

Real Estate Licensee Update

Christine Gregoire, Governor
Volume II, Issue 1

Elizabeth Luce, Director
Spring/Summer 2009

Agents for Distressed Homeowners Get a Break

The Distressed Property Act of 2008 has been revised to exclude qualifying real estate agents from being considered distressed home consultants.

Many homeowners are facing financial difficulties arising from declining home values, increasing mortgage payments, and a worsening employment situation. In desperation, some of these homeowners are turning to businesses and individuals that claim to repurchase mortgages in order to allow the homeowners to remain in their homes (albeit under less than favorable financing). Some of these foreclosure rescue businesses are legitimate and provide a useful service to homeowners; however, with little regulation, many desperate homeowners have been exploited. Washington Legislature passed the Distressed Property Act

of 2008 in an attempt to protect homeowners from these scams.



The Distressed Property Act of 2008 focused on regulating the activities of home consultants who claim to help stop a foreclosure for a fee. The act also provided legal rights to home sellers through distressed property protections and distressed home consultant provisions. Under the original conditions of this law, real estate agents assisting in the sale of a potentially distressed home, or

a home within 20 days of foreclosure, were classified as distressed home consultants. All qualifying consultants in these transactions had a fiduciary

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The Federal Trade Commission is currently investigating instances of businesses using false affiliations to federal mortgage assistance programs. Additional information about mortgage modification and foreclosure rescue scams is available on the FTC's website listed below.

www.ftc.gov

The Washington Department of Financial Institutions has issued an Interpretive Statement that providers of loan modification services to Washington residents involving their Washington property must be licensed under the Mortgage Broker Practices Act (19.146 RCW) or the Consumer Loan Act (31.04 RCW) unless explicitly exempt under those Acts.

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Commissioner Corner

Jeff Thompson

On January 22, 2009, Governor Christine Gregoire announced the appointment of Jeff Thompson of the Tri-Cities as the newest member of the Washington Real Estate Commission. Jeff's term on the Commission expires on August 14, 2014.

Jeff Thompson first entered into the real estate industry in 1990 after being in the sales/management division of Kraft Foods. His passion and expertise lies in training and coaching for real estate agents/brokers. He worked for Century 21 from September of 1990 until November of 1996 when he partnered with Windermere Real Estate/Tri-Cities. In addition to his real estate business,



Jeff is active with the Tri-City Association of REALTORS®, serving as president in 2003. He was chairman of the Tri-City Regional Chamber of Commerce in 2007 and is currently on the board of directors.

Jeff's focus is on the professionalism and training of real estate licensees. He demonstrates this passion through involvement with RealEstateCoach.com, a real estate agent coaching company. Here are some of Jeff's thoughts as he embarks on his term as a real estate Commissioner:

"My drive to become part of the Real Estate Commissioner team for the State of Washington is quite simple. The real estate industry has often been viewed as an industry that is rather unprofessional. In order to raise the professionalism of the industry I believe we need to do several things:

1. Increase the initial clock hour requirements for new agents.
2. Initiate training for new agents and for new managers/brokers.
3. Raise the bar on the educational classes and experiences that are offered.

I feel certain that the more training an agent is given makes them stronger partners for the clients and fellow agents. The more transactions an agent has throughout the year leaves him or her better equipped with more experience and stronger negotiation skills than the agent who sells only a few properties a year. Education and stepped up initial requirements is the first step to improving the industry overall.

I am excited by the opportunities presented as a member of the real estate commission, and look forward to beginning my service as a member of the Commission's Education Subcommittee."

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www.dol.wa.gov/business/reaestate



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Revised Real Estate Seller Disclosure Requirements

Several small changes were made during the 2009 legislative session to the seller disclosure laws for improved and unimproved property (with or without structures) under RCW 64.06. Real estate agents will see slight clarifications in the wording throughout the disclosure forms for both improved and unimproved land. The new wording from House Bill 1420 is outlined below. Changes are effective July 26, 2009.

