
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-4518.2/02 2nd draft

ATTY/TYPIST: KT:mos

BRIEF DESCRIPTION:

2 **ESHB 2565** - S COMM AMD

3 By Committee on Labor, Commerce & Financial Institutions

4

5 Strike everything after the enacting clause and insert the
6 following:

7 NEW SECTION. **Sec. 1.** The legislature finds, declares, and
8 determines that limited changes in the law are necessary and
9 appropriate concerning actions claiming damages, indemnity, or
10 contribution in connection with alleged construction defects. It is
11 the intent of the legislature that this chapter apply to these types of
12 civil actions while preserving adequate rights and remedies for
13 property owners who bring and maintain such actions.

14 NEW SECTION. **Sec. 2.** Unless the context clearly requires
15 otherwise, the definitions in this section apply throughout this
16 chapter.

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

25 (2) "Association" means an association, master association, or
26 subassociation as defined and provided for in RCW 64.34.020(4),
27 64.34.276, 64.34.278, and 64.38.010(1).

28 (3) "Claimant" means a homeowner or association who asserts a claim
29 against a construction professional concerning a defect in the
30 construction of a residence or in the substantial remodel of a
31 residence.

32 (4) "Construction professional" means an architect, builder,
33 builder vendor, contractor, subcontractor, engineer, or inspector,
34 including, but not limited to, a dealer as defined in RCW 64.34.020(12)
35 and a declarant as defined in RCW 64.34.020(13), performing or

1 furnishing the design, supervision, inspection, construction, or
2 observation of the construction of any improvement to real property,
3 whether operating as a sole proprietor, partnership, corporation, or
4 other business entity.

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

11 (6) "Residence" means a single-family house, duplex, triplex,
12 quadraplex, or a unit in a multiunit residential structure in which
13 title to each individual unit is transferred to the owner under a
14 condominium or cooperative system, and shall include common elements as
15 defined in RCW 64.34.020(6) and common areas as defined in RCW
16 64.38.010(4).

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

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

23 NEW SECTION. **Sec. 3.** (1) In every construction defect action
24 brought against a construction professional, the claimant shall, no
25 later than forty-five days before filing an action, serve written
26 notice of claim on the construction professional. The notice of claim
27 shall state that the claimant asserts a construction defect claim
28 against the construction professional and shall describe the claim in
29 reasonable detail sufficient to determine the general nature of the
30 defect.

31 (2) Within twenty-one days after service of the notice of claim,
32 the construction professional shall serve a written response on the
33 claimant by registered mail or personal service. The written response
34 shall:

35 (a) Propose to inspect the residence that is the subject of the
36 claim and to complete the inspection within a specified time frame.
37 The proposal shall include the statement that the construction

1 professional shall, based on the inspection, offer to remedy the
2 defect, compromise by payment, or dispute the claim;

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

9 (c) State that the construction professional disputes the claim and
10 will neither remedy the construction defect nor compromise and settle
11 the claim.

12 (3)(a) If the construction professional disputes the claim or does
13 not respond to the claimant's notice of claim within the time stated in
14 subsection (2) of this section, the claimant may bring an action
15 against the construction professional for the claim described in the
16 notice of claim without further notice.

17 (b) If the claimant rejects the inspection proposal or the
18 settlement offer made by the construction professional pursuant to
19 subsection (2) of this section, the claimant shall serve written notice
20 of the claimant's rejection on the construction professional. After
21 service of the rejection, the claimant may bring an action against the
22 construction professional for the construction defect claim described
23 in the notice of claim. If the construction professional has not
24 received from the claimant, within thirty days after the claimant's
25 receipt of the construction professional's response, either an
26 acceptance or rejection of the inspection proposal or settlement offer,
27 then at anytime thereafter the construction professional may terminate
28 the proposal or offer by serving written notice to the claimant, and
29 the claimant may thereafter bring an action against the construction
30 professional for the construction defect claim described in the notice
31 of claim.

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

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

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

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

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

12 (c) If the construction professional does not proceed further to
13 remedy the construction defect within the agreed timetable, or if the
14 construction professional fails to comply with the provisions of (b) of
15 this subsection, the claimant may bring an action against the
16 construction professional for the claim described in the notice of
17 claim without further notice.

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

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

1 hours to perform and complete the construction by the timetable stated
2 in the offer.

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

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

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

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

29 NEW SECTION. **Sec. 4.** (1) In every action brought against a
30 construction professional, the claimant, including a construction
31 professional asserting a claim against another construction
32 professional, shall file with the court and serve on the defendant a
33 list of known construction defects in accordance with this section.

34 (2) The list of known construction defects shall contain a
35 description of the construction that the claimant alleges to be
36 defective. The list of known construction defects shall be filed with
37 the court and served on the defendant within thirty days after the

1 commencement of the action or within such longer period as the court in
2 its discretion may allow.

