

2ESSB 5536 - H AMD 1141

By Representative Lantz

ADOPTED 03/05/2004

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 64.34 RCW
4 to read as follows:

5 (1) The legislature finds, declares, and determines that:

6 (a) Washington's cities and counties under the growth management
7 act are required to encourage urban growth in urban growth areas at
8 densities that accommodate twenty-year growth projections;

9 (b) The growth management act's planning goals include encouraging
10 the availability of affordable housing for all residents of the state
11 and promoting a variety of housing types;

12 (c) Quality condominium construction needs to be encouraged to
13 achieve growth management act mandated urban densities and to ensure
14 that residents of the state, particularly in urban growth areas, have
15 a broad range of ownership choices.

16 (2) It is the intent of the legislature that limited changes be
17 made to the condominium act to ensure that a broad range of affordable
18 homeownership opportunities continue to be available to the residents
19 of the state, and to assist cities' and counties' efforts to achieve
20 the density mandates of the growth management act.

21 **Sec. 2.** RCW 64.34.100 and 1989 c 43 s 1-113 are each amended to
22 read as follows:

23 (1) The remedies provided by this chapter shall be liberally
24 administered to the end that the aggrieved party is put in as good a
25 position as if the other party had fully performed. However,
26 consequential, special, or punitive damages may not be awarded except
27 as specifically provided in this chapter or by other rule of law.

28 (2) Except as otherwise provided in chapter 64.-- RCW (sections 101
29 through 2002 of this act) or in this subsection, any right or

1 obligation declared by this chapter is enforceable by judicial
2 proceeding or, if provided for in the declaration or by other agreement
3 between the parties, by arbitration.

4 (3) If arbitration is provided for in the declaration with respect
5 to claims arising under RCW 64.34.443, 64.34.445, or 64.34.450, such
6 provision shall be binding on the association and all unit owners and
7 may not be amended without the consent of the declarant. In any
8 arbitration of claims arising under RCW 64.34.443, 64.34.445, or
9 64.34.450, the arbitrator may award reasonable attorneys' fees and
10 costs, and arbitration fees and costs of arbitration, to the
11 substantially prevailing party. Arbitration for claims arising under
12 RCW 64.34.443, 64.34.445, or 64.34.450 shall be in accordance with
13 chapter 7.06 RCW, and the mandatory arbitration rules adopted by the
14 supreme court, to the extent consistent with this section, and except
15 as follows:

16 (a) Chapter 7.06 RCW shall apply regardless of whether a county has
17 authorized mandatory arbitration under RCW 7.06.010. No suit need be
18 commenced in order to commence the arbitration.

19 (b) The monetary limitations and limitations on type of relief in
20 RCW 7.06.020 shall not apply.

21 (c) Notwithstanding RCW 7.06.040, the compensation of the
22 arbitrator shall be at the normal rate for such arbitrator in similar
23 matters.

24 (d) All filings under RCW 7.06.050 shall be on the parties, not
25 with the clerk of the court.

26 (e) Unless otherwise agreed by the parties, the arbitration hearing
27 shall be conducted in the county in which the condominium is located.

28 (f) For purposes of RCW 64.34.452, the commencement of an
29 arbitration proceeding under this section shall be deemed to be the
30 equivalent of the commencement of a judicial proceeding.

31 **Sec. 3.** RCW 64.34.324 and 1992 c 220 s 16 are each amended to read
32 as follows:

33 (1) Unless provided for in the declaration, the bylaws of the
34 association shall provide for:

35 (a) The number, qualifications, powers and duties, terms of office,
36 and manner of electing and removing the board of directors and officers
37 and filling vacancies;

1 (b) Election by the board of directors of such officers of the
2 association as the bylaws specify;

3 (c) Which, if any, of its powers the board of directors or officers
4 may delegate to other persons or to a managing agent;

5 (d) Which of its officers may prepare, execute, certify, and record
6 amendments to the declaration on behalf of the association; (~~and~~)

7 (e) The method of amending the bylaws; and

8 (f) A statement of the standard of care for officers and members of
9 the board of directors imposed by RCW 64.34.308(1).

10 (2) Subject to the provisions of the declaration, the bylaws may
11 provide for any other matters the association deems necessary and
12 appropriate.

13 (3) In determining the qualifications of any officer or director of
14 the association, notwithstanding the provision of RCW 64.34.020(32) the
15 term "unit owner" in such context shall, unless the declaration or
16 bylaws otherwise provide, be deemed to include any director, officer,
17 partner in, or trustee of any person, who is, either alone or in
18 conjunction with another person or persons, a unit owner. Any officer
19 or director of the association who would not be eligible to serve as
20 such if he or she were not a director, officer, partner in, or trustee
21 of such a person shall be disqualified from continuing in office if he
22 or she ceases to have any such affiliation with that person, or if that
23 person would have been disqualified from continuing in such office as
24 a natural person.

25 **Sec. 4.** RCW 64.34.425 and 1992 c 220 s 23 are each amended to read
26 as follows:

27 (1) Except in the case of a sale where delivery of a public
28 offering statement is required, or unless exempt under RCW
29 64.34.400(2), a unit owner shall furnish to a purchaser before
30 execution of any contract for sale of a unit, or otherwise before
31 conveyance, a resale certificate, signed by an officer or authorized
32 agent of the association and based on the books and records of the
33 association and the actual knowledge of the person signing the
34 certificate, containing:

35 (a) A statement disclosing any right of first refusal or other
36 restraint on the free alienability of the unit contained in the
37 declaration;

1 (b) A statement setting forth the amount of the monthly common
2 expense assessment and any unpaid common expense or special assessment
3 currently due and payable from the selling unit owner and a statement
4 of any special assessments that have been levied against the unit which
5 have not been paid even though not yet due;

6 (c) A statement, which shall be current to within forty-five days,
7 of any common expenses or special assessments against any unit in the
8 condominium that are past due over thirty days;

9 (d) A statement, which shall be current to within forty-five days,
10 of any obligation of the association which is past due over thirty
11 days;

12 (e) A statement of any other fees payable by unit owners;

13 (f) A statement of any anticipated repair or replacement cost in
14 excess of five percent of the annual budget of the association that has
15 been approved by the board of directors;

16 (g) A statement of the amount of any reserves for repair or
17 replacement and of any portions of those reserves currently designated
18 by the association for any specified projects;

19 (h) The annual financial statement of the association, including
20 the audit report if it has been prepared, for the year immediately
21 preceding the current year.

22 (i) A balance sheet and a revenue and expense statement of the
23 association prepared on an accrual basis, which shall be current to
24 within one hundred twenty days;

25 (j) The current operating budget of the association;

26 (k) A statement of any unsatisfied judgments against the
27 association and the status of any pending suits or legal proceedings in
28 which the association is a plaintiff or defendant;

29 (l) A statement describing any insurance coverage provided for the
30 benefit of unit owners;

31 (m) A statement as to whether there are any alterations or
32 improvements to the unit or to the limited common elements assigned
33 thereto that violate any provision of the declaration;

34 (n) A statement of the number of units, if any, still owned by the
35 declarant, whether the declarant has transferred control of the
36 association to the unit owners, and the date of such transfer;

37 (o) A statement as to whether there are any violations of the
38 health or building codes with respect to the unit, the limited common
39 elements assigned thereto, or any other portion of the condominium;

1 (p) A statement of the remaining term of any leasehold estate
2 affecting the condominium and the provisions governing any extension or
3 renewal thereof; (~~and~~)

4 (q) A copy of the declaration, the bylaws, the rules or regulations
5 of the association, and any other information reasonably requested by
6 mortgagees of prospective purchasers of units. Information requested
7 generally by the federal national mortgage association, the federal
8 home loan bank board, the government national mortgage association, the
9 veterans administration and the department of housing and urban
10 development shall be deemed reasonable, provided such information is
11 reasonably available to the association; and

12 (r) A statement, as required by section 301 of this act, as to
13 whether the units or common elements of the condominium are covered by
14 a qualified warranty, and a history of claims under any such warranty.

15 (2) The association, within ten days after a request by a unit
16 owner, and subject to payment of any fee imposed pursuant to RCW
17 64.34.304(1)(1), shall furnish a resale certificate signed by an
18 officer or authorized agent of the association and containing the
19 information necessary to enable the unit owner to comply with this
20 section. For the purposes of this chapter, a reasonable charge for the
21 preparation of a resale certificate may not exceed one hundred fifty
22 dollars. The association may charge a unit owner a nominal fee for
23 updating a resale certificate within six months of the unit owner's
24 request. The unit owner shall also sign the certificate but the unit
25 owner is not liable to the purchaser for any erroneous information
26 provided by the association and included in the certificate unless and
27 to the extent the unit owner had actual knowledge thereof.

28 (3) A purchaser is not liable for any unpaid assessment or fee
29 against the unit as of the date of the certificate greater than the
30 amount set forth in the certificate prepared by the association unless
31 and to the extent such purchaser had actual knowledge thereof. A unit
32 owner is not liable to a purchaser for the failure or delay of the
33 association to provide the certificate in a timely manner, but the
34 purchaser's contract is voidable by the purchaser until the certificate
35 has been provided and for five days thereafter or until conveyance,
36 whichever occurs first.

