

CERTIFICATION OF ENROLLMENT

ENGROSSED HOUSE BILL 1848

59th Legislature
2005 Regular Session

Passed by the House April 19, 2005
Yeas 98 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 8, 2005
Yeas 46 Nays 1

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED HOUSE BILL 1848** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED HOUSE BILL 1848

AS AMENDED BY THE SENATE

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

By Representatives Springer, Tom, Lantz, Priest, Hunter, Jarrett, Clibborn, Serben, Fromhold, Rodne, Williams, Flannigan, Kessler, O'Brien and Simpson

Read first time 02/08/2005. Referred to Committee on Judiciary.

1 AN ACT Relating to managing construction defect disputes involving
2 multiunit residential buildings; amending RCW 64.34.415, 64.34.410, and
3 64.34.100; adding a new section to chapter 64.34 RCW; adding a new
4 chapter to Title 64 RCW; creating a new section; and providing an
5 effective date.

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

7 NEW SECTION. **Sec. 1.** APPLICABILITY. (1)(a) Sections 2 through 10
8 of this act apply to any multiunit residential building for which the
9 permit for construction or rehabilitative construction of such building
10 was issued on or after the effective date of this act.

11 (b) Sections 2 and 10 of this act apply to conversion condominiums
12 as defined in RCW 64.34.020, provided that section 10 of this act shall
13 not apply to a condominium conversion for which a public offering
14 statement had been delivered pursuant to chapter 64.34 RCW prior to the
15 effective date of this act.

16 (2) Sections 2 and 11 through 18 of this act apply to any action
17 that alleges breach of an implied or express warranty under chapter
18 64.34 RCW or that seeks relief that could be awarded for such breach,

1 regardless of the legal theory pled, except that sections 11 through 18
2 of this act shall not apply to:

3 (a) Actions filed or served prior to the effective date of this
4 act;

5 (b) Actions for which a notice of claim was served pursuant to
6 chapter 64.50 RCW prior to the effective date of this act;

7 (c) Actions asserting any claim regarding a building that is not a
8 multiunit residential building;

9 (d) Actions asserting any claim regarding a multiunit residential
10 building that was permitted on or after the effective date of this act
11 unless the letter required by section 7 of this act has been submitted
12 to the appropriate building department or the requirements of section
13 10 of this act have been satisfied.

14 (3) Other than the requirements imposed by sections 2 through 10 of
15 this act, nothing in this chapter amends or modifies the provisions of
16 RCW 64.34.050.

17 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly
18 requires otherwise, the definitions in RCW 64.34.020 and in this
19 section apply throughout this chapter.

20 (1) "Attached dwelling unit" means any dwelling unit that is
21 attached to another dwelling unit by a wall, floor, or ceiling that
22 separates heated living spaces. A garage is not a heated living space.

23 (2) "Building enclosure" means that part of any building, above or
24 below grade, that physically separates the outside or exterior
25 environment from interior environments and which weatherproofs,
26 waterproofs, or otherwise protects the building or its components from
27 water or moisture intrusion. Interior environments consist of both
28 heated and unheated enclosed spaces. The building enclosure includes,
29 but is not limited to, that portion of roofs, walls, balcony support
30 columns, decks, windows, doors, vents, and other penetrations through
31 exterior walls, which waterproof, weatherproof, or otherwise protect
32 the building or its components from water or moisture intrusion.

33 (3) "Building enclosure design documents" means plans, details, and
34 specifications for the building enclosure that have been stamped by a
35 licensed engineer or architect. The building enclosure design
36 documents shall include details and specifications that are appropriate
37 for the building in the professional judgment of the architect or

1 engineer which prepared the same to waterproof, weatherproof, and
2 otherwise protect the building or its components from water or moisture
3 intrusion, including details of flashing, intersections at roof, eaves
4 or parapets, means of drainage, water-resistive membrane, and details
5 around openings.

6 (4) "Developer" means:

7 (a) With respect to a condominium or a conversion condominium, the
8 declarant; and

9 (b) With respect to all other buildings, an individual, group of
10 individuals, partnership, corporation, association, municipal
11 corporation, state agency, or other entity or person that obtains a
12 building permit for the construction or rehabilitative reconstruction
13 of a multiunit residential building. If a permit is obtained by
14 service providers such as architects, contractors, and consultants who
15 obtain permits for others as part of services rendered for a fee, the
16 person for whom the permit is obtained shall be the developer, not the
17 service provider.

18 (5) "Dwelling unit" has the meaning given to that phrase or similar
19 phrases in the ordinances of the jurisdiction issuing the permit for
20 construction of the building enclosure but if such ordinances do not
21 provide a definition, then "dwelling unit" means a residence containing
22 living, cooking, sleeping, and sanitary facilities.