RCW 64.06.015 Seller's duty for unimproved residential property.

- Identification of flooding issues and fill material are now located under the Environmental section.
- Wording for substances that may be environmental concerns now must be identified if they are in or on a subject property.
- For properties subject to a homeowners' or common interest association, the name of the association and contact information for an officer, director, employee or other authorized agent who can



Buyer may expressly waive receipt of the disclosure statement. However, if the answer to any question in the Environmental section would be "yes," the buyer may not waive receipt of that section.

provide financial statements, minutes, by-laws, and other information not publicly available must be disclosed.

- Transmission poles or electrical equipment located on the property that do not provide service to property must be identified.

RCW 64.06.020 Seller's duty for improved residential property in addition to the above changes.

- Defects in the pipes or operation of a subject home's water system must be identified.
- If the roof of a subject home has leaked in the last five years, it must be disclosed.
- The presence and type of any wood burning appliance must be disclosed

RCW 64.06.040 Seller's duty after delivery of a disclosure statement.

- The seller must notify the buyer if they learn of any additional information from a source other than the buyer or others acting on the buyer's behalf, such as an inspector. ❖

"Distressed Homeowners" continued from page 1

duty to the homeowner and consequently faced liability when working on behalf of a distressed home seller.

"Many real estate brokerages across the state had policies to not get involved with distressed sales due to the potential liability," said Greg Wright, President of Washington REALTORS®.

The Distressed Property Act has been revised to fix some of the unintended consequences of the 2008 legislation. On March 25, 2009 Governor Gregoire signed amendments to the Distressed Property Act that no longer includes real estate agents as distressed home consultants when representing a client in a qualifying transaction. Those changes were implemented immediately.

Mr. Wright added, "The changes to the 2008 law maintains protection for people trying to keep their homes, but also allows people to seek the assistance of real estate professionals to sell their homes."

Before this fix, the increased legal obligation to homeowners facing foreclosure reduced the number of qualified agents willing to complete distressed home sales.

With the amendment to the 2008 law, homeowners who risk foreclosure will find it easier to find agents willing to sell their homes before they are put up for auction.

Changes to the 2008 law include:

1. Sellers must now be represented by an attorney or real estate agent for a buyers' agent to be excluded from being a distressed home consultant within 20 days of foreclosure.
2. The agent or buyer must not be participating in a distressed home conveyance.
3. The agent or buyer is not a distressed home consultant if the seller of the home is allowed to remain in the home for a maximum 20 day transitional period or signed an agreement to remain in the home as a lessee or tenant.
4. A homeowner is now defined as a person who occupied the home within 180 days of the conveyance.
5. Dwelling now includes condominiums, manufactured homes, and residential planned unit developments. ❖

Relationships with Home Inspectors

As of January 30, 2009, the Washington Administrative Code requires real estate salespersons and brokers to disclose relationships with home inspectors to clients when providing referrals. When a buyers' or sellers' agent refers an inspector, the agent must provide written notice to the client of any prior business or familial relationship. This disclosure must occur before a referred inspector provides any services. The Changing Business Practices Subcommittee of the Washington Real Estate Commission finalized wording for the rule throughout 2008.

The Legislature reacted to allegations that home inspectors colluded with agents to overlook problems. In these cases, a buyer would receive a clean report from a home inspector only to later find structural damage or significant omissions in the inspection.

In some instances, agents would not recommend quality home inspectors and instead recommend or compel clients to choose from their approved list of inspectors. Complaints were not frequent but they had the potential to harm the credibility of the majority of agents who make honest referrals to their clients.

"The new regulation is designed to make sure there is disclosure if a prior business relationship exists between an agent and an inspector," said Cate Moyé, Chair of the Changing Business Practices Subcommittee, Owner of Windermere Valley, Inc. and Liberty Lake, Inc.

