.210, 35.21.755, or 84.36.010; and

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

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

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

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

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

28 (w) A sale of condominiums and townhouses that are constructed in  
29 buildings qualifying for the tax exemption in chapter 84.14 RCW and  
30 that meet the definition of permanently affordable homeownership, as  
31 that term is defined in RCW 84.14.021(6), at the time of the sale.  
32 For the purposes of this subsection (3)(w), "townhouse" means  
33 dwelling units constructed in a row of two or more attached units  
34 where each dwelling unit shares at least one common wall with an  
35 adjacent unit and is accessed by a separate outdoor entrance.

36 **Sec. 10.** RCW 82.45.010 and 2022 c 199 s 4 are each amended to  
37 read as follows:

38 (1) As used in this chapter, the term "sale" has its ordinary  
39 meaning and includes any conveyance, grant, assignment, quitclaim, or

1 transfer of the ownership of or title to real property, including  
2 standing timber, or any estate or interest therein for a valuable  
3 consideration, and any contract for such conveyance, grant,  
4 assignment, quitclaim, or transfer, and any lease with an option to  
5 purchase real property, including standing timber, or any estate or  
6 interest therein or other contract under which possession of the  
7 property is given to the purchaser, or any other person at the  
8 purchaser's direction, and title to the property is retained by the  
9 vendor as security for the payment of the purchase price. The term  
10 also includes the grant, assignment, quitclaim, sale, or transfer of  
11 improvements constructed upon leased land.

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

16 (b) For the sole purpose of determining whether, pursuant to the  
17 exercise of an option, a controlling interest was transferred or  
18 acquired within a (~~(thirty-six)~~) 36 month period, the date that the  
19 option agreement was executed is the date on which the transfer or  
20 acquisition of the controlling interest is deemed to occur. For all  
21 other purposes under this chapter, the date upon which the option is  
22 exercised is the date of the transfer or acquisition of the  
23 controlling interest.

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

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

33 (ii) When persons are not commonly owned or controlled, they must  
34 be treated as acting in concert only when the unity with which the  
35 purchasers have negotiated and will consummate the transfer of  
36 ownership interests supports a finding that they are acting as a  
37 single entity. If the acquisitions are completely independent, with  
38 each purchaser buying without regard to the identity of the other  
39 purchasers, then the acquisitions are considered separate  
40 acquisitions.



- 1           (3) The term "sale" does not include:
- 2           (a) A transfer by gift, devise, or inheritance.
- 3           (b) A transfer by transfer on death deed, to the extent that it
- 4 is not in satisfaction of a contractual obligation of the decedent
- 5 owed to the recipient of the property.
- 6           (c) A transfer of any leasehold interest other than of the type
- 7 mentioned above.
- 8           (d) A cancellation or forfeiture of a vendee's interest in a
- 9 contract for the sale of real property, whether or not such contract
- 10 contains a forfeiture clause, or deed in lieu of foreclosure of a
- 11 mortgage.
- 12           (e) The partition of property by tenants in common by agreement
- 13 or as the result of a court decree.
- 14           (f) The assignment of property or interest in property from one
- 15 spouse or one domestic partner to the other spouse or other domestic
- 16 partner in accordance with the terms of a decree of dissolution of
- 17 marriage or state registered domestic partnership or in fulfillment
- 18 of a property settlement agreement.
- 19           (g) The assignment or other transfer of a vendor's interest in a
- 20 contract for the sale of real property, even though accompanied by a
- 21 conveyance of the vendor's interest in the real property involved.
- 22           (h) Transfers by appropriation or decree in condemnation
- 23 proceedings brought by the United States, the state or any political
- 24 subdivision thereof, or a municipal corporation.
- 25           (i) A mortgage or other transfer of an interest in real property
- 26 merely to secure a debt, or the assignment thereof.
- 27           (j) Any transfer or conveyance made pursuant to a deed of trust
- 28 or an order of sale by the court in any mortgage, deed of trust, or
- 29 lien foreclosure proceeding or upon execution of a judgment, or deed
- 30 in lieu of foreclosure to satisfy a mortgage or deed of trust.
- 31           (k) A conveyance to the federal housing administration or
- 32 veterans administration by an authorized mortgagee made pursuant to a
- 33 contract of insurance or guaranty with the federal housing
- 34 administration or veterans administration.
- 35           (l) A transfer in compliance with the terms of any lease or
- 36 contract upon which the tax as imposed by this chapter has been paid
- 37 or where the lease or contract was entered into prior to the date
- 38 this tax was first imposed.
- 39           (m) The sale of any grave or lot in an established cemetery.

