

SHB 2475 - H AMD 1051

By Representative Barkis

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 64.50.010 and 2002 c 323 s 2 are each amended to  
4 read as follows:

5 Unless the context clearly requires otherwise, the definitions in  
6 this section apply throughout this chapter.

7 (1) "Action" means any civil lawsuit or action in contract or  
8 tort for damages or indemnity brought against a construction  
9 professional to assert a claim, whether by complaint, counterclaim,  
10 or cross-claim, for damage or the loss of use of real or personal  
11 property caused by a defect in the construction of a residence or in  
12 the substantial remodel of a residence. "Action" does not include any  
13 civil action in tort alleging personal injury or wrongful death to a  
14 person or persons resulting from a construction defect.

15 (2) "Association" means an association(~~(, master association, or~~  
16 ~~subassociation)) as defined and provided for in RCW (~~(64.34.020(4),~~  
17 ~~64.34.276, 64.34.278, and)) 64.38.010(~~((+1))~~) (11).~~~~

18 (3) "Claimant" means a homeowner or association who asserts a  
19 claim against a construction professional concerning a defect in the  
20 construction of a residence or in the substantial remodel of a  
21 residence.

22 (4) "Construction professional" means an architect, builder,  
23 builder vendor, contractor, subcontractor, engineer, or inspector,  
24 including, but not limited to, (~~(a dealer as defined in RCW~~  
25 ~~64.34.020(12) and a declarant as defined in RCW 64.34.020(13),)~~)  
26 persons or entities performing or furnishing the design, supervision,  
27 inspection, construction, or observation of the construction of any  
28 improvement to real property, whether operating as a sole proprietor,  
29 partnership, corporation, or other business entity.

30 (5) "Homeowner" means: (a) Any person, company, firm,  
31 partnership, corporation, or association who contracts with a  
32 construction professional for the construction, sale, or construction

1 and sale of a residence; and (b) an "association" as defined in this  
2 section. "Homeowner" includes, but is not limited to, a subsequent  
3 purchaser of a residence from any homeowner.

4 (6) "Residence" means a single-family house, duplex, triplex,  
5 quadraplex, ~~((or))~~ a unit or lot in a ~~((multiunit residential~~  
6 ~~structure in which title to each individual unit is transferred to~~  
7 ~~the owner under a condominium or))~~ cooperative ~~((system))~~ or  
8 homeowner's association, and ~~((shall include common elements as~~  
9 ~~defined in RCW 64.34.020(6) and))~~ common areas as defined in RCW  
10 64.38.010(4).

11 (7) "Serve" or "service" means ~~((personal service or delivery by~~  
12 ~~certified mail to the last known address of the addressee))~~: (a)  
13 Delivery in the manner provided for service of a summons under RCW  
14 4.28.020; or (b) sending by first-class, registered, or certified  
15 mail to the last known address of the addressee, the addressee's  
16 registered agent, or any person designated by the addressee as  
17 authorized to accept service on their behalf. Service by mail shall  
18 be deemed effective three days after deposit into the mail.

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

23 **Sec. 2.** RCW 64.50.020 and 2002 c 323 s 3 are each amended to  
24 read as follows:

25 (1) In every construction defect action brought against a  
26 construction professional, the claimant shall~~((, no later than forty-~~  
27 ~~five days before filing an action,))~~ serve written notice of claim on  
28 the construction professional. The notice of claim shall state that  
29 the claimant asserts a construction defect claim against the  
30 construction professional and shall describe the claim in reasonable  
31 detail sufficient to determine the general nature of the defect. The  
32 claimant shall not file any action alleging construction defects  
33 until after termination of the notice and opportunity to cure process  
34 as specified in this section. Once the notice and opportunity to cure  
35 process is terminated, the claimant may bring an action against the  
36 construction professional without further notice.

37 (2) Within twenty-one days after claimant's service of the notice  
38 of claim, the construction professional shall serve a written

1 response on the claimant (~~((by registered mail or personal service))~~).

