

SENATE BILL REPORT

SB 5221

As Reported by Senate Committee On:
Labor, Commerce & Consumer Protection, January 29, 2009

Title: An act relating to distressed property conveyances.

Brief Description: Regarding distressed property conveyances.

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

Brief History:

Committee Activity: Labor, Commerce & Consumer Protection: 1/26/09, 1/29/09 [DP].

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Majority Report: Do pass.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Holmquist, Ranking Minority Member; Franklin, Honeyford, King and Kline.

Staff: Alison Mendiola (786-7483)

Background: With a rise in foreclosures, there is concern about "sale-leaseback transactions" or similar transactions that appear to help a homeowner facing foreclosure. A sale-leaseback transaction occurs when a purchaser represents to a homeowner facing foreclosure that if the homeowner transfers the title foreclosure will be avoided and after a certain period of time either the purchaser will transfer the title back or promise the homeowner that the homeowner will have the option to buy back the property.

Sometimes the homeowner is unaware that he or she is transferring the title or, upon transfer of title, that the purchaser may then evict the homeowner for nonpayment of rent.

Last year the Legislature passed HB 2791 which regulates this type of transaction as a "distressed home conveyance" and creates other requirements designed to protect homeowners facing foreclosure. For example, duties and requirements for purchasers, known as "distressed home consultants," are also created.

A person is a distressed home consultant if the person contacts a distressed homeowner and offers to perform certain services that the person claims will essentially save the home from

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foreclosure. One of the 12 services that could make a person a distressed home consultant is obtaining a purchase option on the distressed homeowner's residence within 20 days of a foreclosure sale. Another service that could make a person a distressed home consultant is if the person arranges for the distressed homeowner to stay in the residence as a lessee or tenant.

Realtors, who are required to be licensed and have a duty to act in good faith, are not exempt from the definition of distressed home consultant and, over the interim, raised concerns that the work they do in their normal course of business could be interpreted as a distressed home consultant, which triggers certain requirements. For example, a distressed home consultant owes a homeowner a fiduciary duty and the transaction must be in writing in a format proscribed by statute.

The realtor's concerns led to an informal work group consisting of state agencies, the Attorney General's Office, consumer advocates, legislators, and representatives for realtors that met to examine the issues raised by real estate brokers and salespersons.

Summary of Bill: A licensed real estate broker or salesperson is not a distressed home consultant when that person is providing services that are governed by the real estate brokerage laws and the broker or salesperson is not engaged in activities designed to result in a distressed home conveyance.

A person is not a distressed home consultant when the person assists a homeowner in obtaining a contract to purchase the distressed home within 20 days of foreclosure and the homeowner is represented in the transaction by an attorney or a licensed real estate broker or salesperson.

A person is not a distressed home consultant when the person arranges for the homeowner to stay in the home as a lessee or tenant, if the continued residence is for no more than 20 days to arrange for a new residence and the homeowner is represented in the transaction by an attorney or a licensed real estate broker or salesperson.

The definition of "homeowner" is changed to include a person who owns and occupied the home within 180 days of the conveyance or mutual acceptance of an agreement to convey an interest in the home.

The definition of "dwelling" is changed to include condominiums, residential cooperative units and other types of residential planned unit development, and manufactured homes.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony: PRO: A Governor-directed workgroup including state agencies, the Attorney General's Office, legislators, real estate agents, consumer advocates and other stakeholders met over the interim to craft this language fixing the bill (HB 2791) that passed the Legislature last year. This bill is the result of the workgroup and is agreed upon. Clarifying the role of real estate agents is important so they are not unintentionally deemed to be "distressed home consultants."

OTHER: Appraisers should also be exempt from the requirements of the bill.

Persons Testifying: PRO: Jerry McDonald, Department of Licensing; Joe Vincent, Department of Financial Institutions; Annette Fitzsimmons, Washington Realtors; Chris Osborn, Northwest Multiple Listing Services; Bruce Neas, Columbia Legal Services.

OTHER: Jim Irish, Appraiser Coalition of Washington; TK Bentler, Appraisers of Washington.