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No. 67176-6-I

COURT OF APPEALS,
DIVISION I
OF THE STATE OF WASHINGTON

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COURT OF APPEALS
DIVISION I
SEATTLE, WA
[Signature]

Lawrence Jametsky, a single man,

Appellant. NO. 10-2-24428-0 KNT

vs.

Rodney A. and Jane Doe Olsen,
Mathew and Jane Doe Flynn, and
Michael and Jane Doe Haber,

Respondents.

BRIEF OF APPELLANT



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I. ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The Trial Court erred in *denying* the Plaintiff’s Motion for Summary Judgment seeking a ruling that Defendants violated the Washington Distressed Property Act (hereinafter “WDPCA”), RCW 61.34;

2. The trial court erred in *granting* the Defendant’s Motion for Summary Judgment dismissing all of the Plaintiff’s claims as a matter of law because it held that Jametsky was not at risk of loss of his home so the Distressed Property Act did not apply.

B. Issues Pertaining to the Assignment of Error

1. As a consumer protection statute, should the WDPCA be liberally construed in favor of the Plaintiff as is the case with the Washington Consumer Protection Act?

2. Did Jametsky state a *prima facie* case that the sale to Olsen was a “distressed home conveyance” under the WDPCA when he alleged:

(a) Due to four years of delinquent property taxes the Jametsky property was subject to foreclosure, but King County had not yet scheduled a tax sale? CP 177.

(b) He was unemployed and “feared” foreclosure? CP 176.

(c) He was depressed and unsophisticated? CP 177.

3. Were defendants “Distressed Home Consultants?”

4. Was the Jametsky home a “distressed home” and at risk of loss because his property taxes were over three years delinquent?

5. Were Defendants “distressed home consultants” or “distressed home purchasers” when they acquired this property and told Jamestky:

(a) They would loan him enough money to save his house from loss because of delinquent taxes? CP 176.

(b) They (Olsen) obtained his signature on a deed at a local Starbucks, without using an escrow, without paying him at least 82% of his equity, granting him an option to repurchase and a right to remain in

possession during the option period by paying rent, with no evidence he could repay the loan or repurchase the property, and without giving him notice of his rights to cancel the transaction? CP 177

II. STANDARD OF APPELLATE REVIEW AND FINALITY OF ORDER

A. Standard of Review

The appropriate standard of review is *de novo* because the issue on appeal is based on an application of a Washington Statute to undisputed facts. *State v. Nemitz*, 105 Wn.App. 205, 19 P.3d 480 (2001) (holding that the standard of review for fact based rulings is abuse of discretion and the standard of review for interpretation of the law is *de novo*).

B. Finality of Order

A final Judgment is appealable as a matter of right in a civil case. RAP 2.2. Denying a Motion for Summary Judgment under CR 56(b) has been held to be an appealable final order. *Seattle First National Bank v. Marshall*, 16 Wn.App. 503, 557 P.2d 352 (1976).

III. STATEMENT OF THE CASE

A. Procedural History

In October 2008, Larry Jamestky was fraudulently induced to transfer title of his home to Rod Olsen. CP 203. When facing eviction two years after this transaction, he was brought to an attorney by friends.

CP 176-177. A suit was filed on his behalf in King County Superior Court a few days later, on July 2, 2010, to recover his home. Shortly thereafter an unlawful detainer action, *Olsen v. Jametsky*, King County Case No. 10-2-24861-7 was filed. Both actions were consolidated as required by RCW 59.18.363, on October 13, 2010. Both parties then moved for Summary Judgment on March 24, 2011, and the motion was heard by the Honorable Jay V. White on April 22, 2011, who orally ruled for Defendants and against the Plaintiff concluding Jametsky's home was not "at risk of loss." On May 12, 2011, the court awarded judgment for fees and costs against Jametsky. On May 19, 2011, a Notice of Appeal was filed. Thereafter, a writ of restitution was issued (June 23, 2011) and Jametsky and his family were evicted by the King County Sheriff.

B. Factual History

Larry Jametsky is a 39 year old man, who inherited his home located at 2433 S. 135th Street, Seattle, from his grandfather "free and clear" of any encumbrances. CP 176, Jametsky Decl. at 1. Mr. Jametsky did not finish school beyond 8th grade, and is unable to read legal documents. *Id.*

In late 2008, his sixteen year old son was murdered and Mr. Jametsky fell into a deep depression. *Id.* at 2. He also feared a tax

foreclosure on his property as he owed over \$10,000 in back taxes to the county. CP 192.

In October of 2008, four days after the death of his son, Mr. Michael Haber and Mr. Matthew Flynn came to Jametsky's home and offered to loan him money to pay his back taxes and pay off liens on the house. *Id.* On or about November 10, 2008, Mr. Haber came to the house and got Jametsky out of bed and drove him to a nearby Starbucks, where he signed a number of documents. *Id.* Mr. Jametsky was not able to read or understand the loan documents he was asked to sign, but believed he was getting a loan to pay off the liens. *Id.* Mr. Jametsky did not receive a notice of cancellation required by RCW 61.34.110 allowing him a five day opportunity to cancel. On that date he signed a Purchase and Sale Agreement and a warranty deed and the deed was recorded two days later. CP 203.

