
Civil Rights & Judiciary Committee

HB 1576

Brief Description: Concerning construction defect actions.

Sponsors: Representatives Senn, Irwin, Goodman, Griffey, Ryu, Chapman and Barkis.

Brief Summary of Bill

- Requires that, before commencing a construction defect action asserting defects in construction of two or more residences, common elements, or common areas, the board of directors of a common interest community governed by the Washington Uniform Common Interest Ownership Act must:
 - provide notice to homeowners and each construction professional against whom an action is proposed;
 - convene a meeting of homeowners to consider whether to bring such an action; and
 - secure the vote of the majority of the homeowners to proceed with the action.

Hearing Date: 2/12/19

Staff: Cece Clynych (786-7195).

Background:

Construction Defect Action.

In 2002 a mandatory prelitigation claim process was adopted for claims brought against a construction professional for property damage due to alleged defects in the construction of a residence. These requirements apply to the new construction of a residence and to any remodel that costs more than half of the assessed value of the residence and must be met before a lawsuit can be filed.

Requirements Before Suit is Filed: Notice and Opportunity to Cure.

Before a lawsuit can be filed alleging a defect in the construction or substantial remodel of a residence, a claimant must serve notice on the construction professional alleged to be responsible

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for the defect. The claimant's notice must be given at least 45 days before a suit is filed and must describe the claim in reasonable detail.

Within 21 days of receiving the notice, the construction professional must respond to the claimant. In the response, the construction professional must do one of the following:

- offer to inspect the alleged defect and then, based on the inspection, either remedy the defect, pay for it, or dispute the claim;
- offer to settle the claim by paying for the defect, including possibly buying the residence back from the homeowner; or
- dispute the claim.

If the construction professional fails to respond, or disputes the claim, or the claimant rejects an offer of inspection or settlement, then the claimant may file a lawsuit. Procedures are also laid out for situations in which the claimant agrees to an inspection or agrees to an offer of settlement. If the construction professional fails to perform agreed repairs, or fails to meet an agreed timetable, the claimant may file the lawsuit.

If a claimant discovers another defect after a suit has been commenced, the claimant must notify the construction professional and give the construction professional an opportunity to respond in the manner described previously. The new claim may then be added to a pending lawsuit.

The timely service of a notice of claim tolls any applicable statutes of limitations and repose until 60 days after the end of the notice and opportunity to cure period during which bringing a lawsuit is barred.

Notice to Homeowners.

Condominium and Homeowners' Associations Created Before July 1, 2018.

Prior to serving a summons and complaint in a construction defect action, the board of directors of a condominium association under the Condominium Act or a homeowners' association under the Homeowners' Association Act must substantially comply with a requirement to mail or deliver written notice of the commencement or anticipated commencement of the action to each homeowner. The notice must include a general description of:

- the nature of the action and the relief sought; and
- the expenses and fees that are anticipated to be incurred in prosecuting the action.

Common Interest Communities Created After July 1, 2018.

An association of a common interest community subject to the Washington Uniform Common Interest Ownership Act must comply with the mandatory prelitigation process for construction defect actions, if applicable, before instituting any proceeding in connection with construction defects. There is not a specific section expressly governing the notice required from boards of directors to homeowners prior to commencing a construction defect action, as there is for a condominium or homeowners' association created before July 1, 2018.

Summary of Bill:

Before commencing a construction defect action asserting defects in construction of two or more residences, common elements, or common areas, the board of directors of a common interest community (CIC) governed by the Washington Uniform Common Interest Ownership Act must:

provide notice to homeowners and each construction professional against whom an action is proposed; convene a meeting of homeowners to consider whether to bring such an action; and secure the vote of the majority of the homeowners to proceed with the action.

The notice must include a general description of the alleged defects, the relief sought, a good faith estimate of the benefits and risks involved, and the expenses and fees anticipated. The notice must also provide a general description of the construction defect process, together with information about the meeting.

The homeowners' meeting must be held within 45 days of the date of the notice. A quorum is not required at the meeting. Any construction professionals against whom an action is proposed must be invited to attend and have an opportunity to address the homeowners about the alleged defects. A professional may extend an offer to remedy the defect, but is not required to do so.

The board of directors may initiate an action only after the meeting and only if authorized by a majority of the homeowners. More than a simple majority vote may not be required in the governing documents or in any contract or agreement. This approval is not required if the alleged defect pertains to a facility that is intended and used for nonresidential purposes and if the cost to repair the defect does not exceed \$100,000 or when the association is the contracting party for the performance of labor or purchase of services or materials.

A homeowner's vote shall be submitted only once and may be obtained in any written format confirming the vote to approve or defect the proposed action. The association must maintain a record of all votes until the conclusion of the action, including any appeals. For purposes of calculating the total number of eligible votes and the number of votes needed for the required majority vote, the residences owned by a development party are excluded. "Development party" means a contractor, subcontractor, developer, or builder responsible for any part of the design, construction, or repair of any portion of the CIC and any of that party's affiliates; and "affiliate" includes an entity controlled or owned, in whole or in part, by any person that controls or owns a development party or by the spouse of a development party.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.