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SENATE BILL 6431

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State of Washington                      60th Legislature                      2008 Regular Session

By Senators Tom, Hobbs, and Delvin; by request of Attorney General

Read first time 01/16/08.                      Referred to Committee on Consumer Protection & Housing.

1            AN ACT Relating to distressed property conveyances; adding a new  
2 chapter to Title 64 RCW; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            NEW SECTION.    **Sec. 1.** The definitions in this section apply  
5 throughout this chapter unless the context clearly requires otherwise.

6            (1) "Distressed property" means real property that is (a) the  
7 primary residence of the owner and (b) in foreclosure, at risk of loss  
8 due to the nonpayment of taxes, or the owner of which is more than  
9 ninety days delinquent on any loan that is secured by the property.

10            (2) "Distressed property conveyance" means a transaction in which:  
11 A foreclosed homeowner transfers an interest in the distressed property  
12 to a distressed property purchaser; the distressed property purchaser  
13 allows the foreclosed homeowner to occupy the distressed property; and  
14 the distressed property purchaser or a person acting in participation  
15 with the distressed property purchaser conveys or promises to convey  
16 the distressed property to the foreclosed homeowner, provides the  
17 foreclosed homeowner with an option to purchase the distressed property  
18 at a later date, or promises the foreclosed homeowner an interest in,  
19 or portion of, the proceeds of any resale of the distressed property.

1 (3) "Distressed property purchaser" means any person who acquires  
2 an interest in distressed property under a distressed property  
3 conveyance. "Distressed property purchaser" includes a person who acts  
4 in joint venture or joint enterprise with one or more distressed  
5 property purchasers in a distressed property conveyance. A federal or  
6 state chartered bank, savings bank, thrift, or credit union is not a  
7 distressed property purchaser.

8 (4) "Foreclosed homeowner" means an owner of distressed property.

9 (5) "Resale" means a bona fide market sale of the distressed  
10 property subject to the distressed property conveyance by the  
11 distressed property purchaser to an unaffiliated third party.

12 (6) "Resale price" means the gross sale price of the distressed  
13 property on resale.

14 NEW SECTION. **Sec. 2.** A distressed property purchaser shall enter  
15 into a distressed property reconveyance in the form of a written  
16 contract. The contract must be written in at least twelve-point  
17 boldface type in the same language principally used by the distressed  
18 property purchaser and foreclosed homeowner to negotiate the sale of  
19 the distressed property, and must be fully completed, signed, and dated  
20 by the foreclosed homeowner and distressed property purchaser before  
21 the execution of any instrument of conveyance of the distressed  
22 property.

23 NEW SECTION. **Sec. 3.** The contract required in section 2 of this  
24 act must contain the entire agreement of the parties and must include  
25 the following:

26 (1) The name, business address, and telephone number of the  
27 distressed property purchaser;

28 (2) The address of the distressed property;

29 (3) The total consideration to be provided by the distressed  
30 property purchaser in connection with or incident to the sale;

31 (4) A complete description of the terms of payment or other  
32 consideration including, but not limited to, any services of any nature  
33 that the distressed property purchaser represents that he or she will  
34 perform for the foreclosed homeowner before or after the sale;

35 (5) The time at which possession is to be transferred to the  
36 distressed property purchaser;

1 (6) A complete description of the terms of any related agreement  
2 designed to allow the foreclosed homeowner to remain in the home, such  
3 as a rental agreement, repurchase agreement, or lease with option to  
4 buy;

5 (7) A complete description of the interest, if any, the foreclosed  
6 homeowner maintains in the proceeds of, or consideration to be paid  
7 upon, the resale of the distressed property;

8 (8) A notice of cancellation as provided in section 5 of this act;  
9 and

10 (9) The following notice in at least fourteen-point boldface type  
11 if the contract is printed, or in capital letters if the contract is  
12 typed, and completed with the name of the distressed property  
13 purchaser, immediately above the statement required in section 5 of  
14 this act;

15 "NOTICE REQUIRED BY WASHINGTON LAW

16 Until your right to cancel this contract has ended, . . . . . (Name)  
17 or anyone working for . . . . . (Name) CANNOT ask you to sign or have  
18 you sign any deed or any other document."

19 The contract required by this section survives delivery of any  
20 instrument of conveyance of the distressed property and has no effect  
21 on persons other than the parties to the contract.

22 NEW SECTION. **Sec. 4.** (1) In addition to any other right of  
23 rescission, a foreclosed homeowner has the right to cancel any contract  
24 with a distressed property purchaser until midnight of the fifth  
25 business day following the day on which the foreclosed homeowner signs  
26 a contract that complies with this chapter or until 8:00 a.m. on the  
27 last day of the period during which the foreclosed homeowner has a  
28 right of redemption, whichever occurs first.

