

## A Construction Law Update

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### **2008 Legislature Fails to Pass Bill Imposing Reasonable Care Standard on Residential Construction Professionals**

In January 2008 ([http://www.lanepowell.com/pdf/pubs/con\\_2008\\_001.pdf](http://www.lanepowell.com/pdf/pubs/con_2008_001.pdf)), we reported that the legislature was considering Senate Bill 6385, which would have significantly changed the landscape regarding construction defect claims available to owners of residential properties in Washington. Specifically, the bill created a reasonable care standard for construction professionals, including contractors and design professionals, involved in the construction or improvement of residential property.

This bill was designed to provide residential property owners with the ability to sue any construction professional that provided services on real property regardless of whether the owner had a contractual relationship with that construction professional. Thus, if a homeowner contracted for improvements to its residential property and then sold the property after completion of the improvements, the new owner would have the right to sue the contractor that performed the improvements, regardless of the lack of a contractual relationship between the two. Concern regarding this new avenue of liability for construction professionals resulted in lobbying by their representative organizations and, to a limited extent, helped in evolving the bill's content.

As the bill progressed through the legislative process, a more limited homeowner bill of rights was proposed. Rather than provide an open slate of causes of action for residential property owners, later versions of the bill provided homeowners with non-waivable statutory warranties like those provided to condominium owners under RCW Chapter 64. The revised bill attempted to address the concerns expressed by the construction industry, while still providing residential property owners with a cause of action against construction professionals with whom they lacked privity.

Senate Bill 6385 progressed to a third reading by a Senate Rules Committee, where it died when the legislative session ended on March 13, 2008. Legislative consideration of bills such as SB 6385 has become an annual undertaking and it certainly is possible that a similar bill may be submitted for consideration in the next legislative session. In the meantime, the balance between homeowner's rights and construction professional liabilities remains unchanged.

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

206.223.7000 Seattle

503.778.2100 Portland

[lppc@lanepowell.com](mailto:lppc@lanepowell.com)

[www.lanepowell.com](http://www.lanepowell.com)

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