

HB 2791 - S AMD 331

By Senators Weinstein, Tom, and Honeyford

ADOPTED 03/11/2008

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 a nonprofit credit counseling service, a licensed attorney, or a person
28 subject to chapter 19.148 RCW. "Distressed home consultant" does not
29 include a licensed mortgage broker who, pursuant to lawful activities
30 under chapter 19.146 RCW, procures a nonpurchase mortgage loan for the
31 distressed homeowner from a financial institution.

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

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

37 (a) A distressed homeowner transfers an interest in the distressed
38 home to a distressed home purchaser;

1 (b) The distressed home purchaser allows the distressed homeowner
2 to occupy the distressed home; and

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

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

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

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

18 (9) "Financial institution" means (a) any bank or trust company,
19 mutual savings bank, savings and loan association, credit union, or a
20 lender making federally related mortgage loans, (b) a holder in the
21 business of acquiring federally related mortgage loans as defined in
22 the real estate settlement procedures act (RESPA) (12 U.S.C. Sec.
23 2602), insurance company, insurance producer, title insurance company,
24 escrow company, or lender subject to auditing by the federal national
25 mortgage association or the federal home loan mortgage corporation,
26 which is organized or doing business pursuant to the laws of any state,
27 federal law, or the laws of a foreign country, if also authorized to
28 conduct business in Washington state pursuant to the laws of this state
29 or federal law, (c) any affiliate or subsidiary of any of the entities
30 listed in (a) or (b) of this subsection, or (d) an employee or agent
31 acting on behalf of any of the entities listed in (a) or (b) of this
32 subsection. "Financial institution" also means a licensee under
33 chapter 31.04 RCW, provided that the licensee does not include a
34 licensed mortgage broker, unless the mortgage broker is engaged in
35 lawful activities under chapter 19.146 RCW and procures a nonpurchase
36 mortgage loan for the distressed homeowner from a financial
37 institution.

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

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

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

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

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

14 (i) The mortgagee;

15 (ii) A person licensed or required to be licensed under chapter
16 19.134 RCW;

17 (iii) A person licensed or required to be licensed under chapter
18 19.146 RCW;

19 (iv) A person licensed or required to be licensed under chapter
20 18.85 RCW;

21 (v) An attorney-at-law;

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

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

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

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

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

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

37 (16) "Resale" means a bona fide market sale of the distressed home

1 subject to the distressed home conveyance by the distressed home
2 purchaser to an unaffiliated third party.

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

5 NEW SECTION. **Sec. 2.** (1) A distressed home consulting transaction
6 must:

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

8 (b) Be in the same language as principally used by the distressed
9 home consultant to describe his or her services to the distressed
10 homeowner. If the agreement is written in a language other than
11 English, the distressed home consultant shall cause the agreement to be
12 translated into English and shall deliver copies of both the original
13 and English language versions to the distressed homeowner at the time
14 of execution and shall keep copies of both versions on file in
15 accordance with subsection (2) of this section. Any ambiguities or
16 inconsistencies between the English language and the original language
17 versions of the written agreement must be strictly construed in favor
18 of the distressed homeowner;

19 (c) Fully disclose the exact nature of the distressed home
20 consulting services to be provided, including any distressed home
21 conveyance that may be involved and the total amount and terms of any
22 compensation to be received by the distressed home consultant or anyone
23 working in association with the distressed home consultant;

24 (d) Be dated and signed by the distressed homeowner and the
25 distressed home consultant;

26 (e) Contain the complete legal name, address, telephone number, fax
27 number, e-mail address, and internet address if any, of the distressed
28 home consultant, and if the distressed home consultant is serving as an
29 agent for any other person, the complete legal name, address, telephone
30 number, fax number, e-mail address, and internet address if any, of the
31 principal; and

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

35 "NOTICE REQUIRED BY WASHINGTON LAW

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

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

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

10 (2) At the time of execution, the distressed home consultant shall
11 provide the distressed homeowner with a copy of the written agreement,
12 and the distressed home consultant shall keep a separate copy of the
13 written agreement on file for at least five years following the
14 completion or other termination of the agreement.