A familial relationship exists if the agent and inspector are related in any way. The term business relationship applies if the agent and inspector have done business together, such as an inspection of

Real Estate Market Roundup

by Glenn E. Crellin, Director, Washington Center for Real Estate Research

Existing home sales and building permits for new housing construction continued to slide during the early months of 2009. For the first quarter of the year the seasonally adjusted annual rate of existing home sales in Washington stood at 67,070 units. This is the lowest sales rate since WCRER began tracking the market in 1994, and represents closed sales 30.6 percent below the sales rate during the first quarter of 2008.

Although seasonally adjusted annual rate statistics are a common way to report economic activity, especially in sectors like home sales which are widely known to have strong seasonal patterns, the interpretation of the data is challenging to the general public. The number does not represent the number of homes actually sold during the quarter (that number was 13,200). It does not represent a forecast. Each quarter is estimated independently of prior quarters. The seasonally adjusted annual rate should be thought of as an estimate of how many homes would be sold during the course of a year if the same relative pace were to continue for an entire year. Since the January through March period is always a slow sales period, the estimate is higher than simply multiplying the number actually sold by four. During the second and third quarters the seasonal factors are smaller, because sales activity is typically much greater. Because of this seasonal adjustment, data can be compared across quarters in a meaningful way (sales in the first quarter were 8.6 percent below the sales rate in the closing quarter of 2008).

New home construction data is received from the Census Bureau as building permit data. It would be better to report statistics on housing starts, but the Census Bureau only reports that data for the US and the four Census Regions, while the permit data can be aggregated by county and by state. Single-family building permits from the 32

counties (and cities within those counties) which report data monthly totaled 1,806 units during the first quarter (not seasonally adjusted). Single-family permits throughout Washington during the quarter were 50.1 percent below the first part of last year.

The slow rate of sales, large inventories of homes available for sale and increasing numbers of Washington mortgages which are seriously delinquent or in foreclosure have combined to put a great deal of downward pressure on selling prices. The median price home sold during the first three months of 2009 was \$253,500 – 13.7 percent below a year earlier. This brought prevailing prices down to the 2004 level. The degree to which foreclosures and short sales are causing significantly reduced prices on some homes, and how this is influencing aggregate statistics, is difficult to judge. It should be remembered that the median price represents a level at which half the sales are more expensive, and half are less. Average prices are typically 15-20 percent above medians. Price changes vary significantly by market, as illustrated on the accompanying map.

Federal efforts to stabilize the housing market have been concentrated in two areas, encouraging modification to existing loan terms in an effort to prevent some home from being foreclosed and using monetary policy to keep all interest rates low to encourage consumers to make significant purchases. The result was an average mortgage rate during the first quarter, including fees and charges, of 5.16 percent. This was the lowest quarterly average effective mortgage rate reported by the Federal Housing Finance Agency (and its predecessors) since they began reporting mortgage rate data in 1963. Those low rates combined with lower home prices and income estimates which have not yet shown impacts from the recession

the agent's own home, or worked together in any business. A previous referral or inclusion on a list of recommendations does not constitute a business relationship. Agents must also continue to facilitate a client's legal right to select their own home inspector. The intent of the new regulation is not to discourage agents from referring inspectors they believe will do a good job, but to promote honesty and full disclosure for clients.

The latest regulation also requires that brokers create a written office policy outlining the requirements for referring an inspector to a homebuyer or seller. Each office policy must prevent collusion between licensees and inspectors, and must address the customer's right to choose their own home inspector.

