

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5258

Chapter 337, Laws of 2023

68th Legislature
2023 Regular Session

CONDOMINIUMS AND TOWNHOUSES—CONSTRUCTION AND SALE—VARIOUS PROVISIONS

EFFECTIVE DATE: July 23, 2023—Except for section 9, which takes effect January 1, 2024.

Passed by the Senate April 21, 2023
Yeas 49 Nays 0

DENNY HECK

President of the Senate

Passed by the House April 20, 2023
Yeas 98 Nays 0

Laurie Jinkins

**Speaker of the House of
Representatives**

Approved May 8, 2023 1:16 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE SENATE BILL 5258** as passed by the Senate and the House of Representatives on the dates hereon set forth.

SARAH BANNISTER

Secretary

FILED

May 10, 2023

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE SENATE BILL 5258

AS AMENDED BY THE HOUSE

Passed Legislature - 2023 Regular Session

State of Washington

68th Legislature

2023 Regular Session

By Senate Ways & Means (originally sponsored by Senators Shewmake, Gildon, Billig, Llias, Lovick, Nguyen, Nobles, Randall, and Wellman)

1 AN ACT Relating to increasing the supply and affordability of
2 condominium units and townhouses as an option for homeownership;
3 amending RCW 64.35.105, 64.50.010, 64.50.020, 64.50.040, 64.90.250,
4 64.90.605, 64.90.645, 82.02.060, 58.17.060, and 64.55.160; reenacting
5 and amending RCW 64.38.010; adding a new section to chapter 82.45
6 RCW; creating a new section; and providing an effective date.

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

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

10 The definitions in this section apply throughout this chapter
11 unless the context clearly requires otherwise.

- 12 (1) "Affiliate" has the meaning in RCW (~~(64.34.020)~~) 64.90.010.
13 (2) "Association" has the meaning in RCW (~~(64.34.020)~~) 64.90.010.
14 (3) "Building envelope" means the assemblies, components, and
15 materials of a building that are intended to separate and protect the
16 interior space of the building from the adverse effects of exterior
17 climatic conditions.
18 (4) "Common element" has the meaning in RCW (~~(64.34.020)~~)
19 64.90.010.
20 (5) "Condominium" has the meaning in RCW (~~(64.34.020)~~) 64.90.010.
21 (6) "Construction professional" has the meaning in RCW 64.50.010.

- 1 (7) "Conversion condominium" has the meaning in RCW (~~64.34.020~~)
2 64.90.010.
- 3 (8) "Declarant" has the meaning in RCW (~~64.34.020~~) 64.90.010.
- 4 (9) "Declarant control" has the meaning in RCW (~~64.34.020~~)
5 64.90.010.
- 6 (10) "Defect" means any aspect of a condominium unit or common
7 element which constitutes a breach of the implied warranties set
8 forth in RCW 64.34.445 or 64.90.670.
- 9 (11) "Limited common element" has the meaning in RCW
10 (~~64.34.020~~) 64.90.010.
- 11 (12) "Material" means substantive, not simply formal; significant
12 to a reasonable person; not trivial or insignificant. When used with
13 respect to a particular construction defect, "material" does not
14 require that the construction defect render the unit or common
15 element unfit for its intended purpose or uninhabitable.
- 16 (13) "Mediation" means a collaborative process in which two or
17 more parties meet and attempt, with the assistance of a mediator, to
18 resolve issues in dispute between them.
- 19 (14) "Mediation session" means a meeting between two or more
20 parties to a dispute during which they are engaged in mediation.
- 21 (15) "Mediator" means a neutral and impartial facilitator with no
22 decision-making power who assists parties in negotiating a mutually
23 acceptable settlement of issues in dispute between them.
- 24 (16) "Person" has the meaning in RCW (~~64.34.020~~) 64.90.010.
- 25 (17) "Public offering statement" has the meaning in (~~RCW~~
26 ~~64.34.410~~) chapter 64.90 RCW.
- 27 (18) "Qualified insurer" means an entity that holds a certificate
28 of authority under RCW 48.05.030, or an eligible insurer under
29 chapter 48.15 RCW.
- 30 (19) "Qualified warranty" means an insurance policy issued by a
31 qualified insurer that complies with the requirements of this
32 chapter. A qualified warranty includes coverage for repair of
33 physical damage caused by the defects covered by the qualified
34 warranty, except to the extent of any exclusions and limitations
35 under this chapter.
- 36 (20) "Resale certificate" means the statement to be delivered by
37 the association under (~~RCW 64.34.425~~) chapter 64.90 RCW.
- 38 (21) "Transition date" means the date on which the declarant is
39 required to deliver to the association the property of the
40 association under RCW (~~64.34.312~~) 64.90.420.