According to the HUD settlement statement obtained in discovery, the home was sold for \$100,000 to Mr. Rodney Olsen. CP 192. Of the sale proceeds, approximately \$58,000 was used to pay off an unsecured note to "Beneficial." Approximately \$7,000 was paid to "Flynn Investment" and \$3,500 was paid to "Michael Haber." CP 192 - 3. Other payments in the amount of approximately \$11,200 went toward county taxes, the sewer bill, and collection agencies. *Id.* Mr. Jametsky received

only \$4,697 from the “sale” of his home, and he only learned later that he had deeded his home to Mr. Rodney Olsen. CP 194. Mr. Jametsky also discovered later that he had unwittingly signed a “Real Estate Excise Tax Affidavit” and “Affidavit of Verification of Sales Price” which listed the \$100,000 sales price, despite an assessed value of \$272,000, resulting in a very low excise tax paid to the State of Washington. CP 196. An appraisal obtained by Mr. Jametsky in May of 2010, listed the market value of the home to be \$230,000, consistent with the County Assessor’s valuation. CP 205.

Thereafter, Mr. Jametsky paid approximately \$800 each month to Mr. Olsen. But, soon after the contract was signed, Mr. Olsen attempted to evict Mr. Jametsky. CP 177 - 178. Mr. Jametsky also learned later that he had signed a residential lease and a “Real Estate Purchase Option Agreement” containing an option to repurchase the property for \$110,000, expiring May 31, 2010. CP 218. Because of his unstable unemployment, Mr. Jametsky did not have the ability to repurchase his home before the option contract expired. CP 176 - 177.

IV. ARGUMENT

A. Summary of Argument

Mr. Jametsky’s position is that the sale of his home violated the Washington Distressed Property Act and that he demonstrated this as a

matter of law and as a matter of fact. The Defendants advanced one main argument to defeat Jametsky's claim which the court adopted, that Jametsky's home was not a "distressed home" as defined by RCW 61.34.020(2) because a tax foreclosure sale had not been formally scheduled by the County so it was not "at risk of loss." The Plaintiff argues that this is a very restrictive application of the statute which should be liberally construed, in favor of its intended beneficiaries, and to effectuate the clear legislative purpose. We know for a certainty that his home was at a "risk of loss" to Olsen, because Olsen now has possession of it. This court should therefore reverse the trial court and direct that judgment in favor of Jametsky be entered voiding the sale and award him his reasonable attorney fees and costs. Finally, Jametsky urges this court to hold that the facts alleged by him constitute unfair and deceptive practices under the Consumer Protection Act entitling him to damages, return of his property, enhanced damages under RCW 61.34.040(2), and reasonable attorney fees and costs. Because the statute has complex definitions but is relatively short, it is attached as Appendix A in accordance with RAP 10.4(c).

B. The Trail Court Erred by Dismissing Plaintiff's Claims for Violation of the WDPCA and the CPA

1. The Superior Court's Interpretation of the WDPCA Conflicts with the Plain Language of the Statute

“Statutory interpretation begins with the statute’s plain meaning.”

Lake v. Woodcreek Homeowners Ass’n. Wn. 2d, 2009 P. 3d 791, 796 (2010). The “starting point must always be ‘the statute’s plain language and ordinary meaning.’” *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (citing *Nat’l Elec. Contractors Ass’n v. Riveland*, 138 Wn.2d 9, 19, 978 P. 2d 481 (1999) . The reviewing court takes into consideration “the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions and the statutory scheme as a whole.” *Lake*, 229 P. 3d at 796 (citing *State v. Engel*, 166 Wn.2d 572, 578, 2010 P.3d 1007 (2009) . The court has an obligation to “construe statutes such that *all* of the language is given effect.” *Lake*, 229 P.3d at 796 (citing *Rest. Dev., Inc. v. Cananwill, Inc.*, 150 Wn. 2d 674, 682, 80 P.3d 598 (2003)(emphasis added). The court may examine “the legislative intent [only]” when the statute is ambiguous. *Id.* Finally, Washington courts avoid statutory interpretations that “result in unlikely, absurd or strained consequences.” *Kitsap County v. Moore*, 144 Wn.2d 292, 297, 26 P. 3d 931 (2001).

2. **The Distressed Property Act Should be Liberally Construed**

In 2008, the Washington State Legislature adopted the WDPCA to address the mortgage crisis which also prompted the legislature to enact a mediation program (The “Foreclosure Fairness Act”). The 2008 amendments made the old “Equity Skimming Act” effective to protect homeowner’s like Larry Jametsky from losing his home under economic duress. It should also be noted that the 2009, amendments to the WDPCA were deemed by the Governor to be “... necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 25, 2009].”

The legislature also made findings that the “practices covered by this chapter are matters vitally affecting the public interest for the purposes of applying [The Consumer Protection Act] Chapter 19.86 RCW. *See*, RCW 61.34.040.

The legislature eliminated the preservation of business defense to CPA claims, RCW 61.34.040(1), and increased the CPA penalties for “bad faith” violations to a \$100,000 limit. RCW 61.34.040(2).

By making the WDPCA a *per se* violation of the CPA, the Legislature made clear its intent that the WDPCA was, like the CPA

before it, a remedial statute designed to provide broad protection for Washington residents from unfair and deceptive practices.

The legislature also increased the duty of one acquiring another's home under distressed circumstances to that of a fiduciary. RCW 61.34.060.

Against this backdrop, the Appellant urges this court to interpret the law in this case, which maybe the first appellate case on the 2008, and 2009, amendments to the WDPCA, liberally, in contrast to what the trial court did by adopting a very narrow definition of "risk of loss" of appellant's home.