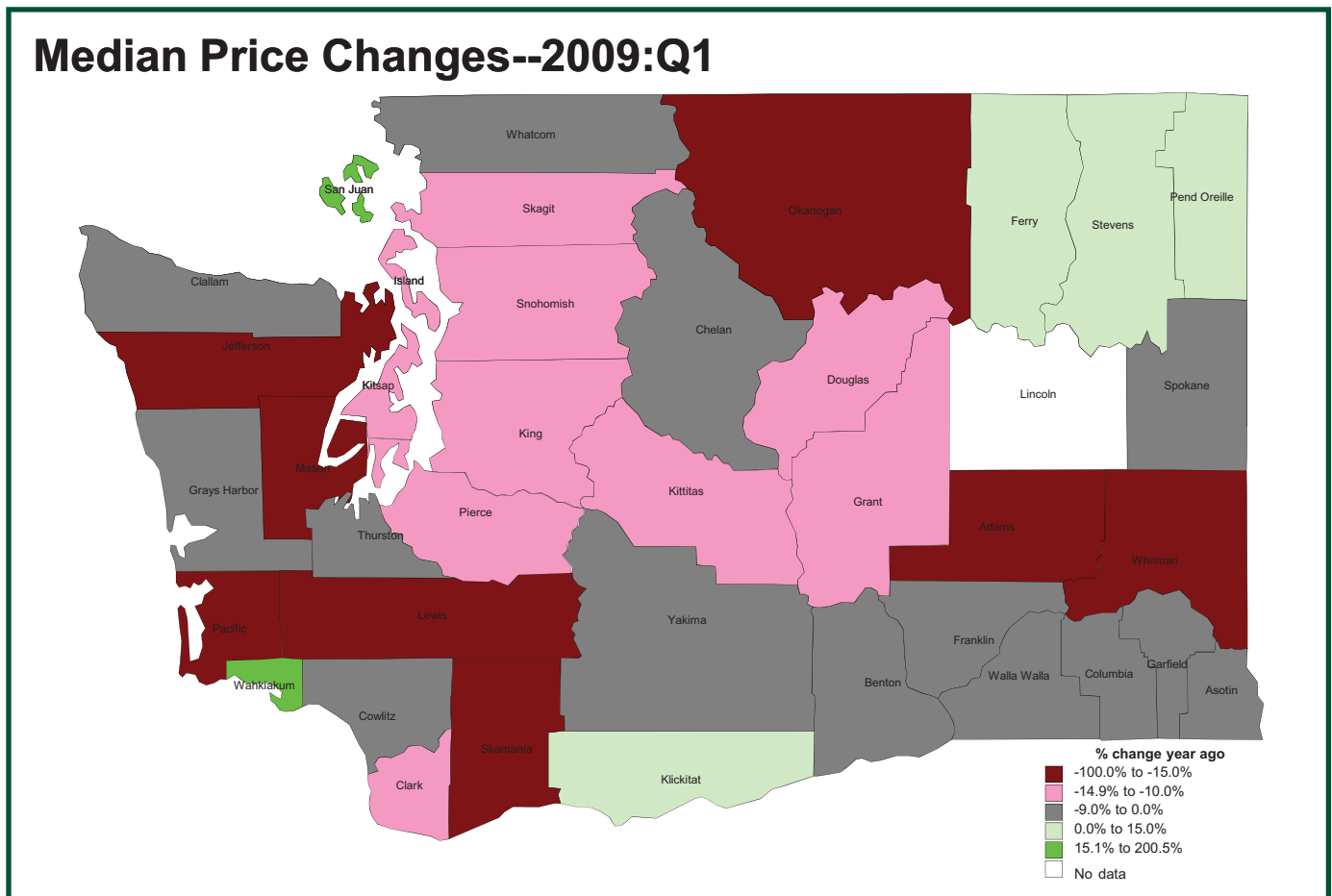
As of July 1, 2009, an additional state law requires home inspectors to be licensed in Washington. The Bill was signed into law by Governor Gregoire and creates a board for professional conduct standards and definitions for home inspector duties. The new licensing process consists of 160 hours of combined classroom and field training in addition to a written examination. The Department of Licensing is also reviewing WAC rules implementing RCW 18.280 that would increase education requirements, disciplinary action, and ethical standards for home inspectors.