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

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

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

5 For purposes of this chapter:

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

8 (2) "Baseline funding plan" means establishing a reserve funding
9 goal of maintaining a reserve account balance above ((zero-dollars))
10 \$0 throughout the ((thirty-year)) 30-year study period described
11 under RCW 64.38.065.

12 (3) "Board of directors" or "board" means the body, regardless of
13 name, with primary authority to manage the affairs of the
14 association.

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

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

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

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

26 (8) "Electronic transmission" or "electronically transmitted"
27 means any electronic communication not directly involving the
28 physical transfer of a writing in a tangible medium, but that may be
29 retained, retrieved, and reviewed by the sender and the recipient of
30 the communication, and that may be directly reproduced in a tangible
31 medium by a sender and recipient.

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

37 (10) "Fully funded balance" means the current value of the
38 deteriorated portion, not the total replacement value, of all the
39 reserve components. The fully funded balance for each reserve

1 component is calculated by multiplying the current replacement cost
2 of the reserve component by its effective age, then dividing the
3 result by the reserve component's useful life. The sum total of all
4 reserve components' fully funded balances is the association's fully
5 funded balance.

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

12 (12) "Homeowners' association" or "association" means a
13 corporation, unincorporated association, or other legal entity, each
14 member of which is an owner of residential real property located
15 within the association's jurisdiction, as described in the governing
16 documents, and by virtue of membership or ownership of property is
17 obligated to pay real property taxes, insurance premiums, maintenance
18 costs, or for improvement of real property other than that which is
19 owned by the member. "Homeowners' association" does not mean an
20 association created under chapter 64.32 (~~(0)~~), 64.34, or 64.90 RCW.

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

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

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

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

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

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

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

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

8 (21) "Tangible medium" means a writing, copy of a writing,
9 facsimile, or a physical reproduction, each on paper or on other
10 tangible material.

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

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

15 Unless the context clearly requires otherwise, the definitions in
16 this section apply throughout this chapter.

17 (1) "Action" means any civil lawsuit or action in contract or
18 tort for damages or indemnity brought against a construction
19 professional to assert a claim, whether by complaint, counterclaim,
20 or cross-claim, for damage or the loss of use of real or personal
21 property caused by a defect in the construction of a residence or in
22 the substantial remodel of a residence. "Action" does not include any
23 civil action in tort alleging personal injury or wrongful death to a
24 person or persons resulting from a construction defect.

25 (2) "Association" means an association, master association, or
26 subassociation as defined and provided for in RCW 64.34.020(4),
27 64.34.276, 64.34.278, (~~(and)~~) 64.38.010(~~((11))~~) (12), and
28 64.90.010(4).

29 (3) "Claimant" means a homeowner or association who asserts a
30 claim against a construction professional concerning a defect in the
31 construction of a residence or in the substantial remodel of a
32 residence.

33 (4) "Construction defect professional" means an architect,
34 builder, builder vendor, contractor, subcontractor, engineer,
35 inspector, or such other person with verifiable training and
36 experience related to the defects or conditions identified in any
37 report included with a notice of claim as set forth in RCW
38 64.50.020(1)(a).

1 (5) "Construction professional" means an architect, builder,
2 builder vendor, contractor, subcontractor, engineer, or inspector,
3 including, but not limited to, a dealer as defined in RCW 64.34.020
4 and a declarant as defined in RCW 64.34.020, performing or furnishing
5 the design, supervision, inspection, construction, or observation of
6 the construction of any improvement to real property, whether
7 operating as a sole proprietor, partnership, corporation, or other
8 business entity.

9 ~~((+5))~~ (6) "Homeowner" means: (a) Any person, company, firm,
10 partnership, corporation, or association who contracts with a
11 construction professional for the construction, sale, or construction
12 and sale of a residence; and (b) an "association" as defined in this
13 section. "Homeowner" includes, but is not limited to, a subsequent
14 purchaser of a residence from any homeowner.

