

HB 2791 - S COMM AMD

By Committee on Consumer Protection & Housing

NOT ADOPTED 03/06/2008

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 61.34.020 and 1988 c 33 s 4 are each amended to read  
4 as follows:

5 Unless the context clearly requires otherwise, the definitions in  
6 this section apply throughout this chapter.

7 ~~(1) ("Pattern of equity skimming" means engaging in a least three~~  
8 ~~acts of equity skimming within any three year period, with at least one~~  
9 ~~of the acts occurring after June 9, 1988.~~

10 ~~(2) "Dwelling" means a single, duplex, triplex, or four unit family~~  
11 ~~residential building.~~

12 ~~(3) "Person" includes any natural person, corporation, joint stock~~  
13 ~~association, or unincorporated association.~~

14 ~~(4)~~) An "act of equity skimming" occurs when:

15 (a)(i) A person purchases a dwelling with the representation that  
16 the purchaser will pay for the dwelling by assuming the obligation to  
17 make payments on existing mortgages, deeds of trust, or real estate  
18 contracts secured by and pertaining to the dwelling, or by representing  
19 that such obligation will be assumed; and

20 (ii) The person fails to make payments on such mortgages, deeds of  
21 trust, or real estate contracts as the payments become due, within two  
22 years subsequent to the purchase; and

23 (iii) The person diverts value from the dwelling by either (A)  
24 applying or authorizing the application of rents from the dwelling for  
25 the person's own benefit or use, or (B) obtaining anything of value  
26 from the sale or lease with option to purchase of the dwelling for the  
27 person's own benefit or use, or (C) removing or obtaining appliances,  
28 fixtures, furnishings, or parts of such dwellings or appurtenances for  
29 the person's own benefit or use without replacing the removed items  
30 with items of equal or greater value; or

1 (b)(i) The person purchases a dwelling in a transaction in which  
2 all or part of the purchase price is financed by the seller and is (A)  
3 secured by a lien which is inferior in priority or subordinated to a  
4 lien placed on the dwelling by the purchaser, or (B) secured by a lien  
5 on other real or personal property, or (C) without any security; and

6 (ii) The person obtains a superior priority loan which either (A)  
7 is secured by a lien on the dwelling which is superior in priority to  
8 the lien of the seller, but not including a bona fide assumption by the  
9 purchaser of a loan existing prior to the time of purchase, or (B)  
10 creating any lien or encumbrance on the dwelling when the seller does  
11 not hold a lien on the dwelling; and

12 (iii) The person fails to make payments or defaults on the superior  
13 priority loan within two years subsequent to the purchase; and

14 (iv) The person diverts value from the dwelling by applying or  
15 authorizing any part of the proceeds from such superior priority loan  
16 for the person's own benefit or use.

17 (2) "Distressed home" means either:

18 (a) A dwelling that is in danger of foreclosure or at risk of loss  
19 due to nonpayment of taxes; or

20 (b) A dwelling that is in danger of foreclosure or that is in the  
21 process of being foreclosed due to a default under the terms of a  
22 mortgage.

23 (3) "Distressed home consultant" means a person who:

24 (a) Solicits or contacts a distressed homeowner in writing, in  
25 person, or through any electronic or telecommunications medium and  
26 makes a representation or offer to perform any service that the person  
27 represents will:

28 (i) Stop, enjoin, delay, void, set aside, annul, stay, or postpone  
29 a foreclosure sale;

30 (ii) Obtain forbearance from any servicer, beneficiary, or  
31 mortgagee;

32 (iii) Assist the distressed homeowner to exercise a right of  
33 reinstatement provided in the loan documents or to refinance a loan  
34 that is in foreclosure or is in danger of foreclosure;

35 (iv) Obtain an extension of the period within which the distressed  
36 homeowner may reinstate the distressed homeowner's obligation or extend  
37 the deadline to object to a ratification;

1 (v) Obtain a waiver of an acceleration clause contained in any  
2 promissory note or contract secured by a mortgage on a distressed home  
3 or contained in the mortgage;

