
HOUSE BILL 1935

State of Washington 60th Legislature 2007 Regular Session

By Representatives Williams, Campbell, Hunt, Moeller, Hasegawa,
Conway, Green, Ericks and Flannigan

Read first time 02/01/2007. Referred to Committee on Judiciary.

1 AN ACT Relating to real property; and adding a new chapter to Title
2 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 new home for resale in the course of its business.

1 (3) "Electrical systems" means all wiring, electrical boxes,
2 switches, outlets, connections to the public utility system, and other
3 similar items.

4 (4) "Heating, cooling, and ventilating systems" means all duct
5 work, gas, steam, water and refrigerant lines, registers, convectors,
6 solar panels, radiation elements, dampers, and other similar items.

7 (5) "Load-bearing portions of the home" means the load-bearing
8 portions of the foundation system and footings, beams, girders,
9 lintels, columns, walls and partitions, floor systems, roof framing
10 systems, and other items integral to the structural design.

11 (6)(a) "New home" means:

12 (i) Every newly constructed private dwelling unit in the state and
13 the appliances, fixtures, and items of equipment and structure that are
14 made a part of a newly constructed private dwelling unit at the time of
15 construction; and

16 (ii) A substantial remodel of a private dwelling unit.
17 "Substantial remodel" means a private dwelling unit that has been
18 remodeled to the extent that the total cost of the remodel exceeds one-
19 half of the property tax assessed value of the home, excluding the
20 assessed value of the land at the time the contract for remodel was
21 made.

22 (iii) A condominium, as defined in RCW 64.34.020, used for
23 residential purposes, as defined in RCW 64.34.020.

24 (b) "New home" does not include:

25 (i) A residential timeshare as defined in RCW 64.36.010;

26 (ii) A manufactured home or mobile home as defined in RCW
27 65.20.020;

28 (iii) Outbuildings, including detached garages and carports, except
29 outbuildings that contain plumbing, electrical, heating, cooling, or
30 ventilation systems serving the new home, and then only to the extent
31 that defects to the outbuildings could affect these systems;

32 (iv) Driveways;

33 (v) Walkways;

34 (vi) Boundary walls;

35 (vii) Retaining walls not necessary for the structural stability of
36 the new home;

37 (viii) Landscaping;

38 (ix) Sprinkler or irrigation systems;

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

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

8 (8) "Owner" means the purchaser of a new home to the extent of the
9 time limitations provided in section 2(4) of this act notwithstanding
10 absence of privity of contract between the builder and owner.

11 (9) "Plumbing systems" means:

12 (a) Gas supply lines and fittings;

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

14 (c) Septic tanks and their drain fields;

15 (d) Water, gas, and sewer service piping and their extensions to
16 the tie-in of a public utility connection, or on-site wells and sewage
17 disposal systems; and

18 (e) Other similar items.

19 (10)(a) "Structural defect" means any defect in the vertical or
20 lateral (seismic and wind) load-bearing portions of a new home that
21 adversely affects its load-bearing function to the extent that the home
22 becomes or is in danger of becoming unsafe, unsanitary, or otherwise
23 not reasonably safely inhabitable.

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

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

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

30 (ii) For which compensation has been provided.

31 (11) "Warranty date" means the first day on which the owner
32 occupies the new home, closes on the new home, makes the final contract
33 payment on the new home, or obtains an occupancy permit for the new
34 home if the home is built on the owner's property, whichever is
35 earliest.

36 NEW SECTION. **Sec. 2.** (1)(a) Except as excluded under (b) of this

1 subsection, all builders of new homes warrant, at a minimum, that the
2 new home, or improvements made as part of a substantial remodel, are:

3 (i) For two years, beginning on the warranty date, free from any
4 patent defects in materials and workmanship not otherwise governed by
5 the remaining warranties in this section;

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

14 (iii) For five years, beginning on the warranty date, free from
15 defective materials, constructed in accordance with sound engineering
16 and construction standards, constructed in a workmanlike manner,
17 constructed in compliance with all laws applicable to the new home or
18 improvements including building codes and regulations, and in
19 conformance with the plans as permitted by the local governmental
20 jurisdiction, or free from any defects that permit or, without repair,
21 will lead to water penetration; and

22 (iv) For ten years, beginning on the warranty date, free from any
23 structural defects.

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

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

27 (ii) Bodily injury;

28 (iii) Any defect in materials supplied or work performed by anyone
29 other than the builder or the builder's employees, agents,
30 subcontractors, or others acting under the direction of the builder;

31 (iv) Any damage caused by the owner or prior owner's failure to
32 take reasonable action to mitigate when that owner knew or had reason
33 to know the defect existed;

34 (v) Normal wear and tear or expiration of normal useful life;

35 (vi) Insect damage, except where any defect covered by the new home
36 warranty permitted or was a proximate cause of the insect infestation;

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

1 (viii) Any damage to the extent it is caused by negligence,
2 improper maintenance, or improper operations by anyone other than the
3 builder or its employees, agents, subcontractors, or others acting
4 under the direction of the builder;

5 (ix) Any damage to the extent it is caused by changes of the
6 grading of the ground by anyone other than the builder, its employees,
7 agents, or subcontractors; and

8 (x) Any loss or damage caused by acts of God unless the damage is
9 attributable at least in part to breach of the warranties in subsection
10 (1)(a) of this section.

11 (2) The new home warranty created by this section runs from the
12 builder to the owner and to subsequent owners to the extent of
13 limitations provided under subsection (4) of this section. The new
14 home warranty does not expire on the subsequent sale of a new home by
15 the owner to a subsequent purchaser, but continues to protect later
16 purchasers to the extent of the limitations in subsection (4) of this
17 section. An absence of privity of contract between the owner and the
18 builder is not a defense to the enforcement of this warranty. This new
19 home warranty entitles the owner to recover from the builder all costs
20 associated with repairing the defects and damage caused by the defects,
21 including all incidental and consequential damages. The liability of
22 a builder under this chapter, exclusive of attorneys' fees, is limited
23 to the fair market value of the home without the defects.

24 (3) If the breach of the new home warranty is the result of work
25 performed by contractors or subcontractors on behalf of the builder,
26 the builder may immediately assert claims against the contractor or
27 subcontractor for that portion of the owner's damages that the builder
28 attributes to the contractor or subcontractor.

29 (4) No action for a breach of the new home warranty created by this
30 section may be commenced after six years have passed from the time the
31 defect is discovered or, with reasonable diligence, should have been
32 discovered. No action for a breach of the new home warranty may be
33 commenced more than eleven years from the warranty date. Providing
34 written notice and a reasonable description of a defect to the builder
35 has the effect of tolling the limitation periods established by this
36 subsection. Tolling continues until the builder completes the repair
37 to the owner's satisfaction, or the owner receives written notice from

1 the builder that the builder refuses to make the repair or has
2 completed as much of the repair as the builder intends to complete.

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

8 (6) The new home warranty created under this chapter may not be
9 omitted, waived, modified, or disclaimed in any way.

10 (7) All builders of new homes shall include in the purchase and
11 sale agreement or other contract between the builder and the buyer the
12 following statement: "This home (or improvements made thereto if a
13 substantial remodel) was built in compliance with all applicable
14 building codes and is governed by a statutory warranty set forth in
15 chapter 64.-- RCW (sections 1 and 2 of this act), which representation
16 and warranty may not be omitted, waived, modified, or disclaimed in any
17 way."

18 NEW SECTION. **Sec. 3.** Sections 1 and 2 of this act constitute a
19 new chapter in Title 64 RCW.

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