

SSB 5538 - H COMM AMD

By Committee on Judiciary

ADOPTED AS AMENDED 04/13/2015

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

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4 "Sec. 1. RCW 59.18.030 and 2012 c 41 s 2 are each reenacted and
5 amended to read as follows:

6 As used in this chapter:

7 (1) "Certificate of inspection" means an unsworn statement,
8 declaration, verification, or certificate made in accordance with
9 the requirements of RCW 9A.72.085 by a qualified inspector that
10 states that the landlord has not failed to fulfill any substantial
11 obligation imposed under RCW 59.18.060 that endangers or impairs the
12 health or safety of a tenant, including (a) structural members that
13 are of insufficient size or strength to carry imposed loads with
14 safety, (b) exposure of the occupants to the weather, (c) plumbing
15 and sanitation defects that directly expose the occupants to the
16 risk of illness or injury, (d) not providing facilities adequate to
17 supply heat and water and hot water as reasonably required by the
18 tenant, (e) providing heating or ventilation systems that are not
19 functional or are hazardous, (f) defective, hazardous, or missing
20 electrical wiring or electrical service, (g) defective or hazardous
21 exits that increase the risk of injury to occupants, and (h)
22 conditions that increase the risk of fire.

23 (2) "Distressed home" has the same meaning as in RCW 61.34.020.

24 (3) "Distressed home conveyance" has the same meaning as in RCW
25 61.34.020.

26 (4) "Distressed home purchaser" has the same meaning as in RCW
27 61.34.020.

1 (5) " 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
3 or by two or more persons maintaining a common household, including
4 but not limited to single-family residences and units of
5 multiplexes, apartment buildings, and mobile homes.

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

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

12 (8) "In danger of foreclosure" means any of the following:

13 (a) The homeowner has defaulted on the mortgage and, under the
14 terms of the mortgage, the mortgagee has the right to accelerate
15 full payment of the mortgage and repossess, sell, or cause to be
16 sold the property;

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

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

23 (i) The mortgagee;

24 (ii) A person licensed or required to be licensed under chapter
25 19.134 RCW;

26 (iii) A person licensed or required to be licensed under chapter
27 19.146 RCW;

28 (iv) A person licensed or required to be licensed under chapter
29 18.85 RCW;

30 (v) An attorney-at-law;

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

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

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1 (9) "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 owner, lessor,
4 or sublessor including, but not limited to, an agent, a resident
5 manager, or a designated property manager.

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

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

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

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

14 (12) "Person" means an individual, group of individuals,
15 corporation, government, or governmental agency, business trust,
16 estate, trust, partnership, or association, two or more persons
17 having a joint or common interest, or any other legal or commercial
18 entity.

19 (13) "Premises" means a dwelling unit, appurtenances thereto,
20 grounds, and facilities held out for the use of tenants generally
21 and any other area or facility which is held out for use by the
22 tenant.

23 (14) "Property" or "rental property" means all dwelling units on
24 a contiguous quantity of land managed by the same landlord as a
25 single, rental complex.

26 (15) "Prospective landlord" means a landlord or a person who
27 advertises, solicits, offers, or otherwise holds a dwelling unit out
28 as available for rent.

29 (16) "Prospective tenant" means a tenant or a person who has
30 applied for residential housing that is governed under this chapter.

31 (17) "Qualified inspector" means a United States department of
32 housing and urban development certified inspector; a Washington
33 state licensed home inspector; an American society of home
34 inspectors certified inspector; a private inspector certified by the

1 national association of housing and redevelopment officials, the
2 American association of code enforcement, or other comparable
3 professional association as approved by the local municipality; a
4 municipal code enforcement officer; a Washington licensed structural
5 engineer; or a Washington licensed architect.

6 (18) "Reasonable attorneys' fees," where authorized in this
7 chapter, means an amount to be determined including the following
8 factors: The time and labor required, the novelty and difficulty of
9 the questions involved, the skill requisite to perform the legal
10 service properly, the fee customarily charged in the locality for
11 similar legal services, the amount involved and the results
12 obtained, and the experience, reputation and ability of the lawyer
13 or lawyers performing the services.