2 The written response shall:

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

8 (b) Offer to compromise and settle the claim by monetary payment  
9 without inspection. A construction professional's offer under this  
10 subsection (2)(b) to compromise and settle a homeowner's claim may  
11 include, but is not limited to, an express offer to purchase the  
12 claimant's residence that is the subject of the claim, and to pay the  
13 claimant's reasonable relocation costs; (~~((or))~~)

14 (c) State that the construction professional disputes the claim  
15 and will (~~((neither))~~) not remedy the construction defect (~~((nor))~~),  
16 compromise and settle the claim, or offer to mediate; or

17 (d) Offer to mediate the claim in accordance with subsection (5)  
18 of this section.

19 (3)(a) If the construction professional disputes the claim (~~((or~~  
20 ~~does not respond to the claimant's notice of claim within the time~~  
21 ~~stated in subsection (2) of this section, the claimant may bring an~~  
22 ~~action against the construction professional for the claim described~~  
23 ~~in the notice of claim without further notice.~~

24 ~~(b) If the claimant rejects the inspection proposal or the~~  
25 ~~settlement offer made by the construction professional pursuant to~~  
26 ~~subsection (2) of this section, the claimant shall serve written~~  
27 ~~notice of the claimant's rejection on the construction professional.~~  
28 ~~After service of the rejection, the claimant may bring an action~~  
29 ~~against the construction professional for the construction defect~~  
30 ~~claim described in the notice of claim. If the construction~~  
31 ~~professional has not received from the claimant, within thirty days~~  
32 ~~after the claimant's receipt of the construction professional's~~  
33 ~~response, either an acceptance or rejection of the inspection~~  
34 ~~proposal or settlement offer, then at anytime thereafter the~~  
35 ~~construction professional may terminate the proposal or offer by~~  
36 ~~serving written notice to the claimant, and the claimant may~~  
37 ~~thereafter bring an action against the construction professional for~~  
38 ~~the construction defect claim described in the notice of claim))~~  
39 under subsection (2)(c) of this section, such dispute shall  
40 constitute termination of the notice and opportunity to cure process.

1 (b) If the construction professional does not respond to the  
2 claimant's notice of claim within the time stated in subsection (2)  
3 of this section, then the claimant may serve written notice of  
4 termination upon the construction professional, which shall terminate  
5 the notice and opportunity to cure process.

6 (c) If the claimant rejects the inspection proposal or the  
7 settlement offer made by the construction professional pursuant to  
8 subsection (2) of this section, the claimant shall serve written  
9 notice of the claimant's rejection on the construction professional,  
10 which shall terminate the notice and opportunity to cure process.

11 (d) If the construction professional has not been served with the  
12 claimant's acceptance or rejection of the inspection proposal or  
13 settlement offer within thirty days after service of the construction  
14 professional's response, then the construction professional may  
15 terminate the notice and opportunity to cure process by serving  
16 written notice of termination on the claimant.

17 (4)(a) If the claimant elects to allow the construction  
18 professional to inspect in accordance with the construction  
19 professional's proposal pursuant to subsection (2)(a) of this  
20 section, the claimant shall provide the construction professional and  
21 its contractors or other agents reasonable access to the claimant's  
22 residence during normal working hours to inspect the ~~((premises))~~  
23 residence and the claimed defect.

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

26 (i) A written offer to remedy the construction defect at no cost  
27 to the claimant, including a report of the scope of the inspection,  
28 the findings and results of the inspection, a description of the  
29 additional construction necessary to remedy the defect described in  
30 the claim, and a timetable for the completion of such construction;

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

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

35 (c) If the construction professional does not proceed further to  
36 remedy the construction defect within the agreed timetable, or if the  
37 construction professional fails to comply with the provisions of (b)  
38 of this subsection, the claimant may ~~((bring an action against the~~  
39 ~~construction professional for the claim described in the notice of~~  
40 ~~claim without further notice)) serve written notice of termination~~

1 upon the construction professional, which shall terminate the notice  
2 and opportunity to cure process.

