

**2ESSB 5536 - H AMD 1209**

By Representative Lantz

ADOPTED 03/10/2004

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 64.34 RCW  
4 to read as follows:

5 (1) The legislature finds, declares, and determines that:

6 (a) Washington's cities and counties under the growth management  
7 act are required to encourage urban growth in urban growth areas at  
8 densities that accommodate twenty-year growth projections;

9 (b) The growth management act's planning goals include encouraging  
10 the availability of affordable housing for all residents of the state  
11 and promoting a variety of housing types;

12 (c) Quality condominium construction needs to be encouraged to  
13 achieve growth management act mandated urban densities and to ensure  
14 that residents of the state, particularly in urban growth areas, have  
15 a broad range of ownership choices.

16 (2) It is the intent of the legislature that limited changes be  
17 made to the condominium act to ensure that a broad range of affordable  
18 homeownership opportunities continue to be available to the residents  
19 of the state, and to assist cities' and counties' efforts to achieve  
20 the density mandates of the growth management act.

21 **Sec. 2.** RCW 64.34.100 and 1989 c 43 s 1-113 are each amended to  
22 read as follows:

23 (1) The remedies provided by this chapter shall be liberally  
24 administered to the end that the aggrieved party is put in as good a  
25 position as if the other party had fully performed. However,  
26 consequential, special, or punitive damages may not be awarded except  
27 as specifically provided in this chapter or by other rule of law.

28 (2) Except as otherwise provided in chapter 64.-- RCW (sections 101  
29 through 2002 of this act), any right or obligation declared by this  
30 chapter is enforceable by judicial proceeding.

1       **Sec. 3.** RCW 64.34.324 and 1992 c 220 s 16 are each amended to read  
2 as follows:

3       (1) Unless provided for in the declaration, the bylaws of the  
4 association shall provide for:

5       (a) The number, qualifications, powers and duties, terms of office,  
6 and manner of electing and removing the board of directors and officers  
7 and filling vacancies;

8       (b) Election by the board of directors of such officers of the  
9 association as the bylaws specify;

10       (c) Which, if any, of its powers the board of directors or officers  
11 may delegate to other persons or to a managing agent;

12       (d) Which of its officers may prepare, execute, certify, and record  
13 amendments to the declaration on behalf of the association; (~~and~~)

14       (e) The method of amending the bylaws; and

15       (f) A statement of the standard of care for officers and members of  
16 the board of directors imposed by RCW 64.34.308(1).

17       (2) Subject to the provisions of the declaration, the bylaws may  
18 provide for any other matters the association deems necessary and  
19 appropriate.

20       (3) In determining the qualifications of any officer or director of  
21 the association, notwithstanding the provision of RCW 64.34.020(32) the  
22 term "unit owner" in such context shall, unless the declaration or  
23 bylaws otherwise provide, be deemed to include any director, officer,  
24 partner in, or trustee of any person, who is, either alone or in  
25 conjunction with another person or persons, a unit owner. Any officer  
26 or director of the association who would not be eligible to serve as  
27 such if he or she were not a director, officer, partner in, or trustee  
28 of such a person shall be disqualified from continuing in office if he  
29 or she ceases to have any such affiliation with that person, or if that  
30 person would have been disqualified from continuing in such office as  
31 a natural person.

32       **Sec. 4.** RCW 64.34.425 and 1992 c 220 s 23 are each amended to read  
33 as follows:

34       (1) Except in the case of a sale where delivery of a public  
35 offering statement is required, or unless exempt under RCW  
36 64.34.400(2), a unit owner shall furnish to a purchaser before  
37 execution of any contract for sale of a unit, or otherwise before  
38 conveyance, a resale certificate, signed by an officer or authorized

1 agent of the association and based on the books and records of the  
2 association and the actual knowledge of the person signing the  
3 certificate, containing:

4 (a) A statement disclosing any right of first refusal or other  
5 restraint on the free alienability of the unit contained in the  
6 declaration;

7 (b) A statement setting forth the amount of the monthly common  
8 expense assessment and any unpaid common expense or special assessment  
9 currently due and payable from the selling unit owner and a statement  
10 of any special assessments that have been levied against the unit which  
11 have not been paid even though not yet due;

12 (c) A statement, which shall be current to within forty-five days,  
13 of any common expenses or special assessments against any unit in the  
14 condominium that are past due over thirty days;

15 (d) A statement, which shall be current to within forty-five days,  
16 of any obligation of the association which is past due over thirty  
17 days;

18 (e) A statement of any other fees payable by unit owners;

19 (f) A statement of any anticipated repair or replacement cost in  
20 excess of five percent of the annual budget of the association that has  
21 been approved by the board of directors;

22 (g) A statement of the amount of any reserves for repair or  
23 replacement and of any portions of those reserves currently designated  
24 by the association for any specified projects;

25 (h) The annual financial statement of the association, including  
26 the audit report if it has been prepared, for the year immediately  
27 preceding the current year.

28 (i) A balance sheet and a revenue and expense statement of the  
29 association prepared on an accrual basis, which shall be current to  
30 within one hundred twenty days;

31 (j) The current operating budget of the association;

32 (k) A statement of any unsatisfied judgments against the  
33 association and the status of any pending suits or legal proceedings in  
34 which the association is a plaintiff or defendant;

35 (l) A statement describing any insurance coverage provided for the  
36 benefit of unit owners;

37 (m) A statement as to whether there are any alterations or  
38 improvements to the unit or to the limited common elements assigned  
39 thereto that violate any provision of the declaration;

1 (n) A statement of the number of units, if any, still owned by the  
2 declarant, whether the declarant has transferred control of the  
3 association to the unit owners, and the date of such transfer;

4 (o) A statement as to whether there are any violations of the  
5 health or building codes with respect to the unit, the limited common  
6 elements assigned thereto, or any other portion of the condominium;

7 (p) A statement of the remaining term of any leasehold estate  
8 affecting the condominium and the provisions governing any extension or  
9 renewal thereof; (~~and~~)

10 (q) A copy of the declaration, the bylaws, the rules or regulations  
11 of the association, and any other information reasonably requested by  
12 mortgagees of prospective purchasers of units. Information requested  
13 generally by the federal national mortgage association, the federal  
14 home loan bank board, the government national mortgage association, the  
15 veterans administration and the department of housing and urban  
16 development shall be deemed reasonable, provided such information is  
17 reasonably available to the association; and

18 (r) A statement, as required by section 301 of this act, as to  
19 whether the units or common elements of the condominium are covered by  
20 a qualified warranty, and a history of claims under any such warranty.

21 (2) The association, within ten days after a request by a unit  
22 owner, and subject to payment of any fee imposed pursuant to RCW  
23 64.34.304(1)(1), shall furnish a resale certificate signed by an  
24 officer or authorized agent of the association and containing the  
25 information necessary to enable the unit owner to comply with this  
26 section. For the purposes of this chapter, a reasonable charge for the  
27 preparation of a resale certificate may not exceed one hundred fifty  
28 dollars. The association may charge a unit owner a nominal fee for  
29 updating a resale certificate within six months of the unit owner's  
30 request. The unit owner shall also sign the certificate but the unit  
31 owner is not liable to the purchaser for any erroneous information  
32 provided by the association and included in the certificate unless and  
33 to the extent the unit owner had actual knowledge thereof.

34 (3) A purchaser is not liable for any unpaid assessment or fee  
35 against the unit as of the date of the certificate greater than the  
36 amount set forth in the certificate prepared by the association unless  
37 and to the extent such purchaser had actual knowledge thereof. A unit  
38 owner is not liable to a purchaser for the failure or delay of the  
39 association to provide the certificate in a timely manner, but the

1 purchaser's contract is voidable by the purchaser until the certificate  
2 has been provided and for five days thereafter or until conveyance,  
3 whichever occurs first.

4 **Sec. 5.** RCW 64.34.445 and 1992 c 220 s 26 are each amended to read  
5 as follows:

6 (1) A declarant and any dealer warrants that a unit will be in at  
7 least as good condition at the earlier of the time of the conveyance or  
8 delivery of possession as it was at the time of contracting, reasonable  
9 wear and tear and damage by casualty or condemnation excepted.