14 (19) "Rental agreement" means all agreements which establish or
15 modify the terms, conditions, rules, regulations, or any other
16 provisions concerning the use and occupancy of a dwelling unit.

17 (20) A "single-family residence" is a structure maintained and
18 used as a single dwelling unit. Notwithstanding that a dwelling unit
19 shares one or more walls with another dwelling unit, it shall be
20 deemed a single-family residence if it has direct access to a street
21 and shares neither heating facilities nor hot water equipment, nor
22 any other essential facility or service, with any other dwelling
23 unit.

24 (21) A "tenant" is any person who is entitled to occupy a
25 dwelling unit primarily for living or dwelling purposes under a
26 rental agreement.

27 (22) "Tenant screening" means using a consumer report or other
28 information about a prospective tenant in deciding whether to make
29 or accept an offer for residential rental property to or from a
30 prospective tenant.

31 (23) "Tenant screening report" means a consumer report as
32 defined in RCW 19.182.010 and any other information collected by a
33 tenant screening service.

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1 (24) "Commercially reasonable manner," with respect to a sale of
2 a deceased tenant's personal property, means a sale where every
3 aspect of the sale, including the method, manner, time, place, and
4 other terms, must be commercially reasonable. If commercially
5 reasonable, a landlord may sell the tenant's property by public or
6 private proceedings, by one or more contracts, as a unit or in
7 parcels, and at any time and place and on any terms.

8 (25) "Designated person" means a person designated by the tenant
9 under section 2 of this act.

10 (26) "Reasonable manner," with respect to disposing of a
11 deceased tenant's personal property, means to dispose of the
12 property by donation to a not-for-profit charitable organization, by
13 removal of the property by a trash hauler or recycler, or by any
14 other method that is reasonable under the circumstances.

15 (27) "Tenant representative" means:

16 (a) A personal representative of a deceased tenant's estate if
17 known to the landlord;

18 (b) If the landlord has no knowledge that a personal
19 representative has been appointed for the deceased tenant's estate,
20 a person claiming to be a successor of the deceased tenant who has
21 provided the landlord with proof of death and an affidavit made by
22 the person that meets the requirements of RCW 11.62.010(2);

23 (c) In the absence of a personal representative under (a) of
24 this subsection or a person claiming to be a successor under (b) of
25 this subsection, a designated person; or

26 (d) In the absence of a personal representative under (a) of
27 this subsection, a person claiming to be a successor under (b) of
28 this subsection, or a designated person under (c) of this
29 subsection, any person who provides the landlord with reasonable
30 evidence that he or she is a successor of the deceased tenant as
31 defined in RCW 11.62.005. The landlord has no obligation to
32 identify all of the deceased tenant's successors.

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1 NEW SECTION. **Sec. 2.** A new section is added to chapter 59.18
2 RCW to read as follows:

3 (1)(a) At a landlord's request, the tenant may designate a
4 person to act for the tenant on the tenant's death when the tenant
5 is the sole occupant of the dwelling unit.

6 (b) Any designation must be in writing, be separate from the
7 rental agreement, and include:

8 (i) The designated person's name, mailing address, any address
9 used for the receipt of electronic communications, and telephone
10 number;

11 (ii) A signed statement authorizing the landlord in the event of
12 the tenant's death when the tenant is the sole occupant of the
13 dwelling unit to allow the designated person to: access the tenant's
14 dwelling unit, remove the tenant's property, receive refunds of
15 amounts due to the tenant, and dispose of the tenant's property
16 consistent with the tenant's last will and testament and any
17 applicable intestate succession law; and

18 (iii) A conspicuous statement that the designation remains in
19 effect until it is revoked in writing by the tenant or replaced with
20 a new designation.

21 (2) A tenant may, without request from the landlord, designate a
22 person to act for the tenant on the tenant's death when the tenant
23 is the sole occupant of the dwelling unit by providing the landlord
24 with the information and signing a statement as provided in
25 subsection (1) of this section.

26 (3) The tenant may change the designated person or revoke any
27 previous designation in writing at any time prior to his or her
28 death.

