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WASHINGTON STATE
SUPREME COURT

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Court of Appeals No. 74115-2-1

COURT OF APPEALS

THE STATE OF WASHINGTON DIVISION I

Viewcrest Condominium Association,

Plaintiff/Respondent

v.

Brenda L. Robertson,

Defendant/Appellant.

PETITION FOR DISCRETIONARY REVIEW

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

The Honorable Veronica A. Galvan

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STATE OF WASHINGTON

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I. INTRODUCTION

1. Identity of the Petitioner

Petitioner Viewcrest Condominium Association through its attorneys of record, Oseran Hahn, P.S., David M. Tall of counsel, seeks Discretionary Review of the Court of Appeals decision in the Viewcrest Condominium Association v. Brenda L. Robertson, Court of Appeals No. 74115-2-1, in which the Court of Appeals, Division I, reversed the Superior Court's Order granting a Writ of Assistance to remove Ms. Robertson from the condominium unit after its entry of an Order confirming Petitioner's Sheriff's Sale.

2. Citation to Court of Appeals Decision.

Petitioner Viewcrest Condominium Association requests a Discretionary Review of the Court of Appeals Decision of December 27, 2016.

II. ISSUES PRESENTED FOR REVIEW

- A. Whether the Court of Appeals, Division 1 erred in reversing the Superior Court's decision to grant Petitioner a Writ of Assistance to remove Ms. Robertson from the condominium unit?
- B. Whether the Court of Appeals erred in holding that the language of

RCW 64.34.364(2) was ambiguous, notwithstanding that such section clearly states the provisions of Chapter 6.13 (the Homestead Statute), do not apply to the association's lien?

- C. Whether the Legislature's decision to broaden the rights of the Association formerly incorporated within RCW 64.32.200(2) within the new RCW 64.34.364(2), supports the clear intent of the Legislature to eliminate an owner's right to claim a homestead as against the Association's lien.
- D. Whether RCW 6.23.110(4) stands alone, separate and apart from the Homestead Act (RCW 6.13 et seq), and allows an owner to remain in possession after the judicial foreclosure of the Association's lien during the redemption period, without payment of rent to the purchaser.

III. STATEMENT OF CASE

On August 29, 2012, Respondent Viewcrest Condominium Association ("Viewcrest") took a judgment against Appellant Brenda Robertson for past due condominium association assessments. *CP 61-65*. The delinquency began in October, 2008, and resulted in a judgment amount of \$10,878.58. *CP 61*. Ms. Robertson failed to pay any post-judgment assessments which had accrued to the date of the sheriff's sale in the amount of \$7,112.49 and failed to make any payment arrangements with Viewcrest.

CP 57. At all times material hereto the amount of the monthly assessment for Ms. Robertson's unit was \$185. *CP 57.* Viewcrest did not proceed with a sheriff's sale until June 12, 2015, as a result of Ms. Robertson's utilization of bankruptcy laws and her filing of multiple bankruptcies. *CP 10 and CP 57.* Viewcrest was the successful purchaser at the sheriff's sale. *CP 10.*

Viewcrest offered to allow Ms. Robertson to remain in her unit during the redemption period in exchange for fair market rent, which after application to post sheriff sale costs and assessments would function as a credit toward her redemption of the property. *CP 57.* However, she failed to respond to Viewcrest's offer. Until vacating, Ms. Robertson had essentially resided in her unit without paying her mortgage or condominium assessments since October 2008. *CP 57.*

Viewcrest filed a motion requesting the Court issue a Writ of Assistance to remove her from the unit after receiving no response about renting. *CP 147-153.* The basis of Viewcrest's motion was that a homestead does not exist as against the Association's lien as RCW 64.34.364(2), provides that the chapter 6.13 RCW (the statute which creates the homestead) **in its entirety** does not apply. *CP 177-181.* Commissioner Velategui agreed with Viewcrest's interpretation of RCW 64.34.364(2) and

granted its motion, but stayed the issuance of the Writ in anticipation of Ms. Robertson's Motion for Revision. *CP 86*.

Ms. Robertson filed a Motion for Revision. *CP 187-198*. Judge Veronica Galvan denied the Motion after lengthy oral argument finding the reasoning of Judge Prochnau in the case of *Redwood High Point v. Blumenthal* persuasive. *RP 32, CP 76-78, and CP 88-90*. Recognizing that Ms. Robertson may choose to appeal the decision, the Court granted Viewcrest's request for the posting of a supersedeas bond as a condition of staying the enforcement of the Court's order granting Viewcrest its Writ of Assistance. *RP 34-37 and CP 90*.

The Court of Appeals reviewed the matter and ruled on December 27, 2016 that:

We conclude that Ms. Robertson had a homestead in her condominium. And because she occupied the condominium when Viewcrest judicially foreclosed its assessment lien, she was entitled to retain possession during the redemption period with no obligation to pay rent. See page 2 of the Opinion.

The Court of Appeals reversed the Superior Court's Order granting the Writ of Assistance to remove Ms. Robertson from the condominium.

IV. ARGUMENT

A. Considerations governing acceptance of Review.

Pursuant to RAP 13.4(b) there are four criteria considered by the Court in determining whether to accept review or not. It is respectfully argued that subsection (b)(4) applies and specifically this Petition involves an issue of substantial public interest that should be determined by the Supreme Court.

This Petition involves substantial public interest since it presents a critical issue, the determination of which will affect condominium associations' rights as a community and their ability to collect assessments from unit owners necessary for the basic operation and survival of such associations. As the Court of Appeals reversed the Superior Court's Order granting a Writ of Assistance, the fundamental issue presented to this Court is whether a unit owner, after the Association's judicial foreclosure of such owners' condominium unit, may remain in that unit, post sheriff's sale, during the redemption period, without paying to the Association the fair market value of rent for occupancy. Associations have been seeking rent and/or occupancy post sheriff's sale during the Great Recession as a means

of recouping losses when Lenders have delayed pursuing foreclosure. Bankrupt or asset-less owners have been occupying these properties pending delayed bank foreclosures without paying assessments, essentially creating “dead properties”.

As the Association’s interest is inferior to the Lender’s mortgage (after the payment of the six (6) months super priority lien), the only effective tool for the Association to recover the delinquency owed is to pursue a sheriff’s sale and thereafter rent the unit until the Lender finally forecloses. The authority to do so is granted under RCW 64.34.364 (2), wherein the Legislature promulgated that provisions of RCW 6.13 and the Homestead created therein do not apply to the liens of Condominium Associations.

In order for Associations to function, certain costs of the Association are uniformly shared among condominium owners. By way of illustration, sewer and water costs are billed to the Association directly and not separately metered to each of the unit owners. Such costs are then incorporated into the operational budget and allocated to the individual owners by way of assessments, payable to the Association.

If unit owners post foreclosure are allowed to remain in their unit during the redemption period, the other unit owners have to pay for these operational costs in order to maintain the functioning of the Association. At

some point the Associations can no longer function without the shared contribution.

The published decision of the Court of Appeals effectively ignores the clear language of RCW 64.34.364(2) and materially interferes with the operation of hundreds, if not thousands of Condominium Associations across the state, and arguably affects millions of condominium unit owners throughout the state of Washington.

