

---

SENATE BILL 5550

---

State of Washington

60th Legislature

2007 Regular Session

By Senators Weinstein, Kohl-Welles, Murray, Kauffman, Kastama, Tom, Rockefeller, Pridemore, Spanel, Marr, Haugen, Eide, McAuliffe, Hargrove, Hatfield, Fraser, Kilmer, Jacobsen, Brown, Keiser, Shin, Franklin, McCaslin, Poulsen, Oemig, Kline and Regala

Read first time 01/23/2007. Referred to Committee on Consumer Protection & Housing.

1 AN ACT Relating to real property; amending RCW 4.16.310; and adding  
2 a new chapter to Title 64 RCW.

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

4 NEW SECTION. **Sec. 1.** The definitions in this section apply  
5 throughout this chapter unless the context clearly requires otherwise.

6 (1) "Appliances, fixtures, and items of equipment" means furnaces,  
7 boilers, oil tanks and fittings, air purifiers, air handling equipment,  
8 ventilating fans, ceiling fans, air conditioning equipment, water  
9 heaters, pumps, stoves, ranges, ovens, refrigerators, garbage  
10 disposals, compactors, dishwashers, automatic door openers, washers and  
11 dryers, bathtubs, sinks, toilets, faucets and fittings, lighting  
12 fixtures, lighting control and energy management systems, security  
13 systems, circuit breakers, and other similar items.

14 (2) "Builder" means any person, corporation, general contractor, or  
15 other legal entity that:

16 (a) Is engaged in the business of erecting or otherwise  
17 constructing a new home; or

18 (b) Purchases a completed new home for resale in the course of its  
19 business.

1 (3) "Defect" means any violation or nonconformity with applicable  
2 building codes, regulations, or permits.

3 (4) "Electrical systems" means all wiring, electrical boxes,  
4 switches, outlets, and connections to the public utility system.

5 (5) "Heating, cooling, and ventilating systems" means all duct  
6 work, gas, steam, water and refrigerant lines, registers, convectors,  
7 solar panels, radiation elements, and dampers.

8 (6) "Load-bearing portions of the home" means the load-bearing  
9 portions of the:

10 (a) Foundation system and footings;

11 (b) Beams;

12 (c) Girders;

13 (d) Lintels;

14 (e) Columns;

15 (f) Walls and partitions;

16 (g) Floor systems; and

17 (h) Roof framing systems.

18 (7)(a) "New home" means:

19 (i) Every newly constructed private dwelling unit in the state and  
20 the appliances, fixtures, and items of equipment and structure that are  
21 made a part of a newly constructed private dwelling unit at the time of  
22 construction. Newly constructed private dwelling units include  
23 substantial remodels. "Substantial remodel" means a remodel of a  
24 residence, for which the total cost exceeds one-half of the assessed  
25 value of the improvements for property tax purposes at the time the  
26 contract for remodel was made; and

27 (ii) A condominium, as defined in RCW 64.34.020, used for  
28 residential purposes, as defined in RCW 64.34.020.

29 (b) "New home" does not include:

30 (i) A residential timeshare as defined in RCW 64.36.010;

31 (ii) A manufactured home or mobile home as defined in RCW  
32 65.20.020;

33 (iii) Outbuildings, including detached garages and carports, except  
34 outbuildings that contain plumbing, electrical, heating, cooling, or  
35 ventilation systems serving the new home, and then only to the extent  
36 that defects to the outbuildings could affect these systems;

37 (iv) Driveways;

38 (v) Walkways;

1 (vi) Boundary walls;  
2 (vii) Retaining walls not necessary for the structural stability of  
3 the new home;  
4 (viii) Landscaping;  
5 (ix) Sprinkler or irrigation systems;  
6 (x) Fences;  
7 (xi) Off-site improvements;  
8 (xii) Appurtenant recreational facilities; and  
9 (xiii) Other similar items as determined by the director of the  
10 department of labor and industries by rule.

11 (8) "New home warranty" means the warranty created in section 2 of  
12 this act.

13 (9) "Owner" means the purchaser of a new home or any subsequent  
14 owner of a home to which the warranty created in section 2 of this act  
15 applies.

16 (10) "Plumbing systems" means:

17 (a) Gas supply lines and fittings;

18 (b) Water supply, waste, and vent pipes and their fittings;

19 (c) Septic tanks and their drain fields; and

20 (d) Water, gas, and sewer service piping and their extensions to  
21 the tie-in of a public utility connection, or on-site wells and sewage  
22 disposal systems.

23 (11)(a) "Structural defect" means any defect in the load-bearing  
24 portions of a new home that adversely affects its load-bearing function  
25 to the extent that the home becomes or is in danger of becoming unsafe,  
26 unsanitary, or otherwise not reasonably safely inhabitable.

27 (b) "Structural defect" also includes damage due to subsidence,  
28 expansion, or lateral movement of soil that has been disturbed or  
29 relocated by the builder.

30 (c) "Structural defect" does not include damage caused by movement  
31 of the soil:

32 (i) Resulting from a flood or earthquake; or

33 (ii) For which compensation has been provided.

34 (12) "Warranty date" means the first day on which the owner  
35 occupies the new home, closes on the new home, makes the final contract  
36 payment on the new home, or obtains an occupancy permit for the new  
37 home if the home is built on the owner's property, whichever is  
38 earlier.

