

Civil Rights & Judiciary Committee

HB 1403

Brief Description: Simplifying condominium construction statutes.

Sponsors: Representatives Taylor, Connors, Duerr, Jacobsen, Peterson, Reed, Barkis, Rule, Doglio, Tharinger, Salahuddin, Ormsby, Ryu, Entenman, Street and Hill.

Brief Summary of Bill

- Removes references to engineering and construction standards and adds a definition of "workmanlike manner" to the implied warranty provisions of the Washington Uniform Common Interest Ownership Act (WUCIOA).
- Requires arbitration of actions for construction defect claims or for a breach of express or implied warranty if the sole relief sought is a money judgment and no party asserts a claim in excess of \$500,000.
- Requires the court or arbitrator to assess costs and reasonable attorney's fees against a claimant or construction professional who fails to improve its position at trial after refusing to accept an offer to remedy the defect or an offer of compromise by payment.
- Exempts accessory dwelling units organized under the WUCIOA as a condominium unit from certain building enclosure design and inspection requirements.
- Provides that the declarant or dealer is not subject to the implied warranties of quality under the WUCIOA if the declarant or dealer provide express warranty coverage that meets specified requirements.

Hearing Date: 1/29/25

Staff: Yelena Baker (786-7301).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background:

State Law Governing Condominiums.

A condominium consists of real property that has individually owned units and also has commonly held elements in which all the individual unit owners have an undivided common interest. A condominium is created by the recording of a "declaration," and the person creating a condominium is referred to as the "declarant." A condominium may be created by the construction of a new condominium building, or by the conversion of an existing building, such as an existing apartment building.

Two main statutes that govern the creation, construction, management, and termination of condominiums are the Washington Uniform Common Interest Ownership Act (WUCIOA) and the Washington Condominium Act (WCA). The WUCIOA took effect on July 1, 2018, and is applicable to residential common interest communities, including condominiums, created after that date. The WCA controls the creation, construction, management, and termination of condominiums created after July 1, 1990, but before the effective date of the WUCIOA.

Implied Warranties under the Washington Uniform Common Interest Ownership Act.

The WUCIOA authorizes the use of express warranties and creates implied warranties regarding the quality of materials and construction in a condominium.

Under these provisions, a declarant and any dealer impliedly warrants to a purchaser of a condominium unit that the unit and the common elements are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by the declarant or dealer will be:

- free from defective materials;
- constructed in accordance with engineering and construction standards, including applicable building codes, generally accepted in Washington at the time of construction; and
- constructed in a workmanlike manner.

Any conveyance of a condominium unit transfers to the purchaser all of declarant's or dealer's implied warranties of quality.

The implied warranties may be excluded or modified by written agreement of the parties. The implied warranties are excluded by written disclaimer, such as "as is," "with all faults," or other language that in common understanding calls the buyer's attention to the exclusion of warranties.

In addition, a declarant or dealer may disclaim liability for a specified defect or failure to comply with applicable law in a written instrument that meets certain requirements, such as specifically describing the defect or failure, and that is signed by the purchaser.

A declarant or dealer may not make an express written warranty of quality that limits the implied warranties of quality made to the purchaser under the WUCIOA.

Disputes under the Washington Uniform Common Interest Ownership Act.

Parties to a dispute arising under the WUCIOA or the governing documents of a common interest community may agree to resolve the dispute by any form of binding or nonbinding alternative dispute resolution. A declarant, association, unit owner, or any other person subject to the WUCIOA may bring an action to enforce a right granted or an obligation imposed under the WUCIOA. The court may award reasonable attorneys' fees and costs.

Construction Defect Claims.

Specific statutory requirements and procedures must be followed before a lawsuit can be filed alleging a defect in the construction or substantial remodel of a residence.

A claimant must serve a written notice of claim on the construction professional alleged to be responsible for the defect and describe the claim in reasonable detail sufficient to determine the general nature of the defect. In some cases, the written notice of claim must include a written report from a construction defect professional. Within 14 days after service of the notice of claim, a construction professional may serve a written response demanding a meeting with the claimant and the claimant's expert to confer regarding the report and its contents.

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. In the response, the construction professional must do one of the following:

- propose to inspect the alleged defect and then, based on the inspection, either offer to remedy the defect, offer to compromise and settle the claim by payment, or dispute the claim;
- offer to compromise and settle the claim by monetary payment without inspection, including an offer to buy the residence back from the homeowner and pay reasonable relocation costs; or
- dispute the claim.