10 (2) A declarant and any dealer impliedly warrants that a unit and  
11 the common elements in the condominium are suitable for the ordinary  
12 uses of real estate of its type and that any improvements made or  
13 contracted for by such declarant or dealer will be:

- 14 (a) Free from defective materials; (~~and~~)
- 15 (b) Constructed in accordance with sound engineering and  
16 construction standards(~~, and~~);
- 17 (c) Constructed in a workmanlike manner; and
- 18 (d) Constructed in compliance with all laws then applicable to such  
19 improvements.

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

24 (4) Warranties imposed by this section may be excluded or modified  
25 as specified in RCW 64.34.450.

26 (5) For purposes of this section, improvements made or contracted  
27 for by an affiliate of a declarant, as defined in RCW 64.34.020(1), are  
28 made or contracted for by the declarant.

29 (6) Any conveyance of a unit transfers to the purchaser all of the  
30 declarant's implied warranties of quality.

31 (7) In a judicial proceeding for breach of any of the obligations  
32 arising under this section, the plaintiff must show that the alleged  
33 breach has adversely affected or will adversely affect the performance  
34 of that portion of the unit or common elements alleged to be in breach.  
35 As used in this subsection, an "adverse effect" must be more than  
36 technical and must be significant to a reasonable person. To establish  
37 an adverse effect, the person alleging the breach is not required to

1 prove that the breach renders the unit or common element uninhabitable  
2 or unfit for its intended purpose.

3 (8) Proof of breach of any obligation arising under this section is  
4 not proof of damages. Damages awarded for a breach of an obligation  
5 arising under this section are the cost of repairs. However, if it is  
6 established that the cost of such repairs is clearly disproportionate  
7 to the loss in market value caused by the breach, then damages shall be  
8 limited to the loss in market value.

9 **Sec. 6.** RCW 64.34.450 and 1989 c 43 s 4-113 are each amended to  
10 read as follows:

11 (1) (~~Except as limited by subsection (2) of this section~~) For  
12 units intended for nonresidential use, implied warranties of quality:

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

15 (b) Are excluded by written expression of disclaimer, such as "as  
16 is," "with all faults," or other language which in common understanding  
17 calls the buyer's attention to the exclusion of warranties.

18 (2) (~~With respect to a purchaser of a unit that may be occupied~~)  
19 For units intended for residential use, no (~~general~~) disclaimer of  
20 implied warranties of quality is effective, (~~but~~) except that a  
21 declarant (~~and any~~) or dealer may disclaim liability in (~~an~~  
22 instrument) writing, in type that is bold faced, capitalized,  
23 underlined, or otherwise set out from surrounding material so as to be  
24 conspicuous, and separately signed by the purchaser, for a specified  
25 defect or specified failure to comply with applicable law, if: (a) The  
26 declarant or dealer knows or has reason to know that the specific  
27 defect or failure (~~entered into and became a part of the basis of the~~  
28 bargain) exists at the time of disclosure; (b) the disclaimer  
29 specifically describes the defect or failure; and (c) the disclaimer  
30 includes a statement as to the effect of the defect or failure.

31 (3) A declarant or dealer may offer an express written warranty of  
32 quality only if the express written warranty does not reduce  
33 protections provided to the purchaser by the implied warranty set forth  
34 in RCW 64.34.445.

35 **Sec. 7.** RCW 64.34.452 and 2002 c 323 s 11 are each amended to read  
36 as follows:

37 (1) A judicial proceeding for breach of any obligations arising

1 under RCW 64.34.443 (~~and~~), 64.34.445, and 64.34.450 must be commenced  
2 within four years after the cause of action accrues: PROVIDED, That  
3 the period for commencing an action for a breach accruing pursuant to  
4 subsection (2)(b) of this section shall not expire prior to one year  
5 after termination of the period of declarant control, if any, under RCW  
6 64.34.308(4). Such periods may not be reduced by either oral or  
7 written agreement, or through the use of contractual claims or notice  
8 procedures that require the filing or service of any claim or notice  
9 prior to the expiration of the period specified in this section.

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

13 (a) As to a unit, the date the purchaser to whom the warranty is  
14 first made enters into possession if a possessory interest was conveyed  
15 or the date of acceptance of the instrument of conveyance if a  
16 nonpossessory interest was conveyed; and

17 (b) As to each common element, at the latest of (i) the date the  
18 first unit in the condominium was conveyed to a bona fide purchaser,  
19 (ii) the date the common element was completed, or (iii) the date the  
20 common element was added to the condominium.

21 (3) If a warranty of quality explicitly extends to future  
22 performance or duration of any improvement or component of the  
23 condominium, the cause of action accrues at the time the breach is  
24 discovered or at the end of the period for which the warranty  
25 explicitly extends, whichever is earlier.

26 (4) If a written notice of claim is served under RCW 64.50.020  
27 within the time prescribed for the filing of an action under this  
28 chapter, the statutes of limitation in this chapter and any applicable  
29 statutes of repose for construction-related claims are tolled until  
30 sixty days after the period of time during which the filing of an  
31 action is barred under RCW 64.50.020.

32 (5) Nothing in this section affects the time for filing a claim  
33 under chapter 64.-- RCW (sections 101 through 2002 of this act).

34 NEW SECTION. Sec. 8. (1) A committee is established to study:

35 (a) The required use of independent third-party inspections of  
36 residential condominiums as a way to reduce the problem of water  
37 penetration in residential condominiums; and

1 (b) The use of arbitration or other forms of alternative dispute  
2 resolution to resolve disputes involving alleged breaches of implied or  
3 express warranties under chapter 64.34 RCW.

4 (2) The committee consists of the following members who shall be  
5 persons with experience and expertise in condominium law or condominium  
6 construction:

7 (a) A member, who shall be the chair of the committee, to be  
8 appointed by the governor;

9 (b) Three members to be appointed by the majority leader of the  
10 senate; and

11 (c) Three members to be appointed by the speaker of the house of  
12 representatives.

13 (3) The committee shall:

14 (a) Examine the problem of water penetration of condominiums and  
15 the efficacy of requiring independent third-party inspections of  
16 condominiums, including plan inspection and inspection during  
17 construction, as a way to reduce the problem of water penetration;

18 (b) Examine issues relating to alternative dispute resolution,  
19 including but not limited to:

20 (i) When and how the decision to use alternative dispute resolution  
21 is made;

22 (ii) The procedures to be used in an alternative dispute  
23 resolution;

24 (iii) The nature of the right of appeal from an alternative dispute  
25 resolution decision; and

26 (iv) The allocation of costs and fees associated with an  
27 alternative dispute resolution proceeding or appeal;

28 (c) Deliver to the judiciary committees of the senate and house of  
29 representatives, not later than December 31, 2004, a report of the  
30 findings and conclusions of the committee, and any proposed legislation  
31 implementing third-party water penetration inspections or providing for  
32 alternative dispute resolution for warranty issues.

33 **Sec. 9.** RCW 64.34.020 and 1992 c 220 s 2 are each amended to read  
34 as follows:

35 In the declaration and bylaws, unless specifically provided  
36 otherwise or the context requires otherwise, and in this chapter:

37 (1) "Affiliate (~~(of a declarant)~~)" means any person who controls,  
38 is controlled by, or is under common control with (~~(a declarant)~~) the



1 referenced person. A person "controls" (~~(a declarant)~~) another person  
2 if the person: (a) Is a general partner, officer, director, or  
3 employer of the (~~declarant~~) referenced person; (b) directly or  
4 indirectly or acting in concert with one or more other persons, or  
5 through one or more subsidiaries, owns, controls, holds with power to  
6 vote, or holds proxies representing, more than twenty percent of the  
7 voting interest in the (~~declarant~~) referenced person; (c) controls in  
8 any manner the election of a majority of the directors of the  
9 (~~declarant~~) referenced person; or (d) has contributed more than  
10 twenty percent of the capital of the (~~declarant~~) referenced person.  
11 A person "is controlled by" (~~a declarant~~) another person if the  
12 (~~declarant~~) other person: (i) Is a general partner, officer,  
13 director, or employer of the person; (ii) directly or indirectly or  
14 acting in concert with one or more other persons, or through one or  
15 more subsidiaries, owns, controls, holds with power to vote, or holds  
16 proxies representing, more than twenty percent of the voting interest  
17 in the person; (iii) controls in any manner the election of a majority  
18 of the directors of the person; or (iv) has contributed more than  
19 twenty percent of the capital of the person. Control does not exist if  
20 the powers described in this subsection are held solely as security for  
21 an obligation and are not exercised.