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

3 (o) A sale to a regional transit authority or public corporation  
4 under RCW 81.112.320 under a sale/leaseback agreement under RCW  
5 81.112.300.

6 (p) A transfer of real property, however effected, if it consists  
7 of a mere change in identity or form of ownership of an entity where  
8 there is no change in the beneficial ownership. These include  
9 transfers to a corporation or partnership which is wholly owned by  
10 the transferor and/or the transferor's spouse or domestic partner or  
11 children of the transferor or the transferor's spouse or domestic  
12 partner. However, if thereafter such transferee corporation or  
13 partnership voluntarily transfers such real property, or such  
14 transferor, spouse or domestic partner, or children of the transferor  
15 or the transferor's spouse or domestic partner voluntarily transfer  
16 stock in the transferee corporation or interest in the transferee  
17 partnership capital, as the case may be, to other than (i) the  
18 transferor and/or the transferor's spouse or domestic partner or  
19 children of the transferor or the transferor's spouse or domestic  
20 partner, (ii) a trust having the transferor and/or the transferor's  
21 spouse or domestic partner or children of the transferor or the  
22 transferor's spouse or domestic partner as the only beneficiaries at  
23 the time of the transfer to the trust, or (iii) a corporation or  
24 partnership wholly owned by the original transferor and/or the  
25 transferor's spouse or domestic partner or children of the transferor  
26 or the transferor's spouse or domestic partner, within three years of  
27 the original transfer to which this exemption applies, and the tax on  
28 the subsequent transfer has not been paid within (~~sixty~~) 60 days of  
29 becoming due, excise taxes become due and payable on the original  
30 transfer as otherwise provided by law.

31 (q) (i) A transfer that for federal income tax purposes does not  
32 involve the recognition of gain or loss for entity formation,  
33 liquidation or dissolution, and reorganization, including but not  
34 limited to nonrecognition of gain or loss because of application of  
35 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal  
36 revenue code of 1986, as amended.

37 (ii) However, the transfer described in (q) (i) of this subsection  
38 cannot be preceded or followed within a (~~thirty-six~~) 36 month  
39 period by another transfer or series of transfers, that, when  
40 combined with the otherwise exempt transfer or transfers described in

1 (q) (i) of this subsection, results in the transfer of a controlling  
2 interest in the entity for valuable consideration, and in which one  
3 or more persons previously holding a controlling interest in the  
4 entity receive cash or property in exchange for any interest the  
5 person or persons acting in concert hold in the entity. This  
6 subsection (3) (q) (ii) does not apply to that part of the transfer  
7 involving property received that is the real property interest that  
8 the person or persons originally contributed to the entity or when  
9 one or more persons who did not contribute real property or belong to  
10 the entity at a time when real property was purchased receive cash or  
11 personal property in exchange for that person or persons' interest in  
12 the entity. The real estate excise tax under this subsection  
13 (3) (q) (ii) is imposed upon the person or persons who previously held  
14 a controlling interest in the entity.

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

18 (s) (i) A transfer of a qualified low-income housing development  
19 or controlling interest in a qualified low-income housing  
20 development, unless, due to noncompliance with federal statutory  
21 requirements, the seller is subject to recapture, in whole or in  
22 part, of its allocated federal low-income housing tax credits within  
23 the four years prior to the date of transfer.

24 (ii) For purposes of this subsection (3) (s), "qualified low-  
25 income housing development" means real property and improvements in  
26 respect to which the seller or, in the case of a transfer of a  
27 controlling interest, the owner or beneficial owner, was allocated  
28 federal low-income housing tax credits authorized under 26 U.S.C.  
29 Sec. 42 or successor statute, by the Washington state housing finance  
30 commission or successor state-authorized tax credit allocating  
31 agency.

