
SECOND SUBSTITUTE SENATE BILL 5258

State of Washington**68th Legislature****2023 Regular Session**

By Senate Ways & Means (originally sponsored by Senators Shewmake, Gildon, Billig, Liiias, Lovick, Nguyen, Nobles, Randall, and Wellman)

1 AN ACT Relating to increasing the supply and affordability of
2 condominium units and townhouses as an option for homeownership;
3 amending RCW 64.35.105, 64.50.010, 64.50.020, 64.50.040, 64.90.250,
4 64.90.605, 64.90.645, 82.45.010, 82.45.010, 82.45.230, 82.02.060,
5 58.17.060, and 64.55.160; reenacting and amending RCW 64.38.010;
6 adding a new section to chapter 82.45 RCW; creating new sections;
7 providing effective dates; and providing expiration dates.

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

9 **Sec. 1.** RCW 64.35.105 and 2004 c 201 s 101 are each amended to
10 read as follows:

11 The definitions in this section apply throughout this chapter
12 unless the context clearly requires otherwise.

13 (1) "Affiliate" has the meaning in RCW (~~(64.34.020)~~) 64.90.010.

14 (2) "Association" has the meaning in RCW (~~(64.34.020)~~) 64.90.010.

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

19 (4) "Common element" has the meaning in RCW (~~(64.34.020)~~)
20 64.90.010.

21 (5) "Condominium" has the meaning in RCW (~~(64.34.020)~~) 64.90.010.

- 1 (6) "Construction professional" has the meaning in RCW 64.50.010.
- 2 (7) "Conversion condominium" has the meaning in RCW (~~64.34.020~~)
3 64.90.010.
- 4 (8) "Declarant" has the meaning in RCW (~~64.34.020~~) 64.90.010.
- 5 (9) "Declarant control" has the meaning in RCW (~~64.34.020~~)
6 64.90.010.
- 7 (10) "Defect" means any aspect of a condominium unit or common
8 element which constitutes a breach of the implied warranties set
9 forth in RCW 64.34.445 or 64.90.670.
- 10 (11) "Limited common element" has the meaning in RCW
11 (~~64.34.020~~) 64.90.010.
- 12 (12) "Material" means substantive, not simply formal; significant
13 to a reasonable person; not trivial or insignificant. When used with
14 respect to a particular construction defect, "material" does not
15 require that the construction defect render the unit or common
16 element unfit for its intended purpose or uninhabitable.
- 17 (13) "Mediation" means a collaborative process in which two or
18 more parties meet and attempt, with the assistance of a mediator, to
19 resolve issues in dispute between them.
- 20 (14) "Mediation session" means a meeting between two or more
21 parties to a dispute during which they are engaged in mediation.
- 22 (15) "Mediator" means a neutral and impartial facilitator with no
23 decision-making power who assists parties in negotiating a mutually
24 acceptable settlement of issues in dispute between them.
- 25 (16) "Person" has the meaning in RCW (~~64.34.020~~) 64.90.010.
- 26 (17) "Public offering statement" has the meaning in (~~RCW~~
27 ~~64.34.410~~) chapter 64.90 RCW.
- 28 (18) "Qualified insurer" means an entity that holds a certificate
29 of authority under RCW 48.05.030, or an eligible insurer under
30 chapter 48.15 RCW.
- 31 (19) "Qualified warranty" means an insurance policy issued by a
32 qualified insurer that complies with the requirements of this
33 chapter. A qualified warranty includes coverage for repair of
34 physical damage caused by the defects covered by the qualified
35 warranty, except to the extent of any exclusions and limitations
36 under this chapter.
- 37 (20) "Resale certificate" means the statement to be delivered by
38 the association under (~~RCW 64.34.425~~) chapter 64.90 RCW.

1 (21) "Transition date" means the date on which the declarant is
2 required to deliver to the association the property of the
3 association under RCW (~~(64.34.312)~~) 64.90.420.

4 (22) "Unit" has the meaning in RCW (~~(64.34.020)~~) 64.90.010.

5 (23) "Unit owner" has the meaning in RCW (~~(64.34.020)~~) 64.90.010.

6 **Sec. 2.** RCW 64.38.010 and 2021 c 227 s 9 are each reenacted and
7 amended to read as follows:

8 For purposes of this chapter:

9 (1) "Assessment" means all sums chargeable to an owner by an
10 association in accordance with RCW 64.38.020.

11 (2) "Baseline funding plan" means establishing a reserve funding
12 goal of maintaining a reserve account balance above (~~(zero dollars)~~)
13 \$0 throughout the (~~(thirty-year)~~) 30-year study period described
14 under RCW 64.38.065.

15 (3) "Board of directors" or "board" means the body, regardless of
16 name, with primary authority to manage the affairs of the
17 association.

18 (4) "Common areas" means property owned, or otherwise maintained,
19 repaired or administered by the association.

20 (5) "Common expense" means the costs incurred by the association
21 to exercise any of the powers provided for in this chapter.

22 (6) "Contribution rate" means, in a reserve study as described in
23 RCW 64.38.065, the amount contributed to the reserve account so that
24 the association will have cash reserves to pay major maintenance,
25 repair, or replacement costs without the need of a special
26 assessment.

27 (7) "Effective age" means the difference between the estimated
28 useful life and remaining useful life.

29 (8) "Electronic transmission" or "electronically transmitted"
30 means any electronic communication not directly involving the
31 physical transfer of a writing in a tangible medium, but that may be
32 retained, retrieved, and reviewed by the sender and the recipient of
33 the communication, and that may be directly reproduced in a tangible
34 medium by a sender and recipient.

35 (9) "Full funding plan" means setting a reserve funding goal of
36 achieving one hundred percent fully funded reserves by the end of the
37 (~~(thirty-year)~~) 30-year study period described under RCW 64.38.065,
38 in which the reserve account balance equals the sum of the
39 deteriorated portion of all reserve components.

1 (10) "Fully funded balance" means the current value of the
2 deteriorated portion, not the total replacement value, of all the
3 reserve components. The fully funded balance for each reserve
4 component is calculated by multiplying the current replacement cost
5 of the reserve component by its effective age, then dividing the
6 result by the reserve component's useful life. The sum total of all
7 reserve components' fully funded balances is the association's fully
8 funded balance.

9 (11) "Governing documents" means the articles of incorporation,
10 bylaws, plat, declaration of covenants, conditions, and restrictions,
11 rules and regulations of the association, or other written instrument
12 by which the association has the authority to exercise any of the
13 powers provided for in this chapter or to manage, maintain, or
14 otherwise affect the property under its jurisdiction.

15 (12) "Homeowners' association" or "association" means a
16 corporation, unincorporated association, or other legal entity, each
17 member of which is an owner of residential real property located
18 within the association's jurisdiction, as described in the governing
19 documents, and by virtue of membership or ownership of property is
20 obligated to pay real property taxes, insurance premiums, maintenance
21 costs, or for improvement of real property other than that which is
22 owned by the member. "Homeowners' association" does not mean an
23 association created under chapter 64.32 (~~(06)~~), 64.34, or 64.90 RCW.

24 (13) "Lot" means a physical portion of the real property located
25 within an association's jurisdiction designated for separate
26 ownership.

27 (14) "Owner" means the owner of a lot, but does not include a
28 person who has an interest in a lot solely as security for an
29 obligation. "Owner" also means the vendee, not the vendor, of a lot
30 under a real estate contract.

31 (15) "Remaining useful life" means the estimated time, in years,
32 before a reserve component will require major maintenance, repair, or
33 replacement to perform its intended function.

34 (16) "Replacement cost" means the current cost of replacing,
35 repairing, or restoring a reserve component to its original
36 functional condition.

37 (17) "Reserve component" means a common element whose cost of
38 maintenance, repair, or replacement is infrequent, significant, and
39 impractical to include in an annual budget.

1 (18) "Reserve study professional" means an independent person who
2 is suitably qualified by knowledge, skill, experience, training, or
3 education to prepare a reserve study in accordance with RCW 64.38.065
4 and 64.38.070.

5 (19) "Residential real property" means any real property, the use
6 of which is limited by law, covenant or otherwise to primarily
7 residential or recreational purposes.

8 (20) "Significant assets" means that the current replacement
9 value of the major reserve components is (~~(seventy-five)~~) 75 percent
10 or more of the gross budget of the association, excluding the
11 association's reserve account funds.

12 (21) "Tangible medium" means a writing, copy of a writing,
13 facsimile, or a physical reproduction, each on paper or on other
14 tangible material.

15 (22) "Useful life" means the estimated time, between years, that
16 major maintenance, repair, or replacement is estimated to occur.

17 **Sec. 3.** RCW 64.50.010 and 2020 c 18 s 23 are each amended to
18 read as follows:

19 Unless the context clearly requires otherwise, the definitions in
20 this section apply throughout this chapter.

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

29 (2) "Association" means an association, master association, or
30 subassociation as defined and provided for in RCW 64.34.020(4),
31 64.34.276, 64.34.278, (~~(and)~~) 64.38.010(~~((11))~~) (12), and
32 64.90.010(4).

33 (3) "Claimant" means a homeowner or association who asserts a
34 claim against a construction professional concerning a defect in the
35 construction of a residence or in the substantial remodel of a
36 residence.

37 (4) "Construction defect professional" means an architect,
38 builder, builder vendor, contractor, subcontractor, engineer,
39 inspector, or such other person with verifiable training and

1 experience related to the defects or conditions identified in any
2 report included with a notice of claim as set forth in RCW
3 64.50.020(1)(a).