23 (6) "Multiunit residential building" means:

24 (a) A building containing more than two attached dwelling units,
25 including a building containing nonresidential units if the building
26 also contains more than two attached dwelling units, but excluding the
27 following classes of buildings:

28 (i) Hotels and motels;

29 (ii) Dormitories;

30 (iii) Care facilities;

31 (iv) Floating homes;

32 (v) A building that contains attached dwelling units that are each
33 located on a single platted lot, except as provided in (b) of this
34 subsection.

35 (vi) A building in which all of the dwelling units are held under
36 one ownership and is subject to a recorded irrevocable sale prohibition
37 covenant.

1 (b) If the developer submits to the appropriate building department
2 when applying for the building permit described in section 3 of this
3 act a statement that the developer elects to treat the improvement for
4 which a permit is sought as a multiunit residential building for all
5 purposes under this chapter, then "multiunit residential building" also
6 means the following buildings for which such election has been made:

- 7 (i) A building containing only two attached dwelling units;
- 8 (ii) A building that does not contain attached dwelling units; and
- 9 (iii) Any building that contains attached dwelling units each of
10 which is located on a single platted lot.

11 (7) "Party unit owner" means a unit owner who is a named party to
12 an action subject to this chapter and does not include any unit owners
13 whose involvement with the action stems solely from their membership in
14 the association.

15 (8) "Qualified building inspector" means a person satisfying the
16 requirements of section 5 of this act.

17 (9) "Rehabilitative construction" means construction work on the
18 building enclosure of a multiunit residential building if the cost of
19 such construction work is more than five percent of the assessed value
20 of the building.

21 (10) "Sale prohibition covenant" means a recorded covenant that
22 prohibits the sale or other disposition of individual dwelling units as
23 or as part of a condominium for five years or more from the date of
24 first occupancy except as otherwise provided in section 10 of this act,
25 a certified copy of which the developer shall submit to the appropriate
26 building department; provided such covenant shall not apply to sales or
27 dispositions listed in RCW 64.34.400(2). The covenant must be recorded
28 in the county in which the building is located and must be in
29 substantially the following form:

30 This covenant has been recorded in the real property records of
31 County, Washington, in satisfaction of the
32 requirements of sections 2 through 10 of this act. The
33 undersigned is the owner of the property described on Exhibit
34 A (the "Property"). Until termination of this covenant, no
35 dwelling unit in or on the Property may be sold as a
36 condominium unit except for sales listed in RCW 64.34.400(2).

37 This covenant terminates on the earlier of either: (a)
38 Compliance with the requirements of section 10 of this act, as

1 certified by the owner of the Property in a recorded supplement
2 hereto; or (b) the fifth anniversary of the date of first
3 occupancy of a dwelling unit as certified by the Owner in a
4 recorded supplement hereto.

5 All title insurance companies and persons acquiring an interest in the
6 Property may rely on the forgoing certifications without further
7 inquiry in issuing any policy of title insurance or in acquiring an
8 interest in the Property.

9 (11) "Stamped" means bearing the stamp and signature of the
10 responsible licensed architect or engineer on the title page, and on
11 every sheet of the documents, drawings, or specifications, including
12 modifications to the documents, drawings, and specifications that
13 become part of change orders or addenda to alter those documents,
14 drawings, or specifications.

15 NEW SECTION. **Sec. 3.** DESIGN DOCUMENTS. (1) Any person applying
16 for a building permit for construction of a multiunit residential
17 building or rehabilitative construction shall submit building enclosure
18 design documents to the appropriate building department prior to the
19 start of construction or rehabilitative construction of the building
20 enclosure. If construction work on a building enclosure is not
21 rehabilitative construction because the cost thereof is not more than
22 five percent of the assessed value of the building, then the person
23 applying for a building permit shall submit to the building department
24 a letter so certifying. Any changes to the building enclosure design
25 documents that alter the manner in which the building or its components
26 is waterproofed, weatherproofed, and otherwise protected from water or
27 moisture intrusion shall be stamped by the architect or engineer and
28 shall be provided to the building department and to the person
29 conducting the course of construction inspection in a timely manner to
30 permit such person to inspect for compliance therewith, and may be
31 provided through individual updates, cumulative updates, or as-built
32 updates.

33 (2) The building department shall not issue a building permit for
34 construction of the building enclosure of a multiunit residential
35 building or for rehabilitative construction unless the building
36 enclosure design documents contain a stamped statement by the person
37 stamping the building enclosure design documents in substantially the

1 following form: "The undersigned has provided building enclosure
2 documents that in my professional judgment are appropriate to satisfy
3 the requirements of sections 1 through 10 of this act."

4 (3) The building department is not charged with determining whether
5 the building enclosure design documents are adequate or appropriate to
6 satisfy the requirements of sections 1 through 10 of this act. Nothing
7 in sections 1 through 10 of this act requires a building department to
8 review, approve, or disapprove enclosure design documents.

9 NEW SECTION. **Sec. 4.** INSPECTIONS. All multiunit residential
10 buildings shall have the building enclosure inspected by a qualified
11 inspector during the course of initial construction and during
12 rehabilitative construction.