From the foregoing, it is respectfully argued that this Petition substantially affects public interest and should be determined by the Supreme Court.

B. The Clear Language Of RCW 64.34.364(2) Eliminates The Right Of A Unit Owner To Claim A Homestead As Against The Condominium Lien.

The Court of Appeals ruled that the homestead created by RCW 6.13.010(1) survives a judicial foreclosure of the Association's lien under RCW 64.34.364(9). Accordingly, Ms. Robertson was entitled to possession of her unit during the redemption period without payment of rent to Viewcrest pursuant to RCW 6.23.110(4). Therefore, the Superior Court erred in granting the Writ of Assistance to Viewcrest. This argument fails to acknowledge that the application of RCW 6.23.110(4) only applies if a homestead under RCW 6.13.010(1) is created.

The Court of Appeals in its decision states that, "...Once property is occupied as a primary residence a homestead is automatically created..." See page 5 and 6 of the Opinion. However in support of that position, the Court of Appeals cites to RCW 6.13.040 which regards the automatic homestead exception in property described in RCW 6.13.010, not the homestead itself, which is created by operation of RCW 6.13.010. Indeed, the Court of Appeals recognizes that Article XIX Section 1 of the Constitution (the section referencing the homestead exemption), is not self-executing, but imposes upon the state Legislature the "...duty of setting up some statutory procedures..." See *Tellevik v. 6717 100th St S.W.*, 83 Wn. App 366, 378, 921 P.2d 1888 (1996).

Thus, without the operation of RCW 6.13.010 there is no homestead right. It is the statute that creates the homestead. Consequently, not only does RCW 6.23.110 refer to the homestead created under RCW 6.13, but RCW 6.23.030 further acknowledges its application only, "...If the property is subject to a homestead as provided in Chapter 6.13 RCW..." (Emphasis Added).

Accordingly, unless a homestead is created, possessory rights under RCW 6.23.110(4) cannot be claimed. This begs the question whether RCW 6.13.010(1) eliminates the right to claim a homestead under RCW 6.13.010(1) as against the Association's lien. The answer is clearly yes

based upon the clear language, which states, "...A lien under this section is not subject to the provisions of Chapter 6.13 RCW..." That language necessarily includes RCW 6.13.010, the statute that creates the homestead.

Rules governing statutory interpretation provide that the "fundamental objective" of statutory interpretation "is to ascertain and carry out the Legislature's intent." *CalPortland Co. v. LevelOne Concrete, LLC*, 180 Wash.App.379, 385, 321 P.3d 1261, 1264 (2014) citing *Campbell & Gwinn*, 146 Wash.2d at 9-10, 43 P.3d 4 (2002). Where a "statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *Id. at page 385*. Such plain meaning "is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question." *Id. at page 385*, citing *Campbell & Gwinn*, 146 Wash.2d at 11-12, 43 P.3d 4.

On its face, RCW 64.34.364(2) makes clear that the entire chapter 6.13 RCW does not apply to condominium assessment liens and the Association's right to possession following a foreclosure sale as provided for under RCW 64.34.364(9). This includes **both** the actual homestead created under RCW 6.13.010(1), and the homestead exemption established under RCW 6.13.040 and RCW 6.13.070. If the Legislature had intended that only the homestead exemption be excluded, as provided under RCW

6.13.080, it would have specifically stated so as it did formerly under RCW 64.32.200(2). Moreover it would not have given condominium associations the powers to “acquire, hold, lease, mortgage or convey” a unit purchased at a foreclosure sale under RCW 64.34.364(9). (Emphasis Added).

If there is more than one reasonable interpretation of a statute, the Court must resort to aids of construction, including legislative history. *CalPortland Co. v. LevelOne Concrete, LLC*, 180 Wash.App.379, 385, 321 P.3d 1261, 1264 citing *Campbell & Gwinn*, 146 Wash.2d at 12, 43 P.3d 4. If the language is clear and unambiguous the Court should not read any ambiguity into the statute.

Even assuming arguendo an ambiguity, the evolution of the pertinent provision from what was set forth in RCW 64.32.200(2) to RCW 64.34.364(2) is instructive.

RCW 64.32.200(2) provided in pertinent part the following:

Such Lien is not subject to the ban against execution or force sales of homesteads under RCW 6.13.080 and may be foreclosed by suit by the manager or Board of Directors, acting on behalf of the apartment owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, if so, provided in the Bylaws, and the Plaintiff in such foreclosures shall be entitled to the appointment of a receiver to collect the same. The manager or Board of Directors, acting on behalf of the apartment owners, shall have power, unless prohibited by the Declaration, to bid on the apartment at foreclosure sale, and

to acquire and hold, lease, mortgage, and convey the same...
(Emphasis Added).

Comparing the aforesaid language to what is provided for in RCW 64.34.364(2) clearly demonstrates that the Legislature chose to broaden the association rights as related to the Homestead Act (RCW 6.13). The former statute specifically cites only to RCW 6.13.080, which only protects the homestead exemption (currently \$125,000.00) from execution and forced sale. Therefore, under RCW 6.13.080 unless exempted, prior to a forced sale, the foreclosing party must pay the homestead exemption of \$125,000.00 as a condition precedent to conducting the sheriff's sale. As the association is exempt from the homestead exemption, such payment under the former statute was not required. While exempt from the homestead exemption, the right to claim a homestead remained under RCW 6.13.010. Thus, under the former statute RCW 64.32.200(2), the association's lien was subject to the owner's homestead, but not to the homestead exemption under RCW 6.13.080(6). By eliminating the application of the homestead statute (RCW 6.13 et seq.) as against the Association's lien in its entirety, the Legislature further eliminated the right to claim a homestead as against the Association's lien.

Clearly if the Legislature simply wanted to reiterate that the condominium lien was not subject to the homestead exemption, it would

have retained the language set forth in RCW 64.32.200(2). Instead the Legislature broadened the language and clearly stated that the lien was not subject to the provisions of chapter RCW 6.13 in its entirety!

The legislative intent of Washington's Condominium Act (RCW 64.34) is also expressed in RCW 64.34.005 which states that the Legislature desired to ensure "that a broad range of affordable homeownership opportunities continue to be available to the residents of the state..." Allowing a homeowner to remain in the condominium unit after a forced sale would be contrary to such intent, as it precludes an Association from recovering the underlying debt unpaid by the homeowner through renting the unit during the redemption period, thereby impeding its ability to provide for common expenses, fund repairs and reserves, necessary for the functioning and survival of the association.

During the August 27, 2015 hearing, Commissioner Velategui emphasized the fact that condominium associations are a unique form of homeownership and are dependent upon all unit owners for payment of assessments in his colloquy with Defendant's attorney, Mr. Tarshes. *CP 207*. Commissioner Velategui asked Mr. Tarshes what would happen if 100 percent of the owners decided to go through bankruptcy and pointed out that "water would be turned off for everybody, power would be turned off for everybody,"... "[g]arbage would not be pick up because they've got not

money,”...“[m]aintenance wouldn’t be paid because they’ve got no money.” *CP 207*. He correctly emphasized that the condominium would be destroyed if the association could not take possession of the unit following a foreclosure sale in order to mitigate its damages and pay for its operational expenses.

