

SENATE BILL REPORT

SB 5258

As of January 23, 2023

Title: An act relating to increasing the supply and affordability of condominium units and townhouses as an option for homeownership.

Brief Description: Increasing the supply and affordability of condominium units and townhouses as an option for homeownership.

Sponsors: Senators Shewmake, Gildon, Billig, Liias, Lovick, Nguyen, Nobles, Randall and Wellman.

Brief History:

Committee Activity: Law & Justice: 1/23/23.

Brief Summary of Bill

- Modifies requirements and scope of construction defect actions.
- Clarifies warranties and disclaimer of warranties related to developers of condominiums subject to the Washington Uniform Common Interest Ownership Act.
- Modifies deposit requirements and local government planning related to the construction of condominiums.
- Exempts sales of condominium units to eligible first-time homebuyers from the real estate excise tax.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Ryan Giannini (786-7285)

Background: Construction Defect Claims. Before a lawsuit can be filed alleging a defect in the construction or substantial remodel of a residence, the homeowner must serve notice

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on the construction professional alleged to be responsible for the defect. For construction defect claims brought by a board of directors of a condominium or homeowners' association, the board of directors must also substantially comply with a requirement to mail or deliver written notice of the commencement or anticipated commencement of the action to each homeowner. 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 homeowner. 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 homeowner's 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 homeowner rejects an offer of inspection or settlement, then the homeowner may file a lawsuit.

If a homeowner does not comply with the statutory requirements prior to filing a lawsuit, the lawsuit is subject to dismissal without prejudice and may not be recommenced until the requirements have been complied with.

Warranties for Construction of Condominiums. The Washington Uniform Common Interest Ownership Act (WUCIOA) contains provisions relating to express and implied warranties that apply to the construction of condominiums. These provisions specify how express warranties are created, warranties that are implied to a purchaser, how these warranties are disclaimed, and the time limit for commencing a cause of action for breach of warranty. These warranty provisions apply specifically to condominiums.

Warranty Insurance Applicable to Condominiums. If a condominium developer purchases warranty insurance that meets certain requirements, the developer and any construction professional are no longer liable to a condominium unit owner for breach of a warranty under the Washington Condominium Act. Instead, the condominium owner's recourse for a warranty breach is to file a claim under the warranty insurance policy. If a construction professional agrees to indemnify the insurer for loss due to construction defects caused by the construction professional, the liability of the construction professional is limited to the insurance limits of the warranty.

Deposits for Purchase. Under WUCIOA, when a purchaser enters into an agreement to purchase a unit from the developer of the community, any earnest money deposit or reservation deposit must be placed in escrow. The amount of the deposit may not exceed 5 percent of the purchase price.

Deposit funds for the purchase of a unit in a common interest community may be used for

the construction costs of the unit if the developer obtains and maintains a surety bond in favor of the purchaser in an amount adequate to cover the amount of the deposit to be withdrawn.

Real Estate Excise Tax. The real estate excise tax is imposed on each sale of real property, which includes both the transfer of ownership and the transfer of controlling interests. Real property includes any interest in land or anything affixed to land.

Building Code Council. The Building Code Council is a state agency responsible for the adoption of the State Building Code. The Code establishes the minimum requirements and standards for buildings and facilities constructed in the state.

Impact Fees. Planning jurisdictions may impose impact fees on development activity as part of financing public facilities needed to serve new growth and development.

Approval of Short Plats and Short Subdivisions. City, town, and county legislative authorities may adopt regulations and procedures for the approval of short plats and short subdivisions.

Summary of Bill: Construction Defect Claims. Claimants in a construction defect action brought against a construction professional must serve a written defect assessment report on the construction professional. The defect assessment report must be executed under oath by a construction defect professional, or an equivalent reliable source, and must state specific details regarding the construction defect professional's qualifications and details about the defect. For construction defect claims brought by board of directors of a condominium or homeowners' association, the board of directors shall also mail or deliver a written defect assessment report to each homeowner.

Prior to commencing a construction defect action, or after dismissal of any construction defect action without prejudice, the claimant may amend a written defect assessment report to include construction defects discovered after the report was served.

Construction defect actions against construction professionals are limited to only condominium units whose developers are required to provide a public offering statement after the effective date of the act.

Warranties for Construction of Condominiums. A purchaser may not rely on any affirmation, promise, description, plans, specifications, plat, survey, statement, or other item to create an express warranty unless it is contained in the public offering statement or in a record signed by the developer.

