

HB 2791 - S AMD 206

By Senator Weinstein

ADOPTED 03/06/2008

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

3 "Sec. 1. RCW 61.34.020 and 1988 c 33 s 4 are each amended to read
4 as follows:

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

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

10 ~~(2) "Dwelling" means a single, duplex, triplex, or four unit family~~
11 ~~residential building.~~

12 ~~(3) "Person" includes any natural person, corporation, joint stock~~
13 ~~association, or unincorporated association.~~

14 ~~(4)~~) An "act of equity skimming" occurs when:

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

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

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

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

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

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

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

17 (2) "Distressed home" means either:

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

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

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

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

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

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

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

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

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

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

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

7 (viii) Avoid or ameliorate the impairment of the distressed
8 homeowner's credit resulting from the recording of a notice of trustee
9 sale, the filing of a petition to foreclose, or the conduct of a
10 foreclosure sale;

11 (ix) Purchase or obtain an option to purchase the distressed
12 homeowner's residence within twenty days of an advertised or docketed
13 foreclosure sale;

14 (x) Arrange for the distressed homeowner to become a lessee or
15 tenant entitled to continue to reside in the distressed homeowner's
16 residence;

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

19 (xii) Engage in any documentation, grant, conveyance, sale, lease,
20 trust, or gift by which the distressed homeowner clogs the distressed
21 homeowner's equity of redemption in the distressed homeowner's
22 residence; or

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

26 "Distressed home consultant" does not mean a financial institution
27 that the distressed homeowner is a customer of, a nonprofit credit
28 counseling service, or a licensed attorney.

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

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

34 (a) A distressed homeowner transfers an interest in the distressed
35 home to a distressed home purchaser;

36 (b) The distressed home purchaser allows the distressed homeowner
37 to occupy the distressed home; and

1 (c) The distressed home purchaser or a person acting in
2 participation with the distressed home purchaser conveys or promises to
3 convey the distressed home to the distressed homeowner, provides the
4 distressed homeowner with an option to purchase the distressed home at
5 a later date, or promises the distressed homeowner an interest in, or
6 portion of, the proceeds of any resale of the distressed home.

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

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

14 (8) "Dwelling" means a single, duplex, triplex, or four-unit family
15 residential building.

16 (9) "Financial institution" means any federally or state chartered
17 bank or trust company, savings bank or savings and loan association, or
18 credit union.

19 (10) "Homeowner" means a person who owns and occupies a dwelling as
20 his or her primary residence, whether or not his or her ownership
21 interest is encumbered by a mortgage, deed of trust, or other lien.

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

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

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

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

32 (i) The mortgagee;

33 (ii) A person licensed or required to be licensed under chapter
34 19.134 RCW;

35 (iii) A person licensed or required to be licensed under chapter
36 19.146 RCW;

37 (iv) A person licensed or required to be licensed under chapter
38 18.85 RCW;

1 (v) An attorney-at-law;

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

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

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

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

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

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

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

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

22 NEW SECTION. Sec. 2. (1) A distressed home consulting transaction
23 must:

24 (a) Be in writing in at least twelve-point font;

25 (b) Be in the same language as principally used by the distressed
26 home consultant to describe his or her services to the distressed
27 homeowner. If the agreement is written in a language other than
28 English, the distressed home consultant shall cause the agreement to be
29 translated into English and shall deliver copies of both the original
30 and English language versions to the distressed homeowner at the time
31 of execution and shall keep copies of both versions on file in
32 accordance with subsection (2) of this section. Any ambiguities or
33 inconsistencies between the English language and the original language
34 versions of the written agreement must be strictly construed in favor
35 of the distressed homeowner;

36 (c) Fully disclose the exact nature of the distressed home
37 consulting services to be provided, including any distressed home

1 conveyance that may be involved and the total amount and terms of any
2 compensation to be received by the distressed home consultant or anyone
3 working in association with the distressed home consultant;

4 (d) Be dated and signed by the distressed homeowner and the
5 distressed home consultant;