29 (2) Cancellation occurs when the foreclosed homeowner delivers to  
30 the distressed property purchaser, by any means, a written notice of  
31 cancellation to the address specified in the contract.

32 (3) A notice of cancellation provided by the foreclosed homeowner  
33 is not required to take the particular form as provided with the  
34 contract.

35 (4) Within ten days following the receipt of a notice of

1 cancellation under this section, the distressed property purchaser  
2 shall return without condition any original contract and any other  
3 documents signed by the foreclosed homeowner.

4 NEW SECTION. **Sec. 5.** (1) The contract required in section 2 of  
5 this act must contain, in immediate proximity to the space reserved for  
6 the foreclosed homeowner's signature, the following conspicuous  
7 statement in at least fourteen-point boldface type if the contract is  
8 printed, or in capital letters if the contract is typed:

9 "You may cancel this contract for the sale of your house without any  
10 penalty or obligation at any time before

11 . . . . .  
12 (Date and time of day)

13 See the attached notice of cancellation form for an explanation of this  
14 right."

15 The distressed property purchaser shall accurately enter the date  
16 and time of day on which the cancellation right ends.

17 (2) The contract must be accompanied by a completed form in  
18 duplicate, captioned "NOTICE OF CANCELLATION" in twelve-point boldface  
19 type if the contract is printed, or in capital letters if the contract  
20 is typed, followed by a space in which the distressed property  
21 purchaser shall enter the date on which the foreclosed homeowner  
22 executes any contract. This form must be attached to the contract,  
23 must be easily detachable, and must contain in at least twelve-point  
24 type if the contract is printed, or in capital letters if the contract  
25 is typed, the following statement written in the same language as used  
26 in the contract:

27 "NOTICE OF CANCELLATION  
28 . . . . .  
29 (Enter date contract signed)

30 You may cancel this contract for the sale of your house, without any  
31 penalty or obligation, at any time before

32 . . . . .  
33 (Enter date and time of day)

34 To cancel this transaction, personally deliver a signed and dated copy  
35 of this cancellation notice to

1 . . . . .

2 (Name of purchaser)

3 at

4 . . . . .

5 (Street address of purchaser's place of business)

6 NOT LATER THAN

7 . . . . .

8 (Enter date and time of day)

9 I hereby cancel this transaction.

10 . . . . .

11 (Date)

12 . . . . .

13 (Seller's signature)"

14 (3) The distressed property purchaser shall provide the foreclosed  
15 homeowner with a copy of the contract and the attached notice of  
16 cancellation at the time the contract is executed by all parties.

17 (4) The five-business-day period during which the foreclosed  
18 homeowner may cancel the contract must not begin to run until all  
19 parties to the contract have executed the contract and the distressed  
20 property purchaser has complied with this section.

21 NEW SECTION. **Sec. 6.** Any waiver of the provisions of this chapter  
22 is void and unenforceable as contrary to public policy, except that a  
23 consumer may waive the five-business-day right to cancel provided in  
24 section 4 of this act if the distressed property is subject to a  
25 foreclosure sale within the five business days and the foreclosed  
26 homeowner agrees to waive his or her right to cancel in a handwritten  
27 statement signed by all parties holding title to the distressed  
28 property.

29 NEW SECTION. **Sec. 7.** (1) Any provision in a contract that  
30 attempts or purports to require arbitration of any dispute arising  
31 under this chapter is void at the option of the foreclosed homeowner.

32 (2) This section applies to any contract entered into on or after  
33 the effective date of this act.

34 NEW SECTION. **Sec. 8.** A distressed property purchaser shall not:

1           (1) Enter into, or attempt to enter into, a distressed property  
2 conveyance with a foreclosed homeowner unless the distressed property  
3 purchaser verifies and can demonstrate that the foreclosed homeowner  
4 has a reasonable ability to pay for the subsequent conveyance of an  
5 interest back to the foreclosed homeowner. In the case of a lease with  
6 an option to purchase, payment ability also includes the reasonable  
7 ability to make the lease payments and purchase the property within the  
8 term of the option to purchase. An evaluation of a foreclosed  
9 homeowner's reasonable ability to pay includes debt to income ratios,  
10 fair market value of the distressed property, and the foreclosed  
11 homeowner's payment and credit history. There is a rebuttable  
12 presumption that the distressed property purchaser has not verified a  
13 foreclosed homeowner's reasonable ability to pay if the distressed  
14 property purchaser has not obtained documentation of assets,  
15 liabilities, and income, other than an undocumented statement, of the  
16 foreclosed homeowner;