No implied warranties of quality are implied to a purchaser for the purchase and sale of a condominium unit in a building containing 12 or fewer units, or that is three or fewer stories.

No general disclaimer of implied warranties of quality is effective. Disclaimers of one or more specified defects or failures no longer require a developer to know, or have reason to believe, a specific defect or failure existed at the time of a disclaimer. Specific defects may be disclaimed if various requirements are met and the purchaser signs the instrument containing such disclaimers.

Deposits for Purchase. Escrow requirements are limited to earnest money deposits for the purchase of a common interest community property from a developer subject to WUCIOA. The amount of deposit funds that can be used in construction costs may not exceed 5 percent of the purchase price.

Warranty Insurance Applicable to Condominiums. Condominium developers subject to WUCIOA may purchase warranty insurance.

Real Estate Excise Tax. The sale of a condominium unit to a first-time homebuyer who is eligible for the first-time homebuyer program offered by the Washington State Housing Finance Commission is exempt from the real estate excise tax.

Building Code Council. The Building Code Council is required to adopt specific building and energy code provisions for multiunit residential buildings between two and 12 units, and three or fewer stories.

Impact Fees. Impact fee schedules shall reflect the proportionate impact of new housing units, including multifamily and condominium units, based on the square footage and number of bedrooms in the housing unit, to produce a proportionally lower impact fee for smaller housing units.

Approval of Short Plats and Short Subdivisions. All cities, towns, and counties shall include in their short plat regulations procedures for unit lot subdivisions allowing division of a parent lot into separately owned unit lots.

Appropriation: None.

Fiscal Note: Requested on January 19, 2023.

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

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony: PRO: Condos are a missing piece of Washington's housing market. Insurance costs for condos are often so high that only high-end condos are built instead of condos for regular people. Missing middle housing must be part of the housing solution. Less than one percent of multifamily units being built in the state are

condominiums, which leads to generations of renters and not owners. Home ownership is an anchor to help families weather storms, provides economic stability in communities, and creates generational wealth. This bill removes barriers to attainable home ownership. Condominium reform unlocks the potential for other housing efforts. There is systemic litigation for condominium construction that are not seen in other construction projects due to the complexities of statutory warranties. Clarification of the right to cure and exclusion from the statutory warranty should be adopted. This bill will incentivize condo owners to work with builder to get to a solution that works for both. This bill will protect consumers and encourage first time home buyers by waiving excise taxes, reducing impact fees, and rolling back some of the red tape to build them.

CON: There are things in this bill that are laudable because of their goals, but there are problems. This bill requires an under-oath inspection by a court-qualified inspector before a homeowner can invoke their right to seek a cure of a defect. If the owner rejects a reasonable offer from the contractor, they can recover the fair market value of the contractor's offer, but the bill does not define a reasonable offer and is not limited to situations where the owner loses in court. This bill eliminates the statutory warranty of quality construction for condominiums with 12 or fewer units or three or fewer stories which would reverse decades of progress under the condominium statutes that have avoided really costly special assessments that end up putting people out of their homes. It is much cheaper to put in a little work in the front end to ensure that a condominium does not have water intrusion problems than to impose special assessments years later.

OTHER: There are issues with Section 13 of this bill. The one size fits all approach is complicated and not cost effective. Preapproved designs may be less expensive, but materials and construction costs will likely be contrary to the purpose of using statewide preapproved plans because of different design criteria in climate zones in different areas of the state. The requirements in the bill would exceed the current State Building Code Council authority. The Council is tasked with adopting policy, but neither the Council nor the Council staff has the subject matter expertise or knowledge to prepare architectural engineering plans, conduct approvals, and regulate enforcement. There will be significant fiscal impact to the Council and would likely require that the Council contract with third parties capable of completing designs and reviewing designs.

Persons Testifying: PRO: Senator Sharon Shewmake, Prime Sponsor; Councilwoman Betsy Wilkerson, City of Spokane; Alex Hur, Master Builders Association of King and Snohomish Counties; Andrew Rolwes, Downtown Spokane Partnership; Bill Clarke, WA REALTORS; Bill Riley, Riley Communities (Condo/Townhouse Builder); Josie Cummings, Building Industry Association of Washington; Mike Ennis, Association of Washington Business; Briahna Murray, Cities of Tacoma, Bellevue, Redmond, and Kent; Spencer Gardner, City of Spokane.

CON: Anthony Rafel, Washington State Chapter of Community Association Institute.

OTHER: Stoyan Bumbalov, State Building Code Council.

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