22 (2) "Allocated interests" means the undivided interest in the  
23 common elements, the common expense liability, and votes in the  
24 association allocated to each unit.

25 (3) "Assessment" means all sums chargeable by the association  
26 against a unit including, without limitation: (a) Regular and special  
27 assessments for common expenses, charges, and fines imposed by the  
28 association; (b) interest and late charges on any delinquent account;  
29 and (c) costs of collection, including reasonable attorneys' fees,  
30 incurred by the association in connection with the collection of a  
31 delinquent owner's account.

32 (4) "Association" or "unit owners' association" means the unit  
33 owners' association organized under RCW 64.34.300.

34 (5) "Board of directors" means the body, regardless of name, with  
35 primary authority to manage the affairs of the association.

36 (6) "Common elements" means all portions of a condominium other  
37 than the units.

38 (7) "Common expenses" means expenditures made by or financial

1 liabilities of the association, together with any allocations to  
2 reserves.

3 (8) "Common expense liability" means the liability for common  
4 expenses allocated to each unit pursuant to RCW 64.34.224.

5 (9) "Condominium" means real property, portions of which are  
6 designated for separate ownership and the remainder of which is  
7 designated for common ownership solely by the owners of those portions.  
8 Real property is not a condominium unless the undivided interests in  
9 the common elements are vested in the unit owners, and unless a  
10 declaration and a survey map and plans have been recorded pursuant to  
11 this chapter.

12 (10) "Conversion condominium" means a condominium (a) that at any  
13 time before creation of the condominium was lawfully occupied wholly or  
14 partially by a tenant or subtenant for residential purposes pursuant to  
15 a rental agreement, oral or written, express or implied, for which the  
16 tenant or subtenant had not received the notice described in (b) of  
17 this subsection; or (b) that, at any time within twelve months before  
18 the conveyance of, or acceptance of an agreement to convey, any unit  
19 therein other than to a declarant or any affiliate of a declarant, was  
20 lawfully occupied wholly or partially by a residential tenant of a  
21 declarant or an affiliate of a declarant and such tenant was not  
22 notified in writing, prior to lawfully occupying a unit or executing a  
23 rental agreement, whichever event first occurs, that the unit was part  
24 of a condominium and subject to sale. "Conversion condominium" shall  
25 not include a condominium in which, before July 1, 1990, any unit  
26 therein had been conveyed or been made subject to an agreement to  
27 convey to any transferee other than a declarant or an affiliate of a  
28 declarant.

29 (11) "Conveyance" means any transfer of the ownership of a unit,  
30 including a transfer by deed or by real estate contract and, with  
31 respect to a unit in a leasehold condominium, a transfer by lease or  
32 assignment thereof, but shall not include a transfer solely for  
33 security.

34 (12) "Dealer" means a person who, together with such person's  
35 affiliates, owns or has a right to acquire either six or more units in  
36 a condominium or fifty percent or more of the units in a condominium  
37 containing more than two units.

38 (13) "Declarant" means (~~any person or group of persons acting in~~  
39 ~~concert who~~);

1 (a) Any person who executes as declarant a declaration as defined  
2 in subsection (15) of this section(~~(7)~~); or

3 ~~((reserves or succeeds to any special declarant right under))~~  
4 Any person who reserves any special declarant right in the declaration;  
5 or

6 (c) Any person who exercises special declarant rights or to whom  
7 special declarant rights are transferred; or

8 (d) Any person who is the owner of a fee interest in the real  
9 property which is subjected to the declaration at the time of the  
10 recording of an instrument pursuant to RCW 64.34.316 and who directly  
11 or through one or more affiliates is materially involved in the  
12 construction, marketing, or sale of units in the condominium created by  
13 the recording of the instrument.

14 (14) "Declarant control" means the right of the declarant or  
15 persons designated by the declarant to appoint and remove officers and  
16 members of the board of directors, or to veto or approve a proposed  
17 action of the board or association, pursuant to RCW 64.34.308 (4) or  
18 (5).

19 (15) "Declaration" means the document, however denominated, that  
20 creates a condominium by setting forth the information required by RCW  
21 64.34.216 and any amendments to that document.

22 (16) "Development rights" means any right or combination of rights  
23 reserved by a declarant in the declaration to: (a) Add real property  
24 or improvements to a condominium; (b) create units, common elements, or  
25 limited common elements within real property included or added to a  
26 condominium; (c) subdivide units or convert units into common elements;  
27 (d) withdraw real property from a condominium; or (e) reallocate  
28 limited common elements with respect to units that have not been  
29 conveyed by the declarant.

30 (17) "Dispose" or "disposition" means a voluntary transfer or  
31 conveyance to a purchaser or lessee of any legal or equitable interest  
32 in a unit, but does not include the transfer or release of a security  
33 interest.

34 (18) "Eligible mortgagee" means the holder of a mortgage on a unit  
35 that has filed with the secretary of the association a written request  
36 that it be given copies of notices of any action by the association  
37 that requires the consent of mortgagees.

38 (19) "Foreclosure" means a forfeiture or judicial or nonjudicial  
39 foreclosure of a mortgage or a deed in lieu thereof.

1 (20) "Identifying number" means the designation of each unit in a  
2 condominium.

3 (21) "Leasehold condominium" means a condominium in which all or a  
4 portion of the real property is subject to a lease, the expiration or  
5 termination of which will terminate the condominium or reduce its size.

6 (22) "Limited common element" means a portion of the common  
7 elements allocated by the declaration or by operation of RCW 64.34.204  
8 (2) or (4) for the exclusive use of one or more but fewer than all of  
9 the units.

10 (23) "Master association" means an organization described in RCW  
11 64.34.276, whether or not it is also an association described in RCW  
12 64.34.300.

13 (24) "Mortgage" means a mortgage, deed of trust or real estate  
14 contract.

15 (25) "Person" means a natural person, corporation, partnership,  
16 limited partnership, trust, governmental subdivision or agency, or  
17 other legal entity.

18 (26) "Purchaser" means any person, other than a declarant or a  
19 dealer, who by means of a disposition acquires a legal or equitable  
20 interest in a unit other than (a) a leasehold interest, including  
21 renewal options, of less than twenty years at the time of creation of  
22 the unit, or (b) as security for an obligation.

23 (27) "Real property" means any fee, leasehold or other estate or  
24 interest in, over, or under land, including structures, fixtures, and  
25 other improvements thereon and easements, rights and interests  
26 appurtenant thereto which by custom, usage, or law pass with a  
27 conveyance of land although not described in the contract of sale or  
28 instrument of conveyance. "Real property" includes parcels, with or  
29 without upper or lower boundaries, and spaces that may be filled with  
30 air or water.

31 (28) "Residential purposes" means use for dwelling or recreational  
32 purposes, or both.

33 (29) "Special declarant rights" means rights reserved for the  
34 benefit of a declarant to: (a) Complete improvements indicated on  
35 survey maps and plans filed with the declaration under RCW 64.34.232;  
36 (b) exercise any development right under RCW 64.34.236; (c) maintain  
37 sales offices, management offices, signs advertising the condominium,  
38 and models under RCW 64.34.256; (d) use easements through the common  
39 elements for the purpose of making improvements within the condominium

1 or within real property which may be added to the condominium under RCW  
2 64.34.260; (e) make the condominium part of a larger condominium or a  
3 development under RCW 64.34.280; (f) make the condominium subject to a  
4 master association under RCW 64.34.276; or (g) appoint or remove any  
5 officer of the association or any master association or any member of  
6 the board of directors, or to veto or approve a proposed action of the  
7 board or association, during any period of declarant control under RCW  
8 64.34.308(4).

9 (30) "Timeshare" shall have the meaning specified in the timeshare  
10 act, RCW 64.36.010(11).

11 (31) "Unit" means a physical portion of the condominium designated  
12 for separate ownership, the boundaries of which are described pursuant  
13 to RCW 64.34.216(1)(d). "Separate ownership" includes leasing a unit  
14 in a leasehold condominium under a lease that expires contemporaneously  
15 with any lease, the expiration or termination of which will remove the  
16 unit from the condominium.

