

E2SSB 5258 - H COMM AMD
By Committee on Appropriations

ADOPTED 04/20/2023

1 Strike everything after the enacting clause and insert the
2 following:

3 **"Sec. 1.** RCW 64.35.105 and 2004 c 201 s 101 are each amended to
4 read as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

7 (1) "Affiliate" has the meaning in RCW (~~(64.34.020)~~) 64.90.010.

8 (2) "Association" has the meaning in RCW (~~(64.34.020)~~) 64.90.010.

9 (3) "Building envelope" means the assemblies, components, and
10 materials of a building that are intended to separate and protect the
11 interior space of the building from the adverse effects of exterior
12 climatic conditions.

13 (4) "Common element" has the meaning in RCW (~~(64.34.020)~~)
14 64.90.010.

15 (5) "Condominium" has the meaning in RCW (~~(64.34.020)~~) 64.90.010.

16 (6) "Construction professional" has the meaning in RCW 64.50.010.

17 (7) "Conversion condominium" has the meaning in RCW (~~(64.34.020)~~)
18 64.90.010.

19 (8) "Declarant" has the meaning in RCW (~~(64.34.020)~~) 64.90.010.

20 (9) "Declarant control" has the meaning in RCW (~~(64.34.020)~~)
21 64.90.010.

22 (10) "Defect" means any aspect of a condominium unit or common
23 element which constitutes a breach of the implied warranties set
24 forth in RCW 64.34.445 or 64.90.670.

25 (11) "Limited common element" has the meaning in RCW
26 (~~(64.34.020)~~) 64.90.010.

27 (12) "Material" means substantive, not simply formal; significant
28 to a reasonable person; not trivial or insignificant. When used with
29 respect to a particular construction defect, "material" does not
30 require that the construction defect render the unit or common
31 element unfit for its intended purpose or uninhabitable.

1 (13) "Mediation" means a collaborative process in which two or
2 more parties meet and attempt, with the assistance of a mediator, to
3 resolve issues in dispute between them.

4 (14) "Mediation session" means a meeting between two or more
5 parties to a dispute during which they are engaged in mediation.

6 (15) "Mediator" means a neutral and impartial facilitator with no
7 decision-making power who assists parties in negotiating a mutually
8 acceptable settlement of issues in dispute between them.

9 (16) "Person" has the meaning in RCW (~~(64.34.020)~~) 64.90.010.

10 (17) "Public offering statement" has the meaning in (~~RCW~~
11 ~~64.34.410~~) chapter 64.90 RCW.

12 (18) "Qualified insurer" means an entity that holds a certificate
13 of authority under RCW 48.05.030, or an eligible insurer under
14 chapter 48.15 RCW.

15 (19) "Qualified warranty" means an insurance policy issued by a
16 qualified insurer that complies with the requirements of this
17 chapter. A qualified warranty includes coverage for repair of
18 physical damage caused by the defects covered by the qualified
19 warranty, except to the extent of any exclusions and limitations
20 under this chapter.

21 (20) "Resale certificate" means the statement to be delivered by
22 the association under (~~RCW 64.34.425~~) chapter 64.90 RCW.

23 (21) "Transition date" means the date on which the declarant is
24 required to deliver to the association the property of the
25 association under RCW (~~(64.34.312)~~) 64.90.420.

26 (22) "Unit" has the meaning in RCW (~~(64.34.020)~~) 64.90.010.

27 (23) "Unit owner" has the meaning in RCW (~~(64.34.020)~~) 64.90.010.

28 **Sec. 2.** RCW 64.38.010 and 2021 c 227 s 9 are each reenacted and
29 amended to read as follows:

30 For purposes of this chapter:

31 (1) "Assessment" means all sums chargeable to an owner by an
32 association in accordance with RCW 64.38.020.

33 (2) "Baseline funding plan" means establishing a reserve funding
34 goal of maintaining a reserve account balance above (~~(zero dollars)~~)
35 \$0 throughout the (~~(thirty-year)~~) 30-year study period described
36 under RCW 64.38.065.

37 (3) "Board of directors" or "board" means the body, regardless of
38 name, with primary authority to manage the affairs of the
39 association.

1 (4) "Common areas" means property owned, or otherwise maintained,
2 repaired or administered by the association.

3 (5) "Common expense" means the costs incurred by the association
4 to exercise any of the powers provided for in this chapter.

5 (6) "Contribution rate" means, in a reserve study as described in
6 RCW 64.38.065, the amount contributed to the reserve account so that
7 the association will have cash reserves to pay major maintenance,
8 repair, or replacement costs without the need of a special
9 assessment.

10 (7) "Effective age" means the difference between the estimated
11 useful life and remaining useful life.

12 (8) "Electronic transmission" or "electronically transmitted"
13 means any electronic communication not directly involving the
14 physical transfer of a writing in a tangible medium, but that may be
15 retained, retrieved, and reviewed by the sender and the recipient of
16 the communication, and that may be directly reproduced in a tangible
17 medium by a sender and recipient.

18 (9) "Full funding plan" means setting a reserve funding goal of
19 achieving one hundred percent fully funded reserves by the end of the
20 (~~(thirty-year)~~) 30-year study period described under RCW 64.38.065,
21 in which the reserve account balance equals the sum of the
22 deteriorated portion of all reserve components.

23 (10) "Fully funded balance" means the current value of the
24 deteriorated portion, not the total replacement value, of all the
25 reserve components. The fully funded balance for each reserve
26 component is calculated by multiplying the current replacement cost
27 of the reserve component by its effective age, then dividing the
28 result by the reserve component's useful life. The sum total of all
29 reserve components' fully funded balances is the association's fully
30 funded balance.