6 (e) Contain the complete legal name, address, telephone number, fax
7 number, e-mail address, and internet address if any, of the distressed
8 home consultant, and if the distressed home consultant is serving as an
9 agent for any other person, the complete legal name, address, telephone
10 number, fax number, e-mail address, and internet address if any, of the
11 principal; and

12 (f) Contain the following notice, which must be initialed by the
13 distressed homeowner, in bold face type and in at least fourteen-point
14 font:

15 "NOTICE REQUIRED BY WASHINGTON LAW

16 THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF
17 YOUR HOME.

18 . . . Name of distressed home consultant . . . or anyone working
19 for him or her CANNOT guarantee you that he or she will be able to
20 refinance your home or arrange for you to keep your home. Continue
21 making mortgage payments until refinancing, if applicable, is approved.
22 You should consult with an attorney before signing this contract.

23 If you sign a promissory note, lien, mortgage, deed of trust, or
24 deed, you could lose your home and be unable to get it back."

25 (2) At the time of execution, the distressed home consultant shall
26 provide the distressed homeowner with a copy of the written agreement,
27 and the distressed home consultant shall keep a separate copy of the
28 written agreement on file for at least five years following the
29 completion or other termination of the agreement.

30 (3) This section does not relieve any duty or obligation imposed
31 upon a distressed home consultant by any other law including, but not
32 limited to, the duties of a credit service organization under chapter
33 19.134 RCW or a person required to be licensed under chapter 19.146
34 RCW.

35 NEW SECTION. **Sec. 3.** A distressed home consultant has a fiduciary
36 relationship with the distressed homeowner, and each distressed home

1 consultant is subject to all requirements for fiduciaries otherwise
2 applicable under state law. A distressed home consultant's fiduciary
3 duties include, but are not limited to, the following:

4 (1) To act in the distressed homeowner's best interest and in
5 utmost good faith toward the distressed homeowner, and not compromise
6 a distressed homeowner's right or interest in favor of another's right
7 or interest, including a right or interest of the distressed home
8 consultant;

9 (2) To disclose to the distressed homeowner all material facts of
10 which the distressed home consultant has knowledge that might
11 reasonably affect the distressed homeowner's rights, interests, or
12 ability to receive the distressed homeowner's intended benefit from the
13 residential mortgage loan;

14 (3) To use reasonable care in performing his or her duties; and

15 (4) To provide an accounting to the distressed homeowner for all
16 money and property received from the distressed homeowner.

17 NEW SECTION. **Sec. 4.** (1) A person may not induce or attempt to
18 induce a distressed homeowner to waive his or her rights under this
19 chapter.

20 (2) Any waiver by a homeowner of the provisions of this chapter is
21 void and unenforceable as contrary to public policy.

22 NEW SECTION. **Sec. 5.** A distressed home purchaser shall enter into
23 a distressed home reconveyance in the form of a written contract. The
24 contract must be written in at least twelve-point boldface type in the
25 same language principally used by the distressed home purchaser and
26 distressed homeowner to negotiate the sale of the distressed home, and
27 must be fully completed, signed, and dated by the distressed homeowner
28 and distressed home purchaser before the execution of any instrument of
29 conveyance of the distressed home.

30 NEW SECTION. **Sec. 6.** The contract required in section 5 of this
31 act must contain the entire agreement of the parties and must include
32 the following:

33 (1) The name, business address, and telephone number of the
34 distressed home purchaser;

35 (2) The address of the distressed home;

1 (3) The total consideration to be provided by the distressed home
2 purchaser in connection with or incident to the sale;

3 (4) A complete description of the terms of payment or other
4 consideration including, but not limited to, any services of any nature
5 that the distressed home purchaser represents that he or she will
6 perform for the distressed homeowner before or after the sale;

7 (5) The time at which possession is to be transferred to the
8 distressed home purchaser;

9 (6) A complete description of the terms of any related agreement
10 designed to allow the distressed homeowner to remain in the home, such
11 as a rental agreement, repurchase agreement, or lease with option to
12 buy;

