
HOUSE BILL 1558

State of Washington

62nd Legislature

2011 Regular Session

By Representatives Hudgins, Orwall, Fitzgibbon, Darneille, and Moscoso

Read first time 01/25/11. Referred to Committee on Business & Financial Services.

1 AN ACT Relating to addressing the foreclosure crisis in Washington
2 state through the creation of alternative mortgage financing based on
3 shared appreciation; adding a new section to chapter 61.24 RCW; adding
4 a new section to chapter 82.45 RCW; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature declares the following:

7 (1) Due to the recent economic crisis and the bursting of the
8 housing bubble, many homeowners find themselves in houses that are
9 worth less than their mortgages. The number of foreclosures in
10 Washington has increased dramatically and will likely continue to
11 increase.

12 (2) Houses are worth more to banks, owners, and communities if they
13 are kept or sold by their owners than if they were foreclosed. When a
14 bank forecloses on a house, the house typically loses a great deal of
15 value, as much as thirty percent to fifty percent, not including the
16 loss that the house has already suffered because of the general
17 economic downturn. Foreclosure can be a time-consuming process, and
18 empty houses are often difficult to maintain. One badly maintained
19 house can bring down the value of the houses around it, leading to more

1 homeowners having houses that are worth less than the mortgages and new
2 issues for already resource-constrained local governments. In
3 addition, lenders generally would rather manage financial instruments
4 instead of managing real estate; therefore, there is incentive to avoid
5 foreclosure when possible for many parties.

6 (3) The legislature intends to create incentives for lenders to
7 renegotiate loans for borrowers who have negative equity but who have
8 the ability to pay a lower mortgage that reflects the actual value of
9 the house, thus preventing foreclosure and costs associated with
10 foreclosure.

11 (4) It is in the state's interest to be prepared for federal action
12 on shared appreciation mortgages, if any federal action takes place
13 following the study to be released by the housing and urban development
14 department in 2011.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 61.24 RCW
16 to read as follows:

17 (1)(a) For the purposes of this section, a shared appreciation loan
18 modification is a tool for homeowners whose residential home values
19 have fallen below the amount the homeowner owes on the loan. Through
20 a shared appreciation loan modification, a beneficiary and homeowner
21 may renegotiate a home loan to reflect the market value of the home in
22 exchange for the beneficiary receiving up to fifty percent of the
23 future appreciation of the home.

24 (b) The future appreciation of the residential real property is
25 determined by the actual sale price of the residential real property
26 when it is sold. The amount of appreciation to be shared is the amount
27 of the actual sale price that exceeds the modified loan, minus the
28 borrower's original down payment and closing costs paid by the borrower
29 when the borrower purchased the residential real property. The
30 beneficiary may not add any special fees or charges for processing or
31 making a shared appreciation loan modification.

32 (2) At least thirty days before the recording of a notice of sale
33 pursuant to RCW 61.24.040, a beneficiary must inform the borrower of
34 the option for a shared appreciation loan modification if:

35 (a) The debt under the borrower's current deed of trust on the
36 owner-occupied residential real property is greater than the property's
37 market value as estimated by a certified appraiser; and

1 (b) The deed of trust is secured by the residential real property.

2 (3)(a) If the borrower does not request a shared appreciation loan
3 modification within thirty days of being informed by the beneficiary of
4 the shared appreciation loan modification option, the beneficiary may
5 record the notice of sale and proceed with the foreclosure.

6 (b) If the borrower requests a shared appreciation loan
7 modification, the beneficiary must contact the borrower within thirty
8 days of the borrower's request and review with the borrower the
9 decision whether or not to enter into a shared appreciation loan
10 modification. Failure of the beneficiary to contact the borrower if
11 the borrower requests a shared appreciation loan modification under
12 this section is a defense to any foreclosure.

13 (4) A shared appreciation loan modification under this section is
14 not a sale or transfer for the purpose of the real estate excise tax
15 under chapter 82.45 RCW when the borrower on the shared appreciation
16 loan modification is the same borrower on the previous loan being
17 modified.

18 NEW SECTION. **Sec. 3.** A new section is added to chapter 82.45 RCW
19 to read as follows:

20 A shared appreciation loan modification under section 2 of this act
21 is not a sale or transfer for the purpose of the real estate excise tax
22 when the borrower on the shared appreciation loan modification is the
23 same borrower on the previous loan being modified.

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