

Court of Appeals No. 67176-6-I

Supreme Court No. 88215-1

IN THE SUPREME COURT
STATE OF WASHINGTON

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LAWRENCE JAMETSKY, a single man,

Petitioner

v.

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

Respondents

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

The petitioner is Lawrence Jametsky, appellant in the Court of Appeals and the plaintiff in the King County Superior Court proceeding.

II. CITATION TO COURT OF APPEALS DECISION

Mr. Jametsky seeks review of the decision in *Jametsky v. Olsen*, Case No. 67176-6-I, filed October 29, 2012, by Division One of the Court of Appeals. A copy of the decision is included in the Appendix attached hereto as Appendix A.

III. ISSUE PRESENTED FOR REVIEW

Whether this Court should accept review of the Court of Appeals decision affirming the Superior Court's dismissal of Mr. Jametsky's claims for violation of the Distressed Property Conveyances Act, RCW 61.34 *et seq.* ("DPCA") (attached hereto as Appendix B) and the Consumer Protection Act, RCW 19.86 *et seq.* ("CPA") based on the Court of Appeals' determination that Mr. Jametsky's property was not a "distressed home" as defined by RCW 61.34.020(2), because:

1. Pursuant to RAP 13.4(b)(1), the Court of Appeals decision conflicts with this Court's well-established principles of statutory interpretation; or
2. Pursuant to RAP 13.4(b)(4), this case involves an issue of substantial public interest that should be determined by this Court.

IV. STATEMENT OF THE CASE

A. Factual Background

Mr. Jametsky has an eighth grade education and his low reading level makes it difficult, if not impossible, to understand legal documents. CP 176-77. Despite these challenges, he owned his own home in Seattle, having inherited it from his grandfather. CP 176. By 2008, however, Mr. Jametsky owed over \$10,000 in back taxes to King County. CP 177. He made two tax payments in early 2008, in an attempt to catch up on the amount owed, but he could not, and did not, pay the entire amount owed to King County, or even a significant portion of it. CP 43, 59. By late 2008, Mr. Jametsky faced even more challenges: he was unemployed, concerned about whether he would lose his house, and, worst of all, his 16-year-old son was murdered. CP 176-77. Not surprisingly, Mr. Jametsky became very depressed. *Id.*

In October 2008, four days after the murder of Mr. Jametsky's teenaged son, Michael Haber and Mathew Flynn offered to loan him money to pay his back taxes and pay off liens on his home. CP 177. A few weeks later, on or about November 10, 2008, Mr. Haber came to Mr. Jametsky's home, roused him from his bed and drove him to a nearby Starbucks, where Mr. Jametsky signed a number of documents. *Id.* Mr. Jametsky was unable to fully read or understand the documents he signed, but he believed he was getting a loan. *Id.* Instead, although he did not know this until much later, Mr. Jametsky signed a purchase and sale

agreement for his home and a warranty deed. *Id.* The deed was recorded two days later. CP 203. The papers he signed did not include a notice advising him that he could cancel the transaction within five days, as is required by the DPCA. CP 266.

After filing this lawsuit and obtaining a copy of the HUD settlement statement for the sale of his home, Mr. Jametsky learned that his home had been sold for \$100,000 to a man named Rodney Olsen. CP 177. The \$100,000 sale price was especially surprising to Mr. Jametsky when he later obtained an appraisal listing the market value of his home as \$230,000; the King County Assessor's valuation of the home for tax purposes was \$272,000. CP 205; *Jametsky*, 2012 WL 5292830, at *1 n.4. Mr. Jametsky only received \$4,697 from the "sale" of his home, the remainder of the \$100,000 going toward payment in full of an unsecured note to "Beneficial Financial," payments to collection agencies, payment of a sewer bill, and payment of the back taxes. CP 84-85, 192-93. Mr. Haber received a payment of \$3,500 and "Flynn Investment," presumably an entity affiliated with Mr. Flynn, received \$7,000. CP 192-93. Mr. Jametsky also learned he had signed a residential lease and a "Real Estate Purchase Option Agreement" with an option to repurchase the property from Mr. Olsen for \$110,000. CP 90, 171, 177.

As part of the “deal” with Mr. Olsen, Mr. Jametsky continued to live in the home and paid Mr. Olsen approximately \$800 each month. CP 177. But shortly thereafter, Mr. Olsen attempted to evict Mr. Jametsky. *Id.* The option to repurchase the property expired May 31, 2010, but because of his unstable employment, Mr. Jametsky did not have the financial ability to buy back his home before the option expired. CP 90, 171, 177.

B. Procedural Background

1. Mr. Jametsky’s Complaint and the Parties’ Summary Judgment Motions

On July 2, 2010, Mr. Jametsky filed a lawsuit against Mr. Olsen, Mr. Flynn, and Mr. Haber. CP 1-4.¹ Alleging that the transfer of his property violated the DPCA and the CPA, Mr. Jametsky asked the Superior Court to quiet title in his favor and for an award of damages, including exemplary damages, “jointly and severally against all Defendants.” CP 1-4. Mr. Olsen then sued Mr. Jametsky for unlawful detainer. CP 5. The Superior Court consolidated the cases and stayed the unlawful detainer action pursuant to RCW 59.18.363, which requires “an automatic stay of [an unlawful detainer action] and a consolidation of the action with a pending or subsequent quiet title action when a defendant

¹ Mr. Jametsky did not serve Mr. Haber with the complaint and summons. *Jametsky*, 2012 WL 5292830, at *1 n.8. The parties dispute why Mr. Haber was not served but this dispute is immaterial for the purpose of this appeal.

claims that the plaintiff acquired title to the property through a distressed home conveyance.” CP 6.

Both parties filed summary judgment motions. CP 10-27, 256-67. The dispositive issue was whether Mr. Jametsky’s home met the DPCA’s definition of a “distressed home.” CP 18-19, 259-260. The DPCA defines “distressed home” as either: (1) “a dwelling that is in danger of foreclosure or at risk of loss due to non-payment of taxes”; or as (2) “a dwelling that is in the process of being foreclosed due to a default under the terms of a mortgage.” RCW 61.34.020(2). Specifically, the parties disputed the meaning of the phrase “at risk of loss due to nonpayment of taxes,” which the DPCA does not define. CP 18-19, 259-260, 268-69, 293-96, 276-77. Mr. Olsen and Mr. Flynn took the position that Mr. Jametsky’s home was not “at risk of loss due to nonpayment of taxes” and therefore, not a “distressed home,” because King County had not issued a certificate of delinquency with respect to the property taxes and because no foreclosure action had been commenced against Mr. Jametsky’s home due to his nonpayment of taxes. CP 276-77. Mr. Jametsky argued that because he owed \$10,000 in back taxes to King County – a debt going back three years – and because he had a reasonable fear that he would lose his home

for failure to pay the taxes, his home was “at risk of loss due to nonpayment of taxes.” CP 269.²

2. The Superior Court’s Decision

The Superior Court granted Mr. Olsen and Mr. Flynn’s summary judgment motion (and denied Mr. Jametsky’s motion for partial summary judgment), quieting title in the property to Mr. Olsen and vacating the unlawful detainer action. CP 302-305. The Superior Court’s form order does not include any findings of fact or conclusions of law, or any other indication of the basis for the court’s decision. CP 302-305. The Superior Court also awarded Mr. Olsen and Mr. Flynn attorneys’ fees and costs based on a provision in the purchase and sale agreement. CP 321-22.

3. The Court of Appeals Decision

Mr. Jametsky appealed the Superior Court’s summary judgment dismissal of his complaint and the fee and cost award. CP 323-330. On October 29, 2012, the Court of Appeals affirmed the Superior Court’s dismissal of Mr. Jametsky’s claims and awarded Mr. Olsen and Mr. Flynn their fees and costs on appeal. *Jametsky*, 2012 WL 5292830, at *5.

² In summary judgment briefing, the parties also disagreed as to whether Mr. Olsen and Mr. Flynn met the DPCA’s definition of “distressed home consultants” and/or “distressed home purchasers,” and thus, whether they were liable for violation of the DPCA, and the CPA. *See* CP 260-64, 277-280. It is not clear if the Superior Court’s decision was based on any of these arguments and the Court of Appeals only considered whether Mr. Jametsky’s home met the statutory definition of a “distressed home.” *See Jametsky*, 2012 WL 5292830, at *2-4.

