
Judiciary Committee

SSB 6385

Title: An act relating to real property.

Brief Description: Concerning real property.

Sponsors: Senate Committee on Consumer Protection & Housing (originally sponsored by Senators Weinstein, Kauffman, Fraser, Marr, Pridemore, Fairley, Brown, McAuliffe and Kohl-Welles).

Brief Summary of Substitute Bill

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| <ul style="list-style-type: none">• Creates a cause of action against construction professionals for negligence in the construction of improvements to real property intended for residential use. |
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Hearing Date: 2/26/08

Staff: Edie Adams (786-7180).

Background:

A homeowner who suffers losses due to defects in the construction of the home may be able to seek redress through a cause of action for breach of contract or for breach of an implied warranty of habitability. There are no statutory warranties governing residential construction, except in the case of condominiums, and there is no statutory or common law negligence cause of action for construction defects.

Common Law Implied Warranty of Habitability. Under the common law, the buyer of a new home may sue the builder of the home for a breach of an implied contractual "warranty of habitability." This warranty covers structural defects in the house and its foundation that make the home unfit for its intended purpose. The warranty extends only to the first purchaser who occupies the home, and the home must have been purchased soon after the completion of construction. In addition, the sale must be of a commercial nature and the relative bargaining positions of the parties must be inherently unfair to the buyer. The implied warranty of habitability may be disclaimed by the seller if the disclaimer is conspicuous, known to the buyer, and specifically bargained for.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Statutory Warranties for Residential Construction. There are no statutory warranties applicable to new home construction except in the case of condominiums. The Washington Condominium Act (WCA) establishes the following implied warranties with respect to condos: the condo is suitable for the ordinary uses of real estate of its type and is free from defective materials; and the condo has been constructed in accordance with sound engineering and construction standards, in a workmanlike manner, and in compliance with all applicable laws. Damages are recoverable only if the breach of the implied warranty had an adverse effect that is more than technical and that would be significant to a reasonable person. Damages that may be awarded for a breach are the cost of repairs unless those costs are clearly disproportionate to the diminution in the condo's market value caused by the breach, in which case damages are the loss in market value.

A cause of action for breach of an implied warranty under the WCA must be brought within four years after the cause of action accrues. For an individual condo unit, accrual occurs when the purchaser takes possession, and for common areas, accrual occurs upon the later of occupancy of a unit or completion of the common area.

Negligence-Based Actions for Construction Defects. There is no statutory cause of action for negligence in the construction of improvements to real property. Washington courts have declined to recognize a negligent construction cause of action by adopting the economic loss rule in the context of construction claims. The economic loss rule is used by the courts to maintain the boundary between tort claims and contract claims when a claim has the potential to be remedied under either theory. The economic loss rule bars a plaintiff from recovering in tort where a contractual relationship exists between the parties and the damages are "economic losses." "Economic losses" in this context mean losses related to the property subject to the contract, as opposed to losses resulting from personal injury or damage to other property. The rationale for the economic loss rule is that tort law is not intended to compensate parties for losses suffered as a result of a breach of duties assumed only by agreement, and a party to a contract should not be able to obtain, through a tort claim, benefits that were not a part of the contract bargain.

Summary of Bill:

A construction professional involved in the construction of improvements upon real property intended for residential use has a duty to exercise reasonable care in the construction of the improvement. If real property is damaged as a result of a breach of this duty, the current owner has a right to recover damages independent of any contract right. This cause of action does not apply to condominiums.

The act is added to a chapter of law that defines "construction professional" as an architect, builder, builder vendor, contractor, subcontractor, engineer or inspector, including condominium dealers and declarants, performing or furnishing the design, supervision, inspection, construction, or observation of the construction of any improvement to real property.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.