31 (11) "Governing documents" means the articles of incorporation,
32 bylaws, plat, declaration of covenants, conditions, and restrictions,
33 rules and regulations of the association, or other written instrument
34 by which the association has the authority to exercise any of the
35 powers provided for in this chapter or to manage, maintain, or
36 otherwise affect the property under its jurisdiction.

37 (12) "Homeowners' association" or "association" means a
38 corporation, unincorporated association, or other legal entity, each
39 member of which is an owner of residential real property located
40 within the association's jurisdiction, as described in the governing

1 documents, and by virtue of membership or ownership of property is
2 obligated to pay real property taxes, insurance premiums, maintenance
3 costs, or for improvement of real property other than that which is
4 owned by the member. "Homeowners' association" does not mean an
5 association created under chapter 64.32 (~~(e)~~), 64.34, or 64.90 RCW.

6 (13) "Lot" means a physical portion of the real property located
7 within an association's jurisdiction designated for separate
8 ownership.

9 (14) "Owner" means the owner of a lot, but does not include a
10 person who has an interest in a lot solely as security for an
11 obligation. "Owner" also means the vendee, not the vendor, of a lot
12 under a real estate contract.

13 (15) "Remaining useful life" means the estimated time, in years,
14 before a reserve component will require major maintenance, repair, or
15 replacement to perform its intended function.

16 (16) "Replacement cost" means the current cost of replacing,
17 repairing, or restoring a reserve component to its original
18 functional condition.

19 (17) "Reserve component" means a common element whose cost of
20 maintenance, repair, or replacement is infrequent, significant, and
21 impractical to include in an annual budget.

22 (18) "Reserve study professional" means an independent person who
23 is suitably qualified by knowledge, skill, experience, training, or
24 education to prepare a reserve study in accordance with RCW 64.38.065
25 and 64.38.070.

26 (19) "Residential real property" means any real property, the use
27 of which is limited by law, covenant or otherwise to primarily
28 residential or recreational purposes.

29 (20) "Significant assets" means that the current replacement
30 value of the major reserve components is (~~(seventy-five)~~) 75 percent
31 or more of the gross budget of the association, excluding the
32 association's reserve account funds.

33 (21) "Tangible medium" means a writing, copy of a writing,
34 facsimile, or a physical reproduction, each on paper or on other
35 tangible material.

36 (22) "Useful life" means the estimated time, between years, that
37 major maintenance, repair, or replacement is estimated to occur.

38 **Sec. 3.** RCW 64.50.010 and 2020 c 18 s 23 are each amended to
39 read as follows:

1 Unless the context clearly requires otherwise, the definitions in
2 this section apply throughout this chapter.

3 (1) "Action" means any civil lawsuit or action in contract or
4 tort for damages or indemnity brought against a construction
5 professional to assert a claim, whether by complaint, counterclaim,
6 or cross-claim, for damage or the loss of use of real or personal
7 property caused by a defect in the construction of a residence or in
8 the substantial remodel of a residence. "Action" does not include any
9 civil action in tort alleging personal injury or wrongful death to a
10 person or persons resulting from a construction defect.

11 (2) "Association" means an association, master association, or
12 subassociation as defined and provided for in RCW 64.34.020(4),
13 64.34.276, 64.34.278, (~~and~~) 64.38.010(~~((11))~~) (12), and
14 64.90.010(4).

15 (3) "Claimant" means a homeowner or association who asserts a
16 claim against a construction professional concerning a defect in the
17 construction of a residence or in the substantial remodel of a
18 residence.

19 (4) "Construction defect professional" means an architect,
20 builder, builder vendor, contractor, subcontractor, engineer,
21 inspector, or such other person with verifiable training and
22 experience related to the defects or conditions identified in any
23 report included with a notice of claim as set forth in RCW
24 64.50.020(1)(a).

25 (5) "Construction professional" means an architect, builder,
26 builder vendor, contractor, subcontractor, engineer, or inspector,
27 including, but not limited to, a dealer as defined in RCW 64.34.020
28 and a declarant as defined in RCW 64.34.020, performing or furnishing
29 the design, supervision, inspection, construction, or observation of
30 the construction of any improvement to real property, whether
31 operating as a sole proprietor, partnership, corporation, or other
32 business entity.

33 (~~((5))~~) (6) "Homeowner" means: (a) Any person, company, firm,
34 partnership, corporation, or association who contracts with a
35 construction professional for the construction, sale, or construction
36 and sale of a residence; and (b) an "association" as defined in this
37 section. "Homeowner" includes, but is not limited to, a subsequent
38 purchaser of a residence from any homeowner.

39 (~~((6))~~) (7) "Residence" means a single-family house, duplex,
40 triplex, quadraplex, or a unit in a multiunit residential structure

1 in which title to each individual unit is transferred to the owner
2 under a condominium or cooperative system, and shall include common
3 elements as defined in RCW 64.34.020 and common areas as defined in
4 RCW 64.38.010(4).

5 ~~((7))~~ (8) "Serve" or "service" means personal service or
6 delivery by certified mail to the last known address of the
7 addressee.

8 ~~((8))~~ (9) "Substantial remodel" means a remodel of a residence,
9 for which the total cost exceeds one-half of the assessed value of
10 the residence for property tax purposes at the time the contract for
11 the remodel work was made.

12 **Sec. 4.** RCW 64.50.020 and 2002 c 323 s 3 are each amended to
13 read as follows:

14 (1) In every construction defect action brought against a
15 construction professional, the claimant shall, no later than ~~((forty-~~
16 ~~five))~~ 45 days before filing an action, serve written notice of claim
17 on the construction professional.

