

SSB 5536 - S AMD 73

By Senators Finkbeiner, Prentice

ADOPTED AS AMENDED 03/11/2003

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

3 "NEW SECTION. **Sec. 1.** (1) The legislature finds, declares, and
4 determines that:

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

8 (b) One of the growth management act's planning goals is to
9 encourage the availability of affordable housing for all residents of
10 the state and promote a variety of housing types;

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

15 (d) Ambiguity in the condominium act, particularly relating to
16 implied warranties of quality, has led to legal actions and threats of
17 legal action that allege minor or immaterial defects and deviations in
18 construction that have no effect on the structure, safety, or
19 marketability of condominiums;

20 (e) The result of these legal challenges is that many home builders
21 cannot obtain insurance to build condominiums and as further result
22 condominium construction is declining thereby reducing rather than
23 expanding home ownership opportunities for the residents of Washington
24 state; and

25 (f) Legislative action is needed to encourage residential
26 condominium construction by:

27 (i) Requiring alternative methods of dispute resolution such as
28 arbitration and setting standards to allow resolution of disputes in an
29 expeditious and fair manner;

1 (ii) Requiring expanded disclosure to owners if implied warranties
2 are excluded, modified, or replaced with an express warranty of
3 quality;

4 (iii) Protecting associations, boards, and officers from liability
5 for deciding to not commence a judicial proceeding or arbitration;

6 (iv) Requiring expanded disclosure to purchasers of legal
7 proceeding;

8 (v) Clarifying that an express written warranty applies to claims
9 against the declarant brought by the association or subsequent unit
10 owners;

11 (vi) Clarifying that implied warranties of quality extend only to
12 defects or deviations that affect the structural integrity of the unit;
13 the safety of unit owners; or substantially impair the marketability of
14 the unit for its intended purpose. Defects or deviations that can be
15 discovered through normal purchaser inspections are not intended to be
16 covered by the implied warranty of quality; and

17 (vii) Allowing an express written warranty of quality to replace
18 implied warranties;

19 (2) It is the intent of the legislature that this act improve and
20 clarify procedures for resolving claims relating to condominium
21 construction and ensure that both a broad range of homeownership
22 opportunities continue to be available to the residents of the state
23 and that cities and counties can achieve density mandates of the growth
24 management act.

25 (3) It is the further intent of the legislature that this act
26 eliminate litigation over minor defects and deviations that have no
27 material effect on the use of a condominium for its intended purpose.

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

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

35 (2) Except as set forth in this chapter, any right or obligation
36 declared by this chapter is enforceable by judicial proceeding. Any
37 claim by an association and/or its board of directors relating to

1 construction defects or deviations or claims by more than one unit
2 owner relating to the same defects or deviations shall be resolved
3 through binding arbitration.

4 (3) Binding arbitration involving construction defects or
5 deviations under RCW 64.34.445 or 64.34.450 shall comply with the
6 following minimum standards:

7 (a) Unless the parties agree otherwise, all disputes must be heard
8 by one qualified arbitrator. When three arbitrators are used, one
9 shall be appointed by each of the disputing parties and the third, who
10 will chair the panel, appointed by the first two arbitrators. Should
11 the required number of arbitrators fail to be appointed, then an
12 arbitrator or arbitrators shall be appointed by the superior court of
13 the county in which the condominium is located pursuant to RCW
14 7.04.050;

15 (b) Arbitrators must have experience with construction and
16 engineering standards and practices, written construction warranties,
17 or construction dispute resolution and a person shall not serve as an
18 arbitrator in any arbitration in which that person has any financial or
19 personal interest;

20 (c) The arbitration hearing must be conducted in a manner that
21 permits full, fair, and expeditious presentation of the case by both
22 parties. The arbitrators are bound by the law of Washington state.
23 Parties may but are not required to be represented by attorneys. The
24 arbitrators may permit discovery to ensure a fair hearing but may limit
25 the scope or manner of discovery for good cause to avoid excessive
26 delay and costs to the parties. Unless the parties agree otherwise or
27 the arbitrator or arbitrators grant an extension for good cause, the
28 arbitration hearing shall be completed within one year of the initial
29 demand for arbitration;

