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**SUBSTITUTE HOUSE BILL 2790**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** House Judiciary (originally sponsored by Representative Kraft)

AN ACT Relating to the condominium and homeowners' association dispute resolution program; adding a new section to chapter 34.12 RCW; adding a new chapter to Title 64 RCW; prescribing penalties; and providing an expiration date.

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

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

(1) "Association" has the same meaning as provided in RCW 64.34.020 and also includes "association of apartment owners" as defined in RCW 64.32.010 and "homeowners' association" or "association" as provided in RCW 64.38.010.

(2) "Complainant" means an owner or association filing a complaint alleging a violation of chapter 64.32, 64.34, or 64.38 RCW.

(3) "Dispute resolution program" means the pilot program established in this act.

(4) "Owner" has the same meaning as provided in RCW 64.38.010 and also includes "unit owner" as defined in RCW 64.34.020 and "apartment owner" as defined in RCW 64.32.010.

(5) "Respondent" means an association or owner alleged to have committed a violation of chapter 64.32, 64.34, or 64.38 RCW.

NEW SECTION. **Sec.**  (1) The attorney general shall establish a pilot program for the resolution of condominium and homeowners' association disputes in Clark, King, and Spokane counties.

(2) The purpose of the dispute resolution program is to provide owners and associations with a cost-effective and time-efficient process to resolve disputes regarding alleged violations of chapters 64.32, 64.34, and 64.38 RCW.

(3) The attorney general shall:

(a) Exercise reasonable diligence to identify the names and addresses of all associations within the pilot counties;

(b) Produce educational materials regarding chapters 64.32, 64.34, and 64.38 RCW and the dispute resolution program, including a notice in a format capable of being posted that:

(i) Summarizes rights and responsibilities;

(ii) Includes information on how to file a complaint with the attorney general;

(iii) Encourages mediation prior to the filing of a complaint and includes contact information regarding dispute resolution centers and other free or low-cost mediation services available in the pilot counties; and

(iv) Includes a toll‑free telephone number and web site address that owners and associations can use to seek additional information and communicate complaints;

(c) Distribute the educational materials described in (b) of this subsection to the associations identified pursuant to (a) of this subsection, together with information alerting associations that:

(i) All associations must post, in a clearly visible location, the notice described in (b) of this subsection;

(ii) The attorney general may visually confirm that the notice is appropriately posted; and

(iii) The attorney general may issue a fine or other penalty if the attorney general discovers that the association has not appropriately posted the notice or that the association has not maintained the posted notice so that it is clearly visible to owners;

(d) Distribute the educational materials described in (b) of this subsection to any complainants and respondents, as requested;

(e) Perform dispute resolution activities, including investigations, negotiations, determinations of violations, and imposition of fines or other penalties as described in section 3 of this act;

(f) Create and maintain a database of condominium and homeowners' associations that have had complaints filed against them. With respect to each, the following information must be included, at a minimum:

(i) The number of complaints received;

(ii) The nature and extent of the complaints received;

(iii) The violation of law complained of; and

(iv) The dispute resolution program outcomes for each complaint; and

(g) Submit, in compliance with RCW 43.01.036, the following reports to the governor and the legislature:

(i) By December 1, 2018, a brief progress report describing the status of implementation in each of the three pilot counties including, for each pilot county, the number of associations, the number of complaints received from owners, the number of complaints received from associations, the number of complaints resolved in favor of owners, and the number of complaints resolved in favor of associations.

(ii) By December 1, 2019, a report: Describing the status of implementation in each of the three pilot counties including, for each pilot county, the number of associations, the number of complaints received from owners, the number of complaints received from associations, the number of complaints resolved in favor of owners, and the number of complaints resolved in favor of associations; discussing the effectiveness of the dispute resolution pilot program in resolving disputes in a cost-effective and time-efficient manner; and making recommendations with respect to whether the pilot program should be continued or not and, if so, whether it should be modified, continued in its current form, or expanded.

NEW SECTION. **Sec.**  (1) An aggrieved party has the right to file a complaint with the attorney general alleging a violation of chapter 64.32, 64.34, or 64.38 RCW. Owners and associations are encouraged to first pursue mediation prior to filing a complaint, and to participate in good faith in any mediation efforts regardless of whether they are the ones initiating or responding to the mediation request.

(2) Upon receiving a complaint under this chapter, the attorney general shall:

(a) Inquire whether the complainant has participated in mediation and, if the response is no, encourage the complainant to first pursue mediation;

(b) Inform the complainant of any statutory notification requirements and encourage the complainant to appropriately notify the respondent of the complaint; and

(c) If a statutory time period is applicable, inform the complainant of the time frame that the respondent has to remedy the complaint.

(3) After receiving a complaint under this chapter, the attorney general shall exercise discretion as to whether to investigate the alleged violations and, if appropriate, facilitate negotiations between the complainant and the respondent.

(4)(a) Complainants and respondents shall cooperate with the attorney general in the course of an investigation by: (i) Responding to subpoenas issued by the attorney general, which may consist of providing access to papers or other documents; and (ii) providing access to any facilities relevant to the investigation. Complainants and respondents must respond to attorney general subpoenas within thirty days.