The real estate licensee disclosure regulation can be found in WAC 308-124C-050. Home inspector licensing requirements are detailed in RCW 18.280, and the current home inspector rules under review are WAC 308-408 through 408C. ❖

to produce significantly improved measures of housing affordability. According to WCRER calculations the Housing Affordability Index for the first quarter was 125.5, meaning the median income family in Washington had 25.5 percent more income than the minimum required to

qualify to purchase the median price home (assuming a 20 percent downpayment). Meanwhile, the first-time buyer affordability index improved to 73.3 (compared to a low of 48.2 in the third quarter of 2007). This still represents an income deficiency of 26.7 percent in terms of the ability of

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Clarification for Title Insurance Industry

Title insurance is something that most people do not think about until purchasing a home. Since few homebuyers have knowledge of title insurers, they often look to their real estate agents for advice. Title insurance companies recognize this pattern of referrals, and it is common practice for these businesses to develop working relationships with local real estate agents. To build those relationships title companies often sponsored company activities, donated educational programs or made other gifts/promotions available to real estate licensees, their firms or associations. Washington State law regulates the nature of these gifts and donations between title insurers and agents. This is done to ensure that homebuyers receive unbiased recommendations from their real estate agents and overhead expenses are kept to a minimum. On March 21, 2009, revised rules under the Washington State Administrative Code (WAC) took effect to clarify what constitutes an appropriate gift and to set specific monetary limitations for title insurance companies.

Beyond providing an added layer of security in real estate transactions, title insurers are extremely valuable supporters of the real estate community. The new regulation allows title insurers to continue supporting the industry under WAC 284-29 but restricts their involvement to \$1,000 per trade organization event each calendar year. Title insurers may also continue to pay to advertise at trade events as long as they pay the standard price and advertising is not offered exclusively to one title insurer. Title insurers may give self-promotional items directly to real estate agents at these events or during any other time as long as the individual item cost no more than \$5.

Under the new rule, title insurance businesses may continue to host complementary educational

sessions for licensees on title-related topics. At these sessions, title insurers may spend up to \$10 per person on refreshments. Educational sessions may be provided on non-title topics if they are open to the public and provided for a fee. There is also an exception for charitable donations and donations to political action committees from title insurers. These donations are unrestricted when provided directly to the organization independent of any direct or indirect referral. Any items or expenses not expressly outlined in the new rules are not allowed.

The new rules add specific restrictions that address the ambiguities in the previous regulation. If you have any concerns about gifts, contributions, or expenses paid by a title insurer on your behalf, check the WAC 284-29 for exact wording. If you believe a title insurer is in violation of this law, you should contact the Washington State Office of the Insurance Commissioner to file a complaint:

Washington State Office of the Insurance
Commissioner

By fax: (360) 586-2018

Online: <http://www.insurance.wa.gov/titleInsurance/>

By mail: PO Box 40256, Olympia WA 98504-0256

Include copies of documentation that supports your complaint. Only send paper documents (be sure to keep your originals). Do not send video or audio materials.

The rules also apply to the acceptance of these gifts and donations by real estate licensees. For more information, or if you believe you know of a violation, you should contact the Regulatory and Enforcement unit:

By phone: (360) 664-6484

By fax: (360) 586-0998

Email: REregulatory&Enforce@dol.wa.gov. ❖

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a household earning 70 percent of the median income to purchase a typical starter home (85 percent of the median price). Based on national statistics any value of 80 or above would be consistent with a generally affordable market for first time buyers, so Washington has almost reached that threshold.

One risk to the market in the short term is whether Washington can avoid significantly larger numbers of foreclosures and their destabilizing impact on both the

market and prices. This is compounded by the number of owners who would like to sell their current homes, but cannot find buyers who are willing to "pull the trigger." What many of those buyers need to ask themselves is whether they are willing to ride an additional decline in prices in favor of purchasing a home at very favorable interest rates, or whether they are willing to risk higher payments as interest rate increases overpower future price declines before the market reaches bottom. ❖

Disciplinary Actions



January 2009

University Place—Sandra J. Davis

Finding: During the course of an audit, numerous record keeping and trust accounting violations were noted including: shortages in trust accounts, incomplete property management files and failure to maintain trial balances.

Action: Two-year suspension of broker license stayed for three years and a \$5,000 fine.

