HOUSE BILL REPORT
HB 2791

As Amended by the Senate

Title: An act relating to distressed property conveyances.

Brief Description: Concerning distressed property conveyances.

Sponsors: By Representatives Lantz, Rodne and Kelley; by request of Attorney General.

Brief History:
- **Committee Activity:**
  - Judiciary: 1/22/08, 2/1/08 [DP].
- **Floor Activity:**
  - Passed House: 2/6/08, 96-0.
  - Senate Amended.
  - Passed Senate: 3/6/08, 39-6.
  - House Refused to Concur.
  - Senate Amended.
  - Passed Senate: 3/11/08, 46-3.

Brief Summary of Bill

- Creates provisions governing conveyances between purchasers and homeowners whose properties are in foreclosure or at a risk of loss due to loan or tax delinquencies.
- Requires distressed property conveyances to be by written contract with a right of cancellation.
- Prohibits certain acts and practices by distressed property purchasers and provides remedies under the Consumer Protection Act.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 10 members: Representatives Lantz, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern, Kirby, Moeller, Pedersen, Ross and Williams.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Trudes Tango (786-7384).

Background:

Credit Services Organization Act and Equity Skimming Laws
Washington has some laws governing certain practices involving foreclosure of real property. The Credit Services Organization Act (CSOA) applies to any company that performs, or claims it can perform, certain services for a person such as stopping, preventing, or delaying a foreclosure, in return for a fee or some other consideration. The CSOA requires licensing and bonding of certain credit service organizations, requires a written contract with a right of cancellation, and makes a violation of the CSOA a Consumer Protection Act (CPA) violation.

"Equity skimming" practices are used to obtain title to properties for the purpose of either taking the equity out of the property or obtaining rents or payments on the property without satisfying any of the underlying obligations that may exist on the property. For example, a person induces a homeowner who is in financial distress to deed the property to the person, with the assurance that the person will assume the underlying debt on the property. The person never assumes the debt, but instead rents or sells the property and diverts value from the property to his or her own personal use. The property is eventually foreclosed. In Washington, equity skimming is a class B felony and a violation of the CPA.

Consumer Protection Act
Under the CPA, the Attorney General may bring an action in the name of the state against any person to restrain and prevent an unlawful action. The court may order to restore to any person of interest, any personal or real property acquired by means of any act violating the CPA.

The CPA also allows any person who is injured in his or her business or property by a CPA violation to bring a civil action to stop further violations and to recover actual damages, plus reasonable attorneys' fees. In addition, the court may award the plaintiff treble damages (three times the actual damages sustained) not to exceed $10,000.

Foreclosure Rescue Schemes
There are several types of foreclosure rescue schemes. One such scheme is a transaction in which the homeowner is induced to "sell" the property to the purchaser to prevent foreclosure. The purchaser promises to resell the property back for a set price in the future. The sale price is generally an amount that is enough to refinance the delinquent mortgage to prevent immediate foreclosure. The purchaser promises to "lease" the property to the homeowner so the homeowner can stay on the property pending the re-purchase by the homeowner. The buyer, however, has obtained the deed and can claim ownership and remove the homeowner.

Summary of Bill:

A new chapter is created governing conveyances between a distressed property purchaser (any person acquiring an interest in distressed property) and the owner of residential real property that is distressed (in foreclosure, at risk of loss due to tax delinquency, or security for a loan in which the owner is more than 90 days delinquent).

A distressed property conveyance is a transaction in which: (1) a foreclosed homeowner transfers an interest in the distressed property to a distressed property purchaser (DPP); (2) the DPP allows the foreclosed homeowner to occupy the property; and (3) the DPP or a person acting in participation with the DPP conveys or promises to convey the property to the foreclosed homeowner; or provides the foreclosed homeowner with an option to purchase the property at a later date; or promises the foreclosed homeowner an interest in, or portion of, the proceeds of any resale of the property.

Written Contract
A distressed property conveyance must be by written contract. The contract must be in at least 12 point boldface type, be in the same language principally used by the DPP and foreclosed homeowner, and specify certain information, including: the total consideration to be provided by the DPP in connection with or incident to the sale; a complete description of the terms of payment or other consideration that the DPP claims he or she will perform for the foreclosed homeowner before or after the sale; the time at which possession is to be transferred to the DPP; a complete description of the terms of any related agreement designed to allow the foreclosed homeowner to remain in the home; a complete description of the interest, if any, the foreclosed homeowner maintains in the proceeds of, or consideration to be paid upon, the resale of the property; the notice of right of cancellation; and notice that the DPP cannot ask the foreclosed homeowner to sign any deed or other document until the right of cancellation has ended.

Right of Cancellation
A foreclosed homeowner has the right to cancel any contract with a DPP until midnight of the fifth business day following the day the foreclosed homeowner signs the contract, or until 8:00 a.m. on the last day of the period during which the foreclosed homeowner has a right of redemption, whichever occurs first.