The Court of Appeals decision was based on its determination that Mr. Jametsky's home was not a "distressed home" as defined by the DPCA. *Jametsky*, 2012 WL 5292830, at *4. After setting forth the text of the DPCA, including the definition of "distressed home," and explaining that the statute does not define "at risk of loss due to nonpayment of taxes," the Court of Appeals turned to the Washington property tax lien foreclosure statute for guidance. *Jametsky*, 2012 WL 5292830, at *4. Specifically, the Court of Appeals focused on RCW 84.64.050 (attached hereto as Appendix C), which states that "[a]fter 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[.]" thereby initiating the foreclosure process. RCW 84.64.050. The Court of Appeals concluded that because "[u]nder RCW 84.64.050, a property is not subject to foreclosure until three years from the date of delinquency[.]" and because the "three-year grace period was still several months away when Jametsky sold his house to Olsen[.]" Mr. Jametsky "fails to raise a genuine issue of material fact regarding whether his property was a 'distressed home.'" *Jametsky*, 2012 WL 5292830, at *4.

The Court of Appeals also affirmed the Superior Court's summary judgment order with respect to Mr. Jametsky's CPA claim, holding that "Jametsky cannot prevail on his DPCA claim, [and] therefore his CPA

argument, which he bases entirely on the CPA's relationship to the DPCA, likewise fails." *Jametsky*, 2012 WL 5292830, at *5.

V. ARGUMENT

A. Summary of Argument

Mr. Jametsky's Petition for Review presents an issue of first impression. To date, there are no published Washington decisions interpreting the DPCA, including the 2008 amendments which define "distressed home," the threshold element of a DPCA claim.

Review is warranted under RAP 13.4(b)(1) because the Court of Appeals decision conflicts with well-established principles of statutory interpretation set forth in countless decisions of this Court. While the Court of Appeals decision briefly referenced the appropriate statutory interpretation principles, it failed to rely upon these standards when it held Mr. Jametsky's home was not a "distressed home" as defined by the DPCA. Rather than ascertaining the plain meaning of the statutory language, the Court of Appeals relied on a definition and guidelines set forth in RCW 84.64 *et seq.*, the statutory chapter governing property tax lien foreclosure procedures, which does not even include the same terms used in the DPCA.

Review is also appropriate under RAP 13.4(b)(4) because this Petition involves an issue of substantial public interest that should be determined by this Court. As detailed below, the implications of the Court

of Appeals decision are serious, not only for Mr. Jametsky but for all Washington homeowners whom the Legislature intended to protect when it enacted the DPCA. As a consumer protection statute, a violation of which is a *per se* violation of the CPA, the DPCA is to be construed broadly to effect its remedial purpose. Contrary to this statutory mandate, the decision will make it more difficult for countless Washington residents to avail themselves of the DPCA's protections. In addition, this case presents issues that have significant implications for all purchasers of residential property in Washington State, as well as their agents; both groups are entitled to guidance to help them avoid liability when they are involved in transactions conveying an interest in a distressed home.

B. This Court Should Accept Review to Apply Appropriate Principles of Statutory Interpretation to Determine Whether Mr. Jametsky's Home Was a "Distressed Home" Under the Distressed Property Conveyances Act

1. The Distressed Property Conveyances Act, RCW 61.34 et seq.

The Distressed Property Conveyances Act, RCW 61.34 *et seq.* ("DPCA") was amended effective June 12, 2008. *See Jametsky*, 2012 WL 5292830, at *2. As the Court of Appeals noted, the purpose of the statute "is to protect financially strapped homeowners from 'equity skimming' and foreclosure rescue scams." *Id.* (citing RCW 61.34.010). Specifically, the Legislature found 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.

RCW 61.34.010. The Legislature also found "this activity of equity skimming to be contrary to the public policy of this state and therefore [the Legislature] establishes the crime of equity skimming to address this form of real estate fraud and abuse." *Id.*

The remedies available under the DPCA confirm its remedial nature. A violation of the DPCA is a *per se* violation of the Consumer Protection Act, RCW 19.86 *et seq.* ("CPA)." RCW 61.34.040(1). Not only are "the practices covered by the [DPCA]...matters vitally affecting the public interest for the purpose of applying [the CPA][,]" but such practices are also "unfair method[s] of competition for the purpose of applying [the CPA]." *Id.* Accordingly, a plaintiff who prevails on a DPCA claim may receive double or treble exemplary damages. RCW 61.34.040(2). In contrast to most CPA actions, where the exemplary damages are subject to a statutory limit of \$25,000, the DPCA increases the ceiling for exemplary damages to \$100,000. *Compare* RCW 19.86.090 (imposing limit on exemplary damages for CPA violations) *with* RCW 64.34.040(2) (providing that CPA limit on exemplary damages

may be increased up to \$100,000 “[i]f...the court determines that the defendant acted in bad faith”). By providing for even more exemplary damages than those allowed under the CPA, the Legislature sent a clear signal that the DPCA was a remedial statute, like the CPA itself, that “shall be liberally construed that its beneficial purposes may be served.” *See* RCW 19.86.920; *cf. Carlsen v. Global Client Solutions, LLC*, 171 Wn.2d 486, 498, 256 P.3d 321 (2011) (holding that Washington’s debt adjusting statute, RCW 18.28 *et seq.*, a violation of which is a *per se* violation of the CPA, “should be construed liberally in favor of the consumers it aims to protect” and that “[a] narrow interpretation of [the debt adjusting statute]...would directly contravene the debt adjusting statute’s remedial purpose.”).

At issue here are the DPCA’s requirements for the sale of “distressed homes.” For example, contracts between owners of a distressed home and “distressed home consultants”³ must include a form notice that the contract could result in the loss of the homeowner’s property. RCW 61.34.050. Such contracts must be in writing in at least a 12-point font, and must “[b]e in the same language as principally used by

³ The DPCA includes a detailed description of persons who fall into the category of “distressed home consultants.” *See* RCW 61.34.020(3). For the purposes of Mr. Jametsky’s DPCA claim, the definition of “distressed home consultants” requires such a person to “[s]olicit[] or contact[] a distressed homeowner....” RCW 61.34.020(3)(a) (emphasis added). The Court of Appeals did not reach the issue of whether Mr. Flynn and Mr. Olsen were “distressed home consultants” under the DPCA because it held Mr. Jametsky’s property was not a “distressed home.”

the distressed home consultant to describe his or her services to the distressed home owner.” RCW 61.34.050(1)(a), (b). The contract must also 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 him or her. RCW 61.34.050(1)(c).

The DPCA also regulates “distressed home purchasers,” defined as “any person who acquires an interest in a distressed home under a distressed home conveyance[,]” including “a person who acts in joint venture or joint enterprise with one or more distressed home purchasers in a distressed home conveyance.” RCW 61.34.020(6).⁴ Distressed home purchasers must avoid certain activities that violate the DPCA. *See* RCW 61.34.120 (listing ten “prohibited practices” of distressed home purchasers). For example, the DPCA requires a distressed home purchaser to “verif[y]...that the distressed homeowner has a reasonable ability to pay for the subsequent conveyance of an interest back to the distressed homeowner.” RCW 61.34.120(1). A distressed home purchaser must also ensure that the distressed homeowner receives “at least eighty-two percent

⁴ As with the question of whether Mr. Flynn and Mr. Olsen were “distressed home consultants,” the Court of Appeals did not reach the issue of whether Mr. Flynn and Mr. Olsen were “distressed home purchasers” because it held there was no “distressed home” involved in the transaction with Mr. Jametsky.

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.” RCW 61.34.120(2)(b). A distressed homeowner has the right to cancel any contract with a distressed home purchaser within five days and the DPCA provides specific language to be used in the mandatory written notice of this right. *See* RCW 61.34.100, .110. And, until the five days have passed and the right to cancel has expired, neither the distressed home purchaser nor “anyone working for” him or her may ask the distressed homeowner to sign a deed.” RCW 61.34.090.

The DPCA makes clear, however, that the requirements imposed on “distressed home consultants” and “distressed home purchasers” only apply if the property at issue is a “distressed home.” *See generally* RCW 61.34 *et seq.* The DPCA defines “distressed home” as either (1) “a dwelling that is in danger of foreclosure or at risk of loss due to non-payment of taxes” or (2) “a dwelling that is in the process of being foreclosed due to a default under the terms of a mortgage.” RCW 61.34.020(2) (emphasis added). The statute does not define what is meant by “at risk of loss due to nonpayment of taxes,” but it does define “in danger of foreclosure.” RCW 61.34.020(11). To be considered “in danger of foreclosure,” one of the following scenarios must be present:

- (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....

RCW 61.34.020(11). If the third scenario applies, the homeowner must have reported his or her belief to either the mortgagee; a person “licensed or required to be licensed under the Washington statutes governing credit services organizations, mortgage brokers and real estate brokers; an attorney, a mortgage counselor or other licensed or certified credit counselor; or “[a]ny other party to a distressed home consulting transaction.” RCW 61.34.020(11).

In this case, Mr. Jametsky’s claim that his home was a “distressed home” for purposes of the DPCA rested on the first prong of the definition: that his home was “at risk of loss due to non-payment of taxes.” CP 260, 269. As detailed below, the Court of Appeals ignored long-standing principles of statutory interpretation when it held Mr. Jametsky was not entitled to the DPCA’s protections because his home was not a “distressed home” and affirmed the Superior Court’s dismissal of his complaint.

