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**SUBSTITUTE SENATE BILL 5024**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** Senate Law & Justice (originally sponsored by Senators Padden, Pedersen, Brown, Gildon, Holy, Mullet, Short, and Van De Wege)

READ FIRST TIME 01/15/21.

1 AN ACT Relating to reducing barriers to condominium construction;  
2 and amending RCW 64.55.010, 64.90.645, and 64.04.005.

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

4 **Sec. 1.** RCW 64.55.010 and 2005 c 456 s 2 are each amended to  
5 read as follows:

6 Unless the context clearly requires otherwise, the definitions in  
7 RCW 64.34.020 and in this section apply throughout this chapter.

8 (1) "Attached dwelling unit" means any dwelling unit that is  
9 attached to another dwelling unit by a wall, floor, or ceiling that  
10 separates heated living spaces. A garage is not a heated living  
11 space.

12 (2) "Building enclosure" means that part of any building, above  
13 or below grade, that physically separates the outside or exterior  
14 environment from interior environments and which weatherproofs,  
15 waterproofs, or otherwise protects the building or its components  
16 from water or moisture intrusion. Interior environments consist of  
17 both heated and unheated enclosed spaces. The building enclosure  
18 includes, but is not limited to, that portion of roofs, walls,  
19 balcony support columns, decks, windows, doors, vents, and other  
20 penetrations through exterior walls, which waterproof, weatherproof,

1 or otherwise protect the building or its components from water or  
2 moisture intrusion.

3 (3) "Building enclosure design documents" means plans, details,  
4 and specifications for the building enclosure that have been stamped  
5 by a licensed engineer or architect. The building enclosure design  
6 documents shall include details and specifications that are  
7 appropriate for the building in the professional judgment of the  
8 architect or engineer which prepared the same to waterproof,  
9 weatherproof, and otherwise protect the building or its components  
10 from water or moisture intrusion, including details of flashing,  
11 intersections at roof, eaves or parapets, means of drainage, water-  
12 resistive membrane, and details around openings.

13 (4) "Developer" means:

14 (a) With respect to a condominium or a conversion condominium,  
15 the declarant; and

16 (b) With respect to all other buildings, an individual, group of  
17 individuals, partnership, corporation, association, municipal  
18 corporation, state agency, or other entity or person that obtains a  
19 building permit for the construction or rehabilitative reconstruction  
20 of a multiunit residential building. If a permit is obtained by  
21 service providers such as architects, contractors, and consultants  
22 who obtain permits for others as part of services rendered for a fee,  
23 the person for whom the permit is obtained shall be the developer,  
24 not the service provider.

25 (5) "Dwelling unit" has the meaning given to that phrase or  
26 similar phrases in the ordinances of the jurisdiction issuing the  
27 permit for construction of the building enclosure but if such  
28 ordinances do not provide a definition, then "dwelling unit" means a  
29 residence containing living, cooking, sleeping, and sanitary  
30 facilities.

31 (6) "Multiunit residential building" means:

32 (a) A building containing more than two attached dwelling units,  
33 including a building containing nonresidential units if the building  
34 also contains more than two attached dwelling units, but excluding  
35 the following classes of buildings:

- 36 (i) Hotels and motels;
- 37 (ii) Dormitories;
- 38 (iii) Care facilities;
- 39 (iv) Floating homes;

1 (v) A building that contains attached dwelling units that are  
2 each located on a single platted lot, except as provided in (b) of  
3 this subsection;

4 (vi) A building in which all of the dwelling units are held under  
5 one ownership and is subject to a recorded irrevocable sale  
6 prohibition covenant; and

7 (vii) A building with 10 or fewer units that is no more than two  
8 stories.

9 (b) If the developer submits to the appropriate building  
10 department when applying for the building permit described in RCW  
11 64.55.020 a statement that the developer elects to treat the  
12 improvement for which a permit is sought as a multiunit residential  
13 building for all purposes under this chapter, then "multiunit  
14 residential building" also means the following buildings for which  
15 such election has been made:

16 (i) A building containing only two attached dwelling units;

17 (ii) A building that does not contain attached dwelling units;

18 and

19 (iii) Any building that contains attached dwelling units each of  
20 which is located on a single platted lot.

21 (7) "Party unit owner" means a unit owner who is a named party to  
22 an action subject to this chapter and does not include any unit  
23 owners whose involvement with the action stems solely from their  
24 membership in the association.

25 (8) "Qualified building inspector" means a person satisfying the  
26 requirements of RCW 64.55.040.

27 (9) "Rehabilitative construction" means construction work on the  
28 building enclosure of a multiunit residential building if the cost of  
29 such construction work is more than five percent of the assessed  
30 value of the building.

31 (10) "Sale prohibition covenant" means a recorded covenant that  
32 prohibits the sale or other disposition of individual dwelling units  
33 as or as part of a condominium for five years or more from the date  
34 of first occupancy except as otherwise provided in RCW 64.55.090, a  
35 certified copy of which the developer shall submit to the appropriate  
36 building department; provided such covenant shall not apply to sales  
37 or dispositions listed in RCW 64.34.400(2). The covenant must be  
38 recorded in the county in which the building is located and must be  
39 in substantially the following form:

1 This covenant has been recorded in the real property records  
2 of . . . . . County, Washington, in satisfaction of the  
3 requirements of RCW 64.55.010 through 64.55.090. The  
4 undersigned is the owner of the property described on Exhibit  
5 A (the "Property"). Until termination of this covenant, no  
6 dwelling unit in or on the Property may be sold as a  
7 condominium unit except for sales listed in RCW 64.34.400(2).

