

2 **SSB 6409** - H COMM AMD **Adopted 3-7-02**  
3 By Committee on Judiciary

4

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 Correct the title.

--- END ---