4 (5) "Construction professional" means an architect, builder,
5 builder vendor, contractor, subcontractor, engineer, or inspector,
6 including, but not limited to, a dealer as defined in RCW 64.34.020
7 and a declarant as defined in RCW 64.34.020, performing or furnishing
8 the design, supervision, inspection, construction, or observation of
9 the construction of any improvement to real property, whether
10 operating as a sole proprietor, partnership, corporation, or other
11 business entity.

12 ~~((+5))~~ (6) "Homeowner" means: (a) Any person, company, firm,
13 partnership, corporation, or association who contracts with a
14 construction professional for the construction, sale, or construction
15 and sale of a residence; and (b) an "association" as defined in this
16 section. "Homeowner" includes, but is not limited to, a subsequent
17 purchaser of a residence from any homeowner.

18 ~~((+6))~~ (7) "Residence" means a single-family house, duplex,
19 triplex, quadraplex, or a unit in a multiunit residential structure
20 in which title to each individual unit is transferred to the owner
21 under a condominium or cooperative system, and shall include common
22 elements as defined in RCW 64.34.020 and common areas as defined in
23 RCW 64.38.010(4).

24 ~~((+7))~~ (8) "Serve" or "service" means personal service or
25 delivery by certified mail to the last known address of the
26 addressee.

27 ~~((+8))~~ (9) "Substantial remodel" means a remodel of a residence,
28 for which the total cost exceeds one-half of the assessed value of
29 the residence for property tax purposes at the time the contract for
30 the remodel work was made.

31 **Sec. 4.** RCW 64.50.020 and 2002 c 323 s 3 are each amended to
32 read as follows:

33 (1) In every construction defect action brought against a
34 construction professional, the claimant shall, no later than ~~((forty-~~
35 ~~five))~~ 45 days before filing an action, serve written notice of claim
36 on the construction professional.

37 (a) The notice of claim shall state that the claimant asserts a
38 construction defect claim against the construction professional and

1 shall describe the claim in reasonable detail sufficient to determine
2 the general nature of the defect.

3 (b) If the claimant is a condominium association created after
4 the effective date of this section, the written notice of claim shall
5 include a written report from a construction defect professional. In
6 addition to describing the claim in reasonable detail sufficient to
7 determine the general nature of the defect the written report shall
8 state the construction defect professional's qualifications, the
9 manner and type of inspection upon which the report was based, and
10 the general location of the defect.

11 (2) Within (~~twenty-one~~) 14 days after service of the notice of
12 claim, the construction professional may serve a written response
13 demanding a meeting with the claimant and its expert, including the
14 construction defect professional who authored the report required in
15 subsection (1)(b) of this section to confer regarding the report and
16 its contents. The meeting shall take place within 14 days of service
17 of the construction professional's demand or at such later date as
18 mutually agreed to by the parties.

19 (3) Within 14 days after the meeting referenced in subsection (2)
20 of this section or, in the absence of a demand for such meeting,
21 within 21 days after service of the notice of claim, whichever is
22 later, the construction professional shall serve a written response
23 on the claimant by registered mail or personal service. The written
24 response shall:

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

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

36 (c) State that the construction professional disputes the claim
37 and will neither remedy the construction defect nor compromise and
38 settle the claim.

39 (~~(3)~~) (4)(a) If the construction professional disputes the
40 claim or does not respond to the claimant's notice of claim within

1 the time stated in subsection (~~((2))~~) (3) of this section, the
2 claimant may bring an action against the construction professional
3 for the claim described in the notice of claim without further
4 notice.

5 (b) If the claimant rejects the inspection proposal or the
6 settlement offer made by the construction professional pursuant to
7 subsection (~~((2))~~) (3) of this section, the claimant shall serve
8 written notice of the claimant's rejection on the construction
9 professional. After service of the rejection, the claimant may bring
10 an action against the construction professional for the construction
11 defect claim described in the notice of claim. If the construction
12 professional has not received from the claimant, within (~~(thirty)~~) 30
13 days after the claimant's receipt of the construction professional's
14 response, either an acceptance or rejection of the inspection
15 proposal or settlement offer, then at anytime thereafter the
16 construction professional may terminate the proposal or offer by
17 serving written notice to the claimant, and the claimant may
18 thereafter bring an action against the construction professional for
19 the construction defect claim described in the notice of claim.

20 (~~((4))~~) (5)(a) If the claimant elects to allow the construction
21 professional to inspect in accordance with the construction
22 professional's proposal pursuant to subsection (~~((2))~~) (3)(a) of this
23 section, the claimant shall provide the construction professional and
24 its contractors or other agents reasonable access to the claimant's
25 residence during normal working hours to inspect the premises and the
26 claimed defect.

27 (b) Within (~~(fourteen)~~) 14 days following completion of the
28 inspection, the construction professional shall serve on the
29 claimant:

30 (i) A written offer to remedy the construction defect at no cost
31 to the claimant, including a report of the scope of the inspection,
32 the findings and results of the inspection, a description of the
33 additional construction necessary to remedy the defect described in
34 the claim, and a timetable for the completion of such construction;

35 (ii) A written offer to compromise and settle the claim by
36 monetary payment pursuant to subsection (~~((2))~~) (3)(b) of this
37 section; or

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

1 (c) If the construction professional does not proceed further to
2 remedy the construction defect within the agreed timetable, or if the
3 construction professional fails to comply with the provisions of (b)
4 of this subsection, the claimant may bring an action against the
5 construction professional for the claim described in the notice of
6 claim without further notice.

7 (d) If the claimant rejects the offer made by the construction
8 professional pursuant to (b)(i) or (ii) of this subsection to either
9 remedy the construction defect or to compromise and settle the claim
10 by monetary payment, the claimant shall serve written notice of the
11 claimant's rejection on the construction professional. After service
12 of the rejection notice, the claimant may bring an action against the
13 construction professional for the construction defect claim described
14 in the notice of claim. If the construction professional has not
15 received from the claimant, within (~~(thirty)~~) 30 days after the
16 claimant's receipt of the construction professional's response,
17 either an acceptance or rejection of the offer made pursuant to
18 (b)(i) or (ii) of this subsection, then at anytime thereafter the
19 construction professional may terminate the offer by serving written
20 notice to the claimant.

21 (~~(5)~~) (6)(a) Any claimant accepting the offer of a construction
22 professional to remedy the construction defect pursuant to subsection
23 (~~(4)~~) (5)(b)(i) of this section shall do so by serving the
24 construction professional with a written notice of acceptance within
25 a reasonable time period after receipt of the offer, and no later
26 than (~~(thirty)~~) 30 days after receipt of the offer. The claimant
27 shall provide the construction professional and its contractors or
28 other agents reasonable access to the claimant's residence during
29 normal working hours to perform and complete the construction by the
30 timetable stated in the offer.

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

35 (~~(6)~~) (7) Any action commenced by a claimant prior to
36 compliance with the requirements of this section shall be subject to
37 dismissal without prejudice, and may not be recommenced until the
38 claimant has complied with the requirements of this section.

39 (~~(7)~~) (8) Nothing in this section may be construed to prevent a
40 claimant from commencing an action on the construction defect claim

1 described in the notice of claim if the construction professional
2 fails to perform the construction agreed upon, fails to remedy the
3 defect, or fails to perform by the timetable agreed upon pursuant to
4 subsection ~~((+2))~~ (3)(a) or ~~((+5))~~ (6) of this section.

5 ~~((+8))~~ (9) Prior to commencing any action alleging a
6 construction defect, or after the dismissal of any action without
7 prejudice pursuant to subsection ~~((+6))~~ (7) of this section, the
8 claimant may amend the notice of claim to include construction
9 defects discovered after the service of the original notice of claim,
10 and must otherwise comply with the requirements of this section for
11 the additional claims. The service of an amended notice of claim
12 shall relate back to the original notice of claim for purposes of
13 tolling statutes of limitations and repose. Claims for defects
14 discovered after the commencement or recommencement of an action may
15 be added to such action only after providing notice to the
16 construction professional of the defect and allowing for response
17 under subsection ~~((+2))~~ (3) of this section.

18 (10) If the claimant is an association, and notwithstanding any
19 contrary provisions in the association's governing documents, the
20 association's board of director's ability to incur expenses to
21 prepare and serve a notice of claim and any related reports and
22 otherwise comply with the requirements of this chapter shall not be
23 restricted.

24 **Sec. 5.** RCW 64.50.040 and 2002 c 323 s 5 are each amended to
25 read as follows:

26 (1)(a) In the event the board of directors, pursuant to RCW
27 64.34.304(1)(d) or 64.38.020(4), institutes an action asserting
28 defects in the construction of two or more residences, common
29 elements, or common areas, this section shall apply. For purposes of
30 this section, "action" has the same meaning as set forth in RCW
31 64.50.010.

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

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

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

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

4 (ii) To the extent applicable, the existence of the report
5 required in RCW 64.50.020(1)(a), which shall be made available to
6 each homeowner upon request;

7 (iii) A summary of the construction professional's response
8 pursuant to RCW 64.50.020(3), if any; and

9 (iv) The expenses and fees that the board of directors
10 anticipates will be incurred in prosecuting the action.

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

12 (a) Require the disclosure in the notice or the disclosure to a
13 unit owner of attorney-client communications or other privileged
14 communications;

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

19 (c) Limit or impair the authority of the board of directors to
20 contract for legal services, or limit or impair the ability to
21 enforce such a contract for legal services.