15 ~~((+6))~~ (7) "Residence" means a single-family house, duplex,
16 triplex, quadraplex, or a unit in a multiunit residential structure
17 in which title to each individual unit is transferred to the owner
18 under a condominium or cooperative system, and shall include common
19 elements as defined in RCW 64.34.020 and common areas as defined in
20 RCW 64.38.010(4).

21 ~~((+7))~~ (8) "Serve" or "service" means personal service or
22 delivery by certified mail to the last known address of the
23 addressee.

24 ~~((+8))~~ (9) "Substantial remodel" means a remodel of a residence,
25 for which the total cost exceeds one-half of the assessed value of
26 the residence for property tax purposes at the time the contract for
27 the remodel work was made.

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

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

34 (a) The notice of claim shall state that the claimant asserts a
35 construction defect claim against the construction professional and
36 shall describe the claim in reasonable detail sufficient to determine
37 the general nature of the defect.

38 (b) If the claimant is a condominium association created after
39 the effective date of this section, the written notice of claim shall

1 include a written report from a construction defect professional. In
2 addition to describing the claim in reasonable detail sufficient to
3 determine the general nature of the defect the written report shall
4 state the construction defect professional's qualifications, the
5 manner and type of inspection upon which the report was based, and
6 the general location of the defect.

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

15 (3) Within 14 days after the meeting referenced in subsection (2)
16 of this section or, in the absence of a demand for such meeting,
17 within 21 days after service of the notice of claim, whichever is
18 later, the construction professional shall serve a written response
19 on the claimant by registered mail or personal service. The written
20 response shall:

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

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

32 (c) State that the construction professional disputes the claim
33 and will neither remedy the construction defect nor compromise and
34 settle the claim.

35 (~~(3)~~) (4)(a) If the construction professional disputes the
36 claim or does not respond to the claimant's notice of claim within
37 the time stated in subsection (~~(2)~~) (3) of this section, the
38 claimant may bring an action against the construction professional
39 for the claim described in the notice of claim without further
40 notice.

1 (b) If the claimant rejects the inspection proposal or the
2 settlement offer made by the construction professional pursuant to
3 subsection ~~((2))~~ (3) of this section, the claimant shall serve
4 written notice of the claimant's rejection on the construction
5 professional. After service of the rejection, the claimant may bring
6 an action against the construction professional for the construction
7 defect claim described in the notice of claim. If the construction
8 professional has not received from the claimant, within ~~((thirty))~~ 30
9 days after the claimant's receipt of the construction professional's
10 response, either an acceptance or rejection of the inspection
11 proposal or settlement offer, then at anytime thereafter the
12 construction professional may terminate the proposal or offer by
13 serving written notice to the claimant, and the claimant may
14 thereafter bring an action against the construction professional for
15 the construction defect claim described in the notice of claim.

16 ~~((4))~~ (5)(a) If the claimant elects to allow the construction
17 professional to inspect in accordance with the construction
18 professional's proposal pursuant to subsection ~~((2))~~ (3)(a) of this
19 section, the claimant shall provide the construction professional and
20 its contractors or other agents reasonable access to the claimant's
21 residence during normal working hours to inspect the premises and the
22 claimed defect.

23 (b) Within ~~((fourteen))~~ 14 days following completion of the
24 inspection, the construction professional shall serve on the
25 claimant:

26 (i) A written offer to remedy the construction defect at no cost
27 to the claimant, including a report of the scope of the inspection,
28 the findings and results of the inspection, a description of the
29 additional construction necessary to remedy the defect described in
30 the claim, and a timetable for the completion of such construction;

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

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

36 (c) If the construction professional does not proceed further to
37 remedy the construction defect within the agreed timetable, or if the
38 construction professional fails to comply with the provisions of (b)
39 of this subsection, the claimant may bring an action against the

1 construction professional for the claim described in the notice of
2 claim without further notice.

