

ESSB 5536 - S AMD 644
By Senator Esser

ADOPTED AS AMENDED 02/12/2004

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

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

16 (2) It is the intent of the legislature that this act implement
17 changes in the condominium act that encourage insurance carriers to
18 provide liability insurance for condominium builders by: Providing for
19 arbitration of disputes; ensuring that material facts and claims are
20 presented as fully as possible in arbitration proceedings; confining
21 judicial review of arbitration decisions to the arbitration record,
22 except in very limited circumstances; requiring mandatory arbitration
23 of disputes involving construction defects; and eliminating litigation
24 over minor or insignificant problems, while continuing to protect
25 consumers' legitimate claims regarding condominium construction.

26 (3) It is the further intent of the legislature that these changes
27 in the condominium act ensure that a broad range of affordable
28 homeownership opportunities continue to be available to the residents
29 of the state and also assist cities' and counties' efforts to achieve
30 the density mandates of the growth management act.

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

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

8 (2) Any right or obligation declared by this chapter is enforceable
9 by arbitration or judicial proceeding. Arbitration may be provided for
10 in the declaration or by agreement of the parties. However, all claims
11 arising under or relating to RCW 64.34.443, 64.34.445, or 64.34.450
12 shall be subject to mandatory arbitration as set forth in this section.
13 In any arbitration of claims arising under or relating to RCW
14 64.34.443, 64.34.445, or 64.34.450, the arbitrator may award reasonable
15 attorneys' fees to the substantially prevailing party as set forth in
16 this section.

17 (3) Mandatory arbitration for claims arising under or relating to
18 RCW 64.34.443, 64.34.445, or 64.34.450 shall comply with the following
19 minimum standards:

20 (a) All disputes shall be heard by one qualified arbitrator, unless
21 the parties agree that three arbitrators shall be used. When three
22 arbitrators are used, one shall be appointed by each of the disputing
23 parties and the first two arbitrators shall appoint the third, who will
24 chair the panel. The parties shall select the identity and number of
25 the arbitrator(s) after service of the request, notice, or petition to
26 arbitrate. If, within thirty days after service of the request,
27 notice, or petition to arbitrate, the parties fail to agree on an
28 arbitrator or the required number of arbitrators fail to be appointed,
29 then an arbitrator shall be appointed under RCW 7.04.050 by the
30 presiding judge of the superior court of the county in which the
31 condominium is located;

32 (b) In any arbitration, at least one arbitrator must be a lawyer or
33 retired judge. Any additional arbitrator must be either a lawyer or
34 retired judge or a person who has experience with construction and
35 engineering standards and practices, written construction warranties,
36 or construction dispute resolution and a person shall not serve as an

1 arbitrator in any arbitration in which that person has any financial or
2 personal interest;

3 (c) The arbitration hearing must be conducted in a manner that
4 permits full, fair, and expeditious presentation of the case by both
5 parties. The arbitrator shall be bound by the law of Washington state.
6 Parties may be, but are not required to be, represented by attorneys.
7 The arbitrator may permit discovery to ensure a fair hearing but may
8 limit the scope or manner of discovery for good cause to avoid
9 excessive delay and costs to the parties. Unless the parties agree
10 otherwise or the arbitrator grants an extension for good cause, the
11 arbitration hearing shall be completed within six months of the service
12 of the request, notice, or petition to arbitrate or, when applicable
13 the service of the list of defects in accordance with RCW 64.50.030;

14 (d) Except as otherwise set forth in this section, arbitration
15 shall be conducted under chapter 7.04 RCW, unless the parties elect to
16 use the condominium or construction dispute resolution rules of the
17 American arbitration association, which are permitted to the extent not
18 inconsistent with this section. The expenses of witnesses including
19 expert witnesses shall be paid by the party producing the witnesses.
20 Each party shall pay its own reasonable attorneys' fees unless the
21 parties agree otherwise or unless the arbitrator awards reasonable
22 attorneys' fees or any part thereof to any specified party or parties.
23 All other expenses of arbitration shall be borne equally by the
24 parties, unless they agree otherwise or unless the arbitrator awards
25 such expenses or any part thereof to any specified party or parties;
26 and

27 (e) Service of a request, notice, or petition to arbitrate
28 commences an arbitration for purposes of RCW 64.34.452.