30 (d) Arbitration shall be conducted under the condominium or
31 construction dispute resolution rules of the American arbitration
32 association and chapter 7.04 RCW unless the parties elect to use the
33 rules of the superior court. The expenses of witnesses including
34 expert witnesses shall be paid by the party producing such witnesses.
35 All other expenses of arbitration shall be borne equally by the
36 parties, unless they agree otherwise or unless the arbitrator or
37 arbitrators award such expenses or any part thereof to any specified
38 party or parties; and

1 (e) Arbitration shall be used only after the parties first attempt
2 to resolve the dispute through mediation. Mediation shall be before a
3 mediator who may not serve subsequently also as an arbitrator for the
4 same dispute. All cost of mediation shall be borne equally by the
5 parties.

6 **Sec. 3.** RCW 64.34.216 and 1992 c 220 s 7 are each amended to read
7 as follows:

8 (1) The declaration for a condominium must contain:

9 (a) The name of the condominium, which must include the word
10 "condominium" or be followed by the words "a condominium," and the name
11 of the association;

12 (b) A legal description of the real property included in the
13 condominium;

14 (c) A statement of the number of units which the declarant has
15 created and, if the declarant has reserved the right to create
16 additional units, the number of such additional units;

17 (d) The identifying number of each unit created by the declaration
18 and a description of the boundaries of each unit if and to the extent
19 they are different from the boundaries stated in RCW 64.34.204(1);

20 (e) With respect to each existing unit:

- 21 (i) The approximate square footage;
- 22 (ii) The number of bathrooms, whole or partial;
- 23 (iii) The number of rooms designated primarily as bedrooms;
- 24 (iv) The number of built-in fireplaces; and
- 25 (v) The level or levels on which each unit is located.

26 The data described in (ii), (iii), and (iv) of this subsection
27 (1)(e) may be omitted with respect to units restricted to
28 nonresidential use;

29 (f) The number of parking spaces and whether covered, uncovered, or
30 enclosed;

31 (g) The number of moorage slips, if any;

32 (h) A description of any limited common elements, other than those
33 specified in RCW 64.34.204 (2) and (4), as provided in RCW
34 64.34.232(2)(j);

35 (i) A description of any real property which may be allocated
36 subsequently by the declarant as limited common elements, other than

1 limited common elements specified in RCW 64.34.204 (2) and (4),
2 together with a statement that they may be so allocated;

3 (j) A description of any development rights and other special
4 declarant rights under RCW 64.34.020(29) reserved by the declarant,
5 together with a description of the real property to which the
6 development rights apply, and a time limit within which each of those
7 rights must be exercised;

8 (k) If any development right may be exercised with respect to
9 different parcels of real property at different times, a statement to
10 that effect together with: (i) Either a statement fixing the
11 boundaries of those portions and regulating the order in which those
12 portions may be subjected to the exercise of each development right, or
13 a statement that no assurances are made in those regards; and (ii) a
14 statement as to whether, if any development right is exercised in any
15 portion of the real property subject to that development right, that
16 development right must be exercised in all or in any other portion of
17 the remainder of that real property;

18 (l) Any other conditions or limitations under which the rights
19 described in (j) of this subsection may be exercised or will lapse;

20 (m) An allocation to each unit of the allocated interests in the
21 manner described in RCW 64.34.224;

22 (n) Any restrictions in the declaration on use, occupancy, or
23 alienation of the units;

24 (o) A cross-reference by recording number to the survey map and
25 plans for the units created by the declaration; and

26 (p) All matters required or permitted by RCW 64.34.220 through
27 64.34.232, 64.34.256, 64.34.260, 64.34.276, ~~((and))~~ 64.34.308(4), and
28 64.34.450.

29 (2) All amendments to the declaration shall contain a cross-
30 reference by recording number to the declaration and to any prior
31 amendments thereto. All amendments to the declaration adding units
32 shall contain a cross-reference by recording number to the survey map
33 and plans relating to the added units and set forth all information
34 required by RCW 64.34.216(1) with respect to the added units.

35 (3) The declaration may contain any other matters the declarant
36 deems appropriate.