32 (iii) This subsection (3) (s) does not apply to transfers of a  
33 qualified low-income housing development or controlling interest in a  
34 qualified low-income housing development occurring on or after July  
35 1, 2035.

36 (iv) The Washington state housing finance commission, in  
37 consultation with the department, must gather data on: (A) The fiscal  
38 savings, if any, accruing to transferees as a result of the exemption  
39 provided in this subsection (3) (s); (B) the extent to which  
40 transferors of qualified low-income housing developments receive

1 consideration, including any assumption of debt, as part of a  
2 transfer subject to the exemption provided in this subsection (3)(s);  
3 and (C) the continued use of the property for low-income housing. The  
4 Washington state housing finance commission must provide this  
5 information to the joint legislative audit and review committee. The  
6 committee must conduct a review of the tax preference created under  
7 this subsection (3)(s) in calendar year 2033, as required under  
8 chapter 43.136 RCW.

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

12 (A) The adult child with developmental disabilities of the  
13 transferor of the residential property must be allowed to reside in  
14 the residence or successor property so long as the placement is safe  
15 and appropriate as determined by the department of social and health  
16 services;

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

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

22 (D) The residential property transferred must remain in continued  
23 use for (~~(fifty)~~) 50 years by the qualified entity as supported  
24 living for persons with developmental disabilities by the qualified  
25 entity or successor entity. If the qualified entity sells or  
26 otherwise conveys ownership of the residential property the proceeds  
27 of the sale or conveyance must be used to acquire similar residential  
28 property and such similar residential property must be considered the  
29 successor for continued use. The property will not be considered in  
30 continued use if the department of social and health services finds  
31 that the property has failed, after a reasonable time to remedy, to  
32 meet any health and safety statutory or regulatory requirements. If  
33 the department of social and health services determines that the  
34 property fails to meet the requirements for continued use, the  
35 department of social and health services must notify the department  
36 and the real estate excise tax based on the value of the property at  
37 the time of the transfer into use as residential property for persons  
38 with developmental disabilities becomes immediately due and payable  
39 by the qualified entity. The tax due is not subject to penalties,  
40 fees, or interest under this title.

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

3 (iii) A "qualified entity" is:

4 (A) A nonprofit organization under Title 26 U.S.C. Sec. 501(c)(3)  
5 of the federal internal revenue code of 1986, as amended, as of June  
6 7, 2018, or a subsidiary under the same taxpayer identification  
7 number that provides residential supported living for persons with  
8 developmental disabilities; or

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

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

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

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

36 (I) The qualifying grantee must receive or qualify the property  
37 for a tax exemption under RCW 84.36.560, 84.36.049,  
38 35.82.210, 35.21.755, or 84.36.010; and

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

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

3 (I) The qualifying grantee must receive or qualify the property  
4 for a tax exemption under RCW 84.36.560, 84.36.049,  
5 35.82.210, 35.21.755, or 84.36.010; and

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

7 (C) If the qualifying grantee intends to substantially  
8 rehabilitate the premises as defined in RCW 59.18.200, within three  
9 years:

10 (I) The qualifying grantee must receive or qualify the property  
11 for a tax exemption under RCW 84.36.560, 84.36.049,  
12 35.82.210, 35.21.755, or 84.36.010; and

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

14 (ii) If the qualifying grantee fails to satisfy the requirements  
15 described in (u)(i)(A), (B), or (C) of this subsection, within the  
16 timelines described in (u)(i)(A), (B), or (C) of this subsection, the  
17 qualifying grantee must pay the tax that would have otherwise been  
18 due at the time of initial transfer, plus interest calculated from  
19 the date of initial transfer pursuant to RCW 82.32.050.