22 **Sec. 6.** RCW 64.90.250 and 2018 c 277 s 211 are each amended to
23 read as follows:

24 (1) To exercise any development right reserved under RCW
25 64.90.225(1)(~~(h)~~) (g), the declarant must prepare, execute, and
26 record any amendments to the declaration and map in accordance with
27 the requirements of RCW 64.90.245 and 64.90.285(3). The declarant is
28 the unit owner of any units created. The amendment to the declaration
29 must assign an identifying number to each new unit created and,
30 except in the case of subdivision, combination, or conversion of
31 units described in subsection (3) of this section, reallocate the
32 allocated interests among all units. The amendment must describe any
33 common elements and any limited common elements created and, in the
34 case of limited common elements, designate the unit to which each is
35 allocated to the extent required under RCW 64.90.240. The amendments
36 are effective upon recording.

37 (2) Development rights may be reserved within any real estate
38 added to the common interest community if the amendment to the
39 declaration adding that real estate includes all matters required

1 under RCW 64.90.225 and 64.90.230 and the amendment to the map
2 includes all matters required under RCW 64.90.245. This subsection
3 does not extend the time limit on the exercise of development rights
4 imposed by the declaration pursuant to RCW 64.90.225(1)(h).

5 (3) When a declarant exercises a development right to subdivide,
6 combine, or convert a unit previously created into additional units
7 or common elements, or both:

8 (a) If the declarant converts the unit entirely into common
9 elements, the amendment to the declaration must reallocate all the
10 allocated interests of that unit among the other units as if that
11 unit had been taken by condemnation under RCW 64.90.030; or

12 (b) If the declarant subdivides the unit into two or more units,
13 whether or not any part of the unit is converted into common
14 elements, the amendment to the declaration must reallocate all the
15 allocated interests of the unit among the units created by the
16 subdivision in any reasonable manner prescribed by the declarant.

17 (4) If the declaration provides, pursuant to RCW 64.90.225(1)(h),
18 that all or a portion of the real estate is subject to a right of
19 withdrawal:

20 (a) If all the real estate is subject to withdrawal, and the
21 declaration or map or amendment to the declaration or map does not
22 describe separate portions of real estate subject to that right, none
23 of the real estate may be withdrawn if a unit in that real estate has
24 been conveyed to a purchaser; or

25 (b) If any portion of the real estate is subject to withdrawal as
26 described in the declaration or map or amendment to the declaration
27 or map, none of that portion of the real estate may be withdrawn if a
28 unit in that portion has been conveyed to a purchaser.

29 (5) If the declarant combines two or more units into a lesser
30 number of units, whether or not any part of a unit is converted into
31 common elements or common elements are converted units, the amendment
32 to the declaration must reallocate all of the allocated interests of
33 the units being combined into the unit or units created by the
34 combination in any reasonable manner prescribed by the declarant.

35 (6) A unit conveyed to a purchaser may not be withdrawn pursuant
36 to subsection (4)(a) or (b) of this section without the consent of
37 the unit owner of that unit and the holder of a security interest in
38 the unit.

1 **Sec. 7.** RCW 64.90.605 and 2018 c 277 s 402 are each amended to
2 read as follows:

3 (1) Except as provided otherwise in subsection (2) of this
4 section, a declarant required to deliver a public offering statement
5 pursuant to subsection (3) of this section must prepare a public
6 offering statement conforming to the requirements of RCW 64.90.610,
7 64.90.615, and 64.90.620.

8 (2) A declarant may transfer responsibility for preparation of
9 all or a part of the public offering statement to a successor
10 declarant or to a dealer who intends to offer units in the
11 (~~condominium~~) common interest community.

12 (3)(a) Any declarant or dealer who offers to convey a unit for
13 the person's own account to a purchaser must provide the purchaser of
14 the unit with a copy of a public offering statement and all material
15 amendments to the public offering statement before conveyance of that
16 unit.

17 (b) Any agent, attorney, or other person assisting the declarant
18 or dealer in preparing the public offering statement may rely upon
19 information provided by the declarant or dealer without independent
20 investigation. The agent, attorney, or other person is not liable for
21 any material misrepresentation in or omissions of material facts from
22 the public offering statement unless the person had actual knowledge
23 of the misrepresentation or omission at the time the public offering
24 statement was prepared.

25 (c) The declarant or dealer is liable for any misrepresentation
26 contained in the public offering statement or for any omission of
27 material fact from the public offering statement if the declarant or
28 dealer had actual knowledge of the misrepresentation or omission or,
29 in the exercise of reasonable care, should have known of the
30 misrepresentation or omission.

31 (4) If a unit is part of a common interest community and is part
32 of any other real estate regime in connection with the sale of which
33 the delivery of a public offering statement is required under the
34 laws of this state, a single public offering statement conforming to
35 the requirements of RCW 64.90.610, 64.90.615, and 64.90.620 as those
36 requirements relate to each regime in which the unit is located, and
37 to any other requirements imposed under the laws of this state, may
38 be prepared and delivered in lieu of providing two or more public
39 offering statements.

1 (5) A declarant is not required to prepare and deliver a public
2 offering statement in connection with the sale of any unit owned by
3 the declarant, or to obtain for or provide to the purchaser a report
4 or statement required under RCW 64.90.610(1)(oo), 64.90.620(1), or
5 64.90.655, upon the later of:

6 (a) The termination or expiration of all special declarant
7 rights;

8 (b) The expiration of all periods within which claims or actions
9 for a breach of warranty arising from defects involving the common
10 elements under RCW 64.90.680 must be filed or commenced,
11 respectively, by the association against the declarant; or

12 (c) The time when the declarant ceases to meet the definition of
13 a dealer under RCW 64.90.010.

14 (6) After the last to occur of any of the events described in
15 subsection (5) of this section, a declarant must deliver to the
16 purchaser of a unit owned by the declarant a resale certificate under
17 RCW 64.90.640(2) together with:

18 (a) The identification of any real property not in the common
19 interest community that unit owners have a right to use and a
20 description of the terms of such use;

21 (b) A brief description or a copy of any express construction
22 warranties to be provided to the purchaser;

23 (c) A statement of any litigation brought by an owners'
24 association, unit owner, or governmental entity in which the
25 declarant or any affiliate of the declarant has been a defendant
26 arising out of the construction, sale, or administration of any
27 common interest community within the state of Washington within the
28 previous five years, together with the results of the litigation, if
29 known;

30 (d) Whether timesharing is permitted or prohibited, and, if
31 permitted, a statement that the purchaser of a time share unit is
32 entitled to receive the disclosure document required under chapter
33 64.36 RCW; and

34 (e) Any other information and cross-references that the declarant
35 believes will be helpful in describing the common interest community
36 to the purchaser, all of which may be included or not included at the
37 option of the declarant.

38 (7) A declarant is not liable to a purchaser for the failure or
39 delay of the association to provide the resale certificate in a
40 timely manner, but the purchase contract is voidable by the purchaser

1 of a unit sold by the declarant until the resale certificate required
2 under RCW 64.90.640(2) and the information required under subsection
3 (6) of this section have been provided and for five days thereafter
4 or until conveyance, whichever occurs first.

5 **Sec. 8.** RCW 64.90.645 and 2021 c 260 s 2 are each amended to
6 read as follows:

7 (1) Except as provided in subsection (2) of this section, any
8 earnest money deposit, as defined in RCW 64.04.005, made in
9 connection with the right to purchase a unit from a person required
10 to deliver a public offering statement pursuant to RCW 64.90.605(3)
11 must be placed in escrow and held in this state in an escrow or trust
12 account designated solely for that purpose by a licensed title
13 insurance company or agent, a licensed attorney, a real estate broker
14 or independent bonded escrow company, or an institution whose
15 accounts are insured by a governmental agency or instrumentality
16 until: (a) Delivered to the declarant at closing, (b) delivered to
17 the declarant because of the purchaser's default under a contract to
18 purchase the unit, (c) refunded to the purchaser, or (d) delivered to
19 a court in connection with the filing of an interpleader action.

20 (2)(a) If a purchase agreement for the sale of a unit provides
21 that deposit funds may be used for construction costs and the
22 declarant obtains and maintains a surety bond as required by this
23 section, the declarant may withdraw escrow funds when construction of
24 improvements has begun. The funds may be used only for actual
25 building and construction costs of the project in which the unit is
26 located.

27 (b) The bond must be issued by a surety insurer licensed in this
28 state in favor of the purchaser in an amount adequate to cover the
29 amount of the deposit to be withdrawn. The declarant may not withdraw
30 more than the face amount of the bond. The bond must be payable to
31 the purchaser if the purchaser obtains a final judgment against the
32 declarant requiring the declarant to return the deposit pursuant to
33 the purchase agreement. The bond may be either in the form of an
34 individual bond for each deposit accepted by the declarant or in the
35 form of a blanket bond assuring the return of all deposits received
36 by the declarant.

37 (c) The party holding escrow funds who releases all or any
38 portion of the funds to the declarant has no obligation to monitor
39 the progress of construction or the expenditure of the funds by the

1 declarant and is not liable to any purchaser for the release of funds
2 pursuant to this section.

3 (3) ((A)) The amount of deposit ((under)) funds that may be used
4 pursuant to subsection (2) of this section may not exceed five
5 percent of the purchase price.

