

# HOUSE BILL REPORT

## HB 1576

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**As Reported by House Committee On:**  
Civil Rights & Judiciary

**Title:** An act relating to construction defect actions.

**Brief Description:** Concerning construction defect actions.

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

**Brief History:**

**Committee Activity:**

Civil Rights & Judiciary: 2/12/19, 2/22/19 [DPS].

**Brief Summary of Substitute Bill**

- Requires that, before commencing a construction defect action, the board of directors of a common interest community governed by the Washington Uniform Common Interest Ownership Act must:
  - provide notice to unit owners and each construction professional against whom an action is proposed;
  - convene a meeting of unit owners to consider whether to bring such an action; and
  - allow unit owners to vote on whether to ratify or reject, and proceed with the action only if ratified.

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### HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Jinkins, Chair; Thai, Vice Chair; Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Goodman, Graham, Hansen, Kilduff, Kirby, Klippert, Orwall, Shea, Valdez, Walen and Ybarra.

**Staff:** Cece Clynch (786-7195).

**Background:**

Construction Defect Action.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

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 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 unit owners prior to commencing a construction defect action, as there is for a condominium or homeowners' association created before July 1, 2018.

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### **Summary of Substitute 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 governed by the Washington Uniform Common Interest Ownership Act (WUCIOA) must: provide notice to unit owners and each construction professional against whom an action is proposed; convene a meeting to consider whether to bring such an action; and allow unit owners to vote on whether to take such action. The action is considered ratified unless a majority votes to reject the action, and the board may commence the action only after ratification.

The notice to unit owners and construction professionals must include: the date, time, and location of the meeting; the nature of the action and the relief sought; and the expenses and fees that the board of directors anticipates will be incurred in prosecuting the action. In addition, the notice to unit owners must also include: a ballot; the time and date by which a ballot must be delivered to the association to be counted, which may not be fewer than 45 days after the date of the meeting; and the percent of votes necessary to reject the action.

The 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. Following any presentation, unit owners in attendance may cast their ballots at the meeting. Alternatively, unit owners may submit their ballots to the association on or before the date by which all ballots must be delivered. If the board proposes an action against the declarant or an affiliate of the declarant, these persons are not eligible to vote and the action is ratified unless a majority of the eligible votes in the association reject the action.

The board of directors may initiate an action only after ratification. Ratification 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.

Nothing in this new section requires the disclosure of attorney-client privileged information. The section supersedes all inconsistent provisions of the governing documents of all common interest communities subject to the WUCIOA.

## **Substitute Bill Compared to Original Bill:**

The substitute retains the original bill with the following changes:

- changes the term "homeowners" to "unit owners," which is the term used in the Washington Uniform Common Interest Ownership Act (WUCIOA);
- strikes the requirement that a majority of the unit owners vote to authorize the board to bring a construction defect action, and replaces it with a provision that such action is ratified unless a majority votes to reject the action;
- provides that the notice to unit owners must be provided prior to the commencement of the action (rather than prior to the service of the summons and complaint, which would have allowed the action to be filed before provision of the notice as long as it had not yet been served);
- revises the content of the notice issued to unit owners and construction professionals, and additionally requires that the notice to unit owners include:
  - a ballot;
  - the time and date by which a ballot must be delivered, which may not be fewer than 45 days after the meeting; and
  - the percent of votes necessary to reject the action;
- provides that unit owners be allowed to vote in person or by delivering a ballot, and that the opportunity to vote be allowed until at least 45 days after the meeting;
- specifies that, except for the exception for alleged defects to a facility that is used for nonresidential purposes and if the cost to repair is limited, the board may commence the action only after ratification;
- provides that this section supersedes all inconsistent provisions of the governing documents of all common interest communities subject to the WUCIOA; and
- provides that, unless otherwise defined, the terms have the meaning set forth in the WUCIOA definition section.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

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

### **Staff Summary of Public Testimony:**

(In support) The bill is much shortened from last year. The goal remains the same, but many of the specifics have been removed. It is important that there is buy-in by homeowners with respect to any construction defect lawsuit. Once suit is filed, the homeowners can be stuck. The key for the homeowners is that the defects are solved. This bill is still a work in progress. Condominiums are an important sector in the housing market. This bill includes the correct elements: information; inclusion; and, it focuses on fixing the defects. This bill allows owners an opportunity to vote. Owners are provided with information and allowed to make a thoughtful decision. Homeowners get to decide on their potential exposure. Litigation can be an obstacle to the sale of a condominium. The law allows for

communication with the contractors. There is also important legislation in the Senate regarding condominiums.

(Opposed) The Washington State Community Action Institute (CAI) is willing to continue conversations on this bill, but requiring a majority vote is problematic. Voter apathy can be a problem. Even when a matter is important, persons entitled to vote may be away or too busy to vote. The timeline is troubling, especially if the defect is found at the end of the statute of repose. In that case, the board may not be able to take necessary and timely action but the defect will still have to be fixed, which will require using the reserves or passing a special assessment to cover the costs. On the broader topic of condominium liability reform, nothing proposed so far will help affordability. There is no guarantee that the price of insurance will change for developers if the law is changed; however, it is known that homeowners will lose consumer protection. The CAI understands there is a housing crisis and more housing is needed, but there is a need to protect homeowners, as their homes are huge investments and they need protection from defects.

**Persons Testifying:** (In support) Representative Senn, prime sponsor; and Bill Stauffacher, Building Industry Association of Washington.

(Opposed) Krystelle Purkey, Washington State Community Association Institute.

**Persons Signed In To Testify But Not Testifying:** None.