1 **Sec. 4.** RCW 64.34.308 and 1992 c 220 s 15 are each amended to read
2 as follows:

3 (1) Except as provided in the declaration, the bylaws, subsection
4 (~~((2))~~) (3) of this section, or other provisions of this chapter, the
5 board of directors shall act in all instances on behalf of the
6 association. In the performance of their duties, the officers and
7 members of the board of directors are required to exercise: (a) If
8 appointed by the declarant, the care required of fiduciaries of the
9 unit owners; or (b) if elected by the unit owners, ordinary and
10 reasonable care.

11 (2) Neither an association nor its directors or officers or
12 managing agents shall be liable for a decision, including a decision
13 not to commence a judicial proceeding under any section of this
14 chapter, if such a decision has been made by a board of directors
15 elected pursuant to subsection (7) of this section which does not
16 include any members who are affiliates of a declarant, and if, in
17 reaching such a decision, the directors and officers and managing
18 agents have acted in good faith, in a manner such directors and
19 officers and managing agents believe to be in the best interests of the
20 corporation, and with such care, including reasonable inquiry, as an
21 ordinarily prudent person in a like position would use under similar
22 circumstances.

23 (3) The board of directors shall not act on behalf of the
24 association to amend the declaration in any manner that requires the
25 vote or approval of the unit owners pursuant to RCW 64.34.264, to
26 terminate the condominium pursuant to RCW 64.34.268, or to elect
27 members of the board of directors or determine the qualifications,
28 powers, and duties, or terms of office of members of the board of
29 directors pursuant to subsection (~~((6))~~) (7) of this section; but the
30 board of directors may fill vacancies in its membership for the
31 unexpired portion of any term.

32 (~~((3))~~) (4) Within thirty days after adoption of any proposed
33 budget for the condominium, the board of directors shall provide a
34 summary of the budget to all the unit owners and shall set a date for
35 a meeting of the unit owners to consider ratification of the budget not
36 less than fourteen nor more than sixty days after mailing of the
37 summary. Unless at that meeting the owners of units to which a
38 majority of the votes in the association are allocated or any larger

1 percentage specified in the declaration reject the budget, the budget
2 is ratified, whether or not a quorum is present. In the event the
3 proposed budget is rejected or the required notice is not given, the
4 periodic budget last ratified by the unit owners shall be continued
5 until such time as the unit owners ratify a subsequent budget proposed
6 by the board of directors.

7 ~~((4))~~ (5)(a) Subject to subsection ~~((5))~~ (6) of this section,
8 the declaration may provide for a period of declarant control of the
9 association, during which period a declarant, or persons designated by
10 the declarant, may: (i) Appoint and remove the officers and members of
11 the board of directors; or (ii) veto or approve a proposed action of
12 the board or association. A declarant's failure to veto or approve
13 such proposed action in writing within thirty days after receipt of
14 written notice of the proposed action shall be deemed approval by the
15 declarant.

16 (b) Regardless of the period provided in the declaration, a period
17 of declarant control terminates no later than the earlier of: (i)
18 Sixty days after conveyance of seventy-five percent of the units which
19 may be created to unit owners other than a declarant; (ii) two years
20 after the last conveyance or transfer of record of a unit except as
21 security for a debt; (iii) two years after any development right to add
22 new units was last exercised; or (iv) the date on which the declarant
23 records an amendment to the declaration pursuant to which the declarant
24 voluntarily surrenders the right to further appoint and remove officers
25 and members of the board of directors. A declarant may voluntarily
26 surrender the right to appoint and remove officers and members of the
27 board of directors before termination of that period pursuant to (i),
28 (ii), and (iii) of this subsection ~~((4))~~ (5)(b), but in that event
29 the declarant may require, for the duration of the period of declarant
30 control, that specified actions of the association or board of
31 directors, as described in a recorded instrument executed by the
32 declarant, be approved by the declarant before they become effective.

33 ~~((5))~~ (6) Not later than sixty days after conveyance of twenty-
34 five percent of the units which may be created to unit owners other
35 than a declarant, at least one member and not less than twenty-five
36 percent of the members of the board of directors must be elected by
37 unit owners other than the declarant. Not later than sixty days after
38 conveyance of fifty percent of the units which may be created to unit

1 owners other than a declarant, not less than thirty-three and one-third
2 percent of the members of the board of directors must be elected by
3 unit owners other than the declarant.

