
**CCTF Staff Summary
Washington State –
Statutory Framework**

**January 25, 2006
Reese Lord**

Recent legislation related to construction claims

- 2001-02** **SB 6409 => RCW 64.50**
<http://apps.leg.wa.gov/billinfo/summary.aspx?bill=6409&year=2001>
- 2003-04** **SB 5536 => RCW 64.35** (also amends 64.34)
<http://apps.leg.wa.gov/billinfo/summary.aspx?bill=5536&year=2003>
- 2005-06** **EHB 1848 => RCW 64.55**
<http://apps.leg.wa.gov/billinfo/summary.aspx?bill=1848&year=2006>

Background: The Washington State Legislature passed three bills over the past five years to address construction defect issues.

- SB 6409 requires notice and an opportunity to cure before a civil lawsuit related to a construction defect may be filed.
- SB 5536 clarifies the implied and express warranties implicit in the Washington Condominium Act. The bill also establishes a voluntary qualified warranty program.
- EHB 1848 addresses construction defect disputes involving multi-unit residential buildings by mandating the use of (1) independent building enclosure specialists during design and construction and (2) alternative dispute resolution procedures.

Analysis: SB 6409 stipulates the process and timeline for filing a construction claim including providing notice to the contractor. The contractor may choose to remedy the defect, settle the claim by monetary payment, or dispute the claim.

The Washington Condominium Act creates a system of warranties of quality – both implied and expressed. Implied warranties extend to the extent of defective materials, sound engineering and construction, workmanship, and compliance with all laws. Plaintiffs claiming a breach of an implied warranty must show that the alleged breach has had an adverse effect on the use of the property. The voluntary warranty insurance program established by SB 5536 provides a framework where insurers may require compliance with specific design, construction practices, and maintenance. The warranty program obligates the consumer to conduct required maintenance, provide timely notice of a defect, and comply with alternative dispute resolution measures.

EHB 1848 evolved out of the work of a study committee formed by SB 5536. The purpose of the new law is twofold: 1) to reduce condominium construction defects leading to water damage; and 2) to motivate earlier, lower-cost settlement of condominium construction defect claims. The law requires:

- An architect or engineer to submit building-enclosure design documents (required for permit)
- A building envelope specialist to certify compliance with plans including inspections during course of construction and field-testing of window for water penetration (required for occupancy)
- Alternative dispute resolution methods including a conference to identify issues, a case schedule plan, mandatory mediation, inspection by a neutral expert, and attorney fee-shifting mechanism.

NOTE: Liability for design and 3rd-party inspections is determined contractually with developer.

CATEGORY	WASHINGTON	BRITISH COLUMBIA
<u>Design/Construction Practices</u>		
Design	<ul style="list-style-type: none"> ▪ An architect or engineer must submit building-enclosure design documents 	<ul style="list-style-type: none"> ▪ Ensure that building design considers building science regarding envelopes either through a checklist, increased training, or requiring review by a specialist. ▪ Require general contractor to submit a project schedule to the architect so visits can be timed accordingly
Quality assurance/ quality control	<ul style="list-style-type: none"> ▪ Third party inspection by building envelope specialist including inspections during course of construction and field-testing of window for water penetration 	<ul style="list-style-type: none"> ▪ Significant emphasis on conducting and disseminating building science research ▪ Develop a set of best practices regarding building practices and building envelope repair
Training/education	<ul style="list-style-type: none"> ▪ 	<ul style="list-style-type: none"> ▪ Increased funding for training and apprenticeship programs especially related to multi-unit building envelope
<u>Regulatory Environment</u>		
Permits/Inspections	<ul style="list-style-type: none"> ▪ Stamped building-enclosure design documents required for initial building permit ▪ Certified building-enclosure inspection report required for certificate of occupancy ▪ Building department does not review or have liability for adequacy of building-enclosure design documents or inspection report 	<ul style="list-style-type: none"> ▪ No additional inspections suggested but the commission did recommend increased education of inspectors regarding building envelope issues and that inspectors focus on these issues during inspections.
Licensing	<ul style="list-style-type: none"> ▪ No licensure or registration of building-enclosure specialist specified 	<ul style="list-style-type: none"> ▪ Require licensure of residential builders and building envelope renovators ▪ Minimum education and training required for licensure (varies by sub-specialty)
Regulatory/statutory framework	<ul style="list-style-type: none"> ▪ Liability for design and 3rd-party inspections is determined contractually with developer. 	<ul style="list-style-type: none"> ▪ Formed Homeowners Protection Office, a separate government agency charged with consumer

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		protection
<u>Dispute Resolution</u>		
Arbitration/mediation	<ul style="list-style-type: none"> ▪ Mandatory mediation of construction defect claims including early meeting to define issues ▪ Arbitration may be elected by both parties 	<ul style="list-style-type: none"> ▪ Third-party mediation of warranty disputes (costs shared equally) ▪ Alternative dispute resolution mandatory for industry; optional for consumers
Complaint process	<ul style="list-style-type: none"> ▪ Claimant must provide notice of repair and opportunity to cure to contractor ▪ Plaintiffs claiming a breach of an implied warranty must show adverse impact 	▪
<u>Homeowner Rights & Responsibilities</u>		
Consumer education	▪	<ul style="list-style-type: none"> ▪ Significant emphasis on consumer education and public outreach
Maintenance	<ul style="list-style-type: none"> ▪ Owners responsible for maintenance as a condition of qualified warranty ▪ Warranty providers must provide maintenance schedule 	<ul style="list-style-type: none"> ▪ Require developers to supply condo owners association with maintenance plans
Warranties	<ul style="list-style-type: none"> ▪ Express and implied warranty of quality including defective materials, sound engineering and construction, workmanship, and compliance with all laws ▪ Establishes a voluntary warranty program (1 yr. materials/labor, 2 yrs. mechanical/ plumbing/ electrical systems; 5 yrs. building envelope; 10 yrs. structure) 	<ul style="list-style-type: none"> ▪ Mandatory 2-5-10 warranty on all new homes (2 yrs. labor, 5 yrs. envelope; 10 yrs. structure) ▪ Prevent developers/contractors from investing in warranty providers; must be a third-party provider with “arms length” relationship with builders ▪ Third-party mediation of warranty disputes (costs shared equally)
Repair costs	▪	<ul style="list-style-type: none"> ▪ Provide financial assistance through tax rebates, loans, and grants (paid for through \$750 levy on multi-family units)