Generally, "remedial" legislation should be liberally construed to effect its purpose. *Building Counsel v. Department of Labor and Industries*, 91 Wn. 2d 41,44 (1978). The WDPCA is clearly a remedial statute as it provides a remedy for those persons, under distressed conditions, who are defrauded out of their homes. Moreover, the WDPCA is not only designed to make victims whole, but to punish and deter fraudulent practices with an enhanced treble damages provision and recovery of costs of suit as well as criminal sanctions. RCW 61.34.030.

Because of the legislative findings and the incorporation of the CPA remedies set forth in RCW 61.34.040, the WDPCA is entitled to a liberal interpretation to effectuate its purpose.

The New Jersey Supreme Court has very recently, and eloquently, lauded the importance of consumer protection statutes to the present foreclosure crisis:

In the midst of an unprecedented foreclosure crisis, defendants would have the Court declare this seemingly unregulated area a free-for-all zone. The drafters of the CFA [New Jersey's version of the Consumer Protection Act] expected the Act to be flexible enough to combat newly packaged forms of fraud. Lending institutions and their servicing agents are not immune from the CFA; they cannot prey on those bowed down by a foreclosure judgment and desperate to keep their homes. Furthermore, the Court does not agree that the CFA is unavailable because plaintiff could seek relief in the chancery court, pursue common law claims, or because a number of federal and state statutes regulate the mortgage lending and servicing area. The CFA is in addition to any other relief, and its counsel-free provision provides a financial incentive for members of the bar to litigate CFA cases, which benefits the poor and powerless. Also, the CFA's purpose is not only to make victims whole, but to punish and deter fraudulent practices with treble damages and costs.

Gonzalez v. Wilshire Credit, _N.J._ (Supreme Court of New Jersey.

No. 065564 – August 29, 2011, at slip opinion page 30 - 36).

C. The Defendants Have Violated the Washington Distressed Property Act

The Washington Distressed Property Conveyance Act (“WDPCA”), also formally known as the Equity Skimming Act (RCW 61.34, was passed in March of 2008, and became effective June 12, 2008.

Minor amendments to the Definitions section of the Act were made the following year and became effective upon signature by the Governor March 25, 2009. Unlike many cases decided by the appellate courts where there is scant legislative definition of terms, in the WDPCA there are over two pages of detailed definitions, RCW 61.34.020, and express legislative findings. RCW 61.34.010. Mr. Haber, Olsen and Flynn's conduct with Mr. Jametsky in October 2008, as well as the November 10, 2008 transaction between Mr. Olsen and Mr. Jametsky, unquestionably falls within the purview of this legislation.

The Distressed Property Act was passed in an effort to protect the Jametskys of the world and thwart the increasing fraudulent home foreclosure rescue scams because of a severe economic crisis. The Act was passed based on the following Legislative Finding:

The legislature finds that persons are engaging in patterns of conduct which defraud innocent homeowners of their equity interest or other value in residential dwellings under the guise of a purchase of the owner's residence but which is in fact a device to convert the owner's equity interest or other value in the residence to an equity skimmer, who fails to make payments, diverts the equity or other value to the skimmer's benefit, and leave the innocent homeowner with a resulting financial loss or debt.

The legislature further finds this activity of equity skimming to be contrary to the public policy of this state and therefore establishes the crime of equity

skimming to address this form of real estate fraud and abuse.

RCW 61.34.010.

Because Mr. Jametsky was depressed over his son's death, he did not understand what he was signing, was unemployed, and would soon be facing a tax foreclosure, he was extremely vulnerable to sophisticated scammers like Mr. Olsen, Mr. Haber and Mr. Flynn, who succeeded in getting his home for a fraction of its value.

1. Mr. Jametsky Meets the Definition of "Homeowner".

At the time of the signing of the contract (November 5, 2008), the Distressed Property Conveyances Act had been in effect for five months. Under the 2008 Act, a "Homeowner" is defined as a "person who owns and occupies a dwelling as his or her primary residence, whether or not his or her ownership is encumbered by a mortgage, deed of trust, or other lien." Here, applying the 2008 Act, as well as the 2009 Amendments, as a matter of law and fact Mr. Jametsky meets the definition of a "Homeowner," as he was living in the home at the time the contract was signed and had been for the past 25 years. CP 176. There is no dispute regarding this issue.

2. His Home Meets the Definition of a “Distressed Property” under the Act.

The definition for a “Distressed Home” has remained unchanged from the 2008 Act, which defines a “Distressed Home” as “(a) A dwelling that is in danger of foreclosure or at risk of loss due to nonpayment of taxes; or (b) a dwelling that is in danger of foreclosure or that is in the process of being foreclosed due to a default under the terms of the mortgage.” RCW 61.34.020(2). Here, as a matter of law, Mr. Jametsky’s home is a “Distressed Home” under sub section (a) because he was three years in arrears on his property taxes on his home and he feared the county would foreclose on his home to satisfy the judgment.¹ CP 176 - 178. The key language that the parties and the court focused on at Summary Judgment was “a dwelling that is in danger of foreclosure or at a risk of loss due to nonpayment of taxes.” This subsection (a) applies to this case and subsection (b) applies to a threatened mortgage foreclosure, a slightly different risk.