3 (d) If the claimant rejects the offer made by the construction
4 professional pursuant to (b)(i) or (ii) of this subsection to either
5 remedy the construction defect or to compromise and settle the claim
6 by monetary payment, the claimant shall serve written notice of the
7 claimant's rejection on the construction professional. After service
8 of the rejection notice, the claimant may bring an action against the
9 construction professional for the construction defect claim described
10 in the notice of claim. If the construction professional has not
11 received from the claimant, within (~~(thirty)~~) 30 days after the
12 claimant's receipt of the construction professional's response,
13 either an acceptance or rejection of the offer made pursuant to
14 (b)(i) or (ii) of this subsection, then at anytime thereafter the
15 construction professional may terminate the offer by serving written
16 notice to the claimant.

17 (~~(5)~~) (6)(a) Any claimant accepting the offer of a construction
18 professional to remedy the construction defect pursuant to subsection
19 (~~(4)~~) (5)(b)(i) of this section shall do so by serving the
20 construction professional with a written notice of acceptance within
21 a reasonable time period after receipt of the offer, and no later
22 than (~~(thirty)~~) 30 days after receipt of the offer. The claimant
23 shall provide the construction professional and its contractors or
24 other agents reasonable access to the claimant's residence during
25 normal working hours to perform and complete the construction by the
26 timetable stated in the offer.

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

31 (~~(6)~~) (7) Any action commenced by a claimant prior to
32 compliance with the requirements of this section shall be subject to
33 dismissal without prejudice, and may not be recommenced until the
34 claimant has complied with the requirements of this section.

35 (~~(7)~~) (8) Nothing in this section may be construed to prevent a
36 claimant from commencing an action on the construction defect claim
37 described in the notice of claim if the construction professional
38 fails to perform the construction agreed upon, fails to remedy the
39 defect, or fails to perform by the timetable agreed upon pursuant to
40 subsection (~~(2)~~) (3)(a) or (~~(5)~~) (6) of this section.

1 ~~((8))~~ (9) Prior to commencing any action alleging a
2 construction defect, or after the dismissal of any action without
3 prejudice pursuant to subsection ~~((6))~~ (7) of this section, the
4 claimant may amend the notice of claim to include construction
5 defects discovered after the service of the original notice of claim,
6 and must otherwise comply with the requirements of this section for
7 the additional claims. The service of an amended notice of claim
8 shall relate back to the original notice of claim for purposes of
9 tolling statutes of limitations and repose. Claims for defects
10 discovered after the commencement or recommencement of an action may
11 be added to such action only after providing notice to the
12 construction professional of the defect and allowing for response
13 under subsection ~~((2))~~ (3) of this section.

14 (10) If the claimant is an association, and notwithstanding any
15 contrary provisions in the association's governing documents, the
16 association's board of director's ability to incur expenses to
17 prepare and serve a notice of claim and any related reports and
18 otherwise comply with the requirements of this chapter shall not be
19 restricted.

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

22 (1)(a) In the event the board of directors, pursuant to RCW
23 64.34.304(1)(d) or 64.38.020(4), institutes an action asserting
24 defects in the construction of two or more residences, common
25 elements, or common areas, this section shall apply. For purposes of
26 this section, "action" has the same meaning as set forth in RCW
27 64.50.010.

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

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

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

38 (i) The nature of the action and the relief sought; ~~((and))~~

1 (ii) To the extent applicable, the existence of the report
2 required in RCW 64.50.020(1)(a), which shall be made available to
3 each homeowner upon request;

4 (iii) A summary of the construction professional's response
5 pursuant to RCW 64.50.020(3), if any; and

6 (iv) The expenses and fees that the board of directors
7 anticipates will be incurred in prosecuting the action.

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

9 (a) Require the disclosure in the notice or the disclosure to a
10 unit owner of attorney-client communications or other privileged
11 communications;

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

16 (c) Limit or impair the authority of the board of directors to
17 contract for legal services, or limit or impair the ability to
18 enforce such a contract for legal services.

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

21 (1) To exercise any development right reserved under RCW
22 64.90.225(1)(~~(h)~~) (g), the declarant must prepare, execute, and
23 record any amendments to the declaration and map in accordance with
24 the requirements of RCW 64.90.245 and 64.90.285(3). The declarant is
25 the unit owner of any units created. The amendment to the declaration
26 must assign an identifying number to each new unit created and,
27 except in the case of subdivision, combination, or conversion of
28 units described in subsection (3) of this section, reallocate the
29 allocated interests among all units. The amendment must describe any
30 common elements and any limited common elements created and, in the
31 case of limited common elements, designate the unit to which each is
32 allocated to the extent required under RCW 64.90.240. The amendments
33 are effective upon recording.