37 **Sec. 5.** RCW 64.34.445 and 1992 c 220 s 26 are each amended to read
38 as follows:

1 (1) A declarant and any dealer warrants that a unit will be in at
2 least as good condition at the earlier of the time of the conveyance or
3 delivery of possession as it was at the time of contracting, reasonable
4 wear and tear and damage by casualty or condemnation excepted.

5 (2) A declarant and any dealer impliedly warrants that a unit and
6 the common elements in the condominium are suitable for the ordinary
7 uses of real estate of its type and that any improvements made or
8 contracted for by such declarant or dealer will be:

9 (a) Free from defective materials; (~~and~~)

10 (b) Constructed in accordance with sound engineering and
11 construction standards(~~, and~~);

12 (c) Constructed in a workmanlike manner; and

13 (d) Constructed in compliance with all laws then applicable to such
14 improvements.

15 (3) A declarant and any dealer warrants to a purchaser of a unit
16 that may be used for residential use that an existing use, continuation
17 of which is contemplated by the parties, does not violate applicable
18 law at the earlier of the time of conveyance or delivery of possession.

19 (4) Warranties imposed by this section may be excluded or modified
20 as specified in RCW 64.34.450.

21 (5) For purposes of this section, improvements made or contracted
22 for by an affiliate of a declarant, as defined in RCW 64.34.020(1), are
23 made or contracted for by the declarant.

24 (6) Any conveyance of a unit transfers to the purchaser all of the
25 declarant's implied warranties of quality.

26 (7) In a judicial proceeding or arbitration for breach of any of
27 the obligations arising under this section, the plaintiff must show
28 that the alleged breach has adversely affected or will adversely affect
29 the performance of that portion of the unit or common elements alleged
30 to be in breach. As used in this subsection, an "adverse effect" must
31 be more than technical and must be significant to a reasonable person.
32 To establish an adverse effect, the person alleging the breach is not
33 required to prove that the breach renders the unit or common element
34 uninhabitable or unfit for its intended purpose.

35 (8) Proof of breach of any obligation arising under this section is
36 not proof of damages. Damages awarded for a breach of an obligation
37 arising under this section are the cost of repairs. However, if it is
38 established that the cost of such repairs is clearly disproportionate

1 to the loss in market value caused by the breach, then damages shall be
2 limited to the loss in market value.

3 **Sec. 6.** RCW 64.34.450 and 1989 c 43 s 4-113 are each amended to
4 read as follows:

5 (1) (~~Except as limited by subsection (2) of this section~~) For
6 units intended for nonresidential use, implied warranties of quality:

7 (a) May be excluded or modified by written agreement of the
8 parties; and

9 (b) Are excluded by written expression of disclaimer, such as "as
10 is," "with all faults," or other language which in common understanding
11 calls the buyer's attention to the exclusion of warranties.

12 (2) (~~With respect to a purchaser of a unit that may be occupied~~)
13 For units intended for residential use, no (~~general~~) disclaimer of
14 implied warranties of quality is effective, (~~but~~) except that a
15 declarant (~~and any~~) or dealer may disclaim liability in (~~an~~
16 ~~instrument~~) writing, in type that is bold faced, capitalized,
17 underlined, or otherwise set out from surrounding material so as to be
18 conspicuous, and separately signed by the purchaser, for a specified
19 defect or specified failure to comply with applicable law, if: (a) The
20 declarant or dealer knows or has reason to know that the specific
21 defect or failure (~~entered into and became a part of the basis of the~~
22 bargain) exists at the time of disclosure; (b) the disclaimer
23 specifically describes the defect or failure; and (c) the disclaimer
24 includes a statement as to the effect of the defect or failure.

25 (3) A declarant or dealer may offer an express written warranty of
26 quality only if the express written warranty does not reduce
27 protections provided to the purchaser by the implied warranty set forth
28 in RCW 64.34.445.

29 **Sec. 7.** RCW 64.34.452 and 2002 c 323 s 11 are each amended to read
30 as follows:

31 (1) A judicial proceeding or arbitration for breach of any
32 obligations arising under RCW 64.34.443 (~~and~~), 64.34.445, and
33 64.34.450 must be commenced within four years after the cause of action
34 accrues: PROVIDED, That the period for commencing (~~an action~~) a
35 judicial proceeding or arbitration for a breach accruing pursuant to
36 subsection (2)(b) of this section shall not expire prior to one year
37 after termination of the period of declarant control, if any, under RCW

1 64.34.308(4). Such periods may not be reduced by either oral or
2 written agreement, or through the use of contractual claims or notice
3 procedures that require the filing or service of any claim or notice
4 prior to the expiration of the period specified in this section. An
5 arbitration is deemed commenced on delivery of a demand for
6 arbitration. Any demand for arbitration shall be delivered by
7 certified mail, return receipt requested, and by ordinary first class
8 mail, or, in the case of persons not resident in the United States of
9 America, by such other comparable form of mailed notice as is
10 reasonably available. The party initiating the arbitration shall
11 address such a notice to the address last known to the initiating party
12 in the exercise of reasonable diligence, and also, in the case of any
13 entity that is required to have a registered agent in the state of
14 Washington, to the address of such a registered agent. Demand for
15 arbitration shall be deemed delivered three days after the postmark
16 date. "Judicial proceeding" as used in this section does not refer to
17 a trial de novo appeal of an arbitration decision and award.

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

21 (a) As to a unit, the date the purchaser to whom the warranty is
22 first made enters into possession if a possessory interest was conveyed
23 or the date of acceptance of the instrument of conveyance if a
24 nonpossessory interest was conveyed; and

25 (b) As to each common element, at the latest of (i) the date the
26 first unit in the condominium was conveyed to a bona fide purchaser,
27 (ii) the date the common element was completed, or (iii) the date the
28 common element was added to the condominium.

29 (3) If a warranty of quality explicitly extends to future
30 performance or duration of any improvement or component of the
31 condominium, the cause of action accrues at the time the breach is
32 discovered or at the end of the period for which the warranty
33 explicitly extends, whichever is earlier.

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

1 (5) Nothing in this section affects the time for filing a claim
2 under chapter 64.-- RCW (sections 101 through 2002 of this act).

3 **NEW SECTION.** **Sec. 8.** (1) A committee is established to study the
4 required use of independent third-party inspections of residential
5 condominiums as a way to reduce the problem of water penetration in
6 residential condominiums.

7 (2) The committee consists of the following members who shall be
8 persons with experience and expertise in condominium law and
9 condominium construction:

10 (a) A member, who shall be the chair of the committee, to be
11 appointed by the governor;

12 (b) Two members to be appointed by the majority leader of the
13 senate; and

14 (c) Two members to be appointed by the speaker of the house of
15 representatives.

16 (3) The committee shall:

17 (a) Examine the problem of water penetration of condominiums and
18 the efficacy of requiring independent third-party inspections of
19 condominiums, including plan inspection and inspection during
20 construction, as a way to reduce the problem of water penetration;

21 (b) Deliver to the judiciary committees of the senate and house of
22 representatives, not later than December 31, 2004, a report of the
23 findings and conclusions of the committee, and any proposed legislation
24 implementing third-party water penetration inspections.

25 **Sec. 9.** RCW 64.34.020 and 1992 c 220 s 2 are each amended to read
26 as follows:

27 In the declaration and bylaws, unless specifically provided
28 otherwise or the context requires otherwise, and in this chapter:

29 (1) "Affiliate (~~((of a declarant))~~)" means any person who controls,
30 is controlled by, or is under common control with (~~((a declarant))~~) the
31 referenced person. A person "controls" (~~((a declarant))~~) another person
32 if the person: (a) Is a general partner, officer, director, or
33 employer of the (~~((declarant))~~) referenced person; (b) directly or
34 indirectly or acting in concert with one or more other persons, or
35 through one or more subsidiaries, owns, controls, holds with power to
36 vote, or holds proxies representing, more than twenty percent of the
37 voting interest in the (~~((declarant))~~) referenced person; (c) controls in

1 any manner the election of a majority of the directors of the
2 ((~~declarant~~)) referenced person; or (d) has contributed more than
3 twenty percent of the capital of the ((~~declarant~~)) referenced person.
4 A person "is controlled by" ((~~a declarant~~)) another person if the
5 ((~~declarant~~)) other person: (i) Is a general partner, officer,
6 director, or employer of the person; (ii) directly or indirectly or
7 acting in concert with one or more other persons, or through one or
8 more subsidiaries, owns, controls, holds with power to vote, or holds
9 proxies representing, more than twenty percent of the voting interest
10 in the person; (iii) controls in any manner the election of a majority
11 of the directors of the person; or (iv) has contributed more than
12 twenty percent of the capital of the person. Control does not exist if
13 the powers described in this subsection are held solely as security for
14 an obligation and are not exercised.

