

NO. 74115-2-1

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**IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I**

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Viewcrest Condominium Association,

Plaintiff/Respondent,

v.

Brenda L. Robertson,

Defendant/Appellant.

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**OPENING BRIEF OF APPELLANT BRENDA L. ROBERTSON**


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ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR KING COUNTY

The Honorable Veronica A. Galván

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## INTRODUCTION

The Redemption Act, chapter 6.23 RCW, addresses the rights of parties during the redemption period that follows a judicial foreclosure sale. It provides, at RCW 6.23.110(4), that

In case of any homestead as defined in chapter 6.13 RCW and occupied for that purpose at the time of sale, the judgment debtor shall have the right to retain possession thereof during the period of redemption without accounting for issues or for value of occupation.

This protection has been in place since 1899.

This appeal presents the question whether defendant-appellant Brenda Robertson, whose home was sold at a foreclosure sale by her condominium's homeowner association, plaintiff-respondent Viewcrest Condominium Association ("Viewcrest"), is entitled to possession during the redemption period, as required by RCW 6.23.110(4). Viewcrest persuaded the superior court that Ms. Robertson was not entitled to possession after the sale.

Viewcrest relied on two statutory provisions that deal with a different issue, whether the sale itself may occur despite the presence of the homestead. The Homestead Act, at RCW 6.13.070, sets forth the general rule that a homestead is exempt from execution or forced sale. However, the Homestead Act and the Condominium Act provide

exceptions to this general rule. The Homestead Act, at RCW 6.13.080(6), provides that

The homestead exemption is not available against an execution or forced sale in satisfaction of judgments obtained . . . (6) On debts secured by a condominium's or homeowner association's lien.

The Condominium Act, at RCW 64.34.364(2), provides that "A lien under this section is not subject to the provisions of chapter 6.13 RCW."

Viewcrest persuaded the superior court that these two provisions do not merely create an exception to the general rule against forced sale of a homestead, but also create an exception to the homeowner's right to remain in possession during the redemption period. The superior court erred in determining that Ms. Robertson was not entitled to the right of possession mandated by RCW 6.23.110(4). It thereby deprived her of a right that has protected homeowners for more than a century and that the courts of this state have consistently held must be construed liberally in favor of the homeowner.

#### **ASSIGNMENT OF ERROR**

The superior court erred in entering its order of September 18, 2015, denying Ms. Robertson's motion for revision of a commissioner's order that issued a writ of assistance.

### Issues Pertaining to Assignment of Error

1. Whether the Redemption Act, at RCW 6.23.110(4), protects a homeowner's right to possession during the redemption period if the judgment creditor is a condominium association.

2. Whether the Homestead Act, at RCW 6.13.080(6), or the Condominium Act, at RCW 64.34.364(2), in addition to granting an exception to the rule of RCW 6.13.070 that a homestead is exempt from forced sale, also grants an exception to the rule of RCW 6.23.110(4) that a homeowner has the right to possession during the redemption period.

3. Whether a post-enactment declaration of a private attorney, purporting to describe legislative intent, is admissible.

### **STATEMENT OF THE CASE**

Brenda Robertson purchased her home in Viewcrest Condominium in February 2007. CP 21. Thereafter, Ms. Robertson suffered financial difficulties, which were compounded by the effects of colon cancer and treatment for the cancer. The cancer and treatment prevented Ms.

Robertson from working and forced her to take early retirement. CP 22.

These issues made it difficult for Ms. Robertson to keep up with her homeowner association dues. CP 22. Viewcrest sued Ms. Robertson for the dues and obtained a judgment against her. CP 1, 98, 103. The

sheriff then sold Ms. Robertson's home. Viewcrest itself purchased the home for \$12,000. CP 118, 125, 145.

Viewcrest filed a motion for writ of assistance to remove Ms. Robertson from her home. Ms. Robertson opposed the motion, relying on RCW 6.23.110(4). Viewcrest contended that the protection granted by RCW 6.23.110(4) does not apply if the debt that led to the sale is owed to a condominium association, relying on RCW 6.13.080(6) and RCW 64.34.364(2). Commissioner Carlos Velategui of King County Superior Court agreed with Viewcrest and issued the writ. CP 85, 149, 163.

Ms. Robertson filed a motion for revision. Judge Veronica Galván denied the motion, but, recognizing that her decision was inconsistent with that of other judges from the same court, encouraged Ms. Robertson to appeal. CP 88, 187; RP 30, 32-33.

Ms. Robertson appealed to this Court, CP 91, but was unable to afford a bond to stay the writ pending the appeal. Viewcrest enforced the writ, forcing Ms. Robertson to move out and incur living expenses she would not have incurred had the court granted her motion for revision.

## **ARGUMENT**

### **A. Introduction and Summary of Argument**

The Homestead Act and the Redemption Act grant two forms of protection to homeowners: (1) the right to be free from execution or

forced sale of the homestead, per the Homestead Act at RCW 6.13.070, with certain exceptions; and (2) the right to live in the home during the redemption period that follows a forced sale, per the Redemption Act at RCW 6.23.110(4). *See* § B.1.

The Homestead Act, at RCW 6.13.080(6), and the Condominium Act, at RCW 64.34.364(2), grant an exception to the first of these two protections. Pursuant to those provisions, Viewcrest had the right to force the sale of Ms. Robertson's home. *See* § B.2.

Viewcrest, however, persuaded the superior court that the exceptions to the normal rule against execution and forced sale also create an exception to the normal rule protecting the homeowner's right to possession during the redemption period. Viewcrest's primary argument may be summarized as follows:

1. RCW 64.34.364(2) provides that "A lien under this section is not subject to the provisions of chapter 6.13 RCW."
2. The right to possession during the redemption period contained in RCW 6.23.110(4) protects "any homestead as defined in chapter 6.13 RCW."
3. Because condominium association liens are not subject to RCW 6.13, the homestead referenced in RCW 6.23.110(4) cannot be defined.
4. If the homestead cannot be defined, it does not exist.

5. Therefore, the foreclosure sale purchaser, not the homestead owner, is entitled to possession during the redemption period.

The superior court's acceptance of this argument was erroneous for five reasons, which this brief addresses in turn.

First, the court erred in accepting the proposition that exempting a lien from the normal prohibition against forced sales also affects the homeowner's right to possession after the sale. A lien is an encumbrance that may entitle a lienholder to conduct a forced sale of property subject to the lien. It does not confer any right to possession to either the lienholder before the sale or the purchaser after the sale. *See* § C.1.

Second, the court erred in accepting the proposition that if (a) the Redemption Act utilizes a definition from the Homestead Act, and (b) the lien is not subject to the Homestead Act, then (c) the homestead cannot be defined and cannot exist. One statute may borrow a definition from a second statute, whether or not a party subject to the first statute is also subject to the second statute. *See* § C.2.

Third, the superior court's decision is contrary to two fundamental principles of statutory construction applicable to homestead statutes: (1) these statutes are to be liberally interpreted in favor of the homestead; and (2) any alleged legislative restriction on the homestead must be expressed clearly, directly, and specifically. *See* § C.3.