29 (4) Once the landlord or the designated person knows of the
30 appointment of a personal representative for the deceased tenant's
31 estate or of a person claiming to be a successor of the deceased
32 tenant who has provided the landlord with proof of death and an
33 affidavit made by the person that meets the requirements of RCW

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1 11.62.010(2), the designated person's authority to act under this
2 section terminates.

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4 NEW SECTION. **Sec. 3.** A new section is added to chapter 59.18
5 RCW to read as follows:

6 (1) In the event of the death of a tenant who is the sole
7 occupant of the dwelling unit:

8 (a) The landlord must mail or personally deliver written notice
9 to any known personal representative, known designated person,
10 emergency contact identified by the tenant on the rental
11 application, known person reasonably believed to be a successor of
12 the tenant as defined in RCW 11.62.005, and to the deceased tenant
13 at the address of the dwelling unit. If the landlord knows of any
14 address used for the receipt of electronic communications, the
15 landlord must email the notice to that address as well. The notice
16 must include:

17 (i) The name of the deceased tenant and address of the dwelling
18 unit;

19 (ii) The approximate date of the deceased tenant's death;

20 (iii) The rental amount and date through which rent is paid;

21 (iv) A statement that the tenancy will terminate fifteen days
22 from the date the notice is mailed or personally delivered or the
23 date through which rent is paid, whichever comes later, unless
24 during that time period a tenant representative makes arrangements
25 with the landlord to pay rent in advance for no more than sixty days
26 from the date of the tenant's death to allow a tenant representative
27 to arrange for orderly removal of the tenant's property. At the end
28 of the period for which the rent has been paid pursuant to this
29 subsection, the tenancy ends;

30 (v) A statement that failure to remove the tenant's property
31 before the tenancy is terminated or ends as provided in (a)(iv) of
32 this subsection will allow the landlord to enter the dwelling unit
33 and take possession of any property found on the premises, store it
34 in a reasonably secure place, and charge the actual or reasonable

1 costs, whichever is less, of drayage and storage of the property,
2 and after service of a second forty-five day notice sell or dispose
3 of the property as provided in subsection (2) of this section; and

4 (vi) A copy of any designation executed by the tenant pursuant
5 to section 2 of this act;

6 (b) The landlord shall turn over possession of the tenant's
7 property to a tenant representative if a request is made in writing
8 within the specified time period or any subsequent date agreed to by
9 the parties;

10 (c) Within fourteen days after the removal of the property by
11 the tenant representative, the landlord shall refund any unearned
12 rent and shall give a full and specific statement of the basis for
13 retaining any deposit together with the payment of any refund due
14 the deceased tenant under the terms and conditions of the rental
15 agreement to the tenant representative; and

16 (d) Any tenant representative who removes property from the
17 tenant's dwelling unit or the premises must, at the time of removal,
18 provide to the landlord an inventory of the removed property and
19 signed acknowledgment that he or she has only been given possession
20 and not ownership of the property.

21 (2) If the landlord places the property in storage pursuant to
22 subsection (1)(a) of this section, the landlord must mail a second
23 written notice to any known personal representative, known
24 designated person, emergency contact identified by the tenant on the
25 rental application, known person reasonably believed to be a
26 successor of the tenant as defined in RCW 11.62.005, and to the
27 deceased tenant at the dwelling unit. The second notice must state
28 that the landlord may sell or dispose of the property on or after a
29 specified date that is at least forty-five days after the second
30 notice is mailed if a tenant representative does not claim and
31 remove the property in accordance with this subsection.

32 (a) The landlord shall turn over possession of the tenant's
33 property to a tenant representative if a written request is made
34 within forty-five days after the second notice is mailed, provided

1 the tenant representative: (i) pays the actual or reasonable costs,
2 whichever is less, of drayage and storage of the property; and (ii)
3 gives the landlord an inventory of the property and signs an
4 acknowledgment that he or she has only been given possession and not
5 ownership of the property.