4 ~~((6))~~ (7) Within thirty days after the termination of any period
5 of declarant control, the unit owners shall elect a board of directors
6 of at least three members, at least a majority of whom must be unit
7 owners. The number of directors need not exceed the number of units
8 then in the condominium. The board of directors shall elect the
9 officers. Such members of the board of directors and officers shall
10 take office upon election.

11 ~~((7))~~ (8) Notwithstanding any provision of the declaration or
12 bylaws to the contrary, the unit owners, by a two-thirds vote of the
13 voting power in the association present and entitled to vote at any
14 meeting of the unit owners at which a quorum is present, may remove any
15 member of the board of directors with or without cause, other than a
16 member appointed by the declarant. The declarant may not remove any
17 member of the board of directors elected by the unit owners. Prior to
18 the termination of the period of declarant control, the unit owners,
19 other than the declarant, may remove by a two-thirds vote, any director
20 elected by the unit owners.

21 **Sec. 5.** RCW 64.34.410 and 2002 c 323 s 10 are each amended to read
22 as follows:

23 (1) A public offering statement shall contain the following
24 information:

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

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

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

28 (d) The relationship of the management company to the declarant, if
29 any;

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

36 (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)(i) A brief description of any construction warranties to be
16 provided to the purchaser;

17 (ii) A brief statement as to whether any express written warranty
18 replaces or other document excludes or modifies the implied warranties
19 of quality provided in RCW 64.34.445;

20 (aa) Any building code violation citations received by the
21 declarant in connection with the condominium which have not been
22 corrected;

23 (bb) A statement of any unsatisfied judgments or pending suits
24 against the association, a statement of the status of any pending suits
25 material to the condominium of which the declarant has actual
26 knowledge, and a statement of any litigation brought by an owners'
27 association, unit owner, or governmental entity in which the declarant
28 or any affiliate of the declarant has been a defendant, arising out of
29 the construction, sale, or administration of any condominium within the
30 previous five years, together with the results thereof, if known;

31 (cc) Any rights of first refusal to lease or purchase any unit or
32 any of the common elements;

33 (dd) The extent to which the insurance provided by the association
34 covers furnishings, fixtures, and equipment located in the unit;

35 (ee) A notice which describes a purchaser's right to cancel the
36 purchase agreement or extend the closing under RCW 64.34.420, including
37 applicable time frames and procedures;

1 (ff) Any reports or statements required by RCW 64.34.415 or
2 64.34.440(6)(a). RCW 64.34.415 shall apply to the public offering
3 statement of a condominium in connection with which a final certificate
4 of occupancy was issued more than sixty calendar months prior to the
5 preparation of the public offering statement whether or not the
6 condominium is a conversion condominium as defined in RCW
7 64.34.020(10);

8 (gg) A list of the documents which the prospective purchaser is
9 entitled to receive from the declarant before the rescission period
10 commences;

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

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

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

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

28 (ll) A notice that is substantially in the form required by RCW
29 64.50.050.

30 (2) The public offering statement shall include copies of each of
31 the following documents: The declaration, the survey map and plans,
32 the articles of incorporation of the association, bylaws of the
33 association, rules and regulations, if any, current or proposed budget
34 for the association, (~~and~~) the balance sheet of the association
35 current within ninety days if assessments have been collected for
36 ninety days or more, and any express written warranty or other document
37 disclosed pursuant to subsection (1)(z) of this section.

1 If any of the foregoing documents listed in this subsection are not
2 available because they have not been executed, adopted, or recorded,
3 drafts of such documents shall be provided with the public offering
4 statement, and, before closing the sale of a unit, the purchaser shall
5 be given copies of any material changes between the draft of the
6 proposed documents and the final documents.