3 (d) If the claimant rejects the offer made by the construction  
4 professional pursuant to (b)(i) or (ii) of this subsection to either  
5 remedy the construction defect or to compromise and settle the claim  
6 by monetary payment, the claimant shall serve written notice of the  
7 claimant's rejection on the construction professional, which shall  
8 terminate the notice and opportunity to cure process. (~~After service~~  
9 ~~of the rejection notice, the claimant may bring an action against the~~  
10 ~~construction professional for the construction defect claim described~~  
11 ~~in the notice of claim.~~) If the construction professional has not  
12 (~~received from the claimant, within thirty days after the claimant's~~  
13 ~~receipt of the construction professional's response, either an~~  
14 ~~acceptance or rejection of the offer made pursuant to (b)(i) or (ii)~~  
15 ~~of this subsection, then at anytime thereafter the construction~~  
16 ~~professional may terminate the offer by serving written notice to the~~  
17 ~~claimant~~) been served with the claimant's acceptance or rejection of  
18 the offer made pursuant to subsection (b)(i) or (ii) of this  
19 subsection within thirty days after the service of the construction  
20 professional's response, then the construction professional may serve  
21 written notice of termination upon the claimant, which shall  
22 terminate the notice and opportunity to cure process.

23 (5)(a) If the construction professional offers to mediate  
24 pursuant to subsection (2)(d) of this section, the claimant shall,  
25 within thirty days of service of the offer, serve its acceptance or  
26 rejection of the offer to mediate.

27 (b) If the claimant rejects the offer to mediate, service of the  
28 rejection on the construction professional shall terminate the notice  
29 and opportunity to cure process.

30 (c) If the claimant accepts the offer to mediate, the claimant  
31 and the construction professional that offered to mediate shall,  
32 within thirty days after service of claimant's acceptance of the  
33 offer to mediate, select a mediator and agree on deadlines for the  
34 following:

35 (i) Commencement of the mediation and submission of mediation  
36 materials;

37 (ii) Completion of each party's investigations;

38 (iii) Disclosure of each party's proposed repair plan;

39 (iv) Disclosure of each party's estimated costs of repair;

40 (v) Disclosure of each party's settlement demand or response; and

1 (vi) Any other deadlines mutually agreed to by the claimant and  
2 construction professional.

3 The events and deadlines in this subsection (5)(c) may be  
4 modified by mutual agreement of the claimant and the construction  
5 professional that offered to mediate. Once selected, the mediator may  
6 unilaterally extend any of the foregoing deadlines by no more than  
7 ninety days.

8 (d) Either the claimant or the construction professional that  
9 offered to mediate may terminate the mediation process and any  
10 related deadlines without cause by serving written notice of  
11 termination on the other, which shall constitute termination of the  
12 notice and opportunity to cure process.

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

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

27 ~~((+6))~~ (7) Any action commenced by a claimant prior to  
28 compliance with the requirements of this section shall be subject to  
29 dismissal without prejudice, and may not be recommenced until the  
30 claimant has complied with the requirements of this section.

31 ~~((+7))~~ (8) Nothing in this section may be construed to prevent a  
32 claimant from commencing an action on the construction defect claim  
33 described in the notice of claim if the construction professional  
34 fails to perform the construction agreed upon, fails to remedy the  
35 defect, or fails to perform by the timetable agreed upon pursuant to  
36 ~~((subsection (2)(a) or (5) of))~~ this section.

37 ~~((+8))~~ (9) Prior to commencing any action alleging a  
38 construction defect, or after the dismissal of any action without  
39 prejudice pursuant to subsection ~~((+6))~~ (7) of this section, the  
40 claimant may amend the notice of claim to include construction

1 defects discovered after the service of the original notice of claim,  
2 and must otherwise comply with the requirements of this section for  
3 the additional claims. The service of an amended notice of claim  
4 shall relate back to the original notice of claim for purposes of  
5 tolling statutes of limitations and repose. Claims for defects  
6 discovered after the commencement or recommencement of an action may  
7 be added to such action only after providing notice to the  
8 construction professional of the defect and allowing for response  
9 under subsection (2) of this section.

10 **Sec. 3.** RCW 64.50.040 and 2002 c 323 s 5 are each amended to  
11 read as follows:

12 (1)(a) In the event the board of directors, pursuant to RCW  
13 (~~(64.34.304(1)(d) or~~) 64.38.020(4), institutes an action asserting  
14 defects in the construction of two or more residences, common  
15 elements, or common areas, this section shall apply. For purposes of  
16 this section, "action" has the same meaning as set forth in RCW  
17 64.50.010.

