

HOUSE BILL REPORT

SB 5058

As Passed House:

April 12, 2023

Title: An act relating to exempting buildings with 12 or fewer units that are no more than two stories from the definition of multiunit residential building.

Brief Description: Exempting buildings with 12 or fewer units that are no more than two stories from the definition of multiunit residential building.

Sponsors: Senators Padden, Pedersen, Billig, Fortunato, Holy, Short and Wilson, L..

Brief History:

Committee Activity:

Civil Rights & Judiciary: 3/22/23, 3/24/23 [DP].

Floor Activity:

Passed House: 4/12/23, 97-0.

Brief Summary of Bill

- Excludes buildings with 12 or fewer units that are no more than two stories from the definition of "multiunit residential building" and thereby exempts these buildings from certain building enclosure design and inspection requirements and alternative dispute resolution provisions applicable to actions alleging breaches of implied or express warranty.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: Do pass. Signed by 11 members: Representatives Hansen, Chair; Farivar, Vice Chair; Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member; Cheney, Entenman, Goodman, Peterson, Rude, Thai and Walen.

Staff: Yelena Baker (786-7301).

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

Background:

Condominiums.

A condominium consists of real property that has individually owned units and commonly held elements in which all the individual unit owners have an undivided common interest. The two main statutes that govern the creation, construction, management, and termination of condominiums are the Washington Uniform Common Interest Ownership Act (WUCIOA) and the Washington Condominium Act (WCA).

The WUCIOA took effect on July 1, 2018, and is applicable to residential common interest communities (CICs) created after that date. A CIC includes condominiums, cooperatives, leasehold CICs, miscellaneous communities, and plat communities. A CIC created prior to July 1, 2018, may choose to opt in to the WUCIOA. The WCA controls the creation, construction, management, and termination of condominiums created after July 1, 1990, but before the effective date of the WUCIOA.

Under both the WUCIOA and the WCA, a condominium is created by the recording of a "declaration," and the person creating a condominium is referred to as the "declarant." A condominium may be created by the construction of a new condominium building, or by the conversion of an existing building, such as an existing apartment building.

Building Enclosure Requirements for Multiunit Residential Buildings.

Specific building enclosure requirements apply when constructing or rehabilitating a multiunit residential building, or when converting a multiunit residential building to condominium units. A building enclosure is the part of a building that physically separates the exterior environment from interior environments and which weatherproofs, waterproofs, or otherwise protects the building or its components from water or moisture intrusion.

A "multiunit residential building" is defined as a building with more than two attached dwelling units, but does not include hotels, motels, dormitories, care facilities, floating homes, buildings with attached dwelling units each on a single platted lot, or buildings subject to a covenant prohibiting conversion to condominium units for at least five years. However, a developer may elect to have the building enclosure requirements apply to a building with only two attached dwelling units, a building without attached dwelling units, or a building with attached dwelling units each on a single platted lot.

Design Requirements.

Building enclosure design documents must be submitted with any application for a building permit for the construction of a multiunit residential building. The documents must be stamped by an architect or engineer and must address waterproofing, weatherproofing, and other protections of the building from water or moisture intrusion. A building department may not issue a building permit unless the design documents have been submitted.

Inspection Requirements.

The building enclosure of a multiunit residential building must be inspected during initial or rehabilitative construction. The inspection must determine through periodic review whether the building enclosure construction complies with the design documents. In addition, the inspection must include testing of windows and window installations for water penetration problems.

Building enclosure inspections must be performed by a person who has training and experience in design and construction of building enclosures, who is free of improper interference or influence, and who has not been an employee of the developer. However, the inspections may be done by the architect or engineer who prepared the design documents or who is the architect or engineer of record on the project.

A building department may not issue a certificate of occupancy for a multiunit residential building until the inspector submits a building enclosure inspection report certifying that the building enclosure was inspected during construction and that the building enclosure was constructed in substantial compliance with the design documents.

Alternative Inspection Requirements for Residential Condominium Units.