2. The Court of Appeals Ignored Well-Established Principles of Statutory Interpretation When It Held Mr. Jametsky's Property Was Not A "Distressed Home"

"Legal conclusions, including the proper interpretations of statutes, are reviewed de novo." *Estate of Bunch v. McGraw Residential Ctr.*, 174 Wn.2d 425, 430, 275 P.3d 1119 (2012). As this Court recently explained, "[i]nterpretation of a statute is guided by well-established principles." *Id.* at 432. An appellate court's "fundamental objective when interpreting a statute is to discern and implement the intent of the legislature." *Id.* (internal citations and marks omitted). When interpreting a statute, this Court "look[s] first to the statute's plain meaning." *Carlsen*, 171 Wn.2d at 494. When a term in a statute is not defined, this Court "appl[ies] the plain meaning of the word and may consult a dictionary." *Cregan v. Fourth Mem'l Church*, 175 Wn.2d 279, 285, 285 P.3d 860 (2012) (relying on Black's Law Dictionary for definition of "public," undefined in Washington's recreational use immunity statute, RCW 4.24.210).

Here, despite the Legislature's failure to define "at risk of loss due to nonpayment of taxes" in the DPCA, the Court of Appeals failed to apply the plain meaning of "at risk of loss" or "risk." The plain meaning of "risk," as defined by Black's Law Dictionary, is "[t]he uncertainty of a result, happening, or loss; the chance of injury, damage, or loss; esp., the existence and extent of the possibility of harm[.]" Black's Law Dictionary 1353 (8th ed. 2004) (emphasis added). A "possibility" is "[a]n event that

may or may not happen.” *Id.* at 1203 (emphasis added). In other words, the plain meaning of “at risk of loss due to nonpayment of taxes” is the “chance” or “possibility” that the homeowner may lose his or her home due to nonpayment of taxes – “an event that may or may not happen.”

Instead of focusing on the plain language of RCW 61.34.020(2), the Court of Appeals turned to the property tax lien foreclosure statute, RCW 84.64 *et seq.*, for guidance. Nothing in the DPCA suggests this is appropriate. *See generally* RCW 61.34 *et seq.* (no reference to RCW 84.64 *et seq.*). Nor does RCW 84.64.050 (or any other section in the chapter) define what is meant by “at risk of loss,” due to non-payment of taxes or otherwise. *See generally* RCW 84.64 *et seq.* It is true that when two statutes “relate to the same subject matter, they must be construed together.” *Jongeward v. BNSF Ry. Co.*, 174 Wn.2d 586, 593, 278 P.3d 157 (2012) (construing former RCW 64.12.030 and RCW 64.12-040 together because both are sections of the timber trespass statute as originally enacted by the Legislature). That is not the case here. The DPCA is a consumer protection statute enacted to protect vulnerable Washington homeowners from those who would defraud them of the equity in their homes. The property tax lien foreclosure statute exists to provide the proper procedure for property tax foreclosure by Washington counties.

Even if RCW 84.64.050 is dispositive with respect to defining “at risk of loss due to non-payment of taxes” – which it is not – the statutory language the Court of Appeals relied upon does not even reference “risk of loss.” *See* RCW 84.64.050. Rather, RCW 84.64.050 describes the steps the county must take before “proceed[ing] to foreclose in the name of the county[.]” *See id.* (explaining that after the county treasurer files certificates of tax delinquency with the court clerk, “the treasurer shall thereupon, with legal assistance from the county prosecuting attorney, proceed to foreclose in the name of the county, the tax liens embraced in such certificates.”). The Court of Appeals’ reliance on a section of an unrelated statute that does not even reference the term at issue – “at risk of loss” – renders the DPCA’s language unnecessary, which runs contrary to this Court’s admonition that statutes must not be interpreted “in any way that renders any portion meaningless or superfluous.” *Jongeward*, 174 Wn.2d at 602.

By ignoring the plain meaning of undefined terms in the DPCA and choosing instead to refer to a definition in an unrelated – and non-remedial – statute, the Court of Appeals ignored established principles of statutory interpretation and this Court should grant review under RAP 13.4(b)(1). The Court of Appeals also ignored that as a consumer protection statute that is remedial in nature, the DPCA should be liberally construed. *See* Section B., 1., *supra*. Failure to apply this principle is also

contrary to this Court's precedents and provides an additional ground for granting review under RAP 13.4(b)(1).

C. This Court Should Accept Review Because the Court of Appeals Decision Involves an Issue of Substantial Public Interest that Has Significant Implications for All Owners and Purchasers of Residential Property in the State of Washington

This Court's review of a Court of Appeals decision is warranted when a case presents an issue of "substantial public interest." RAP 13.4(b)(4). It cannot be contested that the Court of Appeals decision, with its far-reaching implications for all persons who own and purchase residential property in Washington, satisfies this standard. *Cf. State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903 (2005) (finding a "prime example of an issue of substantial public interest" and accepting review of Court of Appeals decision that, "while affecting parties to this proceeding, also has the potential to affect every sentencing proceeding in Pierce County").

First, the Court of Appeals decision limits the scope of the class of homeowners the Legislature had in mind when it amended the DPCA. As one commentator has explained, in a pre-amendment discussion of possible legal remedies for victims of "foreclosure rescue scam artists" ("FRSAs"), the pre-amendment "equity skimming statute," RCW 61.34 *et seq.*, "fail[ed] to protect homeowners from FRSAs because it [was] too narrowly drawn." Zachary E. Davies, Comment, *Rescuing the Rescued: Stemming the Tide of Foreclosure Rescue Scams in Washington*, 31

Seattle U. L. Rev. 353, 379 (2008) (noting that “[i]n its battle against FRSA’s, the State of Washington would be well served by a broader [Equity Skimming Act] that actually accomplishes what it currently only purports to do” and suggesting amendments to broaden the scope of RCW 61.34 similar to the amendments effective June 2008). Such broader protections are especially important given the “epidemic” of FRSA’s that have flourished in the current economic climate where “many Washington homeowners find themselves being pushed to the brink of foreclosure.” *Id.* at 353. A homeowner like Mr. Jametsky – poorly educated, unemployed, in a vulnerable mental and emotional state resulting from the murder of his son, and struggling to avoid tax foreclosure but only able to make partial payments to (barely) keep his head above water – is exactly the type of homeowner whom the DPCA amendments were designed to help. Requiring Mr. Jametsky and other similarly situated Washington homeowners to wait until the tax foreclosure process has actually begun, by issuance of a certificate of delinquency, severely circumscribes the scope of persons whom the amended DPCA protects.

Second, the DPCA also provides guidelines for purchasers of residential property and their agents, and an incorrect interpretation of what constitutes a “distressed home” provides such persons with the mistaken impression that they are complying with Washington law when they purchase, or facilitate the purchase of, residential property from

homeowners who are at risk of losing their homes. Given the increase in the number of Washington homeowners who find themselves faced with such a risk, it cannot be disputed that increasing numbers of residential real property transactions will require careful examination of the DPCA by potential purchasers and their agents, including licensed real estate sales persons whose conduct is also governed by the DPCA. *See* Press Release, Washington State Attorney General, New Law Helps Protect Distressed Homeowners (June 6, 2008) (“AG Press Release”)⁵ (explaining that “licensed real estate sales persons” are “not exempt” from the DPCA’s requirements.) Lacking clarification from Washington State’s highest court as to the definition of a “distressed homeowner,” ever-increasing numbers of real estate brokers and agents and others involved in residential real property transactions could inadvertently find themselves subject to DPCA damages and penalties.

For these reasons, the Court should accept review of the Court of Appeals decision pursuant to RAP 13.4(b)(4).

VI. CONCLUSION

For the aforementioned reasons, Petitioner Lawrence Jametsky respectfully requests that this Court accept review of the decision in *Jametsky v. Olsen*, No. 67176-6-1.

⁵ The AG Press Release is available on the Washington State Attorney General’s website, at http://atg.wa.gov/uploadedFiles/Home/News/Press_Releases/2008/Law_for_Distressed_Homeowners.pdf (last visited November 26, 2012). For the Court’s convenience, a copy is also provided in the Appendix as Appendix D.

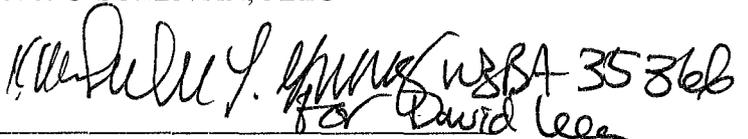
RESPECTFULLY SUBMITTED AND DATED this 28th day of
November, 2012.

