

the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 44. Sections 2 through 43 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

NEW SECTION. Sec. 45. Sections 2, 3, 9, 11, 13, and 35 of this act shall constitute a new chapter in Title 74 RCW.

NEW SECTION. Sec. 46. Sections 14 through 33 of this act shall constitute a new chapter in Title 70 RCW.

NEW SECTION. Sec. 47. Subchapter headings as used in this act do not constitute any part of the law.

Passed the House April 23, 1989.

Passed the Senate April 23, 1989.

Approved by the Governor May 14, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 14, 1989.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 25, 29, 34 and 35, Engrossed Substitute House Bill No. 1968 entitled:

"AN ACT Relating to long term care."

Section 25 requires the Department of Social and Health Services to promulgate rules regarding adult family home resident rights, but limits the rules by requiring them to be "equal" to those already in place. Senior advocates and caregivers may recommend the expansion or modification of resident rights, and the department would be prohibited from responding under this language.

Section 29 requires the department to create a written training program for adult family home operators and to report to the Legislature. No appropriation is made to carry out the requirements of this section.

Section 34 repeals the rule-making authority the department needs to regulate congregate care facilities.

Section 35 is a preemptive zoning statute that designates residential facilities serving up to 15 persons as permitted uses under local zoning statutes. The language is overly broad and vague as written and may present a problem to local governments. The Legislature will receive a report from all local governments on the need for these facilities in 1990.

With the exception of sections 25, 29, 34 and 35, Engrossed Substitute House Bill No. 1968 is approved."

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## CHAPTER 428

[House Bill No. 1656]

### CONDOMINIUMS—WARRANTIES OF QUALITY AND CREATION OF CONDOMINIUM STUDY COMMITTEE

AN ACT Relating to the regulation of the sale of lands; creating new sections; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

**\*NEW SECTION. Sec. 1. PUBLIC OFFERING STATEMENT—**  
**CONDOMINIUM SECURITIES.** *If an interest in a condominium is currently registered with the securities and exchange commission of the United States, a declarant satisfies all requirements relating to the preparation of a public offering statement of this chapter if the declarant delivers to the purchaser a copy of the public offering statement filed with the securities and exchange commission. An interest in a condominium is not a security under the provisions of chapter 21.20 RCW.*

\*Sec. 1 was vetoed, see message at end of chapter.

**NEW SECTION. Sec. 2. EXPRESS WARRANTIES OF QUALITY.** (1) Express warranties made by any seller to a purchaser of a unit, if relied upon by the purchaser, are created as follows:

(a) Any written affirmation of fact or promise which relates to the unit, its use, or rights appurtenant thereto, area improvements to the condominium that would directly benefit the unit, or the right to use or have the benefit of facilities not located in the condominium creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise;

(b) Any model or written description of the physical characteristics of the condominium at the time the purchase agreement is executed, including plans and specifications of or for improvements, creates an express warranty that the condominium will conform to the model or description except pursuant to RCW 64.\_\_\_\_ (section 4-103(1)(v), chapter 43, Laws of 1989);

(c) Any written description of the quantity or extent of the real property comprising the condominium, including plats or surveys, creates an express warranty that the condominium will conform to the description, subject to customary tolerances; and

(d) A written provision that a buyer may put a unit only to a specified use is an express warranty that the specified use is lawful.

(2) Neither formal words, such as "warranty" or "guarantee," nor a specific intention to make a warranty are necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty. A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the declarant or declarant's agent identified in the public offering statement.

(3) Any conveyance of a unit transfers to the purchaser all express warranties of quality made by previous sellers.

**\*NEW SECTION. Sec. 3. STATUTE OF LIMITATIONS FOR WARRANTIES.** (1) *A judicial proceeding for breach of any obligation arising under RCW 64.\_\_\_\_ or 64.\_\_\_\_ (section 4-111 or 4-112, chapter 43,*

*Laws of 1989) must be commenced within four years after the cause of action accrues.*

*(2) Subject to subsection (3) of this section, a cause of action for breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:*

*(a) As to a unit, at the time the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or at the time of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and*

*(b) As to each common element, at the time the common element is completed or, if later: (i) As to a common element that may be added to the condominium or portion thereof, at the time the first unit therein is conveyed to a bona fide purchaser; or (ii) as to a common element within any other portion of the condominium, at the time the first unit in the condominium is conveyed to a bona fide purchaser.*

*(3) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.*

\*Sec. 3 was vetoed, see message at end of chapter.

**NEW SECTION. Sec. 4. SUBSTANTIAL COMPLETION OF UNITS.** *In the case of a sale of a unit where delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed until the declaration is recorded.*

\*Sec. 4 was vetoed, see message at end of chapter.