15 (2) "Allocated interests" means the undivided interest in the
16 common elements, the common expense liability, and votes in the
17 association allocated to each unit.

18 (3) "Assessment" means all sums chargeable by the association
19 against a unit including, without limitation: (a) Regular and special
20 assessments for common expenses, charges, and fines imposed by the
21 association; (b) interest and late charges on any delinquent account;
22 and (c) costs of collection, including reasonable attorneys' fees,
23 incurred by the association in connection with the collection of a
24 delinquent owner's account.

25 (4) "Association" or "unit owners' association" means the unit
26 owners' association organized under RCW 64.34.300.

27 (5) "Board of directors" means the body, regardless of name, with
28 primary authority to manage the affairs of the association.

29 (6) "Common elements" means all portions of a condominium other
30 than the units.

31 (7) "Common expenses" means expenditures made by or financial
32 liabilities of the association, together with any allocations to
33 reserves.

34 (8) "Common expense liability" means the liability for common
35 expenses allocated to each unit pursuant to RCW 64.34.224.

36 (9) "Condominium" means real property, portions of which are
37 designated for separate ownership and the remainder of which is
38 designated for common ownership solely by the owners of those portions.
39 Real property is not a condominium unless the undivided interests in

1 the common elements are vested in the unit owners, and unless a
2 declaration and a survey map and plans have been recorded pursuant to
3 this chapter.

4 (10) "Conversion condominium" means a condominium (a) that at any
5 time before creation of the condominium was lawfully occupied wholly or
6 partially by a tenant or subtenant for residential purposes pursuant to
7 a rental agreement, oral or written, express or implied, for which the
8 tenant or subtenant had not received the notice described in (b) of
9 this subsection; or (b) that, at any time within twelve months before
10 the conveyance of, or acceptance of an agreement to convey, any unit
11 therein other than to a declarant or any affiliate of a declarant, was
12 lawfully occupied wholly or partially by a residential tenant of a
13 declarant or an affiliate of a declarant and such tenant was not
14 notified in writing, prior to lawfully occupying a unit or executing a
15 rental agreement, whichever event first occurs, that the unit was part
16 of a condominium and subject to sale. "Conversion condominium" shall
17 not include a condominium in which, before July 1, 1990, any unit
18 therein had been conveyed or been made subject to an agreement to
19 convey to any transferee other than a declarant or an affiliate of a
20 declarant.

21 (11) "Conveyance" means any transfer of the ownership of a unit,
22 including a transfer by deed or by real estate contract and, with
23 respect to a unit in a leasehold condominium, a transfer by lease or
24 assignment thereof, but shall not include a transfer solely for
25 security.

26 (12) "Dealer" means a person who, together with such person's
27 affiliates, owns or has a right to acquire either six or more units in
28 a condominium or fifty percent or more of the units in a condominium
29 containing more than two units.

30 (13) "Declarant" means (~~any person or group of persons acting in~~
31 ~~concert who~~);

32 (a) Any person who executes as declarant a declaration as defined
33 in subsection (15) of this section(~~(7)~~); or

34 (b) (~~reserves or succeeds to any special declarant right under~~)
35 Any person who reserves any special declarant right in the declaration;
36 or

37 (c) Any person who exercises special declarant rights or to whom
38 special declarant rights are transferred; or

1 (d) Any person who is the owner of a fee interest in the real
2 property which is subjected to the declaration at the time of the
3 recording of an instrument pursuant to RCW 64.34.316 and who directly
4 or through one or more affiliates is materially involved in the
5 construction, marketing, or sale of units in the condominium created by
6 the recording of the instrument.

7 (14) "Declarant control" means the right of the declarant or
8 persons designated by the declarant to appoint and remove officers and
9 members of the board of directors, or to veto or approve a proposed
10 action of the board or association, pursuant to RCW 64.34.308 (4) or
11 (5).

12 (15) "Declaration" means the document, however denominated, that
13 creates a condominium by setting forth the information required by RCW
14 64.34.216 and any amendments to that document.

15 (16) "Development rights" means any right or combination of rights
16 reserved by a declarant in the declaration to: (a) Add real property
17 or improvements to a condominium; (b) create units, common elements, or
18 limited common elements within real property included or added to a
19 condominium; (c) subdivide units or convert units into common elements;
20 (d) withdraw real property from a condominium; or (e) reallocate
21 limited common elements with respect to units that have not been
22 conveyed by the declarant.

23 (17) "Dispose" or "disposition" means a voluntary transfer or
24 conveyance to a purchaser or lessee of any legal or equitable interest
25 in a unit, but does not include the transfer or release of a security
26 interest.

27 (18) "Eligible mortgagee" means the holder of a mortgage on a unit
28 that has filed with the secretary of the association a written request
29 that it be given copies of notices of any action by the association
30 that requires the consent of mortgagees.

31 (19) "Foreclosure" means a forfeiture or judicial or nonjudicial
32 foreclosure of a mortgage or a deed in lieu thereof.

33 (20) "Identifying number" means the designation of each unit in a
34 condominium.

35 (21) "Leasehold condominium" means a condominium in which all or a
36 portion of the real property is subject to a lease, the expiration or
37 termination of which will terminate the condominium or reduce its size.

38 (22) "Limited common element" means a portion of the common

1 elements allocated by the declaration or by operation of RCW 64.34.204
2 (2) or (4) for the exclusive use of one or more but fewer than all of
3 the units.

4 (23) "Master association" means an organization described in RCW
5 64.34.276, whether or not it is also an association described in RCW
6 64.34.300.

7 (24) "Mortgage" means a mortgage, deed of trust or real estate
8 contract.

9 (25) "Person" means a natural person, corporation, partnership,
10 limited partnership, trust, governmental subdivision or agency, or
11 other legal entity.

12 (26) "Purchaser" means any person, other than a declarant or a
13 dealer, who by means of a disposition acquires a legal or equitable
14 interest in a unit other than (a) a leasehold interest, including
15 renewal options, of less than twenty years at the time of creation of
16 the unit, or (b) as security for an obligation.

17 (27) "Real property" means any fee, leasehold or other estate or
18 interest in, over, or under land, including structures, fixtures, and
19 other improvements thereon and easements, rights and interests
20 appurtenant thereto which by custom, usage, or law pass with a
21 conveyance of land although not described in the contract of sale or
22 instrument of conveyance. "Real property" includes parcels, with or
23 without upper or lower boundaries, and spaces that may be filled with
24 air or water.

25 (28) "Residential purposes" means use for dwelling or recreational
26 purposes, or both.

27 (29) "Special declarant rights" means rights reserved for the
28 benefit of a declarant to: (a) Complete improvements indicated on
29 survey maps and plans filed with the declaration under RCW 64.34.232;
30 (b) exercise any development right under RCW 64.34.236; (c) maintain
31 sales offices, management offices, signs advertising the condominium,
32 and models under RCW 64.34.256; (d) use easements through the common
33 elements for the purpose of making improvements within the condominium
34 or within real property which may be added to the condominium under RCW
35 64.34.260; (e) make the condominium part of a larger condominium or a
36 development under RCW 64.34.280; (f) make the condominium subject to a
37 master association under RCW 64.34.276; or (g) appoint or remove any
38 officer of the association or any master association or any member of

1 the board of directors, or to veto or approve a proposed action of the
2 board or association, during any period of declarant control under RCW
3 64.34.308(4).

4 (30) "Timeshare" shall have the meaning specified in the timeshare
5 act, RCW 64.36.010(11).

6 (31) "Unit" means a physical portion of the condominium designated
7 for separate ownership, the boundaries of which are described pursuant
8 to RCW 64.34.216(1)(d). "Separate ownership" includes leasing a unit
9 in a leasehold condominium under a lease that expires contemporaneously
10 with any lease, the expiration or termination of which will remove the
11 unit from the condominium.

12 (32) "Unit owner" means a declarant or other person who owns a unit
13 or leases a unit in a leasehold condominium under a lease that expires
14 simultaneously with any lease, the expiration or termination of which
15 will remove the unit from the condominium, but does not include a
16 person who has an interest in a unit solely as security for an
17 obligation. "Unit owner" means the vendee, not the vendor, of a unit
18 under a real estate contract.