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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that I have this 28th day of November, 2012,
caused to be served a true and correct copy of the following upon the
persons indicated below:

Petition for Review

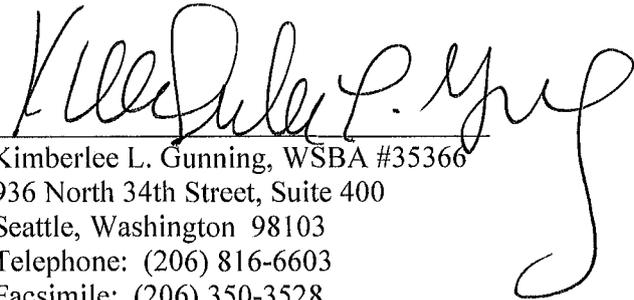
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- U.S. Mail, postage prepaid
- Hand Delivered via
Messenger Service
- Overnight Courier
- Facsimile
- Electronic Service

I certify under penalty of perjury under the laws of the State of
Washington that the foregoing is true and correct.

DATED this 28th day of November, 2012.

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— APPENDIX A —

Not Reported in P.3d, 2012 WL 5292830 (Wash.App. Div. 1)
(Cite as: 2012 WL 5292830 (Wash.App. Div. 1))

Only the Westlaw citation is currently available.

NOTE: UNPUBLISHED OPINION, SEE RCWA
2.06.040

Court of Appeals of Washington,
Division 1.
Lawrence JAMETSKY, a single man, Appellant,
v.
Rodney A. and Jane Doe OLSEN; Mathew and Jane
Doe Flynn, Respondents,
Michael and Jane Doe Haber, Defendants.

No. 67176-6-1.
Oct. 29, 2012.

Appeal from King County Superior Court; Jay vs.
White, J.

David A. Leen, Leen & O'Sullivan PLLC, Seattle,
WA, Roblin John Williamson, Williamson & Wil-
liams, Bainbridge Island, WA, for Appellant.

Aaron Scott Okrent, Scott Robert Scher, Sternberg
Thomson Okrent & Scher, PLLC, Seattle, WA, for
Respondents.

UNPUBLISHED OPINION

LEACH, C.J.

*I Larry Jametsky appeals a trial court's summary dismissal of his distressed property conveyances act (DPCA)^{FN1} and Consumer Protection Act (CPA)^{FN2} claims against Rodney Olsen, who purchased Jametsky's house in 2008. Jametsky, however, failed to raise a genuine issue of material fact regarding whether his house was a "distressed property" at the time it was sold—a necessary element of a DPCA claim. And because Jametsky's CPA claim entirely depended on him proving his DPCA claim, the trial court did not err by granting Olsen summary judgment. We affirm.

FN1. Ch. 61.34 RCW.

FN2. Ch. 19.86 RCW.

FACTS

In 2008, Jametsky approached a family friend,

Roger Hager, for help to "save [his] house." At the time, several debts encumbered Jametsky's property. Hager introduced Jametsky to Michael Haber, a mortgage consultant who owned a company called Pine Mortgage. Haber contacted mortgage broker Matthew Flynn in October to ask whether Jametsky qualified for a home loan. Flynn met with Haber and Jametsky to assess Jametsky's financial situation and determined that Jametsky did not qualify. Haber then told Flynn that Jametsky would consider selling his house. Flynn asked his acquaintance Rodney Olsen if he wanted to buy Jametsky's house with a leaseback and option to purchase.^{FN3} Olsen agreed to buy Jametsky's property for \$100,000.^{FN4}

FN3. Olsen explained in his declaration that he has known Flynn since 1998 and that "Flynn would contact me regarding investment opportunities."

FN4. King County assessed the property's value for tax purposes at \$272,000.

Olsen and Jametsky signed a real estate purchase and sale agreement on November 4.^{FN5} The next day, they entered into a lease-option agreement that allowed Jametsky to stay in the house for \$835 in monthly rent and gave him an 18-month option to repurchase the house for \$110,000. Olsen used the sales proceeds to pay off the liens on the property, including a \$58,221 mortgage loan, \$10,666 in unpaid property taxes (for the period from January 1, 2006, to January 1, 2009), \$1,819 in sewer charges, and two judgments totaling \$9,394. After the debts were paid, Jametsky received \$4,697 from the sale.^{FN6}

FN5. According to Jametsky, he did not realize that he was selling his house and thought the paperwork he signed was for a loan.

FN6. \$15,201 in "settlement charges" was also deducted from the sale proceeds.

Jametsky stopped paying rent after 15 months. On July 2, 2010, he filed a lawsuit against Olsen to quiet title under the theory that the property transfer violated

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the DPCA and the CPA.^{FN7} Jametsky named Olsen, Flynn, and Haber as defendants and asked the court to “[q]uiet title in favor of Plaintiff” and to “[a]ward damages, punitive damages, and penalties ... jointly and severally against all Defendants.”^{FN8} Olsen sued Jametsky for unlawful detainer. The trial court consolidated the cases upon the parties' stipulation and stayed Olsen's unlawful detainer action as required by RCW 59.18.363.^{FN9}

FN7. Additionally, Jametsky alleged civil conspiracy but has not appealed the trial court's dismissal of that claim.

FN8. Jametsky apparently never served Haber as a defendant.

FN9. RCW 59.18.363 requires “an automatic stay of [an unlawful detainer] action and a consolidation of the action with a pending or subsequent quiet title action when a defendant claims that the plaintiff acquired title to the property through a distressed home conveyance.”

On March 24, 2011, Jametsky moved for partial summary judgment, arguing that his property was a “distressed home” under the DPCA because he was three years behind on his property taxes and feared King County would foreclose. Olsen moved to dismiss Jametsky's complaint in its entirety on the basis that as a matter of law, Jametsky's house was not a “distressed home.” Olsen argued that King County had not yet issued a certificate of delinquency and that no foreclosure action had been commenced against Jametsky's property due to the nonpayment of taxes. The trial court granted Olsen's motion and quieted title to the property in his name. Olsen moved for an award of attorney fees and costs based on a provision in the real estate purchase and sale agreement. The trial court awarded Olsen attorney fees and costs in the amount of \$14,453.67.^{FN10}

FN10. The trial court also entered judgment for Olsen in the unlawful detainer action once the stay was lifted.

*2 Jametsky appeals.

STANDARD OF REVIEW

We review summary judgment orders de novo, engaging in the same inquiry as the trial court.^{FN11} Summary judgment is proper if, viewing the facts and reasonable inferences in the light most favorable to the nonmoving party, no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law.^{FN12} “A genuine issue of material fact exists where reasonable minds could differ regarding the facts controlling the outcome of the litigation.”^{FN13}

FN11. Michak v. Transnation Title Ins. Co., 148 Wn.2d 788, 794, 64 P.3d 22 (2003).

FN12. Michak, 148 Wn.2d at 794–95 (quoting CR 56(c)).

FN13. Hulbert v. Port of Everett, 159 Wn.App. 389, 398, 245 P.3d 779, review denied, 171 Wn.2d 1024, 257 P.3d 662 (2011).

This appeal also involves issues of statutory interpretation. “The meaning of a statute is a question of law we review de novo.”^{FN14} When interpreting statutory language, we aim to carry out the legislature's intent.^{FN15} “We determine the plain meaning of a statutory provision based on the statutory language and, if necessary, in the context of related statutes that disclose legislative intent about the provision in question.”^{FN16} If a statute's meaning is plain on its face, we give effect to that plain meaning.^{FN17} Only if statutory language is ambiguous do we resort to aids of construction, including legislative history.^{FN18}

FN14. Broughton Lumber Co. v. BNSF Ry., 174 Wn.2d 619, 624, 278 P.3d 173 (2012).

FN15. Ellerman v. Centerpoint Prepress, Inc., 143 Wn.2d 514, 519, 22 P.3d 795 (2001).

FN16. Delyria v. Wash. State Sch. for the Blind, 165 Wn.2d 559, 563, 199 P.3d 980 (2009).

FN17. City of Olympia v. Drebeck, 156 Wn.2d 289, 295, 126 P.3d 802 (2006).

FN18. Drebeck, 156 Wn.2d at 295.

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ANALYSIS

Distressed Property Conveyances Act

The Statutory Scheme: The DPCA took effect on June 12, 2008. Its purpose is to protect financially strapped homeowners from “equity skimming” and foreclosure rescue scams.^{FN19} In its findings, the legislature states,

FN19. RCW 61.34.010.

[P]ersons 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.^[FN20]

FN20. RCW 61.34.010.

In response to the legislature's findings, the DPCA establishes requirements for the sale of “distressed homes.” RCW 61.34.020(2) defines a “distressed home” as either (1) “a dwelling that is in danger of foreclosure or at risk of loss due to nonpayment of taxes” or (2) “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.” While the legislature did not define “at risk of loss due to nonpayment of taxes,” “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;

*3 (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.^[FN21]

FN21. RCW 61.34.020(11).