34 (2) Development rights may be reserved within any real estate
35 added to the common interest community if the amendment to the
36 declaration adding that real estate includes all matters required
37 under RCW 64.90.225 and 64.90.230 and the amendment to the map
38 includes all matters required under RCW 64.90.245. This subsection

1 does not extend the time limit on the exercise of development rights
2 imposed by the declaration pursuant to RCW 64.90.225(1) (h).

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

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

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

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

18 (a) If all the real estate is subject to withdrawal, and the
19 declaration or map or amendment to the declaration or map does not
20 describe separate portions of real estate subject to that right, none
21 of the real estate may be withdrawn if a unit in that real estate has
22 been conveyed to a purchaser; or

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

27 (5) If the declarant combines two or more units into a lesser
28 number of units, whether or not any part of a unit is converted into
29 common elements or common elements are converted units, the amendment
30 to the declaration must reallocate all of the allocated interests of
31 the units being combined into the unit or units created by the
32 combination in any reasonable manner prescribed by the declarant.

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

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

1 (1) Except as provided otherwise in subsection (2) of this
2 section, a declarant required to deliver a public offering statement
3 pursuant to subsection (3) of this section must prepare a public
4 offering statement conforming to the requirements of RCW 64.90.610,
5 64.90.615, and 64.90.620.

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

10 (3)(a) Any declarant or dealer who offers to convey a unit for
11 the person's own account to a purchaser must provide the purchaser of
12 the unit with a copy of a public offering statement and all material
13 amendments to the public offering statement before conveyance of that
14 unit.

15 (b) Any agent, attorney, or other person assisting the declarant
16 or dealer in preparing the public offering statement may rely upon
17 information provided by the declarant or dealer without independent
18 investigation. The agent, attorney, or other person is not liable for
19 any material misrepresentation in or omissions of material facts from
20 the public offering statement unless the person had actual knowledge
21 of the misrepresentation or omission at the time the public offering
22 statement was prepared.

23 (c) The declarant or dealer is liable for any misrepresentation
24 contained in the public offering statement or for any omission of
25 material fact from the public offering statement if the declarant or
26 dealer had actual knowledge of the misrepresentation or omission or,
27 in the exercise of reasonable care, should have known of the
28 misrepresentation or omission.

29 (4) If a unit is part of a common interest community and is part
30 of any other real estate regime in connection with the sale of which
31 the delivery of a public offering statement is required under the
32 laws of this state, a single public offering statement conforming to
33 the requirements of RCW 64.90.610, 64.90.615, and 64.90.620 as those
34 requirements relate to each regime in which the unit is located, and
35 to any other requirements imposed under the laws of this state, may
36 be prepared and delivered in lieu of providing two or more public
37 offering statements.

38 (5) A declarant is not required to prepare and deliver a public
39 offering statement in connection with the sale of any unit owned by
40 the declarant, or to obtain for or provide to the purchaser a report

1 or statement required under RCW 64.90.610(1)(oo), 64.90.620(1), or
2 64.90.655, upon the later of:

3 (a) The termination or expiration of all special declarant
4 rights;

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

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

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

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

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

20 (c) A statement of any litigation brought by an owners'
21 association, unit owner, or governmental entity in which the
22 declarant or any affiliate of the declarant has been a defendant
23 arising out of the construction, sale, or administration of any
24 common interest community within the state of Washington within the
25 previous five years, together with the results of the litigation, if
26 known;

27 (d) Whether timesharing is permitted or prohibited, and, if
28 permitted, a statement that the purchaser of a time share unit is
29 entitled to receive the disclosure document required under chapter
30 64.36 RCW; and

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

35 (7) A declarant is not liable to a purchaser for the failure or
36 delay of the association to provide the resale certificate in a
37 timely manner, but the purchase contract is voidable by the purchaser
38 of a unit sold by the declarant until the resale certificate required
39 under RCW 64.90.640(2) and the information required under subsection

1 (6) of this section have been provided and for five days thereafter
2 or until conveyance, whichever occurs first.