In interpreting a statute, the appellate courts give meaning to all of the words. Here, we have two parts relating to delinquent property taxes covered by the act, one where the home is “in danger of foreclosure” or (in the disjunctive) the other where the dwelling is “at a risk of loss due to

¹ Jametsky’s tax obligation was \$11,200 (paid by Mr. Olsen after the sale) equivalent to over four years of taxes, but some of this included penalties.

nonpayment of taxes.” The logical way to look at this statute is to conclude that even if a tax foreclosure is not “scheduled” by the County or imminent, a risk of loss would exist if there was a three year delinquency coupled with an inability to pay because of unemployment, as we have established in this case. This is not a strained construction as can be seen in the very next subsection (b) regarding mortgage foreclosures. There, for example, the legislature defined “danger of foreclosure” (defined in RCW 61.34.040(11)(a) or (b) to include a situation where the homeowner is only 30 days delinquent on the home loan, or even where a homeowner who is completely current with all secured obligations in the property but who merely has “a good faith belief that he or she is likely to default on the mortgage within the upcoming four months due to lack of funds” RCW 61.34.040(11)(c). That risk would exist when the mortgage foreclosure (assuming a non-judicial foreclosure) is over a year away.

Also, RCW 84.64.050 mandates that:

After the expiration of three years from the date of delinquency, when any property remains on the tax rolls for which no certificate of delinquency has been issued, the county treasurer shall proceed to issue certificates of delinquency on the property to the county for all years’ taxes, interest and costs.

Thereafter, the county prosecutor promptly forecloses on the property. RCW 84.64.080.

To construe this statute to exclude unemployed persons who happen to be at least three years behind on property taxes makes no sense when the statute is viewed as a whole and the legislative findings are considered. As stated by this court in *Little Mountain Estates Tenants v. Little Mountain LLC*, 146 Wn. App. 546 (2008):

Ultimately, in resolving a question of statutory construction, this court will adopt the interpretation which best advances the legislative purpose.

3. The Defendants Meet the Definition of “Distressed Home Consultants” under the Act.

The definition for a “Distressed Home Consultant” was amended in 2009. However, the changes were minor and do not alter the statute substantially. The current statute defines (in pertinent part) a “Distressed Home Consultant” as a person who:

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

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

...

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

...

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

...

(x) Arrange for the distressed homeowner to become a lessee or tenant entitled to continue to reside in the distressed homeowner's residence, unless (A) the continued residence is for a period of no more than twenty days after closing, (B) the purpose of the continued residence is to arrange for and relocate to a new residence, and (C) the distressed homeowner is represented in the transaction by an attorney or a person licensed and subject to chapter 18.85 RCW;

(xi) Arrange for the distressed homeowner to have an option to repurchase the distressed homeowner's residence...

RCW 61.34.020(3).

Here, under the 2008, Act, as well as the 2009 Amendments, Mr. Olsen, Mr. Flynn and Mr. Haber meet the definition of a "Distressed Home Consultant" under RCW 61.34.020(3) because they contacted Mr. Jametsky in person and represented that they could assist Mr. Jametsky in stopping the tax foreclosure. CP 176 - 177; RCW 61.34.020(3). Both Mr. Flynn and Mr. Haber were active participants in assisting Mr. Jametsky with obtaining financing for his distressed property from Olsen evidenced by the fact that both individuals drove to Mr. Jametsky's house shortly after his son died, woke him up, and proposed a financing plan. CP 176 - 77. Furthermore, Mr. Haber actively assisted with the predatory financing plan when he drove Mr. Jametsky to a Starbucks to sign the loan documents for Mr. Olsen. CP 176 - 177.

Similarly, Olsen meets the definition of a “Distressed Home Consultant” because he entered into the illegal loan transaction with Mr. Jametsky on or about November 5, 2008. Under the 2008 Act, Mr. Olsen would be considered a “Distressed Home Consultant” under subsection (xi) because he “arranged” or entered into an option agreement with Mr. Jametsky to repurchase. CP 176-177. Olsen paid both Flynn and Haber substantial sums (over \$10,000) to set Mr. Jametsky up for Olsen’s illegal acquisition.

Together, Mr. Flynn, Mr. Haber, and Mr. Olsen, took advantage of Mr. Jametsky’s lack of education, vulnerable mental and emotional state resulting from the death of his son, unemployment, and the impending tax foreclosure in order to “purchase” the 2433 S. 135th Street home at an extreme discount, only to then lease back the home and eventually evict him from the only home he has ever known. All of them are equally liable. RCW 61.34.020(b).

4. The Defendants All Meet the Definition of a “Distressed Home Purchaser.”

A “Distressed Home Purchaser” is defined as a “person who acquires an interest in a distressed home under a distressed home conveyance ... [and] includes a person who acts in joint venture or joint

enterprise with one or more distressed home purchaser in a distressed home conveyance.” RCW 61.34.020(6).

A “Distressed Home Conveyance” is defined as a transaction whereby (1) a distressed homeowner conveys his or her home to a Distressed Home Purchaser, (2) the distressed homeowner is allowed to occupy the home, and (3) the distressed homeowner enters into an option agreement whereby he or she may repurchase his or her home at a later date. RCW 61.34.020(6).

The November 10, 2008 transaction whereby Mr. Jametsky unwittingly conveyed his property to Mr. Olsen should be considered a Distressed Home Conveyance because he was allowed to live in the home in exchange for \$835 rent. CP 224. Moreover, Mr. Jametsky also signed an option agreement whereby he could repurchase the home by May 31, 2010, for \$110,000. CP 218.