Fourth, Viewcrest sought to buttress its argument with a declaration from an attorney who said that he participated in drafting the Condominium Act, which declaration purported to describe the legislative intent behind RCW 64.34.364(2). The declaration is both inadmissible and inconsistent with the expressed legislative intent behind the section. *See* § C.4.

Finally, Viewcrest invited the superior court to weigh the respective burdens borne by the homeowner losing her home and the other residents of the condominium. The legislature has already weighed the burdens and found in favor of the homeowner. *See* § C.5.

**B. Washington’s Homestead Laws Protect the Rights of Homeowners.**

Article XIX, Section 1 of the Washington Constitution provides: “The legislature shall protect by law from forced sale a certain portion of the homestead and other property of all heads of families.” The Washington Supreme Court has described the purpose of protecting the homestead as:

to guard the improvident and unfortunate against penury and want, and to save the state and the community from the burden and disagreeable consequences that experience has shown to be a natural result of laws subjecting all of the property of debtors to the demands of their creditors.



*Slyfield v. Willard*, 43 Wash. 179, 182, 86 P. 392 (1906). Protection of the homestead is especially important in the wake of the recent foreclosure crisis. *See generally* Laws of 2011, ch., 58, § 1 (“The rate of home foreclosures continues to rise to unprecedented levels, both for prime and subprime loans, and a new wave of foreclosures has occurred due to rising unemployment, job loss, and higher adjustable loan payments.”).

**1. The Homestead Laws Provide Two Types of Protection.**

The legislature has protected the homestead in two ways that are relevant to this matter. First, the Homestead Act, at RCW 6.13.070, establishes an exemption from forced sale of a homestead. It provides, in pertinent part:

Except as provided in RCW 6.13.080, the homestead is exempt from attachment and from execution or forced sale for the debts of the owner up to the amount specified in RCW 6.13.030 [presently \$125,000].

Second, the Redemption Act, at RCW 6.23.110(4), addresses the right to possession during the eight- or twelve-month redemption period that follows an execution or forced sale. It provides:

In case of any homestead as defined in chapter 6.13 RCW and occupied for that purpose at the time of the sale, the judgment debtor shall have the right to retain possession thereof during the period of redemption without accounting for issues or for value of occupation.

The two statutes address the rights of the homeowner against two different opponents at two different points in time. Prior to execution and forced sale, the rights of the creditor and the homeowner are governed by RCW 6.13.070 and RCW 6.13.080. After execution and forced sale, the rights of the foreclosure sale purchaser and homeowner are governed by RCW 6.23.110. See *First Nat'l Bank of Everett v. Tiffany*, 40 Wn.2d 193, 197, 242 P.2d 169 (1952) (discussing former provisions now re-codified as RCW 6.13.070, 6.13.080, and 6.23.110); CP 55 (chart, reproduced at App. A).

**2. RCW 6.13.080(6) and RCW 64.34.364 Permit Execution and Forced Sale of the Homestead by a Condominium Association.**

The Homestead Act, at RCW 6.13.080(6), and the Condominium Act, at RCW 64.34.364, provide a limited exception to the rule of RCW 6.13.070 that a homestead is “exempt from attachment and from execution or forced sale.” RCW 6.13.080 provides, in pertinent part:

The homestead exemption is not available against an execution or forced sale in satisfaction of judgments obtained: . . . (6) On debts secured by a condominium's or homeowner association's lien.

RCW 64.34.364(2) provides, in pertinent part: “A lien under this section is not subject to the provisions of chapter 6.13 RCW.”

These provisions permit enforcement of a condominium association lien through execution and forced sale, despite the existence of the homestead exemption.<sup>1</sup> Ms. Robertson does not dispute Viewcrest's right to conduct the forced sale of her home.

**C. A Condominium Association's Right to Execute on a Lien Against the Homestead Does Not Impact the Homeowner's Right to Possession During the Redemption Period.**

**1. A Lien Is An Encumbrance Permitting a Forced Sale; It Does Not Confer a Right of Possession to the Foreclosure Sale Purchaser.**

**a. Liens Create No Possessory Interest.**

Viewcrest and the superior court relied on the following sentence in RCW 64.34.364(2): "A lien under this section is not subject to the provisions of chapter 6.13 RCW." They reasoned that if a creditor's lien is not subject to chapter 6.13 RCW, then, after the lien is foreclosed, the purchaser at the foreclosure sale has a right to possession that is not subject to the homestead.

The superior court's holding confused the rights of Viewcrest as creditor and its rights as foreclosure sale purchaser. A foreclosure sale purchaser may or may not be the same party that held the lien that forced

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<sup>1</sup> To qualify for the exemption under RCW 6.13.080(6), a condominium or other homeowner association "must have provided a homeowner with notice that nonpayment of the association's assessment may result in foreclosure of the association lien and that the homestead protection under this chapter shall not apply." RCW 6.13.080(6). RCW 64.34.364(2), by providing that a condominium association's lien is not subject to the provisions of RCW 6.13, eliminated this requirement with respect to condominium association liens. The notice requirement remains as to other homeowner associations.

the sale. In this case, Viewcrest happens to have worn both hats. It held the lien and purchased at the sale. But it brought this eviction action in its capacity as purchaser, not in its capacity as lienholder. See CP 55 (chart, reproduced at App. A). The fact that its lien was not subject to the Homestead Act does not speak to the right to possession following foreclosure of the lien.

To determine what it means to say that a lien is not subject to RCW 6.13, one must examine what a lien is and what rights it carries. Specifically, one must ask what a lienholder has with respect to: (1) the right to execute on a debt; and (2) the right to possession of property that is subject to the lien.

“A lien is merely an encumbrance to secure an obligation.”<sup>2</sup> As such, it provides a remedy against the land subject to the lien, in the form of a right to foreclose.<sup>3</sup>

Washington’s courts have emphasized repeatedly that a lien, as “merely an encumbrance,” does not convey a right to possession or other

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<sup>2</sup> *Byrne v. Ackerlund*, 108 Wn.2d 445, 450, 739 P.2d 1138 (1987); accord *Swanson v. Graham*, 27 Wn.2d 590, 597, 179 P.2d 288 (1947); *S.D. Deacon Corp. v. Gaston Bros. Excavating, Inc.*, 150 Wn. App. 87, 89, 206 P.3d 689 (2009).

<sup>3</sup> *In re Longey*, 2008 WL 2074041 at \*4 (Bankr. W.D. Wash. May 14, 2008), quoting *State v. Teuscher*, 111 Wn.2d 486, 491, 761 P.2d 49 (1988); *Fed. Intermediate Credit Bank of Spokane v. O/S Sablefish*, 111 Wn.2d 219, 226, 758 P.2d 494 (1988).

property rights. A “lien is not a proprietary interest.”<sup>4</sup> “The holder of a lien does not have any right, title or interest in the land the lien encumbers.”<sup>5</sup> A lien conveys no “estate or interest in real property” and “confers no general right of property or title upon the holder.”<sup>6</sup> It “involves no characteristics of co-ownership.”<sup>7</sup> It does not confer a right to possession.<sup>8</sup>

After the foreclosure sale, the lien is extinguished.<sup>9</sup> Thus, the lien has nothing to do with who has the right to possession after the sale.