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

5 (1) Except as provided in subsection (2) of this section, any
6 earnest money deposit, as defined in RCW 64.04.005, made in
7 connection with the right to purchase a unit from a person required
8 to deliver a public offering statement pursuant to RCW 64.90.605(3)
9 must be placed in escrow and held in this state in an escrow or trust
10 account designated solely for that purpose by a licensed title
11 insurance company or agent, a licensed attorney, a real estate broker
12 or independent bonded escrow company, or an institution whose
13 accounts are insured by a governmental agency or instrumentality
14 until: (a) Delivered to the declarant at closing, (b) delivered to
15 the declarant because of the purchaser's default under a contract to
16 purchase the unit, (c) refunded to the purchaser, or (d) delivered to
17 a court in connection with the filing of an interpleader action.

18 (2)(a) If a purchase agreement for the sale of a unit provides
19 that deposit funds may be used for construction costs and the
20 declarant obtains and maintains a surety bond as required by this
21 section, the declarant may withdraw escrow funds when construction of
22 improvements has begun. The funds may be used only for actual
23 building and construction costs of the project in which the unit is
24 located.

25 (b) The bond must be issued by a surety insurer licensed in this
26 state in favor of the purchaser in an amount adequate to cover the
27 amount of the deposit to be withdrawn. The declarant may not withdraw
28 more than the face amount of the bond. The bond must be payable to
29 the purchaser if the purchaser obtains a final judgment against the
30 declarant requiring the declarant to return the deposit pursuant to
31 the purchase agreement. The bond may be either in the form of an
32 individual bond for each deposit accepted by the declarant or in the
33 form of a blanket bond assuring the return of all deposits received
34 by the declarant.

35 (c) The party holding escrow funds who releases all or any
36 portion of the funds to the declarant has no obligation to monitor
37 the progress of construction or the expenditure of the funds by the
38 declarant and is not liable to any purchaser for the release of funds
39 pursuant to this section.

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

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

6 (1) The down payment assistance account is created in the custody
7 of the state treasurer. Receipts from the real estate excise tax on
8 sales of condominiums or townhouses to persons using a down payment
9 assistance program offered by the Washington state housing finance
10 commission must be deposited in the account, as provided in
11 subsection (2) of this section. Expenditures from the account may be
12 used only for payment toward a person's down payment assistance loan
13 that was used to purchase a condominium or townhouse for which the
14 tax was collected. Only the Washington state housing finance
15 commission or the commission's designee may authorize expenditures
16 from the account. The account is subject to allotment procedures
17 under chapter 43.88 RCW, but an appropriation is not required for
18 expenditures.

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

25 (b) Beginning in fiscal year 2025, and each fiscal year
26 thereafter, the legislature must appropriate from the general fund to
27 this account the lesser of (i) the amount received under RCW
28 82.45.060 on sales of condominiums or townhouses to persons using a
29 down payment assistance program offered by the Washington state
30 housing finance commission during the prior calendar year, as
31 determined under (a) of this subsection, or (ii) \$250,000 per fiscal
32 year.

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

1 (i) The real estate excise tax affidavit number associated with
2 the sale;

3 (ii) The date of sale;

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

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

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

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

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

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

15 (d) For the purposes of this subsection, "townhouse" means
16 dwelling units constructed in a row of two or more attached units
17 where each dwelling unit shares at least one common wall with an
18 adjacent unit and is accessed by a separate outdoor entrance.

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

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

22 The local ordinance by which impact fees are imposed:

23 (1) Shall include a schedule of impact fees which shall be
24 adopted for each type of development activity that is subject to
25 impact fees, specifying the amount of the impact fee to be imposed
26 for each type of system improvement. The schedule shall be based upon
27 a formula or other method of calculating such impact fees. The
28 schedule shall reflect the proportionate impact of new housing units,
29 including multifamily and condominium units, based on the square
30 footage, number of bedrooms, or trips generated, in the housing unit
31 in order to produce a proportionally lower impact fee for smaller
32 housing units. In determining proportionate share, the formula or
33 other method of calculating impact fees shall incorporate, among
34 other things, the following:

35 (a) The cost of public facilities necessitated by new
36 development;

37 (b) An adjustment to the cost of the public facilities for past
38 or future payments made or reasonably anticipated to be made by new
39 development to pay for particular system improvements in the form of

1 user fees, debt service payments, taxes, or other payments earmarked
2 for or proratable to the particular system improvement;

3 (c) The availability of other means of funding public facility
4 improvements;

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

6 (e) The methods by which public facilities improvements were
7 financed;

