

# HOUSE BILL REPORT

## SB 5221

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### As Passed House:

March 16, 2009

**Title:** An act relating to distressed property conveyances.

**Brief Description:** Regarding distressed property conveyances.

**Sponsors:** Senators Tom, Honeyford, Kohl-Welles, Haugen, Kilmer and Holmquist; by request of Department of Financial Institutions and Department of Licensing.

### Brief History:

#### Committee Activity:

Judiciary: 3/11/09 [DP].

#### Floor Activity

Passed House: 3/16/09, 89-0.

### Brief Summary of Bill

- Exempts licensed real estate brokers and salespersons from the definition of "distressed home consultant" when the broker or salesperson is providing services governed under the real estate brokerage laws and the services do not result in a distressed home conveyance.
- Specifies that offering certain services does not make a person a distressed home consultant when the homeowner is represented by an attorney or a licensed real estate broker or salesperson in the transaction.
- Changes the definitions of "dwelling" and "homeowner."

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## HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass. Signed by 10 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Shea, Assistant Ranking Minority Member; Flannigan, Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

**Staff:** Trudes Tango (786-7384)

### Background:

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*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.*

Last year the Legislature passed House Bill 2791 (HB 2791), which governs transactions between purchasers and homeowners whose homes are in foreclosure or in danger of foreclosure. To address one common foreclosure rescue scam, the bill established strict requirements for "distressed home conveyances." Distressed home conveyances are transactions in which the homeowner transfers an interest in the property to the purchaser who then: (1) allows the homeowner to stay in the home as a tenant; and (2) promises to convey the property back to the homeowner or promises the homeowner an option to purchase the home later. These are often called "sale-leaseback" transactions.

In addition, HB 2791 established duties and requirements for "distressed home consultants." A person is a distressed home consultant if the person contacts a distressed homeowner and offers to perform certain services that the person claims will produce certain results. One of the services that could make a person a distressed home consultant is obtaining a purchase option on the distressed homeowner's residence within 20 days of a foreclosure sale. Another service that could make a person a distressed home consultant is if the person arranges for the distressed homeowner to stay in the residence as a lessee or tenant.

Real estate brokers and salespersons must be licensed in this state. They have a duty to act in good faith and are subject to sanctions for unprofessional conduct. Real estate brokers and salespersons raised concerns that their normal course of business would subject them to the duties imposed on distressed home consultants. During the interim, an informal work group consisting of state agencies, the Office of the Attorney General, consumer advocates, legislators, and representatives for realtors met to examine the issues raised by real estate brokers and salespersons.

### **Summary of Bill:**

A licensed real estate broker or salesperson is not a distressed home consultant when he or she is providing services that are governed by the real estate brokerage laws and the broker or salesperson is not engaged in activities designed to result in a distressed home conveyance.

A person is not a distressed home consultant when: (1) the person assists a homeowner in obtaining a contract to purchase the distressed home within 20 days of foreclosure; and (2) the homeowner is represented in the transaction by an attorney or a licensed real estate broker or salesperson.

A person is not a distressed home consultant when: (1) the person arranges for the homeowner to stay in the home as a lessee or tenant; (2) the continued residence is for no more than 20 days to arrange for a new residence; and (3) the homeowner is represented in the transaction by an attorney or a licensed real estate broker or salesperson.

The definition of "homeowner" is changed to include a person who owns and occupied the home within 180 days of the conveyance or mutual acceptance of an agreement to convey an interest in the home. The definition of "dwelling" is changed to include condominiums, residential cooperative units and other types of residential planned unit development, and manufactured homes.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:**

(In support) This bill is a "tune-up" of last year's bill, HB 2791, on distressed home conveyances. The Governor asked the Department of Financial Institutions and the Department of Licensing to convene an ad hoc committee to study the unintended consequences of HB 2791. The bill from last session created a chilling effect on real estate agents helping distressed homeowners. The ad hoc committee consisted of experts from the industry, consumer advocates, and others. This bill is a result of the collaborative effort of the committee. This bill needs to be enacted as soon as possible. It will affect buying and selling real estate on a daily basis. There are no regulatory concerns with this bill.

(Opposed) None.

**Persons Testifying:** Lee Malott, Department of Licensing; Joe Vincent, Department of Financial Institutions; and Annette Fitzsimmons, Washington Realtors.

**Persons Signed In To Testify But Not Testifying:** None.