2009 Legislative Report

Washington State Department of Financial Institutions

E2SHB 1078 (chapter 70, Laws of 2009)
Exchange Facilitators

Effective Date: July 26, 2009

A tax-deferred exchange is a method by which a property owner trades one or more relinquished properties for one or more "like-kind" replacement properties. This enables a property owner to defer the payment of federal income taxes on the transaction. Exchange facilitators (called “qualified intermediaries" under federal law) are required by federal law to facilitate the like kind exchange.

E2SHB 1078 creates some regulatory requirements for exchange facilitators in Washington. Each person in the exchange facilitator business ("facilitator") must maintain a fidelity bond or bonds in an amount of not less than $1 million, or a similar equivalent. Each facilitator must maintain an insurance policy for errors and omissions of not less than $250,000, or a similar equivalent. A facilitator must act as a custodian for all exchange funds, property, and other items received from the client (except the facilitator's compensation). The exchange funds must be held in a manner that provides liquidity and preserves principal.

The bill applies certain prohibited practices to exchange facilitators. Violations of these practices may have criminal penalties, and consumers may also pursue remedies under the Consumer Protection Act. The facilitators must file information with the DFI by December 31, 2009 and DFI will prepare a report for the Legislature for 2010.

HB 1127 (chapter 382, Laws of 2009)
Credit and Debit Card Information

Effective Date: July 26, 2009

Persons accepting credit cards or debit cards may not print more than the last five numbers of an account number or print the expiration date on an electronic receipt that is retained by the person or is provided to the cardholder. This restriction does not apply if the means of recording the number is by imprint or handwriting.

HB 1166 (chapter 384, Laws of 2009)
Linked Deposit Program Loans

Effective Date: July 26, 2009

The Linked Deposit Program (Program) purpose is to increase access to capital for the state's certified minority-owned and women-owned businesses. Under the Program, certified businesses can obtain reduced interest rate loans from participating financial institutions. The State Treasurer is authorized to use up to $190 million of short-term state treasury surplus funds for the Program. These funds are deposited in public depositories as certificates of deposit (CDs) on the condition that the public depositary make "qualifying loans" under the Program. The state forgoes up to 2 percent in interest on the CDs and passes along the savings to the public depository with the condition that the depository reduces the interest rate for the loan recipients.

The bill authorizes Community Development Financial Institutions (CDFI), to participate in the link deposit program. A CDFI is a specialized financial institution certified by the U.S. Department of the Treasury to provide loans for community development purposes. A CDFI works in economically distressed markets that are underserved by traditional financial institutions.

EHB 1167
Linked Deposit Program Study
(Partial Veto)

Effective Date: July 26, 2009

The Linked Deposit Program (Program) purpose is to increase access to capital for the state's certified minority-owned and women-owned businesses. Under the Program, certified businesses can obtain reduced interest rate loans from participating financial institutions. The State Treasurer is authorized to use up to $190 million of short-term state treasury surplus funds for the Program. These funds are deposited in public depositories as certificates of deposit (CDs) on the condition that the public depositary make "qualifying loans" under the Program. The state forgoes up to 2 percent in interest on the CDs and passes along the savings to the public depository with the condition that the depository reduces the interest rate for the loan recipients.

The bill also authorizes the State Treasurer to reduce the effective interest rate the state receives on CDs to zero percent.

EHB 1311 (chapter 149, Laws of 2009)
Reverse Mortgages

Effective Date: July 26, 2009

Generally, there are two types of reverse mortgages, those meeting federal underwriting requirements and regulated by the federal government, and those meeting the underwriting standards offered through other financial institutions. The non-government reverse mortgages (proprietary reverse mortgages) are offered by consumer loan companies and contain various provisions, some similar to the federal products, some not. Last year a bill passed (SB 6471) which disallowed consumer loan companies from offering reverse mortgages. This was an unintended consequence and EHB 1311 corrects the provision disallowing reverse mortgages by consumer loan companies. In addition the bill provides DFI with the authority to regulate this type of lending. The bill licenses all lenders offering reverse mortgages and requires that proprietary (private) reverse mortgage products are subject to preapproval by DFI. In addition, lenders offering proprietary reverse mortgage products meet certain capital requirements. Consumers who apply for proprietary reverse mortgages must have counseling and receive certain disclosures.