6 **Sec. 9.** RCW 82.45.010 and 2022 c 199 s 3 are each amended to
7 read as follows:

8 (1) As used in this chapter, the term "sale" has its ordinary
9 meaning and includes any conveyance, grant, assignment, quitclaim, or
10 transfer of the ownership of or title to real property, including
11 standing timber, or any estate or interest therein for a valuable
12 consideration, and any contract for such conveyance, grant,
13 assignment, quitclaim, or transfer, and any lease with an option to
14 purchase real property, including standing timber, or any estate or
15 interest therein or other contract under which possession of the
16 property is given to the purchaser, or any other person at the
17 purchaser's direction, and title to the property is retained by the
18 vendor as security for the payment of the purchase price. The term
19 also includes the grant, assignment, quitclaim, sale, or transfer of
20 improvements constructed upon leased land.

21 (2)(a) The term "sale" also includes the transfer or acquisition
22 within any ((~~thirty-six~~)) 36 month period of a controlling interest
23 in any entity with an interest in real property located in this state
24 for a valuable consideration.

25 (b) For the sole purpose of determining whether, pursuant to the
26 exercise of an option, a controlling interest was transferred or
27 acquired within a ((~~thirty-six~~)) 36 month period, the date that the
28 option agreement was executed is the date on which the transfer or
29 acquisition of the controlling interest is deemed to occur. For all
30 other purposes under this chapter, the date upon which the option is
31 exercised is the date of the transfer or acquisition of the
32 controlling interest.

33 (c) For purposes of this subsection, all acquisitions of persons
34 acting in concert must be aggregated for purposes of determining
35 whether a transfer or acquisition of a controlling interest has taken
36 place. The department must adopt standards by rule to determine when
37 persons are acting in concert. In adopting a rule for this purpose,
38 the department must consider the following:

1 (i) Persons must be treated as acting in concert when they have a
2 relationship with each other such that one person influences or
3 controls the actions of another through common ownership; and

4 (ii) When persons are not commonly owned or controlled, they must
5 be treated as acting in concert only when the unity with which the
6 purchasers have negotiated and will consummate the transfer of
7 ownership interests supports a finding that they are acting as a
8 single entity. If the acquisitions are completely independent, with
9 each purchaser buying without regard to the identity of the other
10 purchasers, then the acquisitions are considered separate
11 acquisitions.

12 (3) The term "sale" does not include:

13 (a) A transfer by gift, devise, or inheritance.

14 (b) A transfer by transfer on death deed, to the extent that it
15 is not in satisfaction of a contractual obligation of the decedent
16 owed to the recipient of the property.

17 (c) A transfer of any leasehold interest other than of the type
18 mentioned above.

19 (d) A cancellation or forfeiture of a vendee's interest in a
20 contract for the sale of real property, whether or not such contract
21 contains a forfeiture clause, or deed in lieu of foreclosure of a
22 mortgage.

23 (e) The partition of property by tenants in common by agreement
24 or as the result of a court decree.

25 (f) The assignment of property or interest in property from one
26 spouse or one domestic partner to the other spouse or other domestic
27 partner in accordance with the terms of a decree of dissolution of
28 marriage or state registered domestic partnership or in fulfillment
29 of a property settlement agreement.

30 (g) The assignment or other transfer of a vendor's interest in a
31 contract for the sale of real property, even though accompanied by a
32 conveyance of the vendor's interest in the real property involved.

33 (h) Transfers by appropriation or decree in condemnation
34 proceedings brought by the United States, the state or any political
35 subdivision thereof, or a municipal corporation.

36 (i) A mortgage or other transfer of an interest in real property
37 merely to secure a debt, or the assignment thereof.

38 (j) Any transfer or conveyance made pursuant to a deed of trust
39 or an order of sale by the court in any mortgage, deed of trust, or

1 lien foreclosure proceeding or upon execution of a judgment, or deed
2 in lieu of foreclosure to satisfy a mortgage or deed of trust.

3 (k) A conveyance to the federal housing administration or
4 veterans administration by an authorized mortgagee made pursuant to a
5 contract of insurance or guaranty with the federal housing
6 administration or veterans administration.

7 (l) A transfer in compliance with the terms of any lease or
8 contract upon which the tax as imposed by this chapter has been paid
9 or where the lease or contract was entered into prior to the date
10 this tax was first imposed.

11 (m) The sale of any grave or lot in an established cemetery.

12 (n) A sale by the United States, this state or any political
13 subdivision thereof, or a municipal corporation of this state.

14 (o) A sale to a regional transit authority or public corporation
15 under RCW 81.112.320 under a sale/leaseback agreement under RCW
16 81.112.300.

17 (p) A transfer of real property, however effected, if it consists
18 of a mere change in identity or form of ownership of an entity where
19 there is no change in the beneficial ownership. These include
20 transfers to a corporation or partnership which is wholly owned by
21 the transferor and/or the transferor's spouse or domestic partner or
22 children of the transferor or the transferor's spouse or domestic
23 partner. However, if thereafter such transferee corporation or
24 partnership voluntarily transfers such real property, or such
25 transferor, spouse or domestic partner, or children of the transferor
26 or the transferor's spouse or domestic partner voluntarily transfer
27 stock in the transferee corporation or interest in the transferee
28 partnership capital, as the case may be, to other than (i) the
29 transferor and/or the transferor's spouse or domestic partner or
30 children of the transferor or the transferor's spouse or domestic
31 partner, (ii) a trust having the transferor and/or the transferor's
32 spouse or domestic partner or children of the transferor or the
33 transferor's spouse or domestic partner as the only beneficiaries at
34 the time of the transfer to the trust, or (iii) a corporation or
35 partnership wholly owned by the original transferor and/or the
36 transferor's spouse or domestic partner or children of the transferor
37 or the transferor's spouse or domestic partner, within three years of
38 the original transfer to which this exemption applies, and the tax on
39 the subsequent transfer has not been paid within (~~sixty~~) 60 days of

1 becoming due, excise taxes become due and payable on the original
2 transfer as otherwise provided by law.

3 (q) (i) A transfer that for federal income tax purposes does not
4 involve the recognition of gain or loss for entity formation,
5 liquidation or dissolution, and reorganization, including but not
6 limited to nonrecognition of gain or loss because of application of
7 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal
8 revenue code of 1986, as amended.

9 (ii) However, the transfer described in (q) (i) of this subsection
10 cannot be preceded or followed within a (~~thirty-six~~) 36 month
11 period by another transfer or series of transfers, that, when
12 combined with the otherwise exempt transfer or transfers described in
13 (q) (i) of this subsection, results in the transfer of a controlling
14 interest in the entity for valuable consideration, and in which one
15 or more persons previously holding a controlling interest in the
16 entity receive cash or property in exchange for any interest the
17 person or persons acting in concert hold in the entity. This
18 subsection (3) (q) (ii) does not apply to that part of the transfer
19 involving property received that is the real property interest that
20 the person or persons originally contributed to the entity or when
21 one or more persons who did not contribute real property or belong to
22 the entity at a time when real property was purchased receive cash or
23 personal property in exchange for that person or persons' interest in
24 the entity. The real estate excise tax under this subsection
25 (3) (q) (ii) is imposed upon the person or persons who previously held
26 a controlling interest in the entity.

27 (r) A qualified sale of a manufactured/mobile home community, as
28 defined in RCW 59.20.030.

29 (s) (i) A transfer of a qualified low-income housing development
30 or controlling interest in a qualified low-income housing
31 development, unless, due to noncompliance with federal statutory
32 requirements, the seller is subject to recapture, in whole or in
33 part, of its allocated federal low-income housing tax credits within
34 the four years prior to the date of transfer.

35 (ii) For purposes of this subsection (3) (s), "qualified low-
36 income housing development" means real property and improvements in
37 respect to which the seller or, in the case of a transfer of a
38 controlling interest, the owner or beneficial owner, was allocated
39 federal low-income housing tax credits authorized under 26 U.S.C.
40 Sec. 42 or successor statute, by the Washington state housing finance

1 commission or successor state-authorized tax credit allocating
2 agency.

3 (iii) This subsection (3)(s) does not apply to transfers of a
4 qualified low-income housing development or controlling interest in a
5 qualified low-income housing development occurring on or after July
6 1, 2035.

7 (iv) The Washington state housing finance commission, in
8 consultation with the department, must gather data on: (A) The fiscal
9 savings, if any, accruing to transferees as a result of the exemption
10 provided in this subsection (3)(s); (B) the extent to which
11 transferors of qualified low-income housing developments receive
12 consideration, including any assumption of debt, as part of a
13 transfer subject to the exemption provided in this subsection (3)(s);
14 and (C) the continued use of the property for low-income housing. The
15 Washington state housing finance commission must provide this
16 information to the joint legislative audit and review committee. The
17 committee must conduct a review of the tax preference created under
18 this subsection (3)(s) in calendar year 2033, as required under
19 chapter 43.136 RCW.