A purchaser’s right to obtain possession of property that has been foreclosed arises not from the lien, but from the Redemption Act, at RCW 6.23.110, and from a sheriff’s deed issued pursuant to RCW 6.21.120.

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<sup>4</sup> *Longey*, 2008 WL 2074041 at \*4, quoting *Teuscher*, 111 Wn.2d at 491.

<sup>5</sup> *Capital Inv. Corp. v. King Cnty.*, 112 Wn. App. 216, 229, 47 P.3d 161 (2002).

<sup>6</sup> *O/S Sablefish*, 111 Wn.2d at 225-26; accord *Swanson*, 27 Wn.2d at 597; *Capital Inv.*, 112 Wn. App. at 229-30.

<sup>7</sup> *Byrne*, 108 Wn.2d at 450.

<sup>8</sup> *Krueger v. Tippet*, 155 Wn. App. 216, 225, 229 P.3d 866 (2010), quoting BLACK’S LAW DICTIONARY 1006 (9th ed. 2009). See also *Borowski v. BNC Mtg., Inc.*, 2013 WL 4522253 at \*3 (W.D. Wash. Aug. 27, 2013) (Quiet title statute, RCW 7.28.230(1), “recognizes that a deed of trust creates only a secured lien on real property and does not convey any ownership interest or right to possess the subject property.”).

<sup>9</sup> See *Capital Inv. Corp.*, 112 Wn. App. at 221, quoting 3 WASHINGTON STATE BAR ASS’N REAL PROPERTY DESKBOOK § 46.15(4) (“At A’s foreclosure sale . . . A bids in for the full amount of his lien and thereby becomes the purchaser of the property. . . . A’s lien was extinguished by the foreclosure sale.”); accord *Damascus Milk Co. v. Morriss*, 1 Wn. App. 501, 503-07, 463 P.2d 212 (1969); 18 WASH. PRAC., REAL ESTATE § 19.19 (foreclosing mortgage “was extinguished by the sale.”); 27 WASH. PRAC., CREDITORS’ REMEDIES – DEBTORS’ RELIEF § 3.19 (same).

Because the sale is “subject to redemption, as provided in chapter 6.23 RCW,” RCW 6.21.080, the sheriff’s deed is not issued until after the redemption period expires. RCW 6.21.120; RCW 6.23.060.

Thus, to state that a lien is not subject to the provisions of RCW 6.13 merely means that the lienholder has the right to foreclose, as an exception to the normal rule of RCW 6.13 that the homestead is exempt from execution. Because a lien does not convey any right to possession to either the lienholder or the foreclosure sale purchaser, excepting a lien from the normal rule against execution does not have any impact on the separate issue of the respective rights of the homeowner and the foreclosure sale purchaser to possession following foreclosure.

**b. RCW 6.13.080(6) Confirms that the Exception Granted to Condominium Association Liens Applies to the Right to Execute, Not to the Right to Possession After the Sale.**

The text of RCW 6.13.080(6), like the text of RCW 64.34.364(2), demonstrates that the exception granted to condominium associations applies only to the association’s ability to conduct a forced sale, not to the respective rights of the homeowner and the foreclosure sale purchaser related to possession after the sale.

RCW 6.13.080 provides that “[t]he homestead exemption is not available *against an execution or forced sale* in satisfaction of judgments

obtained: . . . (6) On debts secured by a condominium's or homeowner association's lien." (Emphasis added). It confirms the condominium association's right to "execution or forced sale in satisfaction of judgments obtained" on the debt secured by the lien. It says nothing about the right to possession following the sale.

Because RCW 6.13.080(6) and RCW 64.34.364(2) "relate to the same subject matter," the relationship between condominium association liens and homesteads, "they must be construed together." *Broughton Lumber Co. v. BNSF Ry. Co.*, 174 Wn.2d 619, 626, 278 P.3d 173 (2012); *see also id.* at 627 ("Plain meaning may also be discerned from related statutes which disclose legislative intent about the provision in question.") (internal quotation omitted). Doing so confirms that both statutes address the ability to execute, not the right to possess the property after execution.

**c. *First Nat'l Bank of Everett v. Tiffany Confirms that the Right to Execute and the Right to Possess are Different Rights, Governed by Different Statutes at Different Times.***

The argument that the exceptions to the prohibition against execution under RCW 6.13.080(6) and RCW 64.34.364(2) carry with them a right to possession after the sale ignores the fact that those statutes and RCW 6.23 govern two different sets of rights, governing the relations between two different sets of parties, that are relevant at two different

points in time. The Washington Supreme Court rejected an argument comparable to Viewcrest's in *First Nat'l Bank of Everett v. Tiffany*, 40 Wn.2d 193, 242 P.2d 169 (1952). There, the foreclosure sale purchaser, like Viewcrest, had also been the lienholder. It argued that, because the predecessor to RCW 6.13.080 granted it an exception to the homestead exemption, permitting it to foreclose on its mortgage, it was also entitled to possession during the post-sale redemption period, even though the predecessor to RCW 6.23.110(4) granted the right to possession to the homeowner.

The Supreme Court rejected the creditor-purchaser's attempt to conflate the two provisions. It explained that the two statutes address the rights of the parties at two different times.

Prior to execution and forced sale, the rights of the parties are governed and defined by RCW 6.12.090 (Rem.Supp.1945, § 532) [now RCW 6.13.070] and RCW 6.12.100 (Rem.Rev.Stat. § 533) [now RCW 6.13.080]. The mortgaged homestead having been sold under execution or forced sale, these statutes have served their purpose and the future rights of the parties are then governed by an entirely different statute.

After execution or forced sale, the rights of the parties are governed by RCW 6.24.210 (Rem.Rev.Stat. (Sup.) § 602) [now RCW 6.23.110], which, so far as here material, reads as follows: "The purchaser from the day of sale \* \* \* shall be entitled to the



possession of the property purchased \* \* \*  
in case of any homestead selected in the  
manner provided by law and occupied for  
that purpose at the time of sale, ***the  
judgment debtor shall have the right to  
retain possession thereof during the period  
of redemption without accounting for  
issues or value of occupation.***”

*Tiffany*, 40 Wn.2d at 197 (emphasis in *Tiffany*); see also 28 WASH. PRAC.,  
CREDITORS’ REMEDIES – DEBTORS’ RELIEF § 7.22 (“The right to  
possession exists even though the judgment debtor is precluded from  
claiming the homestead exemption by one of the exceptions discussed in  
this section,” including “Debts secured by a condominium or homeowner  
association’s lien”) (citing *Tiffany*); CP 55 (chart, reproduced at App. A).

The purpose of RCW 6.13.080(6) and RCW 64.34.364(2) is to  
permit the foreclosing condominium association to execute against the  
homestead. Once the foreclosure sale occurs, “these statutes have served  
their purpose.” *Tiffany*, 40 Wn.2d at 197. Thereafter, the lien, having  
done its duty, is extinguished. See *Capital Inv. Corp.*, 112 Wn. App. at  
221. The lien confers no right to any party to possess property after the  
sale. Instead, RCW 6.23.110(4) then grants the homeowner-debtor the  
right to retain possession during the redemption period.