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

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

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

- 28 (i) The nature of the action and the relief sought; and
- 29 (ii) The expenses and fees that the board of directors  
30 anticipates will be incurred in prosecuting the action.

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

32 (a) Require the disclosure in the notice or the disclosure to a  
33 unit owner of attorney-client communications or other privileged  
34 communications;

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

1 (c) Limit or impair the authority of the board of directors to  
2 contract for legal services, or limit or impair the ability to  
3 enforce such a contract for legal services.

4 **Sec. 4.** RCW 4.16.325 and 2002 c 323 s 8 are each amended to read  
5 as follows:

6 If a claimant serves a written notice of claim (~~(is served under~~  
7 ~~RCW 64.50.020 within the time prescribed for the filing of an action~~  
8 ~~under this chapter, the statutes of limitations for construction-~~  
9 ~~related claims are tolled until sixty days after the period of time~~  
10 ~~during which the filing of an action is barred under RCW 64.50.020))~~  
11 on a construction professional under RCW 64.50.020 within the time  
12 prescribed for the filing of an action under this chapter, the  
13 applicable statutes of limitation and repose for all claims relating  
14 to the residence are tolled from claimant's service of the original  
15 notice of claim until one hundred five days after termination of the  
16 notice and opportunity to cure process as provided in RCW 64.50.020;  
17 however, the foregoing tolling applies to claims by one construction  
18 professional against another only if the construction professional  
19 serves the claimant's notice of claim upon the other construction  
20 professional within sixty days of receipt of the claimant's notice of  
21 claim or amended notice of claim.

22 **Sec. 5.** RCW 4.16.310 and 2002 c 323 s 9 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  
27 of 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  
31 property may be used or occupied for its intended use. Any cause of  
32 action which has not accrued within six years after such substantial  
33 completion of construction, or within six years after such  
34 termination of services, whichever is later, shall be barred:  
35 PROVIDED, That this limitation shall not be asserted as a defense by  
36 any owner, tenant or other person in possession and control of the  
37 improvement at the time such cause of action accrues. The limitations  
38 prescribed in this section apply to all claims or causes of action as



1 set forth in RCW 4.16.300 brought in the name or for the benefit of  
2 the state which are made or commenced after June 11, 1986.

3 ~~((If a written notice is filed under RCW 64.50.020 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 RCW 64.50.020 plus sixty days shall not be a part of the period  
7 limited for the commencement of an action, nor for the application of  
8 this section.))~~

9 **Sec. 6.** RCW 64.34.452 and 2004 c 201 s 7 are each amended to  
10 read as follows:

11 (1) A judicial proceeding for breach of any obligations arising  
12 under RCW 64.34.443, 64.34.445, and 64.34.450 must be commenced  
13 within four years after the cause of action accrues: PROVIDED, That  
14 the period for commencing an action for a breach accruing pursuant to  
15 subsection (2)(b) of this section shall not expire prior to one year  
16 after termination of the period of declarant control, if any, under  
17 RCW 64.34.308(4). Such periods may not be reduced by either oral or  
18 written agreement, or through the use of contractual claims or notice  
19 procedures that require the filing or service of any claim or notice  
20 prior to the expiration of the period specified in this section.

21 (2) Subject to subsection (3) of this section, a cause of action  
22 ~~((or [for]))~~ for breach of warranty of quality, regardless of the  
23 purchaser's lack of knowledge of the breach, accrues:

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

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

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

37 (4) If a written notice of claim is served under ((RCW  
38 ~~64.50.020~~)) section 9 of this act within the time prescribed for the  
39 filing of an action under this chapter, the statutes of limitation in

1 this chapter and any applicable statutes of repose for construction-  
2 related claims are tolled until sixty days after the period of time  
3 during which the filing of an action is barred under ((RCW  
4 ~~64.50.020~~)) section 9 of this act.

5 (5) Nothing in this section affects the time for filing a claim  
6 under chapter 64.35 RCW.