The Legislature, in creating the Condominium Act (RCW 64.34), envisioned how to protect the condominium community and avoid financial crisis in a depressed economy or in a small condominium development when many unit owners may become delinquent in paying assessments. By preventing condominium owners from claiming a right to a homestead after the condominium association forecloses its assessment lien and allowing the association to mitigate its damages, the Legislature found a way to effectively and fairly govern this unique form of homeownership.

C. RCW 6.23.110(4) Requires A Homestead Under Chapter 6.13 RCW In Order For It To Apply.

RCW 6.23.030(1) and RCW 6.23.110(4) both refer to the homestead as provided for under chapter 6.13 RCW, thereby incorporating its provisions. Chapter 6.23 RCW also predates condominium law. Had the Legislature intended to simply preclude a condominium homeowner from claiming a homestead exemption against an execution or forced sale, the amendments to RCW 6.13.080 were sufficient for this purpose and the

references to the homestead statute in RCW 64.34.364(2) would be superfluous. RCW 6.23.110(1) specifically gives the purchaser the right of possession from the date of sale. Subsection (4) prohibits this possession if and only if there is a homestead which can only be created if RCW 6.13.010(1) is applicable. Under RCW 64.34.364(2) the entire chapter of RCW 6.13 does not apply, therefore no homestead exists as against the Association's lien and the condition precedent necessary for RCW 6.23.110(4) to "kick in" is not present.

It is respectfully suggested that the Court of Appeals decision ignored a clear provision which was promulgated by the Washington State Legislature. As the Court is aware, that is not its role. Where the statute is clear and unambiguous, the Court should apply such language thereby deferring to the Legislature. See *CalPortland Co. v. LevelOne Concrete, LLC* 180 Wash.App. 379 -385, 321 P.3d 1261 (2014).

D. Washington's Legislature Created Exceptions To Homestead Rights.

As noted above Article XIX, Section 1 of Washington's Constitution is cited by the Court of Appeals. Notably the Article deals with the homestead exemption, not the homestead itself. The Legislature did create the homestead exemption under RCW 6.13.070 to ensure that an owner receive a sum of money to start over. However, it also created a

carve-out to the homestead exemption pursuant to RCW 6.13.080. Moreover, the Legislature also carved out exceptions to the homestead; specifically **an exception to the application of the homestead itself exists when a deed of trust is foreclosed non-judicially pursuant to chapter 61.24 RCW.** In addition, forfeiture under RCW 69.50.505 is not subject to homestead protection. See *Tellevik v. 677 100th ST SW*, 83 Wn.App. 366,376-379, 921 P.2d 1888 (1996).

As to the claim that a lien is distinguishable from the right to possession after sale, a Deed of Trust is also a lien which requires foreclosure before possession. Moreover, at the time of the Sheriff Sale, the lien merges into the Purchaser's Certificate of Purchase, subject only to the right of redemption during the redemption period before the issuance of the Sheriff's Deed placing the Purchaser into title. Similarly, upon the issuance of the Trustee Deed, the Deed of Trust merges into the Trustee Deed.

Of critical importance, however, is the effect of the foreclosure of the lien upon junior interests. The sale operates to extinguish those interests. Without the right to claim a homestead against the lien under RCW 6.13.010 upon foreclosure of the lien, the unit owner, as a junior interest, loses that interest and the right of possession post sale. Thus, the argument of distinguishing between the foreclosure of the lien and right of possession is nonsensical.

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Paraphrasing, Ms. Robertson also argued that associations have the right, under RCW 64.34.364 to elect to foreclose non-judicially or judicially with the right of possession granted immediately upon completion of the trustee's sale under RCW 61.24 et seq. However, that argument ignored the fact that certain Declarations do not allow for non-judicial foreclosures and furthermore, under RCW 64.34.264(4), any amendment to a Declaration which restricts use requires ninety percent (90%) approval of the association membership; virtually an unobtainable percentage. Thus, the Legislature chose to provide the right for associations to rent post sale whether judicially or non-judicially.

The Court of Appeals also cites to *First Nat'l Bank of Everett v. Tiffany* 40 Wash. 2d 193, 242 P.2d 169 (1952), which was decided by this State's Supreme Court in 1952, long before the 1989 enactment of the Condominium Act and the provisions upon which Viewcrest relies to support its position that a unit owner may not claim a right to a homestead following execution and forced sale of the Association's lien. The decision rendered therein has no application to the plain language of RCW 64.34.364(2). In addition, the property the subject of that mortgage foreclosure was a single family home, not a condominium unit which became a special form of home ownership within a community, not contemplated when *Tiffany* was decided.

IV. CONCLUSION

RCW 64.34.364(2) clearly states that the provisions of Chapter RCW 6.13 do not apply to the condominium lien. Under RCW 6.13 the Legislature not only codified the right to claim a homestead, but also the right to claim a homestead exemption, currently in the amount of \$125,000.00 from any forced sale or execution.

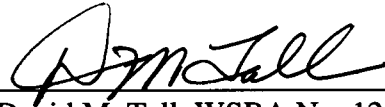
Without the application of the entire Chapter, there is no homestead and without a homestead there is no right to claim possession post sheriff's sale under RCW 6.23.110(4).

The statute must be reconciled to give effect to the clear legislative intent to create a modern urban functioning community, sharing the costs necessary to operate such community and to provide for homeownership with denser urban populations.

It is respectfully argued that the Court of Appeals' decision ignored the clear language of the statute and its decision has impacted Association's statewide. Discretionary review should be accepted as the Petition involves a substantial public interest.

Dated this 25 day of January, 2017.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "D. M. Tall", written over a horizontal line.

David M. Tall, WSBA No. 12849

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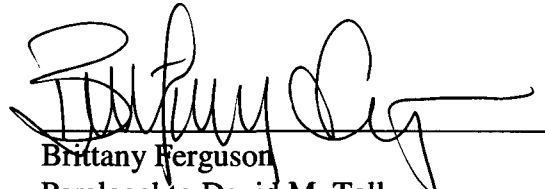
CERTIFICATE OF SERVICE

The undersigned certifies that on the date below she forwarded for filing with the Court of Appeals for the State of Washington, Division I in Seattle, the original and one copy of the foregoing pleading entitled Petition for Discretionary Review, a true and correct copy of the aforementioned pleading was emailed pdf and forwarded for delivery via ABC Legal Messenger, on this date to the following persons:

David Tarshes
Northwest Justice Project
401 Second Ave S, Ste 407
Seattle, WA 98104
davidt@nwjustice.org

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Dated this 25th day of January, 2017 at Bellevue, Washington.