SHB 1347 (chapter 443, Laws of 2009)
Financial Education

Effective Date: July 26, 2009

The Financial Literacy Public-Private Partnership (FLPPP) was created in 2004 to adopt a definition of financial literacy and identify strategies to increase financial literacy of public school students. The FLPPP is made up of four legislators; four representatives from the financial services sector; four educators; one designee from the Office of the Superintendent of Public Instruction (OSPI); and one designee from the Department of Financial Institutions. The FLPPP is scheduled to expire June 30, 2009.

The bill establishes the Financial Education Public-Private Partnership (Partnership) which replaces FLPPP. The Partnership is composed of four members of the Legislature; four representatives from the financial services sector appointed by the Governor; four teachers appointed by the Superintendent of Public Instruction (SPI); one representative from the Department of Financial Institutions; and two representatives from the Office of the Superintendent of Public Instruction (OSPI), one from curriculum development and one from teacher professional development.

The duties and termination date of the FLPPP are also repealed. The following duties are assigned to the new Partnership and are to be implemented to the extent funds are available: communicate the financial education standards and strategies for improving financial education to school districts; review financial education curriculum; develop evaluation standards and a procedure for endorsing financial education curriculum; identify assessments and outcome measures that schools can use to determine whether students meet the financial education standards; monitor and provide guidance for professional development; work with the OSPI and the Professional Educator Standards Board to create professional development that leads to a certification in financial education; develop guidelines and protocols for classroom volunteers providing financial education; and submit an annual report by December 1 of each year to the Governor, SPI, and the Legislature.

Subject to the availability of funds, the bill directs OSPI and the Partnership to provide technical assistance and competitive grants for up to four demonstration projects to implement financial education standards on a district-wide basis. Selected districts must adopt the Jump Start Coalition National Standards in K-12 Personal Finance Education as the learning standards for financial education; make a commitment to integrate financial education into instruction at all grade levels; establish local partnerships; conduct pre- and post-testing of students' financial literacy; and report back to OSPI and the Legislature by April 30, 2011.

HB 1475 (chapter 93, Laws of 2009)
Agency Rulemaking Information

Effective Date: July 26, 2009

State agencies must maintain a website containing the agency's rulemaking information, including the complete text of proposed rules, emergency rules, and permanent rules proposed or adopted within the past 12 months. A direct link to the rulemaking page must be displayed on the agency's homepage. An agency's rulemaking website may contain a direct link to the index page on the Register website that includes the agency's rulemaking activity. The agency rulemaking website must include the time, date, and place for the required hearing of a proposed rule and procedures and timelines for submitting written comments and supporting data.

SHB 1621 (chapter 120, Laws of 2009)
Consumer Loan Companies

Effective Dates: various effective dates (see session law)

The federal Housing and Economic Reform Act of 2008 made many reforms aimed at stimulating the housing markets, providing mortgage relief for homeowners, and protecting consumers from further harm in the mortgage markets. The new law mandates state licensing of all mortgage loan originators and the use of a nationwide state licensing system to facilitate the licensing process. The law provides that if a state does not act the federal government will step in and become the primary regulator of those licensees.

While currently DFI licenses loan originators under the Mortgage Broker Practices Act, DFI does not license loan originators under the Consumer Loan Act. The legislation adds mortgage loan originator licensing to the Consumer Loan Act and requires our state to participate in licensing through a state run system called the Nationwide Mortgage Licensing System and Registry (NMLSR). It requires licensees to submit fingerprints through the (NMLSR) for criminal history background checks to the FBI. There are also education requirements for pre-licensing; a requirement for national and state testing; and a minimum 8 hour continuing education requirement.

ESHB 1709 (chapter 510, Laws of 2009)
Small Loan Default Risk

Effective Date: January 1, 2010

The Department of Financial Institutions regulates payday lenders under the Check Casher and Sellers Act (RCW 31.45). A payday loan is a small, unsecured, short-term cash loan. The loan, typically given in cash and secured by the borrower's post-dated check, includes the original loan principal and a fee. The maturity date usually coincides with the borrower's next payday. On the maturity date the lender may process the check. The borrower may also repay the loan in person with cash.