A residential condominium unit in a multiunit residential building may not be sold without meeting the building enclosure design and inspection requirements for construction of multiunit residential buildings. However, these requirements do not apply if the building enclosure meets certain alternative inspection requirements.

These alternative inspection requirements include intrusive testing, such as removing siding to check for construction quality and for water penetration, and an evaluation of the condition of the building enclosure and its ability to waterproof or weatherproof the building from water or moisture intrusion. The inspection must include a report of the findings and any recommended repairs. This report must be made a part of the public offering statement for the condominium. If the building was subject to a covenant prohibiting conversion to condominium units for at least five years, and less than five years have passed, any recommended repairs must be completed before the condominium units can be sold.

Alternative Dispute Resolution for Breaches of Warranties.

Under the WUCIOA and the WCA, express warranties are written assertions, including descriptions, that are made by the declarant or dealer with respect to a condominium and that are relied upon by a purchaser in purchasing the unit.

Implied warranties are statutorily created in the WUCIOA and the WCA and apply only to condominiums. Both the WCA and the WUCIOA establish substantively similar implied warranties that the condominium unit and the common areas are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by the declarant or the dealer will be:

- free from defective materials;

- constructed in accordance with sound engineering and construction standards; and
- constructed in a workmanlike manner.

Additionally, under the WCA a declarant and any dealer impliedly warrants that the construction will be in compliance with all laws then applicable to the improvements.

All of a declarant's or dealer's implied warranties of quality transfer to the purchaser upon any conveyance of the condominium unit.

Several alternative dispute resolution (ADR) provisions apply once an action alleging a breach of warranty under the WCA or seeking relief that could be awarded for such breach is filed, including: case schedule plan, arbitration, mandatory mediation, and the use of neutral experts in resolving disputes over alleged breaches of condominium warranties. The ADR provisions do not apply to actions asserting any claim regarding a building that is not a multiunit residential building.

Summary of Bill:

Buildings with 12 or fewer units that are no more than two stories are excluded from the definition of "multiunit residential building" and are thereby exempt from:

- the building enclosure design and inspection requirements; and
- the ADR provisions applicable to actions alleging breaches of implied or express warranty or seeking relief that could be awarded for such breach, regardless of the legal theory pleaded.

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.

Staff Summary of Public Testimony:

(In support) More homeownership opportunities are needed throughout the state. For first-time buyers, condominiums provide an affordable path to entering the housing market and to building equity. For seniors, condominiums present an opportunity to downsize into a smaller home, with less maintenance, while still maintaining a real estate asset. To capture these homeownership opportunities, state laws that are preventing condominiums from being constructed need to change.

Some cities have changed their zoning laws to allow more middle housing, but because of the current condominium laws, the impact on homeownership has been limited. Developers say that current condominium laws make condominiums a nonstarter project for them

because the laws impose burdens that make condominium projects impractical except for large buildings at the highest end of the market, where high sale prices can justify the significant cost imposed by the current law. Cost and value on the eastern side of the state are different, so the additional burdens of current law make condominiums financially impossible.

The construction techniques and materials have gotten much better, and the law should keep up with those developments. Builders know how to build these condominiums in a high-quality manner. Public safety can be preserved with the protections that the building code provides for these smaller buildings. These residences are built similarly to single-family homes, so it makes sense for them to be under the residential code. Express and implied warranties under the WCA would still apply, only certain building enclosure requirements would not apply.

It is estimated that at least in some areas of the state, this bill would reduce the cost of a condominium by as much as \$150,000, which is a significant way to allow more people into homeownership, particularly first-time buyers from marginalized communities. The startup capital for most small businesses comes from a loan taken out against the business owner's residence.

(Opposed) None.

Persons Testifying: Senator Mike Padden, prime sponsor; Tricia Gullion, Building Industry Association of Washington; Betsy Wilkerson, Spokane City Council; Pam Haley, City of Spokane Valley; Spencer Gardner, City of Spokane; Alex Hur, Master Builders Association of King and Snohomish Counties; and Bill Clarke, Washington Realtors.

Persons Signed In To Testify But Not Testifying: None.