

Distressed Property Law 2009
A message from your industry partners

Effective immediately, the Distressed Property Law has been revised. There is now a general exemption for all real estate agents and brokers who provide real estate services pursuant to the Agency Law. So long as agents and brokers do not participate in a distressed home conveyance (essentially a scam transaction), agents and brokers cannot become distressed home consultants.

Buyers who purchase or close a transaction within 20 days of a foreclosure sale will not be distressed home consultants so long as seller is represented by a lawyer or real estate agent/broker. In the case of delayed possession, the possession can be for no more than 20 days and must be for the purpose of allowing seller to relocate to a new residence, and again, seller must be represented.

The statewide listing agreements have been revised to eliminate language relative to whether seller is a distressed seller and to add a paragraph stating that listing agent will not participate in a distressed home conveyance. The DH listing agreements have been eliminated altogether. There is no need to have sellers sign a revised listing agreement if sellers are already subject to a listing agreement. However, effective immediately, brokers should destroy all old listing agreements and begin using only the newly revised listing agreements. The new language is boiler plate so there are no additional boxes to check on the revised form.

The Buyer Agency Forms (41A and B) have been revised to include a paragraph stating that buyer's agent will not participate in a distressed home conveyance. Again, there is no need to have buyers sign this new form if buyers have already signed a buyer agency agreement but brokers should destroy old buyer agency agreements and replace them with this revised form. Also, as with the listing agreement, the new language is boiler plate so there is no need for buyer to check additional boxes. (At the request of the Statewide Forms Task Force and unrelated to this change in law, form 41A was also modified to include an option for buyer and agent to have an exclusive agency relationship.)

Forms 22NFW and 22FSBO have been combined into a single form (22 FSBO) and should be used when seller is unrepresented by either a lawyer or a real estate agent/broker and when a represented seller intends to delay possession for more than 20 days following closing. The form will assist buyer in determining that a foreclosure sale is not scheduled within 20 days of closing or mutual agreement. If seller was intending to retain possession after closing, the form will set possession on closing if seller is distressed. If unrepresented, distressed has a foreclosure sale pending within 20 days of closing or mutual agreement, buyer will either have to insure that seller is represented by a lawyer or a real estate broker or buyer will become a distressed home consultant. Likewise, if unrepresented, distressed seller retains any possession after closing or if represented, distressed seller retains possession for more than 20 days after closing, buyer will either have to modify those facts or become a distressed home consultant.

Finally, under the revised law, a distressed property does not have to be owner occupied but seller does have to have lived in the residence within 180 days of when the purchase agreement was signed or closed. Also, condo units in buildings with more than four units can be distressed properties.

More detailed additional information is available from the Washington REALTORS® and NWMLS websites. www.nwmls.com www.warealtor.org