17 (32) "Unit owner" means a declarant or other person who owns a unit  
18 or leases a unit in a leasehold condominium under a lease that expires  
19 simultaneously with any lease, the expiration or termination of which  
20 will remove the unit from the condominium, but does not include a  
21 person who has an interest in a unit solely as security for an  
22 obligation. "Unit owner" means the vendee, not the vendor, of a unit  
23 under a real estate contract.

24 **Sec. 10.** RCW 64.34.312 and 1989 c 43 s 3-104 are each amended to  
25 read as follows:

26 (1) Within sixty days after the termination of the period of  
27 declarant control provided in RCW 64.34.308(4) or, in the absence of  
28 such period, within sixty days after the first conveyance of a unit in  
29 the condominium, the declarant shall deliver to the association all  
30 property of the unit owners and of the association held or controlled  
31 by the declarant including, but not limited to:

32 (a) The original or a photocopy of the recorded declaration and  
33 each amendment to the declaration;

34 (b) The certificate of incorporation and a copy or duplicate  
35 original of the articles of incorporation of the association as filed  
36 with the secretary of state;

37 (c) The bylaws of the association;

- 1 (d) The minute books, including all minutes, and other books and  
2 records of the association;
- 3 (e) Any rules and regulations that have been adopted;
- 4 (f) Resignations of officers and members of the board who are  
5 required to resign because the declarant is required to relinquish  
6 control of the association;
- 7 (g) The financial records, including canceled checks, bank  
8 statements, and financial statements of the association, and source  
9 documents from the time of incorporation of the association through the  
10 date of transfer of control to the unit owners;
- 11 (h) Association funds or the control of the funds of the  
12 association;
- 13 (i) All tangible personal property of the association, represented  
14 by the declarant to be the property of the association or ostensibly  
15 the property of the association, and an inventory of the property;
- 16 (j) Except for alterations to a unit done by a unit owner other  
17 than the declarant, a copy of the declarant's plans and specifications  
18 utilized in the construction or remodeling of the condominium, with a  
19 certificate of the declarant or a licensed architect or engineer that  
20 the plans and specifications represent, to the best of their knowledge  
21 and belief, the actual plans and specifications utilized by the  
22 declarant in the construction or remodeling of the condominium;
- 23 (k) Insurance policies or copies thereof for the condominium and  
24 association;
- 25 (l) Copies of any certificates of occupancy that may have been  
26 issued for the condominium;
- 27 (m) Any other permits issued by governmental bodies applicable to  
28 the condominium in force or issued within one year before the date of  
29 transfer of control to the unit owners;
- 30 (n) All written warranties that are still in effect for the common  
31 elements, or any other areas or facilities which the association has  
32 the responsibility to maintain and repair, from the contractor,  
33 subcontractors, suppliers, and manufacturers and all owners' manuals or  
34 instructions furnished to the declarant with respect to installed  
35 equipment or building systems;
- 36 (o) A roster of unit owners and eligible mortgagees and their  
37 addresses and telephone numbers, if known, as shown on the declarant's  
38 records and the date of closing of the first sale of each unit sold by  
39 the declarant;

1 (p) Any leases of the common elements or areas and other leases to  
2 which the association is a party;

3 (q) Any employment contracts or service contracts in which the  
4 association is one of the contracting parties or service contracts in  
5 which the association or the unit owners have an obligation or a  
6 responsibility, directly or indirectly, to pay some or all of the fee  
7 or charge of the person performing the service; (~~and~~)

8 (r) A copy of any qualified warranty issued to the association as  
9 provided for in section 1001 of this act; and

10 (s) All other contracts to which the association is a party.

11 (2) Upon the transfer of control to the unit owners, the records of  
12 the association shall be audited as of the date of transfer by an  
13 independent certified public accountant in accordance with generally  
14 accepted auditing standards unless the unit owners, other than the  
15 declarant, by two-thirds vote elect to waive the audit. The cost of  
16 the audit shall be a common expense unless otherwise provided in the  
17 declaration. The accountant performing the audit shall examine  
18 supporting documents and records, including the cash disbursements and  
19 related paid invoices, to determine if expenditures were for  
20 association purposes and the billings, cash receipts, and related  
21 records to determine if the declarant was charged for and paid the  
22 proper amount of assessments.

23 **Sec. 11.** RCW 64.34.410 and 2002 c 323 s 10 are each amended to  
24 read as follows:

25 (1) A public offering statement shall contain the following  
26 information:

27 (a) The name and address of the condominium;

28 (b) The name and address of the declarant;

29 (c) The name and address of the management company, if any;

30 (d) The relationship of the management company to the declarant, if  
31 any;

32 (e) A list of up to the five most recent condominium projects  
33 completed by the declarant or an affiliate of the declarant within the  
34 past five years, including the names of the condominiums, their  
35 addresses, and the number of existing units in each. For the purpose  
36 of this section, a condominium is "completed" when any one unit therein  
37 has been rented or sold;

38 (f) The nature of the interest being offered for sale;

- 1 (g) A brief description of the permitted uses and use restrictions  
2 pertaining to the units and the common elements;
- 3 (h) A brief description of the restrictions, if any, on the renting  
4 or leasing of units by the declarant or other unit owners, together  
5 with the rights, if any, of the declarant to rent or lease at least a  
6 majority of units;
- 7 (i) The number of existing units in the condominium and the maximum  
8 number of units that may be added to the condominium;
- 9 (j) A list of the principal common amenities in the condominium  
10 which materially affect the value of the condominium and those that  
11 will or may be added to the condominium;
- 12 (k) A list of the limited common elements assigned to the units  
13 being offered for sale;
- 14 (l) The identification of any real property not in the condominium,  
15 the owner of which has access to any of the common elements, and a  
16 description of the terms of such access;
- 17 (m) The identification of any real property not in the condominium  
18 to which unit owners have access and a description of the terms of such  
19 access;
- 20 (n) The status of construction of the units and common elements,  
21 including estimated dates of completion if not completed;
- 22 (o) The estimated current common expense liability for the units  
23 being offered;
- 24 (p) An estimate of any payment with respect to the common expense  
25 liability for the units being offered which will be due at closing;
- 26 (q) The estimated current amount and purpose of any fees not  
27 included in the common expenses and charged by the declarant or the  
28 association for the use of any of the common elements;
- 29 (r) Any assessments which have been agreed to or are known to the  
30 declarant and which, if not paid, may constitute a lien against any  
31 units or common elements in favor of any governmental agency;
- 32 (s) The identification of any parts of the condominium, other than  
33 the units, which any individual owner will have the responsibility for  
34 maintaining;
- 35 (t) If the condominium involves a conversion condominium, the  
36 information required by RCW 64.34.415;
- 37 (u) Whether timesharing is restricted or prohibited, and if  
38 restricted, a general description of such restrictions;



- 1 (v) A list of all development rights reserved to the declarant and  
2 all special declarant rights reserved to the declarant, together with  
3 the dates such rights must terminate, and a copy of or reference by  
4 recording number to any recorded transfer of a special declarant right;
- 5 (w) A description of any material differences in terms of  
6 furnishings, fixtures, finishes, and equipment between any model unit  
7 available to the purchaser at the time the agreement for sale is  
8 executed and the unit being offered;
- 9 (x) Any liens on real property to be conveyed to the association  
10 required to be disclosed pursuant to RCW 64.34.435(2)(b);
- 11 (y) A list of any physical hazards known to the declarant which  
12 particularly affect the condominium or the immediate vicinity in which  
13 the condominium is located and which are not readily ascertainable by  
14 the purchaser;
- 15 (z) A brief description of any construction warranties to be  
16 provided to the purchaser;
- 17 (aa) Any building code violation citations received by the  
18 declarant in connection with the condominium which have not been  
19 corrected;
- 20 (bb) A statement of any unsatisfied judgments or pending suits  
21 against the association, a statement of the status of any pending suits  
22 material to the condominium of which the declarant has actual  
23 knowledge, and a statement of any litigation brought by an owners'  
24 association, unit owner, or governmental entity in which the declarant  
25 or any affiliate of the declarant has been a defendant, arising out of  
26 the construction, sale, or administration of any condominium within the  
27 previous five years, together with the results thereof, if known;
- 28 (cc) Any rights of first refusal to lease or purchase any unit or  
29 any of the common elements;
- 30 (dd) The extent to which the insurance provided by the association  
31 covers furnishings, fixtures, and equipment located in the unit;
- 32 (ee) A notice which describes a purchaser's right to cancel the  
33 purchase agreement or extend the closing under RCW 64.34.420, including  
34 applicable time frames and procedures;
- 35 (ff) Any reports or statements required by RCW 64.34.415 or  
36 64.34.440(6)(a). RCW 64.34.415 shall apply to the public offering  
37 statement of a condominium in connection with which a final certificate  
38 of occupancy was issued more than sixty calendar months prior to the

