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**SENATE BILL 5219**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** 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.

Read first time 01/16/19. Referred to Committee on Law & Justice.

1 AN ACT Relating to condominium construction warranties; and  
2 amending RCW 64.90.665, 64.90.670, 64.90.675, and 64.90.680.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 64.90.665 and 2018 c 277 s 414 are each amended to  
5 read as follows:

6 (1) Subject to subsections (2) and (3) of this section, express  
7 warranties made by any declarant or dealer to a purchaser of a unit  
8 in a condominium, if relied upon by the purchaser in purchasing the  
9 unit, are created as follows:

10 (a) Any written affirmation of fact or written promise that  
11 relates to the unit, its use, or rights appurtenant to the unit or  
12 its use, improvements to the condominium that would directly benefit  
13 the unit, or the right to use or have the benefit of facilities not  
14 located in the condominium creates an express warranty that the unit  
15 and related rights and uses will not materially deviate from the  
16 affirmation or promise.

17 (b) Any written description of the physical characteristics of  
18 the condominium at the time the purchase agreement is executed,  
19 including plans and specifications of or for improvements, creates an  
20 express warranty that the condominium will conform to the written  
21 description in all material respects.

1 (c) Any written description of the quantity or extent of the real  
2 estate comprising the condominium, including plats or surveys,  
3 creates an express warranty that the condominium will conform to the  
4 description, subject to customary tolerances.

5 (d) A written statement that a purchaser may put a unit only to a  
6 specified use is an express warranty that the specified use is  
7 lawful.

8 (2) Subject to subsection (3) of this section, neither formal  
9 words, such as "warranty" or "guarantee," nor a specific intention to  
10 make a warranty are necessary to create an express warranty, but a  
11 statement of opinion or a commendation of the real estate, its  
12 quality, or its value does not create a warranty, and a statement,  
13 promise, model, depiction, or description does not create a warranty  
14 if it discloses that it is only proposed, is not representative, or  
15 is subject to change.

16 (3) A purchaser may not rely on any statement, affirmation,  
17 promise, model, depiction, or description unless it is contained in  
18 the public offering statement delivered to the purchaser or made in a  
19 record signed by the declarant or dealer, or the declarant's or  
20 dealer's agent identified in the public offering statement.

21 (4) Any conveyance of a unit transfers to the purchaser all  
22 express warranties of quality made by the declarant or dealer.

23 (5) This section does not apply to condominiums with less than  
24 seven units.

25 **Sec. 2.** RCW 64.90.670 and 2018 c 277 s 415 are each amended to  
26 read as follows:

27 (1) A declarant and any dealer warrants to a purchaser of a  
28 condominium unit that the unit will be in at least as good condition  
29 at the earlier of the time of the conveyance or delivery of  
30 possession as it was at the time of contracting, except for  
31 reasonable wear and tear and damage by casualty or condemnation.

32 (2) A declarant and any dealer impliedly warrants to a purchaser  
33 of a condominium unit that the unit and the common elements in the  
34 condominium are suitable for the ordinary uses of real estate of its  
35 type and that any improvements made or contracted for by such  
36 declarant or dealer will be:

37 (a) Free from defective materials;

38 (b) Constructed in accordance with sound engineering and  
39 construction standards;

1 (c) Constructed in a workmanlike manner; and

2 (d) Constructed in compliance with all laws then applicable to  
3 such improvements.

4 (3) A declarant and any dealer warrants to a purchaser of a  
5 condominium unit that may be used for residential use that an  
6 existing use, continuation of which is contemplated by the parties,  
7 does not violate applicable law at the earlier of the time of  
8 conveyance or delivery of possession.

9 (4) Warranties imposed under this section may be excluded or  
10 modified as specified in RCW 64.90.675.

11 (5) For purposes of this section, improvements made or contracted  
12 for by an affiliate of a declarant are made or contracted for by the  
13 declarant.

14 (6) Any conveyance of a condominium unit transfers to the  
15 purchaser all of a declarant's or dealer's implied warranties of  
16 quality.

17 (7)(a) In a proceeding for breach of any of the obligations  
18 arising under this section, the plaintiff must show that the alleged  
19 breach has adversely affected or will adversely affect the  
20 performance of that portion of the unit or common elements alleged to  
21 be in breach.