13 (7) A complete description of the interest, if any, the distressed
14 homeowner maintains in the proceeds of, or consideration to be paid
15 upon, the resale of the distressed home;

16 (8) A notice of cancellation as provided in section 8 of this act;
17 and

18 (9) The following notice in at least fourteen-point boldface type
19 if the contract is printed, or in capital letters if the contract is
20 typed, and completed with the name of the distressed home purchaser,
21 immediately above the statement required in section 8 of this act;

22 "NOTICE REQUIRED BY WASHINGTON LAW

23 Until your right to cancel this contract has ended, (Name)
24 or anyone working for (Name) CANNOT ask you to sign or have
25 you sign any deed or any other document."

26 The contract required by this section survives delivery of any
27 instrument of conveyance of the distressed home and has no effect on
28 persons other than the parties to the contract.

29 NEW SECTION. **Sec. 7.** (1) In addition to any other right of
30 rescission, a distressed homeowner has the right to cancel any contract
31 with a distressed home purchaser until midnight of the fifth business
32 day following the day on which the distressed homeowner signs a
33 contract that complies with this chapter or until 8:00 a.m. on the last
34 day of the period during which the distressed homeowner has a right of
35 redemption, whichever occurs first.

1 (2) Cancellation occurs when the distressed homeowner delivers to
2 the distressed home purchaser, by any means, a written notice of
3 cancellation to the address specified in the contract.

4 (3) A notice of cancellation provided by the distressed homeowner
5 is not required to take the particular form as provided with the
6 contract.

7 (4) Within ten days following the receipt of a notice of
8 cancellation under this section, the distressed home purchaser shall
9 return without condition any original contract and any other documents
10 signed by the distressed homeowner.

11 NEW SECTION. **Sec. 8.** (1) The contract required in section 5 of
12 this act must contain, in immediate proximity to the space reserved for
13 the distressed homeowner's signature, the following conspicuous
14 statement in at least fourteen-point boldface type if the contract is
15 printed, or in capital letters if the contract is typed:

16 "You may cancel this contract for the sale of your house without any
17 penalty or obligation at any time before

18
19 (Date and time of day)

20 See the attached notice of cancellation form for an explanation of this
21 right."

22 The distressed home purchaser shall accurately enter the date and
23 time of day on which the cancellation right ends.

24 (2) The contract must be accompanied by a completed form in
25 duplicate, captioned "NOTICE OF CANCELLATION" in twelve-point boldface
26 type if the contract is printed, or in capital letters if the contract
27 is typed, followed by a space in which the distressed home purchaser
28 shall enter the date on which the distressed homeowner executes any
29 contract. This form must be attached to the contract, must be easily
30 detachable, and must contain in at least twelve-point type if the
31 contract is printed, or in capital letters if the contract is typed,
32 the following statement written in the same language as used in the
33 contract:

34 "NOTICE OF CANCELLATION
35
36 (Enter date contract signed)

1 You may cancel this contract for the sale of your house, without any
2 penalty or obligation, at any time before

3

4 (Enter date and time of day)

5 To cancel this transaction, personally deliver a signed and dated copy
6 of this cancellation notice to

7

8 (Name of purchaser)

9 at

10

11 (Street address of purchaser's place of business)

12 NOT LATER THAN

13

14 (Enter date and time of day)

15 I hereby cancel this transaction.

16

17 (Date)

18

19 (Seller's signature)"

20 (3) The distressed home purchaser shall provide the distressed
21 homeowner with a copy of the contract and the attached notice of
22 cancellation at the time the contract is executed by all parties.

23 (4) The five-business-day period during which the distressed
24 homeowner may cancel the contract must not begin to run until all
25 parties to the contract have executed the contract and the distressed
26 home purchaser has complied with this section.

27 NEW SECTION. **Sec. 9.** (1) Any provision in a contract that
28 attempts or purports to require arbitration of any dispute arising
29 under this chapter is void at the option of the distressed homeowner.