29 (4) Within twenty days after the arbitration decision and award is
30 served on the parties, any aggrieved party may file with the clerk of
31 the superior court in which the condominium is located a written notice
32 of appeal and request for a trial in the superior court. Such a trial
33 shall thereupon be held and shall include a right to a jury, if
34 demande. Such a trial shall be commenced on an expedited schedule
35 within ninety days of the filing of the notice of appeal.

36 (a) Judicial review of an arbitration decision and award shall be

1 confined to the record created by the arbitrator, except that, upon
2 order of the court, the record may be supplemented by additional
3 evidence or claim only if the additional evidence or claim relates to:

4 (i) Claims for disqualification of an arbitrator, when such claims
5 were unknown to the appealing party at the time of arbitration;

6 (ii) Claims regarding matters that were improperly excluded from
7 the arbitration record after being offered by the appealing party;

8 (iii) Claims regarding matters that were outside the jurisdiction
9 of the arbitrator; or

10 (iv) Material facts regarding claims that have been arbitrated and
11 that: (A) Were unknown at the time of the arbitration hearing by the
12 party proposing their introduction where such a lack of knowledge was
13 not the result of the party's prior refusal or failure to exercise
14 reasonable diligence in the investigation of its claims or defenses;
15 and (B) could not have been reasonably discovered at the time of
16 arbitration where the failure to discover was not intentional or due to
17 inexcusable neglect.

18 (b) Except when the court has authorized the record to be
19 supplemented under this subsection (4), the parties may not conduct
20 pretrial discovery. When pretrial discovery is permitted, the court
21 shall, in its order regarding supplementing the record, establish the
22 scope, timing, and extent of permissible discovery and shall require
23 the moving party to disclose before trial the specific additional
24 evidence they intend to offer.

25 (c) Offers of compromise and the assessment of costs and reasonable
26 attorneys' fees shall be governed by RCW 7.06.050 and 7.06.060.

27 (d) The arbitration decision shall be in writing and must set forth
28 findings of fact and conclusions of law that support the decision.

29 (e) Unless the parties agree otherwise, a complete verbatim record
30 of the arbitration hearing shall be maintained that includes all
31 exhibits offered by the parties. Video recording of the arbitration
32 hearing is permissible.

33 (f) Within forty-five days after entry of an order to submit the
34 record, or within such other time as the court allows or as the parties
35 agree, the arbitrator shall submit to the court a certified copy of the
36 record for judicial review of the decision, except that the petitioner
37 shall prepare at the petitioner's expense and submit the verbatim

1 hearing record required under (e) of this subsection. If the parties
2 agree, or upon order of the court, the record shall be shortened or
3 summarized to avoid reproduction and transcription of portions of the
4 record that are duplicative or not relevant to the issues to be
5 reviewed by the court. The petitioner shall pay the arbitrator the
6 cost of preparing the record before the arbitrator submits the record
7 to the court. Failure by the petitioner to timely pay the arbitrator
8 relieves the arbitrator of responsibility to submit the record and is
9 grounds for dismissal of the petition. If the relief sought by the
10 petitioner is granted in whole or in part, the court shall equitably
11 assess the costs of preparing the record among the parties. In
12 assessing costs, the court shall take into account the extent to which
13 each party prevailed and the reasonableness of the parties' conduct in
14 agreeing or not agreeing to shorten or summarize the record under this
15 subsection (4)(f).

16 (g) Unless the parties agree otherwise, an appeal of an
17 arbitrator's decision is an appeal of the full and complete decision.

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

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

21 (a) The name of the condominium, which must include the word
22 "condominium" or be followed by the words "a condominium," and the name
23 of the association;

24 (b) A legal description of the real property included in the
25 condominium;

26 (c) A statement of the number of units which the declarant has
27 created and, if the declarant has reserved the right to create
28 additional units, the number of such additional units;

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

32 (e) With respect to each existing unit:

33 (i) The approximate square footage;

34 (ii) The number of bathrooms, whole or partial;

35 (iii) The number of rooms designated primarily as bedrooms;