13 NEW SECTION. **Sec. 5.** INSPECTORS--QUALIFICATIONS--INDEPENDENCE.

14 (1) A qualified building enclosure inspector:

15 (a) Must be a person with substantial and verifiable training and
16 experience in building enclosure design and construction;

17 (b) Shall be free from improper interference or influence relating
18 to the inspections; and

19 (c) May not be an employee, officer, or director of, nor have any
20 pecuniary interest in, the declarant, developer, association, or any
21 party providing services or materials for the project, or any of their
22 respective affiliates, except that the qualified inspector may be the
23 architect or engineer who approved the building enclosure design
24 documents or the architect or engineer of record. The qualified
25 inspector may, but is not required to, assist with the preparation of
26 such design documents.

27 (2) Nothing in this section alters requirements for licensure of
28 any architect, engineer, or other professional, or alters the
29 jurisdiction, authority, or scope of practice of architects, engineers,
30 other professionals, or general contractors.

31 NEW SECTION. **Sec. 6.** SCOPE OF INSPECTION. (1) Any inspection
32 required by this chapter shall include, at a minimum, the following:

33 (a) Water penetration resistance testing of a representative sample
34 of windows and window installations. Such tests shall be conducted
35 according to industry standards. Where appropriate, tests shall be

1 conducted with an induced air pressure difference across the window and
2 window installation. Additional testing is not required if the same
3 assembly has previously been tested in situ within the previous two
4 years in the project under construction by the builder, by another
5 member of the construction team such as an architect or engineer, or by
6 an independent testing laboratory; and

7 (b) An independent periodic review of the building enclosure during
8 the course of construction or rehabilitative construction to ascertain
9 whether the multiunit residential building has been constructed, or the
10 rehabilitative construction has been performed, in substantial
11 compliance with the building enclosure design documents.

12 (2) Subsection (1)(a) of this section shall not apply to
13 rehabilitative construction if the windows and adjacent cladding are
14 not altered in the rehabilitative construction.

15 (3) "Project" means one or more parcels of land in a single
16 ownership, which are under development pursuant to a single land use
17 approval or building permit, where window installation is performed by
18 the owner with its own forces, or by the same general contractor, or,
19 if the owner is contracting directly with trade contractors, is
20 performed by the same trade contractor.

21 NEW SECTION. **Sec. 7.** CERTIFICATION--CERTIFICATE OF OCCUPANCY.

22 Upon completion of an inspection required by this chapter, the
23 qualified inspector shall prepare and submit to the appropriate
24 building department a signed letter certifying that the building
25 enclosure has been inspected during the course of construction or
26 rehabilitative construction and that it has been constructed or
27 reconstructed in substantial compliance with the building enclosure
28 design documents, as updated pursuant to section 3 of this act. The
29 building department shall not issue a final certificate of occupancy or
30 other equivalent final acceptance until the letter required by this
31 section has been submitted. The building department is not charged
32 with and has no responsibility for determining whether the building
33 enclosure inspection is adequate or appropriate to satisfy the
34 requirements of this chapter.

35 NEW SECTION. **Sec. 8.** INSPECTOR, ARCHITECT, AND ENGINEER

36 LIABILITY. (1) Nothing in this act is intended to, or does:

1 (a) Create a private right of action against any inspector,
2 architect, or engineer based upon compliance or noncompliance with its
3 provisions; or

4 (b) Create any independent basis for liability against an
5 inspector, architect, or engineer.

6 (2) The qualified inspector, architect, or engineer and the
7 developer that retained the inspector, architect, or engineer may
8 contractually agree to the amount of their liability to the developer.

9 NEW SECTION. **Sec. 9.** NO EVIDENTIARY PRESUMPTION--ADMISSIBILITY.

10 A qualified inspector's report or testimony regarding an inspection
11 conducted pursuant to this chapter is not entitled to any evidentiary
12 presumption in any arbitration or court proceeding. Nothing in this
13 chapter restricts the admissibility of such a report or testimony, and
14 questions of the admissibility of such a report or testimony shall be
15 determined under the rules of evidence.

16 NEW SECTION. **Sec. 10.** NO SALE OF CONDOMINIUM UNIT ABSENT
17 COMPLIANCE. (1) Except for sales or other dispositions listed in RCW
18 64.34.400(2), no declarant may convey a condominium unit that may be
19 occupied for residential use in a multiunit residential building
20 without first complying with the requirements of sections 1 through 9
21 of this act unless the building enclosure of the building in which such
22 unit is included is inspected by a qualified building enclosure
23 inspector, and:

24 (a) The inspection includes such intrusive or other testing, such
25 as the removal of siding or other building enclosure materials, that
26 the inspector believes, in his or her professional judgment, is
27 necessary to ascertain the manner in which the building enclosure was
28 constructed;