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

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

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

18 **Sec. 6.** RCW 64.34.425 and 1992 c 220 s 23 are each amended to read
19 as follows:

20 (1) Except in the case of a sale where delivery of a public
21 offering statement is required, or unless exempt under RCW
22 64.34.400(2), a unit owner shall furnish to a purchaser before
23 execution of any contract for sale of a unit, or otherwise before
24 conveyance, a resale certificate, signed by an officer or authorized
25 agent of the association and based on the books and records of the
26 association and the actual knowledge of the person signing the
27 certificate, containing:

28 (a) A statement disclosing any right of first refusal or other
29 restraint on the free alienability of the unit contained in the
30 declaration;

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

36 (c) A statement, which shall be current to within forty-five days,

- 1 of any common expenses or special assessments against any unit in the
2 condominium that are past due over thirty days;
- 3 (d) A statement, which shall be current to within forty-five days,
4 of any obligation of the association which is past due over thirty
5 days;
- 6 (e) A statement of any other fees payable by unit owners;
- 7 (f) A statement of any anticipated repair or replacement cost in
8 excess of five percent of the annual budget of the association that has
9 been approved by the board of directors;
- 10 (g) A statement of the amount of any reserves for repair or
11 replacement and of any portions of those reserves currently designated
12 by the association for any specified projects;
- 13 (h) The annual financial statement of the association, including
14 the audit report if it has been prepared, for the year immediately
15 preceding the current year.
- 16 (i) A balance sheet and a revenue and expense statement of the
17 association prepared on an accrual basis, which shall be current to
18 within one hundred twenty days;
- 19 (j) The current operating budget of the association;
- 20 (k) A statement of any unsatisfied judgments against the
21 association and the status of any pending suits or legal proceedings in
22 which the association is a plaintiff or defendant;
- 23 (l) A statement describing any insurance coverage provided for the
24 benefit of unit owners;
- 25 (m) A statement as to whether there are any alterations or
26 improvements to the unit or to the limited common elements assigned
27 thereto that violate any provision of the declaration;
- 28 (n) A statement of the number of units, if any, still owned by the
29 declarant, whether the declarant has transferred control of the
30 association to the unit owners, and the date of such transfer;
- 31 (o) A statement as to whether there are any violations of the
32 health or building codes with respect to the unit, the limited common
33 elements assigned thereto, or any other portion of the condominium;
- 34 (p) A statement of the remaining term of any leasehold estate
35 affecting the condominium and the provisions governing any extension or
36 renewal thereof; and
- 37 (q) A copy of the declaration, the bylaws, the rules or regulations
38 of the association, and any other information reasonably requested by

1 mortgagees of prospective purchasers of units. Information requested
2 generally by the federal national mortgage association, the federal
3 home loan bank board, the government national mortgage association, the
4 veterans administration and the department of housing and urban
5 development shall be deemed reasonable, provided such information is
6 reasonably available to the association.

7 (2) The association, within ten days after a request by a unit
8 owner, and subject to payment of any fee imposed pursuant to RCW
9 64.34.304(1)(1), shall furnish a resale certificate signed by an
10 officer or authorized agent of the association and containing the
11 information necessary to enable the unit owner to comply with this
12 section. For the purposes of this chapter, a reasonable charge for the
13 preparation of a resale certificate may not exceed one hundred fifty
14 dollars. The association may charge a unit owner a nominal fee for
15 updating a resale certificate within six months of the unit owner's
16 request. The unit owner shall also sign the certificate but the unit
17 owner is not liable to the purchaser for any erroneous information
18 provided by the association and included in the certificate unless and
19 to the extent the unit owner had actual knowledge thereof.

20 (3) A purchaser is not liable for any unpaid assessment or fee
21 against the unit as of the date of the certificate greater than the
22 amount set forth in the certificate prepared by the association unless
23 and to the extent such purchaser had actual knowledge thereof. A unit
24 owner is not liable to a purchaser for the failure or delay of the
25 association to provide the certificate in a timely manner, but the
26 purchaser's contract is voidable by the purchaser until the certificate
27 has been provided and for five days thereafter or until conveyance,
28 whichever occurs first.

29 **Sec. 7.** RCW 64.34.445 and 1992 c 220 s 26 are each amended to read
30 as follows:

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

35 (2) A declarant and any dealer impliedly warrants that a unit and
36 the common elements in the condominium are suitable for the ordinary

1 uses of real estate of its type and that any improvements made or
2 contracted for by such declarant or dealer will be:

3 (a) Free from defective materials; and

4 (b) Constructed in accordance with sound engineering and
5 construction standards, and in a workmanlike manner in compliance with
6 all laws then applicable to such improvements. However, an implied
7 warranty of quality applies only to substantial defects or deviations.
8 The implied warranty extends only to defective materials or deviations
9 in construction practices that have a material effect on the structural
10 integrity of a unit or common area; or have a material effect on the
11 safety of unit owners; or substantially impair the marketability of the
12 unit for its intended purpose. Defects or deviations that are
13 discoverable through the purchaser's normal and prudent inspection are
14 not covered by the implied warranty of quality. As used in this
15 chapter, "material defect," "substantial," and "substantially impair"
16 refer to a defect or deviation that prevents the unit or common element
17 from being used for its intended purpose.