1 preparation of the public offering statement whether or not the  
2 condominium is a conversion condominium as defined in RCW  
3 64.34.020(10);

4 (gg) A list of the documents which the prospective purchaser is  
5 entitled to receive from the declarant before the rescission period  
6 commences;

7 (hh) A notice which states: A purchaser may not rely on any  
8 representation or express warranty unless it is contained in the public  
9 offering statement or made in writing signed by the declarant or by any  
10 person identified in the public offering statement as the declarant's  
11 agent;

12 (ii) A notice which states: This public offering statement is only  
13 a summary of some of the significant aspects of purchasing a unit in  
14 this condominium and the condominium documents are complex, contain  
15 other important information, and create binding legal obligations. You  
16 should consider seeking the assistance of legal counsel;

17 (jj) Any other information and cross-references which the declarant  
18 believes will be helpful in describing the condominium to the  
19 recipients of the public offering statement, all of which may be  
20 included or not included at the option of the declarant;

21 (kk) A notice that addresses compliance or noncompliance with the  
22 housing for older persons act of 1995, P.L. 104-76, as enacted on  
23 December 28, 1995; (~~and~~)

24 (ll) A notice that is substantially in the form required by RCW  
25 64.50.050; and

26 (mm) A statement, as required by section 301 of this act, as to  
27 whether the units or common elements of the condominium are covered by  
28 a qualified warranty, and a history of claims under any such warranty.

29 (2) The public offering statement shall include copies of each of  
30 the following documents: The declaration, the survey map and plans,  
31 the articles of incorporation of the association, bylaws of the  
32 association, rules and regulations, if any, current or proposed budget  
33 for the association, and the balance sheet of the association current  
34 within ninety days if assessments have been collected for ninety days  
35 or more.

36 If any of the foregoing documents listed in this subsection are not  
37 available because they have not been executed, adopted, or recorded,  
38 drafts of such documents shall be provided with the public offering

1 statement, and, before closing the sale of a unit, the purchaser shall  
2 be given copies of any material changes between the draft of the  
3 proposed documents and the final documents.

4 (3) The disclosures required by subsection (1)(g), (k), (s), (u),  
5 (v), and (cc) of this section shall also contain a reference to  
6 specific sections in the condominium documents which further explain  
7 the information disclosed.

8 (4) The disclosures required by subsection (1)(ee), (hh), (ii), and  
9 (ll) of this section shall be located at the top of the first page of  
10 the public offering statement and be typed or printed in ten-point bold  
11 face type size.

12 (5) A declarant shall promptly amend the public offering statement  
13 to reflect any material change in the information required by this  
14 section.

15 NEW SECTION. **Sec. 12.** Sections 5 and 6 of this act apply only to  
16 condominiums created by declarations recorded on or after July 1, 2004.

17 NEW SECTION. **Sec. 13.** If any provision of this act or its  
18 application to any person or circumstance is held invalid, the  
19 remainder of the act or the application of the provision to other  
20 persons or circumstances is not affected.

21 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act take  
22 effect July 1, 2004.

## 23 **ARTICLE 1**

### 24 **GENERAL PROVISIONS**

25 NEW SECTION. **Sec. 101.** DEFINITIONS. The definitions in this  
26 section apply throughout this chapter unless the context clearly  
27 requires otherwise.

28 (1) "Affiliate" has the meaning in RCW 64.34.020.

29 (2) "Association" has the meaning in RCW 64.34.020.

30 (3) "Building envelope" means the assemblies, components, and  
31 materials of a building that are intended to separate and protect the  
32 interior space of the building from the adverse effects of exterior  
33 climatic conditions.

34 (4) "Common element" has the meaning in RCW 64.34.020.

- 1 (5) "Condominium" has the meaning in RCW 64.34.020.
- 2 (6) "Construction professional" has the meaning in RCW 64.50.010.
- 3 (7) "Conversion condominium" has the meaning in RCW 64.34.020.
- 4 (8) "Declarant" has the meaning in RCW 64.34.020.
- 5 (9) "Declarant control" has the meaning in RCW 64.34.020.
- 6 (10) "Defect" means any aspect of a condominium unit or common  
7 element which constitutes a breach of the implied warranties set forth  
8 in RCW 64.34.445.
- 9 (11) "Limited common element" has the meaning in RCW 64.34.020.
- 10 (12) "Material" means substantive, not simply formal; significant  
11 to a reasonable person; not trivial or insignificant. When used with  
12 respect to a particular construction defect, "material" does not  
13 require that the construction defect render the unit or common element  
14 unfit for its intended purpose or uninhabitable.
- 15 (13) "Mediation" means a collaborative process in which two or more  
16 parties meet and attempt, with the assistance of a mediator, to resolve  
17 issues in dispute between them.
- 18 (14) "Mediation session" means a meeting between two or more  
19 parties to a dispute during which they are engaged in mediation.
- 20 (15) "Mediator" means a neutral and impartial facilitator with no  
21 decision-making power who assists parties in negotiating a mutually  
22 acceptable settlement of issues in dispute between them.
- 23 (16) "Person" has the meaning in RCW 64.34.020.
- 24 (17) "Public offering statement" has the meaning in RCW 64.34.410.
- 25 (18) "Qualified insurer" means an entity that holds a certificate  
26 of authority under RCW 48.05.030, or an eligible insurer under chapter  
27 48.15 RCW.
- 28 (19) "Qualified warranty" means an insurance policy issued by a  
29 qualified insurer that complies with the requirements of this chapter.  
30 A qualified warranty includes coverage for repair of physical damage  
31 caused by the defects covered by the qualified warranty, except to the  
32 extent of any exclusions and limitations under this chapter.
- 33 (20) "Resale certificate" means the statement to be delivered by  
34 the association under RCW 64.34.425.
- 35 (21) "Transition date" means the date on which the declarant is  
36 required to deliver to the association the property of the association  
37 under RCW 64.34.312.
- 38 (22) "Unit" has the meaning in RCW 64.34.020.
- 39 (23) "Unit owner" has the meaning in RCW 64.34.020.



- 1 (c) The type of repair performed;
- 2 (d) The date of the repair;
- 3 (e) The cost of the repair; and
- 4 (f) The name of the person or entity who performed the repair.

5 **ARTICLE 4**

6 **MINIMUM COVERAGE STANDARDS FOR QUALIFIED WARRANTIES**

7 NEW SECTION. **Sec. 401.** TWO-YEAR MATERIALS AND LABOR WARRANTY.

8 (1) The minimum coverage for the two-year materials and labor warranty  
9 is:

10 (a) In the first twelve months, for other than the common elements,  
11 (i) coverage for any defect in materials and labor; and (ii) subject to  
12 subsection (2) of this section, coverage for a violation of the  
13 building code;

14 (b) In the first fifteen months, for the common elements, (i)  
15 coverage for any defect in materials and labor; and (ii) subject to  
16 subsection (2) of this section, coverage for a violation of the  
17 building code;

18 (c) In the first twenty-four months, (i) coverage for any defect in  
19 materials and labor supplied for the electrical, plumbing, heating,  
20 ventilation, and air conditioning delivery and distribution systems;  
21 (ii) coverage for any defect in materials and labor supplied for the  
22 exterior cladding, caulking, windows, and doors that may lead to  
23 detachment or material damage to the unit or common elements; (iii)  
24 coverage for any defect in materials and labor which renders the unit  
25 unfit to live in; and (iv) subject to subsection (2) of this section,  
26 coverage for a violation of the building code.

27 (2) Noncompliance with the building code is considered a defect  
28 covered by a qualified warranty if the noncompliance:

29 (a) Constitutes an unreasonable health or safety risk; or

30 (b) Has resulted in, or is likely to result in, material damage to  
31 the unit or common elements.

32 NEW SECTION. **Sec. 402.** FIVE-YEAR BUILDING ENVELOPE WARRANTY. The  
33 minimum coverage for the building envelope warranty is five years for  
34 defects in the building envelope of a condominium, including a defect  
35 which permits unintended water penetration so that it causes, or is  
36 likely to cause, material damage to the unit or common elements.

