
HOUSE BILL 2004

State of Washington 59th Legislature 2005 Regular Session

By Representatives Flannigan, Campbell, Ormsby, Hankins, Pettigrew, Darneille, Moeller, O'Brien, Hasegawa, Hudgins and Simpson

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1 AN ACT Relating to accrual and limitations of actions or claims
2 arising from construction; and amending RCW 4.16.310 and 4.16.326.

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

4 **Sec. 1.** RCW 4.16.310 and 2002 c 323 s 9 are each amended to read
5 as follows:

6 (1) Except as provided in subsection (3) of this section, all
7 claims or causes of action as set forth in RCW 4.16.300 shall accrue,
8 and the applicable statute of limitation shall begin to run only during
9 the period within six years after substantial completion of
10 construction, or during the period within six years after the
11 termination of the services enumerated in RCW 4.16.300, whichever is
12 later. The phrase "substantial completion of construction" shall mean
13 the state of completion reached when an improvement upon real property
14 may be used or occupied for its intended use. Any cause of action
15 which has not accrued within six years after such substantial
16 completion of construction, or within six years after such termination
17 of services, whichever is later, shall be barred: PROVIDED, That this
18 limitation shall not be asserted as a defense by any owner, tenant or
19 other person in possession and control of the improvement at the time

1 such cause of action accrues. The limitations prescribed in this
2 section apply to all claims or causes of action as set forth in RCW
3 4.16.300 brought in the name or for the benefit of the state which are
4 made or commenced after June 11, 1986.

5 (2) If a written notice is filed under RCW 64.50.020 within the
6 time prescribed for the filing of an action under this chapter, the
7 period of time during which the filing of an action is barred under RCW
8 64.50.020 plus sixty days shall not be a part of the period limited for
9 the commencement of an action, nor for the application of this section.

10 (3) Subsection (1) of this section applies to the causes of action
11 or claims identified in this subsection (3), except that the time
12 during which accrual of a cause or claim must occur, and during which
13 the period of limitation must begin, shall be fifteen years. With
14 respect to causes of action or claims identified in this subsection
15 (3), accrual occurs when the claimant discovers, or in the exercise of
16 reasonable diligence should have discovered, the facts that give rise
17 to the cause of action or claim. This subsection (3) applies to causes
18 of action or claims that involve:

19 (a) Residential construction; and

20 (b) An intentional breach, or a knowing concealment of a breach,
21 that results in substantial damage to the structural integrity of the
22 property.

23 (4) Nothing in subsection (3) of this section abrogates, abridges,
24 or limits any cause of action, right, or remedy afforded by statute or
25 common law.

26 **Sec. 2.** RCW 4.16.326 and 2003 c 80 s 1 are each amended to read as
27 follows:

28 (1) Persons engaged in any activity defined in RCW 4.16.300 may be
29 excused, in whole or in part, from any obligation, damage, loss, or
30 liability for those defined activities under the principles of
31 comparative fault for the following affirmative defenses:

32 (a) To the extent it is caused by an unforeseen act of nature that
33 caused, prevented, or precluded the activities defined in RCW 4.16.300
34 from meeting the applicable building codes, regulations, and ordinances
35 in effect at the commencement of construction. For purposes of this
36 section an "unforeseen act of nature" means any weather condition,
37 earthquake, or manmade event such as war, terrorism, or vandalism;

1 (b) To the extent it is caused by a homeowner's unreasonable
2 failure to minimize or prevent those damages in a timely manner,
3 including the failure of the homeowner to allow reasonable and timely
4 access for inspections and repairs under this section. This includes
5 the failure to give timely notice to the builder after discovery of a
6 violation, but does not include damages due to the untimely or
7 inadequate response of a builder to the homeowner's claim;

8 (c) To the extent it is caused by the homeowner or his or her
9 agent, employee, subcontractor, independent contractor, or consultant
10 by virtue of their failure to follow the builder's or manufacturer's
11 maintenance recommendations, or commonly accepted homeowner maintenance
12 obligations. In order to rely upon this defense as it relates to a
13 builder's recommended maintenance schedule, the builder shall show that
14 the homeowner had written notice of the schedule, the schedule was
15 reasonable at the time it was issued, and the homeowner failed to
16 substantially comply with the written schedule;

17 (d) To the extent it is caused by the homeowner or his or her
18 agent's or an independent third party's alterations, ordinary wear and
19 tear, misuse, abuse, or neglect, or by the structure's use for
20 something other than its intended purpose;

21 (e) As to a particular violation for which the builder has obtained
22 a valid release;

23 (f) To the extent that the builder's repair corrected the alleged
24 violation or defect;

25 (g) To the extent that a cause of action does not accrue within the
26 statute of repose pursuant to RCW 4.16.310 or that an actionable cause
27 as set forth in RCW 4.16.300 is not filed within the applicable statute
28 of limitations. Except as provided in RCW 4.16.310(3), in contract
29 actions the applicable contract statute of limitations expires,
30 regardless of discovery, six years after substantial completion of
31 construction, or during the period within six years after the
32 termination of the services enumerated in RCW 4.16.300, whichever is
33 later;

34 (h) As to any causes of action to which this section does not
35 apply, all applicable affirmative defenses are preserved.

36 (2) This section does not apply to any civil action in tort

1 alleging personal injury or wrongful death to a person or persons
2 resulting from a construction defect.

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