

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 6409

57th Legislature
2002 Regular Session

Passed by the Senate March 12, 2002
YEAS 45 NAYS 0

President of the Senate

Passed by the House March 7, 2002
YEAS 93 NAYS 0

**Speaker of the
House of Representatives**

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 6409** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

Approved

FILED

Governor of the State of Washington

Secretary of State
State of Washington

SUBSTITUTE SENATE BILL 6409

AS AMENDED BY THE HOUSE

Passed Legislature - 2002 Regular Session

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 4.16.310, 64.34.410, and 64.34.452;
3 adding a new section to chapter 4.16 RCW; and adding a new chapter to
4 Title 64 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. It is
10 the intent of the legislature that this chapter apply to these types of
11 civil actions while preserving adequate rights and remedies for
12 property owners who bring and maintain 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 lawsuit or action in contract or tort
17 for damages or indemnity brought against a construction professional to
18 assert a claim, whether by complaint, counterclaim, or cross-claim, for

1 damage or the loss of use of real or personal property caused by a
2 defect in the construction of a residence or in the substantial remodel
3 of a residence. "Action" does not include any civil action in tort
4 alleging personal injury or wrongful death to a person or persons
5 resulting from a construction 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 or association who asserts a claim
10 against a construction professional concerning a defect in the
11 construction of a residence or in the substantial remodel of a
12 residence.

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

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

27 (6) "Residence" means a single-family house, duplex, triplex,
28 quadraplex, or a unit in a multiunit residential structure in which
29 title to each individual unit is transferred to the owner under a
30 condominium or cooperative system, and shall include common elements as
31 defined in RCW 64.34.020(6) and common areas as defined in RCW
32 64.38.010(4).

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

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

1 NEW SECTION. **Sec. 3.** (1) In every construction defect action
2 brought against a construction professional, the claimant shall, no
3 later than forty-five days before filing an action, serve written
4 notice of claim on the construction professional. The notice of claim
5 shall state that the claimant asserts a construction defect claim
6 against the construction professional and shall describe the claim in
7 reasonable detail sufficient to determine the general nature of the
8 defect.

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

13 (a) Propose to inspect the residence that is the subject of the
14 claim and to complete the inspection within a specified time frame.
15 The proposal shall include the statement that the construction
16 professional shall, based on the inspection, offer to remedy the
17 defect, compromise by payment, or dispute the claim;

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

24 (c) State that the construction professional disputes the claim and
25 will neither remedy the construction defect nor compromise and settle
26 the claim.

27 (3)(a) If the construction professional disputes the claim or does
28 not respond to the claimant's notice of claim within the time stated in
29 subsection (2) of this section, the claimant may bring an action
30 against the construction professional for the claim described in the
31 notice of claim without further notice.

32 (b) If the claimant rejects the inspection proposal or the
33 settlement offer made by the construction professional pursuant to
34 subsection (2) of this section, the claimant shall serve written notice
35 of the claimant's rejection on the construction professional. After
36 service of the rejection, the claimant may bring an action against the
37 construction professional for the construction defect claim described
38 in the notice of claim. If the construction professional has not
39 received from the claimant, within thirty days after the claimant's

1 receipt of the construction professional's response, either an
2 acceptance or rejection of the inspection proposal or settlement offer,
3 then at anytime thereafter the construction professional may terminate
4 the proposal or offer by serving written notice to the claimant, and
5 the claimant may thereafter bring an action against the construction
6 professional for the construction defect claim described in the notice
7 of claim.

8 (4)(a) If the claimant elects to allow the construction
9 professional to inspect in accordance with the construction
10 professional's proposal pursuant to subsection (2)(a) of this section,
11 the claimant shall provide the construction professional and its
12 contractors or other agents reasonable access to the claimant's
13 residence during normal working hours to inspect the premises and the
14 claimed defect.

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

17 (i) A written offer to remedy the construction defect at no cost to
18 the claimant, including a report of the scope of the inspection, the
19 findings and results of the inspection, a description of the additional
20 construction necessary to remedy the defect described in the claim, and
21 a timetable for the completion of such construction;

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

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

26 (c) If the construction professional does not proceed further to
27 remedy the construction defect within the agreed timetable, or if the
28 construction professional fails to comply with the provisions of (b) of
29 this subsection, the claimant may bring an action against the
30 construction professional for the claim described in the notice of
31 claim without further notice.