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

14 NEW SECTION. **Sec. 8.** Unless the context clearly requires  
15 otherwise, the definitions in this section apply throughout this  
16 chapter.

17 (1) "Action" means any civil lawsuit or action in contract or  
18 tort for damages or indemnity brought against a construction  
19 professional to assert a claim, whether by complaint, counterclaim,  
20 or cross-claim, for damage or the loss of use of real or personal  
21 property caused by a defect in the construction of a residence or in  
22 the substantial remodel of a residence. "Action" does not include any  
23 civil action in tort alleging personal injury or wrongful death to a  
24 person or persons resulting from a construction defect.

25 (2) "Association" means an association, master association, or  
26 subassociation as defined and provided for in RCW 64.34.020(4),  
27 64.34.276, and 64.34.278.

28 (3) "Claimant" means a homeowner or association who asserts a  
29 claim against a construction professional concerning a defect in the  
30 construction of a residence or in the substantial remodel of a  
31 residence.

32 (4) "Construction professional" means an architect, builder,  
33 builder vendor, contractor, subcontractor, engineer, or inspector,  
34 including, but not limited to, a dealer as defined in RCW  
35 64.34.020(14) and a declarant as defined in RCW 64.34.020(15),  
36 performing or furnishing the design, supervision, inspection,  
37 construction, or observation of the construction of any improvement

1 to real property, whether operating as a sole proprietor,  
2 partnership, corporation, or other business entity.

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

9 (6) "Residence" means a unit in a multiunit residential structure  
10 in which title to each individual unit is transferred to the owner  
11 under a condominium or cooperative system, and shall include common  
12 elements as defined in RCW 64.34.020(7).

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

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

19 NEW SECTION. **Sec. 9.** (1) In every construction defect action  
20 brought against a construction professional, the claimant shall, no  
21 later than forty-five days before filing an action, serve written  
22 notice of claim on the construction professional. The notice of claim  
23 shall state that the claimant asserts a construction defect claim  
24 against the construction professional and shall describe the claim in  
25 reasonable detail sufficient to determine the general nature of the  
26 defect.

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

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

36 (b) Offer to compromise and settle the claim by monetary payment  
37 without inspection. A construction professional's offer under this  
38 subsection (2)(b) to compromise and settle a homeowner's claim may  
39 include, but is not limited to, an express offer to purchase the

1 claimant's residence that is the subject of the claim, and to pay the  
2 claimant's reasonable relocation costs; or

3 (c) State that the construction professional disputes the claim  
4 and will neither remedy the construction defect nor compromise and  
5 settle the claim.

6 (3)(a) If the construction professional disputes the claim or  
7 does not respond to the claimant's notice of claim within the time  
8 stated in subsection (2) of this section, the claimant may bring an  
9 action against the construction professional for the claim described  
10 in the notice of claim without further notice.

11 (b) If the claimant rejects the inspection proposal or the  
12 settlement offer made by the construction professional pursuant to  
13 subsection (2) of this section, the claimant shall serve written  
14 notice of the claimant's rejection on the construction professional.  
15 After service of the rejection, the claimant may bring an action  
16 against the construction professional for the construction defect  
17 claim described in the notice of claim. If the construction  
18 professional has not received from the claimant, within thirty days  
19 after the claimant's receipt of the construction professional's  
20 response, either an acceptance or rejection of the inspection  
21 proposal or settlement offer, then at anytime thereafter the  
22 construction professional may terminate the proposal or offer by  
23 serving written notice to the claimant, and the claimant may  
24 thereafter bring an action against the construction professional for  
25 the construction defect claim described in the notice of claim.

26 (4)(a) If the claimant elects to allow the construction  
27 professional to inspect in accordance with the construction  
28 professional's proposal pursuant to subsection (2)(a) of this  
29 section, the claimant shall provide the construction professional and  
30 its contractors or other agents reasonable access to the claimant's  
31 residence during normal working hours to inspect the premises and the  
32 claimed defect.