15 (3) This section does not relieve any duty or obligation imposed
16 upon a distressed home consultant by any other law including, but not
17 limited to, the duties of a credit service organization under chapter
18 19.134 RCW or a person required to be licensed under chapter 19.146
19 RCW.

20 NEW SECTION. **Sec. 3.** A distressed home consultant has a fiduciary
21 relationship with the distressed homeowner, and each distressed home
22 consultant is subject to all requirements for fiduciaries otherwise
23 applicable under state law. A distressed home consultant's fiduciary
24 duties include, but are not limited to, the following:

25 (1) To act in the distressed homeowner's best interest and in
26 utmost good faith toward the distressed homeowner, and not compromise
27 a distressed homeowner's right or interest in favor of another's right
28 or interest, including a right or interest of the distressed home
29 consultant;

30 (2) To disclose to the distressed homeowner all material facts of
31 which the distressed home consultant has knowledge that might
32 reasonably affect the distressed homeowner's rights, interests, or
33 ability to receive the distressed homeowner's intended benefit from the
34 residential mortgage loan;

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

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

1 NEW SECTION. **Sec. 4.** (1) A person may not induce or attempt to
2 induce a distressed homeowner to waive his or her rights under this
3 chapter.

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

6 NEW SECTION. **Sec. 5.** A distressed home purchaser shall enter into
7 a distressed home reconveyance in the form of a written contract. The
8 contract must be written in at least twelve-point boldface type in the
9 same language principally used by the distressed home purchaser and
10 distressed homeowner to negotiate the sale of the distressed home, and
11 must be fully completed, signed, and dated by the distressed homeowner
12 and distressed home purchaser before the execution of any instrument of
13 conveyance of the distressed home.

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

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

19 (2) The address of the distressed home;

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

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

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

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

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

35 (8) A notice of cancellation as provided in section 8 of this act;
36 and

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

5 "NOTICE REQUIRED BY WASHINGTON LAW

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

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

12 NEW SECTION. **Sec. 7.** (1) In addition to any other right of
13 rescission, a distressed homeowner has the right to cancel any contract
14 with a distressed home purchaser until midnight of the fifth business
15 day following the day on which the distressed homeowner signs a
16 contract that complies with this chapter or until 8:00 a.m. on the last
17 day of the period during which the distressed homeowner has a right of
18 redemption, whichever occurs first.

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

22 (3) A notice of cancellation provided by the distressed homeowner
23 is not required to take the particular form as provided with the
24 contract.

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

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

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

1

2 (Date and time of day)

3 See the attached notice of cancellation form for an explanation of this
4 right."

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

7 (2) The contract must be accompanied by a completed form in
8 duplicate, captioned "NOTICE OF CANCELLATION" in twelve-point boldface
9 type if the contract is printed, or in capital letters if the contract
10 is typed, followed by a space in which the distressed home purchaser
11 shall enter the date on which the distressed homeowner executes any
12 contract. This form must be attached to the contract, must be easily
13 detachable, and must contain in at least twelve-point type if the
14 contract is printed, or in capital letters if the contract is typed,
15 the following statement written in the same language as used in the
16 contract:

17 "NOTICE OF CANCELLATION

18

19 (Enter date contract signed)

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

22

23 (Enter date and time of day)

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

26

27 (Name of purchaser)

28 at

29

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

31 NOT LATER THAN

32

33 (Enter date and time of day)

34 I hereby cancel this transaction.

35

36 (Date)

1

2 (Seller's signature)"

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

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

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

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

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

16 (1) Enter into, or attempt to enter into, a distressed home
17 conveyance with a distressed homeowner unless the distressed home
18 purchaser verifies and can demonstrate that the distressed homeowner
19 has a reasonable ability to pay for the subsequent conveyance of an
20 interest back to the distressed homeowner. In the case of a lease with
21 an option to purchase, payment ability also includes the reasonable
22 ability to make the lease payments and purchase the property within the
23 term of the option to purchase. An evaluation of a distressed
24 homeowner's reasonable ability to pay includes debt to income ratios,
25 fair market value of the distressed home, and the distressed
26 homeowner's payment and credit history. There is a rebuttable
27 presumption that the distressed home purchaser has not verified a
28 distressed homeowner's reasonable ability to pay if the distressed home
29 purchaser has not obtained documentation of assets, liabilities, and
30 income, other than an undocumented statement, of the distressed
31 homeowner;