20 (t)(i) A qualified transfer of residential property by a legal
21 representative of a person with developmental disabilities to a
22 qualified entity subject to the following conditions:

23 (A) The adult child with developmental disabilities of the
24 transferor of the residential property must be allowed to reside in
25 the residence or successor property so long as the placement is safe
26 and appropriate as determined by the department of social and health
27 services;

28 (B) The title to the residential property is conveyed without the
29 receipt of consideration by the legal representative of a person with
30 developmental disabilities to a qualified entity;

31 (C) The residential property must have no more than four living
32 units located on it; and

33 (D) The residential property transferred must remain in continued
34 use for (~~fifty~~) 50 years by the qualified entity as supported
35 living for persons with developmental disabilities by the qualified
36 entity or successor entity. If the qualified entity sells or
37 otherwise conveys ownership of the residential property the proceeds
38 of the sale or conveyance must be used to acquire similar residential
39 property and such similar residential property must be considered the
40 successor for continued use. The property will not be considered in

1 continued use if the department of social and health services finds
2 that the property has failed, after a reasonable time to remedy, to
3 meet any health and safety statutory or regulatory requirements. If
4 the department of social and health services determines that the
5 property fails to meet the requirements for continued use, the
6 department of social and health services must notify the department
7 and the real estate excise tax based on the value of the property at
8 the time of the transfer into use as residential property for persons
9 with developmental disabilities becomes immediately due and payable
10 by the qualified entity. The tax due is not subject to penalties,
11 fees, or interest under this title.

12 (ii) For the purposes of this subsection (3)(t) the definitions
13 in RCW 71A.10.020 apply.

14 (iii) A "qualified entity" is:

15 (A) A nonprofit organization under Title 26 U.S.C. Sec. 501(c)(3)
16 of the federal internal revenue code of 1986, as amended, as of June
17 7, 2018, or a subsidiary under the same taxpayer identification
18 number that provides residential supported living for persons with
19 developmental disabilities; or

20 (B) A nonprofit adult family home, as defined in RCW 70.128.010,
21 that exclusively serves persons with developmental disabilities.

22 (iv) In order to receive an exemption under this subsection
23 (3)(t) an affidavit must be submitted by the transferor of the
24 residential property and must include a copy of the transfer
25 agreement and any other documentation as required by the department.

26 (u)(i) The sale by an affordable homeownership facilitator of
27 self-help housing to a low-income household.

28 (ii) The definitions in this subsection (3)(u) apply to this
29 subsection (3)(u) unless the context clearly requires otherwise.

30 (A) "Affordable homeownership facilitator" means a nonprofit
31 community or neighborhood-based organization that is exempt from
32 income tax under Title 26 U.S.C. Sec. 501(c) of the internal revenue
33 code of 1986, as amended, as of October 1, 2019, and that is the
34 developer of self-help housing.

35 (B) "Low-income" means household income as defined by the
36 department, provided that the definition may not exceed eighty
37 percent of median household income, adjusted for household size, for
38 the county in which the dwelling is located.

39 (C) "Self-help housing" means dwelling residences provided for
40 ownership by low-income individuals and families whose ownership

1 requirement includes labor participation. "Self-help housing" does
2 not include residential rental housing provided on a commercial basis
3 to the general public.

4 (v) (i) A sale or transfer of real property to a qualifying
5 grantee that uses the property for housing for low-income persons and
6 receives or otherwise qualifies the property for an exemption from
7 real and personal property taxes under RCW 84.36.560, 84.36.049,
8 35.82.210, 35.21.755, or 84.36.010. For purposes of this subsection
9 (3) (v), "qualifying grantee" means a nonprofit entity as defined in
10 RCW 84.36.560, a nonprofit entity or qualified cooperative
11 association as defined in RCW 84.36.049, a housing authority created
12 under RCW 35.82.030 or 35.82.300, a public corporation established
13 under RCW 35.21.660 or 35.21.730, or a county or municipal
14 corporation. A qualifying grantee that is a county or municipal
15 corporation must record a covenant at the time of transfer that
16 prohibits using the property for any purpose other than for low-
17 income housing for a period of at least 10 years. At a minimum, the
18 covenant must address price restrictions and household income limits
19 for the low-income housing. A qualifying grantee must comply with the
20 requirements described in (v) (i) (A), (B), or (C) of this subsection
21 and must also certify, by affidavit at the time of sale or transfer,
22 that it intends to comply with those requirements.

23 (A) If the qualifying grantee intends to operate existing housing
24 on the property, within one year of the sale or transfer:

25 (I) The qualifying grantee must receive or qualify the property
26 for a tax exemption under RCW 84.36.560, 84.36.049,
27 35.82.210, 35.21.755, or 84.36.010; and

28 (II) The property must be used as housing for low-income persons.

29 (B) If the qualifying grantee intends to develop new housing on
30 the site, within five years of the sale or transfer:

31 (I) The qualifying grantee must receive or qualify the property
32 for a tax exemption under RCW 84.36.560, 84.36.049,
33 35.82.210, 35.21.755, or 84.36.010; and

34 (II) The property must be used as housing for low-income persons.

35 (C) If the qualifying grantee intends to substantially
36 rehabilitate the premises as defined in RCW 59.18.200, within three
37 years:

38 (I) The qualifying grantee must receive or qualify the property
39 for a tax exemption under RCW 84.36.560, 84.36.049,
40 35.82.210, 35.21.755, or 84.36.010; and

1 (II) The property must be used as housing for low-income persons.

2 (ii) If the qualifying grantee fails to satisfy the requirements
3 described in (v)(i)(A), (B), or (C) of this subsection, within the
4 timelines described in (v)(i)(A), (B), or (C) of this subsection, the
5 qualifying grantee must pay the tax that would have otherwise been
6 due at the time of initial transfer, plus interest calculated from
7 the date of initial transfer pursuant to RCW 82.32.050.

8 (iii) If a qualifying grantee transfers the property to a
9 different qualifying grantee within the original timelines described
10 in (v)(i)(A), (B), or (C) of this subsection, neither the original
11 qualifying grantee nor the new qualifying grantee is required to pay
12 the tax, so long as the new qualifying grantee satisfies the
13 requirements as described in (v)(i)(A), (B), or (C) of this
14 subsection within the exemption period of the initial transfer. If
15 the new qualifying grantee fails to satisfy the requirements
16 described in (v)(i)(A), (B), or (C) of this subsection, only the new
17 qualifying grantee is liable for the payment of taxes required by
18 (v)(ii) of this subsection. There is no limit on the number of
19 transfers between qualifying grantees within the original timelines.

20 (iv) Each affidavit must be filed with the department upon
21 completion of the sale or transfer of property, including transfers
22 from a qualifying grantee to a different qualifying grantee. The
23 qualifying grantee must provide proof to the department as required
24 by the department once the requirements as described in (v)(i)(A),
25 (B), or (C) of this subsection have been satisfied.

26 (v) For the purposes of this subsection (3)(v), "low-income" has
27 the same meaning as in (u) of this subsection.

28 (w) A sale of condominiums and townhouses that are constructed in
29 buildings qualifying for the tax exemption in chapter 84.14 RCW and
30 that meet the definition of permanently affordable homeownership, as
31 that term is defined in RCW 84.14.021(6), at the time of the sale.
32 For the purposes of this subsection (3)(w), "townhouse" means
33 dwelling units constructed in a row of two or more attached units
34 where each dwelling unit shares at least one common wall with an
35 adjacent unit and is accessed by a separate outdoor entrance.

36 **Sec. 10.** RCW 82.45.010 and 2022 c 199 s 4 are each amended to
37 read as follows:

38 (1) As used in this chapter, the term "sale" has its ordinary
39 meaning and includes any conveyance, grant, assignment, quitclaim, or

1 transfer of the ownership of or title to real property, including
2 standing timber, or any estate or interest therein for a valuable
3 consideration, and any contract for such conveyance, grant,
4 assignment, quitclaim, or transfer, and any lease with an option to
5 purchase real property, including standing timber, or any estate or
6 interest therein or other contract under which possession of the
7 property is given to the purchaser, or any other person at the
8 purchaser's direction, and title to the property is retained by the
9 vendor as security for the payment of the purchase price. The term
10 also includes the grant, assignment, quitclaim, sale, or transfer of
11 improvements constructed upon leased land.

12 (2) (a) The term "sale" also includes the transfer or acquisition
13 within any (~~(thirty-six)~~) 36 month period of a controlling interest
14 in any entity with an interest in real property located in this state
15 for a valuable consideration.

16 (b) For the sole purpose of determining whether, pursuant to the
17 exercise of an option, a controlling interest was transferred or
18 acquired within a (~~(thirty-six)~~) 36 month period, the date that the
19 option agreement was executed is the date on which the transfer or
20 acquisition of the controlling interest is deemed to occur. For all
21 other purposes under this chapter, the date upon which the option is
22 exercised is the date of the transfer or acquisition of the
23 controlling interest.

24 (c) For purposes of this subsection, all acquisitions of persons
25 acting in concert must be aggregated for purposes of determining
26 whether a transfer or acquisition of a controlling interest has taken
27 place. The department must adopt standards by rule to determine when
28 persons are acting in concert. In adopting a rule for this purpose,
29 the department must consider the following:

30 (i) Persons must be treated as acting in concert when they have a
31 relationship with each other such that one person influences or
32 controls the actions of another through common ownership; and

33 (ii) When persons are not commonly owned or controlled, they must
34 be treated as acting in concert only when the unity with which the
35 purchasers have negotiated and will consummate the transfer of
36 ownership interests supports a finding that they are acting as a
37 single entity. If the acquisitions are completely independent, with
38 each purchaser buying without regard to the identity of the other
39 purchasers, then the acquisitions are considered separate
40 acquisitions.