18 (a) The notice of claim shall state that the claimant asserts a
19 construction defect claim against the construction professional and
20 shall describe the claim in reasonable detail sufficient to determine
21 the general nature of the defect.

22 (b) If the claimant is a condominium association created after
23 the effective date of this section, the written notice of claim shall
24 include a written report from a construction defect professional. In
25 addition to describing the claim in reasonable detail sufficient to
26 determine the general nature of the defect the written report shall
27 state the construction defect professional's qualifications, the
28 manner and type of inspection upon which the report was based, and
29 the general location of the defect.

30 (2) Within ~~((twenty-one))~~ 14 days after service of the notice of
31 claim, the construction professional may serve a written response
32 demanding a meeting with the claimant and its expert, including the
33 construction defect professional who authored the report required in
34 subsection (1)(b) of this section to confer regarding the report and
35 its contents. The meeting shall take place within 14 days of service
36 of the construction professional's demand or at such later date as
37 mutually agreed to by the parties.

38 (3) Within 14 days after the meeting referenced in subsection (2)
39 of this section or, in the absence of a demand for such meeting,

1 within 21 days after service of the notice of claim, whichever is
2 later, the construction professional shall serve a written response
3 on the claimant by registered mail or personal service. The written
4 response shall:

5 (a) Propose to inspect the residence that is the subject of the
6 claim and to complete the inspection within a specified time frame.
7 The proposal shall include the statement that the construction
8 professional shall, based on the inspection, offer to remedy the
9 defect, compromise by payment, or dispute the claim;

10 (b) Offer to compromise and settle the claim by monetary payment
11 without inspection. A construction professional's offer under this
12 subsection (~~((2))~~) (3)(b) to compromise and settle a homeowner's
13 claim may include, but is not limited to, an express offer to
14 purchase the claimant's residence that is the subject of the claim,
15 and to pay the claimant's reasonable relocation costs; or

16 (c) State that the construction professional disputes the claim
17 and will neither remedy the construction defect nor compromise and
18 settle the claim.

19 (~~((3))~~) (4)(a) If the construction professional disputes the
20 claim or does not respond to the claimant's notice of claim within
21 the time stated in subsection (~~((2))~~) (3) of this section, the
22 claimant may bring an action against the construction professional
23 for the claim described in the notice of claim without further
24 notice.

25 (b) If the claimant rejects the inspection proposal or the
26 settlement offer made by the construction professional pursuant to
27 subsection (~~((2))~~) (3) of this section, the claimant shall serve
28 written notice of the claimant's rejection on the construction
29 professional. After service of the rejection, the claimant may bring
30 an action against the construction professional for the construction
31 defect claim described in the notice of claim. If the construction
32 professional has not received from the claimant, within (~~(thirty)~~) 30
33 days after the claimant's receipt of the construction professional's
34 response, either an acceptance or rejection of the inspection
35 proposal or settlement offer, then at anytime thereafter the
36 construction professional may terminate the proposal or offer by
37 serving written notice to the claimant, and the claimant may
38 thereafter bring an action against the construction professional for
39 the construction defect claim described in the notice of claim.

1 (~~(4)~~) (5)(a) If the claimant elects to allow the construction
2 professional to inspect in accordance with the construction
3 professional's proposal pursuant to subsection (~~(2)~~) (3)(a) of this
4 section, the claimant shall provide the construction professional and
5 its contractors or other agents reasonable access to the claimant's
6 residence during normal working hours to inspect the premises and the
7 claimed defect.

8 (b) Within (~~fourteen~~) 14 days following completion of the
9 inspection, the construction professional shall serve on the
10 claimant:

11 (i) A written offer to remedy the construction defect at no cost
12 to the claimant, including a report of the scope of the inspection,
13 the findings and results of the inspection, a description of the
14 additional construction necessary to remedy the defect described in
15 the claim, and a timetable for the completion of such construction;

16 (ii) A written offer to compromise and settle the claim by
17 monetary payment pursuant to subsection (~~(2)~~) (3)(b) of this
18 section; or

19 (iii) A written statement that the construction professional will
20 not proceed further to remedy the defect.

21 (c) If the construction professional does not proceed further to
22 remedy the construction defect within the agreed timetable, or if the
23 construction professional fails to comply with the provisions of (b)
24 of this subsection, the claimant may bring an action against the
25 construction professional for the claim described in the notice of
26 claim without further notice.

27 (d) If the claimant rejects the offer made by the construction
28 professional pursuant to (b)(i) or (ii) of this subsection to either
29 remedy the construction defect or to compromise and settle the claim
30 by monetary payment, the claimant shall serve written notice of the
31 claimant's rejection on the construction professional. After service
32 of the rejection notice, the claimant may bring an action against the
33 construction professional for the construction defect claim described
34 in the notice of claim. If the construction professional has not
35 received from the claimant, within (~~thirty~~) 30 days after the
36 claimant's receipt of the construction professional's response,
37 either an acceptance or rejection of the offer made pursuant to
38 (b)(i) or (ii) of this subsection, then at anytime thereafter the
39 construction professional may terminate the offer by serving written
40 notice to the claimant.

1 (~~(5)~~) (6)(a) Any claimant accepting the offer of a construction
2 professional to remedy the construction defect pursuant to subsection
3 (~~(4)~~) (5)(b)(i) of this section shall do so by serving the
4 construction professional with a written notice of acceptance within
5 a reasonable time period after receipt of the offer, and no later
6 than (~~thirty~~) 30 days after receipt of the offer. The claimant
7 shall provide the construction professional and its contractors or
8 other agents reasonable access to the claimant's residence during
9 normal working hours to perform and complete the construction by the
10 timetable stated in the offer.