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

35 (i) A written offer to remedy the construction defect at no cost  
36 to the claimant, including a report of the scope of the inspection,  
37 the findings and results of the inspection, a description of the  
38 additional construction necessary to remedy the defect described in  
39 the claim, and a timetable for the completion of such construction;

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

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

5 (c) If the construction professional does not proceed further to  
6 remedy the construction defect within the agreed timetable, or if the  
7 construction professional fails to comply with the provisions of (b)  
8 of this subsection, the claimant may bring an action against the  
9 construction professional for the claim described in the notice of  
10 claim without further notice.

11 (d) If the claimant rejects the offer made by the construction  
12 professional pursuant to (b)(i) or (ii) of this subsection to either  
13 remedy the construction defect or to compromise and settle the claim  
14 by monetary payment, the claimant shall serve written notice of the  
15 claimant's rejection on the construction professional. After service  
16 of the rejection notice, the claimant may bring an action against the  
17 construction professional for the construction defect claim described  
18 in the notice of claim. If the construction professional has not  
19 received from the claimant, within thirty days after the claimant's  
20 receipt of the construction professional's response, either an  
21 acceptance or rejection of the offer made pursuant to (b)(i) or (ii)  
22 of this subsection, then at anytime thereafter the construction  
23 professional may terminate the offer by serving written notice to the  
24 claimant.

25 (5)(a) Any claimant accepting the offer of a construction  
26 professional to remedy the construction defect pursuant to subsection  
27 (4)(b)(i) of this section shall do so by serving the construction  
28 professional with a written notice of acceptance within a reasonable  
29 time period after receipt of the offer, and no later than thirty days  
30 after receipt of the offer. The claimant shall provide the  
31 construction professional and its contractors or other agents  
32 reasonable access to the claimant's residence during normal working  
33 hours to perform and complete the construction by the timetable  
34 stated in the offer.

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

39 (6) Any action commenced by a claimant prior to compliance with  
40 the requirements of this section shall be subject to dismissal

1 without prejudice, and may not be recommenced until the claimant has  
2 complied with the requirements of this section.

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

9 (8) Prior to commencing any action alleging a construction  
10 defect, or after the dismissal of any action without prejudice  
11 pursuant to subsection (6) of this section, the claimant may amend  
12 the notice of claim to include construction defects discovered after  
13 the service of the original notice of claim, and must otherwise  
14 comply with the requirements of this section for the additional  
15 claims. The service of an amended notice of claim shall relate back  
16 to the original notice of claim for purposes of tolling statutes of  
17 limitations and repose. Claims for defects discovered after the  
18 commencement or recommencement of an action may be added to such  
19 action only after providing notice to the construction professional  
20 of the defect and allowing for response under subsection (2) of this  
21 section.

22 NEW SECTION. **Sec. 10.** (1) In every action brought against a  
23 construction professional, the claimant, including a construction  
24 professional asserting a claim against another construction  
25 professional, shall file with the court and serve on the defendant a  
26 list of known construction defects in accordance with this section.

27 (2) The list of known construction defects shall contain a  
28 description of the construction that the claimant alleges to be  
29 defective. The list of known construction defects shall be filed with  
30 the court and served on the defendant within thirty days after the  
31 commencement of the action or within such longer period as the court  
32 in its discretion may allow.

33 (3) The list of known construction defects may be amended by the  
34 claimant to identify additional construction defects as they become  
35 known to the claimant.

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

1 (5) If a subcontractor or supplier is added as a party to an  
2 action under this section, the party making the claim against such  
3 subcontractor or supplier shall serve on the subcontractor or  
4 supplier the list of construction defects in accordance with this  
5 section within thirty days after service of the complaint against the  
6 subcontractor or supplier or within such period as the court in its  
7 discretion may allow.

8 NEW SECTION. **Sec. 11.** (1)(a) In the event the board of  
9 directors, pursuant to RCW 64.34.304(1)(d), institutes an action  
10 asserting defects in the construction of two or more residences,  
11 common elements, or common areas, this section shall apply. For  
12 purposes of this section, "action" has the same meaning as in section  
13 8 of this act.

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

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

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

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

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

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

28 (a) Require the disclosure in the notice or the disclosure to a  
29 unit owner of attorney-client communications or other privileged  
30 communications;

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

35 (c) Limit or impair the authority of the board of directors to  
36 contract for legal services, or limit or impair the ability to  
37 enforce such a contract for legal services.