Currently, DFI licenses approximately 700 payday lending locations. The license provides a specific authorization to offer payday loans within the terms provided by the statute. According to the Act, licensees may not lend more than $700 to a single borrower at one time. The licensee may charge 15 percent for the first $500 and 10 percent on the amount over $500 up to the $700 limit. In addition, after four successive loans, a borrower is entitled to covert a loan into a payment plan with the lender.

The terms of the loans are changed in the bill. The minimum term of a loan is the borrower's next paycheck unless that is less than seven days. If it is less than seven days, the minimum term is the date of the next following pay date. A borrower may not take out more than $700 in small loans at any time from all lenders or may not borrow more than 30 percent of that borrower's gross monthly income whichever is less.

A licensee is prohibited from making a small loan to a borrower if making that small loan would result in a borrower receiving more than eight small loans from all licensees in any 12 month period. The existing payment plan is eliminated. A new installment plan is created. The lender must inform the borrower that if the borrower cannot repay a loan when the loan is due, then the borrower may convert the small loan to an installment plan.

A data base system is authorized to enforce these provisions and other parts of Chapter 31.45 RCW. The use of the system will enable a licensee to verify if the potential borrower is eligible for a small loan. The system must be available in real-time and secure against unauthorized acquisition or use, tampering, or theft. The Director of the DFI (Director) must establish the fee by rule. A lender may not charge an additional sum to recover the fee. Information in the system is exempt from public disclosure. The Director must also collect and submit the payday lending information to the Legislature. The Act takes effect January 1, 2010.

SHB 1749
Mortgage Broker Practices

Effective Dates: various effective dates (see session law)

The federal Housing and Economic Reform Act of 2008 (HERA) made many reforms aimed at stimulating the housing markets, providing mortgage relief for homeowners, and protecting consumers from further harm in the mortgage markets. HERA mandates state licensing of all mortgage loan originators and the use of a nationwide state licensing system to facilitate the licensing process. The law provides that if a state does not adopt a statute requiring licensure of loan originators covered by HERA, the federal government will step in and become the primary regulator of those licensees.

Currently DFI licenses most loan originators under the Mortgage Broker Practices Act. However the federal law covers some loan originators that are currently exempt under the Mortgage Broker Practices Act. As a result, DFI current licensure laws were updated to conform with the federal law. The legislation adds additional mortgage loan originator licensing requirements to the Mortgage Broker Practices Act and requires our state to participate in licensing through a state run system called the Nationwide Mortgage Licensing System and Registry (NMLSR). It requires licensees to submit fingerprints through the NMLSR for criminal history background checks to the FBI. There are also education requirements for pre-licensing; a requirement for national and state testing; and a minimum 8 hour continuing education requirement.

SHB 2061 (chapter 9, Laws of 2009)
Public Depositories

Effective Date: March 6, 2009

Public funds may only be deposited in banks and thrift institutions that have been approved as public depositaries by the Public Deposit Protection Commission (Commission). The Commission was established in 1969 and is comprised of the Governor, the Lieutenant Governor, and the State Treasurer. The State Treasurer chairs the Commission and provides administrative support. The Commission is responsible for protecting all public funds deposited in public depositaries.

"Public funds" are those moneys belonging to or held for the state, its political subdivisions, municipal corporations, agencies, courts, boards, commissions, or committees, and includes moneys held in trust. A "public depositary" is defined as a financial institution which does not claim exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state, which has been approved by the Commission to hold public deposits, and which has segregated for the benefit of the Commission eligible collateral having a value of not less than its maximum liability. There are separate collateral pools maintained for banks and thrifts.

The Commission's powers include: making and enforcing regulations to complete its functions; requiring any public depositary to furnish information dealing with public deposits and the exact status of its net worth; taking action for the protection, collection, compromise or settlement of any claim arising in case of loss; fixing the requirements for qualification of financial institutions as public depositaries, and fixing other terms and conditions under which public deposits may be received and held; setting criteria establishing minimum standards for the financial condition of bank and thrift depositaries and, if the minimum standards are not met, providing for additional collateral requirements or restrictions regarding a public depositary's right to receive or hold public deposits; fixing the official date on which any loss shall be deemed to have occurred; and in case loss occurs in more than one public depositary, determining the allocation and time of payment of any sums due to public depositors.