1 (3) The term "sale" does not include:
2 (a) A transfer by gift, devise, or inheritance.
3 (b) A transfer by transfer on death deed, to the extent that it
4 is not in satisfaction of a contractual obligation of the decedent
5 owed to the recipient of the property.
6 (c) A transfer of any leasehold interest other than of the type
7 mentioned above.
8 (d) A cancellation or forfeiture of a vendee's interest in a
9 contract for the sale of real property, whether or not such contract
10 contains a forfeiture clause, or deed in lieu of foreclosure of a
11 mortgage.
12 (e) The partition of property by tenants in common by agreement
13 or as the result of a court decree.
14 (f) The assignment of property or interest in property from one
15 spouse or one domestic partner to the other spouse or other domestic
16 partner in accordance with the terms of a decree of dissolution of
17 marriage or state registered domestic partnership or in fulfillment
18 of a property settlement agreement.
19 (g) The assignment or other transfer of a vendor's interest in a
20 contract for the sale of real property, even though accompanied by a
21 conveyance of the vendor's interest in the real property involved.
22 (h) Transfers by appropriation or decree in condemnation
23 proceedings brought by the United States, the state or any political
24 subdivision thereof, or a municipal corporation.
25 (i) A mortgage or other transfer of an interest in real property
26 merely to secure a debt, or the assignment thereof.
27 (j) Any transfer or conveyance made pursuant to a deed of trust
28 or an order of sale by the court in any mortgage, deed of trust, or
29 lien foreclosure proceeding or upon execution of a judgment, or deed
30 in lieu of foreclosure to satisfy a mortgage or deed of trust.
31 (k) A conveyance to the federal housing administration or
32 veterans administration by an authorized mortgagee made pursuant to a
33 contract of insurance or guaranty with the federal housing
34 administration or veterans administration.
35 (l) A transfer in compliance with the terms of any lease or
36 contract upon which the tax as imposed by this chapter has been paid
37 or where the lease or contract was entered into prior to the date
38 this tax was first imposed.
39 (m) The sale of any grave or lot in an established cemetery.

1 (n) A sale by the United States, this state or any political
2 subdivision thereof, or a municipal corporation of this state.

3 (o) A sale to a regional transit authority or public corporation
4 under RCW 81.112.320 under a sale/leaseback agreement under RCW
5 81.112.300.

6 (p) A transfer of real property, however effected, if it consists
7 of a mere change in identity or form of ownership of an entity where
8 there is no change in the beneficial ownership. These include
9 transfers to a corporation or partnership which is wholly owned by
10 the transferor and/or the transferor's spouse or domestic partner or
11 children of the transferor or the transferor's spouse or domestic
12 partner. However, if thereafter such transferee corporation or
13 partnership voluntarily transfers such real property, or such
14 transferor, spouse or domestic partner, or children of the transferor
15 or the transferor's spouse or domestic partner voluntarily transfer
16 stock in the transferee corporation or interest in the transferee
17 partnership capital, as the case may be, to other than (i) the
18 transferor and/or the transferor's spouse or domestic partner or
19 children of the transferor or the transferor's spouse or domestic
20 partner, (ii) a trust having the transferor and/or the transferor's
21 spouse or domestic partner or children of the transferor or the
22 transferor's spouse or domestic partner as the only beneficiaries at
23 the time of the transfer to the trust, or (iii) a corporation or
24 partnership wholly owned by the original transferor and/or the
25 transferor's spouse or domestic partner or children of the transferor
26 or the transferor's spouse or domestic partner, within three years of
27 the original transfer to which this exemption applies, and the tax on
28 the subsequent transfer has not been paid within (~~sixty~~) 60 days of
29 becoming due, excise taxes become due and payable on the original
30 transfer as otherwise provided by law.

31 (q) (i) A transfer that for federal income tax purposes does not
32 involve the recognition of gain or loss for entity formation,
33 liquidation or dissolution, and reorganization, including but not
34 limited to nonrecognition of gain or loss because of application of
35 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal
36 revenue code of 1986, as amended.

37 (ii) However, the transfer described in (q) (i) of this subsection
38 cannot be preceded or followed within a (~~thirty-six~~) 36 month
39 period by another transfer or series of transfers, that, when
40 combined with the otherwise exempt transfer or transfers described in

1 (q) (i) of this subsection, results in the transfer of a controlling
2 interest in the entity for valuable consideration, and in which one
3 or more persons previously holding a controlling interest in the
4 entity receive cash or property in exchange for any interest the
5 person or persons acting in concert hold in the entity. This
6 subsection (3) (q) (ii) does not apply to that part of the transfer
7 involving property received that is the real property interest that
8 the person or persons originally contributed to the entity or when
9 one or more persons who did not contribute real property or belong to
10 the entity at a time when real property was purchased receive cash or
11 personal property in exchange for that person or persons' interest in
12 the entity. The real estate excise tax under this subsection
13 (3) (q) (ii) is imposed upon the person or persons who previously held
14 a controlling interest in the entity.

15 (r) A qualified sale of a manufactured/mobile home community, as
16 defined in RCW 59.20.030, that takes place on or after June 12, 2008,
17 but before December 31, 2018.

18 (s) (i) A transfer of a qualified low-income housing development
19 or controlling interest in a qualified low-income housing
20 development, unless, due to noncompliance with federal statutory
21 requirements, the seller is subject to recapture, in whole or in
22 part, of its allocated federal low-income housing tax credits within
23 the four years prior to the date of transfer.

24 (ii) For purposes of this subsection (3) (s), "qualified low-
25 income housing development" means real property and improvements in
26 respect to which the seller or, in the case of a transfer of a
27 controlling interest, the owner or beneficial owner, was allocated
28 federal low-income housing tax credits authorized under 26 U.S.C.
29 Sec. 42 or successor statute, by the Washington state housing finance
30 commission or successor state-authorized tax credit allocating
31 agency.

32 (iii) This subsection (3) (s) does not apply to transfers of a
33 qualified low-income housing development or controlling interest in a
34 qualified low-income housing development occurring on or after July
35 1, 2035.

36 (iv) The Washington state housing finance commission, in
37 consultation with the department, must gather data on: (A) The fiscal
38 savings, if any, accruing to transferees as a result of the exemption
39 provided in this subsection (3) (s); (B) the extent to which
40 transferors of qualified low-income housing developments receive

1 consideration, including any assumption of debt, as part of a
2 transfer subject to the exemption provided in this subsection (3)(s);
3 and (C) the continued use of the property for low-income housing. The
4 Washington state housing finance commission must provide this
5 information to the joint legislative audit and review committee. The
6 committee must conduct a review of the tax preference created under
7 this subsection (3)(s) in calendar year 2033, as required under
8 chapter 43.136 RCW.

9 (t)(i) A qualified transfer of residential property by a legal
10 representative of a person with developmental disabilities to a
11 qualified entity subject to the following conditions:

12 (A) The adult child with developmental disabilities of the
13 transferor of the residential property must be allowed to reside in
14 the residence or successor property so long as the placement is safe
15 and appropriate as determined by the department of social and health
16 services;

17 (B) The title to the residential property is conveyed without the
18 receipt of consideration by the legal representative of a person with
19 developmental disabilities to a qualified entity;

20 (C) The residential property must have no more than four living
21 units located on it; and

22 (D) The residential property transferred must remain in continued
23 use for (~~(fifty)~~) 50 years by the qualified entity as supported
24 living for persons with developmental disabilities by the qualified
25 entity or successor entity. If the qualified entity sells or
26 otherwise conveys ownership of the residential property the proceeds
27 of the sale or conveyance must be used to acquire similar residential
28 property and such similar residential property must be considered the
29 successor for continued use. The property will not be considered in
30 continued use if the department of social and health services finds
31 that the property has failed, after a reasonable time to remedy, to
32 meet any health and safety statutory or regulatory requirements. If
33 the department of social and health services determines that the
34 property fails to meet the requirements for continued use, the
35 department of social and health services must notify the department
36 and the real estate excise tax based on the value of the property at
37 the time of the transfer into use as residential property for persons
38 with developmental disabilities becomes immediately due and payable
39 by the qualified entity. The tax due is not subject to penalties,
40 fees, or interest under this title.

1 (ii) For the purposes of this subsection (3)(t) the definitions
2 in RCW 71A.10.020 apply.

3 (iii) A "qualified entity" is:

4 (A) A nonprofit organization under Title 26 U.S.C. Sec. 501(c)(3)
5 of the federal internal revenue code of 1986, as amended, as of June
6 7, 2018, or a subsidiary under the same taxpayer identification
7 number that provides residential supported living for persons with
8 developmental disabilities; or

9 (B) A nonprofit adult family home, as defined in RCW 70.128.010,
10 that exclusively serves persons with developmental disabilities.

11 (iv) In order to receive an exemption under this subsection
12 (3)(t) an affidavit must be submitted by the transferor of the
13 residential property and must include a copy of the transfer
14 agreement and any other documentation as required by the department.

15 (u)(i) A sale or transfer of real property to a qualifying
16 grantee that uses the property for housing for low-income persons and
17 receives or otherwise qualifies the property for an exemption from
18 real and personal property taxes under RCW 84.36.560, 84.36.049,
19 35.82.210, 35.21.755, or 84.36.010. For purposes of this subsection
20 (3)(u), "qualifying grantee" means a nonprofit entity as defined in
21 RCW 84.36.560, a nonprofit entity or qualified cooperative
22 association as defined in RCW 84.36.049, a housing authority created
23 under RCW 35.82.030 or 35.82.300, a public corporation established
24 under RCW 35.21.660 or 35.21.730, or a county or municipal
25 corporation. A qualifying grantee that is a county or municipal
26 corporation must record a covenant at the time of transfer that
27 prohibits using the property for any purpose other than for low-
28 income housing for a period of at least 10 years. At a minimum, the
29 covenant must address price restrictions and household income limits
30 for the low-income housing. A qualifying grantee must comply with the
31 requirements described in (u)(i)(A), (B), or (C) of this subsection
32 and must also certify, by affidavit at the time of sale or transfer,
33 that it intends to comply with those requirements.