Brittany Ferguson
Paralegal to David M. Tall

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APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

VIEWCREST CONDOMINIUM)
ASSOCIATION,)
)
Respondent,)
)
v.)
)
BRENDA L. ROBERTSON,)
)
Appellant.)
_____)

No. 74115-2-1

PUBLISHED OPINION

FILED: December 27, 2016

2016 DEC 27 AM 9:50
COURT OF APPEALS OF THE STATE OF WASHINGTON

VERELLEN, C.J. — We are asked to reconcile whether the “Homestead Act,”¹ “Redemption Act,”² and Condominium Act³ together allow a condominium owner to possess a condominium without paying rent during the redemption period following a judicial foreclosure of a condominium assessment lien. Generally, if property qualifies as a homestead and is occupied for that purpose at the time of a forced sale, the judgment debtor has the right to retain possession during the redemption period with no obligation to pay for the value of occupation.

Viewcrest Condominium Association acknowledges that condominiums qualify for homesteads but contends the provision of the Condominium Act that “[a] lien under this

¹ Ch. 6.13 RCW.

² Ch. 6.23 RCW.

³ Ch. 64.34 RCW.

section is not subject to the provisions of [the Homestead Act]⁴ compels the conclusion that Brenda Robertson was not entitled to rent-free possession of her condominium during the redemption period following Viewcrest's judicial foreclosure of its lien for unpaid assessments.

But we liberally construe the statutory right to homestead, and any limitation on a right of homestead must be specific, clear, and definite. When the Homestead Act, Redemption Act, and Condominium Act are read together, there is no specific, clear, and definite provision limiting a condominium owner's right to homestead for purposes of the right to possession during the redemption period.

We conclude Brenda Robertson had a homestead in her condominium. And because she occupied the condominium when Viewcrest judicially foreclosed its assessment lien, she was entitled to retain possession during the redemption period with no obligation to pay rent.

Therefore, we reverse the superior court order granting a writ of assistance to remove Robertson from her condominium and remand for further proceedings consistent with this opinion.

FACTS

Brenda Robertson purchased her condominium unit in February of 2007 and resided there. She failed to pay condominium assessments starting in October of 2008.

In August of 2012, Viewcrest obtained a \$10,879.58 judgment and order of lien foreclosure against Robertson for past due condominium association assessments. When

⁴ RCW 64.34.364.

Viewcrest pursued a sheriff's foreclosure sale in June of 2015, the total amount owing was \$18,902.47.

Viewcrest purchased the property at the sheriff's sale with a bid of \$12,000. Viewcrest offered Robertson the option to remain in her unit during the one-year redemption period in exchange for fair market rent, with a credit for such rent toward any redemption by Robertson. Robertson did not respond to Viewcrest's offer.

A court commissioner granted Viewcrest's motion for a writ of assistance to remove Robertson from the unit. A superior court judge denied Robertson's motion for revision.

Robertson appeals.

ANALYSIS

Robertson argues she had a statutory right to remain in possession of her condominium until the end of the redemption period following judicial foreclosure of a condominium lien for unpaid assessments. We agree.

The issue implicates the Homestead Act, Condominium Act, and Redemption Act. We review questions of statutory interpretation de novo.⁵ Our goal is to ascertain and give effect to the intent of the legislature.⁶ Where "the statute's meaning is plain from the words used, . . . we give effect to this plain meaning as the expression of legislative intent."⁷ But if the meaning is not clear, we consider rules of construction and legislative history.⁸ Especially when statutes relate to the same subject matter, they are to be read together,

⁵ In re Marriage of Buecking, 179 Wn.2d 438, 443, 316 P.3d 999 (2013).

⁶ Wright v. Jeckle, 158 Wn.2d 375, 379, 144 P.3d 301 (2006).

⁷ Buecking, 179 Wn.2d at 444.

⁸ State v. Ervin, 169 Wn.2d 815, 820, 239 P.3d 354 (2010) (quoting Christensen v. Ellsworth, 162 Wn.2d 365, 373, 173 P.3d 228 (2007)).

whenever possible, "to achieve a 'harmonious total statutory scheme . . . which maintains the integrity of the respective statutes.'"⁹ But a statute creating a lien is in derogation of the common law and must be strictly construed.¹⁰

The Homestead Act implements the right of homestead recognized in our state constitution.¹¹ The legislature enacted the homestead statutes to promote the public policy of insuring shelter for each family.¹² The homestead statutes are favored in the law and should be liberally construed.¹³ Limitations on homestead rights must be specific, clear and direct.¹⁴ The Condominium Act and the Redemption Act also contain provisions related to homestead rights.

The Homestead Act grants homeowners the right to be free from execution or forced sale of the homestead, with certain exceptions.¹⁵ Specifically, the Homestead Act,

⁹ Employco Pers. Servs., Inc. v. City of Seattle, 117 Wn.2d 606, 614, 817 P.2d 1373 (1991) (alteration in original) (quoting State v. O'Neil, 103 Wn.2d 853, 862, 700 P.2d 711 (1985)); Hallauer v. Spectrum Props., Inc., 143 Wn.2d 126, 146, 18 P.3d 540 (2001).

¹⁰ City of Algona v. Sharp, 30 Wn. App. 837, 843, 638 P.2d 627 (1982).

¹¹ WASH. CONST. art. XIX, § 1; Tellevik v. Real Property Known as 6717 100th Street S.W., 83 Wn. App. 366, 378-79, 921 P.2d 1088 (1996) (reasoning that the constitutional homestead provision is not self-executing; it imposes a duty on the legislature to set up a procedure to protect a portion of the owner's property occupied as a residence).

¹² In re Bankr. Pet. of Wieber, 182 Wn.2d 919, 925-26, 347 P.3d 41 (2015); Macumber v. Shafer, 96 Wn.2d 568, 570, 637 P.2d 245 (1981); Bank of Anacortes v. Cook, 10 Wn. App. 391, 395, 517 P.2d 633 (1974)).

¹³ Macumber, 96 Wn.2d at 570.

¹⁴ See City of 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 from the procedure for foreclosure and sale set up in RCW 35.30. The policy in favor of homestead protection is too strong."); see also In re Cunningham, 163 B.R. 593, 594-96 (Bankr. W.D. Wash. 1994) ("In short, when the legislature has wanted to add exceptions to the homestead exemption, it has done so clearly and directly.").

¹⁵ RCW 6.13.070.

together with the Condominium Act, recognize such an exception allowing a forced sale on a judicial foreclosure of a condominium lien for unpaid assessments.¹⁶

But the Redemption Act grants a homeowner the right to live in the home during the redemption period that follows a forced sale: "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."¹⁷ We note that our Supreme Court has recognized that this right to possession under the Redemption Act controls over other statutes governing the rights of parties prior to the sale triggering a redemption period.¹⁸

The key question here is whether the statutory right to possession during the redemption period has been limited or restricted by the Condominium Act.

Viewcrest's core premise is that there is no right to possession during the redemption period because no homestead applies. Once property is occupied as a

¹⁶ RCW 6.13.080(6) ("The homestead exemption is not available against [a] forced sale in satisfaction of judgments obtained . . . [o]n debts secured by a condominium's or homeowner association's lien."); RCW 64.34.364(1) ("The association has a lien on a unit for any unpaid assessments" that may be judicially foreclosed.).