**NEW SECTION. Sec. 5. STUDY COMMITTEE.** A statutory committee is created to:

(1) Review the Washington condominium act, and consider comments concerning the act;

(2) Draft recommended revisions to the act; and

(3) Prepare written comments on the act to be included in the Senate or House Journals. The committee shall consist of the following members:

(a) One member each of the majority and minority parties of the senate, appointed by the president of the senate;

(b) One member each of the majority and minority parties of the house of representatives, appointed by the speaker of the house of representatives;

(c) Four members of the drafting subcommittee of the senate judiciary condominium task force;

(d) One member appointed by the Washington land title association;

(e) One member appointed by the Washington mortgage bankers association;

(f) One member appointed by the Washington association of realtors;

(g) One member appointed by the Washington chapter of the community associations institute;

(h) One member appointed by the homebuilders association of Washington state;

(i) One member appointed by the Washington state bar association;

(j) One member appointed by the Washington association of county officials; and

(k) Two members appointed by the governor.

The committee shall report to the senate law and justice committee and the house judiciary committee before March 1, 1990.

This section shall expire March 1, 1990.

NEW SECTION. Sec. 6. CAPTIONS. Section captions as used in this act do not constitute any part of the law.

NEW SECTION. Sec. 7. EFFECTIVE DATE. Sections 1 through 4 of this act shall take effect July 1, 1990.

Passed the House April 23, 1989.

Passed the Senate April 23, 1989.

Approved by the Governor May 14, 1989, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 14, 1989.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 1, 3, and 4, House Bill No. 1656 entitled:

"AN ACT Relating to regulation of the sale of lands."

I vetoed similar language contained in Substitute Senate Bill No. 5208, because the interests of purchasers were not adequately protected.

The Legislature responded by making changes to sections 2 and 5, so I am approving those sections today. However, sections 1, 3 and 4 still substantially limit the rights of individual condominium purchasers.

Section 1 is related to public offering statements. It states that an interest in a condominium is not a security for state regulatory purposes, under RCW 21.20, if the seller delivers to the purchaser a copy of the securities and exchange commission public offering statement. State security provisions do apply to an interest in a condominium in some cases. This section exempts a developer from having to give the carefully tailored public offering statement required by state law to purchasers. Purchasers need the information in the more detailed state public offering statement, since developers are given expanded rights to do phased projects and to control the homeowners' associations during the phasing.

Section 3 limits the time in which a purchaser can take action for breach of a warranty of quality. Purchasers must take action within four years of the time they take possession, regardless of when the defect is discovered.

Furthermore, the statute of limitations can possibly be interpreted to run four years after common elements are completed, regardless of when a purchaser buys into the project. I urge the Legislature to look at the interrelationship of purchasers' rights and the expanded rights of developers to ensure a balance. Under current case law, purchasers have three years from the date a construction defect is discovered, or should reasonably have been discovered, to bring an action. Hence it offers more protection to purchasers.

Section 4 leaves unclear when a conveyance is completed for purposes of determining when the risk of loss shifts to the purchaser, determining when the statute of limitations begins to run, and ascertaining when the seller has a right to the purchase

funds. Under current case law, the risk of property loss shifts to the purchaser at the time of conveyance, and the statute of limitations on certain actions against the builder under state law begins to run from the time of conveyance. Note, the provisions in the Uniform Condominium Act (UCA) requires a developer to file a certificate of substantial completion before the conveyance occurs. I believe current case law offers more protection for the purchaser, but recommend the Legislature consider adopting the provision in the UCA.

With the exception of sections 1, 3, and 4, House Bill No. 1656 is approved."

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## CHAPTER 429

[Substitute Senate Bill No. 5984]

### YAKIMA RIVER BASIN—CONSERVATION AND WATER RIGHTS

AN ACT Relating to use of the waters of the Yakima river basin; and adding a new chapter to Title 90 RCW.

Be it enacted by the Legislature of the State of Washington:

**NEW SECTION.** Sec. 1. (1) The legislature finds that:

(a) Under present physical conditions in the Yakima river basin there is an insufficient supply of water to satisfy the needs of the basin;

(b) Pursuant to P.L. 96-162, which was urged for enactment by this state, the United States is now conducting a study of ways to provide needed waters through improvements of the federal water project presently existing in the Yakima river basin;

(c) The interests of the state will be served by developing programs, in cooperation with the United States and the various water users in the basin, that increase the overall ability to manage basin waters in order to better satisfy both present and future needs for water in the Yakima river basin.

(2) It is the purpose of this chapter, consistent with these findings, to improve the ability of the state to work with the United States and various water users of the Yakima river basin in a program designed to satisfy both existing rights, and other presently unmet as well as future needs of the basin.

(3) The provisions of this chapter apply only to waters of the Yakima river basin.

**NEW SECTION.** Sec. 2. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of ecology.

(2) "Net water savings" means the amount of water that through hydrological analysis is determined to be conserved and usable for other purposes without impairing existing water rights, reducing the ability to deliver water, or reducing the supply of water that otherwise would have been available to other water users.

(3) "Trust water right" means that portion of an existing water right, constituting net water savings, that is no longer required to be diverted for beneficial use due to the installation of a water conservation project that