To protect owners of distressed homes, contracts between distressed homeowners and distressed home consultants must adhere to the DPCA's requirements. A “distressed home consultant” is a person who “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 financially assist the distressed homeowner to save his or her home.^{FN22} Additionally, an individual may be a “distressed home consultant” if he or she “[s]ystematically contacts owners of property that court records, newspaper advertisements, or any other source demonstrate are in foreclosure or are in danger of foreclosure.”^{FN23} Among other requirements, a contract between a distressed home consultant and a distressed homeowner must include a form notice that the contract could result in the loss of the homeowner's property.^{FN24} The statute also establishes fiduciary obligations owed by distressed home consultants to a distressed homeowner.^{FN25}

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FN22. An individual may be labeled a “distressed home consultant” if he or she promises to do any of the following:

(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.

RCW 61.34.020(3)(a).

FN23, RCW 61.34.020(3)(b). The DPCA specifically excludes some actors from this definition, including financial institutions, nonprofit credit counseling services, licensed mortgage brokers, attorneys, and real estate agents. RCW 61.34.020(3)(b).

FN24, RCW 61.34.050. Additionally, the contract must be in writing, in at least 12-point font, and if the homeowner customarily speaks a language other than English, it must be translated into that language. It must also disclose the “exact nature of the ... consulting services to be provided,” be dated and signed, and contain the consultant's full contact information.

FN25, RCW 61.34.060.

Contracts between the purchaser of a distressed home and distressed homeowners must also conform to the DPCA's requirements.^{FN26} In addition, distressed home purchasers must avoid specific activities that violate the DPCA.^{FN27} For example, the statute requires a distressed home purchaser to verify the distressed homeowner's ability to pay the terms of any

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lease-option agreement and ensure that the distressed homeowner receives at least 82 percent of the distressed property's fair market value.^{FN28} A distressed homeowner may cancel any contract with a distressed home purchaser within five days and must be given written notice of this right.^{FN29} Until the right to cancel has expired, neither the distressed home purchaser nor his or her agent may ask the distressed homeowner to sign a deed.^{FN30}

FN26. The contract must contain

- (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."

RCW 61.34.090.

FN27. RCW 61.34.120.

FN28. RCW 61.34.120(1), (2)(b).

FN29. RCW 61.34.100, .110.

FN30. RCW 61.34.090.

Failure to adhere to the DPCA can result in both civil and criminal penalties.^{FN31} "Any person who willfully engages in a pattern of equity skinning is guilty of a class B felony."^{FN32} Additionally, a violation of the DPCA constitutes "an unfair method of competition" under the CPA.^{FN33} In a personal action brought by a distressed homeowner, the court may award up to three times the amount of actual damages, not to exceed \$100,000.^{FN34}

FN31. RCW 61.34.030, .040.

FN32. RCW 61.34.030.

FN33. RCW 61.34.040(1).

FN34. RCW 61.34.040(2).

*4 *Jametsky's DPCA Claim:* Jametsky's appeal turns on whether his property was a "distressed home." The parties dispute the meaning of "at risk of loss due to nonpayment of taxes," which the DPCA

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does not define. Jametsky argues that his property was at risk of loss because he was behind in his property tax payments and feared he would lose his house as a result. Olsen responds that a property is not at risk of loss until the county treasurer issues a certificate of delinquency, initiating the foreclosure process. RCW 84.64.050 describes what occurs when a property owner fails to pay his or her property taxes:

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.

...

The treasurer shall file the certificates when completed with the clerk of the court at no cost to the treasurer, and the treasurer shall thereupon, with legal assistance from the county prosecuting attorney, proceed to foreclose in the name of the county, the tax liens embraced in such certificates.

Under RCW 84.64.050, a property is not subject to foreclosure until three years from the date of delinquency. Here, Olsen bought Jametsky's house in November 2008. At the time of the sale, Jametsky was delinquent on his 2006 taxes.^{FN35} Therefore, the end of RCW 84.64.050's three-year grace period was still several months away when Jametsky sold his house to Olsen. Under these circumstances, Jametsky fails to raise a genuine issue of material fact regarding whether his property was a "distressed home."

FN35. An October 2008 title report prepared by Rainier Title lists the delinquent tax years on the property as 2006, 2007, and 2008.

For the purpose of reviewing the summary dismissal of Jametsky's claim, we accept that he may have truly feared that he would ultimately lose his house based on a failure to pay his property taxes. But this subjective, good faith belief that the property was at risk of loss for nonpayment of taxes does not meet the statute's requirements. The legislature adopted two alternative definitions for a "distressed home": (1) a dwelling in danger of foreclosure or at risk of loss due to nonpayment of taxes or (2) a dwelling in danger of or being foreclosed due to a default under the terms of

a mortgage.^{FN36} In the definition of "in danger of foreclosure," the legislature explicitly incorporated a good faith belief component: "[t]he 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."^{FN37} It did not include a parallel provision for when a party fears a risk of loss due to the nonpayment of taxes. Thus, the plain words of the DPCA do not make a good faith belief relevant to whether a dwelling is at risk for nonpayment of taxes.

FN36. RCW 61.34.020(2).

FN37. RCW 61.34.020(1)(c).

We also note that a dwelling may be in danger of foreclosure for nonpayment of taxes if the nonpayment is a default under the terms of an existing mortgage.^{FN38} In this circumstance, a good faith belief would be relevant. But Jametsky did not provide the trial court with a copy of his mortgage or advance this argument. For these reasons, the trial court did not err by dismissing Jametsky's DPCA claim.

FN38. RCW 61.34.020(12) defines mortgage as "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."

Consumer Protection Act

*5 The CPA declares unlawful unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce.^{FN39} Generally, to prevail in a private CPA claim, the plaintiff must prove (1) an unfair or deceptive act or practice (2) occurring in trade or commerce (3) affecting the public interest, (4) injury to a person's business or property, and (5) causation.^{FN40} Here, the legislature has provided that a DPCA violation is also a violation of the CPA. RCW 61.34.040(1) reads,

FN39. RCW 19.86.020.

FN40. Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d 778, 784-85, 719 P.2d 531 (1986).

[T]he legislature finds that the practices covered by this chapter are matters vitally affecting the public

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interest for the purpose of applying chapter 19.86 RCW [the CPA]. 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.

Jametsky argues that because he has established a violation of the DPCA, he has also established a violation of the CPA. But Jametsky cannot prevail on his DPCA claim, therefore his CPA argument, which he bases entirely on the CPA's relationship to the DPCA, likewise fails. The trial court did not err by granting Olsen's summary judgment motion.

Attorney Fees

Olsen requests attorney fees and costs on appeal. In Washington, parties may recover attorney fees if allowed by statute, contract, or some well-recognized principle of equity.^{FN41} Here the real estate purchase and sale agreement and the lease both provide for an award of fees to the prevailing party in a dispute concerning the agreements. Because Olsen is the prevailing party on appeal, we award him attorney fees and costs conditioned on his compliance with RAP 18.1.

FN41. *Torgerson v. One Lincoln Tower, LLC*, 166 Wn.2d 510, 525, 210 P.3d 318 (2009).

CONCLUSION

Because Jametsky has failed to raise a genuine issue of material fact regarding whether his property was at risk of loss due to nonpayment of taxes at the time Olsen purchased it, we affirm the trial court's order granting Olsen summary judgment. We also award Olsen his reasonable attorney fees and costs on appeal.

WE CONCUR: SCHINDLER and GROSSE, JJ.

Wash.App. Div. 1, 2012.
Jametsky v. Olsen
Not Reported in P.3d, 2012 WL 5292830 (Wash.App. Div. 1)

END OF DOCUMENT

— APPENDIX B —

Chapter 61.34 RCW
DISTRESSED PROPERTY CONVEYANCES
(Formerly Equity skimming)

RCW Sections

- 61.34.010 Legislative findings.
- 61.34.020 Definitions.
- 61.34.030 Criminal penalty.
- 61.34.040 Application of consumer protection act -- Remedies are cumulative.
- 61.34.045 Arbitration not required.
- 61.34.050 Distressed home consulting transaction -- Requirements -- Notice.
- 61.34.060 Distressed home consultant -- Fiduciary duties.
- 61.34.070 Waiver of rights.
- 61.34.080 Distressed home reconveyance -- Requirements.
- 61.34.090 Distressed home reconveyance -- Entire agreement -- Terms -- Notice.
- 61.34.100 Distressed homeowner's right to cancel.
- 61.34.110 Notice of distressed homeowner's right to cancel.
- 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.]

