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SENATE BILL 5221

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State of Washington

61st Legislature

2009 Regular Session

By Senators Tom, Honeyford, Kohl-Welles, Haugen, Kilmer, and Holmquist; by request of Department of Financial Institutions and Department of Licensing

Read first time 01/16/09. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to distressed property conveyances; amending RCW  
2 61.34.020; and declaring an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 61.34.020 and 2008 c 278 s 1 are each amended to read  
5 as follows:

6 Unless the context clearly requires otherwise, the definitions in  
7 this section apply throughout this chapter.

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

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

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

17 (iii) The person diverts value from the dwelling by either (A)  
18 applying or authorizing the application of rents from the dwelling for  
19 the person's own benefit or use, or (B) obtaining anything of value

1 from the sale or lease with option to purchase of the dwelling for the  
2 person's own benefit or use, or (C) removing or obtaining appliances,  
3 fixtures, furnishings, or parts of such dwellings or appurtenances for  
4 the person's own benefit or use without replacing the removed items  
5 with items of equal or greater value; or

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

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

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

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

22 (2) "Distressed home" means either:

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

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

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

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

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

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

37 (iii) Assist the distressed homeowner to exercise a right of

1 reinstatement provided in the loan documents or to refinance a loan  
2 that is in foreclosure or is in danger of foreclosure;

3 (iv) Obtain an extension of the period within which the distressed  
4 homeowner may reinstate the distressed homeowner's obligation or extend  
5 the deadline to object to a ratification;

6 (v) Obtain a waiver of an acceleration clause contained in any  
7 promissory note or contract secured by a mortgage on a distressed home  
8 or contained in the mortgage;

9 (vi) Assist the distressed homeowner to obtain a loan or advance of  
10 funds;

11 (vii) Save the distressed homeowner's residence from foreclosure;

12 (viii) Avoid or ameliorate the impairment of the distressed  
13 homeowner's credit resulting from the recording of a notice of trustee  
14 sale, the filing of a petition to foreclose, or the conduct of a  
15 foreclosure sale;

16 (ix) (~~Purchase or obtain an option~~) Cause a contract to purchase  
17 an interest in the distressed ((homeowner's residence)) home to be  
18 executed or closed within twenty days of an advertised or docketed  
19 foreclosure sale, unless the distressed homeowner is represented in the  
20 transaction by an attorney or a person licensed under chapter 18.85  
21 RCW;

22 (x) Arrange for the distressed homeowner to become a lessee or  
23 tenant entitled to continue to reside in the distressed homeowner's  
24 residence, unless (A) the continued residence is for a period of no  
25 more than twenty days after closing, (B) the purpose of the continued  
26 residence is to arrange for and relocate to a new residence, and (C)  
27 the distressed homeowner is represented in the transaction by an  
28 attorney or a person licensed and subject to chapter 18.85 RCW;

29 (xi) Arrange for the distressed homeowner to have an option to  
30 repurchase the distressed homeowner's residence; or

31 (xii) Engage in any documentation, grant, conveyance, sale, lease,  
32 trust, or gift by which the distressed homeowner clogs the distressed  
33 homeowner's equity of redemption in the distressed homeowner's  
34 residence; or

35 (b) Systematically contacts owners of property that court records,  
36 newspaper advertisements, or any other source demonstrate are in  
37 foreclosure or are in danger of foreclosure.

1 "Distressed home consultant" does not ((mean)) include: A  
2 financial institution((τ)); a nonprofit credit counseling service((τ));  
3 a licensed attorney, or a person subject to chapter 19.148 RCW((τ  
4 ~~"Distressed home consultant" does not include))~~); a licensed mortgage  
5 broker who, pursuant to lawful activities under chapter 19.146 RCW,  
6 procures a nonpurchase mortgage loan for the distressed homeowner from  
7 a financial institution; or a person licensed as a real estate broker  
8 or salesperson under chapter 18.85 RCW, when rendering real estate  
9 brokerage services under chapter 18.86 RCW, regardless of whether the  
10 person renders additional services that would otherwise constitute the  
11 services of a distressed home consultant, and if the person is not  
12 engaged in activities designed to, or represented to, result in a  
13 distressed home conveyance.

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

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

19 (a) A distressed homeowner transfers an interest in the distressed  
20 home to a distressed home purchaser;

21 (b) The distressed home purchaser allows the distressed homeowner  
22 to occupy the distressed home; and

23 (c) The distressed home purchaser or a person acting in  
24 participation with the distressed home purchaser conveys or promises to  
25 convey the distressed home to the distressed homeowner, provides the  
26 distressed homeowner with an option to purchase the distressed home at  
27 a later date, or promises the distressed homeowner an interest in, or  
28 portion of, the proceeds of any resale of the distressed home.

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

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

36 (8) "Dwelling" means a ((single, duplex, triplex, or four-unit  
37 ~~family residential building~~)) one-to-four family residence, condominium

1 unit, residential cooperative unit, residential unit in any other type  
2 of planned unit development, or manufactured home whether or not title  
3 has been eliminated pursuant to RCW 65.20.040.

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

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

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

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

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

37 (c) The homeowner has a good faith belief that he or she is likely

1 to default on the mortgage within the upcoming four months due to a  
2 lack of funds, and the homeowner has reported this belief to:

3 (i) The mortgagee;

4 (ii) A person licensed or required to be licensed under chapter  
5 19.134 RCW;

6 (iii) A person licensed or required to be licensed under chapter  
7 19.146 RCW;

8 (iv) A person licensed or required to be licensed under chapter  
9 18.85 RCW;

10 (v) An attorney-at-law;

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

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

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

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

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

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

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

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

31 NEW SECTION. **Sec. 2.** This act is necessary for the immediate  
32 preservation of the public peace, health, or safety, or support of the  
33 state government and its existing public institutions, and takes effect  
34 immediately.

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