



AG REQUEST LEGISLATION – 2009 SESSION

MORTGAGE LAW FIX

BACKGROUND:

The Attorney General's Office worked with a bipartisan coalition in 2008 to pass legislation to help protect financially strapped homeowners from 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 "distressed home conveyance" transactions, defined as the sale of a home in or near foreclosure that gives the homeowner an option to buy back the home at a later date or promises the original homeowner a portion of proceeds from any resale.

Last-minute changes by the senate committee revised the definition of a "distressed home" and added the concept of the "distressed home consultant" to the bill. These changes have generated questions and concerns among real estate professionals. Neither the Attorney General's Office nor the Washington Realtors had sufficient opportunity to review and comment on the revisions before the Legislature approved the law.

THE PROBLEM:

Unlike the Minnesota legislation on which the Washington law was modeled, the bill as enacted did not exempt real estate licensees from the definition of "distressed home consultant." The real estate industry is concerned that without an exemption legitimate real estate agents engaged in normal and beneficial real estate activities could unwittingly become "distressed home consultants" and potentially face liability for violating the law. Under some interpretations of the law, the definition as enacted could reach ordinary buyers, even if they are not engaged in a distressed home conveyance. This perceived liability could chill the sales of the homes of distressed homeowners, possibly forcing them into foreclosure even when buyers are available. In other words, the bill as written might harm the very consumers it was intended to help.

LEGISLATION:

The legislative fix, a joint effort of the Attorney General's Office, the real estate industry, consumer advocates and the Governor's Office, exempts real estate licensees from the definition of a "distressed home consultant" and provides a safe harbor for those purchasing a "distressed home" outright within 20 days of the foreclosure sale.