29 (b) The inspection evaluates, to the extent reasonably
30 ascertainable and in the professional judgment of the inspector, the
31 present condition of the building enclosure including whether such
32 condition has adversely affected or will adversely affect the
33 performance of the building enclosure to waterproof, weatherproof, or
34 otherwise protect the building or its components from water or moisture
35 intrusion. "Adversely affect" has the same meaning as provided in RCW
36 64.34.445(7);

1 (c) The inspection report includes recommendations for repairs to
2 the building enclosure that, in the professional judgment of the
3 qualified building inspector, are necessary to: (i) Repair a design or
4 construction defect in the building enclosure that results in the
5 failure of the building enclosure to perform its intended function and
6 allows unintended water penetration not caused by flooding; and (ii)
7 repair damage caused by such a defect that has an adverse effect as
8 provided in RCW 64.34.445(7);

9 (d) With respect to a building that would be a multiunit
10 residential building but for the recording of a sale prohibition
11 covenant and unless more than five years have elapsed since the date
12 such covenant was recorded, all repairs to the building enclosure
13 recommended pursuant to (c) of this subsection have been made; and

14 (e) The declarant provides as part of the public offering
15 statement, consistent with RCW 64.34.410 (1)(nn) and (2) and
16 64.34.415(1)(b), an inspection and repair report signed by the
17 qualified building enclosure inspector that identifies:

18 (i) The extent of the inspection performed pursuant to this
19 section;

20 (ii) The information obtained as a result of that inspection; and

21 (iii) The manner in which any repairs required by this section were
22 performed, the scope of those repairs, and the names of the persons
23 performing those repairs.

24 (2) Failure to deliver the inspection and repair report in
25 violation of this section constitutes a failure to deliver a public
26 offering statement for purposes of chapter 64.34 RCW.

27 NEW SECTION. **Sec. 11.** ARBITRATION--ELECTION--NUMBER OF
28 ARBITRATORS--QUALIFICATIONS--TRIAL DE NOVO. (1) If the declarant, an
29 association, or a party unit owner demands an arbitration by filing
30 such demand with the court not less than thirty and not more than
31 ninety days after filing or service of the complaint, whichever is
32 later, the parties shall participate in a private arbitration hearing.
33 The declarant, the association, and the party unit owner do not have
34 the right to compel arbitration without giving timely notice in
35 compliance with this subsection. Unless otherwise agreed by the
36 parties, the arbitration hearing shall commence no more than fourteen
37 months from the later of the filing or service of the complaint.

1 (2) Unless otherwise agreed by the parties, claims that in
2 aggregate are for less than one million dollars shall be heard by a
3 single arbitrator and all other claims shall be heard by three
4 arbitrators. As used in this chapter, arbitrator also means
5 arbitrators where applicable.

6 (3) Unless otherwise agreed by the parties, the court shall appoint
7 the arbitrator, who shall be a current or former attorney with
8 experience as an attorney, judge, arbitrator, or mediator in
9 construction defect disputes involving the application of Washington
10 law.

11 (4) Upon conclusion of the arbitration hearing, the arbitrator
12 shall file the decision and award with the clerk of the superior court,
13 together with proof of service thereof on the parties. Within twenty
14 days after the filing of the decision and award, any aggrieved party
15 may file with the clerk a written notice of appeal and demand for a
16 trial de novo in the superior court on all claims between the appealing
17 party and an adverse party. As used in this section, "adverse party"
18 means the party who either directly asserted or defended claims against
19 the appealing party. The demand shall identify the adverse party or
20 parties and all claims between those parties shall be included in the
21 trial de novo. The right to a trial de novo includes the right to a
22 jury, if demanded. The court shall give priority to the trial date for
23 the trial de novo.

24 (5) If the judgment for damages, not including awards of fees and
25 costs, in the trial de novo is not more favorable to the appealing
26 party than the damages awarded by the arbitrator, not including awards
27 of fees and costs, the appealing party shall pay the nonappealing
28 adverse party's costs and fees incurred after the filing of the appeal,
29 including reasonable attorneys' fees so incurred.

30 (6) If the judgment for damages, not including awards of fees and
31 costs, in the trial de novo is more favorable to the appealing party
32 than the damages awarded by the arbitrator, not including awards of
33 fees and costs, then the court may award costs and fees, including
34 reasonable attorneys' fees, incurred after the filing of the request
35 for trial de novo in accordance with applicable law; provided if such
36 a judgment is not more favorable to the appealing party than the most
37 recent offer of judgment, if any, made pursuant to section 17 of this

1 act, the court shall not make an award of fees and costs to the
2 appealing party.

3 (7) If a party is entitled to an award with respect to the same
4 fees and costs pursuant to this section and section 17 of this act,
5 then the party shall only receive an award of fees and costs as
6 provided in and limited by section 17 of this act. Any award of fees
7 and costs pursuant to subsections (5) or (6) of this section is subject
8 to review in the event of any appeal thereof otherwise permitted by
9 applicable law or court rule.