19 **Sec. 10.** RCW 64.34.312 and 1989 c 43 s 3-104 are each amended to
20 read as follows:

21 (1) Within sixty days after the termination of the period of
22 declarant control provided in RCW 64.34.308(4) or, in the absence of
23 such period, within sixty days after the first conveyance of a unit in
24 the condominium, the declarant shall deliver to the association all
25 property of the unit owners and of the association held or controlled
26 by the declarant including, but not limited to:

27 (a) The original or a photocopy of the recorded declaration and
28 each amendment to the declaration;

29 (b) The certificate of incorporation and a copy or duplicate
30 original of the articles of incorporation of the association as filed
31 with the secretary of state;

32 (c) The bylaws of the association;

33 (d) The minute books, including all minutes, and other books and
34 records of the association;

35 (e) Any rules and regulations that have been adopted;

36 (f) Resignations of officers and members of the board who are
37 required to resign because the declarant is required to relinquish
38 control of the association;

1 (g) The financial records, including canceled checks, bank
2 statements, and financial statements of the association, and source
3 documents from the time of incorporation of the association through the
4 date of transfer of control to the unit owners;

5 (h) Association funds or the control of the funds of the
6 association;

7 (i) All tangible personal property of the association, represented
8 by the declarant to be the property of the association or ostensibly
9 the property of the association, and an inventory of the property;

10 (j) Except for alterations to a unit done by a unit owner other
11 than the declarant, a copy of the declarant's plans and specifications
12 utilized in the construction or remodeling of the condominium, with a
13 certificate of the declarant or a licensed architect or engineer that
14 the plans and specifications represent, to the best of their knowledge
15 and belief, the actual plans and specifications utilized by the
16 declarant in the construction or remodeling of the condominium;

17 (k) Insurance policies or copies thereof for the condominium and
18 association;

19 (l) Copies of any certificates of occupancy that may have been
20 issued for the condominium;

21 (m) Any other permits issued by governmental bodies applicable to
22 the condominium in force or issued within one year before the date of
23 transfer of control to the unit owners;

24 (n) All written warranties that are still in effect for the common
25 elements, or any other areas or facilities which the association has
26 the responsibility to maintain and repair, from the contractor,
27 subcontractors, suppliers, and manufacturers and all owners' manuals or
28 instructions furnished to the declarant with respect to installed
29 equipment or building systems;

30 (o) A roster of unit owners and eligible mortgagees and their
31 addresses and telephone numbers, if known, as shown on the declarant's
32 records and the date of closing of the first sale of each unit sold by
33 the declarant;

34 (p) Any leases of the common elements or areas and other leases to
35 which the association is a party;

36 (q) Any employment contracts or service contracts in which the
37 association is one of the contracting parties or service contracts in
38 which the association or the unit owners have an obligation or a

1 responsibility, directly or indirectly, to pay some or all of the fee
2 or charge of the person performing the service; (~~and~~)

3 (r) A copy of any qualified warranty issued to the association as
4 provided for in section 1001 of this act; and

5 (s) All other contracts to which the association is a party.

6 (2) Upon the transfer of control to the unit owners, the records of
7 the association shall be audited as of the date of transfer by an
8 independent certified public accountant in accordance with generally
9 accepted auditing standards unless the unit owners, other than the
10 declarant, by two-thirds vote elect to waive the audit. The cost of
11 the audit shall be a common expense unless otherwise provided in the
12 declaration. The accountant performing the audit shall examine
13 supporting documents and records, including the cash disbursements and
14 related paid invoices, to determine if expenditures were for
15 association purposes and the billings, cash receipts, and related
16 records to determine if the declarant was charged for and paid the
17 proper amount of assessments.

18 **Sec. 11.** RCW 64.34.410 and 2002 c 323 s 10 are each amended to
19 read as follows:

20 (1) A public offering statement shall contain the following
21 information:

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

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

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

25 (d) The relationship of the management company to the declarant, if
26 any;

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

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

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

36 (h) A brief description of the restrictions, if any, on the renting
37 or leasing of units by the declarant or other unit owners, together

- 1 with the rights, if any, of the declarant to rent or lease at least a
2 majority of units;
- 3 (i) The number of existing units in the condominium and the maximum
4 number of units that may be added to the condominium;
- 5 (j) A list of the principal common amenities in the condominium
6 which materially affect the value of the condominium and those that
7 will or may be added to the condominium;
- 8 (k) A list of the limited common elements assigned to the units
9 being offered for sale;
- 10 (l) The identification of any real property not in the condominium,
11 the owner of which has access to any of the common elements, and a
12 description of the terms of such access;
- 13 (m) The identification of any real property not in the condominium
14 to which unit owners have access and a description of the terms of such
15 access;
- 16 (n) The status of construction of the units and common elements,
17 including estimated dates of completion if not completed;
- 18 (o) The estimated current common expense liability for the units
19 being offered;
- 20 (p) An estimate of any payment with respect to the common expense
21 liability for the units being offered which will be due at closing;
- 22 (q) The estimated current amount and purpose of any fees not
23 included in the common expenses and charged by the declarant or the
24 association for the use of any of the common elements;
- 25 (r) Any assessments which have been agreed to or are known to the
26 declarant and which, if not paid, may constitute a lien against any
27 units or common elements in favor of any governmental agency;
- 28 (s) The identification of any parts of the condominium, other than
29 the units, which any individual owner will have the responsibility for
30 maintaining;
- 31 (t) If the condominium involves a conversion condominium, the
32 information required by RCW 64.34.415;
- 33 (u) Whether timesharing is restricted or prohibited, and if
34 restricted, a general description of such restrictions;
- 35 (v) A list of all development rights reserved to the declarant and
36 all special declarant rights reserved to the declarant, together with
37 the dates such rights must terminate, and a copy of or reference by
38 recording number to any recorded transfer of a special declarant right;

1 (w) A description of any material differences in terms of
2 furnishings, fixtures, finishes, and equipment between any model unit
3 available to the purchaser at the time the agreement for sale is
4 executed and the unit being offered;

5 (x) Any liens on real property to be conveyed to the association
6 required to be disclosed pursuant to RCW 64.34.435(2)(b);

7 (y) A list of any physical hazards known to the declarant which
8 particularly affect the condominium or the immediate vicinity in which
9 the condominium is located and which are not readily ascertainable by
10 the purchaser;

11 (z) A brief description of any construction warranties to be
12 provided to the purchaser;

13 (aa) Any building code violation citations received by the
14 declarant in connection with the condominium which have not been
15 corrected;

16 (bb) A statement of any unsatisfied judgments or pending suits
17 against the association, a statement of the status of any pending suits
18 material to the condominium of which the declarant has actual
19 knowledge, and a statement of any litigation brought by an owners'
20 association, unit owner, or governmental entity in which the declarant
21 or any affiliate of the declarant has been a defendant, arising out of
22 the construction, sale, or administration of any condominium within the
23 previous five years, together with the results thereof, if known;

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

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

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

31 (ff) Any reports or statements required by RCW 64.34.415 or
32 64.34.440(6)(a). RCW 64.34.415 shall apply to the public offering
33 statement of a condominium in connection with which a final certificate
34 of occupancy was issued more than sixty calendar months prior to the
35 preparation of the public offering statement whether or not the
36 condominium is a conversion condominium as defined in RCW
37 64.34.020(10);

38 (gg) A list of the documents which the prospective purchaser is

1 entitled to receive from the declarant before the rescission period
2 commences;

3 (hh) A notice which states: A purchaser may not rely on any
4 representation or express warranty unless it is contained in the public
5 offering statement or made in writing signed by the declarant or by any
6 person identified in the public offering statement as the declarant's
7 agent;

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

13 (jj) Any other information and cross-references which the declarant
14 believes will be helpful in describing the condominium to the
15 recipients of the public offering statement, all of which may be
16 included or not included at the option of the declarant;

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

20 (ll) A notice that is substantially in the form required by RCW
21 64.50.050; and

22 (mm) A statement, as required by section 301 of this act, as to
23 whether the units or common elements of the condominium are covered by
24 a qualified warranty, and a history of claims under any such warranty.

25 (2) The public offering statement shall include copies of each of
26 the following documents: The declaration, the survey map and plans,
27 the articles of incorporation of the association, bylaws of the
28 association, rules and regulations, if any, current or proposed budget
29 for the association, and the balance sheet of the association current
30 within ninety days if assessments have been collected for ninety days
31 or more.

32 If any of the foregoing documents listed in this subsection are not
33 available because they have not been executed, adopted, or recorded,
34 drafts of such documents shall be provided with the public offering
35 statement, and, before closing the sale of a unit, the purchaser shall
36 be given copies of any material changes between the draft of the
37 proposed documents and the final documents.

38 (3) The disclosures required by subsection (1)(g), (k), (s), (u),

1 (v), and (cc) of this section shall also contain a reference to
2 specific sections in the condominium documents which further explain
3 the information disclosed.

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

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

11 **Sec. 12.** RCW 64.50.010 and 2002 c 323 s 2 are each amended to read
12 as follows:

13 Unless the context clearly requires otherwise, the definitions in
14 this section apply throughout this chapter.

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

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
36 furnishing the design, supervision, inspection, construction, or
37 observation of the construction of any improvement to real property,

1 whether operating as a sole proprietor, partnership, corporation, or
2 other business entity.

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

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

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

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

21 **Sec. 13.** RCW 64.50.020 and 2002 c 323 s 3 are each amended to read
22 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (d) If the claimant rejects the offer made by the construction
17 professional pursuant to (b)(i) or (ii) of this subsection to either
18 remedy the construction defect or to compromise and settle the claim by
19 monetary payment, the claimant shall serve written notice of the
20 claimant's rejection on the construction professional. After service
21 of the rejection notice, 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 offer made pursuant to (b)(i) or (ii) of
27 this subsection, then at anytime thereafter the construction
28 professional may terminate the offer by serving written notice to the
29 claimant.