4 (vi) Assist the distressed homeowner to obtain a loan or advance of  
5 funds;

6 (vii) Save the distressed homeowner's residence from foreclosure;

7 (viii) Avoid or ameliorate the impairment of the distressed  
8 homeowner's credit resulting from the recording of a notice of trustee  
9 sale, the filing of a petition to foreclose, or the conduct of a  
10 foreclosure sale;

11 (ix) Purchase or obtain an option to purchase the distressed  
12 homeowner's residence within twenty days of an advertised or docketed  
13 foreclosure sale;

14 (x) Arrange for the distressed homeowner to become a lessee or  
15 tenant entitled to continue to reside in the distressed homeowner's  
16 residence;

17 (xi) Arrange for the distressed homeowner to have an option to  
18 repurchase the distressed homeowner's residence; or

19 (xii) Engage in any documentation, grant, conveyance, sale, lease,  
20 trust, or gift by which the distressed homeowner clogs the distressed  
21 homeowner's equity of redemption in the distressed homeowner's  
22 residence; or

23 (b) Systematically contacts owners of property that court records,  
24 newspaper advertisements, or any other source demonstrate are in  
25 foreclosure or are in danger of foreclosure.

26 "Distressed home consultant" does not mean a financial institution  
27 that the distressed homeowner is a customer of, a nonprofit credit  
28 counseling service, or a licensed attorney.

29 (4) "Distressed home consulting transaction" means an agreement  
30 between a distressed homeowner and a distressed home consultant in  
31 which the distressed home consultant represents or offers to perform  
32 any of the services enumerated in subsection (3)(a) of this section.

33 (5) "Distressed home conveyance" means a transaction in which:

34 (a) A distressed homeowner transfers an interest in the distressed  
35 home to a distressed home purchaser;

36 (b) The distressed home purchaser allows the distressed homeowner  
37 to occupy the distressed home; and

1       (c) The distressed home purchaser or a person acting in  
2 participation with the distressed home purchaser conveys or promises to  
3 convey the distressed home to the distressed homeowner, provides the  
4 distressed homeowner with an option to purchase the distressed home at  
5 a later date, or promises the distressed homeowner an interest in, or  
6 portion of, the proceeds of any resale of the distressed home.

7       (6) "Distressed home purchaser" means any person who acquires an  
8 interest in a distressed home under a distressed home conveyance.  
9 "Distressed home purchaser" includes a person who acts in joint venture  
10 or joint enterprise with one or more distressed home purchasers in a  
11 distressed home conveyance. A financial institution is not a  
12 distressed home purchaser.

13       (7) "Distressed homeowner" means an owner of a distressed home.

14       (8) "Dwelling" means a single, duplex, triplex, or four-unit family  
15 residential building.

16       (9) "Financial institution" means any federally or state chartered  
17 bank or trust company, savings bank or savings and loan association, or  
18 credit union.

19       (10) "Homeowner" means a person who owns and occupies a dwelling as  
20 his or her primary residence, whether or not his or her ownership  
21 interest is encumbered by a mortgage, deed of trust, or other lien.

22       (11) "In danger of foreclosure" means any of the following:

23       (a) The homeowner has defaulted on the mortgage and, under the  
24 terms of the mortgage, the mortgagee has the right to accelerate full  
25 payment of the mortgage and repossess, sell, or cause to be sold, the  
26 property;

27       (b) The homeowner is at least thirty days delinquent on any loan  
28 that is secured by the property; or

29       (c) The homeowner has a good faith belief that he or she is likely  
30 to default on the mortgage within the upcoming four months due to a  
31 lack of funds, and the homeowner has reported this belief to:

32       (i) The mortgagee;

33       (ii) A person licensed or required to be licensed under chapter  
34 19.134 RCW;

35       (iii) A person licensed or required to be licensed under chapter  
36 19.146 RCW;

37       (iv) A person licensed or required to be licensed under chapter  
38 18.85 RCW;

1       (v) An attorney-at-law;

2       (vi) A mortgage counselor or other credit counselor licensed or  
3 certified by any federal, state, or local agency; or

4       (vii) Any other party to a distressed home consulting transaction.