32 (2) Fail to either:

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

35 (b) Make payment to the distressed homeowner so that the distressed
36 homeowner has received consideration in an amount of at least eighty-

1 two percent of the fair market value of the property as of the date of
2 the eviction or voluntary relinquishment of possession of the
3 distressed home by the distressed homeowner. For the purposes of this
4 subsection (2)(b), the following applies:

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

9 (ii) "Consideration" means any payment or thing of value provided
10 to the distressed homeowner, including unpaid rent owed by the
11 distressed homeowner before the date of eviction or voluntary
12 relinquishment of the distressed home, reasonable costs paid to
13 independent third parties necessary to complete the distressed home
14 conveyance transaction, the payment of money to satisfy a debt or legal
15 obligation of the distressed homeowner, or the reasonable cost of
16 repairs for damage to the distressed home caused by the distressed
17 homeowner. "Consideration" does not include amounts imputed as a down
18 payment or fee to the distressed home purchaser or a person acting in
19 participation with the distressed home purchaser;

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

23 (4) Represent, directly or indirectly, that (a) the distressed home
24 purchaser is acting as an advisor or consultant, (b) the distressed
25 home purchaser is acting on behalf of or in the interests of the
26 distressed homeowner, or (c) the distressed home purchaser is assisting
27 the distressed homeowner to save the distressed home, buy time, or use
28 other substantially similar language;

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

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

33 (a) Accept from any distressed homeowner an execution of, or induce
34 any distressed homeowner to execute, any instrument of conveyance of
35 any interest in the distressed home;

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

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

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

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

7 (9) Fail to extinguish or assume all liens encumbering the
8 distressed home immediately following the conveyance of the distressed
9 home;

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

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

15 (1) In addition to the criminal penalties provided in RCW
16 61.34.030, the legislature finds ((and declares)) that ((equity
17 skimming substantially affects)) the practices covered by this chapter
18 are matters vitally affecting the public interest((. The commission by
19 any person of an act of equity skimming or a pattern of equity skimming
20 is an unfair or deceptive act or practice and unfair method of
21 competition in the conduct of trade or commerce in violation of RCW
22 19.86.020)) for the purpose of applying chapter 19.86 RCW. A violation
23 of this chapter is not reasonable in relation to the development and
24 preservation of business and is an unfair method of competition for the
25 purpose of applying chapter 19.86 RCW.

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

34 (3) The remedies provided in this chapter are cumulative and do not
35 restrict any remedy that is otherwise available. The provisions of
36 this chapter are not exclusive and are in addition to any other
37 requirements, rights, remedies, and penalties provided by law. An

1 action under this chapter shall not affect the rights in the distressed
2 home held by a distressed home purchaser for value under this chapter
3 or other applicable law.

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

6 As used in this chapter:

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

8 (2) "Distressed home conveyance" has the same meaning as in RCW
9 61.34.020.

10 (3) "Distressed home purchaser" has the same meaning as in RCW
11 61.34.020.

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

17 ((+2)) (5) "In danger of foreclosure" means any of the following:

18 (a) The homeowner has defaulted on the mortgage and, under the
19 terms of the mortgage, the mortgagee has the right to accelerate full
20 payment of the mortgage and repossess, sell, or cause to be sold the
21 property;

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

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

27 (i) The mortgagee;

28 (ii) A person licensed or required to be licensed under chapter
29 19.134 RCW;

30 (iii) A person licensed or required to be licensed under chapter
31 19.146 RCW;

32 (iv) A person licensed or required to be licensed under chapter
33 18.85 RCW;

34 (v) An attorney-at-law;

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

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

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

4 ~~((3))~~ (7) "Mortgage" is used in the general sense and includes
5 all instruments, including deeds of trust, that are used to secure an
6 obligation by an interest in real property.