6 (b) Within fourteen days after the removal of the property by
7 the tenant representative, the landlord shall refund any unearned
8 rent and shall give a full and specific statement of the basis for
9 retaining any deposit together with the payment of any refund due
10 the deceased tenant under the terms and conditions of the rental
11 agreement to the tenant representative.

12 (c) If the landlord is not contacted within the forty-five day
13 notice period by a tenant representative entitled to remove the
14 property under this section, the landlord may sell or dispose of the
15 deceased tenant's property, except for personal papers and personal
16 photographs, as provided in this subsection.

17 (i) If the landlord reasonably estimates the fair market value
18 of the stored property to be more than one thousand dollars, the
19 landlord shall arrange to sell the property in a commercially
20 reasonable manner and may dispose of any property that remains
21 unsold in a reasonable manner.

22 (ii) If the value of the stored property does not meet the
23 threshold provided in (c)(i) of this subsection, the landlord may
24 dispose of the property in a reasonable manner.

25 (iii) The landlord may apply any income derived from the sale of
26 the property pursuant to this section against any costs of sale and
27 moneys due the landlord, including actual or reasonable costs,
28 whichever is less, of drayage and storage of the deceased tenant's
29 property. Any excess income derived from the sale of such property
30 under this section must be held by the landlord for a period of one
31 year from the date of sale, and if no claim is made for recovery of
32 the excess income before the expiration of that one-year period, the
33 balance must be treated as abandoned property and deposited by the
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1 landlord with the department of revenue pursuant to chapter 63.29
2 RCW.

3 (d) Personal papers and personal photographs that are not
4 claimed by a tenant representative within ninety days after a sale
5 or other disposition of the deceased tenant's other property shall
6 be either destroyed or held for the benefit of any successor of the
7 deceased tenant as defined in RCW 11.62.005.

8 (e) No landlord or employee of a landlord, or his or her family
9 members, may acquire, directly or indirectly, the property sold
10 pursuant to (c)(i) of this subsection or disposed of pursuant to
11 (c)(ii) of this subsection.

12 (3) Upon learning of the death of the tenant, the landlord may
13 enter the deceased tenant's dwelling unit and immediately dispose of
14 any perishable food, hazardous materials, and garbage found on the
15 premises and turn over animals to a tenant representative or to an
16 animal control officer, humane society, or other individual or
17 organization willing to care for the animals.

18 (4) Any notices sent by the landlord under this section must
19 include a mailing address, any address used for the receipt of
20 electronic communications, and a telephone number of the landlord.

21 (5) If a landlord knowingly violates this section, the landlord
22 is liable to the deceased tenant's estate for actual damages. The
23 prevailing party in any action pursuant to this subsection may
24 recover costs and reasonable attorneys' fees.

25 (6) A landlord who complies with this section is relieved from
26 any liability relating to the deceased tenant's property.

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28 **Sec. 4.** RCW 59.18.310 and 2011 c 132 s 16 are each amended to
29 read as follows:

30 (1) If the tenant defaults in the payment of rent and reasonably
31 indicates by words or actions the intention not to resume tenancy,
32 the tenant shall be liable for the following for such abandonment:
33 PROVIDED, That upon learning of such abandonment of the premises the
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1 landlord shall make a reasonable effort to mitigate the damages
2 resulting from such abandonment:

3 (~~(1)~~) (a) When the tenancy is month-to-month, the tenant shall
4 be liable for the rent for the thirty days following either the date
5 the landlord learns of the abandonment, or the date the next regular
6 rental payment would have become due, whichever first occurs.

7 (~~(2)~~) (b) When the tenancy is for a term greater than month-
8 to-month, the tenant shall be liable for the lesser of the
9 following:

10 (~~(a)~~) (i) The entire rent due for the remainder of the term;
11 or

12 (~~(b)~~) (ii) All rent accrued during the period reasonably
13 necessary to rerent the premises at a fair rental, plus the
14 difference between such fair rental and the rent agreed to in the
15 prior agreement, plus actual costs incurred by the landlord in
16 rerenting the premises together with statutory court costs and
17 reasonable attorneys' fees.