As a matter of law, Mr. Olsen would be considered a Distressed Home Purchaser because he acquired a deed to the distressed property through a “Distressed Home Conveyance.” In the HUD closing statement, Mr. Flynn was paid \$6,969, and Mr. Haber was paid \$3,500 from Olsen from the proceeds of the “sale” of the home. CP193. As a matter of law, all three individuals acted as a “joint venture” or “joint enterprise” to

acquire a financial interest in Mr. Jametsky's property, thus meeting the definition of "Distressed Home Purchaser."

5. The Defendants Clearly Violated the Distressed Property Act as a Matter of Law.

a) The Defendants, as Distressed Home Consultants, Violated the Distressed Property Act

Under the Act, "Distressed Home Consultants" must strictly adhere to proscribed rules. Here, the Defendants, meeting the definition of Distressed Home Consultants above, violated RCW 61.34 by failing to affirmatively do the following:

- Providing the proper notices and disclosures required under the Act. RCW 61.34.050.
- Fully disclosing the exact nature of the services provided. RCW 61.34.050.
- Performing the required fiduciary duties of acting in good faith, using reasonable care, disclosing all material facts, and providing an accounting of all money and property received from the distressed borrower. RCW 61.34.060.
- Disclosing the right to cancel the contract and providing notice to cancel the contract. RCW 61.34.100; RCW 61.34.110.

Here, there are no genuine issues of material fact and all three of the Defendants, defined as "Distressed Home Consultants," are in

violation of the Act as they did not provide the appropriate notices and disclosures to Mr. Jametsky as required. Thus, summary judgment should have been granted in favor of Mr. Jametsky, not the defendants.

b) **The Defendants, as Distressed Home Purchasers,
Violated the Distressed Property Act**

The statute also provides an exhaustive list of prohibited practices with regard to “Distressed Home Purchasers.” RCW 61.34.120. Here, the Defendants violated the following specific prohibited practices:

- Entering into a distressed home conveyance without verifying the ability of the seller’s ability to repay the loan. RCW 61.34.120(1). CP 176 (Jametsky unemployed).
- Entering into an option to purchase agreement without verifying the seller’s ability to repurchase the home. RCW 61.34.120(1). CP 176.
- Paying less than 82% of fair value of the property. RCW 61.34.120(2). CP 196.
- Entering into an option to purchase agreement that is unfair or unreasonable to the homeowner. RCW 61.34.120(3). CP 218.
- Representing to the seller that the purchaser is saving the distressed home. RCW 61.34.120(4)(c). CP 176-77.

- Accepting a deed, or recording a deed, before the five day cancellation period has run from the time of signing the purchase and sale agreement. RCW 61.34.120(6)(a)-(b). CP 203.

Here, there are no genuine issues of material fact, and the Defendants clearly violated the Act:

First, none of the Defendants verified the feasibility of Mr. Jametsky's ability to repay the loan, or to repurchase the home at the end of the option contract. He was unemployed and, in fact, was not able to pay the option price. CP 176.

Second, according to the HUD settlement statement, the home was sold for \$100,000, which is considerably less than 82% of the market value of the home. CP 192. An appraisal of the home conducted in May 2010, shows the home to be worth \$230,000. CP 205. Comparing the sale price of \$100,000, and the appraised market value, the sale was approximately 43.5% of the market value, which is in violation of the Act. Using the 2008, value by the County Assessor of \$272,000, the disparity is even greater. CP 196. He should have received at least \$223,040, 82% of the assessed value on the affidavit of value CP 196.

Third, the agreement was vastly unfair to Mr. Jametsky because, in exchange for a home worth \$272,000 he only received \$4,697 in cash in

addition to the payoff of the “Beneficial” loan and tax liens; meanwhile Mr. Haber received \$3,500, Mr. Flynn received \$6,969 and Mr. Olsen received the equity of over \$140,000 owned by Jametsky in exchange. Moreover, the option agreement was manifestly unfair, because not only was Mr. Jametsky paying over \$800 per month to live in his own home, there was no feasible way that he would ever be able to repay the entire \$100,000 loan plus an additional \$10,000, at the end of the option period, while unemployed. The agreement was also deceptive and unfair because Mr. Jametsky is an uneducated man who cannot read complex legal documents. Moreover, Mr. Jametsky was extremely vulnerable at the time of the transaction as his son had died just four days before he signed the contract, leaving him very depressed and confused. CP 176-178.

Fourth, the Defendants told Mr. Jametsky that they could help him with a “loan” to deal with his tax foreclosure, so that he would not lose his house. CP 177. Here, the Defendants acted as though they were going to help Mr. Jametsky “save” his home. Instead, the Defendants actually helped Mr. Jametsky lose the property to Mr. Olsen, who has now evicted him and his family.

Last, under the Act, the seller has a right to cancel the contract within a five day period after a purchase and sale agreement is signed. RCW 61.34.120(6)(a) - (b). The final closing date in the Escrow Closing

Agreement is listed as “11/07/08.” CP 179 at Exh. 1 at p.6. However, the deed was signed by Mr. Jametsky on November 10, 2008. Both the closing agreement and the signing of the deed and its recording two days later were within the five day cancellation period, and are *per se* violations of the Act.