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

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

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

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

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

27 NEW SECTION. **Sec. 14.** Sections 2, 5, and 6 of this act apply only
28 to condominiums created by declarations recorded on or after July 1,
29 2004.

30 NEW SECTION. **Sec. 15.** If any provision of this act or its
31 application to any person or circumstance is held invalid, the
32 remainder of the act or the application of the provision to other
33 persons or circumstances is not affected.

34 NEW SECTION. **Sec. 16.** Sections 1 through 15 of this act take
35 effect July 1, 2004.

ARTICLE 1
GENERAL PROVISIONS

NEW SECTION. **Sec. 101.** DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

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

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

(4) "Common element" has the meaning in RCW 64.34.020.

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

(6) "Construction professional" has the meaning in RCW 64.50.010.

(7) "Conversion condominium" has the meaning in RCW 64.34.020.

(8) "Declarant" has the meaning in RCW 64.34.020.

(9) "Declarant control" has the meaning in RCW 64.34.020.

(10) "Defect" means any aspect of a condominium unit or common element which constitutes a breach of the implied warranties set forth in RCW 64.34.445.

(11) "Limited common element" has the meaning in RCW 64.34.020.

(12) "Material" means substantive, not simply formal; significant to a reasonable person; not trivial or insignificant. When used with respect to a particular construction defect, "material" does not require that the construction defect render the unit or common element unfit for its intended purpose or uninhabitable.

(13) "Mediation" means a collaborative process in which two or more parties meet and attempt, with the assistance of a mediator, to resolve issues in dispute between them.

(14) "Mediation session" means a meeting between two or more parties to a dispute during which they are engaged in mediation.

(15) "Mediator" means a neutral and impartial facilitator with no decision-making power who assists parties in negotiating a mutually acceptable settlement of issues in dispute between them.

(16) "Person" has the meaning in RCW 64.34.020.

(17) "Public offering statement" has the meaning in RCW 64.34.410.

(18) "Qualified insurer" means an entity that holds a certificate

1 of authority under RCW 48.05.030, or an eligible insurer under chapter
2 48.15 RCW.

3 (19) "Qualified warranty" means an insurance policy issued by a
4 qualified insurer that complies with the requirements of this chapter.
5 A qualified warranty includes coverage for repair of physical damage
6 caused by the defects covered by the qualified warranty, except to the
7 extent of any exclusions and limitations under this chapter.

8 (20) "Resale certificate" means the statement to be delivered by
9 the association under RCW 64.34.425.

10 (21) "Transition date" means the date on which the declarant is
11 required to deliver to the association the property of the association
12 under RCW 64.34.312.

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

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

15 **ARTICLE 2**
16 **EXCLUSIVE REMEDY AND PROCEDURE**
17 **IN CASES WHERE A QUALIFIED WARRANTY IS PROVIDED**

18 NEW SECTION. **Sec. 201.** No declarant, affiliate of a declarant, or
19 construction professional is liable to a unit owner or an association
20 for damages awarded for repair of construction defects and resulting
21 physical damage, and chapter 64.50 RCW shall not apply if: (1) Every
22 unit is the subject of a qualified warranty; and (2) the association
23 has been issued a qualified warranty with respect to the common
24 elements. If a construction professional agrees on terms satisfactory
25 to the qualified insurer to partially or fully indemnify the qualified
26 insurer with respect to a defect caused by the construction
27 professional, the liability of the construction professional for the
28 defect and resulting physical damage caused by him or her shall not
29 exceed damages recoverable under the terms of the qualified warranty
30 for the defect. Any indemnity claim by the qualified insurer shall be
31 by separate action or arbitration, and no unit owner or association
32 shall be joined therein. A qualified warranty may also be provided in
33 the case of improvements made or contracted for by a declarant as part
34 of a conversion condominium, and in such case, declarant's liability
35 with respect to such improvements shall be limited as set forth in this
36 section.

1 **ARTICLE 3**
2 **DISCLOSURE**

3 NEW SECTION. **Sec. 301.** (1) Every public offering statement and
4 resale certificate shall affirmatively state whether or not the unit
5 and/or the common elements are covered by a qualified warranty, and
6 shall provide to the best knowledge of the person preparing the public
7 offering statement or resale certificate a history of claims under the
8 warranty.

9 (2) The history of claims must include, for each claim, not less
10 than the following information for the unit and/or the common elements,
11 as applicable, to the best knowledge of the person providing the
12 information:

- 13 (a) The type of claim that was made;
14 (b) The resolution of the claim;
15 (c) The type of repair performed;
16 (d) The date of the repair;
17 (e) The cost of the repair; and
18 (f) The name of the person or entity who performed the repair.

19 **ARTICLE 4**
20 **MINIMUM COVERAGE STANDARDS FOR QUALIFIED WARRANTIES**

21 NEW SECTION. **Sec. 401.** TWO-YEAR MATERIALS AND LABOR WARRANTY.
22 (1) The minimum coverage for the two-year materials and labor warranty
23 is:

24 (a) In the first twelve months, for other than the common elements,
25 (i) coverage for any defect in materials and labor; and (ii) subject to
26 subsection (2) of this section, coverage for a violation of the
27 building code;

28 (b) In the first fifteen months, for the common elements, (i)
29 coverage for any defect in materials and labor; and (ii) subject to
30 subsection (2) of this section, coverage for a violation of the
31 building code;

32 (c) In the first twenty-four months, (i) coverage for any defect in
33 materials and labor supplied for the electrical, plumbing, heating,
34 ventilation, and air conditioning delivery and distribution systems;
35 (ii) coverage for any defect in materials and labor supplied for the
36 exterior cladding, caulking, windows, and doors that may lead to

1 detachment or material damage to the unit or common elements; (iii)
2 coverage for any defect in materials and labor which renders the unit
3 unfit to live in; and (iv) subject to subsection (2) of this section,
4 coverage for a violation of the building code.

5 (2) Noncompliance with the building code is considered a defect
6 covered by a qualified warranty if the noncompliance:

- 7 (a) Constitutes an unreasonable health or safety risk; or
- 8 (b) Has resulted in, or is likely to result in, material damage to
9 the unit or common elements.

10 NEW SECTION. Sec. 402. FIVE-YEAR BUILDING ENVELOPE WARRANTY. The
11 minimum coverage for the building envelope warranty is five years for
12 defects in the building envelope of a condominium, including a defect
13 which permits unintended water penetration so that it causes, or is
14 likely to cause, material damage to the unit or common elements.

15 NEW SECTION. Sec. 403. TEN-YEAR STRUCTURAL DEFECTS WARRANTY. The
16 minimum coverage for the structural defects warranty is ten years for:

- 17 (1) Any defect in materials and labor that results in the failure
18 of a load-bearing part of the condominium; and
- 19 (2) Any defect which causes structural damage that materially and
20 adversely affects the use of the condominium for residential occupancy.

21 NEW SECTION. Sec. 404. BEGINNING DATES FOR WARRANTY COVERAGE.

22 (1) For the unit, the beginning date of the qualified warranty coverage
23 is the earlier of:

- 24 (a) Actual occupancy of the unit; or
- 25 (b) Transfer of legal title to the unit.

26 (2) For the common elements, the beginning date of a qualified
27 warranty is the date a temporary or final certificate of occupancy is
28 issued for the common elements in each separate multiunit building,
29 comprised by the condominium.

30 NEW SECTION. Sec. 405. BEGINNING DATES FOR SPECIAL CASES;

31 DECLARANT CONTROL. (1) If an unsold unit is occupied as a rental unit,
32 the qualified warranty beginning date for such unit is the date the
33 unit is first occupied.

34 (2) If the declarant subsequently offers to sell a unit which is

1 rented, the declarant must disclose, in writing, to each prospective
2 purchaser, the date on which the qualified warranty expires.

3 (3) If the declarant retains any declarant control over the
4 association on the date that is fourteen full calendar months following
5 the month in which the beginning date for common element warranty
6 coverage commences, the declarant shall within thirty days thereafter
7 cause an election to be held in which the declarant may not vote, for
8 the purpose of electing one or more board members who are empowered to
9 make warranty claims. If at such time, one or more independent board
10 members hold office, no additional election need be held, and such
11 independent board members are empowered to make warranty claims. The
12 declarant shall inform all independent board members of their right to
13 make warranty claims at no later than sixteen full calendar months
14 following the beginning date of the common element warranty.

15 NEW SECTION. **Sec. 406.** LIVING EXPENSE ALLOWANCE. (1) If repairs
16 are required under the qualified warranty and damage to the unit, or
17 the extent of the repairs renders the unit uninhabitable, the qualified
18 warranty must cover reasonable living expenses incurred by the owner to
19 live elsewhere in an amount commensurate with the nature of the unit.