30 (2) This section applies to any contract entered into on or after
31 the effective date of this act.

32 NEW SECTION. **Sec. 10.** A distressed home purchaser shall not:

33 (1) Enter into, or attempt to enter into, a distressed home
34 conveyance with a distressed homeowner unless the distressed home

1 purchaser verifies and can demonstrate that the distressed homeowner
2 has a reasonable ability to pay for the subsequent conveyance of an
3 interest back to the distressed homeowner. In the case of a lease with
4 an option to purchase, payment ability also includes the reasonable
5 ability to make the lease payments and purchase the property within the
6 term of the option to purchase. An evaluation of a distressed
7 homeowner's reasonable ability to pay includes debt to income ratios,
8 fair market value of the distressed home, and the distressed
9 homeowner's payment and credit history. There is a rebuttable
10 presumption that the distressed home purchaser has not verified a
11 distressed homeowner's reasonable ability to pay if the distressed home
12 purchaser has not obtained documentation of assets, liabilities, and
13 income, other than an undocumented statement, of the distressed
14 homeowner;

15 (2) Fail to either:

16 (a) Ensure that title to the distressed home has been reconveyed to
17 the distressed homeowner; or

18 (b) Make payment to the distressed homeowner so that the distressed
19 homeowner has received consideration in an amount of at least eighty-
20 two percent of the fair market value of the property as of the date of
21 the eviction or voluntary relinquishment of possession of the
22 distressed home by the distressed homeowner. For the purposes of this
23 subsection (2)(b), the following applies:

24 (i) There is a rebuttable presumption that an appraisal by a person
25 licensed or certified by an agency of the federal government or this
26 state to appraise real estate constitutes the fair market value of the
27 distressed home;

28 (ii) "Consideration" means any payment or thing of value provided
29 to the distressed homeowner, including unpaid rent owed by the
30 distressed homeowner before the date of eviction or voluntary
31 relinquishment of the distressed home, reasonable costs paid to
32 independent third parties necessary to complete the distressed home
33 conveyance transaction, the payment of money to satisfy a debt or legal
34 obligation of the distressed homeowner, or the reasonable cost of
35 repairs for damage to the distressed home caused by the distressed
36 homeowner. "Consideration" does not include amounts imputed as a down
37 payment or fee to the distressed home purchaser or a person acting in
38 participation with the distressed home purchaser;

1 (3) Enter into repurchase or lease terms as part of the distressed
2 home conveyance that are unfair or commercially unreasonable, or engage
3 in any other unfair or deceptive acts or practices;

4 (4) Represent, directly or indirectly, that (a) the distressed home
5 purchaser is acting as an advisor or consultant, (b) the distressed
6 home purchaser is acting on behalf of or in the interests of the
7 distressed homeowner, or (c) the distressed home purchaser is assisting
8 the distressed homeowner to save the distressed home, buy time, or use
9 other substantially similar language;

10 (5) Misrepresent the distressed home purchaser's status as to
11 licensure or certification;

12 (6) Perform any of the following until after the time during which
13 the distressed homeowner may cancel the transaction has expired:

14 (a) Accept from any distressed homeowner an execution of, or induce
15 any distressed homeowner to execute, any instrument of conveyance of
16 any interest in the distressed home;

17 (b) Record with the county auditor any document, including any
18 instrument of conveyance, signed by the distressed homeowner; or

19 (c) Transfer or encumber or purport to transfer or encumber any
20 interest in the distressed home;

21 (7) Fail to reconvey title to the distressed home when the terms of
22 the distressed home conveyance contract have been fulfilled;

23 (8) Enter into a distressed home conveyance where any party to the
24 transaction is represented by a power of attorney;

25 (9) Fail to extinguish or assume all liens encumbering the
26 distressed home immediately following the conveyance of the distressed
27 home;

28 (10) Fail to close a distressed home conveyance in person before an
29 independent third party who is authorized to conduct real estate
30 closings within the state.