20 (iii) If a qualifying grantee transfers the property to a  
21 different qualifying grantee within the original timelines described  
22 in (u)(i)(A), (B), or (C) of this subsection, neither the original  
23 qualifying grantee nor the new qualifying grantee is required to pay  
24 the tax, so long as the new qualifying grantee satisfies the  
25 requirements as described in (u)(i)(A), (B), or (C) of this  
26 subsection within the exemption period of the initial transfer. If  
27 the new qualifying grantee fails to satisfy the requirements  
28 described in (u)(i)(A), (B), or (C) of this subsection, only the new  
29 qualifying grantee is liable for the payment of taxes required by  
30 (u)(ii) of this subsection. There is no limit on the number of  
31 transfers between qualifying grantees within the original timelines.

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

38 (v) For the purposes of this subsection (3)(u), "low-income"  
39 means household income as defined by the department, provided that  
40 the definition may not exceed 80 percent of median household income,

1 adjusted for household size, for the county in which the dwelling is  
2 located.

3 (v) A sale of condominiums and townhouses that are constructed in  
4 buildings qualifying for the tax exemption in chapter 84.14 RCW and  
5 that meet the definition of permanently affordable homeownership, as  
6 that term is defined in RCW 84.14.021(6), at the time of the sale.  
7 For the purposes of this subsection (3)(v), "townhouse" means  
8 dwelling units constructed in a row of two or more attached units  
9 where each dwelling unit shares at least one common wall with an  
10 adjacent unit and is accessed by a separate outdoor entrance.

11 **Sec. 11.** RCW 82.45.230 and 2019 c 424 s 2 are each amended to  
12 read as follows:

13 (1) Beginning January 1, 2020, and ending June 30, 2023, the  
14 amounts received for the tax imposed on each sale of real property  
15 under RCW 82.45.060 must be deposited as follows:

16 (a) 1.7 percent must be deposited into the public works  
17 assistance account created in RCW 43.155.050;

18 (b) 1.4 percent must be deposited into the city-county assistance  
19 account created in RCW 43.08.290;

20 (c) 79.4 percent must be deposited into the general fund; and

21 (d) The remainder must be deposited into the educational legacy  
22 trust account created in RCW 83.100.230.

23 (2) Beginning July 1, 2023, and thereafter, the amounts received  
24 for the tax imposed on each sale of real property under RCW 82.45.060  
25 must be deposited as follows:

26 (a) 5.2 percent must be deposited into the public works  
27 assistance account created in RCW 43.155.050;

28 (b) 1.4 percent must be deposited into the city-county assistance  
29 account created in RCW 43.08.290;

30 (c) Except as provided in subsection (3) of this section, 79.4  
31 percent must be deposited into the general fund; and

32 (d) The remainder must be deposited into the education legacy  
33 trust account created in RCW 83.100.230.

34 (3)(a) Amounts received from the sale of a condominium or  
35 townhouse to a person using a down payment assistance program offered  
36 by the Washington state housing finance commission must be deposited  
37 into the down payment assistance account created in section 12 of  
38 this act.

1 (b) The department must annually determine the total amount  
2 received under RCW 82.45.060 from sales of condominiums or townhouses  
3 to persons using a down payment assistance program offered by the  
4 Washington state housing finance commission by June 1st and notify  
5 the state treasurer of the amount by June 15th to ensure a proper  
6 accounting of the amount of funds deposited into the down payment  
7 assistance account created in section 12 of this act.

8 (c) For the purposes of this subsection (3), "townhouse" means  
9 dwelling units constructed in a row of two or more attached units  
10 where each dwelling unit shares at least one common wall with an  
11 adjacent unit and is accessed by a separate outdoor entrance.

12 NEW SECTION. Sec. 12. A new section is added to chapter 82.45  
13 RCW to read as follows:

14 The down payment assistance account is created in the custody of  
15 the state treasurer. All receipts from the real estate excise tax  
16 under RCW 82.45.230(3)(a) must be deposited into the account.  
17 Expenditures from the account may be used only for payment toward a  
18 person's down payment assistance loan that was used to purchase a  
19 condominium or townhouse for which the tax was collected. Only the  
20 Washington state housing finance commission or the commission's  
21 designee may authorize expenditures from the account. The account is  
22 subject to allotment procedures under chapter 43.88 RCW, but an  
23 appropriation is not required for expenditures.