10 NEW SECTION. **Sec. 12.** CASE SCHEDULE PLAN. (1) Not less than
11 sixty days after the later of filing or service of the complaint, the
12 parties shall confer to create a proposed case schedule plan for
13 submission to the court that includes the following deadlines:

- 14 (a) Selection of a mediator;
- 15 (b) Commencement of the mandatory mediation and submission of
16 mediation materials required by this chapter;
- 17 (c) Selection of the arbitrator by the parties, where applicable;
- 18 (d) Joinder of additional parties in the action;
- 19 (e) Completion of each party's investigation;
- 20 (f) Disclosure of each party's proposed repair plan;
- 21 (g) Disclosure of each party's estimated costs of repair;
- 22 (h) Meeting of parties and experts to confer in accordance with
23 section 13 of this act; and
- 24 (i) Disclosure of each party's settlement demand or response.

25 (2) If the parties agree upon a proposed case schedule plan, they
26 shall move the court for the entry of the proposed case schedule plan.
27 If the parties cannot agree, either party may move the court for entry
28 of a case schedule plan that includes the above deadlines.

29 NEW SECTION. **Sec. 13.** MANDATORY MEDIATION. (1) The parties to an
30 action subject to this act shall engage in mediation. Unless the
31 parties agree otherwise, the mediation required by this section shall
32 commence within seven months of the later of the filing or service of
33 the complaint. If the parties cannot agree upon a mediator, the court
34 shall appoint a mediator.

35 (2) Prior to the mediation required by this section, the parties

1 and their experts shall meet and confer in good faith to attempt to
2 resolve or narrow the scope of the disputed issues, including issues
3 related to the parties' repair plans.

4 (3) Prior to the mandatory mediation, the parties or their
5 attorneys shall file and serve a declaration that:

6 (a) A decision maker with authority to settle will be available for
7 the duration of the mandatory mediation; and

8 (b) The decision maker has been provided with and has reviewed the
9 mediation materials provided by the party to which the decision maker
10 is affiliated as well as the materials submitted by the opposing
11 parties.

12 (4) Completion of the mediation required by this section occurs
13 upon written notice of termination by any party. The provisions of
14 section 17 of this act shall not apply to any later mediation conducted
15 following such notice.

16 NEW SECTION. **Sec. 14.** NEUTRAL EXPERT. (1) If, after meeting and
17 conferring as required by section 13(2) of this act, disputed issues
18 remain, a party may file a motion with the court, or arbitrator if an
19 arbitrator has been appointed, requesting the appointment of a neutral
20 expert to address any or all of the disputed issues. Unless otherwise
21 agreed to by the parties or upon a showing of exceptional
22 circumstances, including a material adverse change in a party's
23 litigation risks due to a change in allegations, claims, or defenses by
24 an adverse party following the appointment of the neutral expert, any
25 such motion shall be filed no later than sixty days after the first day
26 of the meeting required by section 13(2) of this act. Upon such a
27 request, the court or arbitrator shall decide whether or not to appoint
28 a neutral expert or experts. A party may only request more than one
29 neutral expert if the particular expertise of the additional neutral
30 expert or experts is necessary to address disputed issues.

31 (2) The neutral expert shall be a licensed architect or engineer,
32 or any other person, with substantial experience relevant to the issue
33 or issues in dispute. The neutral expert shall not have been employed
34 as an expert by a party to the present action within three years before
35 the commencement of the present action, unless the parties agree
36 otherwise.

1 (3) All parties shall be given an opportunity to recommend neutral
2 experts to the court or arbitrator and shall have input regarding the
3 appointment of a neutral expert.

4 (4) Unless the parties agree otherwise on the following matters,
5 the court, or arbitrator if then appointed, shall determine:

6 (a) Who shall serve as the neutral expert;

7 (b) Subject to the requirements of this section, the scope of the
8 neutral expert's duties;

9 (c) The number and timing of inspections of the property;

10 (d) Coordination of inspection activities with the parties'
11 experts;

12 (e) The neutral expert's access to the work product of the parties'
13 experts;

14 (f) The product to be prepared by the neutral expert;

15 (g) Whether the neutral expert may participate personally in the
16 mediation required by section 13 of this act; and

17 (h) Other matters relevant to the neutral expert's assignment.

18 (5) Unless the parties agree otherwise, the neutral expert shall
19 not make findings or render opinions regarding the amount of damages to
20 be awarded, or the cost of repairs, or absent exceptional circumstances
21 any matters that are not in dispute as determined in the meeting
22 described in section 13(2) of this act or otherwise.

23 (6) A party may, by motion to the court, or to the arbitrator if
24 then appointed, object to the individual appointed to serve as the
25 neutral expert and to determinations regarding the neutral expert's
26 assignment.

27 (7) The neutral expert shall have no liability to the parties for
28 the performance of his or her duties as the neutral expert.

29 (8) Except as otherwise agreed by the parties, the parties have a
30 right to review and comment on the neutral expert's report before it is
31 made final.