To be approved as a public depositary, a financial institution must meet minimum requirements of the Commission and must pledge securities as collateral to protect public funds on deposit in all public depositaries (not just for that particular institution). For the first 12 months as a public depositary, a depositary must pledge and segregate eligible securities of at least 10 percent of all public funds on deposit in the depositary. If deposit insurance and collateral pledged by a failed institution are insufficient to reimburse all public depositors, the other public depositaries are each assessed a proportionate share of the shortfall.

The Commission may require the State Auditor or the Department of Financial Institutions (DFI) to investigate and report on the condition of any financial institution applying to become a public depositary. The Commission may also require an investigation and report on the condition of any public depositary. The DFI must also advise the Commission of any action the agency has directed a public depositary to take which will result in a reduction of greater than 10 percent of the net worth of the depositary. A public depositary must notify the Commission within five working days of any event that causes a reduction of greater than 10 percent in the net worth of the depositary.

SHB 2061 changes the powers of the Commission. The Commission is given "broad administrative discretion" in performing its general powers. The Commission may delegate all of its authority to the State Treasurer, except rulemaking. The enforcement authority of the Commission is clarified. The Commission may assess costs or deny, suspend, or revoke authority to hold public funds, if a public depositary fails to: provide, or allow verification of, required information; or comply with relevant laws and rules or policies of the Commission. Further, the Commission may make and enforce sanctions against a public depositary for non-compliance with relevant laws, rules, or policies.

The Commission is authorized to set by resolution, based on criteria established in rule, a sum or measure as the maximum liability of public depositaries. The State Treasurer may also do so in exigent circumstances, but the sum or measure must be reviewed and ratified by the Commission within 90 days.

In addition to the existing requirement that the DFI certify reports from public depositaries, the DFI must provide information or data as may be required by the Commission. Any information or date provided to the Commission by a financial institution or a federal or state regulatory agency must be maintained in the same confidential manner and have the same protections as examination reports received by the Commission from the DFI.

The Commission is required to maintain a single depositary pool and treat public depositaries uniformly without regard to differences in their charters. The Commission may establish the required amount of eligible securities that a public depositary must pledge and segregate. Public depositaries must provide the exact status of its capitalization, collateral, and liquidity, in addition to the existing requirement of providing information about its net worth. Public depositaries are required to provide the Commission with the uninsured amount of public funds on deposit in each report. They also must notify the Commission of an event which causes its net worth to be reduced in an amount greater than 10 percent, from within five working days to within 48 hours, or by the close of business of the following business day. A public depositary's liability is not altered by a merger, takeover, or acquisition, except if liability is assumed by agreement or law by the successor entity or resulting financial institution.

The "maximum liability" of a public depositary means, with reference to a public depositary's liability for loss per occurrence by another public depositary, on any given date is a sum equal to 10 percent of: all uninsured public deposits held by a public depositary that has not incurred a loss by the most recent Commission report date; or the average of the balances of uninsured public deposits in the last four reports. An additional way of defining "maximum liability" is also included to mean a sum or measure that the Commission may from time to time set by resolution according to criteria established by rule, consistent with the Commission's broad administrative discretion. If a public depositary is 100 percent collateralized by eligible collateral, the "maximum liability" of a public depositary that has not incurred a loss may not exceed the 10 percent sum mentioned above. The definition of "maximum liability" does not limit the authority of the Commission to adjust the collateral requirements of public depositaries.

ESHB 2327 (chapter 518, Laws of 2009)
State Agency Reports
(Partial Veto)

Effective Date: July 26, 2009

Statute requires state agencies to submit reports to the Governor and the Legislature on the progress, status, or effectiveness of various programs. Many of these reports are submitted annually or on a regular basis, while others may be a one-time requirement to complete a study and make recommendations. The DFI reports to the Legislature regarding mortgage broker complaints received and the mortgage fraud account are each eliminated. The DFI annual report is changed to a report each biennium.

SSB 5042 (chapter 358, Laws of 2009)
Small Business Paperwork

Effective Date: July 26, 2009

The bill provides that state agencies must waive fines, civil penalties, or administrative sanctions for first time paperwork violations by small businesses. A paperwork violation is defined as failure to comply with any statute or regulation requiring an agency to collect data or a business to collect, post, or retain data. In the event of a second violation or failure to correct the first violation, the agency may reinstate the previously waived penalty and impose any new penalty stemming from the second violation.