8 This covenant terminates on the earlier of either: (a)  
9 Compliance with the requirements of RCW 64.55.090, as  
10 certified by the owner of the Property in a recorded  
11 supplement hereto; or (b) the fifth anniversary of the date  
12 of first occupancy of a dwelling unit as certified by the  
13 Owner in a recorded supplement hereto.

14 All title insurance companies and persons acquiring an interest in  
15 the Property may rely on the forgoing certifications without further  
16 inquiry in issuing any policy of title insurance or in acquiring an  
17 interest in the Property.

18 (11) "Stamped" means bearing the stamp and signature of the  
19 responsible licensed architect or engineer on the title page, and on  
20 every sheet of the documents, drawings, or specifications, including  
21 modifications to the documents, drawings, and specifications that  
22 become part of change orders or addenda to alter those documents,  
23 drawings, or specifications.

24 **Sec. 2.** RCW 64.90.645 and 2018 c 277 s 410 are each amended to  
25 read as follows:

26 (~~Any earnest money deposit, as defined in RCW 64.04.005, or any~~  
27 ~~reservation)) (1) Except as provided in subsection (2) of this  
28 section, any deposit made in connection with the right to purchase a  
29 unit from a person required to deliver a public offering statement  
30 pursuant to RCW 64.90.605(3) must be placed in escrow and held in  
31 this state in an escrow or trust account designated solely for that  
32 purpose by a licensed title insurance company or agent, a licensed  
33 attorney, a real estate broker or independent bonded escrow company,  
34 or an institution whose accounts are insured by a governmental agency  
35 or instrumentality until: ~~((1))~~ (a) Delivered to the declarant at  
36 closing, ~~((2))~~ (b) delivered to the declarant because of the  
37 purchaser's default under a contract to purchase the unit, ~~((3))~~~~

1 (c) refunded to the purchaser, or ((+4)) (d) delivered to a court in  
2 connection with the filing of an interpleader action.

3 (2) (a) If a purchase agreement for the sale of a unit provides  
4 that deposit funds may be used for construction costs and the  
5 declarant obtains and maintains a surety bond as required by this  
6 section, the declarant may withdraw escrow funds when construction of  
7 improvements has begun. The funds may be used only for actual  
8 building and construction costs of the project in which the unit is  
9 located.

10 (b) The bond must be issued by a surety insurer licensed in this  
11 state in favor of the purchaser in an amount adequate to cover the  
12 amount of the deposit to be withdrawn. The declarant may not withdraw  
13 more than the face amount of the bond. The bond must be payable to  
14 the purchaser if the purchaser obtains a final judgment against the  
15 declarant requiring the declarant to return the deposit pursuant to  
16 the purchase agreement. The bond may be either in the form of an  
17 individual bond for each deposit accepted by the declarant or in the  
18 form of a blanket bond assuring the return of all deposits received  
19 by the declarant.

20 (3) A deposit under this section may not exceed 10 percent of the  
21 purchase price.

22 **Sec. 3.** RCW 64.04.005 and 2005 c 186 s 1 are each amended to  
23 read as follows:

24 (1) A provision in a written agreement for the purchase and sale  
25 of real estate which provides for liquidated damages or the  
26 forfeiture of an earnest money deposit to the seller as the seller's  
27 sole and exclusive remedy if a party fails, without legal excuse, to  
28 complete the purchase, is valid and enforceable, regardless of  
29 whether the other party incurs any actual damages. However, the  
30 amount of liquidated damages or amount of earnest money to be  
31 forfeited under this subsection may not exceed five percent of the  
32 purchase price.

33 (2) For purposes of this section:

34 (a) "Earnest money deposit" means any deposit, deposits, payment,  
35 or payments of a part of the purchase price for the property, made in  
36 the form of cash, check, promissory note, or other things of value  
37 for the purpose of binding the purchaser to the agreement and  
38 identified in the agreement as an earnest money deposit, and does not  
39 include other deposits or payments made by the purchaser; and

1 (b) "Liquidated damages" means an amount agreed by the parties as  
2 the amount of damages to be recovered for a breach of the agreement  
3 by the other and identified in the agreement as liquidated damages,  
4 and does not include other deposits or payments made by the  
5 purchaser.

6 (3) (a) This section does not prohibit, or supersede the common  
7 law with respect to, liquidated damages or earnest money forfeiture  
8 provisions in excess of five percent of the purchase price. A  
9 liquidated damages or earnest money forfeiture provision not meeting  
10 the requirements of subsection (1) of this section shall be  
11 interpreted and enforced without regard to this statute.

12 (b) This section does not apply to a deposit made in connection  
13 with the right to purchase a unit from a person required to deliver a  
14 public offering statement as provided in RCW 64.90.645.

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