Cancellation occurs when the foreclosed homeowner delivers to the DPP, by any means, a written notice of the cancellation. A notice of cancellation is not required to take a particular form, but the DPP must attach a notice of cancellation form to the contract provided to the foreclosed homeowner. Within 10 days following the receipt of the cancellation notice, the DPP must return any original contract and any other documents signed by the foreclosed homeowner. The foreclosed homeowner may waive the right of cancellation if the distressed property is subject to foreclosure sale within the five business days and the waiver is in a handwritten statement signed by all parties holding title to the property.

Prohibited Acts
A DPP is prohibited from doing specific acts and practices listed in the bill. A DPP shall not enter into, or attempt to enter into, a distressed property conveyance unless the DPP verifies and can demonstrate that the foreclosed homeowner has a reasonable ability to pay for the

subsequent conveyance of an interest back to the foreclosed homeowner. For a lease with option to purchase, payment ability includes the reasonable ability to make the lease payments and purchase the property within the term of the option to purchase. There is a rebuttable presumption that the DPP has not verified a foreclosed homeowner's reasonable ability to pay if the DPP has not obtained documentation of assets, liabilities, and income, other than an undocumented statement, of the foreclosed homeowner.

A DPP must either (1) ensure that title to the property has been reconveyed to the foreclosed homeowner; or (2) make payment to the foreclosed homeowner so that the foreclosed homeowner has received consideration in an amount of at least 82 percent of the fair market value of the property as of the date of the eviction or voluntary relinquishment of possession of the property by the foreclosed homeowner. "Consideration" is defined, and includes unpaid rent owed by the foreclosed homeowner before the eviction or voluntary relinquishment, reasonable costs paid to independent third parties necessary to complete the distressed property conveyance transaction; payment of money to satisfy a debt or legal obligation of the foreclosed homeowner, or the reasonable cost of repairs for damage to the distressed property caused by the foreclosed homeowner.

Before the time period to cancel the contract has expired, a DPP cannot accept any instrument of conveyance of an interest in the distressed property, record any document signed by the foreclosed homeowner, or transfer or encumber any interest in the distressed property.

The DPP must extinguish or assume all liens encumbering the distressed property immediately following the conveyance of the distressed property, and must close the conveyance in person before an independent third party authorized to conduct real estate closings within the state.

The DPP must not enter into repurchase or lease terms that are unfair or commercially unreasonable. The DPP must not represent that the DPP is acting as an advisor or consultant or acting on behalf of or in the interests of the foreclosed homeowner or acting to save the home or buy time.

Other prohibitions are listed in the bill.

CPA Violation
A violation of the act is a per se violation of the CPA. An action for violating the act may only be brought by a foreclosed homeowner against whom the violation was committed or by the Attorney General. In a private right of action under the CPA, the court may double or triple the damages award, subject to the statutory limit. However, if the court determines that the defendant acted in bad faith, the limit for doubling or tripling the damages award may be increased up to $100,000. A claim for damages must be commenced within four years after the date of the alleged violation. A CPA action is in addition to any other remedy available. An action under the CPA does not affect the rights in the distressed property held by a distressed property purchaser for value under the act or other applicable law.

Arbitration

Any provision in a contract that attempts or purports to require arbitration is void at the option of the foreclosed homeowner. This applies to contracts entered on or after the effective date of the act.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment exempts the following entities from the distressed home consultant provisions:
Persons subject to the mortgage loan servicing laws;Licensed mortgage brokers who procure nonpurchase mortgage loans (loans to refinance) for the homeowner from financial institutions;Any bank or trust company, mutual savings bank, savings and loan association, credit union, or lender making federally related mortgage loans;A holder in the business of acquiring federally related mortgage loans as defined in the federal Real Estate Settlement Procedures Act;Insurance companies, insurance producers, title insurance companies, and escrow companies;Lenders subject to auditing by the federal national mortgage association or the federal home loan mortgage corporation;Affiliates, subsidiaries, employees, and agents of the above entities;A licensee under the Consumer Loan Act, other than a mortgage broker unless the mortgage broker is engaged in lawful activities to procure a nonpurchase mortgage loan for the homeowner from a financial institution.
Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) This bill prevents the practice of preying on vulnerable people about to lose their homes. This is a consumer protection bill. There has been a dramatic increase in foreclosures in Washington and that has created a thriving industry of foreclosure scams. Purchasers claim that they can stop the foreclosure, and they induce the homeowner to sign documents that eventually strip the homeowner of all rights to the property. These scams are a way to obtain title without paying fair price. Homeowners believe they have a contract right to repurchase, but those terms are usually vague and unenforceable. These foreclosure scams are happening nationwide. The bill sets the ground rules and is based on laws from other states. The bill requires that all the terms of a contract be in writing and the purchaser cannot contract if there is a power of attorney. The bill requires that when the parties enter into a contract, the homeowner has a real chance to repurchase the home. There is a five day right of cancellation and the purchaser must take responsibility of the underlying debt. The rules established in the bill are similar to truth-in-lending principles.

(Opposed) None.

Persons Testifying: Representative Lantz, prime sponsor; Robin Hunt, Washington Association of County Treasurers; Jim Sugarman, Attorney General's Office; and Sandra Gamble.

Persons Signed In To Testify But Not Testifying: None.