
HOUSE BILL 2565

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By Representatives Fromhold, Benson, Miloscia, Quall, Carrell, Eickmeyer, Morell, Barlean, Chase, Rockefeller, Lantz, Simpson, Kessler and Haigh

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1 AN ACT Relating to construction defect claims asserting property
2 loss and damage; adding a new section to chapter 64.34 RCW; adding a
3 new section to chapter 4.16 RCW; and adding a new chapter to Title 64
4 RCW.

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

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

1 claim, whether by complaint, counterclaim, or cross-claim, for damage
2 or the loss of use of real or personal property caused by a defect in
3 the construction of a residence.

4 (2) "Claimant" means a homeowner or a construction professional who
5 asserts a claim against a construction professional concerning a defect
6 in the construction of a residence.

7 (3) "Construction professional" means an architect, builder,
8 builder vendor, contractor, engineer, or inspector performing or
9 furnishing the design, supervision, inspection, construction, or
10 observation of the construction of any improvement to real property.

11 (4) "Homeowner" means any person, company, firm, partnership,
12 corporation, or association including, but not limited to, a unit
13 owners' association and master association, as defined in RCW 64.34.020
14 who contracts with a construction professional for the construction,
15 sale, or construction and sale of a residence. "Homeowner" includes,
16 but is not limited to, a subsequent purchaser of a residence from any
17 homeowner.

18 (5) "Residence" means a single-family house, duplex, triplex,
19 quadraplex, or a unit in a multiunit residential structure in which
20 title to each individual unit is transferred to the owner under a
21 condominium or cooperative system.

22 NEW SECTION. **Sec. 3.** (1) In every construction defect action
23 brought against a construction professional, the claimant shall, no
24 later than forty-five days before filing an action under this chapter,
25 serve written notice on the construction professional, by registered
26 mail or personal service. The notice of claim shall state that the
27 claimant asserts a construction defect claim against the construction
28 professional and shall describe the claim in reasonable detail.

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

33 (a) Propose to inspect the residence that is the subject of the
34 claim within a specified time frame. The proposal shall include the
35 statement that the construction professional shall, based on the
36 inspection, offer to remedy the defect, compromise by payment, or
37 dispute the claim;

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

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

10 (3)(a) If the construction professional disputes the claim or does
11 not respond to the claimant's notice of claim, the claimant may, in
12 accordance with this chapter, bring an action against the construction
13 professional for the claim described in the notice of claim.

14 (b) If the claimant rejects the inspection proposal or the
15 settlement offer made by the construction professional pursuant to
16 subsection (2) of this section, the claimant shall, within ten days
17 after receiving the construction professional's response, serve written
18 notice of the claimant's rejection on the construction professional by
19 registered mail or personal service. After service of the rejection,
20 the claimant may, in accordance with this chapter, bring an action
21 against the construction professional for the construction defect claim
22 described in the notice of claim.

23 (4)(a) If the claimant elects to consider the inspection proposal
24 of the construction professional made pursuant to subsection (2)(a) of
25 this section, the claimant shall provide the construction professional
26 and its contractors or other agents reasonable access to the claimant's
27 residence during normal working hours to inspect the premises and the
28 claimed defect so that the construction professional may verify the
29 claim.

30 (b) Within ten days following the inspection, the construction
31 professional shall serve on the claimant, by registered mail or
32 personal service:

33 (i) A written offer to remedy the construction defect at no cost to
34 the claimant, including a description of the additional construction
35 that the construction professional has determined from the inspection
36 will be necessary to remedy the defect, and a timetable for the
37 completion of such construction;

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

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

3 (c) If the construction professional does not proceed further to
4 remedy the construction defect, or if the construction professional
5 fails to comply with the provisions of (b) of this subsection, the
6 claimant may bring an action against the construction professional for
7 the claim described in the notice of claim.