32 (9) A neutral expert's report or testimony is not entitled to any
33 evidentiary presumption in any arbitration or court proceeding.
34 Nothing in this act restricts the admissibility of such a report or
35 testimony, provided it is within the scope of the neutral expert's
36 assigned duties, and questions of the admissibility of such a report or
37 testimony shall be determined under the rules of evidence.

1 (10) The court, or arbitrator if then appointed, shall determine
2 the significance of the neutral expert's report and testimony with
3 respect to parties joined after the neutral expert's appointment and
4 shall determine whether additional neutral experts should be appointed
5 or other measures should be taken to protect such joined parties from
6 undue prejudice.

7 NEW SECTION. **Sec. 15.** PAYMENT OF ARBITRATORS, MEDIATORS, AND
8 NEUTRAL EXPERTS. (1) Where the building permit that authorized
9 commencement of construction of a building was issued on or after the
10 effective date of this act:

11 (a)(i) If the action is referred to arbitration under section 11 of
12 this act, the party who demands arbitration shall advance the fees of
13 any arbitrator and any mediator appointed under section 13 of this act;
14 and

15 (ii) A party who requests the appointment of a neutral expert
16 pursuant to section 14 of this act shall advance any appointed neutral
17 expert's fees incurred up to the issuance of a final report.

18 (b) If the action has not been referred to arbitration, the court
19 shall determine liability for the fees of any mediator appointed under
20 section 13 of this act, unless the parties agree otherwise.

21 (c) Ultimate liability for any fees or costs advanced pursuant to
22 this subsection (1) is subject to the fee- and cost-shifting provisions
23 of section 17 of this act.

24 (2) Where the building permit that authorized commencement of
25 construction of a building was issued before the effective date of this
26 act:

27 (a)(i) If the action is referred to arbitration under section 11 of
28 this act, the party who demands arbitration is liable for and shall pay
29 the fees of any appointed arbitrator and any mediator appointed under
30 section 13 of this act; and

31 (ii) A party who requests the appointment of a neutral expert
32 pursuant to section 14 of this act is liable for and shall pay any
33 appointed neutral expert's fees incurred up to the issuance of a final
34 report.

35 (b) If the action has not been referred to arbitration, the court
36 shall determine liability for the fees of any mediator appointed under
37 section 13 of this act, unless the parties agree otherwise.

1 (c) Fees and costs paid under this subsection (2) are not subject
2 to the fee- and cost-shifting provisions of section 17 of this act.

3 NEW SECTION. **Sec. 16.** SUBCONTRACTORS. Upon the demand of a party
4 to an arbitration demanded under section 11 of this act, any
5 subcontractor or supplier against whom such party has a legal claim and
6 whose work or performance on the building in question becomes an issue
7 in the arbitration may be joined in and become a party to the
8 arbitration. However, joinder of such parties shall not be allowed if
9 such joinder would require the arbitration hearing date to be continued
10 beyond the date established pursuant to section 11 of this act, unless
11 the existing parties to the arbitration agree otherwise. Nothing in
12 sections 2 through 10 of this act shall be construed to release,
13 modify, or otherwise alleviate the liabilities or responsibilities that
14 any party may have towards any other party, contractor, or
15 subcontractor.

16 NEW SECTION. **Sec. 17.** OFFERS OF JUDGMENT--COSTS AND FEES. (1) On
17 or before the sixtieth day following completion of the mediation
18 pursuant to section 13(4) of this act, the declarant, association, or
19 party unit owner may serve on an adverse party an offer to allow
20 judgment to be entered. The offer of judgment shall specify the amount
21 of damages, not including costs or fees, that the declarant,
22 association, or party unit owner is offering to pay or receive. A
23 declarant's offer shall also include its commitment to pay costs and
24 fees that may be awarded as provided in this section. The declarant,
25 association, or party unit owner may make more than one offer of
26 judgment so long as each offer is timely made. Each subsequent offer
27 supersedes and replaces the previous offer. Any offer not accepted
28 within twenty-one days of the service of that offer is deemed rejected
29 and withdrawn and evidence thereof is not admissible and may not be
30 provided to the court or arbitrator except in a proceeding to determine
31 costs and fees or as part of the motion identified in subsection (2) of
32 this section.

33 (2) A declarant's offer must include a demonstration of ability to
34 pay damages, costs, and fees, including reasonable attorneys' fees,
35 within thirty days of acceptance of the offer of judgment. The
36 demonstration of ability to pay shall include a sworn statement signed

1 by the declarant, the attorney representing the declarant, and, if any
2 insurance proceeds will be used to fund any portion of the offer, an
3 authorized representative of the insurance company. If the association
4 or party unit owner disputes the adequacy of the declarant's
5 demonstration of ability to pay, the association or party unit owner
6 may file a motion with the court requesting a ruling on the adequacy of
7 the declarant's demonstration of ability to pay. Upon filing of such
8 motion, the deadline for a response to the offer shall be tolled from
9 the date the motion is filed until the court has ruled.