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

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

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

25 (4) May provide an exemption from impact fees for low-income
26 housing or for early learning facilities. Local governments that
27 grant exemptions for low-income housing or for early learning
28 facilities under this subsection (4) may either: Grant a partial
29 exemption of not more than eighty percent of impact fees, in which
30 case there is no explicit requirement to pay the exempted portion of
31 the fee from public funds other than impact fee accounts; or provide
32 a full waiver, in which case the remaining percentage of the exempted
33 fee must be paid from public funds other than impact fee accounts,
34 except as provided in (b) of this subsection. These exemptions are
35 subject to the following requirements:

36 (a) An exemption for low-income housing granted under subsection
37 (2) of this section or this subsection (4) must be conditioned upon
38 requiring the developer to record a covenant that, except as provided
39 otherwise by this subsection, prohibits using the property for any
40 purpose other than for low-income housing. At a minimum, the covenant

1 must address price restrictions and household income limits for the
2 low-income housing, and that if the property is converted to a use
3 other than for low-income housing, the property owner must pay the
4 applicable impact fees in effect at the time of conversion;

5 (b) An exemption for early learning facilities granted under
6 subsection (2) of this section or this subsection (4) may be a full
7 waiver without an explicit requirement to pay the exempted portion of
8 the fee from public funds other than impact fee accounts if the local
9 government requires the developer to record a covenant that requires
10 that at least 25 percent of the children and families using the early
11 learning facility qualify for state subsidized child care, including
12 early childhood education and assistance under chapter 43.216 RCW,
13 and that provides that if the property is converted to a use other
14 than for an early learning facility, the property owner must pay the
15 applicable impact fees in effect at the time of conversion, and that
16 also provides that if at no point during a calendar year does the
17 early learning facility achieve the required percentage of children
18 and families qualified for state subsidized child care using the
19 early learning facility, the property owner must pay 20 percent of
20 the impact fee that would have been imposed on the development had
21 there not been an exemption within 90 days of the local government
22 notifying the property owner of the breach, and any balance remaining
23 thereafter shall be a lien on the property; and

24 (c) Covenants required by (a) and (b) of this subsection must be
25 recorded with the applicable county auditor or recording officer. A
26 local government granting an exemption under subsection (2) of this
27 section or this subsection (4) for low-income housing or an early
28 learning facility may not collect revenue lost through granting an
29 exemption by increasing impact fees unrelated to the exemption. A
30 school district who receives school impact fees must approve any
31 exemption under subsection (2) of this section or this subsection
32 (4);

33 (5) Shall provide a credit for the value of any dedication of
34 land for, improvement to, or new construction of any system
35 improvements provided by the developer, to facilities that are
36 identified in the capital facilities plan and that are required by
37 the county, city, or town as a condition of approving the development
38 activity;

39 (6) Shall allow the county, city, or town imposing the impact
40 fees to adjust the standard impact fee at the time the fee is imposed

1 to consider unusual circumstances in specific cases to ensure that
2 impact fees are imposed fairly;

3 (7) Shall include a provision for calculating the amount of the
4 fee to be imposed on a particular development that permits
5 consideration of studies and data submitted by the developer to
6 adjust the amount of the fee;

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

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

15 (10) Must adopt or amend by ordinance, and incorporate into their
16 development regulations, zoning regulations, and other official
17 controls the requirements of this section to take effect six months
18 after the jurisdiction's next periodic comprehensive plan update
19 required under RCW 36.70A.130.

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

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

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

29 (1) The legislative body of a city, town, or county shall adopt
30 regulations and procedures, and appoint administrative personnel for
31 the summary approval of short plats and short subdivisions or
32 alteration or vacation thereof. When an alteration or vacation
33 involves a public dedication, the alteration or vacation shall be
34 processed as provided in RCW 58.17.212 or 58.17.215. Such regulations
35 shall be adopted by ordinance and shall provide that a short plat and
36 short subdivision may be approved only if written findings that are
37 appropriate, as provided in RCW 58.17.110, are made by the
38 administrative personnel, and may contain wholly different
39 requirements than those governing the approval of preliminary and

1 final plats of subdivisions and may require surveys and
2 monumentations and shall require filing of a short plat, or
3 alteration or vacation thereof, for record in the office of the
4 county auditor: PROVIDED, That such regulations must contain a
5 requirement that land in short subdivisions may not be further
6 divided in any manner within a period of five years without the
7 filing of a final plat, except that when the short plat contains
8 fewer than four parcels, nothing in this section shall prevent the
9 owner who filed the short plat from filing an alteration within the
10 five-year period to create up to a total of four lots within the
11 original short plat boundaries: PROVIDED FURTHER, That such
12 regulations are not required to contain a penalty clause as provided
13 in RCW 36.32.120 and may provide for wholly injunctive relief.