20 (2) If a qualified insurer establishes a maximum amount per day for
21 claims for living expenses, the limit must be the greater of one
22 hundred dollars per day or a reasonable amount commensurate with the
23 nature of the unit for the complete reimbursement of the actual
24 accommodation expenses incurred by the owner at a hotel, motel, or
25 other rental accommodation up to the day the unit is ready for
26 occupancy, subject to the owner receiving twenty-four hours' advance
27 notice.

28 NEW SECTION. **Sec. 407.** WARRANTY ON REPAIRS AND REPLACEMENTS. (1)
29 All repairs and replacements made under a qualified warranty must be
30 warranted by the qualified warranty against defects in materials and
31 labor until the later of:

32 (a) The first anniversary of the date of completion of the repair
33 or replacement; or

34 (b) The expiration of the applicable qualified warranty coverage.

35 (2) All repairs and replacements made under a qualified warranty
36 must be completed in a reasonable manner using materials and labor
37 conforming to the building code and industry standards.

1 **ARTICLE 5**

2 **PERMITTED TERMS FOR QUALIFIED WARRANTIES**

3 **NEW SECTION. Sec. 501.** A qualified insurer may include any of the
4 following provisions in a qualified warranty:

5 (1) If the qualified insurer makes a payment or assumes liability
6 for any payment or repair under a qualified warranty, the owner and
7 association must fully support and assist the qualified insurer in
8 pursuing any rights that the qualified insurer may have against the
9 declarant, and any construction professional that has contractual or
10 common law obligations to the declarant, whether such rights arose by
11 contract, subrogation, or otherwise.

12 (2) Warranties or representations made by a declarant which are in
13 addition to the warranties set forth in this chapter are not binding on
14 the qualified insurer unless and to the extent specifically provided in
15 the text of the warranty; and disclaimers of specific defects made by
16 agreement between the declarant and the unit purchaser under RCW
17 64.34.450 act as an exclusion of the specified defect from the warranty
18 coverage.

19 (3) An owner and the association must permit the qualified insurer
20 or declarant, or both, to enter the unit at reasonable times, after
21 reasonable notice to the owner and the association:

- 22 (a) To monitor the unit or its components;
23 (b) To inspect for required maintenance;
24 (c) To investigate complaints or claims; or
25 (d) To undertake repairs under the qualified warranty.

26 If any reports are produced as a result of any of the activities
27 referred to in (a) through (d) of this subsection, the reports must be
28 provided to the owner and the association.

29 (4) An owner and the association must provide to the qualified
30 insurer all information and documentation that the owner and the
31 association have available, as reasonably required by the qualified
32 insurer to investigate a claim or maintenance requirement, or to
33 undertake repairs under the qualified warranty.

34 (5) To the extent any damage to a unit is caused or made worse by
35 the unreasonable refusal of the association, or an owner or occupant to
36 permit the qualified insurer or declarant access to the unit for the
37 reasons in subsection (3) of this section, or to provide the

1 information required by subsection (4) of this section, that damage is
2 excluded from the qualified warranty.

3 (6) In any claim under a qualified warranty issued to the
4 association, the association shall have the sole right to prosecute and
5 settle any claim with respect to the common elements.

6 **ARTICLE 6**

7 **PERMITTED EXCLUSIONS FROM QUALIFIED WARRANTIES--GENERAL**

8 NEW SECTION. **Sec. 601.** (1) A qualified insurer may exclude from
9 a qualified warranty:

10 (a) Landscaping, both hard and soft, including plants, fencing,
11 detached patios, planters not forming a part of the building envelope,
12 gazebos, and similar structures;

13 (b) Any commercial use area and any construction associated with a
14 commercial use area;

15 (c) Roads, curbs, and lanes;

16 (d) Subject to subsection (2) of this section, site grading and
17 surface drainage except as required by the building code;

18 (e) Municipal services operation, including sanitary and storm
19 sewer;

20 (f) Septic tanks or septic fields;

21 (g) The quality or quantity of water, from either a piped municipal
22 water supply or a well;

23 (h) A water well, but excluding equipment installed for the
24 operation of a water well used exclusively for a unit, which equipment
25 is part of the plumbing system for that unit for the purposes of the
26 qualified warranty.

27 (2) The exclusions permitted by subsection (1) of this section do
28 not include any of the following:

29 (a) A driveway or walkway;

30 (b) Recreational and amenity facilities situated in, or included as
31 the common property of, a unit;

32 (c) A parking structure in a multiunit building;

33 (d) A retaining wall that:

34 (i) An authority with jurisdiction requires to be designed by a
35 professional engineer; or

36 (ii) Is reasonably required for the direct support of, or retaining
37 soil away from, a unit, driveway, or walkway.

1 **ARTICLE 7**

2 **PERMITTED EXCLUSIONS--DEFECTS**

3 NEW SECTION. **Sec. 701.** A qualified insurer may exclude any or all
4 of the following items from a qualified warranty:

5 (1) Weathering, normal wear and tear, deterioration, or deflection
6 consistent with normal industry standards;

7 (2) Normal shrinkage of materials caused by drying after
8 construction;

9 (3) Any loss or damage which arises while a unit is being used
10 primarily or substantially for nonresidential purposes;

11 (4) Materials, labor, or design supplied by an owner;

12 (5) Any damage to the extent caused or made worse by an owner or
13 third party, including:

14 (a) Negligent or improper maintenance or improper operation by
15 anyone other than the declarant or its employees, agents, or
16 subcontractors;

17 (b) Failure of anyone, other than the declarant or its employees,
18 agents, or subcontractors, to comply with the warranty requirements of
19 the manufacturers of appliances, equipment, or fixtures;

20 (c) Alterations to the unit, including converting nonliving space
21 into living space or converting a unit into two or more units, by
22 anyone other than the declarant or its employees, agents, or
23 subcontractors while undertaking their obligations under the sales
24 contract; and

25 (d) Changes to the grading of the ground by anyone other than the
26 declarant or its employees, agents, or subcontractors;

27 (6) An owner failing to take timely action to prevent or minimize
28 loss or damage, including failing to give prompt notice to the
29 qualified insurer of a defect or discovered loss, or a potential defect
30 or loss;

31 (7) Any damage caused by insects, rodents, or other animals, unless
32 the damage results from noncompliance with the building code by the
33 declarant or its employees, agents, or subcontractors;

34 (8) Accidental loss or damage from acts of nature including, but
35 not limited to, fire, explosion, smoke, water escape, glass breakage,
36 windstorm, hail, lightning, falling trees, aircraft, vehicles, flood,
37 earthquake, avalanche, landslide, and changes in the level of the

1 underground water table which are not reasonably foreseeable by the
2 declarant;

3 (9) Bodily injury or damage to personal property or real property
4 which is not part of a unit;

5 (10) Any defect in, or caused by, materials or work supplied by
6 anyone other than the declarant, an affiliate of a declarant, or their
7 respective contractors, employees, agents, or subcontractors;

8 (11) Changes, alterations, or additions made to a unit by anyone
9 after initial occupancy, except those performed by the declarant or its
10 employees, agents, or subcontractors as required by the qualified
11 warranty or under the construction contract or sales agreement;

12 (12) Contaminated soil;

13 (13) Subsidence of the land around a unit or along utility lines,
14 other than subsidence beneath footings of a unit or under driveways or
15 walkways;

16 (14) Diminution in the value of the unit.

17 **ARTICLE 8**
18 **MONETARY LIMITS ON QUALIFIED WARRANTY COVERAGE**

19 NEW SECTION. **Sec. 801.** (1) A qualified insurer may establish a
20 monetary limit on the amount of the warranty. Any limit must not be
21 less than:

22 (a) For a unit, the lesser of (i) the original purchase price paid
23 by the owner, or (ii) one hundred thousand dollars;

24 (b) For common elements, the lesser of (i) the total original
25 purchase price for all components of the multiunit building, or (ii)
26 one hundred fifty thousand dollars times the number of units of the
27 condominium.

28 (2) When calculating the cost of warranty claims under the standard
29 limits under a qualified warranty, a qualified insurer may include:

30 (a) The cost of repairs;

31 (b) The cost of any investigation, engineering, and design required
32 for the repairs; and

33 (c) The cost of supervision of repairs, including professional
34 review, but excluding legal costs.

35 (3) The minimum amounts in subsections (1) and (2) of this section
36 shall be adjusted at the end of each calendar year after the effective
37 date by an amount equal to the percentage change in the consumer price

1 index for all urban consumers, all items, as published from time to
2 time by the United States department of labor. The adjustment does not
3 affect any qualified warranty issued before the adjustment date.

4 **ARTICLE 9**

5 **PROHIBITED POLICY PROVISIONS**

6 NEW SECTION. **Sec. 901.** (1) A qualified insurer must not include
7 in a qualified warranty any provision that requires an owner or the
8 association:

9 (a) To sign a release before repairs are performed under the
10 qualified warranty; or

11 (b) To pay a deductible in excess of five hundred dollars for the
12 repair of any defect in a unit covered by the qualified warranty, or in
13 excess of the lesser of five hundred dollars per unit or ten thousand
14 dollars in the aggregate for any defect in the common elements.