Spokane—Kimberly S. Hickethier

Finding: The Respondent was incompetent and negligent and failed to exercise reasonable skill and care in rendering real estate services to her client, a purchaser of property. Material information was withheld from her client which affected the client's decision to proceed with closing.

Action: Five-year revocation of broker license.

February 2009

Redmond—Hal McCann

Finding: The Respondent, as purchaser, entered into a Purchase and Sale Agreement that included an option to purchase the property. The Quit Claim Deed was recorded in favor the Respondent although the option to purchase was never exercised.

Action: Broker license surrendered and not eligible for renewal for ten years.

Redmond—Julie McCann

Finding: The Respondent, as purchaser, entered into a Purchase and Sale Agreement that included an option to purchase the property. The Quit Claim Deed was recorded in favor the Respondent although the option to purchase was never exercised.

Action: Salesperson license surrendered and not eligible for renewal for ten years.

Burlington—Susan Struthers

Finding: Failure to notify the Department of the entry of a civil judgment; failure to notify the Department of a change of business address; failure to display her license at her business address; failure to retain real estate records at her business address of record and failure to cooperate with the Department's investigation.

Action: Six-month suspension of broker license.

Olympia—Diana Young

Finding: Failure to fully respond to the Department's requests for information.

Action: Suspension of salesperson license until such time as she responds to the Department's request for information and fully cooperates with the Department's investigation.

April 2009

Spokane—David Leroy Baker

Finding: Departmental auditors noted violations of Departmental rules by the Respondent during several audits of the Respondent's property management business. In addition, the Respondent was responsible for the supervision of an office manager who stole cash from rental deposits, which resulted in additional failures by the Respondent to comply with recordkeeping rules.

Action: One-year suspension of broker license stayed for five years and a \$2,500 fine.

Camano Island—Sonya Lee Eppig

Finding: The Respondent failed to advise purchasers of property that a building permit had expired and that there were structural problems with construction. Further she failed to request associated corrections to the Disclosure Form.

Action: Ninety-day suspension of salesperson license.

Bellevue—Jeffrey Leung

Finding: The Respondent failed to notify listing agent or seller that earnest money had not been collected or deposited.

Action: One-year suspension of salesperson license stayed for three years and a \$2,500 fine.

Lakewood—Jeffrey Craig Magnuson

Finding: The Respondent failed to comply with the Director's Order in that he failed to pay a \$2,500 fine.

Action: One-year stayed suspension lifted. Salesperson license suspended until he complies with the terms of the Director's Order.

Silverdale—Trina Jones

Finding: The Respondent in the operation of her business stole prescription drugs from a home she was previewing.

Action: Ten-year revocation of salesperson license.

Puyallup—Larry Feller

Finding: The Respondent failed to advise the Department of a conviction for obtaining controlled substances by forgery or alteration of a prescription or any written order.

Action: One-year suspension of salesperson license stayed for three years and a \$1,000 fine.

May 2009

Anderson Island—Sherry Thierfelder

Finding: The Respondent failed to present several offers to the sellers of property; agency disclosures were inconsistent and confusing; and she failed to supervise the activities of an agent in her office.

Action: Three-year revocation of broker license. ❖



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REMINDER!

Real Estate Licensing Requirements Change July 1, 2010

Existing Licensees:

- Broker License (replaces Salesperson License)
- Managing Broker License (replaces Associate Broker and Broker License)
- Existing licensees need to take 3-hour Transition Course prior to first renewal after July 1, 2010

New Licensees:

- Broker License
 - 90-hour pre-license education: 60-hour Fundamentals, 30-hour Practices
 - 60-hour first-renewal education: 30-hour Advanced Practices, 30-hour Real Estate Law
 - 30-hour continuing education: each renewal cycle, including first; includes 3-hour Core
- Managing Broker License
 - 90-hour pre-license education: 30-hour Advanced Real Estate Law, 30-hour Real Estate Brokerage Management, 30-hour Business Management
 - 30-hour continuing education: each renewal cycle, includes 3-hour Core