36 (iv) The number of built-in fireplaces; and

1 (v) The level or levels on which each unit is located.
2 The data described in (ii), (iii), and (iv) of this subsection
3 (1)(e) may be omitted with respect to units restricted to
4 nonresidential use;
5 (f) The number of parking spaces and whether covered, uncovered, or
6 enclosed;
7 (g) The number of moorage slips, if any;
8 (h) A description of any limited common elements, other than those
9 specified in RCW 64.34.204 (2) and (4), as provided in RCW
10 64.34.232(2)(j);
11 (i) A description of any real property which may be allocated
12 subsequently by the declarant as limited common elements, other than
13 limited common elements specified in RCW 64.34.204 (2) and (4),
14 together with a statement that they may be so allocated;
15 (j) A description of any development rights and other special
16 declarant rights under RCW 64.34.020(29) reserved by the declarant,
17 together with a description of the real property to which the
18 development rights apply, and a time limit within which each of those
19 rights must be exercised;
20 (k) If any development right may be exercised with respect to
21 different parcels of real property at different times, a statement to
22 that effect together with: (i) Either a statement fixing the
23 boundaries of those portions and regulating the order in which those
24 portions may be subjected to the exercise of each development right, or
25 a statement that no assurances are made in those regards; and (ii) a
26 statement as to whether, if any development right is exercised in any
27 portion of the real property subject to that development right, that
28 development right must be exercised in all or in any other portion of
29 the remainder of that real property;
30 (l) Any other conditions or limitations under which the rights
31 described in (j) of this subsection may be exercised or will lapse;
32 (m) An allocation to each unit of the allocated interests in the
33 manner described in RCW 64.34.224;
34 (n) Any restrictions in the declaration on use, occupancy, or
35 alienation of the units;
36 (o) A cross-reference by recording number to the survey map and
37 plans for the units created by the declaration; and

1 (p) All matters required or permitted by RCW 64.34.220 through
2 64.34.232, 64.34.256, 64.34.260, 64.34.276, (~~and~~) 64.34.308(4), and
3 64.34.450.

4 (2) All amendments to the declaration shall contain a cross-
5 reference by recording number to the declaration and to any prior
6 amendments thereto. All amendments to the declaration adding units
7 shall contain a cross-reference by recording number to the survey map
8 and plans relating to the added units and set forth all information
9 required by RCW 64.34.216(1) with respect to the added units.

10 (3) The declaration may contain any other matters the declarant
11 deems appropriate.

12 **Sec. 4.** RCW 64.34.324 and 1992 c 220 s 16 are each amended to read
13 as follows:

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

16 (a) The number, qualifications, powers and duties, terms of office,
17 and manner of electing and removing the board of directors and officers
18 and filling vacancies;

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

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

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

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

26 (f) A statement regarding the decision-making standards to which
27 the board of directors or officers will be held.

28 (2) Subject to the provisions of the declaration, the bylaws may
29 provide for any other matters the association deems necessary and
30 appropriate.

31 (3) In determining the qualifications of any officer or director of
32 the association, notwithstanding the provision of RCW 64.34.020(32) the
33 term "unit owner" in such context shall, unless the declaration or
34 bylaws otherwise provide, be deemed to include any director, officer,
35 partner in, or trustee of any person, who is, either alone or in
36 conjunction with another person or persons, a unit owner. Any officer

1 or director of the association who would not be eligible to serve as
2 such if he or she were not a director, officer, partner in, or trustee
3 of such a person shall be disqualified from continuing in office if he
4 or she ceases to have any such affiliation with that person, or if that
5 person would have been disqualified from continuing in such office as
6 a natural person.

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

9 (1) A public offering statement shall contain the following
10 information:

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

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

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

14 (d) The relationship of the management company to the declarant, if
15 any;

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

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

23 (g) A brief description of the permitted uses and use restrictions
24 pertaining to the units and the common elements;

25 (h) A brief description of the restrictions, if any, on the renting
26 or leasing of units by the declarant or other unit owners, together
27 with the rights, if any, of the declarant to rent or lease at least a
28 majority of units;

29 (i) The number of existing units in the condominium and the maximum
30 number of units that may be added to the condominium;

31 (j) A list of the principal common amenities in the condominium
32 which materially affect the value of the condominium and those that
33 will or may be added to the condominium;

34 (k) A list of the limited common elements assigned to the units
35 being offered for sale;

