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HOUSE BILL 1045

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By Representatives Williams, Dunshee, Nelson, Simpson, Moeller, Hasegawa, Chase, Roberts, Kirby, Appleton, Hunt, and Upthegrove

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1 AN ACT Relating to residential real property; amending RCW  
2 64.50.010; adding new sections to chapter 64.50 RCW; and creating a new  
3 section.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that, for  
6 Washington's families, purchasing a new home is both the greatest  
7 investment they will make and the culmination of their dreams. The  
8 legislature intends that those making the very significant investment  
9 in a new home should receive genuine accountability in return and  
10 should not be expected to bear, particularly on top of the heavy  
11 financial burden of a mortgage, the costs of homebuilder negligence.  
12 Toward that end, and consistent with principles of equal treatment  
13 under the law, the legislature intends that those citizens purchasing  
14 new homes or remodeling their homes receive statutory warranty rights  
15 similar to those purchasing condominiums. Finally, the legislature  
16 intends that anyone purchasing a home within six years of its  
17 construction, including purchasers subsequent to the initial  
18 owner-occupant, be entitled to the common law implied warranty of

1 habitability to ward against egregious defects in the fundamental  
2 structure of their homes, and intends that this warranty cannot be  
3 contractually waived.

4 (2) The legislature by this act does not intend to create a cause  
5 of action in tort for defects in the construction of improvements upon  
6 real property intended for residential use, nor does the legislature  
7 intend to overrule the holding in *Berschauer/Phillips Constr. Co. v.*  
8 *Seattle Sch. Dist. No. 1*, 124 Wn.2d 816, 881 P.2d 986 (1994) and other  
9 cases in which the courts have held that the economic loss rule applies  
10 to construction defect claims.

11 (3) This act may be known and cited as the homeowner's bill of  
12 rights.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 64.50 RCW  
14 to read as follows:

15 (1) A construction professional involved in the construction of  
16 improvements upon residential real property or real property intended  
17 for use as residential real property warrants that the work, and any  
18 part thereof, will be suitable for the ordinary uses of real property  
19 of its type and that the work, and any part thereof, will be:

- 20 (a) Free from defective materials;
- 21 (b) Constructed in accordance with sound engineering and  
22 construction standards;
- 23 (c) Constructed in a workmanlike manner; and
- 24 (d) Constructed in compliance with all laws then applicable to the  
25 improvements.

26 (2) If a construction professional breaches a warranty arising  
27 under this section and the breach results in damage to any portion of  
28 the residential real property, the current owner of the residential  
29 real property may bring a cause of action for damages against the  
30 construction professional. Absence of privity of contract between the  
31 owner and the construction professional is not a defense to the  
32 enforcement of a warranty arising under this section.

33 (3) In a judicial proceeding for breach of a warranty arising under  
34 this section, the plaintiff must show that the alleged breach has  
35 adversely affected or will adversely affect the performance of that  
36 portion of the property alleged to be in breach. To establish an  
37 adverse effect, the person alleging the breach is not required to prove

1 that the breach renders the property unfit for occupancy. As used in  
2 this subsection, "adverse effect" must be more than technical and must  
3 be significant to a reasonable person.

4 (4) Proof of breach of a warranty arising under this section is not  
5 proof of damages. Damages awarded for a breach of a warranty arising  
6 under this section are the cost of repairs. However, if it is  
7 established that the cost of repairs is clearly disproportionate to the  
8 loss in market value caused by the breach, damages are limited to the  
9 loss in market value.

10 (5)(a) A judicial proceeding for breach of a warranty arising under  
11 this section must be commenced within four years after the cause of  
12 action accrues. This period may not be reduced by either oral or  
13 written agreement, or through the use of contractual claims or notice  
14 procedures that require the filing or service of any claim or notice  
15 prior to the expiration of the period specified in this section.

16 (b) Except as provided under (c) of this subsection, a cause of  
17 action for breach of a warranty under this section accrues, regardless  
18 of the owner's lack of knowledge of the breach:

19 (i) In the case of the purchase of newly constructed residential  
20 real property, on the date the initial owner enters into possession of  
21 the property; or

22 (ii) In the case of existing residential real property upon which  
23 the construction of improvements are made, on the date of substantial  
24 completion of construction or termination of the construction project,  
25 whichever is later.

26 (c) A cause of action for breach of a warranty under this section  
27 based on a latent structural defect or a latent water penetration  
28 defect accrues when the claimant discovers or reasonably should have  
29 discovered the latent structural defect or latent water penetration  
30 defect.