3 (3) The list of known construction defects may be amended by the
4 claimant to identify additional construction defects as they become
5 known to the claimant.

6 (4) The list of known construction defects must specify, to the
7 extent known to the claimant, the construction professional responsible
8 for each alleged defect identified by the claimant.

9 (5) If a subcontractor or supplier is added as a party to an action
10 under this section, the party making the claim against such
11 subcontractor or supplier shall serve on the subcontractor or supplier
12 the list of construction defects in accordance with this section within
13 thirty days after service of the complaint against the subcontractor or
14 supplier or within such period as the court in its discretion may
15 allow.

16 NEW SECTION. **Sec. 5.** (1)(a) In the event the board of directors,
17 pursuant to RCW 64.34.304(1)(d) or 64.38.020(4), institutes an action
18 asserting defects in the construction of two or more residences, common
19 elements, or common areas, this section shall apply. For purposes of
20 this section, "action" has the same meaning as set forth in section 2
21 of this act.

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

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

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

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

32 (ii) The expenses and fees that the board of directors anticipates
33 will be incurred in prosecuting the action.

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

35 (a) Require the disclosure in the notice or the disclosure to a
36 unit owner of attorney-client communications or other privileged
37 communications;

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

5 (c) Limit or impair the authority of the board of directors to
6 contract for legal services, or limit or impair the ability to enforce
7 such a contract for legal services.

8 NEW SECTION. **Sec. 6.** (1) The construction professional shall
9 provide notice to each homeowner upon entering into a contract for
10 sale, construction, or substantial remodel of a residence, of the
11 construction professional's right to offer to cure construction defects
12 before a homeowner may commence litigation against the construction
13 professional. Such notice shall be conspicuous and may be included as
14 part of the underlying contract signed by the homeowner. In the sale
15 of a condominium unit, the requirement for delivery of such notice
16 shall be deemed satisfied if contained in a public offering statement
17 delivered in accordance with chapter 64.34 RCW.

18 (2) The notice required by this subsection shall be in
19 substantially the following form:

20 CHAPTER 64.-- RCW (sections 1 through 7 of this act) CONTAINS
21 IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A
22 LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST THE SELLER OR
23 BUILDER OF YOUR HOME. FORTY-FIVE DAYS BEFORE YOU FILE YOUR
24 LAWSUIT, YOU MUST DELIVER TO THE SELLER OR BUILDER A WRITTEN
25 NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE
26 AND PROVIDE YOUR SELLER OR BUILDER THE OPPORTUNITY TO MAKE AN
27 OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED
28 TO ACCEPT ANY OFFER MADE BY THE BUILDER OR SELLER. THERE ARE
29 STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO
30 FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT.

31 (3) This chapter shall not preclude or bar any action if notice is
32 not given to the homeowner as required by this section.

33 NEW SECTION. **Sec. 7.** Nothing in this chapter shall be construed
34 to hinder or otherwise affect the employment, agency, or contractual
35 relationship between and among homeowners and construction
36 professionals during the process of construction or remodeling and does

1 not preclude the termination of those relationships as allowed under
2 current law. Nothing in this chapter shall negate or otherwise
3 restrict a construction professional's right to access or inspection
4 provided by law, covenant, easement, or contract.

5 NEW SECTION. **Sec. 8.** A new section is added to chapter 4.16 RCW
6 to read as follows:

7 If a written notice of claim is served under section 3 of this act
8 within the time prescribed for the filing of an action under this
9 chapter, the statutes of limitations for construction-related claims
10 are tolled until sixty days after the period of time during which the
11 filing of an action is barred under section 3 of this act.

12 **Sec. 9.** RCW 4.16.310 and 1986 c 305 s 702 are each amended to read
13 as follows:

14 All claims or causes of action as set forth in RCW 4.16.300 shall
15 accrue, and the applicable statute of limitation shall begin to run
16 only during the period within six years after substantial completion of
17 construction, or during the period within six years after the
18 termination of the services enumerated in RCW 4.16.300, whichever is
19 later. The phrase "substantial completion of construction" shall mean
20 the state of completion reached when an improvement upon real property
21 may be used or occupied for its intended use. Any cause of action
22 which has not accrued within six years after such substantial
23 completion of construction, or within six years after such termination
24 of services, whichever is later, shall be barred: PROVIDED, That this
25 limitation shall not be asserted as a defense by any owner, tenant or
26 other person in possession and control of the improvement at the time
27 such cause of action accrues. The limitations prescribed in this
28 section apply to all claims or causes of action as set forth in RCW
29 4.16.300 brought in the name or for the benefit of the state which are
30 made or commenced after June 11, 1986.