31 **Sec. 11.** RCW 61.34.040 and 1988 c 33 s 3 are each amended to read
32 as follows:

33 (1) In addition to the criminal penalties provided in RCW
34 61.34.030, the legislature finds ((and declares)) that ((equity
35 skimming substantially affects)) the practices covered by this chapter
36 are matters vitally affecting the public interest((. The commission by
37 any person of an act of equity skimming or a pattern of equity skimming

1 ~~is an unfair or deceptive act or practice and unfair method of~~
2 ~~competition in the conduct of trade or commerce in violation of RCW~~
3 ~~19.86.020))~~ for the purpose of applying chapter 19.86 RCW. A violation
4 of this chapter is not reasonable in relation to the development and
5 preservation of business and is an unfair method of competition for the
6 purpose of applying chapter 19.86 RCW.

7 (2) In a private right of action under chapter 19.86 RCW for a
8 violation of this chapter, the court may double or triple the award of
9 damages pursuant to RCW 19.86.090, subject to the statutory limit. If,
10 however, the court determines that the defendant acted in bad faith,
11 the limit for doubling or tripling the award of damages may be
12 increased, but shall not exceed one hundred thousand dollars. Any
13 claim for damages brought under this chapter must be commenced within
14 four years after the date of the alleged violation.

15 (3) The remedies provided in this chapter are cumulative and do not
16 restrict any remedy that is otherwise available. The provisions of
17 this chapter are not exclusive and are in addition to any other
18 requirements, rights, remedies, and penalties provided by law. An
19 action under this chapter shall not affect the rights in the distressed
20 home held by a distressed home purchaser for value under this chapter
21 or other applicable law.

22 **Sec. 12.** RCW 59.18.030 and 1998 c 276 s 1 are each amended to read
23 as follows:

24 As used in this chapter:

25 (1) "Distressed home" has the same meaning as in RCW 61.34.020.

26 (2) "Distressed home conveyance" has the same meaning as in RCW
27 61.34.020.

28 (3) "Distressed home purchaser" has the same meaning as in RCW
29 61.34.020.

30 (4) " Dwelling unit " is a structure or that part of a structure
31 which is used as a home, residence, or sleeping place by one person or
32 by two or more persons maintaining a common household, including but
33 not limited to single family residences and units of multiplexes,
34 apartment buildings, and mobile homes.

35 ((+2)) (5) "In danger of foreclosure" means any of the following:

36 (a) The homeowner has defaulted on the mortgage and, under the

1 terms of the mortgage, the mortgagee has the right to accelerate full
2 payment of the mortgage and repossess, sell, or cause to be sold the
3 property;

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

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

9 (i) The mortgagee;

10 (ii) A person licensed or required to be licensed under chapter
11 19.134 RCW;

12 (iii) A person licensed or required to be licensed under chapter
13 19.146 RCW;

14 (iv) A person licensed or required to be licensed under chapter
15 18.85 RCW;

16 (v) An attorney-at-law;

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

19 (vii) Any other party to a distressed property conveyance.

20 (6) "Landlord" means the owner, lessor, or sublessor of the
21 dwelling unit or the property of which it is a part, and in addition
22 means any person designated as representative of the landlord.

23 ((+3)) (7) "Mortgage" is used in the general sense and includes
24 all instruments, including deeds of trust, that are used to secure an
25 obligation by an interest in real property.

26 (8) "Person" means an individual, group of individuals,
27 corporation, government, or governmental agency, business trust,
28 estate, trust, partnership, or association, two or more persons having
29 a joint or common interest, or any other legal or commercial entity.

30 ((+4)) (9) "Owner" means one or more persons, jointly or
31 severally, in whom is vested:

32 (a) All or any part of the legal title to property; or

33 (b) All or part of the beneficial ownership, and a right to present
34 use and enjoyment of the property.

35 ((+5)) (10) "Premises" means a dwelling unit, appurtenances
36 thereto, grounds, and facilities held out for the use of tenants
37 generally and any other area or facility which is held out for use by
38 the tenant.