1        NEW SECTION.    **Sec. 403.**    TEN-YEAR STRUCTURAL DEFECTS WARRANTY.    The  
2    minimum coverage for the structural defects warranty is ten years for:

3        (1) Any defect in materials and labor that results in the failure  
4    of a load-bearing part of the condominium; and

5        (2) Any defect which causes structural damage that materially and  
6    adversely affects the use of the condominium for residential occupancy.

7        NEW SECTION.    **Sec. 404.**    BEGINNING DATES FOR WARRANTY COVERAGE.

8    (1) For the unit, the beginning date of the qualified warranty coverage  
9    is the earlier of:

- 10        (a) Actual occupancy of the unit; or
- 11        (b) Transfer of legal title to the unit.

12        (2) For the common elements, the beginning date of a qualified  
13    warranty is the date a temporary or final certificate of occupancy is  
14    issued for the common elements in each separate multiunit building,  
15    comprised by the condominium.

16        NEW SECTION.    **Sec. 405.**    BEGINNING DATES FOR SPECIAL CASES;  
17    DECLARANT CONTROL.    (1) If an unsold unit is occupied as a rental unit,  
18    the qualified warranty beginning date for such unit is the date the  
19    unit is first occupied.

20        (2) If the declarant subsequently offers to sell a unit which is  
21    rented, the declarant must disclose, in writing, to each prospective  
22    purchaser, the date on which the qualified warranty expires.

23        (3) If the declarant retains any declarant control over the  
24    association on the date that is fourteen full calendar months following  
25    the month in which the beginning date for common element warranty  
26    coverage commences, the declarant shall within thirty days thereafter  
27    cause an election to be held in which the declarant may not vote, for  
28    the purpose of electing one or more board members who are empowered to  
29    make warranty claims.    If at such time, one or more independent board  
30    members hold office, no additional election need be held, and such  
31    independent board members are empowered to make warranty claims.    The  
32    declarant shall inform all independent board members of their right to  
33    make warranty claims at no later than sixteen full calendar months  
34    following the beginning date of the common element warranty.

35        NEW SECTION.    **Sec. 406.**    LIVING EXPENSE ALLOWANCE.    (1) If repairs  
36    are required under the qualified warranty and damage to the unit, or

1 the extent of the repairs renders the unit uninhabitable, the qualified  
2 warranty must cover reasonable living expenses incurred by the owner to  
3 live elsewhere in an amount commensurate with the nature of the unit.

4 (2) If a qualified insurer establishes a maximum amount per day for  
5 claims for living expenses, the limit must be the greater of one  
6 hundred dollars per day or a reasonable amount commensurate with the  
7 nature of the unit for the complete reimbursement of the actual  
8 accommodation expenses incurred by the owner at a hotel, motel, or  
9 other rental accommodation up to the day the unit is ready for  
10 occupancy, subject to the owner receiving twenty-four hours' advance  
11 notice.

12 NEW SECTION. **Sec. 407.** WARRANTY ON REPAIRS AND REPLACEMENTS. (1)

13 All repairs and replacements made under a qualified warranty must be  
14 warranted by the qualified warranty against defects in materials and  
15 labor until the later of:

16 (a) The first anniversary of the date of completion of the repair  
17 or replacement; or

18 (b) The expiration of the applicable qualified warranty coverage.

19 (2) All repairs and replacements made under a qualified warranty  
20 must be completed in a reasonable manner using materials and labor  
21 conforming to the building code and industry standards.

22 **ARTICLE 5**

23 **PERMITTED TERMS FOR QUALIFIED WARRANTIES**

24 NEW SECTION. **Sec. 501.** A qualified insurer may include any of the  
25 following provisions in a qualified warranty:

26 (1) If the qualified insurer makes a payment or assumes liability  
27 for any payment or repair under a qualified warranty, the owner and  
28 association must fully support and assist the qualified insurer in  
29 pursuing any rights that the qualified insurer may have against the  
30 declarant, and any construction professional that has contractual or  
31 common law obligations to the declarant, whether such rights arose by  
32 contract, subrogation, or otherwise.

33 (2) Warranties or representations made by a declarant which are in  
34 addition to the warranties set forth in this chapter are not binding on  
35 the qualified insurer unless and to the extent specifically provided in  
36 the text of the warranty; and disclaimers of specific defects made by



1 agreement between the declarant and the unit purchaser under RCW  
2 64.34.450 act as an exclusion of the specified defect from the warranty  
3 coverage.

4 (3) An owner and the association must permit the qualified insurer  
5 or declarant, or both, to enter the unit at reasonable times, after  
6 reasonable notice to the owner and the association:

- 7 (a) To monitor the unit or its components;
- 8 (b) To inspect for required maintenance;
- 9 (c) To investigate complaints or claims; or
- 10 (d) To undertake repairs under the qualified warranty.

11 If any reports are produced as a result of any of the activities  
12 referred to in (a) through (d) of this subsection, the reports must be  
13 provided to the owner and the association.

14 (4) An owner and the association must provide to the qualified  
15 insurer all information and documentation that the owner and the  
16 association have available, as reasonably required by the qualified  
17 insurer to investigate a claim or maintenance requirement, or to  
18 undertake repairs under the qualified warranty.

19 (5) To the extent any damage to a unit is caused or made worse by  
20 the unreasonable refusal of the association, or an owner or occupant to  
21 permit the qualified insurer or declarant access to the unit for the  
22 reasons in subsection (3) of this section, or to provide the  
23 information required by subsection (4) of this section, that damage is  
24 excluded from the qualified warranty.

25 (6) In any claim under a qualified warranty issued to the  
26 association, the association shall have the sole right to prosecute and  
27 settle any claim with respect to the common elements.

28 **ARTICLE 6**

29 **PERMITTED EXCLUSIONS FROM QUALIFIED WARRANTIES--GENERAL**

30 NEW SECTION. **Sec. 601.** (1) A qualified insurer may exclude from  
31 a qualified warranty:

- 32 (a) Landscaping, both hard and soft, including plants, fencing,  
33 detached patios, planters not forming a part of the building envelope,  
34 gazebos, and similar structures;
- 35 (b) Any commercial use area and any construction associated with a  
36 commercial use area;
- 37 (c) Roads, curbs, and lanes;

- 1 (d) Subject to subsection (2) of this section, site grading and  
2 surface drainage except as required by the building code;
- 3 (e) Municipal services operation, including sanitary and storm  
4 sewer;
- 5 (f) Septic tanks or septic fields;
- 6 (g) The quality or quantity of water, from either a piped municipal  
7 water supply or a well;
- 8 (h) A water well, but excluding equipment installed for the  
9 operation of a water well used exclusively for a unit, which equipment  
10 is part of the plumbing system for that unit for the purposes of the  
11 qualified warranty.
- 12 (2) The exclusions permitted by subsection (1) of this section do  
13 not include any of the following:
- 14 (a) A driveway or walkway;
- 15 (b) Recreational and amenity facilities situated in, or included as  
16 the common property of, a unit;
- 17 (c) A parking structure in a multiunit building;
- 18 (d) A retaining wall that:
- 19 (i) An authority with jurisdiction requires to be designed by a  
20 professional engineer; or
- 21 (ii) Is reasonably required for the direct support of, or retaining  
22 soil away from, a unit, driveway, or walkway.