**2. RCW 64.34.364(2) Does Not Eliminate the Homestead's Existence via the Redemption Act's Incorporation of the Homestead Act's Definition of Homestead.**

As noted in Section A, the basis of Viewcrest's argument, accepted by the superior court, was that because (a) RCW 6.23.110(4) grants protection to "any homestead as defined in chapter 6.13 RCW," and (b) RCW 64.34.364 (2) provides that "[a] lien under this section is not subject to the provisions of chapter 6.13. RCW," then (c) there can be no definition of a homestead in RCW 6.23.110(4) that affects a condominium association, and (d) without a definition, the homestead simply does not exist with respect to condominium association liens. This argument is incorrect for multiple reasons.

First, the establishment of the homestead is "automatic once the property is occupied as a permanent residence." *O/S Sablefish*, 111 Wn.2d at 229; see RCW 6.13.010(1); RCW 6.13.040(1). Here, that occurred when Ms. Robertson moved into her home in 2007. In contrast, a lien does not arise until "the time the assessment is due." RCW 64.34.364(1). There can be no dispute that Ms. Robertson's homestead did exist, before any lien ever arose. That a lien arose later would not cause the homestead to magically disappear.

Second, as noted in Section C.1, only the lien is "not subject to the provisions of chapter 6.13. RCW." Viewcrest and the superior court

ignored the fact that Viewcrest is seeking possession during the redemption period in its capacity as the foreclosure sale purchaser, not in its capacity as the lienholder. Even if RCW 64.34.364(2) meant that a homestead did not exist with respect to a condominium association's lien, the homestead would still exist with respect to the foreclosure sale purchaser, whether or not that purchaser happened to be the same person who had held the lien prior to the sale.

Third, the premise of the argument -- that Statute A's incorporation by reference of a definition contained in Statute B is ineffective as to a party not subject to Statute B -- is false. A statute may incorporate a definition from another statute, without regard to whether parties subject to the incorporating statute are also subject to the statute from which the definition is borrowed. Courts have, on a number of occasions, rejected arguments by parties in the position of Viewcrest that a statute did not apply to them because it utilized a definition in another statute to which they were not subject.<sup>10</sup>

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<sup>10</sup> See, e.g., *Inv. Co. Inst. v. CFTC*, 720 F.3d 370, 380-81 (D.C. Cir. 2013) (rejecting argument that regulation was inapplicable because it cross-referenced definition included in another regulation that had been invalidated); *Artistic Entm't, Inc. v. City of Warner Robins*, 331 F.3d 1196, 1206 (11th Cir. 2003) ("For incorporation purposes, as long as the referenced definition is certain and is readily available, it is valid: that the ordinance referenced has lapsed or has been repealed or has been invalidated (for reasons unrelated to the definition) is not important."); *California v. Summer Del Caribe, Inc.*, 821 F. Supp. 574, 579-80 (N.D. Cal. 1993) (rejecting argument that defendant could not be responsible for disposal and treatment of solder dross under CERCLA because CERCLA defined "disposal" and "treatment" by reference to Solid Waste Disposal Act (SWDA) and solder

Indeed, RCW 6.23.110(4) is not the only statute that incorporates RCW 6.13's definition of a homestead into a statute that governs parties exempt under RCW 6.13.080. The Deed of Trust Act, at RCW 61.24.030(4), also incorporates the same definition of homestead ("if a receiver is appointed, the grantor shall be entitled to any rents or profits derived from property subject to a homestead as defined in RCW 6.13.010."). There is no question that, pursuant to RCW 6.13.080(2), the homestead exemption is not available against foreclosure of a deed of trust pursuant to RCW 61.24. Under the superior court's rationale, RCW 61.24.030(4)'s rule regarding entitlement to rents and profits would be inapplicable to every deed of trust that is in fact governed by the rule. It is

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dross was not regulated under SWDA); *EEOC v. Massachusetts*, 1990 WL 173728 at \*2 (D. Mass. Nov. 1, 1990) (rejecting argument that, because ADEA incorporated definitions from ERISA, and because state was exempt from ERISA, state was also exempt from ADEA); *Southern Entm't Co. v. City of Boynton Beach*, 736 F. Supp. 1094, 1101 (S.D. Fla. 1990) (ordinance may incorporate definition from another ordinance, even if city attorney had determined that the other ordinance was unconstitutional and could not be enforced); *Seal Builders & Realty Corp. v. City of Pawtucket Board of Appeals*, 230 A.2d 875, 877-78 (R.I. 1967) (rejecting argument that building permit for apartment house was invalid because ordinance permitting apartment houses "restricts apartment buildings to those defined in chap. 3, and since chap. 3 has been repealed, there are no standards to guide the building inspector in determining what is an apartment house."); cf. *Herman v. Héctor I. Nieves Transport, Inc.*, 244 F.3d 32, 35 (1st Cir. 2001) (applying test of Motor Carrier Transportation Act, incorporated into Fair Labor Standards Act (FLSA), to hold that Puerto Rican trucking company was subject to FLSA, even though Puerto Rican companies were exempt from coverage of Motor Carrier Transportation Act); *Smart v. Montana Historical Soc.*, 918 P.2d 670, 674 (Mont. 1996) (utilizing definition from other statute passed at same time as statute in question, even though the definition had later been stricken from the other statute). See also *Whiting v. Johns Hopkins Hosp.*, 416 Fed. Appx. 312, 316 (4th Cir. 2011), quoting 73 Fed. Reg. 67987 (Nov. 17, 2008) (Family & Medical Leave Act (FMLA) "protects all segments of the workforce, from low wage workers to highly paid professionals"); 29 U.S.C. §§ 203(e), 213(a)(1), 2611(4) (FMLA incorporates definition of "employee" contained in FLSA, though FLSA exempts professionals from its wage and hour requirements).

absurd to suggest that the legislature adopted RCW 61.24.030(4) with the intent that it would have no application. And Washington’s courts do not countenance absurd interpretations of statutes. *Broughton Lumber*, 174 Wn.2d at 635.

Finally, even if RCW 64.34.364(2)’s exemption of the lien from RCW 6.13 caused the homestead referenced in RCW 6.23.110(4) to be undefined, it would not follow that the homestead could not exist. Undefined statutory terms are defined by reference to their ordinary meaning. *Filmore LLLP v. Unit Owners Ass’n of Centre Pointe Condominium*, 184 Wn.2d 170, 174, 355 P.3d 1128 (2015). They do not become inoperative. A homestead, defined by its ordinary meaning as a “house, outbuildings, and adjoining land owned and occupied by a person or family as a residence,” BLACK’S LAW DICTIONARY (2014), would still exist if the RCW 6.13.010 definition disappeared.