- 1 (l) The identification of any real property not in the condominium,
2 the owner of which has access to any of the common elements, and a
3 description of the terms of such access;
- 4 (m) The identification of any real property not in the condominium
5 to which unit owners have access and a description of the terms of such
6 access;
- 7 (n) The status of construction of the units and common elements,
8 including estimated dates of completion if not completed;
- 9 (o) The estimated current common expense liability for the units
10 being offered;
- 11 (p) An estimate of any payment with respect to the common expense
12 liability for the units being offered which will be due at closing;
- 13 (q) The estimated current amount and purpose of any fees not
14 included in the common expenses and charged by the declarant or the
15 association for the use of any of the common elements;
- 16 (r) Any assessments which have been agreed to or are known to the
17 declarant and which, if not paid, may constitute a lien against any
18 units or common elements in favor of any governmental agency;
- 19 (s) The identification of any parts of the condominium, other than
20 the units, which any individual owner will have the responsibility for
21 maintaining;
- 22 (t) If the condominium involves a conversion condominium, the
23 information required by RCW 64.34.415;
- 24 (u) Whether timesharing is restricted or prohibited, and if
25 restricted, a general description of such restrictions;
- 26 (v) A list of all development rights reserved to the declarant and
27 all special declarant rights reserved to the declarant, together with
28 the dates such rights must terminate, and a copy of or reference by
29 recording number to any recorded transfer of a special declarant right;
- 30 (w) A description of any material differences in terms of
31 furnishings, fixtures, finishes, and equipment between any model unit
32 available to the purchaser at the time the agreement for sale is
33 executed and the unit being offered;
- 34 (x) Any liens on real property to be conveyed to the association
35 required to be disclosed pursuant to RCW 64.34.435(2)(b);
- 36 (y) A list of any physical hazards known to the declarant which

1 particularly affect the condominium or the immediate vicinity in which
2 the condominium is located and which are not readily ascertainable by
3 the purchaser;

4 (z) A brief description of any construction warranties to be
5 provided to the purchaser and a brief statement as to whether any
6 express written warranty replaces or other document excludes or
7 modifies the implied warranties of quality provided in RCW 64.34.445;

8 (aa) Any building code violation citations received by the
9 declarant in connection with the condominium which have not been
10 corrected;

11 (bb) A statement of any unsatisfied judgments or pending suits
12 against the association, a statement of the status of any pending suits
13 material to the condominium of which the declarant has actual
14 knowledge, and a statement of any litigation brought by an owners'
15 association, unit owner, or governmental entity in which the declarant
16 or any affiliate of the declarant has been a defendant, arising out of
17 the construction, sale, or administration of any condominium within the
18 previous five years, together with the results thereof, if known;

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

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

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

26 (ff) Any reports or statements required by RCW 64.34.415 or
27 64.34.440(6)(a). RCW 64.34.415 shall apply to the public offering
28 statement of a condominium in connection with which a final certificate
29 of occupancy was issued more than sixty calendar months prior to the
30 preparation of the public offering statement whether or not the
31 condominium is a conversion condominium as defined in RCW
32 64.34.020(10);

33 (gg) A list of the documents which the prospective purchaser is
34 entitled to receive from the declarant before the rescission period
35 commences;

36 (hh) A notice which states: A purchaser may not rely on any
37 representation or express warranty unless it is contained in the public

1 offering statement or made in writing signed by the declarant or by any
2 person identified in the public offering statement as the declarant's
3 agent;

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

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

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

16 (ll) A notice that is substantially in the form required by RCW
17 64.50.050.

18 (2) The public offering statement shall include copies of each of
19 the following documents: The declaration, the survey map and plans,
20 the articles of incorporation of the association, bylaws of the
21 association, rules and regulations, if any, current or proposed budget
22 for the association, and the balance sheet of the association current
23 within ninety days if assessments have been collected for ninety days
24 or more.

25 If any of the foregoing documents listed in this subsection are not
26 available because they have not been executed, adopted, or recorded,
27 drafts of such documents shall be provided with the public offering
28 statement, and, before closing the sale of a unit, the purchaser shall
29 be given copies of any material changes between the draft of the
30 proposed documents and the final documents.

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

35 (4) The disclosures required by subsection (1)(z), (ee), (hh),
36 (ii), and (ll) of this section shall be located at the top of the first

1 page of the public offering statement and be typed or printed in ten-
2 point bold face type size.

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

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

8 (1) Except in the case of a sale where delivery of a public
9 offering statement is required, or unless exempt under RCW
10 64.34.400(2), a unit owner shall furnish to a purchaser before
11 execution of any contract for sale of a unit, or otherwise before
12 conveyance, a resale certificate, signed by an officer or authorized
13 agent of the association and based on the books and records of the
14 association and the actual knowledge of the person signing the
15 certificate, containing:

16 (a) A statement disclosing any right of first refusal or other
17 restraint on the free alienability of the unit contained in the
18 declaration;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (p) A statement of the remaining term of any leasehold estate
23 affecting the condominium and the provisions governing any extension or
24 renewal thereof; and

25 (q) A copy of the declaration, the bylaws, the rules or regulations
26 of the association, and any other information reasonably requested by
27 mortgagees of prospective purchasers of units. Information requested
28 generally by the federal national mortgage association, the federal
29 home loan bank board, the government national mortgage association, the
30 veterans administration and the department of housing and urban
31 development shall be deemed reasonable, provided such information is
32 reasonably available to the association.