11 (b) The claimant and construction professional may, by written
12 mutual agreement, alter the extent of construction or the timetable
13 for completion of construction stated in the offer, including, but
14 not limited to, repair of additional defects.

15 (~~(6)~~) (7) Any action commenced by a claimant prior to
16 compliance with the requirements of this section shall be subject to
17 dismissal without prejudice, and may not be recommenced until the
18 claimant has complied with the requirements of this section.

19 (~~(7)~~) (8) Nothing in this section may be construed to prevent a
20 claimant from commencing an action on the construction defect claim
21 described in the notice of claim if the construction professional
22 fails to perform the construction agreed upon, fails to remedy the
23 defect, or fails to perform by the timetable agreed upon pursuant to
24 subsection (~~(2)~~) (3)(a) or (~~(5)~~) (6) of this section.

25 (~~(8)~~) (9) Prior to commencing any action alleging a
26 construction defect, or after the dismissal of any action without
27 prejudice pursuant to subsection (~~(6)~~) (7) of this section, the
28 claimant may amend the notice of claim to include construction
29 defects discovered after the service of the original notice of claim,
30 and must otherwise comply with the requirements of this section for
31 the additional claims. The service of an amended notice of claim
32 shall relate back to the original notice of claim for purposes of
33 tolling statutes of limitations and repose. Claims for defects
34 discovered after the commencement or recommencement of an action may
35 be added to such action only after providing notice to the
36 construction professional of the defect and allowing for response
37 under subsection (~~(2)~~) (3) of this section.

38 (10) If the claimant is an association, and notwithstanding any
39 contrary provisions in the association's governing documents, the
40 association's board of director's ability to incur expenses to

1 prepare and serve a notice of claim and any related reports and
2 otherwise comply with the requirements of this chapter shall not be
3 restricted.

4 **Sec. 5.** RCW 64.50.040 and 2002 c 323 s 5 are each amended to
5 read as follows:

6 (1)(a) In the event the board of directors, pursuant to RCW
7 64.34.304(1)(d) or 64.38.020(4), institutes an action asserting
8 defects in the construction of two or more residences, common
9 elements, or common areas, this section shall apply. For purposes of
10 this section, "action" has the same meaning as set forth in RCW
11 64.50.010.

12 (b) The board of directors shall substantially comply with the
13 provisions of this section.

14 (2)(a) Prior to the service of the summons and complaint on any
15 defendant with respect to an action governed by this section, the
16 board of directors shall mail or deliver written notice of the
17 commencement or anticipated commencement of such action to each
18 homeowner at the last known address described in the association's
19 records.

20 (b) The notice required by (a) of this subsection shall state a
21 general description of the following:

- 22 (i) The nature of the action and the relief sought; ~~((and))~~
- 23 (ii) To the extent applicable, the existence of the report
24 required in RCW 64.50.020(1)(a), which shall be made available to
25 each homeowner upon request;
- 26 (iii) A summary of the construction professional's response
27 pursuant to RCW 64.50.020(3), if any; and
- 28 (iv) The expenses and fees that the board of directors
29 anticipates will be incurred in prosecuting the action.

30 (3) Nothing in this section may be construed to:

31 (a) Require the disclosure in the notice or the disclosure to a
32 unit owner of attorney-client communications or other privileged
33 communications;

34 (b) Permit the notice to serve as a basis for any person to
35 assert the waiver of any applicable privilege or right of
36 confidentiality resulting from, or to claim immunity in connection
37 with, the disclosure of information in the notice; or

1 (c) Limit or impair the authority of the board of directors to
2 contract for legal services, or limit or impair the ability to
3 enforce such a contract for legal services.

4 **Sec. 6.** RCW 64.90.250 and 2018 c 277 s 211 are each amended to
5 read as follows:

6 (1) To exercise any development right reserved under RCW
7 64.90.225(1)(~~(h)~~) (g), the declarant must prepare, execute, and
8 record any amendments to the declaration and map in accordance with
9 the requirements of RCW 64.90.245 and 64.90.285(3). The declarant is
10 the unit owner of any units created. The amendment to the declaration
11 must assign an identifying number to each new unit created and,
12 except in the case of subdivision, combination, or conversion of
13 units described in subsection (3) of this section, reallocate the
14 allocated interests among all units. The amendment must describe any
15 common elements and any limited common elements created and, in the
16 case of limited common elements, designate the unit to which each is
17 allocated to the extent required under RCW 64.90.240. The amendments
18 are effective upon recording.

19 (2) Development rights may be reserved within any real estate
20 added to the common interest community if the amendment to the
21 declaration adding that real estate includes all matters required
22 under RCW 64.90.225 and 64.90.230 and the amendment to the map
23 includes all matters required under RCW 64.90.245. This subsection
24 does not extend the time limit on the exercise of development rights
25 imposed by the declaration pursuant to RCW 64.90.225(1)(h).

26 (3) When a declarant exercises a development right to subdivide,
27 combine, or convert a unit previously created into additional units
28 or common elements, or both:

29 (a) If the declarant converts the unit entirely into common
30 elements, the amendment to the declaration must reallocate all the
31 allocated interests of that unit among the other units as if that
32 unit had been taken by condemnation under RCW 64.90.030; or

33 (b) If the declarant subdivides the unit into two or more units,
34 whether or not any part of the unit is converted into common
35 elements, the amendment to the declaration must reallocate all the
36 allocated interests of the unit among the units created by the
37 subdivision in any reasonable manner prescribed by the declarant.