3. **The Policies of Construing Homestead Statutes Liberally and Requiring Limitations on Homestead Rights to be Expressed Clearly, Directly, and Specifically Confirm the Right to Possession.**
  - a. **Homestead Statutes are to be Liberally Construed.**

The Washington Supreme Court has “repeatedly held that the homestead statutes are favored in the law and should be liberally

construed.” *In re Wieber*, 182 Wn.2d 919, 925-26, 347 P.3d 41 (2015).<sup>11</sup>

The Supreme Court has, on multiple occasions, followed this rule of construction by upholding the right to possession during the redemption period against attempts to narrow the scope of that right.<sup>12</sup>

In contrast, lien statutes are to be strictly construed. *See, e.g., Pinebrook Homeowners Ass’n v. Owen*, 48 Wn. App. 424, 428, 739 P.2d 110 (1987); *City of Algona v. Sharp*, 30 Wn. App. 837, 843, 638 P.2d 627 (1982). If there is a question regarding how to construe together statutes concerning the relationship between a lien and the homestead, the homestead prevails. *See Pinebrook*, 48 Wn. App. at 428-32; *Algona*, 30 Wn. App. at 842-43. In this case, these rules of construction dictate that Ms. Robertson’s right to possession of the homestead prevails over the foreclosure sale purchaser.

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<sup>11</sup> *See also, e.g., In re Dependency of Schermer*, 161 Wn.2d 927, 953, 169 P.3d 452 (2007) (“The act is favored in law and courts construe it liberally so it may achieve its purpose of protecting family homes.”); *O/S Sablefish*, 111 Wn.2d at 228-29; *Macumber v. Shafer*, 96 Wn.2d 568, 570, 637 P.2d 645 (1981) (“Homestead statutes are enacted as a matter of public policy in the interest of humanity and thus are favored in the law and are accorded a liberal construction.”).

<sup>12</sup> *See, e.g., Tiffany*, 40 Wn.2d at 202 (“As a matter of public policy, homestead and exemption laws are to secure and protect the homesteader and his dependents in the enjoyment of a domicile. They do not protect the rights of creditors.”); *State ex rel. White v. Douglas*, 6 Wn.2d 356, 358-60, 107 P.2d 593 (1940); *Pease v. Stephens*, 173 Wash. 12, 15, 21 P.2d 294 (1933); *Perkins v. La Varne*, 171 Wash. 240, 242, 17 P.2d 857 (1933); *State ex rel. Fed. Land Bank of Spokane v. Superior Ct.*, 169 Wash. 286, 288-91, 13 P.2d 890 (1932); *Union Cent. Life Ins. Co. v. Fischer*, 169 Wash. 75, 77, 13 P.2d 889 (1932).

**b. Legislative Abrogation of the Homestead's Protection Must be Clear, Direct, and Specific.**

The homeowner's right to live in the homestead during the redemption period has existed since 1899. *Tiffany*, 40 Wn.2d at 198. In light of the longstanding existence of the protection and the strong policy in favor of liberal construction of homestead statutes, an abrogation of such protection must be expressed clearly, directly, and specifically.<sup>13</sup>

The supposed legislative direction to eliminate the right to possession contained in the Redemption Act when the creditor had been a condominium association is anything but clear, direct, and specific. The legislature did not amend RCW 6.23.110(4) to create an exception for purchasers at foreclosure sales initiated by condominium association creditors. It did not say in the Condominium Act that purchasers following condominium association foreclosures were not subject to RCW 6.23. (Indeed, Viewcrest concedes that the right to redeem pursuant to RCW 6.23 exists following this foreclosure. CP 5.). It did not say in the Condominium Act that such purchasers were not subject to RCW

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<sup>13</sup> See, e.g., *In re Cunningham*, 163 B.R. 593, 594-96 (Bankr. W.D. Wash. 1994) (“[W]hen the legislature has wanted to add exceptions to the homestead exemption, it has done so clearly and directly.”); *Algona*, 30 Wn. App. at 843 (“Without a more specific statement, a legislative intent to supersede the homestead provisions as to sale cannot be implied . . . .”); *Union Cent. Life Ins. Co.*, 169 Wash. at 77 (“A strictly technical interpretation” of statute arguably limiting the scope of the right to possession during the redemption period “would not harmonize with the policy which may be reasonably supposed to have dictated the enactment.”). Cf. *O.S.T. ex rel. G.T and E.S. v. Regence BlueShield*, 181 Wn.2d 691, 701-02, 335 P.3d 416 (2014) (repeals by implication are disfavored).

6.23.110(4). It did not even say that such purchases, as distinguished from the foreclosed liens that led to the purchase, were exempt from RCW 6.13.

Instead, according to the superior court, the legislature eliminated the right to possession in a most indirect manner, through providing in one statute, RCW 64.34.364(2), that a lien was not subject to a second statute, RCW 6.13, which second statute contained a definition relied on by a third statute, RCW 6.23.110(4), to specify what it meant when it used the word “homestead.” This tortured interpretation is not the clear, direct, and specific legislative direction required to eliminate a 117-year-old protection. *See Broughton Lumber*, 174 Wn.2d at 635 (“[W]e avoid interpretations that yield unlikely, absurd or strained consequences.”) (internal quotation omitted). The requirements that homestead statutes be interpreted liberally and be limited only clearly, directly, and specifically dictate that Ms. Robertson’s right to live in the homestead during the redemption period be respected here.

**4. Viewcrest’s Declaration Regarding Alleged Legislative Intent is Not Admissible and is Inconsistent with the Expressed Legislative Intent.**

Viewcrest contended below that the legislative history behind the sentence in RCW 64.34.364(2) on which it relies showed a legislative intent to eliminate the right to possession under RCW 6.23.110(4) when the creditor was a condominium association. In fact, the legislative



history does reveal the intent behind this sentence of RCW 64.34.364(2), but it is not what Viewcrest says it is.

The provision in question was intended to address the requirement of RCW 6.13.080(6) that a condominium or other homeowner association

must have provided a homeowner with notice that nonpayment of the association's assessment may result in foreclosure of the association lien and that the homestead protection under this chapter shall not apply.

RCW 64.34.364(2), by providing that a condominium association's lien is not subject to the provisions of RCW 6.13, eliminated this requirement with respect to condominium associations.<sup>14</sup> The official comments to the section explain:

A lien for assessments is not subject to the homestead exemption of RCW 6.13 and an association will no longer need to give the notice regarding the effect of foreclosure which is required by that chapter in order to avoid the homestead exemption.

2 Sen. Journal, 51st Leg., Reg., 1st & 2nd Spec. Sess. at 2081 (1990),

referenced at 1 Sen. Journal, 51st Leg. Sess., Reg. Sess. at 376 (1990).

Contrary to Viewcrest's contention and the superior court's holding, the legislative history said nothing about a purported legislative intent to

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<sup>14</sup> The notice requirement remains in effect for homeowner associations other than condominium associations. See RCW 6.13.080(6).

eliminate the century-old right of a homeowner to remain in possession during the redemption period.<sup>15</sup>

Viewcrest's argument below did not rely on the actual legislative history. Instead, it relied on a declaration from an attorney named James Strichartz. CP 83, 179; RP 21. Mr. Strichartz's practice focuses on representing condominium associations. His declaration stated that he was one of four attorneys who drafted the Condominium Act, that he was "the primary author" of RCW 64.34.364, and that the section was intended to eliminate a homeowner's right to possession pursuant to RCW 6.23.110(4) during the redemption period. CP 83-84.