D. The Defendants Have Also Violated the Washington Consumer Protection Act

Generally, to prove a violation of the Consumer Protection Act, the Plaintiff must establish the elements set forth in *Hangman Ridge v. Safeco*, 105 Wn.2d 778 (1986).

In *Anderson v. Valley Quality Homes*, 84 Wn.App. 511, 516; 928 P. 2d 1143 (January 1997) the court discussed how a *per se* violation can be established:

In *Hangman Ridge*, the Supreme Court identifies five elements, all statutorily based, that a plaintiff must prove in order to prevail in a private CPA action: (1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) which affects the public interest, (4) injury to the plaintiff in his or her business or property, and (5) causation. The court then describes the elements and various ways to establish them.

One way a plaintiff may establish the first two elements is by showing that the alleged conduct constitutes a *per se* unfair trade practice. The court explains “[a] *per se* unfair trade practice exists when a statute [that] has been declared by the Legislature to constitute an unfair or deceptive act in trade or

commerce has been *violated*’ and gives examples of such statutes...

The court notes the Legislature, not the court, is the appropriate body to establish the interaction between other statutes and the CPA by declaring a statutory *violation* to be *per se* unfair trade practice. Therefore, the court confirms ‘[when] the Legislature specifically defines the exact relationship between a statute and the CPA, this court will acknowledge that relationship.’ Id. at 787 (emphasis added).

Here, the WDPCA specifies that its violations are “matter vitally affecting the public interest for the purposes of applying Chapter 19.86 RCW.” Further, a violation “... is an unfair method of competition.” RCW 61.34.040(1).

In this case, we have *per se* violations of the first and third element of *Hangman Ridge*. Left would be “in trade or commerce” which is undisputed and demonstrated clearly in the record, and “causation” and damages or injury,” both established by the transaction in violation of the WDPCA resulting in the loss of Jamesky’s home.

The Distressed Property Conveyance Act (61.34.040) specifically incorporates the Consumer Protection Act (RCW 19.86) in RCW 61.34.040. The Consumer Protection Act Allows:

The Court may make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any act herein prohibited or declared to be unlawful.

RCW 19.86.080(2).

Under these provisions, the Court should order the return of Plaintiff's property, (quiet title) as a matter of law because of the clear unlawful actions outlined above, plus payment of attorney fees and costs. Finally, it should be noted that the CPA is to be liberally interpreted. RCW 19.86.920. Conversely, exclusions from the CPA should be narrowly construed. *Edmonds v. John L. Scott*, 942 P.2d 1072 (1997).

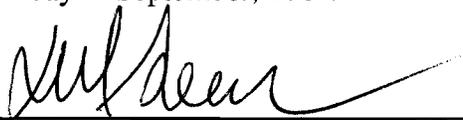
E. The Plaintiff is Entitled to Reasonable Attorney Fees and Costs

If successful, the Plaintiff is entitled to recover his reasonable attorney fees (cost of suit) and costs under RCW 19.86.090. If a violation is proved, the award of fees and costs is mandated.

V. CONCLUSION

For the reasons set out above, the Appellant respectfully requests that the Court of Appeals reverse the trial court and remand with instructions to enter the Summary Judgment in favor of the Plaintiff, clear title to his property, award attorney fees and costs, and determine damages and CPA penalties as may be proved at trial.

Respectfully submitted this 7th day of September, 2011.



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APPENDIX A

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Chapter 61.34 RCW Distressed property conveyances (formerly equity skimming)

[Chapter Listing](#)

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- [61.34.120](#) Distressed home purchaser -- Prohibited practices.
- [61.34.900](#) Severability -- 1988 c 33.

61.34.010 Legislative findings.

The legislature finds that persons are engaging in patterns of conduct which defraud innocent homeowners of their equity interest or other value in residential dwellings under the guise of a purchase of the owner's residence but which is in fact a device to convert the owner's equity interest or other value in the residence to an equity skimmer, who fails to make payments, diverts the equity or other value to the skimmer's benefit, and leaves the innocent homeowner with a resulting financial loss or debt.

The legislature further finds this activity of equity skimming to be contrary to the public policy of this state and therefore establishes the crime of equity skimming to address this form of real estate fraud and abuse.

[1988 c 33 § 1.]

61.34.020 Definitions.

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

(1) An "act of equity skimming" occurs when:

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

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

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

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

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

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

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

(2) "Distressed home" means either:

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

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

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

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

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

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

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

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

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

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

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

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

(ix) Cause a contract to purchase an interest in the distressed home to be executed or closed within twenty days of an advertised or docketed foreclosure sale, unless the distressed homeowner is represented in the transaction by an attorney or a person licensed under chapter 18.85 RCW;

(x) Arrange for the distressed homeowner to become a lessee or tenant entitled to continue to reside in the distressed homeowner's residence, unless (A) the continued residence is for a period of no more than twenty days after closing, (B) the purpose of the continued residence is to arrange for and relocate to a new residence, and (C) the distressed homeowner is represented in the transaction by an attorney or a person licensed and subject to chapter 18.85 RCW;

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

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

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

"Distressed home consultant" does not include: A financial institution; a nonprofit credit counseling service; a licensed attorney, or a person subject to chapter 19.148 RCW; a licensed mortgage broker who, pursuant to lawful activities under chapter 19.146 RCW, procures a nonpurchase mortgage loan for the distressed homeowner from a financial institution; or a person licensed as a real estate broker or salesperson under chapter 18.85 RCW, when rendering real estate brokerage services under chapter 18.86 RCW, regardless of whether the person renders additional services that would otherwise constitute the services of a distressed home consultant, and if the person is not engaged in activities designed to, or represented to, result in a distressed home conveyance.