15 (2) All exclusions must be permitted by this chapter and stated in
16 the qualified warranty.

17 **ARTICLE 10**

18 **CONSEQUENCES OF NOT PROVIDING INFORMATION**

19 NEW SECTION. **Sec. 1001.** (1) If coverage under a qualified
20 warranty is conditional on an owner undertaking proper maintenance, or
21 if coverage is excluded for damage caused by negligence by the owner or
22 association with respect to maintenance or repair by the owner or
23 association, the conditions or exclusions apply only to maintenance
24 requirements or procedures: (a) Provided to the original owner in the
25 case of the unit warranty, and to the association for the common
26 element warranty with an estimation of the required cost thereof for
27 the common element warranty provided in the budget prepared by the
28 declarant; or (b) that would be obvious to a reasonable and prudent
29 layperson. Recommended maintenance requirements and procedures are
30 sufficient for purposes of this subsection if consistent with knowledge
31 generally available in the construction industry at the time the
32 qualified warranty is issued.

33 (2) If an original owner or the association has not been provided
34 with the manufacturer's documentation or warranty information, or both,
35 or with recommended maintenance and repair procedures for any component

1 of a unit, the relevant exclusion does not apply. The common element
2 warranty is included in the written warranty to be provided to the
3 association under RCW 64.34.312.

4 **ARTICLE 11**

5 **MANDATORY NOTICE OF EXPIRATION OF WARRANTY**

6 NEW SECTION. **Sec. 1101.** (1) A qualified insurer must, as soon as
7 reasonably possible after the beginning date for the qualified
8 warranty, provide an owner and association with a schedule of the
9 expiration dates for coverages under the qualified warranty as
10 applicable to the unit and the common elements, respectively.

11 (2) The expiration date schedule for a unit must set out all the
12 required dates on an adhesive label that is a minimum size of four
13 inches by four inches and is suitable for affixing by the owner in a
14 conspicuous location in the unit.

15 **ARTICLE 12**

16 **DUTY TO MITIGATE**

17 NEW SECTION. **Sec. 1201.** (1) The qualified insurer may require an
18 owner or association to mitigate any damage to a unit or the common
19 elements, including damage caused by defects or water penetration, as
20 set out in the qualified warranty.

21 (2) Subject to subsection (3) of this section, for defects covered
22 by the qualified warranty, the duty to mitigate is met through timely
23 notice in writing to the qualified insurer.

24 (3) The owner must take all reasonable steps to restrict damage to
25 the unit if the defect requires immediate attention.

26 (4) The owner's duty to mitigate survives even if:

27 (a) The unit is unoccupied;

28 (b) The unit is occupied by someone other than the owner;

29 (c) Water penetration does not appear to be causing damage; or

30 (d) The owner advises the homeowners' association corporation about
31 the defect.

32 (5) If damage to a unit is caused or made worse by the failure of
33 an owner to take reasonable steps to mitigate as set out in this
34 section, the damage may, at the option of the qualified insurer, be
35 excluded from qualified warranty coverage.

1 **ARTICLE 13**
2 **NOTICE OF CLAIM**

3 NEW SECTION. **Sec. 1301.** (1) Within a reasonable time after the
4 discovery of a defect and before the expiration of the applicable
5 qualified warranty coverage, a claimant must give to the qualified
6 insurer and the declarant written notice in reasonable detail that
7 provides particulars of any specific defects covered by the qualified
8 warranty.

9 (2) The qualified insurer may require the notice under subsection
10 (1) of this section to include:

- 11 (a) The qualified warranty number; and
12 (b) Copies of any relevant documentation and correspondence between
13 the claimant and the declarant, to the extent any such documentation
14 and correspondence is in the control or possession of the claimant.

15 **ARTICLE 14**
16 **HANDLING OF CLAIMS**

17 NEW SECTION. **Sec. 1401.** A qualified insurer must, on receipt of
18 a notice of a claim under a qualified warranty, promptly make
19 reasonable attempts to contact the claimant to arrange an evaluation of
20 the claim. Claims shall be handled in accordance with the claims
21 procedures set forth in rules by the insurance commissioner, and as
22 follows:

23 (1) The qualified insurer must make all reasonable efforts to avoid
24 delays in responding to a claim under a qualified warranty, evaluating
25 the claim, and scheduling any required repairs.

26 (2) If, after evaluating a claim under a qualified warranty, the
27 qualified insurer determines that the claim is not valid, or not
28 covered under the qualified warranty, the qualified insurer must: (a)
29 Notify the claimant of the decision in writing; (b) set out the reasons
30 for the decision; and (c) set out the rights of the parties under the
31 third-party dispute resolution process for the warranty.

32 (3) Repairs must be undertaken in a timely manner, with reasonable
33 consideration given to weather conditions and the availability of
34 materials and labor.

35 (4) On completing any repairs, the qualified insurer must deliver

1 a copy of the repair specifications to the claimant along with a letter
2 confirming the date the repairs were completed and referencing the
3 repair warranty provided for in section 407 of this act.

4 **ARTICLE 15**

5 **MEDIATION OF DISPUTED CLAIMS**

6 NEW SECTION. **Sec. 1501.** (1) If a dispute between a qualified
7 insurer and a claimant arising under a qualified warranty cannot be
8 resolved by informal negotiation within a reasonable time, the claimant
9 or qualified insurer may require that the dispute be referred to
10 mediation by delivering written notice to the other to mediate.

11 (2) If a party delivers a request to mediate under subsection (1)
12 of this section, the qualified insurer and the party must attend a
13 mediation session in relation to the dispute and may invite to
14 participate in the mediation any other party to the dispute who may be
15 liable.

16 (3) Within twenty-one days after the party has delivered a request
17 to mediate under subsection (1) of this section, the parties must,
18 directly or with the assistance of an independent, neutral person or
19 organization, jointly appoint a mutually acceptable mediator.

20 (4) If the parties do not jointly appoint a mutually acceptable
21 mediator within the time required by subsection (3) of this section,
22 the party may apply to the superior court of the county where the
23 project is located, which must appoint a mediator taking into account:

- 24 (a) The need for the mediator to be neutral and independent;
- 25 (b) The qualifications of the mediator;
- 26 (c) The mediator's fees;
- 27 (d) The mediator's availability; and
- 28 (e) Any other consideration likely to result in the selection of an
29 impartial, competent, and effective mediator.

30 (5) After selecting the mediator under subsection (4) of this
31 section, the superior court must promptly notify the parties in writing
32 of that selection.

33 (6) The mediator selected by the superior court is deemed to be
34 appointed by the parties effective the date of the notice sent under
35 subsection (5) of this section.

36 (7) The first mediation session must occur within twenty-one days

1 of the appointment of the mediator at the date, time, and place
2 selected by the mediator.

3 (8) A party may attend a mediation session by representative if:
4 (a) The party is under a legal disability and the representative is
5 that party's guardian ad litem;
6 (b) The party is not an individual; or
7 (c) The party is a resident of a jurisdiction other than Washington
8 and will not be in Washington at the time of the mediation session.

9 (9) A representative who attends a mediation session in the place
10 of a party as permitted by subsection (8) of this section:
11 (a) Must be familiar with all relevant facts on which the party, on
12 whose behalf the representative attends, intends to rely; and
13 (b) Must have full authority to settle, or have immediate access to
14 a person who has full authority to settle, on behalf of the party on
15 whose behalf the representative attends.

16 (10) A party or a representative who attends the mediation session
17 may be accompanied by counsel.

18 (11) Any other person may attend a mediation session on consent of
19 all parties or their representatives.

20 (12) At least seven days before the first mediation session is to
21 be held, each party must deliver to the mediator a statement briefly
22 setting out:
23 (a) The facts on which the party intends to rely; and
24 (b) The matters in dispute.

25 (13) The mediator must promptly send each party's statement to each
26 of the other parties.

27 (14) Before the first mediation session, the parties must enter
28 into a retainer agreement with the mediator which must:
29 (a) Disclose the cost of the mediation services; and
30 (b) Provide that the cost of the mediation will be paid:
31 (i) Equally by the parties; or
32 (ii) On any other specified basis agreed by the parties.

33 (15) The mediator may conduct the mediation in any manner he or she
34 considers appropriate to assist the parties to reach a resolution that
35 is timely, fair, and cost-effective.

36 (16) A person may not disclose, or be compelled to disclose, in any
37 proceeding, oral or written information acquired or an opinion formed,
38 including, without limitation, any offer or admission made in
39 anticipation of or during a mediation session.

1 (17) Nothing in subsection (16) of this section precludes a party
2 from introducing into evidence in a proceeding any information or
3 records produced in the course of the mediation that are otherwise
4 producible or compellable in those proceedings.

5 (18) A mediation session is concluded when:

6 (a) All issues are resolved;

7 (b) The mediator determines that the process will not be productive
8 and so advises the parties or their representatives; or

9 (c) The mediation session is completed and there is no agreement to
10 continue.

