

HB 2791 – Distressed Property Law – Issue Summary

- 1) **HB 2791, the Distressed Property Law is legislation intended to protect vulnerable property owners from scams to steal the property owner's equity. The law goes into effect June 12, 2008.**
 - a) Owners of distressed homes have been victimized by "equity skimmers." Distressed homes are owned by homeowners who
 - are at risk of losing their home due to non-payment of taxes.
 - are at least 30 days late on their mortgage payment.
 - are in default of a mortgage term so that the lender could accelerate the balance owed.
 - believe they are likely to default on the mortgage within 4 months and tell this to, among others, the real estate agent.
 - b) The skimmers claimed they would rescue the homeowners by taking title, renting back to the homeowners, and then later allowing the homeowners to repurchase the property from the skimmer.
 - c) In reality, the skimmers know the property owners will not be able to make the rent payments and will never be able to afford to buy the house back; then, they pocket the property owner's equity. This law was intended to stop this type of unethical transaction that victimizes homeowners.
 - d) The Governor's Task Force on Homeowner Security (on which REALTORS® served) called for legislation to protect distressed homeowners. The bill, in its original form, was modeled after legislation passed in Minnesota and similar bills passed in 10 states.
- 2) **The law, as passed, has broader implications on our industry and the real estate transaction.**
 - a) An unintended consequence of the law potentially makes many agents "Distressed Home Consultants". The new law defines the term "Distressed Home Consultant" as anyone who, among other things, helps or offers to help a distressed homeowner save their home from foreclosure if the seller is either 30 days behind on their mortgage payment or believes they could become late on mortgage payments in the next four months.
 - b) A Distressed Home Consultant owes fiduciary duties to the seller, must use a special listing agreement and must write the listing agreement in the language used to negotiate the agreement.
 - c) It is the recommendation of the Washington REALTORS® and the Northwest Multiple Listing Service that agents and brokers who use the statewide listing agreement require sellers who are in current listing agreements to sign an addendum to the listing agreement or a new agreement that complies with the specific language in the new law. New statewide forms are being drafted and will be released, with comprehensive instructions for their use, by June 5. The new agreements will need to be signed not later than June 12, the effective date of the law.

3) The Washington REALTORS® is working in collaboration with the NWMLS and other industry lawyers to prepare members to meet requirements of the new distressed properties law.

- a) Members of the real estate brokerage industry must operate under the law while protecting themselves from liability.
- b) Washington REALTORS® Administrative, Government Affairs, Communications, Members Services, Education and Legal staff in cooperation with NWMLS and real estate attorneys representing MLS's and brokerages from around the state are working to provide the necessary information, classes, advice and forms prior to the bill going into effect on June 12, 2008.
- c) Washington REALTORS® and NWMLS are notifying their entire memberships regarding the new law and are providing a link to an FAQ information source.
- d) Washington REALTORS® and NWMLS are providing classes to teach brokers the requirements of the new law (Weeks of May 12 & 19) at no cost and throughout the state so that every broker can attend.
- e) Washington REALTORS® and NWMLS are creating a DVD that brokers can use in their offices to educate their agents.
- f) Washington REALTORS® have created a toll-free information line for our members to call to ask questions and sign up for classes. The number is #888-222-8843 (internal extension 198). We have created a web address where REALTORS® can find information on classes and updates: http://www.warealtor.org/distressed_properties.asp. Information and registration for the NWMLS classes are available at www.nwmls.com.
- g) Washington REALTORS® is looking at solutions for changing the state law in 2009 to correct the problems that were created by the legislation. We are working with the Attorney General to add language to the law next session minimizing the effect of the law on normal real estate services, yet still providing the consumer protection it was originally intended to have.

4) Brokers and agents will be provided the resources needed to help comply with the law.

- a) Please do not speculate about what the solution(s) might be, and discourage others from doing so. Speculation can create confusion and misinformation that could increase the risk and liability for agents and brokers.
- b) Washington REALTORS® and NWMLS in coordination with industry attorneys continue to work and develop agreed-upon recommendations for how best to comply with the new law.

5) HB 2791 was monitored by Washington REALTORS®.

- a) The legislation was modeled after Minnesota legislation adopted in 2004. It was important legislation recommended by the Governor's Homeowners Security Task Force to address the problem of equity skimmers and legislators wanted to pass measures to protect victimized homeowners.

- b) HB 2791 was introduced on January 16, and the REALTORS® began tracking it. The bill passed the House, and then went to the Senate. The version of the legislation passed by the House did not include the broad definition for "Distressed Home Consultants" until it was added in the Senate.
- c) March 6 – The Senate adopted a striking amendment and approved the amended bill (39-6). This new striking amendment included the language regarding "Distressed Home Consultants" and form requirements from SB 6695 that had died in the Senate.
- d) March 8 – (less than a week before the Legislature adjourned) the House sent the bill back to the Senate and asked the Senate to "recede" (back off) from the Senate's amendment.
- e) March 11 – (just 48 hours before the Legislature adjourned) a new striking amendment was introduced on the Senate floor and the Senate approved the amended bill (46-3). An amendment to the striking amendment was also introduced, which the Senate adopted, exempting some other professionals from the bill.
- f) March 12 – With pressure to ensure the bill addressing problems with distressed home transactions was passed by the legislature before the end of session, and with little time remaining, the House concurred with the Senate amendments and approved the bill (97-0).
- g) March 13 – Legislature adjourns.
- h) REALTORS® did not provide input to the striking amendments during the session's final days, relying on the Attorney General's understanding that the House would not agree with the Senate version. Legislators did not fully comprehend the ramifications of the well-intended legislation on the real estate industry, intending for the legislation to only affect distressed property transactions.
- i) REALTOR® lobbyists and real estate attorneys who were following these developments, communicated with the Attorney General's office and key legislators on several occasions to indicate our concerns with certain aspects of the legislation while it was in the policy committees, and after the House refused to concur with the Senate amendments. Also, as early as February, the industry requested real estate agents be exempt from the bill. But the request was denied.

6) Questions & Comments

REALTORS® with questions, comments or concerns can call toll free at #888-222-8843 (internal extension 198). Also watch the FAQ information sheet that is posted on Washington REALTORS® website, which will be updated as we get new information at:

http://www.warealtor.org/distressed_properties.asp .