The waiver is not available to a small business whose owner or operator has previously committed a paperwork violation, and cannot reduce a requirement to apply for a permit or license. The waiver requirement does not apply where the violation: 1) presents a direct danger to the public health, results in a loss of income or benefits to an employee, poses a potentially significant threat to human health or the environment, or causes serious harm to the public interest; 2) involves knowing or willful conduct that may result in a felony conviction; 3) concerns assessment or collection of any tax, debt, revenue, or receipt; or 4) conflicts with federal law or programs. The waiver does not apply to a regulated entity's financial filings, an insurance rate or form filing, any business required to provide accurate and complete information regarding any claim for payment by the state or federal government, or any businesses licensed or certified to provide care to vulnerable adults or children.

SB 5164 (chapter 13, Laws of 2009)
Collection Practices of Payday Lenders

Effective Date: July 26, 2009

The Department of Financial Institutions regulates payday lenders under the Check Casher and Sellers Act (RCW 31.45). A payday loan is a small, unsecured, short-term cash loan. The loan, typically given in cash and secured by the borrower's post-dated check, includes the original loan principal and a fee. The maturity date usually coincides with the borrower's next payday. On the maturity date the lender may process the check. The borrower may also repay the loan in person with cash.

Currently, DFI licenses approximately 700 payday lending locations. The license provides a specific authorization to offer payday loans within the terms provided by the statute. According to the Act, licensees may not lend more than $700 to a single borrower at one time. The licensee may charge 15 percent for the first $500 and 10 percent on the amount over $500 up to the $700 limit. In addition, after four successive loans, a borrower is entitled to covert a loan into a payment plan with the lender.

A licensee may take certain actions in furtherance of the collection of a dishonored check. A one-time fee may be charged if the borrower's check is returned unpaid. The licensee may also institute a civil suit under the Uniform Commercial Code for collection of a dishonored check. Only recovery of the cost of collection is allowed, while attorneys' fees and any other interest or damages are not allowed. The requirements for the licensee also apply to any collection agency to which a debt owed to the check casher or seller may be assigned.

The bill creates various prohibitions on the collection practices of payday lenders. A licensee may not visit to the borrower's place of employment, impersonate a law enforcement officer and impersonate any other governmental official while collecting a loan. Harassing, intimidating, abusive, or embarrassing communication with a borrower is prohibited. A presumption of harassing communication is established by the licensee's communication with the borrower more than three times a week; communication to the borrower at that person's place of employment more than once a week; communication at the borrower's residence between the hours of 9:00 p.m. and 7:30 a.m.; or communication made to someone other than the borrower.

SB 5221 (chapter 15, Laws of 2009)
Distressed Property Conveyances

Effective Date: March 25, 2009

With a rise in foreclosures, there is concern about "sale-leaseback transactions" or similar transactions that appear to help a homeowner facing foreclosure. A sale-leaseback transaction occurs when a purchaser represents to a homeowner facing foreclosure that if the homeowner transfers the title foreclosure will be avoided and after a certain period of time either the purchaser will transfer the title back or promise the homeowner that the homeowner will have the option to buy back the property. Sometimes the homeowner is unaware that he or she is transferring the title or, upon transfer of title, that the purchaser may then evict the homeowner for nonpayment of rent.

Last year the Legislature passed HB 2791 which regulates this type of transaction as a "distressed home conveyance" and creates other requirements designed to protect homeowners facing foreclosure. Realtors, who are required to be licensed and have a duty to act in good faith, were not specifically exempt from the definition of distressed home consultant and, over the summer, raised concerns that the work they do in their normal course of business could be interpreted as becoming distressed home consultants. This would trigger certain requirements under the law. For example, a distressed home consultant owes a homeowner a fiduciary duty and the transaction must be in writing in a format proscribed by statute.