¹⁷ RCW 6.23.110(4); *see* MARJORIE D. ROMBAUER, 27 WASHINGTON PRACTICE: CREDITORS' REMEDIES—DEBTORS' RELIEF § 3.19(c), at 166 (1998) ("If the property qualifies as a homestead and is occupied for that purpose at the time of sale, the judgment debtor has the right to retain possession during the redemption period, with no obligation to pay for the value of the occupation.").

¹⁸ *First Nat'l Bank of Everett v. Tiffany*, 40 Wn.2d 193, 197, 242 P.2d 169 (1952). Viewcrest argues *Tiffany* has no application to these facts because it predates the Condominium Act, but the current redemption statute is nearly identical to the version construed in *Tiffany*. Viewcrest provides no authority to the contrary. Consistent with *Tiffany*, a homeowner debtor's statutory right to possession during the redemption period controls over the lienholder's rights prior to the forced foreclosure sale.

primary residence, a homestead is automatically created.¹⁹ As clarified at oral argument, Viewcrest acknowledges the legislature has not eliminated homesteads for condominiums. It instead argues that a condominium *lien* is not subject to any right of homestead for any purpose, including the Redemption Act right to possession during the redemption period. Viewcrest relies on the Condominium Act provision that “[a] lien under this section is not subject to the provisions of chapter 6.13 RCW.”²⁰

The Condominium Act, modeled after the Uniform Condominium Act, applies to condominiums created after July 1, 1990.²¹ The Horizontal Property Regimes Act²² generally continues to apply to condominiums created before that date.²³

Viewcrest reads RCW 64.34.364(2) to broadly bar both the actual homestead and the homestead exemption from execution or forced sales in the context of condominium assessment liens.²⁴ But the meaning of “a lien under this section is not subject to the provisions of chapter 6.13 RCW” is not clear on its face. It is elusive to define what

¹⁹ RCW 6.13.040; In re Dependency of Schermer, 161 Wn.2d 927, 953, 169 P.3d 452 (2007).

²⁰ RCW 64.34.364(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.*” (emphasis added)).

²¹ RCW 64.34.010(1) (“This chapter applies to all condominiums created within this state after July 1, 1990.”).

²² Ch. 64.32 RCW.

²³ RCW 64.34.010(2) (“The provisions of chapter 64.32 do not apply to condominiums created after July 1, 1990.”). We note RCW 64.34.010(1) provides that RCW 64.34.364 applies to condominiums created before July 1, 1990 “with respect to events and circumstances occurring after July 1, 1990.”

²⁴ Br. of Resp’t at 9.

aspects or consequences of a lien are impacted if the "lien" is not subject to the Homestead Act but the owner has a homestead in the condominium. RCW 64.34.364(2) does not plainly refer to the right of possession granted under the Redemption Act. So we consider legislative history and rules of statutory construction, including the goal of a harmonious reading of the Condominium Act, Homestead Act, and Redemption Act.

Viewcrest argues that if the legislature intended only to restate the exemption allowing forced sales for condominium liens contained in RCW 6.13.080(6) of the Homestead Act, it would have simply restated that exemption, just as it has in the Horizontal Regime Act: "Such lien is not subject to the ban against execution or forced sales of homesteads under RCW 6.13.080."²⁵ But Viewcrest's arguments are not compelling when considered in context of legislative history and other statutes.

First, the Uniform Condominium Act provision for assessment liens introduced phrasing for an optional provision: "[The lien under this section is not subject to the provisions of (insert appropriate reference to state homestead, dower and curtesy, or other exemptions.)]."²⁶ The reference to "exemptions" suggests the Uniform Condominium Act contemplated homestead exemptions precluding forced sales, not the right to possession during redemption.

Second, the Homestead Act provision allowing a forced sale for a condominium association lien expressly requires that the association give a notice to the owner that nonpayment of assessments may result in foreclosure of the association lien "and that the homestead protection under this chapter shall not apply."²⁷ The comments to the

²⁵ RCW 64.32.200(2).

²⁶ UNIF. CONDOMINIUM ACT § 3-116(b) (UNIF. LAW COMM'N 1980).

²⁷ RCW 6.13.080(6).

Condominium Act suggest the elimination of this notice requirement as a reason for the broad language introduced in RCW 64.34.364(2):

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.^[28]

While the comment expressly identifies the elimination of the requirement for “notice regarding the effect of foreclosure which is required by that chapter in order to avoid the homestead exemption,” there is no mention of any intent to directly or indirectly alter any provision of the Redemption Act.²⁹

Third, other comparisons of the Condominium Act to the Horizontal Regime Act undercut Viewcrest’s position. RCW 64.32.200(2), governing assessment liens under the Horizontal Regime Act, provides:

In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the bylaws, and the plaintiff in such foreclosures shall be entitled to the appointment of a receiver to collect the same.

Following Viewcrest’s logic, the legislature knew how to expressly require the owner to pay rent during the foreclosure process, as it expressly stated in the Horizontal Regime Act, but did not include such language in the Condominium Act. Viewcrest appears to suggest such language would be inconsistent with other statutory obligations, but a requirement that the condominium owner pay rent throughout the foreclosure would seem to specifically address the underlying question. The legislature has not included such a

²⁸ 2 SENATE JOURNAL, 51st Leg., Reg. Sess., 1st & 2nd Spec. Sess., at 2081 (Wash. 1990) (emphasis added) (referenced at 1 SENATE JOURNAL, 51st Leg., Reg. Sess., at 376 (Wash. 1990)).

²⁹ Id.

provision in the Condominium Act, the Redemption Act, or the Homestead Act.

Fourth, Viewcrest argues that if the legislature intended to continue an owner's right to possession during the redemption period, it would never have included the provision of RCW 64.34.364(9), giving condominium associations the power to lease a unit purchased at a judicial foreclosure sale. But if a lien is foreclosed upon a unit not occupied by the owner, there is no right to possession during the redemption period. So granting the purchaser the authority to lease a unit purchased at a sale is not necessarily inconsistent with allowing owners who occupied their unit at foreclosure to continue in possession during the redemption period.

Fifth, the Condominium Act provides that only as to "a unit that is not occupied by the owner" is the association entitled to "appointment of a receiver to collect from the lessee thereof the rent for the unit."³⁰ Allowing appointment of a receiver to collect rents for a unit not occupied by the owner without any parallel provision for a unit occupied by the owner is consistent with the owner's right to possess during the redemption period with no rent.

Sixth, Viewcrest relies on the policy argument that requiring an association to forgo any rent on a foreclosed unit during the redemption period frustrates the six-month super priority granted condominium association assessment liens.³¹ Without the right to collect

³⁰ RCW 64.34.364(10).

³¹ Consistent with the Uniform Condominium Act, the Condominium Act, RCW 64.34.364(3), includes a six-month super priority for assessment liens over preexisting mortgages. In substantially identical comments to the Uniform Condominium Act, the Condominium Act recognizes the six-month priority as an attempt to strike "an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of mortgage lenders. As a practical matter, mortgage lenders will most likely pay the assessments demanded by the association which are prior to the mortgage rather than having the association

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rent during the 8- or 12-month redemption period, Viewcrest argues there is no practical benefit to the super priority over the lender holding a first mortgage or deed of trust and the association is jeopardized. But this is a policy argument for the legislature.