23 **ARTICLE 7**  
24 **PERMITTED EXCLUSIONS--DEFECTS**

25 NEW SECTION. **Sec. 701.** A qualified insurer may exclude any or all  
26 of the following items from a qualified warranty:

- 27 (1) Weathering, normal wear and tear, deterioration, or deflection  
28 consistent with normal industry standards;
- 29 (2) Normal shrinkage of materials caused by drying after  
30 construction;
- 31 (3) Any loss or damage which arises while a unit is being used  
32 primarily or substantially for nonresidential purposes;
- 33 (4) Materials, labor, or design supplied by an owner;
- 34 (5) Any damage to the extent caused or made worse by an owner or  
35 third party, including:
- 36 (a) Negligent or improper maintenance or improper operation by

- 1 anyone other than the declarant or its employees, agents, or  
2 subcontractors;
- 3 (b) Failure of anyone, other than the declarant or its employees,  
4 agents, or subcontractors, to comply with the warranty requirements of  
5 the manufacturers of appliances, equipment, or fixtures;
- 6 (c) Alterations to the unit, including converting nonliving space  
7 into living space or converting a unit into two or more units, by  
8 anyone other than the declarant or its employees, agents, or  
9 subcontractors while undertaking their obligations under the sales  
10 contract; and
- 11 (d) Changes to the grading of the ground by anyone other than the  
12 declarant or its employees, agents, or subcontractors;
- 13 (6) An owner failing to take timely action to prevent or minimize  
14 loss or damage, including failing to give prompt notice to the  
15 qualified insurer of a defect or discovered loss, or a potential defect  
16 or loss;
- 17 (7) Any damage caused by insects, rodents, or other animals, unless  
18 the damage results from noncompliance with the building code by the  
19 declarant or its employees, agents, or subcontractors;
- 20 (8) Accidental loss or damage from acts of nature including, but  
21 not limited to, fire, explosion, smoke, water escape, glass breakage,  
22 windstorm, hail, lightning, falling trees, aircraft, vehicles, flood,  
23 earthquake, avalanche, landslide, and changes in the level of the  
24 underground water table which are not reasonably foreseeable by the  
25 declarant;
- 26 (9) Bodily injury or damage to personal property or real property  
27 which is not part of a unit;
- 28 (10) Any defect in, or caused by, materials or work supplied by  
29 anyone other than the declarant, an affiliate of a declarant, or their  
30 respective contractors, employees, agents, or subcontractors;
- 31 (11) Changes, alterations, or additions made to a unit by anyone  
32 after initial occupancy, except those performed by the declarant or its  
33 employees, agents, or subcontractors as required by the qualified  
34 warranty or under the construction contract or sales agreement;
- 35 (12) Contaminated soil;
- 36 (13) Subsidence of the land around a unit or along utility lines,  
37 other than subsidence beneath footings of a unit or under driveways or  
38 walkways;
- 39 (14) Diminution in the value of the unit.



1 (2) All exclusions must be permitted by this chapter and stated in  
2 the qualified warranty.

3 **ARTICLE 10**

4 **CONSEQUENCES OF NOT PROVIDING INFORMATION**

5 NEW SECTION. **Sec. 1001.** (1) If coverage under a qualified  
6 warranty is conditional on an owner undertaking proper maintenance, or  
7 if coverage is excluded for damage caused by negligence by the owner or  
8 association with respect to maintenance or repair by the owner or  
9 association, the conditions or exclusions apply only to maintenance  
10 requirements or procedures: (a) Provided to the original owner in the  
11 case of the unit warranty, and to the association for the common  
12 element warranty with an estimation of the required cost thereof for  
13 the common element warranty provided in the budget prepared by the  
14 declarant; or (b) that would be obvious to a reasonable and prudent  
15 layperson. Recommended maintenance requirements and procedures are  
16 sufficient for purposes of this subsection if consistent with knowledge  
17 generally available in the construction industry at the time the  
18 qualified warranty is issued.

19 (2) If an original owner or the association has not been provided  
20 with the manufacturer's documentation or warranty information, or both,  
21 or with recommended maintenance and repair procedures for any component  
22 of a unit, the relevant exclusion does not apply. The common element  
23 warranty is included in the written warranty to be provided to the  
24 association under RCW 64.34.312.

25 **ARTICLE 11**

26 **MANDATORY NOTICE OF EXPIRATION OF WARRANTY**

27 NEW SECTION. **Sec. 1101.** (1) A qualified insurer must, as soon as  
28 reasonably possible after the beginning date for the qualified  
29 warranty, provide an owner and association with a schedule of the  
30 expiration dates for coverages under the qualified warranty as  
31 applicable to the unit and the common elements, respectively.

32 (2) The expiration date schedule for a unit must set out all the  
33 required dates on an adhesive label that is a minimum size of four  
34 inches by four inches and is suitable for affixing by the owner in a  
35 conspicuous location in the unit.

1 **ARTICLE 12**  
2 **DUTY TO MITIGATE**

3 NEW SECTION. **Sec. 1201.** (1) The qualified insurer may require an  
4 owner or association to mitigate any damage to a unit or the common  
5 elements, including damage caused by defects or water penetration, as  
6 set out in the qualified warranty.

7 (2) Subject to subsection (3) of this section, for defects covered  
8 by the qualified warranty, the duty to mitigate is met through timely  
9 notice in writing to the qualified insurer.

10 (3) The owner must take all reasonable steps to restrict damage to  
11 the unit if the defect requires immediate attention.

12 (4) The owner's duty to mitigate survives even if:

13 (a) The unit is unoccupied;

14 (b) The unit is occupied by someone other than the owner;

15 (c) Water penetration does not appear to be causing damage; or

16 (d) The owner advises the homeowners' association corporation about  
17 the defect.

18 (5) If damage to a unit is caused or made worse by the failure of  
19 an owner to take reasonable steps to mitigate as set out in this  
20 section, the damage may, at the option of the qualified insurer, be  
21 excluded from qualified warranty coverage.

22 **ARTICLE 13**  
23 **NOTICE OF CLAIM**

24 NEW SECTION. **Sec. 1301.** (1) Within a reasonable time after the  
25 discovery of a defect and before the expiration of the applicable  
26 qualified warranty coverage, a claimant must give to the qualified  
27 insurer and the declarant written notice in reasonable detail that  
28 provides particulars of any specific defects covered by the qualified  
29 warranty.

30 (2) The qualified insurer may require the notice under subsection  
31 (1) of this section to include:

32 (a) The qualified warranty number; and

33 (b) Copies of any relevant documentation and correspondence between  
34 the claimant and the declarant, to the extent any such documentation  
35 and correspondence is in the control or possession of the claimant.



1 (3) Within twenty-one days after the party has delivered a request  
2 to mediate under subsection (1) of this section, the parties must,  
3 directly or with the assistance of an independent, neutral person or  
4 organization, jointly appoint a mutually acceptable mediator.

5 (4) If the parties do not jointly appoint a mutually acceptable  
6 mediator within the time required by subsection (3) of this section,  
7 the party may apply to the superior court of the county where the  
8 project is located, which must appoint a mediator taking into account:

9 (a) The need for the mediator to be neutral and independent;

10 (b) The qualifications of the mediator;

11 (c) The mediator's fees;

12 (d) The mediator's availability; and

13 (e) Any other consideration likely to result in the selection of an  
14 impartial, competent, and effective mediator.

15 (5) After selecting the mediator under subsection (4) of this  
16 section, the superior court must promptly notify the parties in writing  
17 of that selection.

18 (6) The mediator selected by the superior court is deemed to be  
19 appointed by the parties effective the date of the notice sent under  
20 subsection (5) of this section.

21 (7) The first mediation session must occur within twenty-one days  
22 of the appointment of the mediator at the date, time, and place  
23 selected by the mediator.

24 (8) A party may attend a mediation session by representative if:

25 (a) The party is under a legal disability and the representative is  
26 that party's guardian ad litem;

27 (b) The party is not an individual; or

28 (c) The party is a resident of a jurisdiction other than Washington  
29 and will not be in Washington at the time of the mediation session.

30 (9) A representative who attends a mediation session in the place  
31 of a party as permitted by subsection (8) of this section:

32 (a) Must be familiar with all relevant facts on which the party, on  
33 whose behalf the representative attends, intends to rely; and

34 (b) Must have full authority to settle, or have immediate access to  
35 a person who has full authority to settle, on behalf of the party on  
36 whose behalf the representative attends.

37 (10) A party or a representative who attends the mediation session  
38 may be accompanied by counsel.



1 (11) Any other person may attend a mediation session on consent of  
2 all parties or their representatives.

3 (12) At least seven days before the first mediation session is to  
4 be held, each party must deliver to the mediator a statement briefly  
5 setting out:

6 (a) The facts on which the party intends to rely; and  
7 (b) The matters in dispute.

8 (13) The mediator must promptly send each party's statement to each  
9 of the other parties.

10 (14) Before the first mediation session, the parties must enter  
11 into a retainer agreement with the mediator which must:

12 (a) Disclose the cost of the mediation services; and  
13 (b) Provide that the cost of the mediation will be paid:  
14 (i) Equally by the parties; or  
15 (ii) On any other specified basis agreed by the parties.

