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## Judiciary Committee

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### SSB 6409

**Title:** An act relating to construction defect claims asserting property loss and damage.

**Brief Description:** Requiring an opportunity for a cure before an action on a construction defect may be filed.

**Sponsors:** Senate Committee on Labor, Commerce & Financial Institutions (originally sponsored by Senators Prentice, Hargrove, Johnson, Rossi, Rasmussen, Honeyford, Gardner, Finkbeiner and Hale).

#### Brief Summary of Substitute Bill

- Provides that the builder of a residence must be given an opportunity to cure a construction defect before a lawsuit may be filed against the builder.
- Provides that when filing a suit against a builder, the plaintiff must list the alleged defects and must identify which construction professional is responsible for a defect.
- Provides that before a condominium or homeowners' association may sue a builder, the association must notify all its members of the nature of the action and the expected costs of bringing the action.

**Hearing Date:** 2/28/02

**Staff:** Bill Perry (786-7123).

#### Background:

In most instances, a lawsuit may be commenced by filing a complaint or serving the defendant with a summons within the period of the applicable statute of limitations. Generally, a plaintiff is not required to take other specific steps prior to commencing the suit. One exception to this general rule is found in the requirement that a tort lawsuit against a state or local government must be preceded by the presentment of the claim to the government at least 60 days before a suit may be commenced.

Generally, the complaint that commences a lawsuit need only contain a "short and plain statement of the claim" and a showing that the plaintiff is entitled to the relief sought.

Procedures are available for the defendant to seek clarification and more specificity in the statement of the claim. Once a lawsuit is commenced, both parties also may use various forms of discovery to better understand the nature and strength of a claim.

Various statutes of limitations control the periods of time within which a lawsuit may be brought. These periods begin after a cause of action has accrued. For instance, a lawsuit for breach of contract must be brought within six years of the breach. For most tort cases, the statute of limitations is three years. If one of the many specific statutes of limitations does not apply to a particular kind of case, the default period is two years from accrual.

In some kinds of cases, a statute of "repose" may apply in addition to a statute of "limitations." While a statute of limitations requires an action to be brought within a certain time of its accrual, a statute of repose says that the accrual itself must occur within a certain time. A statute of repose applies to claims against building contractors. It provides that a cause of action must accrue within six years after substantial completion of a project, or no lawsuit can be brought. If the period of repose has expired, the statute of limitations never even begins to run. If a cause of action does accrue within those six years, however, then the statute of limitations that applies begins to run from the time of the accrual.

Under the state's condominium law, a four year statute of limitations generally applies to lawsuits for breaches of express or implied warranties as to the quality of construction. Express warranties are assertions that a builder has made with respect to the condominium and that were relied upon by the buyer. Implied warranties are statutorily created and generally may not be waived by the buyer of a residential unit unless the waiver is specified in writing and has become a part of the bargain for purchase of the unit. Implied warranties by the seller of a condominium include warranties that:

- The units and common areas are suitable for ordinary uses of real estate of that type;
- any construction is free from defective materials; and
- construction is in accordance with sound engineering and construction standards, and has been done in a workmanlike manner and in compliance with applicable laws.

### **Summary of Bill:**

Several requirements are placed on a homeowner who wishes to bring a lawsuit against a builder or others for property damage due to alleged defects in the construction of a residence. These requirements must be met before a lawsuit can be filed. These requirements apply to any defects in the construction or remodel of more than half of a residence. Requirements are also placed on condominium association boards of directors when they do bring such a lawsuit.

### **Requirements Before A Lawsuit Can Be Filed.**

Before a lawsuit can be filed alleging a defect in the construction of a residence, the homeowner must serve notice on the construction professional alleged to be responsible for the defect. The following terms are defined:

- "Homeowner" includes any person or entity, including a condominium association, that contracts with a construction professional for the construction or sale of a residence. The term also includes a subsequent purchaser from an original homeowner.

- "residence" includes single family houses, residential structures of four or less units, and condominium units.
- "construction professional" includes builders, architects, builder vendors, contractors, engineers and others.

The claimant's notice must be given at least 45 days before a suit is filed and must describe the claim in "reasonable detail." The notice must be served by personal service or registered mail. This notice requirement applies to any property damage claim by a homeowner against a construction professional. (It also applies to a claim by one construction professional against another.)

Within 21 days of receiving the notice, the construction professional must respond to the homeowner. In the response, the construction professional must do one of the following:

- Offer to inspect the alleged defect and then, based on the inspection, either remedy the defect, pay for it, or dispute the homeowner's claim;
- offer to settle the claim by paying for the defect, including possibly buying the residence back from the homeowner; or
- dispute the claim.

If the construction professional fails to respond, or disputes the claim, or the homeowner rejects an offer of inspection or settlement, then the homeowner may file a lawsuit.

Procedures are also laid out for situations in which the homeowner agrees to an inspection or agrees to an offer of settlement.

If the construction professional fails to perform agreed to repairs, or fails to meet an agreed to timetable, the homeowner may file the lawsuit.

If, after agreed upon repair work has been done, the homeowner discovers defects that were not reasonably discoverable at the time of the repair, the homeowner may sue for those defects only after complying again with the notice requirements of the act.

The serving of notices required by the act tolls the statute of limitations for bringing a lawsuit.

#### Requirements When A Lawsuit Is Filed.

After a homeowner has served the required notice on the construction professional, if the matter has not been resolved and a lawsuit has been commenced, the homeowner must file with the court and serve on the defendant a list of the alleged construction defects. The list must be filed and served within 30 days after the lawsuit has been commenced and must specify the construction professional responsible for each alleged defect.

#### Additional Requirements Before A Condominium or Homeowners' Association Can File a Lawsuit.

Before the board of directors of a condominium or homeowners' association may sue a construction professional on behalf of two or more owners, the board must notify all residents regarding the intended suit. The notice must state the nature of the suit and the expected expenses and fees to be incurred in bringing the suit.

**Appropriation:** None.

**Fiscal Note:** Not Requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.