17           (2) Fail to either:

18           (a) Ensure that title to the distressed property has been  
19 reconveyed to the foreclosed homeowner; or

20           (b) Make payment to the foreclosed homeowner so that the foreclosed  
21 homeowner has received consideration in an amount of at least eighty-  
22 two percent of the fair market value of the property as of the date of  
23 the eviction or voluntary relinquishment of possession of the  
24 distressed property by the foreclosed homeowner. For the purposes of  
25 this subsection (2)(b), the following applies:

26           (i) There is a rebuttable presumption that an appraisal by a person  
27 licensed or certified by an agency of the federal government or this  
28 state to appraise real estate constitutes the fair market value of the  
29 property;

30           (ii) "Consideration" means any payment or thing of value provided  
31 to the foreclosed homeowner, including unpaid rent owed by the  
32 foreclosed homeowner before the date of eviction or voluntary  
33 relinquishment of the property, reasonable costs paid to independent  
34 third parties necessary to complete the distressed property conveyance  
35 transaction, the payment of money to satisfy a debt or legal obligation  
36 of the foreclosed homeowner, or the reasonable cost of repairs for  
37 damage to the distressed property caused by the foreclosed homeowner.

1 "Consideration" does not include amounts imputed as a down payment or  
2 fee to the distressed property purchaser or a person acting in  
3 participation with the distressed property purchaser;

4 (3) Enter into repurchase or lease terms as part of the distressed  
5 property conveyance that are unfair or commercially unreasonable, or  
6 engage in any other unfair or deceptive acts or practices;

7 (4) Represent, directly or indirectly, that (a) the distressed  
8 property purchaser is acting as an advisor or consultant, (b) the  
9 distressed property purchaser is acting on behalf of or in the  
10 interests of the foreclosed homeowner, or (c) the distressed property  
11 purchaser is assisting the foreclosed homeowner to save the home, buy  
12 time, or use other substantially similar language;

13 (5) Misrepresent the distressed property purchaser's status as to  
14 licensure or certification;

15 (6) Perform any of the following until after the time during which  
16 the foreclosed homeowner may cancel the transaction has expired:

17 (a) Accept from any foreclosed homeowner an execution of, or induce  
18 any foreclosed homeowner to execute, any instrument of conveyance of  
19 any interest in the distressed property;

20 (b) Record with the county auditor any document, including any  
21 instrument of conveyance, signed by the foreclosed homeowner; or

22 (c) Transfer or encumber or purport to transfer or encumber any  
23 interest in the distressed property;

24 (7) Fail to reconvey title to the distressed property when the  
25 terms of the distressed property conveyance contract have been  
26 fulfilled;

27 (8) Enter into a distressed property conveyance where any party to  
28 the transaction is represented by a power of attorney;

29 (9) Fail to extinguish or assume all liens encumbering the  
30 distressed property immediately following the conveyance of the  
31 distressed property;

32 (10) Fail to close a distressed property conveyance in person  
33 before an independent third party who is authorized to conduct real  
34 estate closings within the state.

35 NEW SECTION. **Sec. 9.** (1) A violation of this chapter is  
36 considered a per se violation of chapter 19.86 RCW, and all remedies of

1 chapter 19.86 RCW are available for such an action. A private right of  
2 action under chapter 19.86 RCW by a foreclosed homeowner is in the  
3 public interest.

4 (2) An action may not be brought on the basis of a violation of  
5 this chapter except by a foreclosed homeowner against whom the  
6 violation was committed or by the attorney general. This limitation  
7 does not apply to administrative action by any state regulatory agency.

8 (3) In a private right of action under chapter 19.86 RCW for a  
9 violation of this chapter, the court may double or triple the award of  
10 damages pursuant to RCW 19.86.090, subject to the statutory limit. If,  
11 however, the court determines that the defendant acted in bad faith,  
12 the limit for doubling or tripling the award of damages may be  
13 increased, but shall not exceed one hundred thousand dollars. Any  
14 claim for damages brought under this section must be commenced within  
15 four years after the date of the alleged violation.

16 (4) The remedies provided in this section are cumulative and do not  
17 restrict any remedy that is otherwise available. The provisions of  
18 this chapter are not exclusive and are in addition to any other  
19 requirements, rights, remedies, and penalties provided by law. An  
20 action under this section shall not affect the rights in the distressed  
21 property held by a distressed property purchaser for value under this  
22 chapter or other applicable law.

23 NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act constitute  
24 a new chapter in Title 64 RCW.

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