Seventh, the strong policy protecting homestead rights is more compelling than the policy arguments offered by Viewcrest. If the legislature intends that homesteads in condominiums occupied by owners at the time of a condominium lien judicial foreclosure sale are not adequate to invoke the RCW 6.23.110(4) right to possession during redemption, it could easily say so specifically, clearly, and directly. We strictly construe the lien provision of the Condominium Act. And it is not harmonious to read the Condominium Act as indirectly negating a right recognized under the Redemption Act by means of a hazy link to the Homestead Act. Absent specific, clear, and direct language limiting the homestead rights of condominium owners for purposes of possession during redemption, it is harmonious to read the existing statutes as leaving in place the RCW 6.23.110(4) right to possession during the redemption period.

Finally, Viewcrest offered the trial court legislative history in the form of a declaration from one of four attorneys who drafted the Condominium Act. The legislature's intent in passing a particular bill cannot be shown by the affidavit of a legislator.³² The same rule applies to post-enactment affidavits and declarations by the legislation's drafter,

foreclose on the unit and eliminate the lender's mortgage lien." 2 SENATE JOURNAL, 51st Leg., Reg. Sess., 1st & 2nd Spec. Sess., at 2081 (Wash. 1990) (emphasis added) (referenced at 1 SENATE JOURNAL, 51st Leg., Reg. Sess., at 376 (Wash. 1990)); see UNIF. CONDOMINIUM ACT § 3-116(b) cmt. 2 (UNIF. LAW COMM'N 1980); BAC Home Loan Servicing L.P. v. Fulbright, 180 Wn.2d 754, 762, 328 P.3d 895 (2014) (discussing the "somewhat complicated exception to the recording act").

³² City of Yakima v. Int'l Ass'n of Firefighters, 117 Wn.2d 655, 676-77, 818 P.2d 1076 (1991).

other legislators, by legislative counsel and staff who participated in developing the legislation, by lobbyists, and by other interested parties.³³ On de novo review, we reject the declaration.

Applying the long-established directive to construe homestead provisions liberally, we conclude there is no specific, clear, and direct limitation on a condominium homestead that eliminates the right to possession granted by the Redemption Act. Therefore, a condominium owner occupying the condominium as a residence at the time of a judicial foreclosure of a condominium lien has the right to possession during the redemption period, with no obligation to pay for the value of the occupation.³⁴

We reverse and remand for proceedings consistent with this opinion.

WE CONCUR:

Trickey, J

Vendler, J
Seach, J

³³ Western Telepage, Inc. v. City of Tacoma, 95 Wn. App. 140, 145-46, 974 P.2d 1270 (1999); Woodson v. State, 95 Wn.2d 257, 264, 623 P.2d 683 (1980); City of Shoreline v. Club for Free Speech Rights, 109 Wn. App. 696, 702, 36 P.3d 1058 (2001); Pannell v. Thompson, 91 Wn.2d 591, 597-98, 589 P.2d 1235 (1979).

³⁴ We note that a nonjudicial foreclosure of the assessment lien is not subject to the right of possession.

ARTICLE XVI SCHOOL AND GRANTED LANDS

SECTION 1 DISPOSITION OF. All the public lands granted to the state are held in trust for all the people and none of such lands, nor any estate or interest therein, shall ever be disposed of unless the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, be paid or safely secured to the state; nor shall any lands which the state holds by grant from the United States (in any case in which the manner of disposal and minimum price are so prescribed) be disposed of except in the manner and for at least the price prescribed in the grant thereof, without the consent of the United States.

SECTION 2 MANNER AND TERMS OF SALE. None of the lands granted to the state for educational purposes shall be sold otherwise than at public auction to the highest bidder, the value thereof, less the improvements shall, before any sale, be appraised by a board of appraisers to be provided by law, the terms of payment also to be prescribed by law, and no sale shall be valid unless the sum bid be equal to the appraised value of said land. In estimating the value of such lands for disposal, the value of the improvements thereon shall be excluded: *Provided*, That the sale of all school and university land heretofore made by the commissioners of any county or the university commissioners when the purchase price has been paid in good faith, may be confirmed by the legislature.

SECTION 3 LIMITATIONS ON SALES. No more than one-fourth of the land granted to the state for educational purposes shall be sold prior to January 1, 1895, and not more than one-half prior to January 1, 1905: *provided*, that nothing herein shall be so construed as to prevent the state from selling the timber or stone off of any of the state lands in such manner and on such terms as may be prescribed by law: and *provided, further*, that no sale of timber lands shall be valid unless the full value of such lands is paid or secured to the state.

SECTION 4 HOW MUCH MAY BE OFFERED IN CERTAIN CASES —PLATTING OF. No more than one hundred and sixty (160) acres of any granted lands of the state shall be offered for sale in one parcel, and all lands within the limits of any incorporated city or within two miles of the boundary of any incorporated city where the valuation of such land shall be found by appraisal to exceed one hundred dollars (\$100) per acre shall, before the same be sold, be platted into lots and blocks of not more than five acres in a block, and not more than one block shall be offered for sale in one parcel.

SECTION 5 INVESTMENT OF PERMANENT COMMON SCHOOL FUND. The permanent common school fund of this state may be invested as authorized by law. [AMENDMENT 44, 1965 ex.s. Senate Joint Resolution No. 22, part 2, p 2817. Approved November 8, 1966.]

Amendment 1 (1894) — Art. 16 Section 5 INVESTMENT OF SCHOOL FUND — *None of the permanent school fund of this state shall*

(Rev. 12-10)

ever be loaned to private persons or corporations, but it may be invested in national, state, county, municipal or school district bonds. [AMENDMENT 1, 1893 p 9 Section 1. Approved November, 1894.]

Original text — Art. 16 Section 5 INVESTMENT OF PERMANENT SCHOOL FUND — *None of the permanent school fund shall ever be loaned to private persons or corporations, but it may be invested in national, state, county or municipal bonds.*

Funds for support of education: Art. 9 Section 3.

SECTION 6 INVESTMENT OF HIGHER EDUCATION PERMANENT FUNDS. Notwithstanding the provisions of Article VIII, sections 5 and 7 and Article XII, section 9, or any other section or article of the Constitution of the state of Washington, the moneys of the permanent funds established for any of the institutions of higher education in this state may be invested as authorized by law. Without limitation, this shall include the authority to invest permanent funds held for the benefit of institutions of higher education in stocks or bonds issued by any association, company, or corporation if authorized by law. [AMENDMENT 102, 2007 Substitute House Joint Resolution No. 4215, p 3145. Approved November 6, 2007.]

ARTICLE XVII TIDE LANDS

SECTION 1 DECLARATION OF STATE OWNERSHIP. The state of Washington asserts its ownership to the beds and shores of all navigable waters in the state up to and including the line of ordinary high tide, in waters where the tide ebbs and flows, and up to and including the line of ordinary high water within the banks of all navigable rivers and lakes: *Provided*, that this section shall not be construed so as to debar any person from asserting his claim to vested rights in the courts of the state.

Harbors and tide waters: Art. 15.