— APPENDIX C —

Chapter 84.64 RCW
LIEN FORECLOSURE
(Formerly Certificates of delinquency)

RCW Sections

- 84.64.040 Prosecuting attorney to foreclose on request.
- 84.64.050 Certificate to county -- Foreclosure -- Notice -- Sale of certain residential property eligible for deferral prohibited.
- 84.64.060 Payment by interested person before day of sale.
- 84.64.070 Redemption before day of sale -- Redemption of property of minors and legally incompetent persons.
- 84.64.080 Foreclosure proceedings -- Judgment -- Sale -- Notice -- Form of deed -- Recording.
- 84.64.120 Appellate review -- Deposit.
- 84.64.130 Certified copies of records as evidence.
- 84.64.180 Deeds as evidence -- Estoppel by judgment.
- 84.64.190 Certified copy of deed as evidence.
- 84.64.200 Prior taxes deemed delinquent -- County as bidder at sale -- Purchaser to pay all delinquent taxes, interest, or costs.
- 84.64.215 Deed recording fee -- Transmittal to county auditor and purchaser.

84.64.040**Prosecuting attorney to foreclose on request.**

The county prosecuting attorney shall furnish to holders of certificates of delinquency, at the expense of the county, forms of applications for judgment and forms of notice and summons when the same are required, and shall prosecute to final judgment all actions brought by holders of certificates under the provisions of this chapter for the foreclosure of tax liens, when requested so to do by the holder of any certificate of delinquency: PROVIDED, Said holder has duly paid to the clerk of the court the sum of two dollars for each action brought as per RCW

84.64.120: PROVIDED, FURTHER, That nothing herein shall be construed to prevent said holder from employing other and additional counsel, or prosecuting said action independent of and without assistance from the prosecuting attorney, if he so desires, but in such cases, no other and further costs or charge whatever shall be allowed than the costs provided in this section and RCW 84.64.120: AND PROVIDED, ALSO, That in no event shall the county prosecuting attorney collect any fee for the services herein enumerated.

[1961 c 15 § 84.64.040. Prior: 1925 ex.s. c 130 § 116; RRS § 11277; prior: 1903 c 166 § 1; 1899 c 141 § 14.]

84.64.050**Certificate to county — Foreclosure — Notice — Sale of certain residential property eligible for deferral prohibited.**

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: PROVIDED, That the county treasurer, with the consent of the county legislative authority, may elect to issue a certificate for fewer than all years' taxes, interest, and costs to a minimum of the taxes, interest, and costs for the earliest year.

Certificates of delinquency shall be prima facie evidence that:

- (1) The property described was subject to taxation at the time the same was assessed;
- (2) The property was assessed as required by law;
- (3) The taxes or assessments were not paid at any time before the issuance of the certificate;

(4) Such certificate shall have the same force and effect as a *lis pendens* required under chapter

4.28 RCW.

The county treasurer may include in the certificate of delinquency any assessments which are due on the property and are the responsibility of the county treasurer to collect. For purposes of this chapter, "taxes, interest, and costs" include any assessments which are so included by the county treasurer, and "interest" means interest and penalties unless the context requires otherwise.

The treasurer shall file the certificates when completed with the clerk of the court at no cost to the treasurer, and the treasurer shall thereupon, with legal assistance from the county prosecuting attorney, proceed to foreclose in the name of the county, the tax liens embraced in such certificates. Notice and summons must be served or notice given in a manner reasonably calculated to inform the owner or owners, and any person having a recorded interest in or lien of record upon the property, of the foreclosure action to appear within thirty days after service of such notice and defend such action or pay the amount due. Either (a) personal service upon the owner or owners and any person having a recorded interest in or lien of record upon the property, or (b) publication once in a newspaper of general circulation, which is circulated in the area of the property and mailing of notice by certified mail to the owner or owners and any person having a recorded interest in or lien of record upon the property, or, if a mailing address is unavailable, personal service upon the occupant of the property, if any, is sufficient. If such notice is returned as unclaimed, the treasurer shall send notice by regular first-class mail. The notice shall include the legal description on the tax rolls, the year or years for which assessed, the amount of tax and interest due, and the name of owner, or reputed owner, if known, and the notice must include the local street address, if any, for informational purposes only. The certificates of delinquency issued to the county may be issued in one general certificate in book form including all property, and the proceedings to foreclose the liens against the property may be brought in one action and all persons interested in any of the property involved in the proceedings may be made codefendants in the action, and if unknown may be therein named as unknown owners, and the publication of such notice shall be sufficient service thereof on all persons interested in the property described therein, except as provided above. The person or persons whose name or names appear on the treasurer's rolls as the owner or owners of the property shall be considered and treated as the owner or owners of the property for the purpose of this section, and if upon the treasurer's rolls it appears that the owner or owners of the property are unknown, then the property shall be proceeded against, as belonging to an unknown owner or owners, as the case may be, and all persons owning or claiming to own, or having or claiming to have an interest therein, are hereby required to take notice of the proceedings and of any and all steps thereunder: PROVIDED, That prior to the sale of the property, the treasurer shall order or conduct a title search of the property to be sold to determine the legal description of the property to be sold and the record title holder, and if the record title holder or holders differ from the person or persons whose name or names appear on the treasurer's rolls as the owner or owners, the record title holder or holders shall be considered and treated as the owner or owners of the property for the purpose of this section, and shall be entitled to the notice provided for in this section. Such title search shall be included in the costs of foreclosure.

The county treasurer shall not sell property which is eligible for deferral of taxes under chapter 84.38 RCW but shall require the owner of the property to file a declaration to defer taxes under chapter 84.38 RCW.

[1999 c 18 § 7; 1991 c 245 § 25; 1989 c 378 § 37; 1986 c 278 § 64. Prior: 1984 c 220 § 19; 1984 c 179 § 2; 1981 c 322 § 4; 1972 ex.s. c 84 § 2; 1961 c 15 §84.64.050; prior: 1937 c 17 § 1; 1925 ex.s. c 130 § 117; RRS § 11278; prior: 1917 c 113 § 1; 1901 c 178 § 3; 1899 c 141 § 15; 1897 c 71 § 98.]

Notes:

Severability -- 1986 c 278: See note following RCW 36.01.010.

84.64.060

Payment by interested person before day of sale.

Any person owning a recorded interest in lands or lots upon which judgment is prayed, as provided in this chapter, may in person or by agent pay the taxes, interest and costs due thereon to the county treasurer of the county in which the same are situated, at any time before the day of the sale; and for the amount so paid he or she shall have a lien on the property liable for taxes, interest and costs for which judgment is prayed; and the person or authority who shall collect or receive the same shall give a receipt for such payment, or issue to such person a certificate showing such payment. If paying by agent, the agent shall provide notarized documentation of the agency relationship.

[2003 c 23 § 4; 2002 c 168 § 9; 1983 c 88 § 1; 1961 c 15 §

84.64.060 . Prior: 1925 ex.s. c 130 § 118; RRS § 11279; prior: 1897 c 71 § 99.]

84.64.070**Redemption before day of sale — Redemption of property of minors and legally incompetent persons.**

Real property upon which certificates of delinquency have been issued under the provisions of this chapter, may be redeemed at any time before the close of business the day before the day of the sale, by payment, as prescribed by the county treasurer, to the county treasurer of the proper county, of the amount for which the certificate of delinquency was issued, together with interest at the statutory rate per annum charged on delinquent general real and personal property taxes from date of issuance of the certificate of delinquency until paid. The person redeeming such property shall also pay the amount of all taxes, interest and costs accruing after the issuance of such certificate of delinquency, together with interest at the statutory rate per annum charged on delinquent general real and personal property taxes on such payment from the day the same was made. No fee shall be charged for any redemption. Tenants in common or joint tenants shall be allowed to redeem their individual interest in real property for which certificates of delinquency have been issued under the provisions of this chapter, in the manner and under the terms specified in RCW

84.64.060 for the redemption of real property other than that of persons adjudicated to be legally incompetent or minors for purposes of this section. If the real property of any minor, or any person adjudicated to be legally incompetent, be sold for nonpayment of taxes, the same may be redeemed at any time within three years after the date of sale upon the terms specified in this section, on the payment of interest at the statutory rate per annum charged on delinquent general real and personal property taxes on the amount for which the same was sold, from and after the date of sale, and in addition the redemptioner shall pay the reasonable value of all improvements made in good faith on the property, less the value of the use thereof, which redemption may be made by themselves or by any person in their behalf.

[2002 c 168 § 10; 1991 c 245 § 26; 1963 c 88 § 2; 1961 c 15 § 84.64.070. Prior: 1925 ex.s. c 130 § 119; RRS § 11280; prior: 1917 c 142 § 4; 1899 c 141 § 17; 1897 c 71 § 102; 1895 c 176 § 25; 1893 c 124 § 121.]