The Washington Supreme Court has emphasized that it is "well settled that the legislature's intent in passing a particular bill cannot be shown by the affidavit of a legislator." *City of Yakima v. Int'l Ass'n of Firefighters*, 117 Wn.2d 655, 676-77, 818 P.2d 1076 (1991). The same rule applies to post-enactment affidavits and declarations by the legislation's drafter,<sup>16</sup> by other legislators,<sup>17</sup> by legislative counsel and

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<sup>15</sup> See 1 Sen. Journal, 51st Leg. Sess., Reg. Sess. at 376 (1990); 2 Sen. Journal, 51st Leg., Reg., 1st & 2nd Spec. Sess. at 2080-82 (1990); H.B. Rep., SSB 6776, 1st Sess., 51st Leg. (Wash. 1990); S.B. Rep., SSB 6776, 1st Sess., 51st Leg. (Wash. 1990).

<sup>16</sup> *Western Telepage, Inc. v. City of Tacoma Dept. of Fin.*, 95 Wn. App. 140, 145-46, 974 P.2d 1270 (1999).

<sup>17</sup> *Woodson v. State*, 95 Wn.2d 257, 264, 623 P.2d 683 (1980).

staff who participated in developing the legislation,<sup>18</sup> by lobbyists,<sup>19</sup> and by other interested parties.<sup>20</sup> *See also Pittston Coal Group v. Sebben*, 488 U.S. 105, 118-19, 109 S.Ct. 414, 102 L.Ed.2d 408 (1988) (“[T]here is no more basis for considering [postenactment statements by key sponsors of act] than there is to conduct postenactment polls of the original legislators.”). The declaration of a private attorney who says he participated in the drafting is inadmissible.

In addition to being inadmissible and inconsistent with the actual legislative history, Mr. Strichartz’s declaration set forth an alleged rationale for RCW 64.34.364(2) that does not support Viewcrest’s argument. The declaration stated that the goal of the section “was to put a condominium association in the same position as a deed of trust holder with regard to a homestead.” CP 84. In fact, another subsection, RCW 64.34.364(9), did put condominium associations in the same position as a deed of trust holder, by providing that the association has the option of foreclosing judicially or non-judicially, as long as the association’s declaration so permits. *See* RCW 64.34.364(9); 2 Sen. Journal, 51st Leg.,

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<sup>18</sup> *Eugster v. City of Spokane*, 118 Wn. App. 383, 411 n.6, 76 P.3d 741 (2003); *City of Shoreline v. Club for Free Speech Rights*, 109 Wn. App. 696, 702, 36 P.3d 1058 (2001).

<sup>19</sup> *Cycle Barn, Inc. v. Arctic Cat Sales, Inc.*, 701 F. Supp.2d 1197, 1203 (W.D. Wash. 2010); *Western Telepage, Inc. v. City of Tacoma Dept. of Fin.*, 140 Wn.2d 599, 611, 998 P.2d 884 (2000).

<sup>20</sup> *Pannell v. Thompson*, 91 Wn.2d 591, 597, 589 P.2d 1235 (1979) (DSHS staff).

Reg., 1st & 2nd Spec. Sess. at 2081 (1990) (“subsection (9) adds the ability for an association to foreclose its assessment lien nonjudicially under RCW 61.24”).<sup>21</sup>

A deed of trust holder may foreclose judicially or non-judicially. *See* RCW 61.12.040; RCW 61.24.040. When it chooses to foreclose judicially, the homeowner’s right to possession post-sale applies. *See Tiffany*, 40 Wn.2d at 197-98. Similarly, per RCW 64.34.364(9), a condominium association also has the option of foreclosing judicially or non-judicially. When it chooses to foreclose non-judicially, there is no redemption period and the homeowner’s right to possession ceases twenty days after the sale. RCW 61.24.060.

The choice of the two remedies involves trade-offs. Proceeding non-judicially simplifies the process and eliminates redemption rights, but eliminates the right to pursue personal liability on a deficiency. *See* RCW 61.24.100. Proceeding judicially permits preservation of personal liability, in exchange for preserving the homeowner’s rights to redeem and to possess during the redemption period. *See* RCW 6.23.110(4); RCW 61.12.070.

Thus, RCW 64.34.364(9) does put condominium associations in the same position as a deed of trust holder. They may, like a deed of trust

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<sup>21</sup> An association whose declaration does not permit non-judicial foreclosures may amend the declaration pursuant to RCW 64.34.264.

holder, avoid the homeowner's right to possession during a redemption period by foreclosing non-judicially. Interpreting RCW 64.34.364(2) as Viewcrest suggests would put condominium associations *in a better position* than deed of trust holders, permitting them to both preserve the right to pursue a deficiency and eliminate the homeowner's right to possession through a judicial foreclosure, something that deed of trust holders cannot do. There is no admissible evidence that the legislature intended this result.

**5. The Legislative Policy in Favor of Homesteads Controls Over the Burden on Other Condominium Owners.**

Viewcrest contended below that honoring Ms. Robertson's right to possession during the redemption period would unreasonably burden other condominium owners. This is a policy determination for the legislature. As *Tiffany* noted, "[t]he determination of the right to possession during the period of redemption is a matter of legislative policy" and the legislature has given homeowners that right since 1899. 40 Wn.2d at 198. Sound reasons support this longstanding legislative policy.

First, permitting homeowners to retain possession during the redemption period is consistent with the general policy behind the law of homesteads, which is to protect homeowners, not creditors. *Wieber*, 182 Wn.2d at 925-26; *O/S Sablefish*, 111 Wn.2d at 228-29; *Tiffany*, 40 Wn.2d

at 202. Second, the policy recognizes the hardship and inefficiency that would be visited on the homeowner if he or she were required to move out of the home after the sale, try to find a temporary new home, and then move back following the redemption. *See* CP 22-23 (discussing hardship of moving twice). Third, the policy recognizes the reality that a foreclosed home subject to redemption likely would remain empty during the redemption period were the homeowner not permitted to live there; a prospective purchaser would be disinclined to move in, given the homeowner's right to displace the purchaser by exercising the right to redeem. Displacing a homeowner to create an empty home is not favored.

The legislature has already weighed the respective burdens. It has resolved them in favor of the homesteader, not the creditor. *See Tiffany*, 40 Wn.2d at 202; *Algona*, 30 Wn. App. at 842-43.<sup>22</sup>

### CONCLUSION

For the reasons set forth above, the Court should reverse the decision of the superior court, hold that Ms. Robertson was entitled to possession during the redemption period pursuant to RCW 6.23.110(4), and remand for assessment of Ms. Robertson's damages resulting from being deprived of the right to possession.

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<sup>22</sup> As a factual matter, the burden in question at Viewcrest appears to be 98 cents per owner per month, or \$11.75 for the twelve-month redemption period, assuming a foreclosed unit is transferred immediately to a new owner. *See* CP 28, 45-46 (there are 190 units at Viewcrest), 57 (monthly assessments are \$185 per month).