14 An ordinance requiring a survey shall require that the survey be
15 completed and filed with the application for approval of the short
16 subdivision.

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

22 (3) All cities, towns, and counties shall include in their short
23 plat regulations procedures for unit lot subdivisions allowing
24 division of a parent lot into separately owned unit lots. Portions of
25 the parent lot not subdivided for individual unit lots shall be owned
26 in common by the owners of the individual unit lots, or by a
27 homeowners' association comprised of the owners of the individual
28 unit lots.

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

31 (1) On or before the (~~sixtieth~~) 60th day following completion
32 of the mediation pursuant to RCW 64.55.120(4) and following filing
33 and service of the complaint, the declarant, association, or party
34 unit owner may serve on an adverse party an offer to allow judgment
35 to be entered. The offer of judgment shall specify the amount of
36 damages, not including costs or fees, that the declarant,
37 association, or party unit owner is offering to pay or receive. A
38 declarant's offer shall also include its commitment to pay costs and
39 fees that may be awarded as provided in this section. The declarant,

1 association, or party unit owner may make more than one offer of
2 judgment so long as each offer is timely made. Each subsequent offer
3 supersedes and replaces the previous offer. Any offer not accepted
4 within (~~twenty-one~~) 21 days of the service of that offer is deemed
5 rejected and withdrawn and evidence thereof is not admissible and may
6 not be provided to the court or arbitrator except in a proceeding to
7 determine costs and fees or as part of the motion identified in
8 subsection (2) of this section.

9 (2) A declarant's offer must include a demonstration of ability
10 to pay damages, costs, and fees, including reasonable attorneys'
11 fees, within thirty days of acceptance of the offer of judgment. The
12 demonstration of ability to pay shall include a sworn statement
13 signed by the declarant, the attorney representing the declarant,
14 and, if any insurance proceeds will be used to fund any portion of
15 the offer, an authorized representative of the insurance company. If
16 the association or party unit owner disputes the adequacy of the
17 declarant's demonstration of ability to pay, the association or party
18 unit owner may file a motion with the court requesting a ruling on
19 the adequacy of the declarant's demonstration of ability to pay. Upon
20 filing of such motion, the deadline for a response to the offer shall
21 be tolled from the date the motion is filed until the court has
22 ruled.

23 (3) An association or party unit owner that accepts the
24 declarant's offer of judgment shall be deemed the prevailing party
25 and, in addition to recovery of the amount of the offer, shall be
26 entitled to a costs and fees award, including reasonable attorneys'
27 fees, in an amount to be determined by the court in accordance with
28 applicable law.

29 (4) If the amount of the final nonappealable or nonappealed
30 judgment, exclusive of costs or fees, is not more favorable to the
31 offeree than the offer of judgment, then the offeror is deemed the
32 prevailing party for purposes of this section only and is entitled to
33 an award of costs and fees, including reasonable attorneys' fees,
34 incurred after the date the last offer of judgment was rejected and
35 through the date of entry of a final nonappealable or nonappealed
36 judgment, in an amount to be determined by the court in accordance
37 with applicable law. The nonprevailing party shall not be entitled to
38 receive any award of costs and fees.

39 (5) If the final nonappealable or nonappealed judgment on
40 damages, not including costs or fees, is more favorable to the

1 offerer than the last offer of judgment, then the court shall
2 determine which party is the prevailing party and shall determine the
3 amount of the costs and fees award, including reasonable attorneys'
4 fees, in accordance with applicable law.

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

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

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

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

19 NEW SECTION. **Sec. 14.** Section 9 of this act takes effect
20 January 1, 2024.

Passed by the Senate April 21, 2023.
Passed by the House April 20, 2023.
Approved by the Governor May 8, 2023.
Filed in Office of Secretary of State May 10, 2023.

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