
SENATE BILL 5049

State of Washington 60th Legislature 2007 Regular Session

By Senators Weinstein, Jacobsen, Kohl-Welles and Kline

Read first time 01/09/2007. Referred to Committee on Consumer Protection & Housing.

1 AN ACT Relating to new home warranties; amending RCW 4.16.300; and
2 adding a new chapter to Title 64 RCW.

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

4 NEW SECTION. **Sec. 1.** The definitions in this section apply
5 throughout this chapter unless the context clearly requires otherwise.

6 (1) "Appliances, fixtures, and items of equipment" means furnaces,
7 boilers, oil tanks and fittings, air purifiers, air handling equipment,
8 ventilating fans, ceiling fans, air conditioning equipment, water
9 heaters, pumps, stoves, ranges, ovens, refrigerators, garbage
10 disposals, compactors, dishwashers, automatic door openers, washers and
11 dryers, bathtubs, sinks, toilets, faucets and fittings, lighting
12 fixtures, lighting control and energy management systems, security
13 systems, circuit breakers, and other similar items.

14 (2) "Builder" means any person, corporation, general contractor, or
15 other legal entity that:

16 (a) Is engaged in the business of erecting or otherwise
17 constructing a new home; or

18 (b) Purchases a completed new home for resale in the course of its
19 business.

- 1 (3) "Electrical systems" means all wiring, electrical boxes,
2 switches, outlets, and connections to the public utility system.
- 3 (4) "Heating, cooling, and ventilating systems" means all duct
4 work, gas, steam, water and refrigerant lines, registers, convectors,
5 solar panels, radiation elements, and dampers.
- 6 (5) "Load-bearing portions of the home" means the load-bearing
7 portions of the:
- 8 (a) Foundation system and footings;
 - 9 (b) Beams;
 - 10 (c) Girders;
 - 11 (d) Lintels;
 - 12 (e) Columns;
 - 13 (f) Walls and partitions;
 - 14 (g) Floor systems; and
 - 15 (h) Roof framing systems.
- 16 (6)(a) "New home" means:
- 17 (i) Every newly constructed private dwelling unit in the state and
18 the appliances, fixtures, and items of equipment and structure that are
19 made a part of a newly constructed private dwelling unit at the time of
20 construction; and
 - 21 (ii) A condominium, as defined in RCW 64.34.020, used for
22 residential purposes, as defined in RCW 64.34.020.
- 23 (b) "New home" does not include:
- 24 (i) A residential timeshare as defined in RCW 64.36.010;
 - 25 (ii) A manufactured home or mobile home as defined in RCW
26 65.20.020;
 - 27 (iii) Outbuildings, including detached garages and carports, except
28 outbuildings that contain plumbing, electrical, heating, cooling, or
29 ventilation systems serving the new home, and then only to the extent
30 that defects to the outbuildings could affect these systems;
 - 31 (iv) Driveways;
 - 32 (v) Walkways;
 - 33 (vi) Boundary walls;
 - 34 (vii) Retaining walls not necessary for the structural stability of
35 the new home;
 - 36 (viii) Landscaping;
 - 37 (ix) Sprinkler or irrigation systems;
 - 38 (x) Fences;

1 (xi) Off-site improvements;
2 (xii) Appurtenant recreational facilities; and
3 (xiii) Other similar items as determined by the director of the
4 department of labor and industries by rule.

5 (7) "New home warranty" means the warranty created in section 2 of
6 this act.

7 (8) "Owner" means the purchaser of a new home.

8 (9) "Plumbing systems" means:

9 (a) Gas supply lines and fittings;

10 (b) Water supply, waste, and vent pipes and their fittings;

11 (c) Septic tanks and their drain fields; and

12 (d) Water, gas, and sewer service piping and their extensions to
13 the tie-in of a public utility connection, or on-site wells and sewage
14 disposal systems.

15 (10)(a) "Structural defect" means any defect in the load-bearing
16 portions of a new home that adversely affects its load-bearing function
17 to the extent that the home becomes or is in serious danger of becoming
18 unsafe, unsanitary, or otherwise not reasonably safely inhabitable.

19 (b) "Structural defect" also includes damage due to subsidence,
20 expansion, or lateral movement of soil that has been disturbed or
21 relocated by the builder.

22 (c) "Structural defect" does not include damage caused by movement
23 of the soil:

24 (i) Resulting from a flood or earthquake; or

25 (ii) For which compensation has been provided.

26 (11) "Warranty date" means the first day on which the owner
27 occupies the new home, closes on the new home, makes the final contract
28 payment on the new home, or obtains an occupancy permit for the new
29 home if the home is built on the owner's property, whichever is
30 earlier.