31 If a written notice is filed under section 3 of this act within the
32 time prescribed for the filing of an action under this chapter, the
33 period of time during which the filing of an action is barred under
34 section 3 of this act plus sixty days shall not be a part of the period
35 limited for the commencement of an action, nor for the application of
36 this section.

1 **Sec. 10.** RCW 64.34.410 and 1997 c 400 s 1 are each amended to read
2 as follows:

3 (1) A public offering statement shall contain the following
4 information:

5 (a) The name and address of the condominium;

6 (b) The name and address of the declarant;

7 (c) The name and address of the management company, if any;

8 (d) The relationship of the management company to the declarant, if
9 any;

10 (e) A list of up to the five most recent condominium projects
11 completed by the declarant or an affiliate of the declarant within the
12 past five years, including the names of the condominiums, their
13 addresses, and the number of existing units in each. For the purpose
14 of this section, a condominium is "completed" when any one unit therein
15 has been rented or sold;

16 (f) The nature of the interest being offered for sale;

17 (g) A brief description of the permitted uses and use restrictions
18 pertaining to the units and the common elements;

19 (h) A brief description of the restrictions, if any, on the renting
20 or leasing of units by the declarant or other unit owners, together
21 with the rights, if any, of the declarant to rent or lease at least a
22 majority of units;

23 (i) The number of existing units in the condominium and the maximum
24 number of units that may be added to the condominium;

25 (j) A list of the principal common amenities in the condominium
26 which materially affect the value of the condominium and those that
27 will or may be added to the condominium;

28 (k) A list of the limited common elements assigned to the units
29 being offered for sale;

30 (l) The identification of any real property not in the condominium,
31 the owner of which has access to any of the common elements, and a
32 description of the terms of such access;

33 (m) The identification of any real property not in the condominium
34 to which unit owners have access and a description of the terms of such
35 access;

36 (n) The status of construction of the units and common elements,
37 including estimated dates of completion if not completed;

38 (o) The estimated current common expense liability for the units
39 being offered;

- 1 (p) An estimate of any payment with respect to the common expense
2 liability for the units being offered which will be due at closing;
- 3 (q) The estimated current amount and purpose of any fees not
4 included in the common expenses and charged by the declarant or the
5 association for the use of any of the common elements;
- 6 (r) Any assessments which have been agreed to or are known to the
7 declarant and which, if not paid, may constitute a lien against any
8 units or common elements in favor of any governmental agency;
- 9 (s) The identification of any parts of the condominium, other than
10 the units, which any individual owner will have the responsibility for
11 maintaining;
- 12 (t) If the condominium involves a conversion condominium, the
13 information required by RCW 64.34.415;
- 14 (u) Whether timesharing is restricted or prohibited, and if
15 restricted, a general description of such restrictions;
- 16 (v) A list of all development rights reserved to the declarant and
17 all special declarant rights reserved to the declarant, together with
18 the dates such rights must terminate, and a copy of or reference by
19 recording number to any recorded transfer of a special declarant right;
- 20 (w) A description of any material differences in terms of
21 furnishings, fixtures, finishes, and equipment between any model unit
22 available to the purchaser at the time the agreement for sale is
23 executed and the unit being offered;
- 24 (x) Any liens on real property to be conveyed to the association
25 required to be disclosed pursuant to RCW 64.34.435(2)(b);
- 26 (y) A list of any physical hazards known to the declarant which
27 particularly affect the condominium or the immediate vicinity in which
28 the condominium is located and which are not readily ascertainable by
29 the purchaser;
- 30 (z) A brief description of any construction warranties to be
31 provided to the purchaser;
- 32 (aa) Any building code violation citations received by the
33 declarant in connection with the condominium which have not been
34 corrected;
- 35 (bb) A statement of any unsatisfied judgments or pending suits
36 against the association, a statement of the status of any pending suits
37 material to the condominium of which the declarant has actual
38 knowledge, and a statement of any litigation brought by an owners'
39 association, unit owner, or governmental entity in which the declarant

1 or any affiliate of the declarant has been a defendant, arising out of
2 the construction, sale, or administration of any condominium within the
3 previous five years, together with the results thereof, if known;

4 (cc) Any rights of first refusal to lease or purchase any unit or
5 any of the common elements;

6 (dd) The extent to which the insurance provided by the association
7 covers furnishings, fixtures, and equipment located in the unit;

8 (ee) A notice which describes a purchaser's right to cancel the
9 purchase agreement or extend the closing under RCW 64.34.420, including
10 applicable time frames and procedures;

11 (ff) Any reports or statements required by RCW 64.34.415 or
12 64.34.440(6)(a). RCW 64.34.415 shall apply to the public offering
13 statement of a condominium in connection with which a final certificate
14 of occupancy was issued more than sixty calendar months prior to the
15 preparation of the public offering statement whether or not the
16 condominium is a conversion condominium as defined in RCW
17 64.34.020(10);

