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**SUBSTITUTE SENATE BILL 6409**

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**State of Washington 57th Legislature**

**2002 Regular Session**

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

READ FIRST TIME 02/06/2002.

1 AN ACT Relating to construction defect claims asserting property  
2 loss and damage; amending RCW 64.34.452; adding a new section to  
3 chapter 4.16 RCW; and adding a new chapter to Title 64 RCW.

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

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

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

16 (1) "Action" means any civil action in contract or tort for damages  
17 or indemnity brought against a construction professional to assert a  
18 claim, whether by complaint, counterclaim, or cross-claim, for damage

1 or the loss of use of real or personal property caused by a defect in  
2 the construction or remodel of more than half of a residence. "Action"  
3 does not include any civil action in tort alleging physical injury or  
4 wrongful death to a person or persons resulting from a construction  
5 defect.

6 (2) "Association" means an association, master association, or  
7 subassociation as defined and provided for in RCW 64.34.020(4),  
8 64.34.276, 64.34.278, and 64.38.010(1).

9 (3) "Claimant" means a homeowner, association, or a construction  
10 professional who asserts a claim against a construction professional  
11 concerning a defect in the construction or remodel of more than half of  
12 a residence.

13 (4) "Construction professional" means an architect, builder,  
14 builder vendor, contractor, engineer, or inspector, including, but not  
15 limited to, a dealer as defined in RCW 64.34.020(12) and a declarant as  
16 defined in RCW 64.34.020(13), performing or furnishing the design,  
17 supervision, inspection, construction, or observation of the  
18 construction of any improvement to real property, whether operating as  
19 a sole proprietor, partnership, corporation, or other business entity.

20 (5) "Homeowner" means any person, company, firm, partnership,  
21 corporation, or association who contracts with a construction  
22 professional for the construction, sale, or construction and sale of a  
23 residence. "Homeowner" includes, but is not limited to, a subsequent  
24 purchaser of a residence from any homeowner.

25 (6) "Residence" means a single-family house, duplex, triplex,  
26 quadraplex, or a unit in a multiunit residential structure in which  
27 title to each individual unit is transferred to the owner under a  
28 condominium or cooperative system, and shall include common elements as  
29 defined in RCW 64.34.020(6) and common areas as defined in RCW  
30 64.38.010(4).

31 NEW SECTION. **Sec. 3.** (1) In every construction defect action  
32 brought against a construction professional, the claimant shall, no  
33 later than forty-five days before filing an action, serve written  
34 notice on the construction professional, by registered mail or personal  
35 service. The notice of claim shall state that the claimant asserts a  
36 construction defect claim against the construction professional and  
37 shall describe the claim in reasonable detail.

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

5 (a) Propose to inspect the residence that is the subject of the  
6 claim within a specified time frame. The proposal shall include the  
7 statement that the construction professional shall, based on the  
8 inspection, offer to remedy the defect, compromise by payment, or  
9 dispute the claim;

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

16 (c) State that the construction professional disputes the claim and  
17 will neither remedy the construction defect nor compromise and settle  
18 the claim.

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

23 (b) If the claimant rejects the inspection proposal or the  
24 settlement offer made by the construction professional pursuant to  
25 subsection (2) of this section, the claimant shall serve written notice  
26 of the claimant's rejection on the construction professional by  
27 registered mail or personal service. After service of the rejection,  
28 the claimant may, in accordance with this chapter, bring an action  
29 against the construction professional for the construction defect claim  
30 described in the notice of claim.

31 (4)(a) If the claimant elects to consider the inspection proposal  
32 of the construction professional made pursuant to subsection (2)(a) of  
33 this section, the claimant shall provide the construction professional  
34 and its contractors or other agents reasonable access to the claimant's  
35 residence during normal working hours to inspect the premises and the  
36 claimed defect so that the construction professional may verify the  
37 claim.

1 (b) Within fourteen days following the inspection, the construction  
2 professional shall serve on the claimant, by registered mail or  
3 personal service:

4 (i) A written offer to remedy the construction defect at no cost to  
5 the claimant, including a description of the additional construction  
6 that the construction professional has determined from the inspection  
7 will be necessary to remedy the defect, and a timetable for the  
8 completion of such construction;

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

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

13 (c) If the construction professional does not proceed further to  
14 remedy the construction defect, or if the construction professional  
15 fails to comply with the provisions of (b) of this subsection, the  
16 claimant may bring an action against the construction professional for  
17 the claim described in the notice of claim.

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 by registered  
23 mail or personal service. After service of the rejection notice, the  
24 claimant may, in accordance with this chapter, bring an action against  
25 the construction professional for the construction defect claim  
26 described in the notice of claim.