18 (2) In the event of such abandonment of tenancy and an
19 accompanying default in the payment of rent by the tenant, the
20 landlord may immediately enter and take possession of any property
21 of the tenant found on the premises and may store the same in any
22 reasonably secure place. A landlord shall make reasonable efforts to
23 provide the tenant with a notice containing the name and address of
24 the landlord and the place where the property is stored and
25 informing the tenant that a sale or disposition of the property
26 shall take place pursuant to this section, and the date of the sale
27 or disposal, and further informing the tenant of the right under RCW
28 59.18.230 to have the property returned prior to its sale or
29 disposal. The landlord's efforts at notice under this subsection
30 shall be satisfied by the mailing by first-class mail, postage
31 prepaid, of such notice to the tenant's last known address and to
32 any other address provided in writing by the tenant or actually
33 known to the landlord where the tenant might receive the notice. The
34 landlord shall return the property to the tenant after the tenant

1 has paid the actual or reasonable drayage and storage costs
2 whichever is less if the tenant makes a written request for the
3 return of the property before the landlord has sold or disposed of
4 the property. After forty-five days from the date the notice of such
5 sale or disposal is mailed or personally delivered to the tenant,
6 the landlord may sell or dispose of such property, including
7 personal papers, family pictures, and keepsakes. The landlord may
8 apply any income derived therefrom against moneys due the landlord,
9 including actual or reasonable costs whichever is less of drayage
10 and storage of the property. If the property has a cumulative value
11 of two hundred fifty dollars or less, the landlord may sell or
12 dispose of the property in the manner provided in this section,
13 except for personal papers, family pictures, and keepsakes, after
14 seven days from the date the notice of sale or disposal is mailed or
15 personally delivered to the tenant: PROVIDED, That the landlord
16 shall make reasonable efforts, as defined in this section, to notify
17 the tenant. Any excess income derived from the sale of such property
18 under this section shall be held by the landlord for the benefit of
19 the tenant for a period of one year from the date of sale, and if no
20 claim is made or action commenced by the tenant for the recovery
21 thereof prior to the expiration of that period of time, the balance
22 shall be the property of the landlord, including any interest paid
23 on the income.

24 (3) This section does not apply to the disposition of property of
25 a deceased tenant. Section 3 of this act governs the disposition of
26 property on the death of a tenant when the tenant is the sole occupant
27 of the dwelling unit."

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EFFECT: The striking amendment makes the following changes:

- Provides that where a tenant representative contacts the landlord within the first 15-day notice period and makes arrangements to retrieve the property at a future date by extending the tenancy, but then fails to do so before the tenancy ends, the

landlord must store the tenant's property and send the second 45-day notice to the relevant parties.

- Adds specific requirements for the landlord relating to refunding any unearned rent or the tenant's deposit. Requires the landlord, within 14 days of removal of the tenant's property, to refund any unearned rent and give a full and specific statement of the basis for retaining any deposit together with any refund payment due under the terms of the rental agreement to the tenant representative.

- When the deceased tenant's property has been stored, removes language that allows the landlord to turn over the property to either a designated person or any person reasonably believed to be a successor at any time prior to the expiration of the 45-day notice period as long as the landlord has no knowledge of a personal representative or successor with affidavit. Provides instead that the landlord must turn over the property to a tenant representative if a written request is made within the 45-day period as long as the tenant representative pays the costs of drayage and storage and gives the landlord an inventory and signed acknowledgement that he or she has been given possession but not ownership of the property.

- Removes language that stated that a landlord must sell property valued at over \$1,000 in a commercially reasonable manner only if a commercially reasonable sale is available through a third party. Requires any disposal of property to be done in a reasonable manner. Defines "commercially reasonable manner" and "reasonable manner."

- Requires personal papers and photos to be held for an additional 90 days (rather than 60 days) after the sale or disposal of the tenant's other property, and then requires them to be either destroyed or held for the benefit of a successor.

- Revises the definition of "tenant representative" to provide that a successor is any person who provides the landlord with reasonable evidence that he or she is a successor and that a landlord need not identify all successors of the deceased tenant.

- Makes a number of changes for clarity and consistent use of terms.

--- END ---