

LEGISLATIVE CHANGE NEEDED

PUBLIC DUTY DOCTRINE MUST BE ABOLISHED

I only know reasonable people. Every reasonable person I know believes that when he or she purchases a new home or condominium it is

SAFE and COMPLIES WITH APPLICABLE BUILDING CODES
because
IT HAS BEEN INSPECTD BY THE BUILDING DEPARTMENT
WRONG

Reliance on course of construction inspections by building departments is misplaced. Building inspections by building departments do not assure compliance with applicable building codes. Taylor v. Stevens County, 111 Wn.2d 159, 759 P.2d 447 (1988). Under Taylor v. Stevens County and its progeny building departments owe no duty to the owner or occupier of a structure to exercise reasonable care in inspecting a building and approving it for occupancy. Under Taylor building departments are not liable – even for admittedly negligent inspections. This must change.

The absurdity of the Taylor holding becomes even more apparent, when considered in light of the state building code **requirement** that certificates of occupancy which evidence the building department's inspection and finding of code compliance must be conspicuously posted!

If you are interested in seeing a change in this absurd Public Duty Doctrine law as formulated in the Taylor Case send your comments, suggestions for revision, pledges of support (or money) to Bo Barker, 14445 S.E. 55th St. Bellevue, 98006 Money received will be well spent.

DRAFT

-LEGISLATIVE PROPOSAL -

ASSURANCE OF QUALITY
OF NEW CONSTRUCTION

Whereas, municipal and county building departments are effectively insulated from liability arising from claims by purchasers of new construction alleging inadequate inspection and/or permitting practices by building departments; and

Whereas most new residential construction is directed by real estate developers and condominium declarants at a time prior to there being an identified owner who could look after his own interests by commissioning a private inspection; and

Whereas, it appears to be a commonly held misapprehension that new construction complies with applicable building codes because new construction has been permitted and inspected by local building departments; and

Whereas, the only time when cost effective and meaningful building inspections can be performed is during the construction process; and

Whereas, the State of Washington has an interest in preventing the waste of economic and physical resources and energy which results from faulty construction and has an interest in providing for the safety of firefighters and users of residential structures and the economic security of purchasers of residential structures; now therefor be it enacted as follows:

1. The Public Duty Doctrine shall not be recognized as a defense to any claim for inadequate plan review, inspection and/or permitting practices asserted by or on behalf of any owner or condominium association against any county, city and/or building department relating to structures for which a certificate of occupancy or other evidence of governmental permission for occupancy is first issued as to a structure on or after January 1, 1999.

2. For all construction, the occupancy of which is first permitted by any governmental agency on or after January 1, 2000, all governmental agencies permitting occupancy owe a duty to all first owners and to all persons using or occupying any structure with the permission of any first owner to exercise reasonable care in the process of permitting occupancy of any residential structure. The process of permitting occupancy is hereby defined to include the process of reviewing construction plans and specifications to assure compliance with the provisions of the State Building Code as adopted from time to time under Chapter 19.27 of the Revised Code of Washington, inspecting construction to assure compliance with applicable codes and other administrative processes necessarily and reasonably performed as part of the occupancy permitting processes provided for under the codes adopted pursuant to Chapter 19.27 of the Revised Code of Washington.

3. Any governmental body that fails to exercise reasonable care in the satisfaction of the above described duty shall be liable for any and all damages resulting from the failure. Such damages may include the cost to achieve code compliance as well as resulting and/or consequential damages.

4. Compliance with applicable codes relating to construction is the primary obligation of those persons and entities who direct and carry out construction. Accordingly, any governmental agency suffering liability under section 2 above shall be entitled to indemnification for any and all liability resulting and/or arising under section 2 above from those architects, engineers, contractors, real estate developers and/or building permit applicants whose actions caused and/or allowed construction to be completed in a manner not authorized by applicable codes then in effect.

5. Without limiting any power otherwise conferred, all governmental agencies involved in permitting new residential construction are hereby granted the following powers with respect to the performance of permitting processes:

a) to require that the submission of any plans and/or specifications for residential construction be accompanied by the written certification of the design professional who prepared said plans and specifications that said plans and/or specifications comply with applicable codes;

b) to require any applicant for a permit for new residential construction to post or provide adequate assurance for the payment of all costs of plan and specification reviews and all inspections required under applicable codes adopted pursuant to RCW 19.27 of the Revised Code of Washington;

c) to retain the services of private individuals and/or entities to perform reviews of plans, specifications and/or construction to assure compliance with applicable codes on such terms as are appropriate which may include providing proof of liability insurance commensurate with the undertaking and furnishing proof of qualifications to perform the services under consideration;

d) to require any individual and/or entity retained to perform any construction inspection to certify in writing that all construction inspected by such person complies with all applicable codes.

[CAI981112 Public Duty Doctrine to Be Abolished]