DATED this 22 day of March, 2016.

NORTHWEST JUSTICE PROJECT



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CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on this 3<sup>rd</sup> day of March, 2016, I caused to be delivered via ABC Legal Messenger, Inc., a true and correct copy of this OPENING BRIEF OF APPELLANT BRENDA L. ROBERTSON, addressed to following:

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## APPENDICES

App. A-1	Comparison of Rights With Respect to (1) Foreclosure Sale and (2) Possession Following Foreclosure Sale (CP 55)
App. B-1 – B-6	Relevant Statutes

<b>Issue</b>	<b>Parties</b>	<b>Source of Rights</b>	<b>Rights of Homeowner</b>	<b>Rights of Opponent</b>
Collection of Debt Through Foreclosure Sale	Creditor v. Homeowner	Lien v. Homestead	Homeowner Has Protection of Homestead Against Execution up to \$125,000  RCW 6.13.070	Creditor Has Exception to Protection of Homestead Against Execution  RCW 6.13.080 RCW 64.34.364
Possession of Property Following Foreclosure Sale	Purchaser v. Homeowner	Purchase v. Homestead	Homeowner Has Right to Possession During Redemption Period  RCW 6.23.110(4)	Purchaser Has Right to Possession Following Redemption Period  RCW 6.23.110(4)

## APPENDIX B: RELEVANT STATUTES

### RCW 6.13: HOMESTEAD ACT

#### RCW 6.13.010: Homestead, what constitutes — "Owner," "net value" defined.

(1) **The homestead consists of real or personal property that the owner uses as a residence.** In the case of a dwelling house or mobile home, the homestead consists of the dwelling house or the mobile home in which the owner resides or intends to reside, with appurtenant buildings, and the land on which the same are situated and by which the same are surrounded, or improved or unimproved land owned with the intention of placing a house or mobile home thereon and residing thereon. A mobile home may be exempted under this chapter whether or not it is permanently affixed to the underlying land and whether or not the mobile home is placed upon a lot owned by the mobile home owner. Property included in the homestead must be actually intended or used as the principal home for the owner.

(2) As used in this chapter, the term "owner" includes but is not limited to a purchaser under a deed of trust, mortgage, or real estate contract.

(3) As used in this chapter, the term "net value" means market value less all liens and encumbrances senior to the judgment being executed upon and not including the judgment being executed upon.

#### RCW 6.13.040: Automatic homestead exemption — Conditions — Declaration of homestead — Declaration of abandonment.

(1) **Property described in RCW 6.13.010 constitutes a homestead and is automatically protected by the exemption described in RCW 6.13.070 from and after the time the real or personal property is occupied as a principal residence by the owner** or, if the homestead is unimproved or improved land that is not yet occupied as a homestead, from and after the declaration or declarations required by the following subsections are filed for record or, if the homestead is a mobile home not yet occupied as a homestead and located on land not owned by the owner of the mobile home, from and after delivery of a declaration as prescribed in RCW 6.15.060(3)(c) or, if the homestead is any other personal property, from and after the delivery of a declaration as prescribed in RCW 6.15.060(3)(d).

(2) An owner who selects a homestead from unimproved or improved land that is not yet occupied as a homestead must execute a declaration of homestead and file the same for record in the office of the recording officer in the county in which the land is located. However, if the owner also owns another parcel of property on which the owner presently resides or in which the owner claims a homestead, the owner must also execute a declaration of abandonment of homestead on that other property and file the same for record with the recording officer in the county in which the land is located.

(3) The declaration of homestead must contain:

(a) A statement that the person making it is residing on the premises or intends to reside thereon and claims them as a homestead;

(b) A legal description of the premises; and

(c) An estimate of their actual cash value.

(4) The declaration of abandonment must contain:

(a) A statement that premises occupied as a residence or claimed as a homestead no longer constitute the owner's homestead;

(b) A legal description of the premises; and

(c) A statement of the date of abandonment.

(5) The declaration of homestead and declaration of abandonment of homestead must be acknowledged in the same manner as a grant of real property is acknowledged.

**RCW 6.13.070: Homestead exempt from execution, when — Presumed valid.**

**(1) Except as provided in RCW 6.13.080, the homestead is exempt from attachment and from execution or forced sale for the debts of the owner up to the amount specified in RCW 6.13.030.** The proceeds of the voluntary sale of the homestead in good faith for the purpose of acquiring a new homestead, and proceeds from insurance covering destruction of homestead property held for use in restoring or replacing the homestead property, up to the amount specified in RCW 6.13.030, shall likewise be exempt for one year from receipt, and also such new homestead acquired with such proceeds.

(2) Every homestead created under this chapter is presumed to be valid to the extent of all the property claimed exempt, until the validity thereof is contested in a court of general jurisdiction in the county or district in which the homestead is situated.

**RCW 6.13.080: Homestead exemption, when not available.**

**The homestead exemption is not available against an execution or forced sale in satisfaction of judgments obtained:**

(1) On debts secured by mechanic's, laborer's, construction, maritime, automobile repair, material supplier's, or vendor's liens arising out of and against the particular property claimed as a homestead;

(2) On debts secured (a) by security agreements describing as collateral the property that is claimed as a homestead or (b) by mortgages or deeds of trust on the premises that have been executed and acknowledged by both spouses or both domestic partners or by any claimant not married or in a state registered domestic partnership;

(3) On one spouse's or one domestic partner's or the community's debts existing at the time of that spouse's or that domestic partner's bankruptcy filing where (a) bankruptcy is filed by both spouses or both domestic partners within a six-month period, other than in a joint case or a case in which their assets are jointly administered, and (b) the other spouse or other domestic partner exempts property from property of the estate under the bankruptcy exemption provisions of 11 U.S.C. Sec. 522(d);

(4) On debts arising from a lawful court order or decree or administrative order establishing a child support obligation or obligation to pay maintenance;

(5) On debts owing to the state of Washington for recovery of medical assistance correctly paid on behalf of an individual consistent with 42 U.S.C. Sec. 1396p;

(6) **On debts secured by a condominium's or homeowner association's lien. In order for an association to be exempt under this provision, the association must have provided a homeowner with notice that nonpayment of the association's assessment may result in foreclosure of the association lien and that the homestead protection under this chapter shall not apply.** An association has complied with this notice requirement by mailing the notice, by first-class mail, to the address of the owner's lot or unit. The notice required in this subsection shall be given within thirty days from the date the association learns of a new owner, but in all cases the notice must be given prior to the initiation of a foreclosure. The phrase "learns of a new owner" in this subsection means actual knowledge of the identity of a homeowner acquiring title after June 9, 1988, and does not require that an association affirmatively ascertain the identity of a homeowner. Failure to give the notice specified in this subsection affects an association's lien only for debts accrued up to the time an association complies with the notice provisions under this subsection; or

(7) On debts owed for taxes collected under chapters 82.08, 82.12, and 82.14 RCW but not remitted to the department of revenue.