84.64.080**Foreclosure proceedings — Judgment — Sale — Notice — Form of deed — Recording.**

The court shall examine each application for judgment foreclosing tax lien, and if defense (specifying in writing the particular cause of objection) be offered by any person interested in any of the lands or lots to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, without other pleadings, and shall pronounce judgment as the right of the case may be; or the court may, in its discretion, continue such individual cases, wherein defense is offered, to such time as may be necessary, in order to secure substantial justice to the contestants therein; but in all other cases the court shall proceed to determine the matter in a summary manner as above specified. In all judicial proceedings of any kind for the collection of taxes, and interest and costs thereon, all amendments which by law can be made in any personal action pending in such court shall be allowed, and no assessments of property or charge for any of the taxes shall be considered illegal on account of any irregularity in the tax list or assessment rolls or on account of the assessment rolls or tax list not having been made, completed or returned within the time required by law, or on account of the property having been charged or listed in the assessment or tax lists without name, or in any other name than that of the owner, and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collection of the taxes, shall vitiate or in any manner affect the tax or the assessment thereof, and any irregularities or informality in the assessment rolls or tax lists or in any of the proceedings connected with the assessment or levy of such taxes or any omission or defective act of any officer or officers connected with the assessment or levying of such taxes, may be, in the discretion of the court, corrected, supplied and made to conform to the law by the court. The court shall give judgment for such taxes, interest and costs as shall appear to be due upon the several lots or tracts described in the notice of application for judgment or complaint, and such judgment shall be a several judgment against each tract or lot or part of a tract or lot for each kind of tax included therein, including all interest and costs, and the court shall order and direct the clerk to make and enter an order for the sale of such real property against which judgment is made, or vacate and set aside the certificate of delinquency or make such other order or judgment as in the law or equity may be just. The order shall be signed by the judge of the superior court, shall be delivered to the county treasurer, and shall be full and sufficient authority for him or her to proceed to sell the property for the sum as set forth in the order and to take such further steps in the matter as are provided by law. The county treasurer shall immediately after receiving the order and judgment of the court proceed to sell the property as provided in this chapter to the highest and best bidder for cash. The acceptable minimum bid shall be the total amount of taxes, interest, and costs. All sales shall be made at a location in the county on a date and time (except Saturdays, Sundays, or legal holidays) as the county treasurer may direct, and shall continue from day to day (Saturdays, Sundays, and legal holidays excepted) during the same hours until all lots or tracts are sold, after first giving notice of the time, and place where such sale is to take place for ten days successively by posting notice thereof in three public places in the county, one of which shall be in the office of the treasurer. The notice shall be substantially in the following form:

TAX JUDGMENT SALE

Public notice is hereby given that pursuant to real property tax judgment of the superior court of the county of in the state of Washington, and an order of sale duly issued by the court, entered the day of,, in proceedings for foreclosure of tax liens upon real property, as per provisions of law, I shall on the day of,, at o'clock a.m., at in the city of, and county of, state of Washington, sell the real property to the highest and best bidder for cash, to satisfy the full amount of taxes, interest and costs adjudged to be due.

In witness whereof, I have hereunto affixed my hand and seal this day of,

.....

Treasurer of
county.

No county officer or employee shall directly or indirectly be a purchaser of such property at such sale.

If any buildings or improvements are upon an area encompassing more than one tract or lot, the same must be advertised and sold as a single unit.

If the highest amount bid for any such separate unit tract or lot is in excess of the minimum bid due upon the whole property included in the certificate of delinquency, the excess shall be refunded following payment of all recorded water-sewer district liens, on application therefor, to the record owner of the property. The record owner of the property is the person who held title on the date of issuance of the certificate of delinquency. Assignments of interests, deeds, or other documents executed or recorded after filing the certificate of delinquency shall not affect the payment of excess funds to the record owner. In the event no claim for the excess is received by the county treasurer within three years after the date of the sale he or she shall at expiration of the three year period deposit such excess in the current expense fund of the county which shall extinguish all claims by any owner to the excess funds. The county treasurer shall execute to the purchaser of any piece or parcel of land a tax deed. The deed so made by the county treasurer, under the official seal of his or her office, shall be recorded in the same manner as other conveyances of real property, and shall vest in the grantee, his or her heirs and assigns the title to the property therein described, without further acknowledgment or evidence of such conveyance, and shall be substantially in the following form:

State of Washington |
|
| ss.
|
County of >
.. |
|

This indenture, made this day of,, between, as treasurer of county, state of Washington, party of the first part, and, party of the second part:

Witnesseth, that, whereas, at a public sale of real property held on the day of,, pursuant to a real property tax judgment entered in the superior court in the county of on the day of,, in proceedings to foreclose tax liens upon real property and an order of sale duly issued by the court, duly purchased in compliance with the laws of the state of Washington, the following described real property, to wit: (Here place description of real property conveyed) and that the has complied with the laws of the state of Washington necessary to entitle (him, or her or them) to a deed for the real property.

Now, therefore, know ye, that, I, county treasurer of the county of, state of Washington, in consideration of the premises and by virtue of the statutes of the state of Washington, in such cases provided, do hereby grant and convey unto, his or her heirs and assigns, forever, the real property hereinbefore described.

Given under my hand and seal of office this day of, A.D.

.....
County Treasurer.

[2004 c 79 § 7; 2003 c 23 § 5. Prior: 1999 c 153 § 72; 1999 c 18 § 8; 1991 c 245 § 27; 1981 c 322 § 5; 1965 ex.s. c 23 § 4; 1963 c 8 § 1; 1961 c 15 § 84.64.080; prior: 1951 c 220 § 1; 1939 c 206 § 47; 1937 c 118 § 1; 1925 ex.s. c 130 § 20; RRS § 11281; prior: 1909 c 163 § 1; 1903 c 59 § 5; 1899 c 141 § 18; 1897 c 71 § 103; 1893 c 124 § 105; 1890 p 573 § 112; Code 1881 § 2917. Formerly RCW 84.64.080, 84.64.090, 84.64.100, and 84.64.110.]

Notes:

Part headings not law -- 1999 c 153: See note following RCW 57.04.050.

Validation -- 1963 c 8: "All rights acquired or any liability or obligation incurred under the provisions of this section prior to February 18, 1963, or any process, proceeding, order, or judgment involving the assessment of any property or the levy or collection of any tax thereunder, or any certificate of delinquency, tax deed or other instrument given or executed thereunder, or any claim or refund thereunder, or any sale or other proceeding thereunder are hereby declared valid and of full force and effect." [1963 c 8 § 2.]

84.64.120

Appellate review — Deposit.

Appellate review of the judgment of the superior court may be sought as in other civil cases. However, review must be sought within thirty days after the entry of the judgment and the party taking such appeal shall deposit a sum equal to all taxes, interest, and costs with the clerk of the court, conditioned that the appellant shall prosecute the appeal with effect, and will pay the amount of any taxes, interest and costs which may be finally adjudged against the real property involved in the appeal by any court having jurisdiction of the cause. No appeal shall be allowed from any judgment for the sale of land or lot for taxes unless the party taking such appeal shall before the time of giving notice of such appeal, and within thirty days herein allowed within which to appeal, deposit with the clerk of the court of the county in which the land or lots are situated, an amount of money equal to the amount of the judgment and costs rendered in such cause by the trial court. If, in case of an appeal, the judgment of the lower court shall be affirmed, in whole or in part, the supreme court or the court of appeals shall enter judgment for the amount of taxes, interest and costs, with damages not to exceed twenty percent, and shall order that the amount deposited with the clerk of the court, or so much thereof as may be necessary, be credited upon the judgment so rendered, and execution shall issue for the balance of the judgment, damages and costs. The clerk of the supreme court or the clerk of the division of the court of appeals in which the appeal is pending shall transmit to the county treasurer of the county in which the land or lots are situated a certified copy of the order of affirmance, and it shall be the duty of such county treasurer upon receiving the same to apply so much of the amount deposited with the clerk of the court, as shall be necessary to satisfy the amount of the judgment of the supreme court, and to account for the same as collected taxes. If the judgment of the superior court shall be reversed and the cause remanded for a rehearing, and if, upon a rehearing, judgment shall be rendered for the sale of the land or lots for taxes, or any part thereof, and such judgment be not appealed from, as herein provided, the clerk of such superior court shall certify to the county treasurer the amount of such judgment, and thereupon it shall be the duty of the county treasurer to certify to the county clerk the amount deposited with the clerk of the court, and the county clerk shall credit such judgment with the amount of such deposit, or so much thereof as will satisfy the judgment, and the county treasurer shall be chargeable and accountable for the amount so credited as collected taxes. Nothing herein shall be construed as requiring an additional deposit in case of more than one appeal being prosecuted in the proceeding. If, upon a final hearing, judgment shall be refused for the sale of the land or lots for the taxes, interest, and costs, or any part thereof, in the proceedings, the county treasurer shall pay over to the party who shall have made such deposit, or his or her legally authorized agent or representative, the amount of the deposit, or so much thereof as shall remain after the satisfaction of the judgment against the land or lots in respect to which such deposit shall have been made.