10 (3) An association or party unit owner that accepts the declarant's
11 offer of judgment shall be deemed the prevailing party and, in addition
12 to recovery of the amount of the offer, shall be entitled to a costs
13 and fees award, including reasonable attorneys' fees, in an amount to
14 be determined by the court in accordance with applicable law.

15 (4) If the amount of the final nonappealable or nonappealed
16 judgment, exclusive of costs or fees, is not more favorable to the
17 offeree than the offer of judgment, then the offeror is deemed the
18 prevailing party for purposes of this section only and is entitled to
19 an award of costs and fees, including reasonable attorneys' fees,
20 incurred after the date the last offer of judgment was rejected and
21 through the date of entry of a final nonappealable or nonappealed
22 judgment, in an amount to be determined by the court in accordance with
23 applicable law. The nonprevailing party shall not be entitled to
24 receive any award of costs and fees.

25 (5) If the final nonappealable or nonappealed judgment on damages,
26 not including costs or fees, is more favorable to the offeree than the
27 last offer of judgment, then the court shall determine which party is
28 the prevailing party and shall determine the amount of the costs and
29 fees award, including reasonable attorneys' fees, in accordance with
30 applicable law.

31 (6) Notwithstanding any other provision in this section, with
32 respect to claims brought by an association or unit owner, the
33 liability for declarant's costs and fees, including reasonable
34 attorneys' fees, shall:

35 (a) With respect to claims brought by an association, not exceed
36 five percent of the assessed value of the condominium as a whole, which
37 is determined by the aggregate tax-assessed value of all units at the
38 time of the award; and

1 (b) With respect to claims brought by a party unit owner, not
2 exceed five percent of the assessed value of the unit at the time of
3 the award.

4 **Sec. 18.** RCW 64.34.415 and 1992 c 220 s 22 are each amended to
5 read as follows:

6 (1) The public offering statement of a conversion condominium shall
7 contain, in addition to the information required by RCW 64.34.410:

8 (a) Either a copy of a report prepared by an independent, licensed
9 architect or engineer, or a statement by the declarant based on such
10 report, which report or statement describes, to the extent reasonably
11 ascertainable, the present condition of all structural components and
12 mechanical and electrical installations material to the use and
13 enjoyment of the condominium;

14 (b) A copy of the inspection and repair report prepared by an
15 independent, licensed architect, engineer, or qualified building
16 inspector in accordance with the requirements of section 10 of this
17 act;

18 (c) A statement by the declarant of the expected useful life of
19 each item reported on in (a) of this subsection or a statement that no
20 representations are made in that regard; and

21 ~~((e))~~ (d) A list of any outstanding notices of uncured violations
22 of building code or other municipal regulations, together with the
23 estimated cost of curing those violations. Unless the purchaser waives
24 in writing the curing of specific violations, the extent to which the
25 declarant will cure such violations prior to the closing of the sale of
26 a unit in the condominium shall be included.

27 (2) This section applies only to condominiums containing units that
28 may be occupied for residential use.

29 **Sec. 19.** RCW 64.34.410 and 2004 c 201 s 11 are each amended to
30 read as follows:

31 (1) A public offering statement shall contain the following
32 information:

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

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

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

- 1 (d) The relationship of the management company to the declarant, if
2 any;
- 3 (e) A list of up to the five most recent condominium projects
4 completed by the declarant or an affiliate of the declarant within the
5 past five years, including the names of the condominiums, their
6 addresses, and the number of existing units in each. For the purpose
7 of this section, a condominium is "completed" when any one unit therein
8 has been rented or sold;
- 9 (f) The nature of the interest being offered for sale;
- 10 (g) A brief description of the permitted uses and use restrictions
11 pertaining to the units and the common elements;
- 12 (h) A brief description of the restrictions, if any, on the renting
13 or leasing of units by the declarant or other unit owners, together
14 with the rights, if any, of the declarant to rent or lease at least a
15 majority of units;
- 16 (i) The number of existing units in the condominium and the maximum
17 number of units that may be added to the condominium;
- 18 (j) A list of the principal common amenities in the condominium
19 which materially affect the value of the condominium and those that
20 will or may be added to the condominium;
- 21 (k) A list of the limited common elements assigned to the units
22 being offered for sale;
- 23 (l) The identification of any real property not in the condominium,
24 the owner of which has access to any of the common elements, and a
25 description of the terms of such access;
- 26 (m) The identification of any real property not in the condominium
27 to which unit owners have access and a description of the terms of such
28 access;
- 29 (n) The status of construction of the units and common elements,
30 including estimated dates of completion if not completed;
- 31 (o) The estimated current common expense liability for the units
32 being offered;
- 33 (p) An estimate of any payment with respect to the common expense
34 liability for the units being offered which will be due at closing;
- 35 (q) The estimated current amount and purpose of any fees not
36 included in the common expenses and charged by the declarant or the
37 association for the use of any of the common elements;