5       (12) "Mortgage" means a mortgage, mortgage deed, deed of trust,  
6 security agreement, or other instrument securing a mortgage loan and  
7 constituting a lien on or security interest in housing.

8       (13) "Nonprofit credit counseling service" means a nonprofit  
9 organization described under section 501(c)(3) of the internal revenue  
10 code, or similar successor provisions, that is licensed or certified by  
11 any federal, state, or local agency.

12       (14) "Pattern of equity skimming" means engaging in at least three  
13 acts of equity skimming within any three-year period, with at least one  
14 of the acts occurring after June 9, 1988.

15       (15) "Person" includes any natural person, corporation, joint stock  
16 association, or unincorporated association.

17       (16) "Resale" means a bona fide market sale of the distressed home  
18 subject to the distressed home conveyance by the distressed home  
19 purchaser to an unaffiliated third party.

20       (17) "Resale price" means the gross sale price of the distressed  
21 home on resale.

22       NEW SECTION. Sec. 2. (1) A distressed home consulting transaction  
23 must:

24       (a) Be in writing in at least twelve-point font;

25       (b) Be in the same language as principally used by the distressed  
26 home consultant to describe his or her services to the distressed  
27 homeowner. If the agreement is written in a language other than  
28 English, the distressed home consultant shall cause the agreement to be  
29 translated into English and shall deliver copies of both the original  
30 and English language versions to the distressed homeowner at the time  
31 of execution and shall keep copies of both versions on file in  
32 accordance with subsection (2) of this section. Any ambiguities or  
33 inconsistencies between the English language and the original language  
34 versions of the written agreement must be strictly construed in favor  
35 of the distressed homeowner;

36       (c) Fully disclose the exact nature of the distressed home  
37 consulting services to be provided, including any distressed home

1 conveyance that may be involved and the total amount and terms of any  
2 compensation to be received by the distressed home consultant or anyone  
3 working in association with the distressed home consultant;

4 (d) Be dated and signed by the distressed homeowner and the  
5 distressed home consultant;

6 (e) Contain the complete legal name, address, telephone number, fax  
7 number, e-mail address, and internet address if any, of the distressed  
8 home consultant, and if the distressed home consultant is serving as an  
9 agent for any other person, the complete legal name, address, telephone  
10 number, fax number, e-mail address, and internet address if any, of the  
11 principal; and

12 (f) Contain the following notice, which must be initialed by the  
13 distressed homeowner, in bold face type and in at least fourteen-point  
14 font:

15 "NOTICE REQUIRED BY WASHINGTON LAW

16 THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF  
17 YOUR HOME.

18 . . . Name of distressed home consultant . . . or anyone working  
19 for him or her CANNOT guarantee you that he or she will be able to  
20 refinance your home or arrange for you to keep your home. Continue  
21 making mortgage payments until refinancing, if applicable, is approved.  
22 You should consult with an attorney before signing this contract.

23 If you sign a promissory note, lien, mortgage, deed of trust, or  
24 deed, you could lose your home and be unable to get it back."

25 (2) At the time of execution, the distressed home consultant shall  
26 provide the distressed homeowner with a copy of the written agreement,  
27 and the distressed home consultant shall keep a separate copy of the  
28 written agreement on file for at least five years following the  
29 completion or other termination of the agreement.

30 (3) This section does not relieve any duty or obligation imposed  
31 upon a distressed home consultant by any other law including, but not  
32 limited to, the duties of a credit service organization under chapter  
33 19.134 RCW or a person required to be licensed under chapter 19.146  
34 RCW.

