

RCW 61.34.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) An "act of equity skimming" occurs when:

(a) (i) A person purchases a dwelling with the representation that the purchaser will pay for the dwelling by assuming the obligation to make payments on existing mortgages, deeds of trust, or real estate contracts secured by and pertaining to the dwelling, or by representing that such obligation will be assumed; and

(ii) The person fails to make payments on such mortgages, deeds of trust, or real estate contracts as the payments become due, within two years subsequent to the purchase; and

(iii) The person diverts value from the dwelling by either (A) applying or authorizing the application of rents from the dwelling for the person's own benefit or use, or (B) obtaining anything of value from the sale or lease with option to purchase of the dwelling for the person's own benefit or use, or (C) removing or obtaining appliances, fixtures, furnishings, or parts of such dwellings or appurtenances for the person's own benefit or use without replacing the removed items with items of equal or greater value; or

(b) (i) The person purchases a dwelling in a transaction in which all or part of the purchase price is financed by the seller and is (A) secured by a lien which is inferior in priority or subordinated to a lien placed on the dwelling by the purchaser, or (B) secured by a lien on other real or personal property, or (C) without any security; and

(ii) The person obtains a superior priority loan which either (A) is secured by a lien on the dwelling which is superior in priority to the lien of the seller, but not including a bona fide assumption by the purchaser of a loan existing prior to the time of purchase, or (B) creating any lien or encumbrance on the dwelling when the seller does not hold a lien on the dwelling; and

(iii) The person fails to make payments or defaults on the superior priority loan within two years subsequent to the purchase; and

(iv) The person diverts value from the dwelling by applying or authorizing any part of the proceeds from such superior priority loan for the person's own benefit or use.

(2) "Distressed home" means either:

(a) A dwelling that is in danger of foreclosure or at risk of loss due to nonpayment of taxes; or

(b) A dwelling that is in danger of foreclosure or that is in the process of being foreclosed due to a default under the terms of a mortgage.

(3) "Distressed home consultant" means a person who:

(a) Solicits or contacts a distressed homeowner in writing, in person, or through any electronic or telecommunications medium and makes a representation or offer to perform any service that the person represents will:

(i) Stop, enjoin, delay, void, set aside, annul, stay, or postpone a foreclosure sale;

(ii) Obtain forbearance from any servicer, beneficiary, or mortgagee;

(iii) Assist the distressed homeowner to exercise a right of reinstatement provided in the loan documents or to refinance a loan that is in foreclosure or is in danger of foreclosure;

- (iv) Obtain an extension of the period within which the distressed homeowner may reinstate the distressed homeowner's obligation or extend the deadline to object to a ratification;
- (v) Obtain a waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a distressed home or contained in the mortgage;
- (vi) Assist the distressed homeowner to obtain a loan or advance of funds;
- (vii) Save the distressed homeowner's residence from foreclosure;
- (viii) Avoid or ameliorate the impairment of the distressed homeowner's credit resulting from the recording of a notice of trustee sale, the filing of a petition to foreclose, or the conduct of a foreclosure sale;
- (ix) Cause a contract to purchase an interest in the distressed home to be executed or closed within twenty days of an advertised or docketed foreclosure sale, unless the distressed homeowner is represented in the transaction by an attorney or a person licensed under chapter 18.85 RCW;
- (x) Arrange for the distressed homeowner to become a lessee or tenant entitled to continue to reside in the distressed homeowner's residence, unless (A) the continued residence is for a period of no more than twenty days after closing, (B) the purpose of the continued residence is to arrange for and relocate to a new residence, and (C) the distressed homeowner is represented in the transaction by an attorney or a person licensed and subject to chapter 18.85 RCW;
- (xi) Arrange for the distressed homeowner to have an option to repurchase the distressed homeowner's residence; or
- (xii) Engage in any documentation, grant, conveyance, sale, lease, trust, or gift by which the distressed homeowner clogs the distressed homeowner's equity of redemption in the distressed homeowner's residence; or
- (b) Systematically contacts owners of property that court records, newspaper advertisements, or any other source demonstrate are in foreclosure or are in danger of foreclosure.
- "Distressed home consultant" does not include: A financial institution; a nonprofit credit counseling service; a licensed attorney, or a person subject to chapter 19.148 RCW; a licensed mortgage broker who, pursuant to lawful activities under chapter 19.146 RCW, procures a nonpurchase mortgage loan for the distressed homeowner from a financial institution; or a person licensed as a real estate broker or salesperson under chapter 18.85 RCW, when rendering real estate brokerage services under chapter 18.86 RCW, regardless of whether the person renders additional services that would otherwise constitute the services of a distressed home consultant, and if the person is not engaged in activities designed to, or represented to, result in a distressed home conveyance.
- (4) "Distressed home consulting transaction" means an agreement between a distressed homeowner and a distressed home consultant in which the distressed home consultant represents or offers to perform any of the services enumerated in subsection (3)(a) of this section.
- (5) "Distressed home conveyance" means a transaction in which:
- (a) A distressed homeowner transfers an interest in the distressed home to a distressed home purchaser;
- (b) The distressed home purchaser allows the distressed homeowner to occupy the distressed home; and
- (c) The distressed home purchaser or a person acting in participation with the distressed home purchaser conveys or promises

to convey the distressed home to the distressed homeowner, provides the distressed homeowner with an option to purchase the distressed home at a later date, or promises the distressed homeowner an interest in, or portion of, the proceeds of any resale of the distressed home.

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

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

(8) "Dwelling" means a one-to-four family residence, condominium unit, residential cooperative unit, residential unit in any other type of planned unit development, or manufactured home whether or not title has been eliminated pursuant to RCW 65.20.040.

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

(10) "Homeowner" means a person who owns and has occupied a dwelling as his or her primary residence within one hundred eighty days of the latter of conveyance or mutual acceptance of an agreement to convey an interest in the dwelling, whether or not his or her ownership interest is encumbered by a mortgage, deed of trust, or other lien.

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

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

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

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

(i) The mortgagee;

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

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

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

(v) An attorney-at-law;

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

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

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

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

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

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

(16) "Resale" means a bona fide market sale of the distressed home subject to the distressed home conveyance by the distressed home purchaser to an unaffiliated third party.

(17) "Resale price" means the gross sale price of the distressed home on resale. [2009 c 15 § 1; 2008 c 278 § 1; 1988 c 33 § 4.]

Effective date—2009 c 15: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 25, 2009]." [2009 c 15 § 2.]