1 (r) Any assessments which have been agreed to or are known to the
2 declarant and which, if not paid, may constitute a lien against any
3 units or common elements in favor of any governmental agency;

4 (s) The identification of any parts of the condominium, other than
5 the units, which any individual owner will have the responsibility for
6 maintaining;

7 (t) If the condominium involves a conversion condominium, the
8 information required by RCW 64.34.415;

9 (u) Whether timesharing is restricted or prohibited, and if
10 restricted, a general description of such restrictions;

11 (v) A list of all development rights reserved to the declarant and
12 all special declarant rights reserved to the declarant, together with
13 the dates such rights must terminate, and a copy of or reference by
14 recording number to any recorded transfer of a special declarant right;

15 (w) A description of any material differences in terms of
16 furnishings, fixtures, finishes, and equipment between any model unit
17 available to the purchaser at the time the agreement for sale is
18 executed and the unit being offered;

19 (x) Any liens on real property to be conveyed to the association
20 required to be disclosed pursuant to RCW 64.34.435(2)(b);

21 (y) A list of any physical hazards known to the declarant which
22 particularly affect the condominium or the immediate vicinity in which
23 the condominium is located and which are not readily ascertainable by
24 the purchaser;

25 (z) A brief description of any construction warranties to be
26 provided to the purchaser;

27 (aa) Any building code violation citations received by the
28 declarant in connection with the condominium which have not been
29 corrected;

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

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

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

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

8 (ff) Any reports or statements required by RCW 64.34.415 or
9 64.34.440(6)(a). RCW 64.34.415 shall apply to the public offering
10 statement of a condominium in connection with which a final certificate
11 of occupancy was issued more than sixty calendar months prior to the
12 preparation of the public offering statement whether or not the
13 condominium is a conversion condominium as defined in RCW
14 64.34.020(10);

15 (gg) A list of the documents which the prospective purchaser is
16 entitled to receive from the declarant before the rescission period
17 commences;

18 (hh) A notice which states: A purchaser may not rely on any
19 representation or express warranty unless it is contained in the public
20 offering statement or made in writing signed by the declarant or by any
21 person identified in the public offering statement as the declarant's
22 agent;

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

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

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

35 (ll) A notice that is substantially in the form required by RCW
36 64.50.050; (~~and~~)

37 (mm) A statement, as required by RCW 64.35.210, as to whether the

1 units or common elements of the condominium are covered by a qualified
2 warranty, and a history of claims under any such warranty; and

3 (nn) A statement that the building enclosure has been designed and
4 inspected as required by sections 2 through 10 of this act, and, if
5 required, repaired in accordance with the requirements of section 10 of
6 this act.

7 (2) The public offering statement shall include copies of each of
8 the following documents: The declaration, the survey map and plans,
9 the articles of incorporation of the association, bylaws of the
10 association, rules and regulations, if any, current or proposed budget
11 for the association, (~~and~~) the balance sheet of the association
12 current within ninety days if assessments have been collected for
13 ninety days or more, and the inspection and repair report or reports
14 prepared in accordance with the requirements of section 10 of this act.

15 If any of the foregoing documents listed in this subsection are not
16 available because they have not been executed, adopted, or recorded,
17 drafts of such documents shall be provided with the public offering
18 statement, and, before closing the sale of a unit, the purchaser shall
19 be given copies of any material changes between the draft of the
20 proposed documents and the final documents.

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

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

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

32 **Sec. 20.** RCW 64.34.100 and 2004 c 201 s 2 are each amended to read
33 as follows:

34 (1) The remedies provided by this chapter shall be liberally
35 administered to the end that the aggrieved party is put in as good a
36 position as if the other party had fully performed. However,

1 consequential, special, or punitive damages may not be awarded except
2 as specifically provided in this chapter or by other rule of law.

3 (2) Except as otherwise provided in sections 11 through 17 of this
4 act or chapter 64.35 RCW, any right or obligation declared by this
5 chapter is enforceable by judicial proceeding. The arbitration
6 proceedings provided for in sections 11 through 17 of this act shall be
7 considered judicial proceedings for the purposes of this chapter.

8 NEW SECTION. Sec. 21. A new section is added to Article 1 of
9 chapter 64.34 RCW to read as follows:

10 Chapter 64.-- RCW (sections 1 through 17 of this act) includes
11 requirements for: The inspection of the building enclosures of
12 multiunit residential buildings, as defined in section 2 of this act,
13 which includes condominiums and conversion condominiums; for provision
14 of inspection and repair reports; and for the resolution of implied or
15 express warranty disputes under chapter 64.34 RCW.

16 NEW SECTION. Sec. 22. CAPTIONS. Captions used in this act are
17 not any part of the law.

18 NEW SECTION. Sec. 23. Sections 1 through 17 of this act
19 constitute a new chapter in Title 64 RCW.

20 NEW SECTION. Sec. 24. EFFECTIVE DATE. This act takes effect
21 August 1, 2005.

--- END ---