18 (gg) A list of the documents which the prospective purchaser is
19 entitled to receive from the declarant before the rescission period
20 commences;

21 (hh) A notice which states: A purchaser may not rely on any
22 representation or express warranty unless it is contained in the public
23 offering statement or made in writing signed by the declarant or by any
24 person identified in the public offering statement as the declarant's
25 agent;

26 (ii) A notice which states: This public offering statement is only
27 a summary of some of the significant aspects of purchasing a unit in
28 this condominium and the condominium documents are complex, contain
29 other important information, and create binding legal obligations. You
30 should consider seeking the assistance of legal counsel;

31 (jj) Any other information and cross-references which the declarant
32 believes will be helpful in describing the condominium to the
33 recipients of the public offering statement, all of which may be
34 included or not included at the option of the declarant; ~~((and))~~

35 (kk) A notice that addresses compliance or noncompliance with the
36 housing for older persons act of 1995, P.L. 104-76, as enacted on
37 December 28, 1995; and

38 (ll) A notice that is substantially in the form required by section
39 6 of this act.

1 (2) The public offering statement shall include copies of each of
2 the following documents: The declaration, the survey map and plans,
3 the articles of incorporation of the association, bylaws of the
4 association, rules and regulations, if any, current or proposed budget
5 for the association, and the balance sheet of the association current
6 within ninety days if assessments have been collected for ninety days
7 or more.

8 If any of the foregoing documents listed in this subsection are not
9 available because they have not been executed, adopted, or recorded,
10 drafts of such documents shall be provided with the public offering
11 statement, and, before closing the sale of a unit, the purchaser shall
12 be given copies of any material changes between the draft of the
13 proposed documents and the final documents.

14 (3) The disclosures required by subsection (1)(g), (k), (s), (u),
15 (v), and (cc) of this section shall also contain a reference to
16 specific sections in the condominium documents which further explain
17 the information disclosed.

18 (4) The disclosures required by subsection (1)(ee), (hh), ~~((and))~~
19 ~~(ii), and (ll)~~ of this section shall be located at the top of the first
20 page of the public offering statement and be typed or printed in ten-
21 point bold face type size.

22 (5) A declarant shall promptly amend the public offering statement
23 to reflect any material change in the information required by this
24 section.

25 **Sec. 11.** RCW 64.34.452 and 1990 c 166 s 14 are each amended to
26 read as follows:

27 (1) A judicial proceeding for breach of any obligations arising
28 under RCW 64.34.443 and 64.34.445 must be commenced within ~~((four))~~ six
29 years after the cause of action accrues: PROVIDED, That the period for
30 commencing an action for a breach accruing pursuant to subsection
31 (2)(b) of this section shall not expire prior to one year after
32 termination of the period of declarant control, if any, under RCW
33 64.34.308(4). Such period may not be reduced by either oral or written
34 agreement.

35 (2) Subject to subsection (3) of this section, a cause of action or
36 breach of warranty of quality, regardless of the purchaser's lack of
37 knowledge of the breach, accrues:

1 (a) As to a unit, the date the (~~purchaser to whom the warranty is~~
2 ~~first made enters into possession if a possessory interest was conveyed~~
3 ~~or the date of acceptance of the instrument of conveyance if a~~
4 ~~nonpossessory interest was conveyed~~) last unit of the complex is
5 completed; and

6 (b) As to each common element, (~~at the latest of (i) the date the~~
7 ~~first unit in the condominium was conveyed to a bona fide purchaser,~~
8 ~~(ii) the date the common element was completed, or (iii)~~) the date the
9 common element was added to the condominium.

10 (3) If a warranty of quality explicitly extends to future
11 performance or duration of any improvement or component of the
12 condominium, the cause of action accrues at the time the breach is
13 discovered or at the end of the period for which the warranty
14 explicitly extends, whichever is earlier.

15 (4) If a written notice of claim is served under section 3 of this
16 act within the time prescribed for the filing of an action under this
17 chapter, the statutes of limitation in this chapter and any applicable
18 statutes of repose for construction-related claims are tolled until
19 sixty days after the period of time during which the filing of an
20 action is barred under section 3 of this act.

21 NEW SECTION. Sec. 12. Sections 1 through 7 of this act constitute
22 a new chapter in Title 64 RCW."

23 **ESHB 2565** - S COMM AMD

24 By Committee on Labor, Commerce & Financial Institutions

25

26 On page 1, line 2 of the title, after "damage;" strike the
27 remainder of the title and insert "amending RCW 4.16.310, 64.34.410,
28 and 64.34.452; adding a new section to chapter 4.16 RCW; and adding a
29 new chapter to Title 64 RCW."

--- END ---