

FINAL BILL REPORT

E2SSB 5258

C 337 L 23
Synopsis as Enacted

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

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Shewmake, Gildon, Billig, Liias, Lovick, Nguyen, Nobles, Randall and Wellman).

Senate Committee on Law & Justice
Senate Committee on Ways & Means
House Committee on Appropriations

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 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,

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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.

Down Payment Assistance Programs. The Washington State Housing Finance Commission (HFC) is required in statute to provide a down payment assistance program to veterans and a housing finance program for income eligible first-time homebuyers. The HFC homeownership programs offer below-market-rate loans and down payment assistance, allows homebuyers to qualify for mortgages with higher loan ratios, and pay less closing costs than under conventional loan programs. Although not required in statute, the HFC periodically develops supplemental programs to provide additional assistance to specific targeted populations including teachers, low-income rural residents, residents of a specific area, and individuals with disabilities.

Multifamily Property Tax Exemption. The Multifamily Property Tax Exemption (MFTE)

exempts the value of real property associated with the construction, conversion, or rehabilitation of qualified, multi-unit residential structures located in residential targeted areas contained within an urban center. The tax exemption applies only to the value of the construction, conversion, or rehabilitation projects, and does not exempt the value of the underlying property or other improvements on the property.

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: Construction Defect Claims. A condominium association created after the effective date of this act must include a written report from a construction defect professional in a construction defect claim. The written report must include a description of the defect, the construction defect professional's qualifications, the type of inspection that served as the basis for the report, and the general location of the defect.

Within 14 days after service of the notice of claim, a construction professional may serve a written response demanding a meeting with a claimant and the claimant's expert to confer regarding the report and its contents. The meeting shall take place within 14 days of service of the construction professional's demand or another date agreed to by the parties.

Within 14 days of the meeting, or within 21 days after service of the claim in the absence of a demand for such a meeting, whichever is later, the construction professional must serve a written response on the claimant.

If the claimant is an association, the association may incur expenses to prepare and serve a notice of claim and any related reports notwithstanding any contrary provisions in the association's governing documents. The association must provide a copy of the construction defect professional's report to each unit owner upon request, and also provide a summary of the construction professional's response.

A declarant, association, or party unit owner may offer to allow judgment to be entered in a construction defect dispute involving multiunit residential buildings following the filing and service of the complaint.

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 Down Payment Assistance Account is created. Moneys in the account may only be used for payment toward a person's down payment assistance loan offered by the HFC.

Beginning in fiscal year 2025, subject to appropriation, the state treasurer must transfer from the state general fund to the Down Payment Assistance Account the lesser of either all real estate excise tax revenue collected in the prior calendar year from sales of condominiums or townhouses to persons using a down payment assistance program offered by the HFC, as determined by the Department of Revenue (DOR), or \$250,000. The HFC must provide certain data to DOR to enable DOR to determine the transfer amount each fiscal year.

The Down Payment Assistance Account and revenue transfers from the general fund to the account expire January 1, 2034.

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, or trips generated, in the housing unit, to produce a proportionally lower impact fee for smaller housing units. Any changes to the impact fee schedule take effect six months after the next periodic comprehensive plan update adopted by a city or county.

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.

Votes on Final Passage:

Senate	48	0	
House	98	0	(House amended)
Senate	49	0	(Senate concurred)

Effective: July 23, 2023
January 1, 2024 (Section 9)