31 (d) An action for breach of a warranty under this section is  
32 subject to the time limits provided in RCW 4.16.310.

33 (6) If a written notice of claim is served under RCW 64.50.020  
34 within the time prescribed for the filing of an action under this  
35 section, the statutes of limitation in this section and any applicable  
36 statutes of repose for construction-related claims are tolled until  
37 sixty days after the period of time during which the filing of an  
38 action is barred under RCW 64.50.020.

1 (7) The warranties imposed by this section may not be waived,  
2 disclaimed, or limited.

3 (8) In a judicial proceeding under this section, the court may  
4 award reasonable attorneys' fees and costs to the prevailing party.

5 (9) This section does not apply to condominiums subject to chapter  
6 64.34 RCW or nonprofit housing developers.

7 (10) This section does not affect the application of the  
8 requirements imposed under other provisions of this chapter.

9 (11) The warranties created in this section are in addition to any  
10 other remedies provided by statutory or common law and do not abrogate  
11 or limit such common law or statutory remedies in any way.

12 (12) For the purposes of this section:

13 (a) "Nonprofit housing developer" means a nonprofit organization or  
14 housing authority that has among its purposes the provision of housing  
15 that is affordable to low-income households.

16 (b) "Residential real property" means a single-family house or a  
17 duplex occupied by the owner as a residence.

18 (c) "Substantial completion of construction" means the state of  
19 completion reached when an improvement upon real property may be used  
20 or occupied for its intended use.

21 **Sec. 3.** RCW 64.50.010 and 2002 c 323 s 2 are each amended to read  
22 as follows:

23 Unless the context clearly requires otherwise, the definitions in  
24 this section apply throughout this chapter.

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

33 (2) "Association" means an association, master association, or  
34 subassociation as defined and provided for in RCW 64.34.020(4),  
35 64.34.276, 64.34.278, and 64.38.010(1).

36 (3) "Claimant" means a homeowner or association who asserts a claim

1 against a construction professional concerning a defect in the  
2 construction of a residence or in the substantial remodel of a  
3 residence.

4 (4) "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  
7 64.34.020(~~(+12+)~~) and a declarant as defined in RCW 64.34.020(~~(+13+)~~),  
8 performing or furnishing the design, supervision, inspection,  
9 construction, or observation of the construction of any improvement to  
10 real property, whether operating as a sole proprietor, partnership,  
11 corporation, or other business entity. "Construction professional"  
12 does not include an inspector who is an agent or employee of a local  
13 government and is acting in his or her official capacity as an  
14 inspector.

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

21 (6) "Residence" means a single-family house, duplex, triplex,  
22 quadraplex, or a unit in a multiunit residential structure in which  
23 title to each individual unit is transferred to the owner under a  
24 condominium or cooperative system, and shall include common elements as  
25 defined in RCW 64.34.020(6) and common areas as defined in RCW  
26 64.38.010(4).

27 (7) "Serve" or "service" means personal service or delivery by  
28 certified mail to the last known address of the addressee.

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

33 NEW SECTION. Sec. 4. A new section is added to chapter 64.50 RCW  
34 to read as follows:

35 (1) The legislature finds that as a matter of public policy the  
36 common law warranty of habitability applicable to newly constructed  
37 residential real property should be modified to extend greater

1 protection to home purchasers. The legislature intends by this section  
2 to modify the common law implied warranty of habitability in two  
3 respects: To extend the implied warranty of habitability to subsequent  
4 purchasers; and to prohibit the waiver, disclaimer, or limitation of  
5 this warranty through contractual agreement. The legislature does not  
6 intend by this act to change any other aspect of the common law implied  
7 warranty of habitability as developed through case law.

8 (2)(a) The common law implied warranty of habitability for newly  
9 constructed residential real property extends to any homeowner who  
10 purchases the property within six years of its construction, and is not  
11 limited to the initial owner-occupant of the property. A homeowner who  
12 purchases the property subsequent to the initial owner-occupant, and  
13 within six years of the construction of the property, receives the same  
14 protections of the common law implied warranty of habitability as  
15 possessed by the person from whom the property was purchased.

16 (b) The common law implied warranty of habitability may not be  
17 waived, disclaimed, or limited by contractual agreement. A provision  
18 of any contract for the purchase or sale of newly constructed  
19 residential property that purports to waive, disclaim, or limit the  
20 common law implied warranty of habitability is void and unenforceable.

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