11 (19) If the mediation resolves some but not all issues, the
12 mediator may, at the request of all parties, complete a report setting
13 out any agreements made as a result of the mediation, including,
14 without limitation, any agreements made by the parties on any of the
15 following:

16 (a) Facts;

17 (b) Issues; and

18 (c) Future procedural steps.

19 **ARTICLE 16**
20 **ARBITRATION**

21 NEW SECTION. **Sec. 1601.** A qualified warranty may include
22 mandatory binding arbitration of all disputes arising out of or in
23 connection with a qualified warranty. The provision may provide that
24 all claims for a single condominium be heard by the same arbitrator,
25 but shall not permit the joinder or consolidation of any other person
26 or entity. The arbitration shall comply with the following minimum
27 procedural standards:

28 (1) Any demand for arbitration shall be delivered by certified mail
29 return receipt requested, and by ordinary first class mail. The party
30 initiating the arbitration shall address the notice to the address last
31 known to the initiating party in the exercise of reasonable diligence,
32 and also, for any entity which is required to have a registered agent
33 in the state of Washington, to the address of the registered agent.
34 Demand for arbitration is deemed effective three days after the date
35 deposited in the mail;

36 (2) All disputes shall be heard by one qualified arbitrator, unless
37 the parties agree to use three arbitrators. If three arbitrators are

1 used, one shall be appointed by each of the disputing parties and the
2 first two arbitrators shall appoint the third, who will chair the
3 panel. The parties shall select the identity and number of the
4 arbitrator or arbitrators after the demand for arbitration is made.
5 If, within thirty days after the effective date of the demand for
6 arbitration, the parties fail to agree on an arbitrator or the agreed
7 number of arbitrators fail to be appointed, then an arbitrator or
8 arbitrators shall be appointed under RCW 7.04.050 by the presiding
9 judge of the superior court of the county in which the condominium is
10 located;

11 (3) In any arbitration, at least one arbitrator must be a lawyer or
12 retired judge. Any additional arbitrator must be either a lawyer or
13 retired judge or a person who has experience with construction and
14 engineering standards and practices, written construction warranties,
15 or construction dispute resolution. No person may serve as an
16 arbitrator in any arbitration in which that person has any past or
17 present financial or personal interest;

18 (4) The arbitration hearing must be conducted in a manner that
19 permits full, fair, and expeditious presentation of the case by both
20 parties. The arbitrator is bound by the law of Washington state.
21 Parties may be, but are not required to be, represented by attorneys.
22 The arbitrator may permit discovery to ensure a fair hearing, but may
23 limit the scope or manner of discovery for good cause to avoid
24 excessive delay and costs to the parties. The parties and the
25 arbitrator shall use all reasonable efforts to complete the arbitration
26 within six months of the effective date of the demand for arbitration
27 or, when applicable, the service of the list of defects in accordance
28 with RCW 64.50.030;

29 (5) Except as otherwise set forth in this section, arbitration
30 shall be conducted under chapter 7.04 RCW, unless the parties elect to
31 use the construction industry arbitration rules of the American
32 arbitration association, which are permitted to the extent not
33 inconsistent with this section. The expenses of witnesses including
34 expert witnesses shall be paid by the party producing the witnesses.
35 All other expenses of arbitration shall be borne equally by the
36 parties, unless all parties agree otherwise or unless the arbitrator
37 awards expenses or any part thereof to any specified party or parties.
38 The parties shall pay the fees of the arbitrator as and when specified
39 by the arbitrator;

1 (6) Demand for arbitration given pursuant to subsection (1) of this
2 section commences an arbitration for purposes of RCW 64.34.452;

3 (7) The arbitration decision shall be in writing and must set forth
4 findings of fact and conclusions of law that support the decision.

5 **ARTICLE 17**
6 **ATTORNEYS' FEES**

7 NEW SECTION. **Sec. 1701.** In any judicial proceeding or arbitration
8 brought to enforce the terms of a qualified warranty, the court or
9 arbitrator may award reasonable attorneys' fees to the substantially
10 prevailing party. In no event may such fees exceed the reasonable
11 hourly value of the attorney's work.

12 **ARTICLE 18**
13 **TRANSFER**

14 NEW SECTION. **Sec. 1801.** (1) A qualified warranty pertains solely
15 to the unit and common elements for which it provides coverage and no
16 notice to the qualified insurer is required on a change of ownership.

17 (2) All of the applicable unused benefits under a qualified
18 warranty with respect to a unit are automatically transferred to any
19 subsequent owner on a change of ownership.

20 **ARTICLE 19**
21 **ACCEPTANCE OF DECLARANT FOR QUALIFIED WARRANTY**

22 NEW SECTION. **Sec. 1901.** (1) No insurer is bound to offer a
23 qualified warranty to any person. Except as specifically set forth in
24 this section, the terms of any qualified warranty are set in the sole
25 discretion of the qualified insurer. Without limiting the generality
26 of this subsection, a qualified insurer may make inquiries about the
27 applicant as follows:

28 (a) Does the applicant have the financial resources to undertake
29 the construction of the number of units being proposed by the
30 applicant's business plan for the following twelve months;

31 (b) Does the applicant and its directors, officers, employees, and
32 consultants possess the necessary technical expertise to adequately

1 perform their individual functions with respect to their proposed role
2 in the construction and sale of units;

3 (c) Does the applicant and its directors and officers have
4 sufficient experience in business management to properly manage the
5 unit construction process;

6 (d) Does the applicant and its directors, officers, and employees
7 have sufficient practical experience to undertake the proposed unit
8 construction;

9 (e) Does the past conduct of the applicant and its directors,
10 officers, employees, and consultants provide a reasonable indication of
11 good business practices, and reasonable grounds for belief that its
12 undertakings will be carried on in accordance with all legal
13 requirements; and

14 (f) Is the applicant reasonably able to provide, or to cause to be
15 provided, after-sale customer service for the units to be constructed.

16 (2) A qualified insurer may charge a fee to make the inquiries
17 permitted by subsection (1) of this section.

18 (3) Before approving a qualified warranty for a condominium, a
19 qualified insurer may make such inquiries and impose such conditions as
20 it deems appropriate in its sole discretion, including without
21 limitation the following:

22 (a) To determine if the applicant has the necessary capitalization
23 or financing in place, including any reasonable contingency reserves,
24 to undertake construction of the proposed unit;

25 (b) To determine if the applicant or, in the case of a corporation,
26 its directors, officers, employees, and consultants possess reasonable
27 technical expertise to construct the proposed unit, including specific
28 technical knowledge or expertise in any building systems, construction
29 methods, products, treatments, technologies, and testing and inspection
30 methods proposed to be employed;

31 (c) To determine if the applicant or, in the case of a corporation,
32 its directors, officers, employees, and consultants have sufficient
33 practical experience in the specific types of construction to undertake
34 construction of the proposed unit;

35 (d) To determine if the applicant has sufficient personnel and
36 other resources to adequately undertake the construction of the
37 proposed unit in addition to other units which the applicant may have
38 under construction or is currently marketing;

39 (e) To determine if:

1 (i) The applicant is proposing to engage a general contractor to
2 undertake all or a significant portion of the construction of the
3 proposed unit; and

4 (ii) The general contractor meets the criteria set out in this
5 section;

6 (f) Requiring that a declarant provide security in a form suitable
7 to the qualified insurer;

8 (g) Establishing or requiring compliance with specific construction
9 standards for the unit;

10 (h) Restricting the applicant from constructing some types of units
11 or using some types of construction or systems;

12 (i) Requiring the use of specific types of systems, consultants, or
13 personnel for the construction;

14 (j) Requiring an independent review of the unit building plans or
15 consultants' reports or any part thereof;

16 (k) Requiring third-party verification or certification of the
17 construction of the unit or any part thereof;

18 (l) Providing for inspection of the unit or any part thereof during
19 construction;

20 (m) Requiring ongoing monitoring of the unit, or one or more of its
21 components, following completion of construction;

22 (n) Requiring that the declarant or any of the design
23 professionals, engineering professionals, consultants, general
24 contractors, or subcontractors maintain minimum levels of insurance,
25 bonding, or other security naming the potential owners and qualified
26 insurer as loss payees or beneficiaries of the insurance, bonding, or
27 security to the extent possible;

28 (o) Requiring that the declarant provide a list of all design
29 professionals and other consultants who are involved in the design or
30 construction inspection, or both, of the unit;

31 (p) Requiring that the declarant provide a list of trades employed
32 in the construction of the unit, and requiring evidence of their
33 current trade's certification, if applicable.

34 **ARTICLE 20**
35 **MISCELLANEOUS**

36 NEW SECTION. **Sec. 2001.** All qualified warrantees shall be deemed

1 to be "insurance" for purposes of RCW 48.01.040, and shall be regulated
2 as such.

3 NEW SECTION. **Sec. 2002.** Captions and part headings used in this
4 act are not any part of the law.

5 NEW SECTION. **Sec. 2003.** Sections 101 through 2002 of this act
6 constitute a new chapter in Title 64 RCW."

7 Correct the title.

--- END ---