(4) "Distressed home consulting transaction" means an agreement between a distressed homeowner and a distressed home

consultant in which the distressed home consultant represents or offers to perform any of the services enumerated in subsection (3)(a) of this section.

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

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

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

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

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

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

(8) "Dwelling" means a one-to-four family residence, condominium unit, residential cooperative unit, residential unit in any other type of planned unit development, or manufactured home whether or not title has been eliminated pursuant to RCW 65.20.040.

(9) "Financial institution" means (a) any bank or trust company, mutual savings bank, savings and loan association, credit union, or a lender making federally related mortgage loans, (b) a holder in the business of acquiring federally related mortgage loans as defined in the real estate settlement procedures act (RESPA) (12 U.S.C. Sec. 2602), insurance company, insurance producer, title insurance company, escrow company, or lender subject to auditing by the federal national mortgage association or the federal home loan mortgage corporation, which is organized or doing business pursuant to the laws of any state, federal law, or the laws of a foreign country, if also authorized to conduct business in Washington state pursuant to the laws of this state or federal law, (c) any affiliate or subsidiary of any of the entities listed in (a) or (b) of this subsection, or (d) an employee or agent acting on behalf of any of the entities listed in (a) or (b) of this subsection. "Financial institution" also means a licensee under chapter 31.04 RCW, provided that the licensee does not include a licensed mortgage broker, unless the mortgage broker is engaged in lawful activities under chapter 19.146 RCW and procures a nonpurchase mortgage loan for the distressed homeowner from a financial institution.

(10) "Homeowner" means a person who owns and has occupied a dwelling as his or her primary residence within one hundred eighty days of the latter of conveyance or mutual acceptance of an agreement to convey an interest in the dwelling, whether or not his or her ownership interest is encumbered by a mortgage, deed of trust, or other lien.

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

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

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

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

(i) The mortgagee;

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

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

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

(v) An attorney-at-law;

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

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

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

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

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

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

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

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

[2009 c 15 § 1; 2008 c 278 § 1; 1988 c 33 § 4.]

Notes:

Effective date -- 2009 c 15: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 25, 2009]." [2009 c 15 § 2.]

61.34.030

Criminal penalty.

Any person who wilfully engages in a pattern of equity skimming is guilty of a class B felony under RCW 9A.20.021. Equity skimming shall be classified as a level II offense under chapter 9.94A RCW, and each act of equity skimming found beyond a reasonable doubt or admitted by the defendant upon a plea of guilty to be included in the pattern of equity skimming, shall be a separate current offense for the purpose of determining the sentence range for each current offense pursuant to RCW 9.94A.589(1)(a).

[1988 c 33 § 2.]

61.34.040

Application of consumer protection act — Remedies are cumulative.

(1) In addition to the criminal penalties provided in RCW 61.34.030, the legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair method of competition for the purpose of applying chapter 19.86 RCW.

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

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

[2008 c 278 § 11; 1988 c 33 § 3.]

61.34.045

Arbitration not required.

(1) Any provision in a contract that attempts or purports to require arbitration of any dispute arising under this chapter is void at the option of the distressed homeowner.

(2) This section applies to any contract entered into on or after June 12, 2008.

[2008 c 278 § 9.]

61.34.050

Distressed home consulting transaction — Requirements — Notice.

(1) A distressed home consulting transaction must:

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

(b) Be in the same language as principally used by the distressed home consultant to describe his or her services to the distressed homeowner. If the agreement is written in a language other than English, the distressed home consultant shall cause the agreement to be translated into English and shall deliver copies of both the original and English language versions to the distressed homeowner at the time of execution and shall keep copies of both versions on file in accordance with subsection (2) of this section. Any ambiguities or inconsistencies between the English language and the original language

versions of the written agreement must be strictly construed in favor of the distressed homeowner;

(c) Fully disclose the exact nature of the distressed home consulting services to be provided, including any distressed home conveyance that may be involved and the total amount and terms of any compensation to be received by the distressed home consultant or anyone working in association with the distressed home consultant;

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

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

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

"NOTICE REQUIRED BY WASHINGTON LAW

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

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

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

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

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

[2008 c 278 § 2.]

61.34.060

Distressed home consultant — Fiduciary duties.

A distressed home consultant has a fiduciary relationship with the distressed homeowner, and each distressed home consultant is subject to all requirements for fiduciaries otherwise applicable under state law. A distressed home consultant's fiduciary duties include, but are not limited to, the following:

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

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

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

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

[2008 c 278 § 3.]

61.34.070

Waiver of rights.

(1) A person may not induce or attempt to induce a distressed homeowner to waive his or her rights under this chapter.

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

[2008 c 278 § 4.]

61.34.080**Distressed home reconveyance — Requirements.**

A distressed home purchaser shall enter into a distressed home reconveyance in the form of a written contract. The contract must be written in at least twelve-point boldface type in the same language principally used by the distressed home purchaser and distressed homeowner to negotiate the sale of the distressed home, and must be fully completed, signed, and dated by the distressed homeowner and distressed home purchaser before the execution of any instrument of conveyance of the distressed home.

[2008 c 278 § 5.]