The bill provides that a licensed real estate broker or salesperson is not a distressed home consultant when that person is providing services that are governed by the real estate brokerage laws and the broker or salesperson is not engaged in activities designed to result in a distressed home conveyance. A person is not a distressed home consultant when the person assists a homeowner in obtaining a contract to purchase the distressed home within 20 days of foreclosure and the homeowner is represented in the transaction by an attorney or a licensed real estate broker or salesperson. A person is not a distressed home consultant when the person arranges for the homeowner to stay in the home as a lessee or tenant, if the continued residence is for no more than 20 days to arrange for a new residence and the homeowner is represented in the transaction by an attorney or a licensed real estate broker or salesperson.

SSB 5468 (chapter 311, Laws of 2009)
Nonprofit Housing Organizations

Effective Date: July 26, 2009

The Consumer Loan Act requires that lenders making secured and unsecured loans be licensed by the Department of Financial Institutions (DFI). The Consumer Loan Act restricts certain loan provisions, requires disclosure of certain loan terms, requires a surety bond, and prohibits lenders from engaging in unfair and deceptive acts and practices. The Consumer Loan Act currently has an exception for banks, credit unions, pawnbrokers, and credit cards. There are not explicit exceptions for nonprofits.

Last year SB 6471 made all lenders subject to the Consumer Loan Act and did not specifically exclude nonprofit lenders. Thus nonprofit lenders could become subject to all of the requirements under the Act including the necessity of retaining a surety bond. The legislation adds an exception to the Consumer Loan Act for nonprofit housing organizations making loans under certain federal and state funded housing programs.

SSB 5531 (chapter 371, Laws of 2009)
Consumer Protection Act

Effective Date: July 26, 2009

The Consumer Protection Act (CPA), first enacted in 1961, prohibits unfair or deceptive practices in trade or commerce. The act includes prohibitions on anti-competitive behavior and restraints on trade. The act may be enforced by private parties, the state, counties, municipalities, and all political subdivisions of the state.

In a lawsuit for a CPA violation, a prevailing plaintiff may recover (1) the actual damages sustained; (2) the costs of the suit; and (3) reasonable attorney's fees. Additionally, a court has the discretion to award additional damages in the amount of up to three times the actual damages sustained by the plaintiff. These discretionary treble damages are capped at $10,000 in superior court and $75,000 in district court.

To prevail on a private CPA claim, a plaintiff must show (1) an unfair or deceptive act or practice; (2) that occurs in trade or commerce; (3) a public interest; (4) injury to the plaintiff in the plaintiff's business or property; and (5) a causal link between the unfair or deceptive act and the injury suffered.

The bill changes the law so that in a lawsuit for a CPA violation, the district and superior courts have the discretion to award up to $25,000 in damages. In a private action claiming a CPA violation, a claimant may establish that the act or practice is injurious to the public because it: violates a statute which incorporates the CPA; violates a statute which contains a specific legislative declaration of public interest impact; or injured other persons, had the capacity to injure, or has the capacity to injure other persons.

SSB 5723 (chapter 486, Laws of 2009)
Small Business Assistance

Effective Date: July 26, 2009

The Washington Small Business Development Center (SBDC) provides assistance, training, and support services to small businesses and entrepreneurs. The SBDC currently operates with federal funds and some state funds. Washington's Community Credit Needs Act, patterned after the federal Community Reinvestment Act (CRA), is intended to encourage depository institutions to help meet the credit needs of the communities in which they operate. Under both laws, a depository institution's record in helping meet the credit needs of its entire community is evaluated periodically. The new law states that for state chartered banks, contributions to local or statewide business assistance organizations must be considered in assessing the bank's performance in meeting community credit needs.

ESB 5810 (chapter 292, Laws of 2009)
Deeds of Trust Foreclosure

Effective Date: July 26, 2009

Current law does not require a residential mortgage lender to contact its borrower prior to commencing a non-judicial deed of trust foreclosure, nor does current state law require proof of the existence of the original promissory note secured by the deed of trust prior to a trustee commencing foreclosure. Current law does not require that the successful bidder at a deed of trust sale (either the lender or a third party bidder) provide any notice or time-period after foreclosure before commencing an eviction of an existing tenant. In addition, appellate case law has held that the failure to enjoin a deed of trust sale prior to completion of the foreclosure bars the borrower from bringing any claims against the lender or trustee.