## RCW 6.23: REDEMPTION ACT

### RCW 6.23.060: Sheriff's deed — When issued.

**If no redemption is made within the redemption period prescribed by RCW 6.23.020 or within any extension of that period under any other provision of this chapter, the purchaser is entitled to a sheriff's deed;** or, if so redeemed, whenever sixty days have elapsed and no other redemption has been made or notice given operating to extend the period for redemption, and the time for redemption by the judgment debtor has expired, the last redemptioner is entitled to receive a sheriff's deed as provided in RCW 6.21.120.

### RCW 6.23.110: Possession during period of redemption.

(1) **Except as provided in this section and RCW 6.23.090, the purchaser from the day of sale until a resale or redemption,** and the redemptioner from the day of redemption until

another redemption, **shall be entitled to the possession of the property purchased** or redeemed, unless the same be in the possession of a tenant holding under an unexpired lease, and in such case shall be entitled to receive from such tenant the rents or the value of the use and occupation thereof during the period of redemption.

(2) If a mortgage contains a stipulation that in case of foreclosure the mortgagor may remain in possession of the mortgaged premises after sale and until the period of redemption has expired, the court shall make its decree to that effect and the mortgagor shall have such right.

(3) As to any land so sold which is at the time of the sale used for farming purposes, or which is a part of a farm used, at the time of sale, for farming purposes, the judgment debtor shall be entitled to retain possession thereof during the period of redemption and the purchaser or his or her successor in interest shall, if the judgment debtor does not redeem, have a lien upon the crops raised or harvested thereon during said period of redemption, for interest on the purchase price at the rate of six percent per annum during said period of redemption and for taxes becoming delinquent during the period of redemption together with interest thereon.

(4) **In case of any homestead as defined in chapter 6.13 RCW and occupied for that purpose at the time of sale, the judgment debtor shall have the right to retain possession thereof during the period of redemption without accounting for issues or for value of occupation.**

#### RCW 64.34: CONDOMINIUM ACT

##### RCW 64.34.364: Lien for assessments.

(1) **The association has a lien on a unit for any unpaid assessments levied against a unit from the time the assessment is due.**

(2) A lien under this section shall be prior to all other liens and encumbrances on a unit except: (a) Liens and encumbrances recorded before the recording of the declaration; (b) a mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and (c) liens for real property taxes and other governmental assessments or charges against the unit. **A lien under this section is not subject to the provisions of chapter 6.13 RCW.**

(3) Except as provided in subsections (4) and (5) of this section, the lien shall also be prior to the mortgages described in subsection (2)(b) of this section to the extent of assessments for common expenses, excluding any amounts for capital improvements, based on the periodic budget adopted by the association pursuant to RCW 64.34.360(1) which would have become due during the six months immediately preceding the date of a sheriff's sale in an action for judicial foreclosure by either the association or a mortgagee, the date of a trustee's sale in a nonjudicial foreclosure by a mortgagee, or the date of recording of the declaration of forfeiture in a proceeding by the vendor under a real estate contract.

(4) The priority of the association's lien against units encumbered by a mortgage held by an

eligible mortgagee or by a mortgagee which has given the association a written request for a notice of delinquent assessments shall be reduced by up to three months if and to the extent that the lien priority under subsection (3) of this section includes delinquencies which relate to a period after such holder becomes an eligible mortgagee or has given such notice and before the association gives the holder a written notice of the delinquency. This subsection does not affect the priority of mechanics' or material suppliers' liens, or the priority of liens for other assessments made by the association.

(5) If the association forecloses its lien under this section nonjudicially pursuant to chapter 61.24 RCW, as provided by subsection (9) of this section, the association shall not be entitled to the lien priority provided for under subsection (3) of this section.

(6) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(7) Recording of the declaration constitutes record notice and perfection of the lien for assessments. While no further recording of any claim of lien for assessment under this section shall be required to perfect the association's lien, the association may record a notice of claim of lien for assessments under this section in the real property records of any county in which the condominium is located. Such recording shall not constitute the written notice of delinquency to a mortgagee referred to in subsection (2) of this section.

(8) A lien for unpaid assessments and the personal liability for payment of assessments is extinguished unless proceedings to enforce the lien or collect the debt are instituted within three years after the amount of the assessments sought to be recovered becomes due.

(9) The lien arising under this section may be enforced judicially by the association or its authorized representative in the manner set forth in chapter 61.12 RCW. The lien arising under this section may be enforced nonjudicially in the manner set forth in chapter 61.24 RCW for nonjudicial foreclosure of deeds of trust if the declaration (a) contains a grant of the condominium in trust to a trustee qualified under RCW 61.24.010 to secure the obligations of the unit owners to the association for the payment of assessments, (b) contains a power of sale, (c) provides in its terms that the units are not used principally for agricultural or farming purposes, and (d) provides that the power of sale is operative in the case of a default in the obligation to pay assessments. The association or its authorized representative shall have the power, unless prohibited by the declaration, to purchase the unit at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. Nothing in this section shall prohibit an association from taking a deed in lieu of foreclosure.

(10) From the time of commencement of an action by the association to foreclose a lien for nonpayment of delinquent assessments against a unit that is not occupied by the owner thereof, the association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the unit as and when due. If the rental is not paid, the receiver may obtain possession of the unit, refurbish it for rental up to a reasonable standard for rental units in this type of

condominium, rent the unit or permit its rental to others, and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the unit, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent assessments. Only a receiver may take possession and collect rents under this subsection, and a receiver shall not be appointed less than ninety days after the delinquency. The exercise by the association of the foregoing rights shall not affect the priority of preexisting liens on the unit.

(11) Except as provided in subsection (3) of this section, the holder of a mortgage or other purchaser of a unit who obtains the right of possession of the unit through foreclosure shall not be liable for assessments or installments thereof that became due prior to such right of possession. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners, including such mortgagee or other purchaser of the unit. Foreclosure of a mortgage does not relieve the prior owner of personal liability for assessments accruing against the unit prior to the date of such sale as provided in this subsection.

(12) In addition to constituting a lien on the unit, each assessment shall be the joint and several obligation of the owner or owners of the unit to which the same are assessed as of the time the assessment is due. In a voluntary conveyance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Suit to recover a personal judgment for any delinquent assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

(13) The association may from time to time establish reasonable late charges and a rate of interest to be charged on all subsequent delinquent assessments or installments thereof. In the absence of another established nonusurious rate, delinquent assessments shall bear interest from the date of delinquency at the maximum rate permitted under RCW 19.52.020 on the date on which the assessments became delinquent.

(14) The association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent assessments, whether or not such collection activities result in suit being commenced or prosecuted to judgment. In addition, the association shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment.

(15) The association upon written request shall furnish to a unit owner or a mortgagee a statement signed by an officer or authorized agent of the association setting forth the amount of unpaid assessments against that unit. The statement shall be furnished within fifteen days after receipt of the request and is binding on the association, the board of directors, and every unit owner, unless and to the extent known by the recipient to be false.

(16) To the extent not inconsistent with this section, the declaration may provide for such additional remedies for collection of assessments as may be permitted by law.