(b) Failure to cooperate with the attorney general in the course of an investigation is a violation of this chapter.

(5) If after an investigation the attorney general determines that an agreement cannot be negotiated between the parties, the attorney general shall make a written determination on whether a violation of chapter 64.32, 64.34, or 64.38 RCW has occurred.

(a) If the attorney general finds by a written determination that a violation of chapter 64.32, 64.34, or 64.38 RCW has occurred, the attorney general shall deliver a written notice of violation to the respondent who committed the violation by certified mail. The notice of violation must specify the violation, the corrective action required, the time within which the corrective action must be taken, the penalties including fines, other penalties, and actions that will result if corrective action is not taken within the specified time period, and the process for contesting the determination, fines, penalties, and other actions included in the notice of violation through an administrative hearing. The attorney general must deliver to the complainant a copy of the notice of violation by certified mail.

(b) If the attorney general finds by a written determination that a violation of chapter 64.32, 64.34, or 64.38 RCW has not occurred, the attorney general shall deliver a written notice of nonviolation to both the complainant and the respondent by certified mail. The notice of nonviolation must include the process for contesting the determination included in the notice of nonviolation through an administrative hearing.

(6) Corrective action must take place within fifteen business days of the respondent's receipt of a notice of violation, except as required otherwise by the attorney general, unless the respondent has submitted a timely request for an administrative hearing to contest the notice of violation as required under subsection (8) of this section. If a respondent, which includes either an association or an owner, fails to take corrective action within the required time period and the attorney general has not received a timely request for an administrative hearing, the attorney general may impose a fine, up to a maximum of one hundred dollars per violation per day, for each day that a violation remains uncorrected. The attorney general must consider the severity and duration of the violation and the violation's impact on other owners when determining the appropriate amount of a fine or the appropriate penalty to impose on a respondent. If the respondent shows upon timely application to the attorney general that a good faith effort to comply with the corrective action requirements of the notice of violation has been made and that the corrective action has not been completed because of mitigating factors beyond the respondent's control, the attorney general may delay the imposition of a fine or penalty.

(7) The attorney general may issue an order requiring the respondent, or its assignee or agent, to cease and desist from an unlawful practice and take affirmative actions that in the judgment of the attorney general will carry out the purposes of this chapter. The affirmative actions may include, but are not limited to, the following:

(a) Refunds of improper fees, charges, and assessments collected in violation of chapters 64.32, 64.34, or 64.38 RCW or this chapter;

(b) Filing and utilization of documents that correct a statutory or rule violation; and

(c) Reasonable action necessary to correct a statutory or rule violation.

(8) A complainant or respondent may request an administrative hearing before an administrative law judge under chapter 34.05 RCW to contest:

(a) A notice of violation issued under subsection (5)(a) of this section or a notice of nonviolation issued under subsection (5)(b) of this section;

(b) A fine or other penalty imposed under subsection (6) of this section; or

(c) An order to cease and desist or an order to take affirmative actions under subsection (7) of this section.

The complainant or respondent must request an administrative hearing within fifteen business days of receipt of a notice of violation, notice of nonviolation, fine, other penalty, order, or action. If an administrative hearing is not requested within this time period, the notice of violation, notice of nonviolation, fine, other penalty, order, or action constitutes a final order of the attorney general and is not subject to review by any court or agency.

(9) If an administrative hearing is initiated, the respondent and complainant shall each bear the cost of his or her own legal expenses.

(10) The administrative law judge appointed under chapter 34.12 RCW shall:

(a) Hear and receive pertinent evidence and testimony;

(b) Decide whether the evidence supports the attorney general finding by a preponderance of the evidence; and

(c) Enter an appropriate order within thirty days after the close of the hearing and immediately mail copies of the order to the affected parties.

The order of the administrative law judge constitutes the final agency order of the attorney general and may be appealed to the superior court under chapter 34.05 RCW.

(11) When the attorney general imposes a fine, refund, or other penalty against a respondent, the respondent may not seek any recovery or reimbursement of the fine, refund, or other penalty from a complainant.

(12) All receipts from the imposition of fines or other penalties collected under this section other than those due to a complainant must be deposited into the state general fund.

(13) This section is not exclusive and does not limit the right of owners or associations to take legal action against another party. Exhaustion of the administrative remedy provided in this chapter is not required before a legal action may be brought.

NEW SECTION. **Sec.**  The attorney general or individuals acting on behalf of the attorney general are immune from suit in any action, civil or criminal, based upon any disciplinary actions or other official acts performed in the course of their duties under this chapter, except their intentional or willful misconduct.

NEW SECTION. **Sec.**  This act does not apply to any disputes between owners and associations regarding construction defect actions under chapter 64.50 RCW.

NEW SECTION. **Sec.**  A new section is added to chapter 34.12 RCW to read as follows:

When requested by the attorney general, the chief administrative law judge shall assign an administrative law judge to conduct proceedings under chapter 64.--- RCW (the new chapter created in section 7 of this act).

NEW SECTION. **Sec.**  Sections 1 through 5 of this act constitute a new chapter in Title 64 RCW.

NEW SECTION. **Sec.**  This act expires June 30, 2020.

**--- END ---**