[1999 c 18 § 9; 1991 c 245 § 28; 1988 c 202 § 70; 1971 c 81 § 154; 1961 c 15 §

84.64.120. Prior: 1925 ex.s. c 130 § 121; RRS § 11282; prior: 1903 c 59 § 4; 1897 c 71 § 104; 1893 c 124 § 106.]

Notes:

Rules of court: Cf. RAP 5.2, 8.1, 18.22.

Severability -- 1988 c 202: See note following RCW 2.24.050.

84.64.130**Certified copies of records as evidence.**

The books and records belonging to the office of county treasurer, certified by said treasurer, shall be deemed prima facie evidence to prove the issuance of any certificate, the sale of any land or lot for taxes, the redemption of the same or payment of taxes thereon. The county treasurer shall, at the expiration of his term of office, pay over to his successor in office all moneys in his hands received for redemption from sale for taxes on real property.

[1981 c 15 §

84.64.130. Prior: 1925 ex.s. c 130 § 123; RRS § 11284; prior: 1897 c 71 § 108; 1893 c 124 § 123.]

84.64.180**Deeds as evidence — Estoppel by judgment.**

Deeds executed by the county treasurer, as aforesaid, shall be prima facie evidence in all controversies and suits in relation to the right of the purchaser, his heirs and assigns, to the real property thereby conveyed of the following facts: First, that the real property conveyed was subject to taxation at the time the same was assessed, and had been listed and assessed in the time and manner required by law; second, that the taxes were not paid at any time before the issuance of deed; third, that the real property conveyed had not been redeemed from the sale at the date of the deed; fourth, that the real property was sold for taxes, interest and costs, as stated in the deed; fifth, that the grantee in the deed was the purchaser, or assignee of the purchaser; sixth, that the sale was conducted in the manner required by law. And any judgment for the deed to real property sold for delinquent taxes rendered after January 9, 1926, except as otherwise provided in this section, shall estop all parties from raising any objections thereto, or to a tax title based thereon, which existed at or before the rendition of such judgment, and could have been presented as a defense to the application for such judgment in the court wherein the same was rendered, and as to all such questions the judgment itself shall be conclusive evidence of its regularity and validity in all collateral proceedings, except in cases where the tax has been paid, or the real property was not liable to the tax.

[1981 c 15 §

84.64.180. Prior: 1925 ex.s. c 130 § 127; RRS § 11288; prior: 1897 c 71 § 114; 1893 c 124 § 132; 1890 p 574 § 114.]

84.64.190**Certified copy of deed as evidence.**

Whenever it shall be necessary in any action in any court of law or equity, wherein the title to any real property is in controversy, to prove the conveyance to any county of such real property in pursuance of a foreclosure of a tax certificate and sale thereunder, a copy of the tax deed issued to the county containing a description of such real property, exclusive of the description of all other real property therein described, certified by the county auditor of the county wherein the real property is situated, to be such, shall be admitted in evidence by the court, and shall be proof of the conveyance of the real property in controversy to such county, to the same extent as would a certified copy of the entire record of such tax deed.

[1961 c 15 §

84.64.190. Prior: 1925 ex.s. c 130 § 128; RRS § 11289; prior: 1890 p 575 § 115.]

84.64.200**Prior taxes deemed delinquent — County as bidder at sale — Purchaser to pay all delinquent taxes, interest, or costs.**

All lots, tracts and parcels of land upon which taxes levied prior to January 9, 1926 remain due and unpaid at the date when such taxes would have become delinquent as provided in the act under which they were levied shall be deemed to be delinquent under the provisions of this title, and the same proceedings may be had to enforce the payment of such unpaid taxes, with interest and costs, and payment enforced and liens foreclosed under and by virtue of the provisions of this chapter. For the purposes of foreclosure under this chapter, the date of delinquency shall be construed to mean the date when the taxes first became delinquent. At all sales of property for which certificates of delinquency are held by the county, if no other bids are received, the county shall be considered a bidder for the full area of each tract or lot to the amount of all taxes, interest and costs due thereon, and where no bidder appears, acquire title in trust for the taxing districts as absolutely as if purchased by an individual under the provisions of this chapter; all bidders except the county at sales of property for which certificates of delinquency are held by the county shall pay the full amount of taxes, interest and costs for which judgment is

rendered, together with all taxes, interest and costs which are delinquent at the time of sale, regardless of whether the taxes, interest, or costs are included in the judgment.

[2007 c 295 § 7; 1981 c 322 § 6; 1961 c 15 §

84.64.200. Prior: 1925 ex.s. c 130 § 129; RRS § 11290; prior: 1901 c 178 § 4; 1899 c 141 § 24; 1897 c 71 § 116; 1893 c 124 § 136.]

84.64.215

Deed recording fee — Transmittal to county auditor and purchaser.

In addition to a five dollar fee for preparing the deed, the treasurer shall collect the proper recording fee. This recording fee together with the deed shall then be transmitted by the treasurer to the county auditor who will record the same and mail the deed to the purchaser.

[1991 c 245 § 29; 1961 c 15 §

84.64.215. Prior: 1947 c 60 § 1; Rem. Supp. 1947 § 11295a. Formerly RCW 84.64.210, part.]

— **APPENDIX D** —



NEW LAW HELPS PROTECT DISTRESSED HOMEOWNERS

For Immediate Release:
June 6, 2008

SEATTLE - A new state law to help protect financially strapped homeowners from equity skimming and foreclosure rescue scams becomes effective in Washington on June 12. The new law provides safeguards for people trying to stop the loss of their home and requires new disclosures and responsibilities for individuals claiming to help homeowners avoid foreclosure.

House Bill 2791, based in part on legislation proposed by the Attorney General's Office, aims to reduce foreclosure rescue schemes that promise to save homes, but all too often add insult to injury, either by stripping the equity from the property and leaving the homeowner with nothing, or by charging exorbitant fees for unnecessary or non-existent services.

The new law addresses two common types of foreclosure rescue scheme perpetrators:

- **Distressed home purchasers**, who lead homeowners to sign over the deed to their property by promising to sell the home back once the homeowners get back on their feet financially and allowing them to remain in the home as tenants in the meantime. The homeowners frequently do not understand the transaction, receive little, if any, financial benefit and are ultimately stripped of both their home and whatever equity they had in it.
- **Distressed home consultants**, who offer phantom help to homeowners in financial distress, typically with false promises to "stop the foreclosure" or "save the home." The consulting services are often of little or no value and serve only to delay homeowners from seeking real assistance from qualified professionals such as mortgage counselors or attorneys.

Distressed Homeowner Protections

The following distressed homeowner protections apply only when a purchase agreement includes an offer for the original homeowner to lease the home and buy it back or receive a portion of proceeds of any resale:

Distressed home purchasers must provide homeowners with a written contract completely describing the terms of the sale and giving the homeowner a right to cancel the sale for within five days.

- Prior to the sale, the purchaser must verify that the homeowner has the ability to make rental payments and to buy the home back.
- If the homeowner is unable to buy the home back, he or she must receive at least 82 percent of the fair market value of the home at the time the homeowner loses possession of the home.
- A homeowner injured by a violation of the statute may collect up to three times the amount of actual damages, not to exceed \$100,000.

Distressed Home Consultant Provisions

- Distressed home consultants must provide homeowners with a written contract listing all services and charges.
- The consultant has what is called a "fiduciary duty" to the homeowner, meaning the consultant must act at all times in the best interests of the homeowner.
- Because the Legislature (unlike similar statutes in other states) did not exempt licensed real estate sales persons from the law, sellers who are behind on their loans or real property taxes may be asked to sign a revised listing agreement limiting the services offered by the real estate agent or broker. Without new agreements, brokers and agents risk unanticipated liability in such cases.





Tips for Distressed Homeowners

- **Free foreclosure and homeownership counseling is available** from the State of Washington. Contact the Washington State Homeownership Information Hotline at 1.877.894.HOME (1.877.894.4663) or visit www.homeownership.wa.gov for a list of counselors in your area.
- **Consider alternatives to foreclosure.** Your lender may be able to temporarily reduce your mortgage payments or assist you with restructuring or refinancing your loan so that you can stay in your home. If you're unable to afford the house long-term, you may be able to sell before the foreclosure sale and save some of your equity.
- **Approach any unsolicited offer of assistance with caution.** Seek professional assistance, but carefully select the professionals you choose to help you. Ask for references and check them. Check with state licensing authorities.
- **Ignore signs, fliers and hand-written notes offering foreclosure help.** Scam artists typically advertise their "services" on posters pinned to telephone poles and fliers dropped on your porch. They also contact people whose homes are listed in public foreclosure notices.
- **Read everything and don't sign any papers you don't understand.** Once you sign papers, insist on immediately receiving copies that you can keep of all the documents.

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