

A Construction Law Update

01/25/08

Proposed Bill Could Dramatically Alter the Construction Industry

Sen. Brian Weinstein (D-41, Mercer Island) has introduced Senate Bill 6385, which would add a new section to the Construction Defects statute, RCW 64.50 *et seq.* At the same time, Rep. Brendan Williams (D-22, Olympia) has introduced a companion bill, HB 2837, in the House of Representatives. Sen. Weinstein recently offered a substitute version of the bill. This bill, as revised on January 24, creates a reasonable care standard for all construction professionals involved in the construction of any improvement on real property.

Sen. Weinstein's bill proposes several dramatic changes in Washington construction law. Washington currently does not recognize a cause of action for negligent construction. If this bill passes, residential owners would be able to sue any construction professional who performed construction on their property regardless of whether the owner had a contractual relationship with the construction professional. Suits by a subsequent purchaser of a residence would be allowed. Privity of contract will no longer matter.

The bill would vitiate longstanding Washington law regarding construction contracts, including the economic loss rule, privity of contract and the implied warranty of workmanship. Washington has used the economic loss rule to separate breach of contract cases from tort cases. The economic loss rule limits a contracting party's recovery of purely economic damages to the remedies provided for in the parties' contract. Economic damages are defined as all damages that do not result in property damage or personal injury.

Washington courts drew a line in the sand between tort and contract damages in construction cases, arguing that parties are capable of allocating the risk of negligence through the contract. The courts reasoned that parties should bear some responsibility to review their contracts, ascertain the various risks and draft language to allocate the same. This includes negligence or "workmanship." The new reasonable care standard under SB 6385 could supplant this, with workmanship being measured under the reasonable care standard.

The effects on contractors, sub-contractors, architects, and possibly suppliers connected to residential construction and remodeling could be far-reaching. A construction professional could face suits from subsequent purchasers of homes who had no contract with the construction professional.

SB 6385 has been referred to the Committee on Consumer Protection & Housing. HB 2837 has been referred to the Judiciary Committee. The legislative session for 2008 is 60 days. It is

unknown whether the Legislature will act on this bill during this regular session, but Lane Powell is tracking this bill closely.

For more information, please contact the Construction Law Practice Group at Lane Powell:

206.223.7000 Seattle
503.778.2100 Portland
lppc@lanepowell.com
www.lanepowell.com

We provide the *Construction Law Hotsheet* as a service to our clients, colleagues and friends. It is intended to be a source of general information, not an opinion or legal advice on any specific situation, and does not create an attorney-client relationship with our readers. If you would like more information regarding whether we may assist you in any particular matter, please contact one of our lawyers, using care not to provide us any confidential information until we have notified you in writing that there are no conflicts of interest and that we have agreed to represent you on the specific matter that is the subject of your inquiry.

Copyright © 2008 [Lane Powell PC](#)
Seattle - Portland - Anchorage - Olympia - Tacoma - London