8 (d) If the claimant rejects the offer made by the construction
9 professional pursuant to (b)(i) or (ii) of this subsection to either
10 remedy the construction defect or to compromise and settle the claim by
11 monetary payment, the claimant shall, within five days after receiving
12 such offer, serve written notice of the claimant's rejection on the
13 construction professional by registered mail or personal service.
14 After service of the rejection notice, the claimant may, in accordance
15 with this chapter, bring an action against the construction
16 professional for the construction defect claim described in the notice
17 of claim.

18 (5)(a) Any claimant accepting the offer of a construction
19 professional to remedy the construction defect pursuant to subsection
20 (4)(b)(i) of this section shall do so by serving the construction
21 professional with a written notice of acceptance, by personal service
22 or registered mail, within seven days after receipt of the offer. The
23 claimant shall promptly provide the construction professional and its
24 contractors or other agents reasonable access to the claimant's
25 residence during normal working hours to perform and complete the
26 construction by the timetable stated in the offer.

27 (b) The claimant and construction professional may, by written
28 mutual agreement, alter the extent of construction or the timetable for
29 completion of construction stated in the offer.

30 (6) No action may be commenced until after the claimant has
31 complied with the requirements of this section.

32 (7) Nothing in this section may be construed to prevent a claimant
33 from commencing an action on the construction defect claim described in
34 the notice of claim if:

35 (a) The construction professional fails to perform the construction
36 agreed upon or fails to perform by the timetable agreed upon pursuant
37 to subsection (5) of this section; or

38 (b) Notwithstanding the completion of the construction agreed upon,
39 the claimant later discovers latent construction defects that the

1 claimant attributes to the construction professional, but that were not
2 discoverable by a reasonable person at the time of such completion.
3 Any claimant who intends to bring an action for such latent
4 construction defects may do so only after complying with the
5 requirements of this section.

6 NEW SECTION. **Sec. 4.** (1) In every action brought against a
7 construction professional, the claimant shall file with the court and
8 serve on the defendant a list of construction defects in accordance
9 with this section.

10 (2) The list of construction defects shall contain a description of
11 the construction that the claimant alleges to be defective. The list
12 of construction defects shall be filed with the court and served on the
13 defendant concurrent with the commencement of the action or within such
14 longer period as the court in its discretion may allow.

15 (3) The list of construction defects may be amended by the claimant
16 to identify additional construction defects as they become known to the
17 claimant. In no event shall the court allow the case to be set for
18 trial before the list of construction defects is filed and served.

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

22 (5) If a subcontractor or supplier is added as a party to an action
23 under this section, the claimant making the claim against such
24 subcontractor or supplier shall file with the court and serve on the
25 defendant the list of construction defects in accordance with this
26 section concurrent with service of the complaint against the
27 subcontractor or supplier or within such period as the court in its
28 discretion may allow.

29 NEW SECTION. **Sec. 5.** A new section is added to chapter 64.34 RCW
30 to read as follows:

31 (1)(a) In the event the board of directors, pursuant to RCW
32 64.34.304(1)(d), institutes an action asserting defects in the
33 construction of two or more units, this section shall apply. For
34 purposes of this section, "action" has the same meaning as set forth in
35 section 2 of this act.

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

1 (2)(a) Prior to the service of the summons and complaint on any
2 defendant with respect to an action governed by this section, the board
3 of directors shall mail or deliver written notice of the commencement
4 or anticipated commencement of such action to each unit owner at the
5 last known address described in the association's records.

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

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

9 (ii) The expenses and fees that the board of directors anticipates
10 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 assert
16 the waiver of any applicable privilege or right of confidentiality
17 resulting from, or to claim immunity in connection with, the disclosure
18 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 enforce
21 such a contract for legal services.

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

24 If a written notice is filed under section 3 of this act within the
25 time prescribed for the filing of an action under this chapter, the
26 period of time during which the filing of an action is barred under
27 section 3 of this act shall not be a part of the period limited for the
28 commencement of an action.

29 NEW SECTION. **Sec. 7.** Sections 1 through 4 of this act constitute
30 a new chapter in Title 64 RCW.

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