35 NEW SECTION. **Sec. 3.** A distressed home consultant has a fiduciary  
36 relationship with the distressed homeowner, and each distressed home

1 consultant is subject to all requirements for fiduciaries otherwise  
2 applicable under state law. A distressed home consultant's fiduciary  
3 duties include, but are not limited to, the following:

4 (1) To act in the distressed homeowner's best interest and in  
5 utmost good faith toward the distressed homeowner, and not compromise  
6 a distressed homeowner's right or interest in favor of another's right  
7 or interest, including a right or interest of the distressed home  
8 consultant;

9 (2) To disclose to the distressed homeowner all material facts of  
10 which the distressed home consultant has knowledge that might  
11 reasonably affect the distressed homeowner's rights, interests, or  
12 ability to receive the distressed homeowner's intended benefit from the  
13 residential mortgage loan;

14 (3) To use reasonable care in performing his or her duties; and

15 (4) To provide an accounting to the distressed homeowner for all  
16 money and property received from the distressed homeowner.

17 NEW SECTION. **Sec. 4.** (1) A person may not induce or attempt to  
18 induce a distressed homeowner to waive his or her rights under this  
19 chapter, except that a distressed homeowner may waive the five-  
20 business-day right to cancel as provided in section 7 of this act if  
21 the distressed home is subject to a foreclosure sale within the five  
22 business days and the distressed homeowner agrees to waive his or her  
23 right to cancel in a handwritten statement signed by all parties  
24 holding title to the distressed home.

25 (2) Any waiver by a homeowner of the provisions of this chapter is  
26 void and unenforceable as contrary to public policy.

27 NEW SECTION. **Sec. 5.** A distressed home purchaser shall enter into  
28 a distressed home reconveyance in the form of a written contract. The  
29 contract must be written in at least twelve-point boldface type in the  
30 same language principally used by the distressed home purchaser and  
31 distressed homeowner to negotiate the sale of the distressed home, and  
32 must be fully completed, signed, and dated by the distressed homeowner  
33 and distressed home purchaser before the execution of any instrument of  
34 conveyance of the distressed home.

1 NEW SECTION. **Sec. 6.** The contract required in section 5 of this  
2 act must contain the entire agreement of the parties and must include  
3 the following:

4 (1) The name, business address, and telephone number of the  
5 distressed home purchaser;

6 (2) The address of the distressed home;

7 (3) The total consideration to be provided by the distressed home  
8 purchaser in connection with or incident to the sale;

9 (4) A complete description of the terms of payment or other  
10 consideration including, but not limited to, any services of any nature  
11 that the distressed home purchaser represents that he or she will  
12 perform for the distressed homeowner before or after the sale;

13 (5) The time at which possession is to be transferred to the  
14 distressed home purchaser;

15 (6) A complete description of the terms of any related agreement  
16 designed to allow the distressed homeowner to remain in the home, such  
17 as a rental agreement, repurchase agreement, or lease with option to  
18 buy;

19 (7) A complete description of the interest, if any, the distressed  
20 homeowner maintains in the proceeds of, or consideration to be paid  
21 upon, the resale of the distressed home;

22 (8) A notice of cancellation as provided in section 8 of this act;  
23 and

24 (9) The following notice in at least fourteen-point boldface type  
25 if the contract is printed, or in capital letters if the contract is  
26 typed, and completed with the name of the distressed home purchaser,  
27 immediately above the statement required in section 8 of this act;

28 "NOTICE REQUIRED BY WASHINGTON LAW

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

32 The contract required by this section survives delivery of any  
33 instrument of conveyance of the distressed home and has no effect on  
34 persons other than the parties to the contract.

35 NEW SECTION. **Sec. 7.** (1) In addition to any other right of  
36 rescission, a distressed homeowner has the right to cancel any contract



1 with a distressed home purchaser until midnight of the fifth business  
2 day following the day on which the distressed homeowner signs a  
3 contract that complies with this chapter or until 8:00 a.m. on the last  
4 day of the period during which the distressed homeowner has a right of  
5 redemption, whichever occurs first.

6 (2) Cancellation occurs when the distressed homeowner delivers to  
7 the distressed home purchaser, by any means, a written notice of  
8 cancellation to the address specified in the contract.

9 (3) A notice of cancellation provided by the distressed homeowner  
10 is not required to take the particular form as provided with the  
11 contract.

