

ESHB 2614 - S AMD 182

By Senators Frockt, Benton, Hobbs

ADOPTED 02/29/2012

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

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 64.04 RCW
4 to read as follows:

5 (1) If the beneficiary or mortgagee, or its assignees, of debt
6 secured by owner-occupied real property intends to release its deed of
7 trust or mortgage in the real property for less than full payment of
8 the secured debt, it shall provide upon its first written notice to the
9 borrower the following information in substantially the following form:

10 "To: [Name of borrower] DATE:

11 Please take note that [name of beneficiary or mortgagee, or its
12 assignees], in releasing its security interest in this owner-occupied
13 real property, [waives or reserves] the right to collect that amount
14 that constitutes full payment of the secured debt. The amount of debt
15 outstanding as of the date of this letter is \$. However,
16 nothing in this letter precludes the borrower from negotiating with the
17 [name of beneficiary or mortgagee, or its assignees] for a full release
18 of this outstanding debt.

19 If [name of beneficiary or mortgagee, or its assignees] does not
20 initiate a court action to collect the outstanding debt within three
21 years on the date which it released its security interest, the right to
22 collect the outstanding debt is forfeited."

23 (2) If the beneficiary or mortgagee, or its assignees, of debt
24 secured by owner-occupied real property intends to pursue collection of
25 the outstanding debt, it must initiate a court action to collect the
26 remaining debt within three years from the date on which it released
27 its deed of trust or mortgage in the owner-occupied real property or
28 else it forfeits any right to collect the remaining debt.

1 (3) This section applies only to debts incurred by individuals
2 primarily for personal, family, or household purposes. This section
3 does not apply to debts for business, commercial, or agricultural
4 purposes.

5 (4) For the purposes of this section, "owner-occupied real
6 property" means real property consisting solely of a single-family
7 residence, a residential condominium unit, or a residential cooperative
8 unit that is the principal residence of the borrower.

9 **Sec. 2.** RCW 18.86.120 and 1997 c 217 s 7 are each amended to read
10 as follows:

11 (1) The pamphlet required under RCW 18.86.030(1)(f) shall consist
12 of the entire text of RCW 18.86.010 through 18.86.030 and 18.86.040
13 through 18.86.110 with a separate cover page. The pamphlet shall be 8
14 1/2 by 11 inches in size, the text shall be in print no smaller than
15 10-point type, the cover page shall be in print no smaller than 12-
16 point type, and the title of the cover page "The Law of Real Estate
17 Agency" shall be in print no smaller than 18-point type. The cover
18 page shall be in the following form:

19 **The Law of Real Estate Agency**

20 This pamphlet describes your legal rights in dealing
21 with a real estate broker or salesperson. Please read it
22 carefully before signing any documents.

23 The following is only a brief summary of the attached law:
24 Sec. 1. Definitions. Defines the specific terms used in the
25 law.
26 Sec. 2. Relationships between Licensees and the Public. States
27 that a licensee who works with a buyer or tenant represents
28 that buyer or tenant--unless the licensee is the listing agent,
29 a seller's subagent, a dual agent, the seller personally or the
30 parties agree otherwise. Also states that in a transaction
31 involving two different licensees affiliated with the same
32 broker, the broker is a dual agent and each licensee solely
33 represents his or her client--unless the parties agree in
34 writing that both licensees are dual agents.

1 Sec. 3. Duties of a Licensee Generally. Prescribes the duties
2 that are owed by all licensees, regardless of who the licensee
3 represents. Requires disclosure of the licensee's agency
4 relationship in a specific transaction.

5 Sec. 4. Duties of a Seller's Agent. Prescribes the additional
6 duties of a licensee representing the seller or landlord only.

7 Sec. 5. Duties of a Buyer's Agent. Prescribes the additional
8 duties of a licensee representing the buyer or tenant only.

9 Sec. 6. Duties of a Dual Agent. Prescribes the additional
10 duties of a licensee representing both parties in the same
11 transaction, and requires the written consent of both parties
12 to the licensee acting as a dual agent.

13 Sec. 7. Duration of Agency Relationship. Describes when an
14 agency relationship begins and ends. Provides that the duties
15 of accounting and confidentiality continue after the
16 termination of an agency relationship.

17 Sec. 8. Compensation. Allows brokers to share compensation
18 with cooperating brokers. States that payment of compensation
19 does not necessarily establish an agency relationship. Allows
20 brokers to receive compensation from more than one party in a
21 transaction with the parties' consent.

22 Sec. 9. Vicarious Liability. Eliminates the common law
23 liability of a party for the conduct of the party's agent or
24 subagent, unless the agent or subagent is insolvent. Also
25 limits the liability of a broker for the conduct of a subagent
26 associated with a different broker.

27 Sec. 10. Imputed Knowledge and Notice. Eliminates the common
28 law rule that notice to or knowledge of an agent constitutes
29 notice to or knowledge of the principal.

30 Sec. 11. Interpretation. This law replaces the fiduciary
31 duties owed by an agent to a principal under the common law, to
32 the extent that it conflicts with the common law.

33 (2)(a) The pamphlet required under RCW 18.86.030(1)(f) must also
34 include the following disclosure: When the seller of owner-occupied
35 residential real property enters into a listing agreement with a real
36 estate licensee where the proceeds from the sale may be insufficient to
37 cover the costs at closing, it is the responsibility of the real estate

1 licensee to disclose to the seller in writing that the decision by any
2 beneficiary or mortgagee, or its assignees, to release its interest in
3 the real property, for less than the amount the borrower owes, does not
4 automatically relieve the seller of the obligation to pay any debt or
5 costs remaining at closing, including fees such as the real estate
6 licensee's commission.

7 (b) For the purposes of this subsection, "owner-occupied real
8 property" means real property consisting solely of a single-family
9 residence, a residential condominium unit, or a residential cooperative
10 unit that is the principal residence of the borrower.

11 **Sec. 3.** RCW 4.16.040 and 2007 c 124 s 1 are each amended to read
12 as follows:

13 The following actions shall be commenced within six years:

14 (1) An action upon a contract in writing, or liability express or
15 implied arising out of a written agreement, except as provided for in
16 section 1(2) of this act.

17 (2) An action upon an account receivable. For purposes of this
18 section, an account receivable is any obligation for payment incurred
19 in the ordinary course of the claimant's business or profession,
20 whether arising from one or more transactions and whether or not earned
21 by performance.

22 (3) An action for the rents and profits or for the use and
23 occupation of real estate."

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24 On page 1, line 2 of the title, after "property" strike the
25 remainder of the title and insert "; amending RCW 18.86.120 and
26 4.16.040; and adding a new section to chapter 64.04 RCW."

EFFECT: (1) If a beneficiary agrees to a short sale of

owner-occupied residential property, it must provide written notice to the seller, stating whether or not it will pursue the deficiency, the amount of the outstanding debt, and the fact that the beneficiary may collect upon the debt for three years after releasing its interest, and that the seller has the ability to negotiate for a full release of the debt.

(2) If a court action is not pursued within three years of releasing its security interest, the beneficiary forfeits the right to collect upon the debt.

(3) These provisions only apply to debts incurred by individuals primarily for personal, family, or household purposes and does not apply to debts for business, commercial, or agricultural purposes.

(4) The real estate pamphlet is amended to state that real estate licensees are to notify sellers that a decision by any beneficiary to release its interest in the real property does not automatically relieve the seller of the obligation to pay any debt remaining at closing, including fees such as the real estate licensee's commission.

(5) The three-year statute of limitations for deficiencies on short sales is cross-referenced in the six-year written contract statute of limitation statute.

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