

SENATE BILL REPORT

SB 5219

As Reported by Senate Committee On:
Law & Justice, January 31, 2019

Title: An act relating to condominium construction warranties.

Brief Description: Concerning condominium construction warranties.

Sponsors: Senators Padden, Pedersen, Becker, Palumbo, Zeiger, Van De Wege, Holy, Dhingra, Braun, Schoesler, Warnick, Ericksen, Honeyford, Bailey, Brown, Short, Sheldon, Fortunato, O'Ban, Das, Mullet, Wellman and Wilson, L..

Brief History:

Committee Activity: Law & Justice: 1/28/19, 1/31/19 [DP, DNP].

Brief Summary of Bill

- Exempts condominiums with less than seven units from the warranty provisions in the Washington Uniform Common Interest Ownership Act.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Holy and Wilson, L..

Minority Report: Do not pass.

Signed by Senators Kuderer and Salomon.

Staff: Shani Bauer (786-7468)

Background: The Washington Uniform Common Interest Ownership Act (WUCIOA) contains provisions relating to express and implied warranties that apply to the construction of condominiums. Those provisions specify how express warranties are created, warranties that are implied to a purchaser, how those warranties are disclaimed, and the time limit for commencing a cause of action for breach of warranty. These warranty provisions apply specifically to condominiums and not all common interest communities or residential construction.

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.

Implied Warranties Under The Washington Uniform Common Interest Ownership Act.

Implied warranties under WUCIOA require condominium construction must be:

- free from defective materials;
- in accordance with sound engineering and construction standards;
- constructed in a workmanlike manner; and
- in compliance with all laws applicable to such improvements.

In a proceeding for an alleged breach, the plaintiff must show the alleged breach has adversely affected, or will adversely affect, the performance of that portion of the unit or common elements alleged to be in breach. An adverse affect must be more than technical and must be significant to a reasonable person. To establish an adverse affect, the person alleging breach must prove it renders the unit or common element uninhabitable or unfit for its intended purpose.

Proof of breach is not proof of damages. Damages awarded for a breach of warranty are the reasonable cost of repairs. However, if it is established the cost of repairs is clearly disproportionate to the loss in market value caused by the breach, damages are limited to the loss in market value.

A proceeding for breach must be commenced within four years after the cause of action accrues. Regardless of the purchaser's lack of knowledge of the breach, the cause of action accrues:

- as to a unit, on the date the purchaser first enters into possession of the unit;
- as to any common element, the latest of (1) the date the first unit was conveyed to a bona fide purchaser, (2) the date the common element was completed, or (3) the date the common element was added to the condominium.

Construction Defects in General. Recovery for a construction defect of a residential dwelling other than a condominium is governed by contract and common law. Theories of recovery may include:

- breach of contract;
- breach of an express warranty, which may be included in the construction contract, sales materials, or advertising and marketing materials; or
- breach of the implied warranty of habitability.

To recover for an implied warranty of habitability:

- the builder or vendor must be a commercial builder;
- the sale giving rise to the warranty is for a new residential dwelling;
- the plaintiff is the first occupant of the residential dwelling; and
- there are fundamental defects in the structure that render the dwelling unfit for the purpose of habitation.

The statute of limitation to bring an implied warranty of habitability claim is three years from the date the cause of action accrued. Regardless of whether the claim has accrued, it must be brought within six years from the date of substantial completion.

Summary of Bill: The warranty provisions in WUCIOA do not apply to condominiums with less than seven units.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill is targeted at increasing the affordability and accessibility of housing. The additional costs of insurance and liability have resulted in very few condominiums being built. It is far cheaper for a developer to build apartments than it is to build condominiums. This eliminates an important segment of the housing market. It is important to have more affordable housing for young professionals, students, and people with lower incomes to start out in the housing market. Owning your own home is key to being able to withstand economic downturns and having a stable payment over a number of years.

The development of condominiums has been decreasing since the Washington Condominium Act was passed and additional warranties were put into place. Exempting condominiums with a larger number of units would be great, but this is a good starting place to incentivize more building. Incentives are needed to get builders to address in-fill housing—filling in those gaps where smaller developments can be added.

CON: Smaller developments are often taken on by smaller developers with less experience and sophistication. They also have less ability and leverage to sequence a property correctly which often leads to mistakes in forming the building envelope. Good builders do the right thing all the time. Warranties are to protect a purchaser from those builders who are learning on the job at the expense of the homeowner. Often the worst lawsuits have resulted from smaller projects. People who purchase condominiums are often in the lower income levels and are thrilled to be in their own home. They are not prepared to face unforeseen expenses when the building does not hold up as it should. This bill strips out the warranty provisions in WUCIOA, but not the rest of the process. The board for a small condominium is almost all the owners. There is no escape from the process and it can be cumbersome.

Persons Testifying: PRO: Senator Mike Padden, Prime Sponsor; Lars Gilberts, CEO, University District; Alan Nolan, Gov. Affairs Director, Spokane Home Builders Association; Pam Haley, Deputy Mayor, Spokane Valley; Jan Himebaugh, Building Industry Association of Washington.

CON: Dean Martin, Washington State Chapter of Community Associations Institute.

Persons Signed In To Testify But Not Testifying: No one.