SECTION 2 DISCLAIMER OF CERTAIN LANDS. The state of Washington disclaims all title in and claim to all tide, swamp and overflowed lands, patented by the United States: *Provided*, the same is not impeached for fraud.

ARTICLE XVIII STATE SEAL

SECTION 1 SEAL OF THE STATE. The seal of the State of Washington shall be, a seal encircled with the words: "The Seal of the State of Washington," with the vignette of General George Washington as the central figure, and beneath the vignette the figures "1889."

*Custody of seal: Art. 3 Section 18.
State seal: RCW 1.20.080.*

ARTICLE XIX EXEMPTIONS

SECTION 1 EXEMPTIONS — HOMESTEADS, ETC. The legislature shall protect by law from forced sale a certain portion of the homestead and other property of all heads of families.

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.

[1999 c 403 § 1; 1993 c 200 § 1; 1987 c 442 § 201; 1981 c 329 § 7; 1945 c 196 § 1; 1931 c 88 § 1; 1927 c 193 § 1; 1895 c 64 § 1; Rem. Supp. 1945 § 528. Formerly RCW 6.12.010.]

NOTES:

Severability—1981 c 329: See note following RCW 6.21.020.

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.

[1993 c 200 § 3; 1987 c 442 § 204; 1981 c 329 § 9. Formerly RCW 6.12.045.]

NOTES:

Severability—1981 c 329: See note following RCW 6.21.020.

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.

[1987 c 442 § 207; 1981 c 329 § 13; 1945 c 196 § 2; 1927 c 193 § 2; 1895 c 64 § 4; Rem. Supp. 1945 § 532. Formerly RCW 6.12.090.]

NOTES:

Severability—1981 c 329: See note following RCW 6.21.020.

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.

[**2013 c 23 § 2**; **2008 c 6 § 635**; **2007 c 429 § 2**; **2005 c 292 § 4**; **1993 c 200 § 4**. Prior: **1988 c 231 § 3**; **1988 c 192 § 1**; **1987 c 442 § 208**; **1984 c 260 § 16**; **1982 c 10 § 1**; prior: **1981 c 304 § 17**; **1981 c 149 § 1**; **1909 c 44 § 1**; **1895 c 64 § 5**; RRS § 533. Formerly RCW **6.12.100**.]

NOTES:

Part headings not law—Severability—2008 c 6: See RCW **26.60.900** and **26.60.901**.

Severability—1988 c 231: See note following RCW 6.01.050.

Severability—1982 c 10: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 10 § 19.]

Severability—1981 c 304: See note following RCW 26.16.030.

RCW 6.23.030

Notice to be given during redemption period—Effect of noncompliance—Form of notice and affidavit.

(1) If the property is subject to a homestead as provided in chapter 6.13 RCW, the purchaser, or the redemptioner if the property has been redeemed, shall send a notice, in the form prescribed in subsection (3) of this section, at least forty but not more than sixty days before the expiration of the judgment debtor's redemption period both by regular mail and by certified mail, return receipt requested, to the judgment debtor or debtors and to each of them separately, if there is more than one judgment debtor, at their last known address or addresses and to "occupant" at the property address. The party who sends the notice shall file a copy of the notice with an affidavit of mailing with the clerk of the court and deliver or mail a copy to the sheriff.

(2) Failure to comply with this section extends the judgment debtor's redemption period six months. If the redemption period is extended, no further notice need be sent. Time for redemption by redemptioners shall not be extended.

(3) The notice and affidavit of mailing required by subsection (1) of this section shall be in substantially the following form:

IN THE SUPERIOR COURT OF THE STATE
OF WASHINGTON FOR COUNTY

Plaintiff,	}	CAUSE NO.
vs.		NOTICE OF
Defendant.		EXPIRATION OF REDEMPTION PERIOD

TO: [Judgment Debtor]

THIS IS AN IMPORTANT NOTICE AFFECTING YOUR RIGHT TO RETAIN YOUR PROPERTY.

NOTICE IS HEREBY GIVEN that the period for redemption of the following described real property ("the property") is expiring. The property is situated in the County of, State of Washington, to wit:

. [legal description] and commonly known as, which was sold by, County Sheriff, in, County, Washington on the day of, (year), under and by virtue of a writ of execution and order of sale issued by the court in the above-entitled action.

THE REDEMPTION PERIOD FOR THE PROPERTY IS MONTHS. THE REDEMPTION PERIOD COMMENCED ON, (year), AND WILL EXPIRE AT 4:30 p.m. ON, (year)

If you intend to redeem the property described above you must give written notice of your intention to the County Sheriff on or before, (year)

Following is an itemized account of the amount required to redeem the property to date:

Item	Amount
Purchase price paid at sale	\$
Interest from date of sale to date of this notice at . . . percent per annum	\$
Real estate taxes plus interest	\$
Assessments plus interest	\$
Liens or other costs paid by purchaser or purchaser's successor during redemption period plus interest	\$
Lien of redemptioner	\$
TOTAL REQUIRED TO REDEEM AS OF THE DATE OF THIS NOTICE	\$

You may redeem the property by 4:30 p.m. on or before the day of, (year), by paying the amount set forth above and such other amounts as may be required by law. Payment must be in the full amount and in cash, certified check, or cashier's check. Because such other amounts as may be required by law to redeem may include presently unknown expenditures required to operate, preserve, protect, or insure the property, or the amount to comply with state or local laws, or the amounts of prior liens, with interest, held by the purchaser or a redemptioner, it will be necessary for you to contact the County Sheriff at the address stated below prior to the time you tender the redemption amount so that you may be informed exactly how much you will have to pay to redeem the property.

. SHERIFF-DIRECTOR,
 COUNTY, WASHINGTON.

By, Deputy
 Address
 City
 Washington 9
 Phone (. . .)

IF YOU FAIL TO REDEEM THE PROPERTY BY 4:30 p.m. ON OR BEFORE THE DAY OF, (year), THE DATE UPON WHICH THE REDEMPTION PERIOD WILL EXPIRE, THE PURCHASER OR THE PURCHASER'S SUCCESSOR WILL BE ENTITLED TO POSSESSION OF THE PROPERTY AND MAY BRING AN ACTION TO EVICT YOU FROM POSSESSION OF THE PROPERTY.

DATED THIS DAY OF, (year)

[Purchaser]
By
[Purchaser's attorney]
Attorneys for

STATE OF
WASHINGTON

COUNTY OF

}
}
} ss.
}

The undersigned being first duly sworn on oath states: That on this day affiant deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the judgment debtor at the address stated on the face of this document and to "occupant" at the property address, both by certified mail, return receipt requested, and by first-class mail, all of the mailings containing a copy of the document to which this affidavit is attached.

SIGNED AND SWORN TO BEFORE ME THIS DAY OF, (year), BY (name of person making statement)

.
Title
My appointment expires
., (year)

[2016 c 202 § 2; 1987 c 442 § 703; 1984 c 276 § 5; 1981 c 329 § 6. Formerly RCW 6.24.145.]

NOTES:

Application—1984 c 276: See note following RCW 6.21.020.

Severability—1981 c 329: See note following RCW 6.21.020.

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.