If the construction professional fails to respond, or disputes the claim, or the claimant rejects an offer of inspection or settlement, then the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim. If the claimant does not respond within 30 days after receipt of the construction professional's offer to remedy or compromise by payment, the construction professional may terminate the offer, and the claimant may bring an action against the construction professional for the defect described in the original notice of claim.

If the claimant rejects the post-inspection offer to remedy or compromise by payment, the claimant must serve the rejection notice on the construction professional and may then bring an action against the professional for the defect described in the original notice of claim. If the claimant does not respond within 30 days after receiving the construction professional's post-inspection offer, the professional may terminate the offer.

Building Enclosure Requirements for Multiunit Residential Buildings.

A building enclosure is the part of a building that physically separates the exterior environment from interior environments and which weatherproofs, waterproofs, or otherwise protects the building or its components from water or moisture intrusion. Specific building enclosure requirements apply when constructing or rehabilitating a multiunit residential building, or when converting a multiunit residential building to condominium units.

Building enclosure design documents must be submitted with any application for a building permit for the construction of a multiunit residential building and must address waterproofing, weatherproofing, and other protections of the building from water or moisture intrusion. The building enclosure of a multiunit residential building must be inspected during initial or rehabilitative construction. The inspection must include testing of windows and window installations for water penetration problems.

A building department may not issue a certificate of occupancy for a multiunit residential building until the inspector submits a building enclosure inspection report certifying that the building enclosure was inspected during construction and that the building enclosure was constructed in substantial compliance with the design documents.

A residential condominium unit in a multiunit residential building may not be sold without meeting the building enclosure design and inspection requirements. However, these requirements do not apply if the building enclosure meets certain alternative inspection requirements, including intrusive testing for water penetration and an evaluation of the condition of the building enclosure and its ability to waterproof or weatherproof the building from water or moisture intrusion.

Summary of Bill:

Implied Warranties under the Washington Uniform Common Interest Ownership Act.

The WUCIOA provisions related to implied warranties of quality are amended and apply to condominiums in common interest communities created on or after the effective date of the bill.

For such condominium units, a declarant or dealer impliedly warrants to a purchaser that the unit will be constructed in accordance with the approved plans, specifications, and applicable building code in effect at the time of construction, instead of in accordance with engineering and construction standards and applicable building codes generally accepted in Washington at the time of construction.

Additionally, the term "workmanlike manner" is defined to mean the degree of care that a reasonably prudent licensed contractor would exercise under the same or similar circumstances.

An additional exclusion from implied warranties of quality is created for any condominium unit that is an accessory dwelling unit organized as a condominium under the WUCIOA and that is

located in a new or a condominium conversion building containing 12 or fewer units.

For such units, a declarant or dealer is not subject to the implied warranties of quality if the declarant or dealer provides an express warranty of quality and express warranty insurance coverage that:

- requires acknowledgement by the purchaser that the express warranty of quality applies;
- allows for recovery of defects under the express warranty;
- applies to all units and common areas within the building; and
- provides minimum coverage periods for: workmanship and materials (one year); plumbing, electrical, and ductwork distribution systems (two years); and structural defects to load-bearing structural members (10 years).

Mandatory Arbitration of Certain Disputes.

An action for a breach of express or implied warranties under the WUCIOA must be arbitrated pursuant to state law related to construction defect claims involving multiunit residential buildings if:

- a condominium unit is part of a common interest community created on or after the effective date of the bill;
- the sole relief sought is a money judgment; and
- no party asserts a claim in excess of \$500,000, not including interest and costs.

It is specified that it is the substantially prevailing party that may be awarded reasonable attorneys' fees and costs in an action to enforce a right granted or an obligation imposed under the WUCIOA.

Construction Defect Claims.

A fee-shifting provision is added to the statutory requirements that must be followed before a construction defect lawsuit can be filed. The fee-shifting provision applies to actions where the subject of the claim is a residence constructed or substantially remodeled on or after the effective date of the bill.

In such actions, the court or arbitrator must assess costs and reasonable attorneys' fees against a claimant or construction professional who refuses to accept an offer to remedy the defect or a compromise by payment and subsequently fails to improve its position in a construction defect action.

Building Enclosure Requirements for Multiunit Residential Buildings.

The building enclosure design and inspection requirements do not apply to any accessory dwelling unit organized under the WUCIOA as a condominium unit in a common interest community created on or after the effective date of the bill.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains multiple effective dates. Please see the bill.