1        NEW SECTION.    **Sec. 12.**    (1) The construction professional shall  
2 provide notice to each homeowner upon entering into a contract for  
3 sale, construction, or substantial remodel of a residence, of the  
4 construction professional's right to offer to cure construction  
5 defects before a homeowner may commence litigation against the  
6 construction professional. Such notice shall be conspicuous and may  
7 be included as part of the underlying contract signed by the  
8 homeowner. In the sale of a condominium unit, the requirement for  
9 delivery of such notice shall be deemed satisfied if contained in a  
10 public offering statement delivered in accordance with chapter 64.34  
11 RCW.

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

14        CHAPTER 64.--- RCW (the new chapter created in section 17 of  
15 this act) CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW  
16 BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION  
17 AGAINST THE SELLER OR BUILDER OF YOUR HOME. FORTY-FIVE DAYS  
18 BEFORE YOU FILE YOUR LAWSUIT, YOU MUST DELIVER TO THE SELLER  
19 OR BUILDER A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS  
20 YOU ALLEGE ARE DEFECTIVE AND PROVIDE YOUR SELLER OR BUILDER  
21 THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE  
22 DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY  
23 THE BUILDER OR SELLER. THERE ARE STRICT DEADLINES AND  
24 PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY  
25 AFFECT YOUR ABILITY TO FILE A LAWSUIT.

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

28        NEW SECTION.    **Sec. 13.**    Nothing in this chapter shall be  
29 construed to hinder or otherwise affect the employment, agency, or  
30 contractual relationship between and among homeowners and  
31 construction professionals during the process of construction or  
32 remodeling and does not preclude the termination of those  
33 relationships as allowed under current law. Nothing in this chapter  
34 shall negate or otherwise restrict a construction professional's  
35 right to access or inspection provided by law, covenant, easement, or  
36 contract.



1        NEW SECTION.    **Sec. 14.**    All claims or causes of action as set  
2    forth in RCW 4.16.300 shall accrue, and the applicable statute of  
3    limitation shall begin to run only during the period within six years  
4    after substantial completion of construction, or during the period  
5    within six years after the termination of the services enumerated in  
6    RCW 4.16.300, whichever is later. The phrase "substantial completion  
7    of construction" shall mean the state of completion reached when an  
8    improvement upon real property may be used or occupied for its  
9    intended use. Any cause of action which has not accrued within six  
10   years after such substantial completion of construction, or within  
11   six years after such termination of services, whichever is later,  
12   shall be barred: PROVIDED, That this limitation shall not be asserted  
13   as a defense by any owner, tenant or other person in possession and  
14   control of the improvement at the time such cause of action accrues.  
15   The limitations prescribed in this section apply to all claims or  
16   causes of action as set forth in RCW 4.16.300 brought in the name or  
17   for the benefit of the state which are made or commenced after June  
18   11, 1986.

19        If a written notice is filed under section 9 of this act within  
20   the time prescribed for the filing of an action under this chapter,  
21   the period of time during which the filing of an action is barred  
22   under section 9 of this act plus sixty days shall not be a part of  
23   the period limited for the commencement of an action, nor for the  
24   application of this section.

25        NEW SECTION.    **Sec. 15.**    If a written notice of claim is served  
26   under section 9 of this act within the time prescribed for the filing  
27   of an action under this chapter, the statutes of limitations for  
28   construction-related claims are tolled until sixty days after the  
29   period of time during which the filing of an action is barred under  
30   section 9 of this act.

31        NEW SECTION.    **Sec. 16.**    Sections 14 and 15 of this act are each  
32   added to chapter 4.16 RCW.

33        NEW SECTION.    **Sec. 17.**    Sections 7 through 13 of this act  
34   constitute a new chapter in Title 64 RCW."

35        Correct the title.

EFFECT: Retains the underlying SHB 2475, but makes the changes in SHB 2475 inapplicable to condominiums. Creates a new chapter in Title 64 RCW that is only applicable to construction defect actions involving condominiums and that matches current law with respect to construction defect actions.

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