34 (A) If the qualifying grantee intends to operate existing housing
35 on the property, within one year of the sale or transfer:

36 (I) The qualifying grantee must receive or qualify the property
37 for a tax exemption under RCW 84.36.560, 84.36.049,
38 35.82.210, 35.21.755, or 84.36.010; and

39 (II) The property must be used as housing for low-income persons.

1 (B) If the qualifying grantee intends to develop new housing on
2 the site, within five years of the sale or transfer:

3 (I) The qualifying grantee must receive or qualify the property
4 for a tax exemption under RCW 84.36.560, 84.36.049,
5 35.82.210, 35.21.755, or 84.36.010; and

6 (II) The property must be used as housing for low-income persons.

7 (C) If the qualifying grantee intends to substantially
8 rehabilitate the premises as defined in RCW 59.18.200, within three
9 years:

10 (I) The qualifying grantee must receive or qualify the property
11 for a tax exemption under RCW 84.36.560, 84.36.049,
12 35.82.210, 35.21.755, or 84.36.010; and

13 (II) The property must be used as housing for low-income persons.

14 (ii) If the qualifying grantee fails to satisfy the requirements
15 described in (u)(i)(A), (B), or (C) of this subsection, within the
16 timelines described in (u)(i)(A), (B), or (C) of this subsection, the
17 qualifying grantee must pay the tax that would have otherwise been
18 due at the time of initial transfer, plus interest calculated from
19 the date of initial transfer pursuant to RCW 82.32.050.

20 (iii) If a qualifying grantee transfers the property to a
21 different qualifying grantee within the original timelines described
22 in (u)(i)(A), (B), or (C) of this subsection, neither the original
23 qualifying grantee nor the new qualifying grantee is required to pay
24 the tax, so long as the new qualifying grantee satisfies the
25 requirements as described in (u)(i)(A), (B), or (C) of this
26 subsection within the exemption period of the initial transfer. If
27 the new qualifying grantee fails to satisfy the requirements
28 described in (u)(i)(A), (B), or (C) of this subsection, only the new
29 qualifying grantee is liable for the payment of taxes required by
30 (u)(ii) of this subsection. There is no limit on the number of
31 transfers between qualifying grantees within the original timelines.

32 (iv) Each affidavit must be filed with the department upon
33 completion of the sale or transfer of property, including transfers
34 from a qualifying grantee to a different qualifying grantee. The
35 qualifying grantee must provide proof to the department as required
36 by the department once the requirements as described in (u)(i)(A),
37 (B), or (C) of this subsection have been satisfied.

38 (v) For the purposes of this subsection (3)(u), "low-income"
39 means household income as defined by the department, provided that
40 the definition may not exceed 80 percent of median household income,

1 adjusted for household size, for the county in which the dwelling is
2 located.

3 (v) A sale of condominiums and townhouses that are constructed in
4 buildings qualifying for the tax exemption in chapter 84.14 RCW and
5 that meet the definition of permanently affordable homeownership, as
6 that term is defined in RCW 84.14.021(6), at the time of the sale.
7 For the purposes of this subsection (3)(v), "townhouse" means
8 dwelling units constructed in a row of two or more attached units
9 where each dwelling unit shares at least one common wall with an
10 adjacent unit and is accessed by a separate outdoor entrance.

11 **Sec. 11.** RCW 82.45.230 and 2019 c 424 s 2 are each amended to
12 read as follows:

13 (1) Beginning January 1, 2020, and ending June 30, 2023, the
14 amounts received for the tax imposed on each sale of real property
15 under RCW 82.45.060 must be deposited as follows:

16 (a) 1.7 percent must be deposited into the public works
17 assistance account created in RCW 43.155.050;

18 (b) 1.4 percent must be deposited into the city-county assistance
19 account created in RCW 43.08.290;

20 (c) 79.4 percent must be deposited into the general fund; and

21 (d) The remainder must be deposited into the educational legacy
22 trust account created in RCW 83.100.230.

23 (2) Beginning July 1, 2023, and thereafter, the amounts received
24 for the tax imposed on each sale of real property under RCW 82.45.060
25 must be deposited as follows:

26 (a) 5.2 percent must be deposited into the public works
27 assistance account created in RCW 43.155.050;

28 (b) 1.4 percent must be deposited into the city-county assistance
29 account created in RCW 43.08.290;

30 (c) Except as provided in subsection (3) of this section, 79.4
31 percent must be deposited into the general fund; and

32 (d) The remainder must be deposited into the education legacy
33 trust account created in RCW 83.100.230.

34 (3)(a) Amounts received from the sale of a condominium or
35 townhouse to a person using a down payment assistance program offered
36 by the Washington state housing finance commission must be deposited
37 into the down payment assistance account created in section 12 of
38 this act.

1 (b) The department must annually determine the total amount
2 received under RCW 82.45.060 from sales of condominiums or townhouses
3 to persons using a down payment assistance program offered by the
4 Washington state housing finance commission by June 1st and notify
5 the state treasurer of the amount by June 15th to ensure a proper
6 accounting of the amount of funds deposited into the down payment
7 assistance account created in section 12 of this act.

8 (c) For the purposes of this subsection (3), "townhouse" means
9 dwelling units constructed in a row of two or more attached units
10 where each dwelling unit shares at least one common wall with an
11 adjacent unit and is accessed by a separate outdoor entrance.

12 NEW SECTION. Sec. 12. A new section is added to chapter 82.45
13 RCW to read as follows:

14 The down payment assistance account is created in the custody of
15 the state treasurer. All receipts from the real estate excise tax
16 under RCW 82.45.230(3)(a) must be deposited into the account.
17 Expenditures from the account may be used only for payment toward a
18 person's down payment assistance loan that was used to purchase a
19 condominium or townhouse for which the tax was collected. Only the
20 Washington state housing finance commission or the commission's
21 designee may authorize expenditures from the account. The account is
22 subject to allotment procedures under chapter 43.88 RCW, but an
23 appropriation is not required for expenditures.

24 **Sec. 13.** RCW 82.02.060 and 2021 c 72 s 1 are each amended to
25 read as follows:

26 The local ordinance by which impact fees are imposed:

27 (1) Shall include a schedule of impact fees which shall be
28 adopted for each type of development activity that is subject to
29 impact fees, specifying the amount of the impact fee to be imposed
30 for each type of system improvement. The schedule shall be based upon
31 a formula or other method of calculating such impact fees. The
32 schedule shall reflect the proportionate impact of new housing units,
33 including multifamily and condominium units, based on the square
34 footage, number of bedrooms, or trips generated, in the housing unit
35 in order to produce a proportionally lower impact fee for smaller
36 housing units. In determining proportionate share, the formula or
37 other method of calculating impact fees shall incorporate, among
38 other things, the following:

1 (a) The cost of public facilities necessitated by new
2 development;

3 (b) An adjustment to the cost of the public facilities for past
4 or future payments made or reasonably anticipated to be made by new
5 development to pay for particular system improvements in the form of
6 user fees, debt service payments, taxes, or other payments earmarked
7 for or proratable to the particular system improvement;

8 (c) The availability of other means of funding public facility
9 improvements;

10 (d) The cost of existing public facilities improvements; and

11 (e) The methods by which public facilities improvements were
12 financed;

13 (2) May provide an exemption for low-income housing, and other
14 development activities with broad public purposes, including
15 development of an early learning facility, from these impact fees,
16 provided that the impact fees for such development activity shall be
17 paid from public funds other than impact fee accounts;

18 (3)(a) May not impose an impact fee on development activities of
19 an early learning facility greater than that imposed on commercial
20 retail or commercial office development activities that generate a
21 similar number, volume, type, and duration of vehicle trips;

22 (b) When a facility or development has more than one use, the
23 limitations in this subsection (3) or the exemption applicable to an
24 early learning facility in subsections (2) and (4) of this section
25 only apply to that portion that is developed as an early learning
26 facility. The impact fee assessed on an early learning facility in
27 such a development or facility may not exceed the least of the impact
28 fees assessed on comparable businesses in the facility or
29 development;

30 (4) May provide an exemption from impact fees for low-income
31 housing or for early learning facilities. Local governments that
32 grant exemptions for low-income housing or for early learning
33 facilities under this subsection (4) may either: Grant a partial
34 exemption of not more than eighty percent of impact fees, in which
35 case there is no explicit requirement to pay the exempted portion of
36 the fee from public funds other than impact fee accounts; or provide
37 a full waiver, in which case the remaining percentage of the exempted
38 fee must be paid from public funds other than impact fee accounts,
39 except as provided in (b) of this subsection. These exemptions are
40 subject to the following requirements:

1 (a) An exemption for low-income housing granted under subsection
2 (2) of this section or this subsection (4) must be conditioned upon
3 requiring the developer to record a covenant that, except as provided
4 otherwise by this subsection, prohibits using the property for any
5 purpose other than for low-income housing. At a minimum, the covenant
6 must address price restrictions and household income limits for the
7 low-income housing, and that if the property is converted to a use
8 other than for low-income housing, the property owner must pay the
9 applicable impact fees in effect at the time of conversion;