12 (4) Within ten days following the receipt of a notice of  
13 cancellation under this section, the distressed home purchaser shall  
14 return without condition any original contract and any other documents  
15 signed by the distressed homeowner.

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

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

23 . . . . .  
24 (Date and time of day)

25 See the attached notice of cancellation form for an explanation of this  
26 right."

27 The distressed home purchaser shall accurately enter the date and  
28 time of day on which the cancellation right ends.

29 (2) The contract must be accompanied by a completed form in  
30 duplicate, captioned "NOTICE OF CANCELLATION" in twelve-point boldface  
31 type if the contract is printed, or in capital letters if the contract  
32 is typed, followed by a space in which the distressed home purchaser  
33 shall enter the date on which the distressed homeowner executes any  
34 contract. This form must be attached to the contract, must be easily  
35 detachable, and must contain in at least twelve-point type if the

1 contract is printed, or in capital letters if the contract is typed,  
2 the following statement written in the same language as used in the  
3 contract:

4 "NOTICE OF CANCELLATION

5 . . . . .

6 (Enter date contract signed)

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

9 . . . . .

10 (Enter date and time of day)

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

13 . . . . .

14 (Name of purchaser)

15 at

16 . . . . .

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

18 NOT LATER THAN

19 . . . . .

20 (Enter date and time of day)

21 I hereby cancel this transaction.

22 . . . . .

23 (Date)

24 . . . . .

25 (Seller's signature)"

26 (3) The distressed home purchaser shall provide the distressed  
27 homeowner with a copy of the contract and the attached notice of  
28 cancellation at the time the contract is executed by all parties.

29 (4) The five-business-day period during which the distressed  
30 homeowner may cancel the contract must not begin to run until all  
31 parties to the contract have executed the contract and the distressed  
32 home purchaser has complied with this section.

33 NEW SECTION. **Sec. 9.** (1) Any provision in a contract that  
34 attempts or purports to require arbitration of any dispute arising  
35 under this chapter is void at the option of the distressed homeowner.

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

3 NEW SECTION. **Sec. 10.** A distressed home purchaser shall not:

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

20 (2) Fail to either:

21 (a) Ensure that title to the distressed home has been reconveyed to  
22 the distressed homeowner; or

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

29 (i) There is a rebuttable presumption that an appraisal by a person  
30 licensed or certified by an agency of the federal government or this  
31 state to appraise real estate constitutes the fair market value of the  
32 distressed home;

33 (ii) "Consideration" means any payment or thing of value provided  
34 to the distressed homeowner, including unpaid rent owed by the  
35 distressed homeowner before the date of eviction or voluntary  
36 relinquishment of the distressed home, reasonable costs paid to  
37 independent third parties necessary to complete the distressed home

1 conveyance transaction, the payment of money to satisfy a debt or legal  
2 obligation of the distressed homeowner, or the reasonable cost of  
3 repairs for damage to the distressed home caused by the distressed  
4 homeowner. "Consideration" does not include amounts imputed as a down  
5 payment or fee to the distressed home purchaser or a person acting in  
6 participation with the distressed home purchaser;

7 (3) Enter into repurchase or lease terms as part of the distressed  
8 home conveyance that are unfair or commercially unreasonable, or engage  
9 in any other unfair or deceptive acts or practices;

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

16 (5) Misrepresent the distressed home purchaser's status as to  
17 licensure or certification;

18 (6) Perform any of the following until after the time during which  
19 the distressed homeowner may cancel the transaction has expired:

20 (a) Accept from any distressed homeowner an execution of, or induce  
21 any distressed homeowner to execute, any instrument of conveyance of  
22 any interest in the distressed home;

23 (b) Record with the county auditor any document, including any  
24 instrument of conveyance, signed by the distressed homeowner; or

25 (c) Transfer or encumber or purport to transfer or encumber any  
26 interest in the distressed home;

27 (7) Fail to reconvey title to the distressed home when the terms of  
28 the distressed home conveyance contract have been fulfilled;