33 (2) The association, within ten days after a request by a unit
34 owner, and subject to payment of any fee imposed pursuant to RCW
35 64.34.304(1)(1), shall furnish a resale certificate signed by an
36 officer or authorized agent of the association and containing the
37 information necessary to enable the unit owner to comply with this

1 section. For the purposes of this chapter, a reasonable charge for the
2 preparation of a resale certificate may not exceed one hundred fifty
3 dollars. The association may charge a unit owner a nominal fee for
4 updating a resale certificate within six months of the unit owner's
5 request. The unit owner shall also sign the certificate but the unit
6 owner is not liable to the purchaser for any erroneous information
7 provided by the association and included in the certificate unless and
8 to the extent the unit owner had actual knowledge thereof.

9 (3) A purchaser is not liable for any unpaid assessment or fee
10 against the unit as of the date of the certificate greater than the
11 amount set forth in the certificate prepared by the association unless
12 and to the extent such purchaser had actual knowledge thereof. A unit
13 owner is not liable to a purchaser for the failure or delay of the
14 association to provide the certificate in a timely manner, but the
15 purchaser's contract is voidable by the purchaser until the certificate
16 has been provided and for five days thereafter or until conveyance,
17 whichever occurs first.

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

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

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

28 ~~((a))~~ (i) Free from defective materials; ~~((and~~
29 ~~(b))~~ (ii) Constructed in accordance with sound engineering and
30 construction standards(~~(, and)~~);
31 (iii) Constructed in a workmanlike manner; and
32 (iv) Constructed in compliance with all laws then applicable to
33 such improvements.

34 (b) The implied warranty is applicable only to the extent that a
35 failure under (a) of this subsection: (i) Has had or will have a
36 materially adverse effect on the structural integrity of a unit or

1 common element; (ii) has resulted or will result in a unit or common
2 element being unsafe in any material respect when used for its intended
3 purpose; (iii) would have substantially reduced the fair market value
4 of the unit on the date of initial conveyance by the declarant or
5 dealer had the defect been disclosed at the date of initial conveyance;
6 or (iv) materially impairs or will impair the use of a unit or common
7 element for its intended purpose.

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

12 (4) Warranties imposed by this section may be replaced, excluded,
13 or modified as specified in RCW 64.34.450.

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

17 (6) Any conveyance of a unit transfers to the purchaser all of the
18 declarant's implied warranties of quality, as they may be replaced,
19 excluded, or modified by an express written warranty as specified in
20 RCW 64.34.450.

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

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

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

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

30 (2) (~~With respect to a purchaser of a unit that may be occupied~~)
31 For units intended for residential use, no (~~general~~) disclaimer of
32 implied warranties of quality is effective, (~~but a~~) except that:

33 (a) A declarant (~~and any~~) or dealer may disclaim liability in
34 (~~an~~) a separate recorded instrument signed by the purchaser for a
35 specified defect or specified failure to comply with applicable law,
36 if: (i) The specific defect or failure (~~entered into and became~~) is

1 known to exist at the time of disclosure; (ii) the disclaimer
2 specifically describes the defect or failure; (iii) the disclaimer
3 includes a statement as to the effect of the defect or failure; and
4 (iv) the disclaimer is clearly a part of the basis of the bargain;
5 and/or

6 (b) A declarant or dealer may replace or modify the implied
7 warranties of quality provided under RCW 64.34.445 with an express
8 written warranty of quality only if each of the following conditions
9 are met:

10 (i) The express written warranty does not reduce protections
11 provided to the purchaser by the implied warranty set forth in RCW
12 64.34.445;

13 (ii) The disclosure required by RCW 64.34.410(1)(z) is contained in
14 a public offering statement as provided by RCW 64.34.410(3) and such
15 disclosure is set forth in twelve-point bold face type in the
16 declaration or amendment thereto;

17 (iii) The express written warranty is set forth in full in the
18 declaration, an amendment to the declaration, or another recorded
19 document; and

20 (iv) The unit purchaser who initially acquires the unit from the
21 declarant expressly acknowledges in a recorded written conveyance or
22 another recorded written instrument that the implied warranties of
23 quality have been replaced or modified by the express written warranty.

