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**SENATE BILL 5219**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senators Padden, Pedersen, Becker, Palumbo, Zeiger, Van De Wege, Holy, Dhingra, Braun, Schoesler, Warnick, Ericksen, Honeyford, Bailey, Brown, Short, Sheldon, Fortunato, O'Ban, Das, Mullet, Wellman, and Wilson, L.

AN ACT Relating to condominium construction warranties; and amending RCW 64.90.665, 64.90.670, 64.90.675, and 64.90.680.

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

**Sec.**  RCW 64.90.665 and 2018 c 277 s 414 are each amended to read as follows:

(1) Subject to subsections (2) and (3) of this section, express warranties made by any declarant or dealer to a purchaser of a unit in a condominium, if relied upon by the purchaser in purchasing the unit, are created as follows:

(a) Any written affirmation of fact or written promise that relates to the unit, its use, or rights appurtenant to the unit or its use, improvements to the condominium that would directly benefit the unit, or the right to use or have the benefit of facilities not located in the condominium creates an express warranty that the unit and related rights and uses will not materially deviate from the affirmation or promise.

(b) Any written description of the physical characteristics of the condominium at the time the purchase agreement is executed, including plans and specifications of or for improvements, creates an express warranty that the condominium will conform to the written description in all material respects.

(c) Any written description of the quantity or extent of the real estate comprising the condominium, including plats or surveys, creates an express warranty that the condominium will conform to the description, subject to customary tolerances.

(d) A written statement that a purchaser may put a unit only to a specified use is an express warranty that the specified use is lawful.

(2) Subject to subsection (3) of this section, neither formal words, such as "warranty" or "guarantee," nor a specific intention to make a warranty are necessary to create an express warranty, but a statement of opinion or a commendation of the real estate, its quality, or its value does not create a warranty, and a statement, promise, model, depiction, or description does not create a warranty if it discloses that it is only proposed, is not representative, or is subject to change.

(3) A purchaser may not rely on any statement, affirmation, promise, model, depiction, or description unless it is contained in the public offering statement delivered to the purchaser or made in a record signed by the declarant or dealer, or the declarant's or dealer's agent identified in the public offering statement.

(4) Any conveyance of a unit transfers to the purchaser all express warranties of quality made by the declarant or dealer.

(5) This section does not apply to condominiums with less than seven units.

**Sec.**  RCW 64.90.670 and 2018 c 277 s 415 are each amended to read as follows:

(1) A declarant and any dealer warrants to a purchaser of a condominium unit that the unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of contracting, except for reasonable wear and tear and damage by casualty or condemnation.

(2) A declarant and any dealer impliedly warrants to a purchaser of a condominium unit that the unit and the common elements in the condominium are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by such declarant or dealer will be:

(a) Free from defective materials;

(b) Constructed in accordance with sound engineering and construction standards;

(c) Constructed in a workmanlike manner; and

(d) Constructed in compliance with all laws then applicable to such improvements.

(3) A declarant and any dealer warrants to a purchaser of a condominium unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

(4) Warranties imposed under this section may be excluded or modified as specified in RCW 64.90.675.

(5) For purposes of this section, improvements made or contracted for by an affiliate of a declarant are made or contracted for by the declarant.

(6) Any conveyance of a condominium unit transfers to the purchaser all of a declarant's or dealer's implied warranties of quality.

(7)(a) In a proceeding for breach of any of the obligations arising under this section, the plaintiff must show that the alleged breach has adversely affected or will adversely affect the performance of that portion of the unit or common elements alleged to be in breach.

(b) As used in this subsection, an adverse effect must be more than technical and must be significant to a reasonable person. To establish an adverse effect, the person alleging the breach is not required to prove that the breach renders the unit or common element uninhabitable or unfit for its intended purpose.

(8) Proof of breach of any obligation arising under this section is not proof of damages. Damages awarded for a breach of an obligation arising under this section are the reasonable cost of repairs. However, if it is established that the cost of such repairs is clearly disproportionate to the loss in market value caused by the breach, damages are limited to the loss in market value.

(9) This section does not apply to condominiums with less than seven units.

**Sec.**  RCW 64.90.675 and 2018 c 277 s 416 are each amended to read as follows:

(1) Except as limited under subsection (2) of this section with respect to a purchaser of a condominium unit that may be used for residential use, implied warranties of quality under RCW 64.90.670:

(a) May be excluded or modified by written agreement of the parties; and

(b) Are excluded by written expression of disclaimer, such as "as is," "with all faults," or other language that in common understanding calls the buyer's attention to the exclusion of warranties.

(2) With respect to a purchaser of a condominium unit that may be used for residential use, no disclaimer of implied warranties of quality under RCW 64.90.670 is effective, except that a declarant and any dealer may disclaim liability in an instrument for one or more specified defects or failures to comply with applicable law, if:

(a) The declarant or dealer knows or has reason to believe that the specific defects or failures exist at the time of disclosure;

(b) The disclaimer specifically describes the defects or failures;

(c) The disclaimer includes a statement as to the effect of the defects or failures;

(d) The disclaimer is bold faced, capitalized, underlined, or otherwise set out from surrounding material so as to be conspicuous; and

(e) The disclaimer is signed by the purchaser.

(3) A declarant or dealer may not make an express written warranty of quality that limits the implied warranties of quality made to the purchaser set forth in RCW 64.90.670.

(4) This section does not apply to condominiums with less than seven units.

**Sec.**  RCW 64.90.680 and 2018 c 277 s 417 are each amended to read as follows:

(1) A proceeding for breach of any obligations arising under RCW 64.90.665, 64.90.670, or 64.90.675 must be commenced within four years after the cause of action accrues. The period for commencing an action for a breach accruing pursuant to subsection (2)(a) of this section does not expire prior to one year after termination of the period of declarant control, if any, under RCW 64.90.415. Such periods may not be reduced by either oral or written agreement or through the use of contractual claims or notice procedures that require the filing or service of any claim or notice prior to the expiration of the period specified in this section.

(2) Subject to subsection (3) of this section, a cause of action for breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

(a) As to a unit, the latest of:

(i) The date the unit was conveyed to the purchaser to whom the warranty is first made; or

(ii) The date any portion of the unit that constitutes a building enclosure as defined in RCW 64.55.010(3) was completed; and

(b) As to each common element, at the latest of:

(i) The date the common element was completed;

(ii) The date the common element was added to the condominium; or

(iii) The date the first unit in the condominium was conveyed to a bona fide purchaser.

(3) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

(4) If a written notice of claim is served under RCW 64.50.020 within the time prescribed for the filing of an action under this chapter, the statutes of limitation in this chapter and any applicable statutes of repose for construction-related claims are tolled until sixty days after the period of time during which the filing of an action is barred under RCW 64.50.020.

(5) This section does not apply to condominiums with less than seven units.

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