

SENATE BILL REPORT

SHB 1576

As of March 19, 2019

Title: An act relating to construction defect actions.

Brief Description: Concerning construction defect actions.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Senn, Irwin, Goodman, Griffey, Ryu, Chapman and Barkis).

Brief History: Passed House: 3/05/19, 94-4.

Committee Activity: Law & Justice: 3/19/19.

Brief Summary of Bill

- Requires the board of directors of a common interest community notify unit owners, convene an informational meeting, and conduct a vote prior to commencing action for a construction defect.
- Requires a construction professional be given an opportunity at the meeting to address unit owners regarding the alleged defects.
- Allows the board of directors to proceed with the construction defect action unless the action is rejected by a majority of unit owners.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Shani Bauer (786-7468)

Background: Construction Defect Action. In 2002, a mandatory prelitigation claim process was adopted for claims brought against a construction professional for property damage due to alleged defects in the construction of a residence. These requirements apply to the new construction of a residence and to any remodel that costs more than half of the assessed value of the residence and must be met before a lawsuit can be filed.

Requirements Before Suit is Filed—Notice and Opportunity to Cure. Before a lawsuit can be filed alleging a defect in the construction or substantial remodel of a residence, a claimant must serve notice on the construction professional alleged to be responsible for the defect.

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.

The claimant's notice must be given at least 45 days before a suit is filed and must describe the claim in reasonable detail.

Within 21 days of receiving the notice, the construction professional must respond to the claimant. In the response, the construction professional must do one of the following:

- offer to inspect the alleged defect and then, based on the inspection, either remedy the defect, pay for it, or dispute the claim;
- offer to settle the claim by paying for the defect, including possibly buying the residence back from the homeowner; or
- dispute the claim.

If the construction professional fails to respond, or disputes the claim, or the claimant rejects an offer of inspection or settlement, then the claimant may file a lawsuit. Procedures are also laid out for situations in which the claimant agrees to an inspection or agrees to an offer of settlement. If the construction professional fails to perform agreed repairs, or fails to meet an agreed timetable, the claimant may file the lawsuit.

If a claimant discovers another defect after a suit has been commenced, the claimant must notify the construction professional and give the construction professional an opportunity to respond in the manner described previously. The new claim may then be added to a pending lawsuit.

The timely service of a notice of claim tolls any applicable statutes of limitations and repose until 60 days after the end of the notice and opportunity to cure period during which bringing a lawsuit is barred.

Notice to Homeowners. *Condominium and Homeowners' Associations Created Before July 1, 2018.* Prior to serving a summons and complaint in a construction defect action, the board of directors of a condominium association under the Condominium Act or a homeowners' association under the Homeowners' Association Act must substantially comply with a requirement to mail or deliver written notice of the commencement or anticipated commencement of the action to each homeowner. The notice must include a general description of:

- the nature of the action and the relief sought; and
- the expenses and fees anticipated to be incurred in prosecuting the action.

Common Interest Communities Created After July 1, 2018. An association of a common interest community subject to the Washington Uniform Common Interest Ownership Act (WUCIOA) must comply with the mandatory prelitigation process for construction defect actions, if applicable, before instituting any proceeding in connection with construction defects. There is not a specific section expressly governing the notice required from boards of directors to unit owners prior to commencing a construction defect action, as there is for a condominium or homeowners' association created before July 1, 2018.

Summary of Bill: Prior to commencing an action for a construction defect, the board of directors of a common interest community governed by WUCIOA must provide notice to unit owners and each construction professional against whom an action is proposed, convene

a meeting of unit owners to consider whether to initiate action, and conduct a vote of unit owners.

The notice to unit owners must include the date, time and location of the meeting, the nature of the action and relief sought, and the anticipated costs that will be incurred in prosecuting the action. The notice must also include a ballot, the deadline for which the ballot must be delivered—which may not be fewer than 45 days of the date of the meeting—and the percent of votes necessary to reject the action.

A meeting must be held within 45 days of the date the notice was provided, at which the construction professional must be invited to attend and have an opportunity to address the unit owners concerning the alleged defects. The construction professional's presentation may, but is not required, to include an offer to remedy any defect. Unit owners in attendance may cast their ballots at the meeting or may deliver them on or before the deadline provided in the initial notice. If the declarant or an affiliate of the declarant is a proposed defendant, the declarant and any affiliate of the declarant are not eligible to vote.

Unless a majority of unit owners reject the proposed action, the action is ratified and the board of directors may proceed in commencing the construction defect action. Ratification is not required if the alleged construction defect pertains to a facility that is intended and used for nonresidential purposes and the cost to repair the alleged defect does not exceed \$100,000 or when the association is the contracting party for the performance of labor or purchase of services or materials.

This section supersedes all inconsistent provisions of the governing documents of all common interest communities subject to WUCIOA.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill is seeking to ensure that condominium owners have a voice in the decision whether to proceed with a construction defect lawsuit. If a majority of condo owners do not want to proceed, this gives them an outlet to object. It also gives the construction professional an opportunity to come in and remedy the situation.

This is another piece of the puzzle in addressing construction defects and the ability to incentivize construction of middle market condominiums.

Other bills do not give relief to architects because architects do not provide warranties. This bill would assist in helping architects to avoid non meritorious lawsuits.

CON: This bill is singling out homeowners' associations as the only entity in the state that needs to seek out the approval of the membership before proceeding with litigation. It would be difficult to have the construction professional in the room at the meeting where the Board is trying to explain the situation to homeowners. It would also be difficult to preserve attorney client privilege in a large meeting of homeowners.

It is difficult and odd to include homeowners in this type of management decision. Short term owners do not have a long term stake in the community. Also it is rare that there is a concrete settlement on the table early in the process. A construction professional may be making some type of offer to remedy the defect while the statute of limitations is ticking down. These are considerations that the Board has an obligation to consider.

Persons Testifying: PRO: Representative Tana Senn, Prime Sponsor; Kirsten Smith, American Institute of Architects; Jan Himebaugh, Building Industry Association of Washington.

CON: Krystelle Purkey, Washington State Community Association Institute; Dean Martin, Washington State Community Association Institute.

Persons Signed In To Testify But Not Testifying: No one.