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

22 (4) Warranties imposed by this section may be replaced, excluded,
23 or modified as specified in RCW 64.34.450 and an express written
24 warranty between a declarant and a unit purchaser applies to claims
25 against the declarant that may be brought by subsequent purchasers.

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 unless replaced by an
31 expressed warranty.

32 **Sec. 8.** RCW 64.34.450 and 1989 c 43 s 4-113 are each amended to
33 read as follows:

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

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

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

4 (2) ~~((With respect to a purchaser of a unit that may be occupied
5 for residential use, no))~~ For units intended for residential use:

6 (a) A general disclaimer of implied warranties of quality is
7 effective, ~~((but))~~ if a declarant ~~((and any))~~ or dealer ~~((may disclaim~~
8 liability in an instrument signed by the purchaser for a specified
9 defect or specified failure to comply with applicable law, if the
10 defect or failure entered into and became a part of the basis of the
11 bargain)) replaces, excludes, or modifies the implied warranty as
12 specified in this section with an expressed warranty as specified in
13 (b) of this subsection;

14 (b) The implied warranties of quality under RCW 64.34.445 may be
15 replaced with an express written warranty of quality if:

16 (i) The disclosure required by RCW 64.34.410(1)(z) is contained in
17 a public offering statement as provided by RCW 64.34.410(3) and such
18 disclosure is set forth in ten-point bold face type in the declaration
19 or amendment thereto;

20 (ii) The express written warranty is set forth in full in the
21 declaration, an amendment to the declaration, or a document recorded
22 with the declaration; and

23 (iii) The unit purchaser who initially acquires the unit from the
24 declarant expressly acknowledges in a recorded written conveyance or
25 another recorded written instrument that the implied warranties of
26 quality have been replaced by the express written warranty; and

27 (c) An express written warranty approved by the United States
28 veterans administration or the United States department of housing and
29 urban development shall be deemed to have satisfied the requirements of
30 (b) of this subsection.

31 **Sec. 9.** RCW 64.34.452 and 2002 c 323 s 11 are each amended to read
32 as follows:

33 (1) A judicial proceeding or arbitration for breach of any
34 obligations arising under RCW 64.34.443 and 64.34.445 must be commenced
35 within four years after the cause of action accrues: PROVIDED, That
36 the period for commencing an action for a breach accruing pursuant to
37 subsection (2)(b) of this section shall not expire prior to one year

1 after termination of the period of declarant control, if any, under RCW
2 64.34.308(~~(4)~~) (5). Such period may not be reduced by either oral or
3 written agreement.

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

7 (a) As to a unit, the date the purchaser to whom the warranty is
8 first made enters into possession if a possessory interest was conveyed
9 or the date of acceptance of the instrument of conveyance if a
10 nonpossessory interest was conveyed; and

11 (b) As to each common element, at the latest of (i) the date the
12 first unit in the condominium was conveyed to a bona fide purchaser,
13 (ii) the date the common element was completed, or (iii) the date the
14 common element was added to the condominium.

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

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

26 NEW SECTION. **Sec. 10.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

30 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
31 preservation of the public peace, health, or safety, or support of the
32 state government and its existing public institutions, and takes effect
33 July 1, 2003."

SSB 5536 - S AMD 73

By Senators Finkbeiner, Prentice

ADOPTED AS AMENDED 03/11/2003

1 On page 1, line 1 of the title, after "condominiums;" strike the
2 remainder of the title and insert "amending RCW 64.34.100, 64.34.216,
3 64.34.308, 64.34.410, 64.34.425, 64.34.445, 64.34.450, and 64.34.452;
4 creating a new section; providing an effective date; and declaring an
5 emergency."

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