1 (4) If the declaration provides, pursuant to RCW 64.90.225(1)(h),
2 that all or a portion of the real estate is subject to a right of
3 withdrawal:

4 (a) If all the real estate is subject to withdrawal, and the
5 declaration or map or amendment to the declaration or map does not
6 describe separate portions of real estate subject to that right, none
7 of the real estate may be withdrawn if a unit in that real estate has
8 been conveyed to a purchaser; or

9 (b) If any portion of the real estate is subject to withdrawal as
10 described in the declaration or map or amendment to the declaration
11 or map, none of that portion of the real estate may be withdrawn if a
12 unit in that portion has been conveyed to a purchaser.

13 (5) If the declarant combines two or more units into a lesser
14 number of units, whether or not any part of a unit is converted into
15 common elements or common elements are converted units, the amendment
16 to the declaration must reallocate all of the allocated interests of
17 the units being combined into the unit or units created by the
18 combination in any reasonable manner prescribed by the declarant.

19 (6) A unit conveyed to a purchaser may not be withdrawn pursuant
20 to subsection (4)(a) or (b) of this section without the consent of
21 the unit owner of that unit and the holder of a security interest in
22 the unit.

23 **Sec. 7.** RCW 64.90.605 and 2018 c 277 s 402 are each amended to
24 read as follows:

25 (1) Except as provided otherwise in subsection (2) of this
26 section, a declarant required to deliver a public offering statement
27 pursuant to subsection (3) of this section must prepare a public
28 offering statement conforming to the requirements of RCW 64.90.610,
29 64.90.615, and 64.90.620.

30 (2) A declarant may transfer responsibility for preparation of
31 all or a part of the public offering statement to a successor
32 declarant or to a dealer who intends to offer units in the
33 (~~condominium~~) common interest community.

34 (3)(a) Any declarant or dealer who offers to convey a unit for
35 the person's own account to a purchaser must provide the purchaser of
36 the unit with a copy of a public offering statement and all material
37 amendments to the public offering statement before conveyance of that
38 unit.

1 (b) Any agent, attorney, or other person assisting the declarant
2 or dealer in preparing the public offering statement may rely upon
3 information provided by the declarant or dealer without independent
4 investigation. The agent, attorney, or other person is not liable for
5 any material misrepresentation in or omissions of material facts from
6 the public offering statement unless the person had actual knowledge
7 of the misrepresentation or omission at the time the public offering
8 statement was prepared.

9 (c) The declarant or dealer is liable for any misrepresentation
10 contained in the public offering statement or for any omission of
11 material fact from the public offering statement if the declarant or
12 dealer had actual knowledge of the misrepresentation or omission or,
13 in the exercise of reasonable care, should have known of the
14 misrepresentation or omission.

15 (4) If a unit is part of a common interest community and is part
16 of any other real estate regime in connection with the sale of which
17 the delivery of a public offering statement is required under the
18 laws of this state, a single public offering statement conforming to
19 the requirements of RCW 64.90.610, 64.90.615, and 64.90.620 as those
20 requirements relate to each regime in which the unit is located, and
21 to any other requirements imposed under the laws of this state, may
22 be prepared and delivered in lieu of providing two or more public
23 offering statements.

24 (5) A declarant is not required to prepare and deliver a public
25 offering statement in connection with the sale of any unit owned by
26 the declarant, or to obtain for or provide to the purchaser a report
27 or statement required under RCW 64.90.610(1)(oo), 64.90.620(1), or
28 64.90.655, upon the later of:

29 (a) The termination or expiration of all special declarant
30 rights;

31 (b) The expiration of all periods within which claims or actions
32 for a breach of warranty arising from defects involving the common
33 elements under RCW 64.90.680 must be filed or commenced,
34 respectively, by the association against the declarant; or

35 (c) The time when the declarant ceases to meet the definition of
36 a dealer under RCW 64.90.010.

37 (6) After the last to occur of any of the events described in
38 subsection (5) of this section, a declarant must deliver to the
39 purchaser of a unit owned by the declarant a resale certificate under
40 RCW 64.90.640(2) together with:

1 (a) The identification of any real property not in the common
2 interest community that unit owners have a right to use and a
3 description of the terms of such use;

4 (b) A brief description or a copy of any express construction
5 warranties to be provided to the purchaser;

6 (c) A statement of any litigation brought by an owners'
7 association, unit owner, or governmental entity in which the
8 declarant or any affiliate of the declarant has been a defendant
9 arising out of the construction, sale, or administration of any
10 common interest community within the state of Washington within the
11 previous five years, together with the results of the litigation, if
12 known;

13 (d) Whether timesharing is permitted or prohibited, and, if
14 permitted, a statement that the purchaser of a time share unit is
15 entitled to receive the disclosure document required under chapter
16 64.36 RCW; and

17 (e) Any other information and cross-references that the declarant
18 believes will be helpful in describing the common interest community
19 to the purchaser, all of which may be included or not included at the
20 option of the declarant.

21 (7) A declarant is not liable to a purchaser for the failure or
22 delay of the association to provide the resale certificate in a
23 timely manner, but the purchase contract is voidable by the purchaser
24 of a unit sold by the declarant until the resale certificate required
25 under RCW 64.90.640(2) and the information required under subsection
26 (6) of this section have been provided and for five days thereafter
27 or until conveyance, whichever occurs first.

28 **Sec. 8.** RCW 64.90.645 and 2021 c 260 s 2 are each amended to
29 read as follows:

30 (1) Except as provided in subsection (2) of this section, any
31 earnest money deposit, as defined in RCW 64.04.005, made in
32 connection with the right to purchase a unit from a person required
33 to deliver a public offering statement pursuant to RCW 64.90.605(3)
34 must be placed in escrow and held in this state in an escrow or trust
35 account designated solely for that purpose by a licensed title
36 insurance company or agent, a licensed attorney, a real estate broker
37 or independent bonded escrow company, or an institution whose
38 accounts are insured by a governmental agency or instrumentality
39 until: (a) Delivered to the declarant at closing, (b) delivered to

1 the declarant because of the purchaser's default under a contract to
2 purchase the unit, (c) refunded to the purchaser, or (d) delivered to
3 a court in connection with the filing of an interpleader action.