1 (~~(6)~~) (11) "Rental agreement" means all agreements which
2 establish or modify the terms, conditions, rules, regulations, or any
3 other provisions concerning the use and occupancy of a dwelling unit.

4 (~~(7)~~) (12) A "single family residence" is a structure maintained
5 and used as a single dwelling unit. Notwithstanding that a dwelling
6 unit shares one or more walls with another dwelling unit, it shall be
7 deemed a single family residence if it has direct access to a street
8 and shares neither heating facilities nor hot water equipment, nor any
9 other essential facility or service, with any other dwelling unit.

10 (~~(8)~~) (13) A "tenant" is any person who is entitled to occupy a
11 dwelling unit primarily for living or dwelling purposes under a rental
12 agreement.

13 (~~(9)~~) (14) "Reasonable attorney's fees", where authorized in this
14 chapter, means an amount to be determined including the following
15 factors: The time and labor required, the novelty and difficulty of
16 the questions involved, the skill requisite to perform the legal
17 service properly, the fee customarily charged in the locality for
18 similar legal services, the amount involved and the results obtained,
19 and the experience, reputation and ability of the lawyer or lawyers
20 performing the services.

21 (~~(10)~~) (15) "Gang" means a group that: (a) Consists of three or
22 more persons; (b) has identifiable leadership or an identifiable name,
23 sign, or symbol; and (c) on an ongoing basis, regularly conspires and
24 acts in concert mainly for criminal purposes.

25 (~~(11)~~) (16) "Gang-related activity" means any activity that
26 occurs within the gang or advances a gang purpose.

27 NEW SECTION. Sec. 13. A new section is added to chapter 59.18 RCW
28 to read as follows:

29 In an unlawful detainer action involving property that was a
30 distressed home:

31 (1) The plaintiff shall disclose to the court whether the defendant
32 previously held title to the property that was a distressed home, and
33 explain how the plaintiff came to acquire title;

34 (2) A defendant who previously held title to the property that was
35 a distressed home shall not be required to escrow any money pending
36 trial when a material question of fact exists as to whether the

1 plaintiff acquired title from the defendant directly or indirectly
2 through a distressed home conveyance;

3 (3) There must be both an automatic stay of the action and a
4 consolidation of the action with a pending or subsequent quiet title
5 action when a defendant claims that the plaintiff acquired title to the
6 property through a distressed home conveyance.

7 NEW SECTION. **Sec. 14.** Sections 2 through 10 of this act are each
8 added to chapter 61.34 RCW."

HB 2791 - S AMD
By Senator Weinstein

ADOPTED 03/06/2008

9 On page 1, line 1 of the title, after "conveyances;" strike the
10 remainder of the title and insert "amending RCW 61.34.020, 61.34.040,
11 and 59.18.030; adding new sections to chapter 61.34 RCW; adding a new
12 section to chapter 59.18 RCW; and prescribing penalties."

EFFECT: (1) Harmonizes the definitions and terms used throughout.
(2) Incorporates provisions of SSB 6695, which:
(a) Define a "distressed home consultant" as a person who offers to
provide mortgage, debt, credit, or related assistance to a homeowner
who is in foreclosure or "in danger of foreclosure."
(b) Provide that transactions between these consultants and
homeowners must meet the following requirements: (i) The agreement
must be in writing in the language used to make the deal, include full
disclosure of services to be provided, be dated and signed by the
homeowner, and contain the consultant's full contact information; and
(ii) the consultant must provide the homeowner with a conspicuous
notice warning the homeowner of the possibility of losing his or her
home and advise the homeowner to seek an attorney.
(c) Create a fiduciary relationship between a distressed home
consultant and homeowner and enumerates the duties the consultant owes
to the homeowner.
(3) Incorporates the unlawful detainer provisions of SB 6383, which
require a plaintiff in an unlawful detainer (eviction) action involving

a distressed home to disclose to the court that the defendant previously held title to the home and explain how the plaintiff came to acquire title. Language is revised in section 13 of this act to make the intent clearer.

(4) The rights provided by this bill cannot be waived.

--- END ---