
HOUSE BILL 2020

State of Washington 58th Legislature 2003 Regular Session

By Representatives Lantz, Benson, Voloria, Kessler, Mielke, Gombosky, Simpson, Cooper, Buck and Clibborn

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1 AN ACT Relating to condominiums; amending RCW 64.34.308, 64.34.445,
2 and 64.34.452; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature finds, declares, and
5 determines that it is necessary and appropriate to enact limited
6 changes in the law related to liability for decisions made by a
7 condominium association board of directors, the scope of the implied
8 warranty of quality, and actions for breach of warranty under this act.

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

11 (1) Except as provided in the declaration, the bylaws, subsection
12 ((+2)) (3) of this section, or other provisions of this chapter, the
13 board of directors shall act in all instances on behalf of the
14 association. In the performance of their duties, the officers and
15 members of the board of directors are required to exercise: (a) If
16 appointed by the declarant, the care required of fiduciaries of the
17 unit owners; or (b) if elected by the unit owners, ordinary and
18 reasonable care.

1 (2) An association and its directors, officers, and managing agents
2 are not liable for a decision, including a decision not to commence a
3 judicial proceeding under this chapter if:

4 (a) The decision is made by a board of directors elected under
5 subsection (7) of this section and that board does not include any
6 member who is an affiliate of a declarant; or

7 (b) In reaching the decision the directors, officers, and managing
8 agents act in good faith, in a manner they believe to be in the best
9 interests of the corporation, and with the care, including reasonable
10 inquiry, an ordinarily prudent person in a like position uses under the
11 circumstances.

12 (3) The board of directors shall not act on behalf of the
13 association to amend the declaration in any manner that requires the
14 vote or approval of the unit owners pursuant to RCW 64.34.264, to
15 terminate the condominium pursuant to RCW 64.34.268, or to elect
16 members of the board of directors or determine the qualifications,
17 powers, and duties, or terms of office of members of the board of
18 directors pursuant to subsection ~~((6))~~ (7) of this section; but the
19 board of directors may fill vacancies in its membership for the
20 unexpired portion of any term.

21 ~~((3))~~ (4) Within thirty days after adoption of any proposed
22 budget for the condominium, the board of directors shall provide a
23 summary of the budget to all the unit owners and shall set a date for
24 a meeting of the unit owners to consider ratification of the budget not
25 less than fourteen nor more than sixty days after mailing of the
26 summary. Unless at that meeting the owners of units to which a
27 majority of the votes in the association are allocated or any larger
28 percentage specified in the declaration reject the budget, the budget
29 is ratified, whether or not a quorum is present. In the event the
30 proposed budget is rejected or the required notice is not given, the
31 periodic budget last ratified by the unit owners shall be continued
32 until such time as the unit owners ratify a subsequent budget proposed
33 by the board of directors.

34 ~~((4))~~ (5)(a) Subject to subsection ~~((5))~~ (6) of this section,
35 the declaration may provide for a period of declarant control of the
36 association, during which period a declarant, or persons designated by
37 the declarant, may: (i) Appoint and remove the officers and members of
38 the board of directors; or (ii) veto or approve a proposed action of

1 the board or association. A declarant's failure to veto or approve
2 such proposed action in writing within thirty days after receipt of
3 written notice of the proposed action shall be deemed approval by the
4 declarant.

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

22 (~~((+5))~~) (6) Not later than sixty days after conveyance of twenty-
23 five percent of the units which may be created to unit owners other
24 than a declarant, at least one member and not less than twenty-five
25 percent of the members of the board of directors must be elected by
26 unit owners other than the declarant. Not later than sixty days after
27 conveyance of fifty percent of the units which may be created to unit
28 owners other than a declarant, not less than thirty-three and one-third
29 percent of the members of the board of directors must be elected by
30 unit owners other than the declarant.

31 (~~((+6))~~) (7) Within thirty days after the termination of any period
32 of declarant control, the unit owners shall elect a board of directors
33 of at least three members, at least a majority of whom must be unit
34 owners. The number of directors need not exceed the number of units
35 then in the condominium. The board of directors shall elect the
36 officers. Such members of the board of directors and officers shall
37 take office upon election.

1 ~~((7))~~ (8) Notwithstanding any provision of the declaration or
2 bylaws to the contrary, the unit owners, by a two-thirds vote of the
3 voting power in the association present and entitled to vote at any
4 meeting of the unit owners at which a quorum is present, may remove any
5 member of the board of directors with or without cause, other than a
6 member appointed by the declarant. The declarant may not remove any
7 member of the board of directors elected by the unit owners. Prior to
8 the termination of the period of declarant control, the unit owners,
9 other than the declarant, may remove by a two-thirds vote, any director
10 elected by the unit owners.

11 **Sec. 3.** RCW 64.34.445 and 1992 c 220 s 26 are each amended to read
12 as follows:

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

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

21 (a) Free from defective materials; ~~((and))~~

22 (b) Constructed in accordance with sound engineering and
23 construction standards ~~((, and))~~;

24 (c) Completed in a workmanlike manner; and

25 (d) In compliance with all laws then applicable to such
26 improvements. However, there is a breach of an implied warranty under
27 this subsection (2)(d) only if the failure to comply with applicable
28 law has a material effect on any of the following: Safety,
29 habitability, performance, durability, functionality, marketability, or
30 use and enjoyment, of the unit, the common elements, or any of the
31 condominium components.

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

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

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

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

6 **Sec. 4.** RCW 64.34.452 and 2002 c 323 s 11 are each amended to read
7 as follows:

8 (1) A judicial proceeding for breach of any obligations arising
9 under RCW 64.34.443 and 64.34.445 must be commenced within (~~four~~)
10 eight years after the cause of action accrues: PROVIDED, That the
11 period for commencing an action for a breach accruing pursuant to
12 subsection (2)(b) of this section shall not expire prior to one year
13 after termination of the period of declarant control, if any, under RCW
14 64.34.308(4). (~~Such~~) Except under chapter 64.50 RCW, this period may
15 not be reduced by either oral or written agreement, or through the use
16 of contractual claims or notice procedures that require the filing or
17 service of any claim or notice prior to the expiration of the period
18 specified in this section.

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

22 (a) As to a unit, the date the purchaser to whom the warranty is
23 first made enters into possession if a possessory interest was conveyed
24 or the date of acceptance of the instrument of conveyance if a
25 nonpossessory interest was conveyed; and

26 (b) As to each common element, at the latest of (i) the date the
27 first unit in the condominium was conveyed to a bona fide purchaser,
28 (ii) the date the common element was completed, or (iii) the date the
29 common element was added to the condominium.

30 (3) If a warranty of quality explicitly extends to future
31 performance or duration of any improvement or component of the
32 condominium, the cause of action accrues at the time the breach is
33 discovered or at the end of the period for which the warranty
34 explicitly extends, whichever is earlier.

35 (4) If a written notice of claim is served under RCW 64.50.020
36 within the time prescribed for the filing of an action under this
37 chapter, the statutes of limitation in this chapter and any applicable

1 statutes of repose for construction-related claims are tolled until
2 sixty days after the period of time during which the filing of an
3 action is barred under RCW 64.50.020.

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