4 (2) (a) If a purchase agreement for the sale of a unit provides
5 that deposit funds may be used for construction costs and the
6 declarant obtains and maintains a surety bond as required by this
7 section, the declarant may withdraw escrow funds when construction of
8 improvements has begun. The funds may be used only for actual
9 building and construction costs of the project in which the unit is
10 located.

11 (b) The bond must be issued by a surety insurer licensed in this
12 state in favor of the purchaser in an amount adequate to cover the
13 amount of the deposit to be withdrawn. The declarant may not withdraw
14 more than the face amount of the bond. The bond must be payable to
15 the purchaser if the purchaser obtains a final judgment against the
16 declarant requiring the declarant to return the deposit pursuant to
17 the purchase agreement. The bond may be either in the form of an
18 individual bond for each deposit accepted by the declarant or in the
19 form of a blanket bond assuring the return of all deposits received
20 by the declarant.

21 (c) The party holding escrow funds who releases all or any
22 portion of the funds to the declarant has no obligation to monitor
23 the progress of construction or the expenditure of the funds by the
24 declarant and is not liable to any purchaser for the release of funds
25 pursuant to this section.

26 (3) ((A)) The amount of deposit ((under)) funds that may be used
27 pursuant to subsection (2) of this section may not exceed five
28 percent of the purchase price.

29 NEW SECTION. **Sec. 9.** A new section is added to chapter 82.45
30 RCW to read as follows:

31 (1) The down payment assistance account is created in the custody
32 of the state treasurer. Receipts from the real estate excise tax on
33 sales of condominiums or townhouses to persons using a down payment
34 assistance program offered by the Washington state housing finance
35 commission must be deposited in the account, as provided in
36 subsection (2) of this section. Expenditures from the account may be
37 used only for payment toward a person's down payment assistance loan
38 that was used to purchase a condominium or townhouse for which the
39 tax was collected. Only the Washington state housing finance

1 commission or the commission's designee may authorize expenditures
2 from the account. The account is subject to allotment procedures
3 under chapter 43.88 RCW, but an appropriation is not required for
4 expenditures.

5 (2) (a) Beginning June 15, 2024, and each June 15th thereafter,
6 the department must notify the economic and revenue forecast council
7 of the total amount received under RCW 82.45.060 from sales of
8 condominiums or townhouses to persons using a down payment assistance
9 program offered by the Washington state housing finance commission
10 during the prior calendar year.

11 (b) Beginning in fiscal year 2025, and each fiscal year
12 thereafter, the legislature must appropriate from the general fund to
13 this account the lesser of (i) the amount received under RCW
14 82.45.060 on sales of condominiums or townhouses to persons using a
15 down payment assistance program offered by the Washington state
16 housing finance commission during the prior calendar year, as
17 determined under (a) of this subsection, or (ii) \$250,000 per fiscal
18 year.

19 (c) On or before March 1, 2024, and each March 1st thereafter,
20 the Washington state housing finance commission must provide the
21 department with the following information for each sale of a
22 condominium or townhouse to a person using a down payment assistance
23 program offered by the Washington state housing finance commission
24 that occurred during the prior calendar year:

25 (i) The real estate excise tax affidavit number associated with
26 the sale;

27 (ii) The date of sale;

28 (iii) The parcel number of the property sold;

29 (iv) The street address of the property sold;

30 (v) The county in which the property sold is located;

31 (vi) The full legal name of the seller, or sellers, as shown on
32 the real estate excise tax affidavit;

33 (vii) The full legal name of the buyer, or buyers, as shown on
34 the real estate excise tax affidavit; and

35 (viii) Any additional information the department may require to
36 verify the property sold is a condominium or townhouse sold to
37 persons using a down payment assistance program offered by the
38 Washington state housing finance commission.

39 (d) For the purposes of this subsection, "townhouse" means
40 dwelling units constructed in a row of two or more attached units

1 where each dwelling unit shares at least one common wall with an
2 adjacent unit and is accessed by a separate outdoor entrance.

3 (3) This section expires January 1, 2034.

4 **Sec. 10.** RCW 82.02.060 and 2021 c 72 s 1 are each amended to
5 read as follows:

6 The local ordinance by which impact fees are imposed:

7 (1) Shall include a schedule of impact fees which shall be
8 adopted for each type of development activity that is subject to
9 impact fees, specifying the amount of the impact fee to be imposed
10 for each type of system improvement. The schedule shall be based upon
11 a formula or other method of calculating such impact fees. The
12 schedule shall reflect the proportionate impact of new housing units,
13 including multifamily and condominium units, based on the square
14 footage, number of bedrooms, or trips generated, in the housing unit
15 in order to produce a proportionally lower impact fee for smaller
16 housing units. In determining proportionate share, the formula or
17 other method of calculating impact fees shall incorporate, among
18 other things, the following:

19 (a) The cost of public facilities necessitated by new
20 development;

21 (b) An adjustment to the cost of the public facilities for past
22 or future payments made or reasonably anticipated to be made by new
23 development to pay for particular system improvements in the form of
24 user fees, debt service payments, taxes, or other payments earmarked
25 for or proratable to the particular system improvement;

26 (c) The availability of other means of funding public facility
27 improvements;

28 (d) The cost of existing public facilities improvements; and

29 (e) The methods by which public facilities improvements were
30 financed;

