



# WASHINGTON'S NEW DISTRESSED HOMEOWNER LEGISLATION

## FAQ

### BACKGROUND

[HB 2791](#) is based on legislation proposed by the Attorney General's Office to help protect financially strapped homeowners from equity stripping and foreclosure rescue scams. The proposed bill was modeled after legislation enacted in Minnesota, Illinois, California and several other states.

The [original bill draft](#), as written by the Attorney General's Office, focused solely on purchase agreements that permit the original homeowner to lease the home then either buy it back later or receive a portion of proceeds of any resale.

Last-minute changes revised the definition of a "distressed home" and added the term "distressed homeowner consultant" to the bill. These changes, in particular, are generating many questions and concerns among real estate professionals. Neither the Attorney General's Office nor the Washington REALTORS had sufficient opportunity to comment on the revisions before the Legislature approved the law.

The law took effect June 12, 2008. Changes are incorporated into RCWs [61.34](#) and [59.18](#).

### Is anyone working to change the law?

Yes. The Attorney General's Office is working with REALTORS and legislators to address the concerns. Attorneys in our office are meeting with REALTORS to draft amendments to the new law that we will request the Legislature enact as soon as possible. Unless the Legislature calls for a special session, the existing bill will likely remain in effect until next session, which starts in January.

### What part of the bill was proposed by the Attorney General's Office and why?

In this time of rising foreclosures, desperate homeowners are being lured by offers of assistance – only to be cheated out of equity they've built up and tricked into transferring ownership of their home. The Attorney General requested legislation targeted at cons who promise to save homes but either strip the equity from the property or charge exorbitant fees for unnecessary or non-existent services. Victims of such scams are often given the opportunity to rent back their property – but at prices higher than the original mortgage payments. In some cases, homeowners are unaware that they've lost their property until they receive an eviction notice.

The bill as drafted by the Attorney General's office required that distressed home purchasers offering homeowners the ability to lease or buy back their property provide homeowners with written contracts that completely describe the terms of the sale and give the homeowner the right to cancel the sale within five days.

Prior to the sale, the purchaser was required to verify that the homeowner has the ability to make rental payments and to buy the home back.

Under the original bill, if the distressed 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 as of the time he or she is evicted or voluntarily relinquishes the home.

### Why is the law causing changes in the real estate industry?

The final version of the law added the term "distressed home consultant," defined as anyone who contacts a distressed homeowner with an offer to stop or delay a foreclosure sale or offers other specified services. In some cases, the law could be interpreted to mean that a licensed real estate agent is a distressed home consultant.





## **What are the definitions of a “distressed home” and “distressed homeowner” under the law?**

A “distressed home” is a single, duplex, triplex or four-unit residential building, occupied by the owner as the owner’s primary residence, that is in foreclosure or is in danger of being foreclosed. Units in larger condominium buildings are not specifically included in the statute.

Under the law, a home may be considered at risk of foreclosure, and therefore, distressed, if the homeowner is more than 30 days delinquent on any loan secured by the property.

Additionally, if the homeowner believes that he or she may default on the mortgage within the next four months and has reported this belief to an attorney, real estate agent, credit counselor, mortgage broker or various other officials, the home is considered distressed.

## **What is the definition of a “distressed home consultant” under the law?**

The term “distressed home consultant” is defined as a person who solicits or contacts a distressed homeowner and offers to stop or delay a foreclosure sale or “save” the distressed homeowner from foreclosure. Among other things, this could include actions such as negotiating short sales, assisting the homeowner to reinstate or refinance the mortgage, obtaining a loan, extending loan deadlines or obtaining a waiver of an acceleration clause that allows the lender to demand immediate payment of the outstanding loan balance. It could also include purchasing or obtaining an option to purchase the distressed property within 20 days of the foreclosure sale, arranging for the homeowner to become a lessee or tenant entitled to continue to reside in the home, or engaging in any transactions or documentation that clogs the distressed homeowner’s equity of redemption.

The definition also includes anyone who “systematically contacts” distressed homeowners.