29 (8) Enter into a distressed home conveyance where any party to the  
30 transaction is represented by a power of attorney;

31 (9) Fail to extinguish or assume all liens encumbering the  
32 distressed home immediately following the conveyance of the distressed  
33 home;

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

1       **Sec. 11.** RCW 61.34.040 and 1988 c 33 s 3 are each amended to read  
2 as follows:

3       (1) In addition to the criminal penalties provided in RCW  
4 61.34.030, the legislature finds ((and declares)) that ((equity  
5 skimming substantially affects)) the practices covered by this chapter  
6 are matters vitally affecting the public interest((. The commission by  
7 any person of an act of equity skimming or a pattern of equity skimming  
8 is an unfair or deceptive act or practice and unfair method of  
9 competition in the conduct of trade or commerce in violation of RCW  
10 19.86.020)) for the purpose of applying chapter 19.86 RCW. A violation  
11 of this chapter is not reasonable in relation to the development and  
12 preservation of business and is an unfair method of competition for the  
13 purpose of applying chapter 19.86 RCW.

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

22       (3) The remedies provided in this chapter are cumulative and do not  
23 restrict any remedy that is otherwise available. The provisions of  
24 this chapter are not exclusive and are in addition to any other  
25 requirements, rights, remedies, and penalties provided by law. An  
26 action under this chapter shall not affect the rights in the distressed  
27 home held by a distressed home purchaser for value under this chapter  
28 or other applicable law.

29       **Sec. 12.** RCW 59.18.030 and 1998 c 276 s 1 are each amended to read  
30 as follows:

31       As used in this chapter:

32       (1) "Distressed home" has the same meaning as in RCW 61.34.020.

33       (2) "Distressed home conveyance" has the same meaning as in RCW  
34 61.34.020.

35       (3) "Distressed home purchaser" has the same meaning as in RCW  
36 61.34.020.

1       (4) " Dwelling unit " is a structure or that part of a structure  
2 which is used as a home, residence, or sleeping place by one person or  
3 by two or more persons maintaining a common household, including but  
4 not limited to single family residences and units of multiplexes,  
5 apartment buildings, and mobile homes.

6       (~~(+2)~~) (5) "In danger of foreclosure" means any of the following:

7       (a) The homeowner has defaulted on the mortgage and, under the  
8 terms of the mortgage, the mortgagee has the right to accelerate full  
9 payment of the mortgage and repossess, sell, or cause to be sold the  
10 property;

11       (b) The homeowner is at least thirty days delinquent on any loan  
12 that is secured by the property; or

13       (c) The homeowner has a good faith belief that he or she is likely  
14 to default on the mortgage within the upcoming four months due to a  
15 lack of funds, and the homeowner has reported this belief to:

16       (i) The mortgagee;

17       (ii) A person licensed or required to be licensed under chapter  
18 19.134 RCW;

19       (iii) A person licensed or required to be licensed under chapter  
20 19.146 RCW;

21       (iv) A person licensed or required to be licensed under chapter  
22 18.85 RCW;

23       (v) An attorney-at-law;

24       (vi) A mortgage counselor or other credit counselor licensed or  
25 certified by any federal, state, or local agency; or

26       (vii) Any other party to a distressed property conveyance.

27       (6) "Landlord" means the owner, lessor, or sublessor of the  
28 dwelling unit or the property of which it is a part, and in addition  
29 means any person designated as representative of the landlord.

30       (~~(+3)~~) (7) "Mortgage" is used in the general sense and includes  
31 all instruments, including deeds of trust, that are used to secure an  
32 obligation by an interest in real property.

33       (8) "Person" means an individual, group of individuals,  
34 corporation, government, or governmental agency, business trust,  
35 estate, trust, partnership, or association, two or more persons having  
36 a joint or common interest, or any other legal or commercial entity.

37       (~~(+4)~~) (9) "Owner" means one or more persons, jointly or  
38 severally, in whom is vested:

1 (a) All or any part of the legal title to property; or

2 (b) All or part of the beneficial ownership, and a right to present  
3 use and enjoyment of the property.