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

11 ~~((4))~~ (9) "Owner" means one or more persons, jointly or
12 severally, in whom is vested:

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

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

16 ~~((5))~~ (10) "Premises" means a dwelling unit, appurtenances
17 thereto, grounds, and facilities held out for the use of tenants
18 generally and any other area or facility which is held out for use by
19 the tenant.

20 ~~((6))~~ (11) "Rental agreement" means all agreements which
21 establish or modify the terms, conditions, rules, regulations, or any
22 other provisions concerning the use and occupancy of a dwelling unit.

23 ~~((7))~~ (12) A "single family residence" is a structure maintained
24 and used as a single dwelling unit. Notwithstanding that a dwelling
25 unit shares one or more walls with another dwelling unit, it shall be
26 deemed a single family residence if it has direct access to a street
27 and shares neither heating facilities nor hot water equipment, nor any
28 other essential facility or service, with any other dwelling unit.

29 ~~((8))~~ (13) A "tenant" is any person who is entitled to occupy a
30 dwelling unit primarily for living or dwelling purposes under a rental
31 agreement.

32 ~~((9))~~ (14) "Reasonable attorney's fees", where authorized in this
33 chapter, means an amount to be determined including the following
34 factors: The time and labor required, the novelty and difficulty of
35 the questions involved, the skill requisite to perform the legal
36 service properly, the fee customarily charged in the locality for
37 similar legal services, the amount involved and the results obtained,

1 and the experience, reputation and ability of the lawyer or lawyers
2 performing the services.

3 ((+10+)) (15) "Gang" means a group that: (a) Consists of three or
4 more persons; (b) has identifiable leadership or an identifiable name,
5 sign, or symbol; and (c) on an ongoing basis, regularly conspires and
6 acts in concert mainly for criminal purposes.

7 ((+11+)) (16) "Gang-related activity" means any activity that
8 occurs within the gang or advances a gang purpose.

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

11 In an unlawful detainer action involving property that was a
12 distressed home:

13 (1) The plaintiff shall disclose to the court whether the defendant
14 previously held title to the property that was a distressed home, and
15 explain how the plaintiff came to acquire title;

16 (2) A defendant who previously held title to the property that was
17 a distressed home shall not be required to escrow any money pending
18 trial when a material question of fact exists as to whether the
19 plaintiff acquired title from the defendant directly or indirectly
20 through a distressed home conveyance;

21 (3) There must be both an automatic stay of the action and a
22 consolidation of the action with a pending or subsequent quiet title
23 action when a defendant claims that the plaintiff acquired title to the
24 property through a distressed home conveyance.

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

HB 2791 - S AMD
By Senators Weinstein, Tom, and Honeyford

ADOPTED 03/11/2008

27 On page 1, line 1 of the title, after "conveyances;" strike the
28 remainder of the title and insert "amending RCW 61.34.020, 61.34.040,

1 and 59.18.030; adding new sections to chapter 61.34 RCW; adding a new
2 section to chapter 59.18 RCW; and prescribing penalties."

EFFECT: The following entities are exempted from the distressed consultant provisions:

(1) Lenders who make loans used to finance owner-occupied residences.

(2) Licensed mortgage brokers who use lawful practices to obtain a refinance for a distressed homeowner.

(3) Banks, credit unions, savings and loans and their subsidiaries and agents.

(4) Holders of loans regulated under RESPA (i.e., federally regulated loans) and their subsidiaries and agents.

(5) Insurance companies and producers and their subsidiaries and agents.

(6) Title insurance companies and their subsidiaries and agents.

(7) Escrow companies and their subsidiaries and agents.

(8) Lenders subject to auditing by the federal national mortgage association or the federal home loan mortgage corporation and their subsidiaries and agents.

(9) Licensees under the consumer loan act except for mortgage brokers who are not exempt from HB 2791 unless they are using lawful practices to obtain a refinance for a distressed homeowner.

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