32 (d) If the claimant rejects the offer made by the construction
33 professional pursuant to (b)(i) or (ii) of this subsection to either
34 remedy the construction defect or to compromise and settle the claim by
35 monetary payment, the claimant shall serve written notice of the
36 claimant's rejection on the construction professional. After service
37 of the rejection notice, the claimant may bring an action against the
38 construction professional for the construction defect claim described
39 in the notice of claim. If the construction professional has not

1 received from the claimant, within thirty days after the claimant's
2 receipt of the construction professional's response, either an
3 acceptance or rejection of the offer made pursuant to (b)(i) or (ii) of
4 this subsection, then at anytime thereafter the construction
5 professional may terminate the offer by serving written notice to the
6 claimant.

7 (5)(a) Any claimant accepting the offer of a construction
8 professional to remedy the construction defect pursuant to subsection
9 (4)(b)(i) of this section shall do so by serving the construction
10 professional with a written notice of acceptance within a reasonable
11 time period after receipt of the offer, and no later than thirty days
12 after receipt of the offer. The claimant shall provide the
13 construction professional and its contractors or other agents
14 reasonable access to the claimant's residence during normal working
15 hours to perform and complete the construction by the timetable stated
16 in the offer.

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

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

25 (7) Nothing in this section may be construed to prevent a claimant
26 from commencing an action on the construction defect claim described in
27 the notice of claim if the construction professional fails to perform
28 the construction agreed upon, fails to remedy the defect, or fails to
29 perform by the timetable agreed upon pursuant to subsection (2)(a) or
30 (5) of this section.

31 (8) Prior to commencing any action alleging a construction defect,
32 or after the dismissal of any action without prejudice pursuant to
33 subsection (6) of this section, the claimant may amend the notice of
34 claim to include construction defects discovered after the service of
35 the original notice of claim, and must otherwise comply with the
36 requirements of this section for the additional claims. The service of
37 an amended notice of claim shall relate back to the original notice of
38 claim for purposes of tolling statutes of limitations and repose.
39 Claims for defects discovered after the commencement or recommencement

1 of an action may be added to such action only after providing notice to
2 the construction professional of the defect and allowing for response
3 under subsection (2) of this section.

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

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

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

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

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

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

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

36 (2)(a) Prior to the service of the summons and complaint on any
37 defendant with respect to an action governed by this section, the board

1 of directors shall mail or deliver written notice of the commencement
2 or anticipated commencement of such action to each homeowner at the
3 last known address described in the association's records.

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

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

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

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

10 (a) Require the disclosure in the notice or the disclosure to a
11 unit owner of attorney-client communications or other privileged
12 communications;

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

17 (c) Limit or impair the authority of the board of directors to
18 contract for legal services, or limit or impair the ability to enforce
19 such a contract for legal services.

20 NEW SECTION. **Sec. 6.** (1) The construction professional shall
21 provide notice to each homeowner upon entering into a contract for
22 sale, construction, or substantial remodel of a residence, of the
23 construction professional's right to offer to cure construction defects
24 before a homeowner may commence litigation against the construction
25 professional. Such notice shall be conspicuous and may be included as
26 part of the underlying contract signed by the homeowner. In the sale
27 of a condominium unit, the requirement for delivery of such notice
28 shall be deemed satisfied if contained in a public offering statement
29 delivered in accordance with chapter 64.34 RCW.

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

32 CHAPTER 64.-- RCW (sections 1 through 7 of this act) CONTAINS
33 IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A
34 LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST THE SELLER OR
35 BUILDER OF YOUR HOME. FORTY-FIVE DAYS BEFORE YOU FILE YOUR
36 LAWSUIT, YOU MUST DELIVER TO THE SELLER OR BUILDER A WRITTEN
37 NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE
38 AND PROVIDE YOUR SELLER OR BUILDER THE OPPORTUNITY TO MAKE AN

1 OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED
2 TO ACCEPT ANY OFFER MADE BY THE BUILDER OR SELLER. THERE ARE
3 STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO
4 FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT.

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

7 NEW SECTION. **Sec. 7.** Nothing in this chapter shall be construed
8 to hinder or otherwise affect the employment, agency, or contractual
9 relationship between and among homeowners and construction
10 professionals during the process of construction or remodeling and does
11 not preclude the termination of those relationships as allowed under
12 current law. Nothing in this chapter shall negate or otherwise
13 restrict a construction professional's right to access or inspection
14 provided by law, covenant, easement, or contract.