31 (2) May provide an exemption for low-income housing, and other
32 development activities with broad public purposes, including
33 development of an early learning facility, from these impact fees,
34 provided that the impact fees for such development activity shall be
35 paid from public funds other than impact fee accounts;

36 (3) (a) May not impose an impact fee on development activities of
37 an early learning facility greater than that imposed on commercial
38 retail or commercial office development activities that generate a
39 similar number, volume, type, and duration of vehicle trips;

1 (b) When a facility or development has more than one use, the
2 limitations in this subsection (3) or the exemption applicable to an
3 early learning facility in subsections (2) and (4) of this section
4 only apply to that portion that is developed as an early learning
5 facility. The impact fee assessed on an early learning facility in
6 such a development or facility may not exceed the least of the impact
7 fees assessed on comparable businesses in the facility or
8 development;

9 (4) May provide an exemption from impact fees for low-income
10 housing or for early learning facilities. Local governments that
11 grant exemptions for low-income housing or for early learning
12 facilities under this subsection (4) may either: Grant a partial
13 exemption of not more than eighty percent of impact fees, in which
14 case there is no explicit requirement to pay the exempted portion of
15 the fee from public funds other than impact fee accounts; or provide
16 a full waiver, in which case the remaining percentage of the exempted
17 fee must be paid from public funds other than impact fee accounts,
18 except as provided in (b) of this subsection. These exemptions are
19 subject to the following requirements:

20 (a) An exemption for low-income housing granted under subsection
21 (2) of this section or this subsection (4) must be conditioned upon
22 requiring the developer to record a covenant that, except as provided
23 otherwise by this subsection, prohibits using the property for any
24 purpose other than for low-income housing. At a minimum, the covenant
25 must address price restrictions and household income limits for the
26 low-income housing, and that if the property is converted to a use
27 other than for low-income housing, the property owner must pay the
28 applicable impact fees in effect at the time of conversion;

29 (b) An exemption for early learning facilities granted under
30 subsection (2) of this section or this subsection (4) may be a full
31 waiver without an explicit requirement to pay the exempted portion of
32 the fee from public funds other than impact fee accounts if the local
33 government requires the developer to record a covenant that requires
34 that at least 25 percent of the children and families using the early
35 learning facility qualify for state subsidized child care, including
36 early childhood education and assistance under chapter 43.216 RCW,
37 and that provides that if the property is converted to a use other
38 than for an early learning facility, the property owner must pay the
39 applicable impact fees in effect at the time of conversion, and that
40 also provides that if at no point during a calendar year does the

1 early learning facility achieve the required percentage of children
2 and families qualified for state subsidized child care using the
3 early learning facility, the property owner must pay 20 percent of
4 the impact fee that would have been imposed on the development had
5 there not been an exemption within 90 days of the local government
6 notifying the property owner of the breach, and any balance remaining
7 thereafter shall be a lien on the property; and

8 (c) Covenants required by (a) and (b) of this subsection must be
9 recorded with the applicable county auditor or recording officer. A
10 local government granting an exemption under subsection (2) of this
11 section or this subsection (4) for low-income housing or an early
12 learning facility may not collect revenue lost through granting an
13 exemption by increasing impact fees unrelated to the exemption. A
14 school district who receives school impact fees must approve any
15 exemption under subsection (2) of this section or this subsection
16 (4);

17 (5) Shall provide a credit for the value of any dedication of
18 land for, improvement to, or new construction of any system
19 improvements provided by the developer, to facilities that are
20 identified in the capital facilities plan and that are required by
21 the county, city, or town as a condition of approving the development
22 activity;

23 (6) Shall allow the county, city, or town imposing the impact
24 fees to adjust the standard impact fee at the time the fee is imposed
25 to consider unusual circumstances in specific cases to ensure that
26 impact fees are imposed fairly;

27 (7) Shall include a provision for calculating the amount of the
28 fee to be imposed on a particular development that permits
29 consideration of studies and data submitted by the developer to
30 adjust the amount of the fee;

31 (8) Shall establish one or more reasonable service areas within
32 which it shall calculate and impose impact fees for various land use
33 categories per unit of development; (~~and~~)

34 (9) May provide for the imposition of an impact fee for system
35 improvement costs previously incurred by a county, city, or town to
36 the extent that new growth and development will be served by the
37 previously constructed improvements provided such fee shall not be
38 imposed to make up for any system improvement deficiencies; and

39 (10) Must adopt or amend by ordinance, and incorporate into their
40 development regulations, zoning regulations, and other official

1 controls the requirements of this section to take effect six months
2 after the jurisdiction's next periodic comprehensive plan update
3 required under RCW 36.70A.130.

4 For purposes of this section, "low-income housing" means housing
5 with a monthly housing expense, that is no greater than thirty
6 percent of eighty percent of the median family income adjusted for
7 family size, for the county where the project is located, as reported
8 by the United States department of housing and urban development.

9 For the purposes of this section, "early learning facility" has
10 the same meaning as in RCW 43.31.565.

11 **Sec. 11.** RCW 58.17.060 and 1990 1st ex.s. c 17 s 51 are each
12 amended to read as follows:

13 (1) The legislative body of a city, town, or county shall adopt
14 regulations and procedures, and appoint administrative personnel for
15 the summary approval of short plats and short subdivisions or
16 alteration or vacation thereof. When an alteration or vacation
17 involves a public dedication, the alteration or vacation shall be
18 processed as provided in RCW 58.17.212 or 58.17.215. Such regulations
19 shall be adopted by ordinance and shall provide that a short plat and
20 short subdivision may be approved only if written findings that are
21 appropriate, as provided in RCW 58.17.110, are made by the
22 administrative personnel, and may contain wholly different
23 requirements than those governing the approval of preliminary and
24 final plats of subdivisions and may require surveys and
25 monumentations and shall require filing of a short plat, or
26 alteration or vacation thereof, for record in the office of the
27 county auditor: PROVIDED, That such regulations must contain a
28 requirement that land in short subdivisions may not be further
29 divided in any manner within a period of five years without the
30 filing of a final plat, except that when the short plat contains
31 fewer than four parcels, nothing in this section shall prevent the
32 owner who filed the short plat from filing an alteration within the
33 five-year period to create up to a total of four lots within the
34 original short plat boundaries: PROVIDED FURTHER, That such
35 regulations are not required to contain a penalty clause as provided
36 in RCW 36.32.120 and may provide for wholly injunctive relief.