Licensed mortgage brokers who procure nonpurchase mortgage loans (eg: line of credit, refinance, etc.) for the homeowner from financial institutions are exempt under the law. So are financial institutions, nonprofit credit counselors and licensed attorneys.

States with similar laws also exempt licensed real estate agents under the definition of “distressed home consultants,” but that is not currently the case in Washington.

## **What are the obligations of a distressed homeowner consultant?**

Distressed home consultants must provide homeowners with a written contract listing all services and charges. The new law requires that the contract be written in at least 12-point font in the same language used by the consultant to describe his/her services, as well as in English. Certain disclosures are required.

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.

## **Who enforces the law?**

A violation of the law is a violation of the Consumer Protection Act. The Attorney General’s Office can take civil action against a law violator. The office is concerned with individuals or businesses that engage in deceptive practices that harm consumers, not real estate professionals who commit “technical” violations of the new law while trying to provide legitimate professional services.

A homeowner may also bring a personal lawsuit under the statute and collect up to three times the amount of actual damages, not to exceed \$100,000.





## Why are sellers being asked to sign new listing agreements?

Because the Legislature 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. Washington REALTORS have interpreted the law to mean that it prohibits an agent from providing services to a distressed home seller without first having a distressed home consultant agreement in place. Without new agreements, agents and brokers risk unanticipated liability in such cases.

Washington REALTORS® and NWMLS recommend that agents and brokers who use the statewide listing agreement require all sellers to sign a new listing agreement or listing agreement addendum, clarifying the seller's status under the new law. According to the REALTORS, the current listing agreement does not satisfy the requirements for a distressed home consultant agreement. The distressed home consultant agreement must be in larger type than the existing listing agreements and must contain specific language not contained in existing listing agreements. In addition, a distressed home consultant owes fiduciary duties to the distressed homeowner that are more extensive than the statutory duties owed to a seller under the Agency Law.

## What additional resources are available to help people understand the law?

- Washington REALTORS and NWMLS have produced a **FAQ page** available at [http://www.warealtor.org/distressed\\_properties.asp](http://www.warealtor.org/distressed_properties.asp) and a **1-hour informational video** available at <http://www.warealtor.org/dpmedia/dvd.asp> for real estate professionals.
- The following news articles provide summaries of the law:
  - o NuWire Investor: "[The Legislative Labyrinth of HB 2791](#)"
  - o Spokesman-Review: "[Law aids 'distressed' home sellers](#)"
- Attorney General's news release: [New law helps protect distressed homeowners](#)
- Sellers and buyers are also encouraged to communicate with a professional, licensed real estate agent.
- If you still have questions, you are encouraged to seek the advice of your own lawyer.
- Unfortunately, the Attorney General's Office is unable to provide legal advice or interpret the law for individuals. It's also important to note that because the law is new and, in some cases, ambiguous, lawyers and judges may interpret it differently.

## Where can homeowners facing potential foreclosure find help?

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](http://www.homeownership.wa.gov) for a list of counselors in your area.

## I believe I am a victim of an equity skimming or foreclosure rescue scam. Where can I go for help?

- 1.) File a complaint with the Attorney General's Office either online at <http://atg.wa.gov/FileAComplaint.aspx> or by mail. You may call our Consumer Resource Center at 1-800-551-4636 between 10 a.m. and 3 p.m. weekdays to request a form.
- 2.) Speak with a homeownership counselor. Contact the Washington State Homeownership Information Hotline at 1-877-894-HOME (1-877-894-4663) or visit [www.homeownership.wa.gov](http://www.homeownership.wa.gov) for a list of counselors in your area.
- 3.) Consult with an attorney. Low-income residents can contact the Northwest Justice Project's legal aid advice and referral hotline (1-888-201-1014) – called **CLEAR** – weekdays from 9:15 a.m. until 12:15 p.m., and Tuesdays from 3:30 p.m. until 6:15 p.m. If you are 60 or over you may call CLEAR\*Sr at 1-888-387-7111 regardless of income.