10 (b) An exemption for early learning facilities granted under
11 subsection (2) of this section or this subsection (4) may be a full
12 waiver without an explicit requirement to pay the exempted portion of
13 the fee from public funds other than impact fee accounts if the local
14 government requires the developer to record a covenant that requires
15 that at least 25 percent of the children and families using the early
16 learning facility qualify for state subsidized child care, including
17 early childhood education and assistance under chapter 43.216 RCW,
18 and that provides that if the property is converted to a use other
19 than for an early learning facility, the property owner must pay the
20 applicable impact fees in effect at the time of conversion, and that
21 also provides that if at no point during a calendar year does the
22 early learning facility achieve the required percentage of children
23 and families qualified for state subsidized child care using the
24 early learning facility, the property owner must pay 20 percent of
25 the impact fee that would have been imposed on the development had
26 there not been an exemption within 90 days of the local government
27 notifying the property owner of the breach, and any balance remaining
28 thereafter shall be a lien on the property; and

29 (c) Covenants required by (a) and (b) of this subsection must be
30 recorded with the applicable county auditor or recording officer. A
31 local government granting an exemption under subsection (2) of this
32 section or this subsection (4) for low-income housing or an early
33 learning facility may not collect revenue lost through granting an
34 exemption by increasing impact fees unrelated to the exemption. A
35 school district who receives school impact fees must approve any
36 exemption under subsection (2) of this section or this subsection
37 (4);

38 (5) Shall provide a credit for the value of any dedication of
39 land for, improvement to, or new construction of any system
40 improvements provided by the developer, to facilities that are

1 identified in the capital facilities plan and that are required by
2 the county, city, or town as a condition of approving the development
3 activity;

4 (6) Shall allow the county, city, or town imposing the impact
5 fees to adjust the standard impact fee at the time the fee is imposed
6 to consider unusual circumstances in specific cases to ensure that
7 impact fees are imposed fairly;

8 (7) Shall include a provision for calculating the amount of the
9 fee to be imposed on a particular development that permits
10 consideration of studies and data submitted by the developer to
11 adjust the amount of the fee;

12 (8) Shall establish one or more reasonable service areas within
13 which it shall calculate and impose impact fees for various land use
14 categories per unit of development; (~~and~~)

15 (9) May provide for the imposition of an impact fee for system
16 improvement costs previously incurred by a county, city, or town to
17 the extent that new growth and development will be served by the
18 previously constructed improvements provided such fee shall not be
19 imposed to make up for any system improvement deficiencies; and

20 (10) Must adopt or amend by ordinance, and incorporate into their
21 development regulations, zoning regulations, and other official
22 controls the requirements of this section to take effect six months
23 after the jurisdiction's next periodic comprehensive plan update
24 required under RCW 36.70A.130.

25 For purposes of this section, "low-income housing" means housing
26 with a monthly housing expense, that is no greater than thirty
27 percent of eighty percent of the median family income adjusted for
28 family size, for the county where the project is located, as reported
29 by the United States department of housing and urban development.

30 For the purposes of this section, "early learning facility" has
31 the same meaning as in RCW 43.31.565.

32 **Sec. 14.** RCW 58.17.060 and 1990 1st ex.s. c 17 s 51 are each
33 amended to read as follows:

34 (1) The legislative body of a city, town, or county shall adopt
35 regulations and procedures, and appoint administrative personnel for
36 the summary approval of short plats and short subdivisions or
37 alteration or vacation thereof. When an alteration or vacation
38 involves a public dedication, the alteration or vacation shall be
39 processed as provided in RCW 58.17.212 or 58.17.215. Such regulations

1 shall be adopted by ordinance and shall provide that a short plat and
2 short subdivision may be approved only if written findings that are
3 appropriate, as provided in RCW 58.17.110, are made by the
4 administrative personnel, and may contain wholly different
5 requirements than those governing the approval of preliminary and
6 final plats of subdivisions and may require surveys and
7 monumentations and shall require filing of a short plat, or
8 alteration or vacation thereof, for record in the office of the
9 county auditor: PROVIDED, That such regulations must contain a
10 requirement that land in short subdivisions may not be further
11 divided in any manner within a period of five years without the
12 filing of a final plat, except that when the short plat contains
13 fewer than four parcels, nothing in this section shall prevent the
14 owner who filed the short plat from filing an alteration within the
15 five-year period to create up to a total of four lots within the
16 original short plat boundaries: PROVIDED FURTHER, That such
17 regulations are not required to contain a penalty clause as provided
18 in RCW 36.32.120 and may provide for wholly injunctive relief.

19 An ordinance requiring a survey shall require that the survey be
20 completed and filed with the application for approval of the short
21 subdivision.

22 (2) Cities, towns, and counties shall include in their short plat
23 regulations and procedures pursuant to subsection (1) of this section
24 provisions for considering sidewalks and other planning features that
25 assure safe walking conditions for students who walk to and from
26 school.

27 (3) All cities, towns, and counties shall include in their short
28 plat regulations procedures for unit lot subdivisions allowing
29 division of a parent lot into separately owned unit lots. Portions of
30 the parent lot not subdivided for individual unit lots shall be owned
31 in common by the owners of the individual unit lots, or by a
32 homeowners' association comprised of the owners of the individual
33 unit lots.

34 **Sec. 15.** RCW 64.55.160 and 2005 c 456 s 17 are each amended to
35 read as follows:

36 (1) On or before the (~~sixtieth~~) 60th day following completion
37 of the mediation pursuant to RCW 64.55.120(4) and following filing
38 and service of the complaint, the declarant, association, or party
39 unit owner may serve on an adverse party an offer to allow judgment

1 to be entered. The offer of judgment shall specify the amount of
2 damages, not including costs or fees, that the declarant,
3 association, or party unit owner is offering to pay or receive. A
4 declarant's offer shall also include its commitment to pay costs and
5 fees that may be awarded as provided in this section. The declarant,
6 association, or party unit owner may make more than one offer of
7 judgment so long as each offer is timely made. Each subsequent offer
8 supersedes and replaces the previous offer. Any offer not accepted
9 within (~~twenty-one~~) 21 days of the service of that offer is deemed
10 rejected and withdrawn and evidence thereof is not admissible and may
11 not be provided to the court or arbitrator except in a proceeding to
12 determine costs and fees or as part of the motion identified in
13 subsection (2) of this section.

14 (2) A declarant's offer must include a demonstration of ability
15 to pay damages, costs, and fees, including reasonable attorneys'
16 fees, within thirty days of acceptance of the offer of judgment. The
17 demonstration of ability to pay shall include a sworn statement
18 signed by the declarant, the attorney representing the declarant,
19 and, if any insurance proceeds will be used to fund any portion of
20 the offer, an authorized representative of the insurance company. If
21 the association or party unit owner disputes the adequacy of the
22 declarant's demonstration of ability to pay, the association or party
23 unit owner may file a motion with the court requesting a ruling on
24 the adequacy of the declarant's demonstration of ability to pay. Upon
25 filing of such motion, the deadline for a response to the offer shall
26 be tolled from the date the motion is filed until the court has
27 ruled.

28 (3) An association or party unit owner that accepts the
29 declarant's offer of judgment shall be deemed the prevailing party
30 and, in addition to recovery of the amount of the offer, shall be
31 entitled to a costs and fees award, including reasonable attorneys'
32 fees, in an amount to be determined by the court in accordance with
33 applicable law.

34 (4) If the amount of the final nonappealable or nonappealed
35 judgment, exclusive of costs or fees, is not more favorable to the
36 offeree than the offer of judgment, then the offeror is deemed the
37 prevailing party for purposes of this section only and is entitled to
38 an award of costs and fees, including reasonable attorneys' fees,
39 incurred after the date the last offer of judgment was rejected and
40 through the date of entry of a final nonappealable or nonappealed

1 judgment, in an amount to be determined by the court in accordance
2 with applicable law. The nonprevailing party shall not be entitled to
3 receive any award of costs and fees.

4 (5) If the final nonappealable or nonappealed judgment on
5 damages, not including costs or fees, is more favorable to the
6 offeree than the last offer of judgment, then the court shall
7 determine which party is the prevailing party and shall determine the
8 amount of the costs and fees award, including reasonable attorneys'
9 fees, in accordance with applicable law.

10 (6) Notwithstanding any other provision in this section, with
11 respect to claims brought by an association or unit owner, the
12 liability for declarant's costs and fees, including reasonable
13 attorneys' fees, shall:

14 (a) With respect to claims brought by an association, not exceed
15 five percent of the assessed value of the condominium as a whole,
16 which is determined by the aggregate tax-assessed value of all units
17 at the time of the award; and

18 (b) With respect to claims brought by a party unit owner, not
19 exceed five percent of the assessed value of the unit at the time of
20 the award.

21 NEW SECTION. **Sec. 16.** Sections 3 through 5 of this act apply
22 only to construction defect claims commenced after the effective date
23 of this section.

24 NEW SECTION. **Sec. 17.** RCW 82.32.808 does not apply to this act.

25 NEW SECTION. **Sec. 18.** Section 9 of this act takes effect
26 January 1, 2024.

27 NEW SECTION. **Sec. 19.** Section 9 of this act expires January 1,
28 2030.

29 NEW SECTION. **Sec. 20.** Section 10 of this act takes effect
30 January 1, 2030.

31 NEW SECTION. **Sec. 21.** Sections 10 through 12 of this act expire
32 January 1, 2034.

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