4 ~~((+5))~~ (10) "Premises" means a dwelling unit, appurtenances  
5 thereto, grounds, and facilities held out for the use of tenants  
6 generally and any other area or facility which is held out for use by  
7 the tenant.

8 ~~((+6))~~ (11) "Rental agreement" means all agreements which  
9 establish or modify the terms, conditions, rules, regulations, or any  
10 other provisions concerning the use and occupancy of a dwelling unit.

11 ~~((+7))~~ (12) A "single family residence" is a structure maintained  
12 and used as a single dwelling unit. Notwithstanding that a dwelling  
13 unit shares one or more walls with another dwelling unit, it shall be  
14 deemed a single family residence if it has direct access to a street  
15 and shares neither heating facilities nor hot water equipment, nor any  
16 other essential facility or service, with any other dwelling unit.

17 ~~((+8))~~ (13) A "tenant" is any person who is entitled to occupy a  
18 dwelling unit primarily for living or dwelling purposes under a rental  
19 agreement.

20 ~~((+9))~~ (14) "Reasonable attorney's fees", where authorized in this  
21 chapter, means an amount to be determined including the following  
22 factors: The time and labor required, the novelty and difficulty of  
23 the questions involved, the skill requisite to perform the legal  
24 service properly, the fee customarily charged in the locality for  
25 similar legal services, the amount involved and the results obtained,  
26 and the experience, reputation and ability of the lawyer or lawyers  
27 performing the services.

28 ~~((+10))~~ (15) "Gang" means a group that: (a) Consists of three or  
29 more persons; (b) has identifiable leadership or an identifiable name,  
30 sign, or symbol; and (c) on an ongoing basis, regularly conspires and  
31 acts in concert mainly for criminal purposes.

32 ~~((+11))~~ (16) "Gang-related activity" means any activity that  
33 occurs within the gang or advances a gang purpose.

34 NEW SECTION. Sec. 13. A new section is added to chapter 59.18 RCW  
35 to read as follows:

36 In an unlawful detainer action involving a distressed home:

1 (1) The plaintiff shall disclose to the court whether the defendant  
2 previously held title to the distressed home, and explain how the  
3 plaintiff came to acquire title;

4 (2) A defendant who previously held title to the distressed home  
5 shall not be required to escrow any money pending trial when a material  
6 question of fact exists as to whether the plaintiff acquired title from  
7 the defendant directly or indirectly through a distressed home  
8 conveyance;

9 (3) There must be both an automatic stay of the action and a  
10 consolidation of the action with a pending or subsequent quiet title  
11 action when a defendant claims that the plaintiff acquired title to the  
12 distressed home through a distressed home conveyance.

13 NEW SECTION. **Sec. 14.** Sections 2 through 10 of this act are each  
14 added to chapter 61.34 RCW."

HB 2791 - S COMM AMD  
By Committee on Consumer Protection & Housing

**NOT ADOPTED 03/06/2008**

15 On page 1, line 1 of the title, after "conveyances;" strike the  
16 remainder of the title and insert "amending RCW 61.34.020, 61.34.040,  
17 and 59.18.030; adding new sections to chapter 61.34 RCW; adding a new  
18 section to chapter 59.18 RCW; and prescribing penalties."

EFFECT: Adds provisions and makes changes to HB 2791 identical to  
SSB 6695, which passed out of CP&H committee, but died in rules.  
Creates a fiduciary relationship between a distressed home  
consultant and homeowner and enumerates the duties the consultant owes  
to the homeowner.  
Incorporates the distressed home reconveyance requirements  
contained in SB 6431, including contract disclosure requirements, 5-day  
right to cancel, and the ability to pay requirement.



A violation of the provisions is a CPA violation and double or treble damages may be awarded up to \$100,000.

Incorporates the unlawful detainer provisions of SB 6383, which require a plaintiff in an unlawful detainer (eviction) action involving a distressed home to disclose to the court that the defendant previously held title to the home and explain how the plaintiff came to acquire title.

--- END ---