61.34.090**Distressed home reconveyance — Entire agreement — Terms — Notice.**

The contract required in RCW [61.34.080](#) must contain the entire agreement of the parties and must include the following:

- (1) The name, business address, and telephone number of the distressed home purchaser;
- (2) The address of the distressed home;
- (3) The total consideration to be provided by the distressed home purchaser in connection with or incident to the sale;
- (4) A complete description of the terms of payment or other consideration including, but not limited to, any services of any nature that the distressed home purchaser represents that he or she will perform for the distressed homeowner before or after the sale;
- (5) The time at which possession is to be transferred to the distressed home purchaser;
- (6) A complete description of the terms of any related agreement designed to allow the distressed homeowner to remain in the home, such as a rental agreement, repurchase agreement, or lease with option to buy;
- (7) A complete description of the interest, if any, the distressed homeowner maintains in the proceeds of, or consideration to be paid upon, the resale of the distressed home;
- (8) A notice of cancellation as provided in RCW [61.34.110](#); and
- (9) The following notice in at least fourteen-point boldface type if the contract is printed, or in capital letters if the contract is typed, and completed with the name of the distressed home purchaser, immediately above the statement required in RCW [61.34.110](#):

"NOTICE REQUIRED BY WASHINGTON LAW

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

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

[2008 c 278 § 6.]

61.34.100**Distressed homeowner's right to cancel.**

- (1) In addition to any other right of rescission, a distressed homeowner has the right to cancel any contract with a distressed home purchaser until midnight of the fifth business day following the day on which the distressed homeowner signs a contract that complies with this chapter or until 8:00 a.m. on the last day of the period during which the distressed homeowner has a right of redemption, whichever occurs first.
- (2) Cancellation occurs when the distressed homeowner delivers to the distressed home purchaser, by any means, a written notice of cancellation to the address specified in the contract.
- (3) A notice of cancellation provided by the distressed homeowner is not required to take the particular form as provided with the contract.

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

[2008 c 278 § 7.]

61.34.110

Notice of distressed homeowner's right to cancel.

(1) The contract required in RCW 61.34.080 must contain, in immediate proximity to the space reserved for the distressed homeowner's signature, the following conspicuous statement in at least fourteen-point boldface type if the contract is printed, or in capital letters if the contract is typed:

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

.....

(Date and time of day)

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

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

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

"NOTICE OF CANCELLATION

.....

(Enter date contract signed) You may cancel this contract for the sale of your house, without any penalty or obligation, at any time before

.....

(Enter date and time of day)

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

.....

(Name of purchaser)

at

.....

(Street address of purchaser's place of business)

NOT LATER THAN

.....

(Enter date and time of day)

I hereby cancel this transaction.

.....

(Date)

.....

(Seller's signature)"

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

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

[2008 c 278 § 8.]

**61.34.120
Distressed home purchaser — Prohibited practices.**

A distressed home purchaser shall not:

(1) Enter into, or attempt to enter into, a distressed home conveyance with a distressed homeowner unless the distressed home purchaser verifies and can demonstrate that the distressed homeowner has a reasonable ability to pay for the subsequent conveyance of an interest back to the distressed homeowner. In the case of a lease with an option to purchase, payment ability also includes the reasonable ability to make the lease payments and purchase the property within the term of the option to purchase. An evaluation of a distressed homeowner's reasonable ability to pay includes debt to income ratios, fair market value of the distressed home, and the distressed homeowner's payment and credit history. There is a rebuttable presumption that the distressed home purchaser has not verified a distressed homeowner's reasonable ability to pay if the distressed home purchaser has not obtained documentation of assets, liabilities, and income, other than an undocumented statement, of the distressed homeowner;

(2) Fail to either:

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

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

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

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

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

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

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

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

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

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

- (c) Transfer or encumber or purport to transfer or encumber any interest in the distressed home;
- (7) Fail to reconvey title to the distressed home when the terms of the distressed home conveyance contract have been fulfilled;
- (8) Enter into a distressed home conveyance where any party to the transaction is represented by a power of attorney;
- (9) Fail to extinguish or assume all liens encumbering the distressed home immediately following the conveyance of the distressed home;
- (10) Fail to close a distressed home conveyance in person before an independent third party who is authorized to conduct real estate closings within the state.

[2008 c 278 § 10.]

61.34.900
Severability — 1988 c 33.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1988 c 33 § 6.]

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2011 SEP -8 PM 3:00

IN THE COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

LAWRENCE JAMETSKY, a single man,
Appellant,

NO. 67176-6-I

vs.

CERTIFICATE OF SERVICE

RODNEY A. and JANE DOE OLSEN,
MATHEW and JANE DOE FLYNN, and
MICHAEL and JANE DOE HABER,
Respondents.

I, Angella R. Čulić, certify that at all times mentioned herein, I was and am a resident of the State of Washington, over the age of eighteen years, not a party to the proceeding or interested therein, and competent to be a witness therein. My business address is that of Leen & O'Sullivan, Seattle, Washington 98122.

On September 8, 2011, I caused a true and correct copy of the Brief of Appellant to be served upon the following parties in the manner indicated below:



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Aaron Okrent Sternberg Thomson Okrent & Scher, PLLC 500 Union Street, Suite 500 Seattle, WA 98101-4047	X	Hand Delivery/Messenger
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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 8th day of September, 2011.

Angella R. Čulić
Angella R. Čulić