27 (5)(a) Any claimant accepting the offer of a construction  
28 professional to remedy the construction defect pursuant to subsection  
29 (4)(b)(i) of this section shall do so by serving the construction  
30 professional with a written notice of acceptance, by personal service  
31 or registered mail, within a reasonable time period after receipt of  
32 the offer. The claimant shall promptly provide the construction  
33 professional and its contractors or other agents reasonable access to  
34 the claimant's residence during normal working hours to perform and  
35 complete the construction by the timetable stated in the offer.

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

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

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

6 (a) The construction professional fails to perform the construction  
7 agreed upon, fails to remedy the defect as defined by the terms of the  
8 agreement under subsection (5) of this section, or fails to perform by  
9 the timetable agreed upon pursuant to subsection (2)(a) or (5) of this  
10 section; or

11 (b) Notwithstanding the completion of the construction agreed upon,  
12 the claimant later discovers latent construction defects that the  
13 claimant attributes to the construction professional, but that were not  
14 discoverable by a reasonable person at the time of such completion.  
15 Any claimant who intends to bring an action for such latent  
16 construction defects may do so only after complying with the  
17 requirements of this section.

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

22 (2) The list of construction defects shall contain a description of  
23 the construction that the claimant alleges to be defective. The list  
24 of construction defects shall be filed with the court and served on the  
25 defendant within thirty days after the commencement of the action or  
26 within such longer period as the court in its discretion may allow.

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

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

33 (5) If a subcontractor or supplier is added as a party to an action  
34 under this section, the claimant making the claim against such  
35 subcontractor or supplier shall file with the court and serve on the  
36 defendant the list of construction defects in accordance with this  
37 section within thirty days after service of the complaint against the

1 subcontractor or supplier or within such period as the court in its  
2 discretion may allow.

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

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

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

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

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

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

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

22 (a) Require the disclosure in the notice or the disclosure to a  
23 unit owner of attorney-client communications or other privileged  
24 communications;

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

29 (c) Limit or impair the authority of the board of directors to  
30 contract for legal services, or limit or impair the ability to enforce  
31 such a contract for legal services.

32 NEW SECTION. **Sec. 6.** Nothing in this chapter shall be construed  
33 to hinder or otherwise affect the employment relationship between and  
34 among homeowners and construction professionals during the process of  
35 construction or remodeling and does not preclude the termination of  
36 those relationships as allowed under current law.

1        NEW SECTION.    **Sec. 7.**    A new section is added to chapter 4.16 RCW  
2 to read as follows:

3        If a written notice is filed under section 3 of this act within the  
4 time prescribed for the filing of an action under this chapter, the  
5 period of time during which the filing of an action is barred under  
6 section 3 of this act shall not be a part of the period limited for the  
7 commencement of an action.

8        **Sec. 8.**    RCW 64.34.452 and 1990 c 166 s 14 are each amended to read  
9 as follows:

10        (1) A judicial proceeding for breach of any obligations arising  
11 under RCW 64.34.443 and 64.34.445 must be commenced within four years  
12 after the cause of action accrues:    PROVIDED, That the period for  
13 commencing an action for a breach accruing pursuant to subsection  
14 (2)(b) of this section shall not expire prior to one year after  
15 termination of the period of declarant control, if any, under RCW  
16 64.34.308(4).    Such period may not be reduced by either oral or written  
17 agreement.

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

21        (a) As to a unit, the date the purchaser to whom the warranty is  
22 first made enters into possession if a possessory interest was conveyed  
23 or the date of acceptance of the instrument of conveyance if a  
24 nonpossessory interest was conveyed; and

25        (b) As to each common element, at the latest of (i) the date the  
26 first unit in the condominium was conveyed to a bona fide purchaser,  
27 (ii) the date the common element was completed, or (iii) the date the  
28 common element was added to the condominium.

29        (3) If a warranty of quality explicitly extends to future  
30 performance or duration of any improvement or component of the  
31 condominium, the cause of action accrues at the time the breach is  
32 discovered or at the end of the period for which the warranty  
33 explicitly extends, whichever is earlier.

34        (4) If a written notice is filed under section 3 of this act within  
35 the time prescribed for the filing of an action under this chapter, the  
36 period of time during which the filing of an action is barred under  
37 section 3 of this act shall not be a part of the period limited for the  
38 commencement of an action.

1        NEW SECTION.   **Sec. 9.**   Sections 1 through 6 of this act constitute  
2   a new chapter in Title 64 RCW.

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