This bill makes several temporary and permanent changes to the Deed of Trust Act (Ch. 61.24 RCW) that are designed to address the ill-effects of the present mortgage crisis and the perceived inequity of Washington appellate case law:

- Lender contacting the borrower before starting foreclosure process. The bill requires that the first notice of default, which commences a non-judicial deed of trust foreclosure, may not commence against a borrower on an owner-occupied residential mortgage loan made between January 1, 2003, and December 31, 2007, unless the lender has contacted the borrower and certifies having done so in the notice of default. This contact requirement is temporary and expires December 31, 2012. Deeds of trust securing commercial loans, guaranties, and seller-financed sales are exempt from this temporary requirement.

- Proof of promissory note prior to trustee commencing foreclosure. Before the statutory notice of sale may be recorded, which is the first act of the appointed trustee in the non-judicial foreclosure process, the trustee must have proof that the purported lender is the actual holder of the promissory note secured by the deed of trust and possesses the original note with authority to commence the deed of trust sale. If the original promissory note is lost, the lender may provide a copy of the note and a notarized statement declaring that the original note has been lost.
- Sixty-day notice to tenants after foreclosure of tenant-occupied residence. The bill requires that tenants in possession of non-owner occupied residential property at time of deed of trust foreclosure shall be given a 60-day notice to vacate. The new owner (landlord) by foreclosure still has the option of negotiating a new lease with the tenant or offering to pay the tenant to vacate sooner.
- Survival of certain claims against the lender or trustee. The failure of a borrower (beneficiary) or lender (grantor) to enjoin a deed of trust sale under the Deed of Trust Act does not act as a waiver of the claim for actual damages for common law fraud or misrepresentation, conduct in violation of Title 19 RCW, and a failure of the trustee to materially comply with Deed of Trust Act. The claim for actual damages must be brought within two (2) years of the foreclosure’s completion.

ESB 5995 (Signed by Governor)
Eliminating certain Boards and Commissions

Effective Date: June 30, 2009

On December 16, 2008, the Joint Legislative Audit and Review Committee (JLARC) released the revised version of a report entitled "Review of Boards and Commissions: Pre- Audit." The JLARC report identified 470 boards and commissions currently operating, or not known to have been disbanded.

This bill eliminates the following boards, commissions, and committees:

- The Acupuncture Ad Hoc Committee
- Adult Family Home Advisory Committee
- Boarding Home Advisory Committee
- Citizens' Work Group on Health Care Reform
- Displaced Homemaker Program Statewide Advisory Committee
- Foster Care Endowed Scholarship Advisory Board
- Higher Education Coordinating Board Work Study Advisory Committee
- Model Toxics Control Act Science Advisory Board
- Oil Heat Advisory Committee
- Organized Crime Advisory Board

- Oversight Committee on Character-Building Residential Services in Prisons
- Parks Centennial Advisory Committee
- Prescription Drug Purchasing Consortium Advisory Commission
- Radiologic Technologists Ad Hoc Committee
- Risk Management Advisory Committee
- Securities Advisory Committee
- Sexual Offender Treatment Providers Advisory Committee
- Vendor Rates Advisory Committee

ESB 6033 (chapter 386, Laws of 2009)
Owner Occupied Foreclosure
(Partial Veto)

Effective Date: July 26, 2009

Last year the Smart Homeownership Choices program became law. Under this program, the Department of Financial Institutions (DFI) receives an appropriation and uses this money to fund the Washington State Housing Finance Commission (Commission), as needed, to implement and operate the program for the purpose of preventing foreclosures. The Smart Homeownership Choices Program assists homeowners who are delinquent on their mortgage payments in bringing their mortgage payments current so they may refinance the purchase of their homes. In the last year the monies appropriated for the Smart Homeownership Choices Program remained largely unspent.

ESB 6033 replaces the Smart Homeownership Choices Program by a program called Prevent or Reduce Owner-Occupied Foreclosure Program (PROOF). This program is created to assist borrowers facing foreclosure. The program emphasizes borrowers with incomes up to and including 140 percent of the county median income level. PROOF provides a pool of unpaid volunteers from relevant professions, such as accountants, banks, credit unions, mortgage brokers, and attorneys, who provide advice to borrowers in the work-out process. The Commission implements the program by which volunteers and borrowers are paired in the most productive manner. The Housing Finance Commission must establish an oversight committee to serve as the principal advisory body to the commission for PROOF. The act is repealed on June 30, 2011.