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

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

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

24 All claims or causes of action as set forth in RCW 4.16.300 shall
25 accrue, and the applicable statute of limitation shall begin to run
26 only during the period within six years after substantial completion of
27 construction, or during the period within six years after the
28 termination of the services enumerated in RCW 4.16.300, whichever is
29 later. The phrase "substantial completion of construction" shall mean
30 the state of completion reached when an improvement upon real property
31 may be used or occupied for its intended use. Any cause of action
32 which has not accrued within six years after such substantial
33 completion of construction, or within six years after such termination
34 of services, whichever is later, shall be barred: PROVIDED, That this
35 limitation shall not be asserted as a defense by any owner, tenant or
36 other person in possession and control of the improvement at the time

1 such cause of action accrues. The limitations prescribed in this
2 section apply to all claims or causes of action as set forth in RCW
3 4.16.300 brought in the name or for the benefit of the state which are
4 made or commenced after June 11, 1986.

5 If a written notice is filed under section 3 of this act within the
6 time prescribed for the filing of an action under this chapter, the
7 period of time during which the filing of an action is barred under
8 section 3 of this act plus sixty days shall not be a part of the period
9 limited for the commencement of an action, nor for the application of
10 this section.

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

13 (1) A public offering statement shall contain the following
14 information:

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

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

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

18 (d) The relationship of the management company to the declarant, if
19 any;

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

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

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

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

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

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

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

1 the condominium is located and which are not readily ascertainable by
2 the purchaser;

3 (z) A brief description of any construction warranties to be
4 provided to the purchaser;

5 (aa) Any building code violation citations received by the
6 declarant in connection with the condominium which have not been
7 corrected;

8 (bb) A statement of any unsatisfied judgments or pending suits
9 against the association, a statement of the status of any pending suits
10 material to the condominium of which the declarant has actual
11 knowledge, and a statement of any litigation brought by an owners'
12 association, unit owner, or governmental entity in which the declarant
13 or any affiliate of the declarant has been a defendant, arising out of
14 the construction, sale, or administration of any condominium within the
15 previous five years, together with the results thereof, if known;

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

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

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

23 (ff) Any reports or statements required by RCW 64.34.415 or
24 64.34.440(6)(a). RCW 64.34.415 shall apply to the public offering
25 statement of a condominium in connection with which a final certificate
26 of occupancy was issued more than sixty calendar months prior to the
27 preparation of the public offering statement whether or not the
28 condominium is a conversion condominium as defined in RCW
29 64.34.020(10);

30 (gg) A list of the documents which the prospective purchaser is
31 entitled to receive from the declarant before the rescission period
32 commences;

33 (hh) A notice which states: A purchaser may not rely on any
34 representation or express warranty unless it is contained in the public
35 offering statement or made in writing signed by the declarant or by any
36 person identified in the public offering statement as the declarant's
37 agent;

38 (ii) A notice which states: This public offering statement is only
39 a summary of some of the significant aspects of purchasing a unit in

1 this condominium and the condominium documents are complex, contain
2 other important information, and create binding legal obligations. You
3 should consider seeking the assistance of legal counsel;

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

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

11 (ll) A notice that is substantially in the form required by section
12 6 of this act.

13 (2) The public offering statement shall include copies of each of
14 the following documents: The declaration, the survey map and plans,
15 the articles of incorporation of the association, bylaws of the
16 association, rules and regulations, if any, current or proposed budget
17 for the association, and the balance sheet of the association current
18 within ninety days if assessments have been collected for ninety days
19 or more.

20 If any of the foregoing documents listed in this subsection are not
21 available because they have not been executed, adopted, or recorded,
22 drafts of such documents shall be provided with the public offering
23 statement, and, before closing the sale of a unit, the purchaser shall
24 be given copies of any material changes between the draft of the
25 proposed documents and the final documents.

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

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

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

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

1 (1) A judicial proceeding for breach of any obligations arising
2 under RCW 64.34.443 and 64.34.445 must be commenced within four years
3 after the cause of action accrues: PROVIDED, That the period for
4 commencing an action for a breach accruing pursuant to subsection
5 (2)(b) of this section shall not expire prior to one year after
6 termination of the period of declarant control, if any, under RCW
7 64.34.308(4). Such period may not be reduced by either oral or written
8 agreement.

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

12 (a) As to a unit, the date the purchaser to whom the warranty is
13 first made enters into possession if a possessory interest was conveyed
14 or the date of acceptance of the instrument of conveyance if a
15 nonpossessory interest was conveyed; and

16 (b) As to each common element, at the latest of (i) the date the
17 first unit in the condominium was conveyed to a bona fide purchaser,
18 (ii) the date the common element was completed, or (iii) the date the
19 common element was added to the condominium.

20 (3) If a warranty of quality explicitly extends to future
21 performance or duration of any improvement or component of the
22 condominium, the cause of action accrues at the time the breach is
23 discovered or at the end of the period for which the warranty
24 explicitly extends, whichever is earlier.

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

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

--- END ---