1        NEW SECTION.    **Sec. 2.**    (1)(a) Except as excluded under (b) of this  
2 subsection, every contract for the construction or sale of a new home  
3 includes, as a matter of law, a warranty from the residential builder  
4 that shall warrant at a minimum that:

5            (i) For two years, beginning on the warranty date, the new home is  
6 free from any defects in materials and workmanship;

7            (ii) For three years, beginning on the warranty date, the new home  
8 is free from any defects in the electrical, plumbing, heating, cooling,  
9 and ventilating systems, except that in the case of appliances,  
10 fixtures, and items of equipment, the warranty need not exceed the  
11 length and scope of the warranty offered by the manufacturer, and the  
12 warranty of merchantability, fitness, and all other implied warranties  
13 with respect to appliances, fixtures, and items of equipment shall be  
14 governed by the Washington uniform commercial code;

15            (iii) For five years, beginning on the warranty date, the new home  
16 is free from any defects that permit or, without repair, will lead to  
17 water penetration; and

18            (iv) For ten years, beginning on the warranty date, the new home is  
19 free from any structural defects.

20            (b) The new home warranty excludes the following:

21            (i) Damage to real property that is not part of the home covered by  
22 the warranty or that is not included in the purchase price of the home;

23            (ii) Bodily injury or damage to personal property;

24            (iii) Any defect in materials supplied or work performed by anyone  
25 other than the builder or the builder's employees, agents, or  
26 subcontractors;

27            (iv) Any damage that the owner knew or had reason to know existed  
28 but has not taken reasonable action to mitigate;

29            (v) Normal wear and tear or expiration of normal useful life;

30            (vi) Insect damage, except where the builder has failed to use  
31 proper materials or construction methods designed to prevent insect  
32 infestation;

33            (vii) Any loss or damage that arises while the home is being used  
34 primarily for nonresidential purposes;

35            (viii) Any damage to the extent it is caused or made worse by  
36 negligence, improper maintenance, or improper operations by anyone  
37 other than the builder or its employees, agents, or subcontractors;

1 (ix) Any damage to the extent it is caused or made worse by changes  
2 of the grading of the ground by anyone other than the builder, its  
3 employees, agents, or subcontractors; and

4 (x) Any loss or damage caused by acts of God.

5 (2) The warranty created by this section runs from the builder to  
6 the owner. This warranty entitles the owner to recover from the  
7 builder all costs associated with repairing the defects, including all  
8 incidental and consequential damages. The liability of a builder under  
9 the new home warranty shall be limited to the fair market value of the  
10 home. Absence of privity of contract between the owner and the builder  
11 is not a defense to the enforcement of this warranty.

12 (3) If the defect is the result of work performed by a  
13 subcontractor, the builder has a right of contribution from that  
14 subcontractor for amounts paid to the owner as a result of the new home  
15 warranty.

16 (4) No action to enforce the new home warranty created by this  
17 section may be commenced after six years have passed from the time the  
18 defect is discovered or, with reasonable diligence, should have been  
19 discovered. Providing written notice and a reasonable description of  
20 a defect to the builder has the effect of tolling the limitation  
21 periods established by this subsection and subsection (5) of this  
22 section. Tolling continues until the builder completes the repair to  
23 the owner's satisfaction, or the builder gives the owner written notice  
24 that the builder refuses to make the repair or has completed as much of  
25 the repair as the builder intends to complete.

26 (5) Except as provided in subsection (4) of this section, no action  
27 to enforce the new home warranty created by this section may be filed  
28 later than the time periods described in subsection (1)(a) of this  
29 section.

30 (6) The new home warranty is a cumulative remedy, and shall not  
31 have the effect of diminishing or replacing any other remedy or  
32 warranty created by law or equity or agreement between the parties.  
33 The new home warranty is in addition to the warranties created under  
34 chapter 64.34 RCW.

35 (7) The new home warranty does not expire on the subsequent sale of  
36 a new home by the owner to a subsequent purchaser, but continues to  
37 protect later purchasers until the warranties provided in subsection  
38 (1)(a) of this section expire.

1 (8) The new home warranty created in this section may not be  
2 omitted, waived, or disclaimed in any way.

3 (9) All new homes must include in the purchase and sale agreement  
4 between the builder and the buyer the following statement: "This home  
5 was built in compliance with all applicable building codes and is  
6 governed by a statutory warranty set forth in chapter 64.-- RCW  
7 (sections 1 and 2 of this act), which representation and warranty may  
8 not be omitted, waived, or disclaimed in any way."

9 **Sec. 3.** RCW 4.16.310 and 2002 c 323 s 9 are each amended to read  
10 as follows:

11 (1) All claims or causes of action as set forth in RCW 4.16.300  
12 shall accrue, and the applicable statute of limitation shall begin to  
13 run only during the period within (~~six~~) ten years after substantial  
14 completion of construction, or during the period within (~~six~~) ten  
15 years after the termination of the services enumerated in RCW 4.16.300,  
16 whichever is later. The phrase "substantial completion of  
17 construction" shall mean the state of completion reached when an  
18 improvement upon real property may be used or occupied for its intended  
19 use. Any cause of action which has not accrued within (~~six~~) ten  
20 years after such substantial completion of construction, or within  
21 (~~six~~) ten years after such termination of services, whichever is  
22 later, shall be barred(~~(: PROVIDED, That)~~). This limitation shall not  
23 be asserted as a defense by any owner, tenant, or other person in  
24 possession and control of the improvement at the time such cause of  
25 action accrues. The limitations prescribed in this section apply to  
26 all claims or causes of action as set forth in RCW 4.16.300 brought in  
27 the name or for the benefit of the state which are made or commenced  
28 after (~~June 11, 1986~~) the effective date of this section.

29 (2) If a written notice is filed under RCW 64.50.020 within the  
30 time prescribed for the filing of an action under this chapter, the  
31 period of time during which the filing of an action is barred under RCW  
32 64.50.020 plus sixty days shall not be a part of the period limited for  
33 the commencement of an action, nor for the application of this section.

34 NEW SECTION. **Sec. 4.** Sections 1 and 2 of this act constitute a

1 new chapter in Title 64 RCW.

--- END ---