16 (15) The mediator may conduct the mediation in any manner he or she  
17 considers appropriate to assist the parties to reach a resolution that  
18 is timely, fair, and cost-effective.

19 (16) A person may not disclose, or be compelled to disclose, in any  
20 proceeding, oral or written information acquired or an opinion formed,  
21 including, without limitation, any offer or admission made in  
22 anticipation of or during a mediation session.

23 (17) Nothing in subsection (16) of this section precludes a party  
24 from introducing into evidence in a proceeding any information or  
25 records produced in the course of the mediation that are otherwise  
26 producible or compellable in those proceedings.

27 (18) A mediation session is concluded when:

28 (a) All issues are resolved;  
29 (b) The mediator determines that the process will not be productive  
30 and so advises the parties or their representatives; or  
31 (c) The mediation session is completed and there is no agreement to  
32 continue.

33 (19) If the mediation resolves some but not all issues, the  
34 mediator may, at the request of all parties, complete a report setting  
35 out any agreements made as a result of the mediation, including,  
36 without limitation, any agreements made by the parties on any of the  
37 following:

38 (a) Facts;  
39 (b) Issues; and

1 (c) Future procedural steps.

2 **ARTICLE 16**  
3 **ARBITRATION**

4 NEW SECTION. **Sec. 1601.** A qualified warranty may include  
5 mandatory binding arbitration of all disputes arising out of or in  
6 connection with a qualified warranty. The provision may provide that  
7 all claims for a single condominium be heard by the same arbitrator,  
8 but shall not permit the joinder or consolidation of any other person  
9 or entity. The arbitration shall comply with the following minimum  
10 procedural standards:

11 (1) Any demand for arbitration shall be delivered by certified mail  
12 return receipt requested, and by ordinary first class mail. The party  
13 initiating the arbitration shall address the notice to the address last  
14 known to the initiating party in the exercise of reasonable diligence,  
15 and also, for any entity which is required to have a registered agent  
16 in the state of Washington, to the address of the registered agent.  
17 Demand for arbitration is deemed effective three days after the date  
18 deposited in the mail;

19 (2) All disputes shall be heard by one qualified arbitrator, unless  
20 the parties agree to use three arbitrators. If three arbitrators are  
21 used, one shall be appointed by each of the disputing parties and the  
22 first two arbitrators shall appoint the third, who will chair the  
23 panel. The parties shall select the identity and number of the  
24 arbitrator or arbitrators after the demand for arbitration is made.  
25 If, within thirty days after the effective date of the demand for  
26 arbitration, the parties fail to agree on an arbitrator or the agreed  
27 number of arbitrators fail to be appointed, then an arbitrator or  
28 arbitrators shall be appointed under RCW 7.04.050 by the presiding  
29 judge of the superior court of the county in which the condominium is  
30 located;

31 (3) In any arbitration, at least one arbitrator must be a lawyer or  
32 retired judge. Any additional arbitrator must be either a lawyer or  
33 retired judge or a person who has experience with construction and  
34 engineering standards and practices, written construction warranties,  
35 or construction dispute resolution. No person may serve as an  
36 arbitrator in any arbitration in which that person has any past or  
37 present financial or personal interest;

1 (4) The arbitration hearing must be conducted in a manner that  
2 permits full, fair, and expeditious presentation of the case by both  
3 parties. The arbitrator is bound by the law of Washington state.  
4 Parties may be, but are not required to be, represented by attorneys.  
5 The arbitrator may permit discovery to ensure a fair hearing, but may  
6 limit the scope or manner of discovery for good cause to avoid  
7 excessive delay and costs to the parties. The parties and the  
8 arbitrator shall use all reasonable efforts to complete the arbitration  
9 within six months of the effective date of the demand for arbitration  
10 or, when applicable, the service of the list of defects in accordance  
11 with RCW 64.50.030;

12 (5) Except as otherwise set forth in this section, arbitration  
13 shall be conducted under chapter 7.04 RCW, unless the parties elect to  
14 use the construction industry arbitration rules of the American  
15 arbitration association, which are permitted to the extent not  
16 inconsistent with this section. The expenses of witnesses including  
17 expert witnesses shall be paid by the party producing the witnesses.  
18 All other expenses of arbitration shall be borne equally by the  
19 parties, unless all parties agree otherwise or unless the arbitrator  
20 awards expenses or any part thereof to any specified party or parties.  
21 The parties shall pay the fees of the arbitrator as and when specified  
22 by the arbitrator;

23 (6) Demand for arbitration given pursuant to subsection (1) of this  
24 section commences a judicial proceeding for purposes of RCW 64.34.452;

25 (7) The arbitration decision shall be in writing and must set forth  
26 findings of fact and conclusions of law that support the decision.

27 **ARTICLE 17**  
28 **ATTORNEYS' FEES**

29 NEW SECTION. **Sec. 1701.** In any judicial proceeding or arbitration  
30 brought to enforce the terms of a qualified warranty, the court or  
31 arbitrator may award reasonable attorneys' fees to the substantially  
32 prevailing party. In no event may such fees exceed the reasonable  
33 hourly value of the attorney's work.

34 **ARTICLE 18**  
35 **TRANSFER**



1 (3) Before approving a qualified warranty for a condominium, a  
2 qualified insurer may make such inquiries and impose such conditions as  
3 it deems appropriate in its sole discretion, including without  
4 limitation the following:

5 (a) To determine if the applicant has the necessary capitalization  
6 or financing in place, including any reasonable contingency reserves,  
7 to undertake construction of the proposed unit;

8 (b) To determine if the applicant or, in the case of a corporation,  
9 its directors, officers, employees, and consultants possess reasonable  
10 technical expertise to construct the proposed unit, including specific  
11 technical knowledge or expertise in any building systems, construction  
12 methods, products, treatments, technologies, and testing and inspection  
13 methods proposed to be employed;

14 (c) To determine if the applicant or, in the case of a corporation,  
15 its directors, officers, employees, and consultants have sufficient  
16 practical experience in the specific types of construction to undertake  
17 construction of the proposed unit;

18 (d) To determine if the applicant has sufficient personnel and  
19 other resources to adequately undertake the construction of the  
20 proposed unit in addition to other units which the applicant may have  
21 under construction or is currently marketing;

22 (e) To determine if:

23 (i) The applicant is proposing to engage a general contractor to  
24 undertake all or a significant portion of the construction of the  
25 proposed unit; and

26 (ii) The general contractor meets the criteria set out in this  
27 section;

28 (f) Requiring that a declarant provide security in a form suitable  
29 to the qualified insurer;

30 (g) Establishing or requiring compliance with specific construction  
31 standards for the unit;

32 (h) Restricting the applicant from constructing some types of units  
33 or using some types of construction or systems;

34 (i) Requiring the use of specific types of systems, consultants, or  
35 personnel for the construction;

36 (j) Requiring an independent review of the unit building plans or  
37 consultants' reports or any part thereof;

38 (k) Requiring third-party verification or certification of the  
39 construction of the unit or any part thereof;

1 (l) Providing for inspection of the unit or any part thereof during  
2 construction;

3 (m) Requiring ongoing monitoring of the unit, or one or more of its  
4 components, following completion of construction;

5 (n) Requiring that the declarant or any of the design  
6 professionals, engineering professionals, consultants, general  
7 contractors, or subcontractors maintain minimum levels of insurance,  
8 bonding, or other security naming the potential owners and qualified  
9 insurer as loss payees or beneficiaries of the insurance, bonding, or  
10 security to the extent possible;

11 (o) Requiring that the declarant provide a list of all design  
12 professionals and other consultants who are involved in the design or  
13 construction inspection, or both, of the unit;

14 (p) Requiring that the declarant provide a list of trades employed  
15 in the construction of the unit, and requiring evidence of their  
16 current trade's certification, if applicable.

17 **ARTICLE 20**  
18 **MISCELLANEOUS**

19 NEW SECTION. **Sec. 2001.** All qualified warrantees shall be deemed  
20 to be "insurance" for purposes of RCW 48.01.040, and shall be regulated  
21 as such.

22 NEW SECTION. **Sec. 2002.** Captions and part headings used in this  
23 act are not any part of the law.

24 NEW SECTION. **Sec. 2003.** Sections 101 through 2002 of this act  
25 constitute a new chapter in Title 64 RCW."

26 Correct the title.

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