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

26 (1) A judicial proceeding or arbitration for breach of any
27 obligations arising under or relating to RCW 64.34.443 ((and)),
28 64.34.445, and 64.34.450 must be commenced within four years after the
29 cause of action accrues: PROVIDED, That the period for commencing an
30 action for a breach accruing pursuant to subsection (2)(b) of this
31 section shall not expire prior to one year after termination of the
32 period of declarant control, if any, under RCW 64.34.308(4). Such
33 periods may not be reduced by either oral or written agreement, or
34 through the use of contractual claims or notice procedures that require
35 the filing or service of any claim or notice prior to the expiration of

1 the period specified in this section. Arbitration under this chapter
2 shall be deemed commenced when a request, notice, or petition is served
3 on a party that is necessary to the resolution of the claim.

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. A new section is added to chapter 64.34 RCW
27 to read as follows:

28 (1) Effective January 1, 2006, all condominiums shall be inspected
29 by a qualified third party independent inspector during the course of
30 construction. Condominiums inspected that are granted a certification
31 of inspection shall be presumed to be constructed in accordance with
32 sound engineering and construction standards; constructed in a
33 workmanlike manner; and constructed in compliance with all laws then
34 applicable to improvements.

35 (2)(a) The inspections shall be performed by qualified inspectors.
36 To be qualified, the person performing the inspection shall have at

1 least five years of verifiable experience in construction; have
2 certification as a building inspector, combination inspector or
3 combination dwelling inspector from the international code council; and
4 have successfully passed the technical written examination promulgated
5 by the international code council for those certification categories.

6 (b) Nothing in this section, as it relates to qualified inspectors,
7 shall be construed to alter the requirements for licensure, or the
8 jurisdiction, authority, or scope of practice of architects,
9 professional engineers, or general contractors.

10 (c) A qualified inspector shall be free from any interference or
11 influence relating to the inspections under this chapter. An inspector
12 shall not engage in any design or construction activities relating to
13 the condominium for which the inspector is engaged to inspect. Nor may
14 a qualified inspector be engaged by the declarant or agents of the
15 declarant in any other activity except qualified inspections.

16 (3)(a) Any inspection during the course of construction of a
17 condominium shall include at a minimum the following:

18 (i) An independent review of all plans and specifications for the
19 condominium to determine compliance with all laws then applicable to
20 improvements and to ensure that the plans and specifications are in
21 accordance with sound engineering and construction standards.

22 (ii) An independent periodic review of all construction activities
23 during the course of construction to ensure that the condominium has
24 been constructed in a workmanlike manner.

25 (b) A qualified inspector shall prepare a certificate certifying
26 that the condominium has been inspected during the course of
27 construction in compliance with this chapter. The certificate of
28 inspection shall be provided to each purchaser at or prior to closing
29 of the sale of a unit.

30 (4)(a) A qualified inspector shall have no monetary liability and
31 no cause of action for damages shall arise against a qualified
32 inspector for the inspections required by this chapter.

33 (b) The immunity provided under this section does not inure to the
34 benefit of the qualified inspector for damages caused to the declarant
35 solely by the negligence or willful misconduct of the qualified
36 inspector resulting from the provision of services under the contract
37 with the declarant.

1 (c) Except for qualified inspectors, this section shall not relieve
2 from, excuse, or lessen in any manner, the responsibility or liability
3 of any person, company, contractor, builder, developer, architect,
4 engineer, designer, or other individual or entity who develops,
5 improves, owns, operates, or manages any condominium for any damages to
6 persons or property caused by construction or design defects. The fact
7 that an inspection by a qualified inspector has taken place may be
8 introduced as evidence in a construction defect action, including any
9 reports or other items generated by the qualified inspector.

10 NEW SECTION. **Sec. 11.** Sections 3, 5, and 8 of this act apply only
11 to condominiums created by declarations recorded on or after July 1,
12 2004.

13 NEW SECTION. **Sec. 12.** If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected.

17 NEW SECTION. **Sec. 13.** This act takes effect July 1, 2004."

ESSB 5536 - S AMD 644
By Senator Esser

ADOPTED AS AMENDED 02/12/2004

18 On page 1, line 1 of the title, after "condominiums;" strike the
19 remainder of the title and insert "amending RCW 64.34.100, 64.34.216,
20 64.34.324, 64.34.410, 64.34.425, 64.34.445, 64.34.450, and 64.34.452;
21 adding new sections to chapter 64.34 RCW; creating a new section; and
22 providing an effective date."

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