31 NEW SECTION. **Sec. 2.** (1)(a) Except as excluded under (b) of this
32 subsection, every contract for the construction or sale of a new home
33 includes, as a matter of law, a warranty from the residential builder
34 that shall warrant at a minimum that:

35 (i) For two years, beginning on the warranty date, the new home is
36 free from any defects in materials and workmanship;

1 (ii) For three years, beginning on the warranty date, the new home
2 is free from any defects in the electrical, plumbing, heating, cooling,
3 and ventilating systems, except that in the case of appliances,
4 fixtures, and items of equipment, the warranty need not exceed the
5 length and scope of the warranty offered by the manufacturer, and the
6 warranty of merchantability, fitness, and all other implied warranties
7 with respect to appliances, fixtures, and items of equipment shall be
8 governed by the Washington uniform commercial code;

9 (iii) For five years, beginning on the warranty date, the new home
10 is free from any defects resulting from water penetration; and

11 (iv) For ten years, beginning on the warranty date, the new home is
12 free from any structural defects.

13 (b) The new home warranty excludes the following:

14 (i) Damage to real property that is not part of the home covered by
15 the warranty or that is not included in the purchase price of the home;

16 (ii) Bodily injury or damage to personal property;

17 (iii) Any defect in materials supplied or work performed by anyone
18 other than the builder or the builder's employees, agents, or
19 subcontractors;

20 (iv) Any damage that the owner has not taken timely action to
21 minimize;

22 (v) Normal wear and tear or normal deterioration;

23 (vi) Insect damage, except where the builder has failed to use
24 proper materials or construction methods designed to prevent insect
25 infestation;

26 (vii) Any loss or damage that arises while the home is being used
27 primarily for nonresidential purposes;

28 (viii) Any damage to the extent it is caused or made worse by
29 negligence, improper maintenance, or improper operations by anyone
30 other than the builder or its employees, agents, or subcontractors;

31 (ix) Any damage to the extent it is caused or made worse by changes
32 of the grading of the ground by anyone other than the builder, its
33 employees, agents, or subcontractors; and

34 (x) Any loss or damage caused by acts of God.

35 (2) The warranty created by this section runs from the builder to
36 the owner. This warranty entitles the owner to recover from the
37 builder all costs associated with repairing the defect, together with
38 the cost of repair of damage proximately caused by the defect,

1 including the cost of repairing driveways, sidewalks, lawns,
2 landscaping, or similar associated facilities and fixtures necessarily
3 damaged as a result of the required repairs. The liability of a
4 builder under the new home warranty shall be limited to the purchase
5 price of the home in the first good faith sale or the fair market value
6 of the home on its completion date if there is no good faith sale.
7 Absence of privity of contract between the owner and the builder is not
8 a defense to the enforcement of this warranty.

9 (3) If the defect is the result of work performed by a
10 subcontractor, the builder has a right of contribution from that
11 subcontractor for amounts paid to the owner as a result of the new home
12 warranty.

13 (4) No action to enforce the new home warranty created by this
14 section may be commenced after four years has passed from the time the
15 defect is discovered, or, with reasonable diligence, should have been
16 discovered. Providing written notice and a reasonable description of
17 a defect to the builder has the effect of tolling the limitation
18 periods established by this subsection and subsection (5) of this
19 section. Tolling continues until the builder completes the repair to
20 the owner's satisfaction, or the builder gives the owner written notice
21 that the builder refuses to make the repair or has completed as much of
22 the repair as the builder intends to complete.

23 (5) Except as provided in subsection (4) of this section, no action
24 to enforce the new home warranty created by this section may be filed
25 later than the time periods described in subsection (1)(a) of this
26 section.

27 (6) The new home warranty is a cumulative remedy, and shall not
28 have the effect of diminishing or replacing any other remedy or
29 warranty created by law or equity or agreement between the parties.
30 The new home warranty is in addition to the warranties created under
31 chapter 64.34 RCW.

32 (7) The new home warranty does not expire on the subsequent sale of
33 a new home by the owner to a subsequent purchaser, but continues to
34 protect later purchasers until the warranties provided in subsection
35 (1)(a) of this section expire.

36 (8) A general disclaimer of the new home warranty is not effective
37 except that a purchaser of real property consisting of, or improved by,
38 more than four dwelling units may make a written disclaimer of the new

1 home warranty. A builder and any owner or any successor in title to
2 the owner may disclaim liability in a written instrument signed by the
3 purchaser for a specified defect, if the defect entered into and became
4 a part of the basis of the bargain.

5 **Sec. 3.** RCW 4.16.300 and 2004 c 257 s 1 are each amended to read
6 as follows:

7 RCW 4.16.300 through 4.16.320 shall apply to all claims or causes
8 of action of any kind against any person, arising from such person
9 having constructed, altered or repaired any improvement upon real
10 property, or having performed or furnished any design, planning,
11 surveying, architectural or construction or engineering services, or
12 supervision or observation of construction, or administration of
13 construction contracts for any construction, alteration or repair of
14 any improvement upon real property. This section is specifically
15 intended to benefit persons having performed work for which the persons
16 must be registered or licensed under RCW 18.08.310, 18.27.020,
17 18.43.040, 18.96.020, or 19.28.041, and shall not apply to claims or
18 causes of action against persons not required to be so registered or
19 licensed. This section does not apply to a new home warranty under
20 chapter 64.-- RCW (sections 1 and 2 of this act).

21 NEW SECTION. **Sec. 4.** Sections 1 and 2 of this act constitute a
22 new chapter in Title 64 RCW.

--- END ---