37 An ordinance requiring a survey shall require that the survey be
38 completed and filed with the application for approval of the short
39 subdivision.

1 (2) Cities, towns, and counties shall include in their short plat
2 regulations and procedures pursuant to subsection (1) of this section
3 provisions for considering sidewalks and other planning features that
4 assure safe walking conditions for students who walk to and from
5 school.

6 (3) All cities, towns, and counties shall include in their short
7 plat regulations procedures for unit lot subdivisions allowing
8 division of a parent lot into separately owned unit lots. Portions of
9 the parent lot not subdivided for individual unit lots shall be owned
10 in common by the owners of the individual unit lots, or by a
11 homeowners' association comprised of the owners of the individual
12 unit lots.

13 **Sec. 12.** RCW 64.55.160 and 2005 c 456 s 17 are each amended to
14 read as follows:

15 (1) On or before the (~~sixtieth~~) 60th day following completion
16 of the mediation pursuant to RCW 64.55.120(4) and following filing
17 and service of the complaint, the declarant, association, or party
18 unit owner may serve on an adverse party an offer to allow judgment
19 to be entered. The offer of judgment shall specify the amount of
20 damages, not including costs or fees, that the declarant,
21 association, or party unit owner is offering to pay or receive. A
22 declarant's offer shall also include its commitment to pay costs and
23 fees that may be awarded as provided in this section. The declarant,
24 association, or party unit owner may make more than one offer of
25 judgment so long as each offer is timely made. Each subsequent offer
26 supersedes and replaces the previous offer. Any offer not accepted
27 within (~~twenty-one~~) 21 days of the service of that offer is deemed
28 rejected and withdrawn and evidence thereof is not admissible and may
29 not be provided to the court or arbitrator except in a proceeding to
30 determine costs and fees or as part of the motion identified in
31 subsection (2) of this section.

32 (2) A declarant's offer must include a demonstration of ability
33 to pay damages, costs, and fees, including reasonable attorneys'
34 fees, within thirty days of acceptance of the offer of judgment. The
35 demonstration of ability to pay shall include a sworn statement
36 signed by the declarant, the attorney representing the declarant,
37 and, if any insurance proceeds will be used to fund any portion of
38 the offer, an authorized representative of the insurance company. If
39 the association or party unit owner disputes the adequacy of the

1 declarant's demonstration of ability to pay, the association or party
2 unit owner may file a motion with the court requesting a ruling on
3 the adequacy of the declarant's demonstration of ability to pay. Upon
4 filing of such motion, the deadline for a response to the offer shall
5 be tolled from the date the motion is filed until the court has
6 ruled.

7 (3) An association or party unit owner that accepts the
8 declarant's offer of judgment shall be deemed the prevailing party
9 and, in addition to recovery of the amount of the offer, shall be
10 entitled to a costs and fees award, including reasonable attorneys'
11 fees, in an amount to be determined by the court in accordance with
12 applicable law.

13 (4) If the amount of the final nonappealable or nonappealed
14 judgment, exclusive of costs or fees, is not more favorable to the
15 offeree than the offer of judgment, then the offeror is deemed the
16 prevailing party for purposes of this section only and is entitled to
17 an award of costs and fees, including reasonable attorneys' fees,
18 incurred after the date the last offer of judgment was rejected and
19 through the date of entry of a final nonappealable or nonappealed
20 judgment, in an amount to be determined by the court in accordance
21 with applicable law. The nonprevailing party shall not be entitled to
22 receive any award of costs and fees.

23 (5) If the final nonappealable or nonappealed judgment on
24 damages, not including costs or fees, is more favorable to the
25 offeree than the last offer of judgment, then the court shall
26 determine which party is the prevailing party and shall determine the
27 amount of the costs and fees award, including reasonable attorneys'
28 fees, in accordance with applicable law.

29 (6) Notwithstanding any other provision in this section, with
30 respect to claims brought by an association or unit owner, the
31 liability for declarant's costs and fees, including reasonable
32 attorneys' fees, shall:

33 (a) With respect to claims brought by an association, not exceed
34 five percent of the assessed value of the condominium as a whole,
35 which is determined by the aggregate tax-assessed value of all units
36 at the time of the award; and

37 (b) With respect to claims brought by a party unit owner, not
38 exceed five percent of the assessed value of the unit at the time of
39 the award.

1 NEW SECTION. **Sec. 13.** Sections 3 through 5 of this act apply
2 only to construction defect claims commenced after the effective date
3 of this section.

4 NEW SECTION. **Sec. 14.** Section 9 of this act takes effect
5 January 1, 2024."

6 Correct the title.

EFFECT: Removes the real estate excise tax exemption for sales of condominiums and townhouses that are constructed in buildings qualifying for the multifamily property tax exemption. Limits the amount the Legislature must appropriate from the General Fund to the Down Payment Assistance Account to the lesser of (1) the total amount of real estate excise tax revenues attributable to sales of condominiums and townhouses to persons using down payment assistance programs in the prior calendar year, or (2) \$250,000 per fiscal year.

--- END ---