24 **Sec. 13.** RCW 82.02.060 and 2021 c 72 s 1 are each amended to  
25 read as follows:

26 The local ordinance by which impact fees are imposed:

27 (1) Shall include a schedule of impact fees which shall be  
28 adopted for each type of development activity that is subject to  
29 impact fees, specifying the amount of the impact fee to be imposed  
30 for each type of system improvement. The schedule shall be based upon  
31 a formula or other method of calculating such impact fees. The  
32 schedule shall reflect the proportionate impact of new housing units,  
33 including multifamily and condominium units, based on the square  
34 footage, number of bedrooms, or trips generated, in the housing unit  
35 in order to produce a proportionally lower impact fee for smaller  
36 housing units. In determining proportionate share, the formula or  
37 other method of calculating impact fees shall incorporate, among  
38 other things, the following:



1 (a) The cost of public facilities necessitated by new  
2 development;

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

8 (c) The availability of other means of funding public facility  
9 improvements;

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

11 (e) The methods by which public facilities improvements were  
12 financed;

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

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

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

30 (4) May provide an exemption from impact fees for low-income  
31 housing or for early learning facilities. Local governments that  
32 grant exemptions for low-income housing or for early learning  
33 facilities under this subsection (4) may either: Grant a partial  
34 exemption of not more than eighty percent of impact fees, in which  
35 case there is no explicit requirement to pay the exempted portion of  
36 the fee from public funds other than impact fee accounts; or provide  
37 a full waiver, in which case the remaining percentage of the exempted  
38 fee must be paid from public funds other than impact fee accounts,  
39 except as provided in (b) of this subsection. These exemptions are  
40 subject to the following requirements:

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

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

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

38 (5) Shall provide a credit for the value of any dedication of  
39 land for, improvement to, or new construction of any system  
40 improvements provided by the developer, to facilities that are

1 identified in the capital facilities plan and that are required by  
2 the county, city, or town as a condition of approving the development  
3 activity;

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

8 (7) Shall include a provision for calculating the amount of the  
9 fee to be imposed on a particular development that permits  
10 consideration of studies and data submitted by the developer to  
11 adjust the amount of the fee;

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

15 (9) May provide for the imposition of an impact fee for system  
16 improvement costs previously incurred by a county, city, or town to  
17 the extent that new growth and development will be served by the  
18 previously constructed improvements provided such fee shall not be  
19 imposed to make up for any system improvement deficiencies; and

20 (10) Must adopt or amend by ordinance, and incorporate into their  
21 development regulations, zoning regulations, and other official  
22 controls the requirements of this section to take effect six months  
23 after the jurisdiction's next periodic comprehensive plan update  
24 required under RCW 36.70A.130.

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. 14.** 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. 15.** 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~~) 60th day following completion  
37 of the mediation pursuant to RCW 64.55.120(4) and following filing  
38 and service of the complaint, the declarant, association, or party  
39 unit owner may serve on an adverse party an offer to allow judgment

1 to be entered. The offer of judgment shall specify the amount of  
2 damages, not including costs or fees, that the declarant,  
3 association, or party unit owner is offering to pay or receive. A  
4 declarant's offer shall also include its commitment to pay costs and  
5 fees that may be awarded as provided in this section. The declarant,  
6 association, or party unit owner may make more than one offer of  
7 judgment so long as each offer is timely made. Each subsequent offer  
8 supersedes and replaces the previous offer. Any offer not accepted  
9 within (~~twenty-one~~) 21 days of the service of that offer is deemed  
10 rejected and withdrawn and evidence thereof is not admissible and may  
11 not be provided to the court or arbitrator except in a proceeding to  
12 determine costs and fees or as part of the motion identified in  
13 subsection (2) of this 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. 16.** 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. 17.** RCW 82.32.808 does not apply to this act.

25 NEW SECTION. **Sec. 18.** Section 9 of this act takes effect  
26 January 1, 2024.

27 NEW SECTION. **Sec. 19.** Section 9 of this act expires January 1,  
28 2030.

29 NEW SECTION. **Sec. 20.** Section 10 of this act takes effect  
30 January 1, 2030.

31 NEW SECTION. **Sec. 21.** Sections 10 through 12 of this act expire  
32 January 1, 2034.

--- END ---