22 (b) As used in this subsection, an adverse effect must be more  
23 than technical and must be significant to a reasonable person. To  
24 establish an adverse effect, the person alleging the breach is not  
25 required to prove that the breach renders the unit or common element  
26 uninhabitable or unfit for its intended purpose.

27 (8) Proof of breach of any obligation arising under this section  
28 is not proof of damages. Damages awarded for a breach of an  
29 obligation arising under this section are the reasonable cost of  
30 repairs. However, if it is established that the cost of such repairs  
31 is clearly disproportionate to the loss in market value caused by the  
32 breach, damages are limited to the loss in market value.

33 (9) This section does not apply to condominiums with less than  
34 seven units.

35 **Sec. 3.** RCW 64.90.675 and 2018 c 277 s 416 are each amended to  
36 read as follows:

37 (1) Except as limited under subsection (2) of this section with  
38 respect to a purchaser of a condominium unit that may be used for  
39 residential use, implied warranties of quality under RCW 64.90.670:

1 (a) May be excluded or modified by written agreement of the  
2 parties; and

3 (b) Are excluded by written expression of disclaimer, such as "as  
4 is," "with all faults," or other language that in common  
5 understanding calls the buyer's attention to the exclusion of  
6 warranties.

7 (2) With respect to a purchaser of a condominium unit that may be  
8 used for residential use, no disclaimer of implied warranties of  
9 quality under RCW 64.90.670 is effective, except that a declarant and  
10 any dealer may disclaim liability in an instrument for one or more  
11 specified defects or failures to comply with applicable law, if:

12 (a) The declarant or dealer knows or has reason to believe that  
13 the specific defects or failures exist at the time of disclosure;

14 (b) The disclaimer specifically describes the defects or  
15 failures;

16 (c) The disclaimer includes a statement as to the effect of the  
17 defects or failures;

18 (d) The disclaimer is bold faced, capitalized, underlined, or  
19 otherwise set out from surrounding material so as to be conspicuous;  
20 and

21 (e) The disclaimer is signed by the purchaser.

22 (3) A declarant or dealer may not make an express written  
23 warranty of quality that limits the implied warranties of quality  
24 made to the purchaser set forth in RCW 64.90.670.

25 (4) This section does not apply to condominiums with less than  
26 seven units.

27 **Sec. 4.** RCW 64.90.680 and 2018 c 277 s 417 are each amended to  
28 read as follows:

29 (1) A proceeding for breach of any obligations arising under RCW  
30 64.90.665, 64.90.670, or 64.90.675 must be commenced within four  
31 years after the cause of action accrues. The period for commencing an  
32 action for a breach accruing pursuant to subsection (2)(a) of this  
33 section does not expire prior to one year after termination of the  
34 period of declarant control, if any, under RCW 64.90.415. Such  
35 periods may not be reduced by either oral or written agreement or  
36 through the use of contractual claims or notice procedures that  
37 require the filing or service of any claim or notice prior to the  
38 expiration of the period specified in this section.

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

4           (a) As to a unit, the latest of:

5           (i) The date the unit was conveyed to the purchaser to whom the  
6 warranty is first made; or

7           (ii) The date any portion of the unit that constitutes a building  
8 enclosure as defined in RCW 64.55.010(3) was completed; and

9           (b) As to each common element, at the latest of:

10          (i) The date the common element was completed;

11          (ii) The date the common element was added to the condominium; or

12          (iii) The date the first unit in the condominium was conveyed to  
13 a bona fide purchaser.

14          (3) If a warranty of quality explicitly extends to future  
15 performance or duration of any improvement or component of the  
16 condominium, the cause of action accrues at the time the breach is  
17 discovered or at the end of the period for which the warranty  
18 explicitly extends, whichever is earlier.

19          (4) If a written notice of claim is served under RCW 64.50.020  
20 within the time prescribed for the filing of an action under this  
21 chapter, the statutes of limitation in this chapter and any  
22 applicable statutes of repose for construction-related claims are  
23 tolled until sixty days after the period of time during which the  
24 filing of an action is barred under RCW 64.50.020.

25          (5) This section does not apply to condominiums with less than  
26 seven units.

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