[2011 c 336 § 146; 1987 c 442 § 711; 1981 c 329 § 21; 1961 c 196 § 3; 1957 c 8 § 6; 1939 c 94 § 1; 1927 c 93 § 1; 1899 c 53 § 15; RRS § 602. Formerly RCW 6.24.210.]

NOTES:

Severability—1981 c 329: See note following RCW 6.21.020.

RCW 64.32.200**Assessments for common expenses—Enforcement of collection—Liens and foreclosures—Liability of mortgagee or purchaser.**

(1) The declaration may provide for the collection of all sums assessed by the association of apartment owners for the share of the common expenses chargeable to any apartment and the collection may be enforced in any manner provided in the declaration including, but not limited to, (a) ten days notice shall be given the delinquent apartment owner to the effect that unless such assessment is paid within ten days any or all utility services will be forthwith severed and shall remain severed until such assessment is paid, or (b) collection of such assessment may be made by such lawful method of enforcement, judicial or extra-judicial, as may be provided in the declaration and/or bylaws.

(2) All sums assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to any apartment shall constitute a lien on such apartment prior to all other liens except only (a) tax liens on the apartment in favor of any assessing unit and/or special district, and (b) all sums unpaid on all mortgages of record. Such lien is not subject to the ban against execution or forced sales of homesteads under RCW 6.13.080 and may be foreclosed by suit by the manager or board of directors, acting on behalf of the apartment owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the bylaws, and the plaintiff in such foreclosures shall be entitled to the appointment of a receiver to collect the same. The manager or board of directors, acting on behalf of the apartment owners, shall have power, unless prohibited by the declaration, to bid on the apartment at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment, the period of redemption shall be eight months after the sale. Suit to recover any judgment for any unpaid common expenses shall be maintainable without foreclosing or waiving the liens securing the same.

(3) Where the mortgagee of a mortgage of record or other purchaser of an apartment obtains possession of the apartment as a result of foreclosure of the mortgage, such possessor, his or her successors and assigns shall not be liable for the share of the common expenses or assessments by the association of apartment owners chargeable to such apartment which became due prior to such possession. Such unpaid share of common expenses of assessments shall be deemed to be common expenses collectible from all of the apartment owners including such possessor, his or her successors and assigns.

[2012 c 117 § 201; 1988 c 192 § 2; 1965 ex.s. c 11 § 6; 1963 c 156 § 20.]

RCW 64.34.264**Amendment of declaration.**

(1) Except in cases of amendments that may be executed by a declarant under RCW **64.34.232(6)** or **64.34.236**; the association under RCW **64.34.060**, **64.34.220(5)**, **64.34.228(3)**, **64.34.244(1)**, **64.34.248**, or **64.34.268(8)**; or certain unit owners under RCW **64.34.228(2)**, **64.34.244(1)**, **64.34.248(2)**, or **64.34.268(2)**, and except as limited by subsection (4) of this section, the declaration, including the survey maps and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated, or any larger percentage the declaration specifies: PROVIDED, That the declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use.

(2) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(3) Every amendment to the declaration must be recorded in every county in which any portion of the condominium is located, and is effective only upon recording. An amendment shall be indexed in the name of the condominium and shall contain a cross-reference by recording number to the declaration and each previously recorded amendment thereto.

(4) Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of the vote or agreement of the owner of each unit particularly affected and the owners of units to which at least ninety percent of the votes in the association are allocated other than the declarant or such larger percentage as the declaration provides.

(5) Amendments to the declaration required by this chapter to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(6) No amendment may restrict, eliminate, or otherwise modify any special declarant right provided in the declaration without the consent of the declarant and any mortgagee of record with a security interest in the special declarant right or in any real property subject thereto, excluding mortgagees of units owned by persons other than the declarant.

[1989 c 43 § 2-117.]

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.

[2013 c 23 § 175; 1990 c 166 § 6; 1989 c 43 § 3-117.]

NOTES:

Effective date—1990 c 166: See note following RCW 64.34.020.

RCW 69.50.505**Seizure and forfeiture.**

(1) The following are subject to seizure and forfeiture and no property right exists in them:

(a) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or chapter **69.41** or **69.52** RCW, and all hazardous chemicals, as defined in RCW **64.44.010**, used or intended to be used in the manufacture of controlled substances;

(b) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter or chapter **69.41** or **69.52** RCW;

(c) All property which is used, or intended for use, as a container for property described in (a) or (b) of this subsection;

(d) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate the sale, delivery, or receipt of property described in (a) or (b) of this subsection, except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or chapter **69.41** or **69.52** RCW;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

(iii) No conveyance is subject to forfeiture under this section if used in the receipt of only an amount of marijuana for which possession constitutes a misdemeanor under RCW **69.50.4014**;

(iv) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(v) When the owner of a conveyance has been arrested under this chapter or chapter **69.41** or **69.52** RCW the conveyance in which the person is arrested may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

(e) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter or chapter **69.41** or **69.52** RCW;

(f) All drug paraphernalia*21 other than paraphernalia possessed, sold, or used solely to facilitate marijuana-related activities that are not violations of this chapter;

(g) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter **69.41** or **69.52** RCW, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter **69.41** or **69.52** RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter **69.41** or **69.52** RCW. A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the

security interest was created, the secured party neither had knowledge of nor consented to the act or omission. No personal property may be forfeited under this subsection (1)(g), to the extent of the interest of an owner, by reason of any act or omission which that owner establishes was committed or omitted without the owner's knowledge or consent; and

(h) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substance, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter **69.41** or **69.52** RCW, if such activity is not less than a class C felony and a substantial nexus exists between the commercial production or sale of the controlled substance and the real property. However:

(i) No property may be forfeited pursuant to this subsection (1)(h), to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(ii) The bona fide gift of a controlled substance, legend drug, or imitation controlled substance shall not result in the forfeiture of real property;

(iii) The possession of marijuana shall not result in the forfeiture of real property unless the marijuana is possessed for commercial purposes that are unlawful under Washington state law, the amount possessed is five or more plants or one pound or more of marijuana, and a substantial nexus exists between the possession of marijuana and the real property. In such a case, the intent of the offender shall be determined by the preponderance of the evidence, including the offender's prior criminal history, the amount of marijuana possessed by the offender, the sophistication of the activity or equipment used by the offender, whether the offender was licensed to produce, process, or sell marijuana, or was an employee of a licensed producer, processor, or retailer, and other evidence which demonstrates the offender's intent to engage in unlawful commercial activity;

(iv) The unlawful sale of marijuana or a legend drug shall not result in the forfeiture of real property unless the sale was forty grams or more in the case of marijuana or one hundred dollars or more in the case of a legend drug, and a substantial nexus exists between the unlawful sale and the real property; and

(v) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, at the time the security interest was created, neither had knowledge of nor consented to the act or omission.

(2) Real or personal property subject to forfeiture under this chapter may be seized by any ****board** inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a lis pendens by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: PROVIDED, That real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) A **board inspector or law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The **board inspector or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(3) In the event of seizure pursuant to subsection (2) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(d), (g), or (h) of this section within forty-five days of the service of notice from the seizing agency in the case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. The community property interest in real property of a person whose spouse or domestic partner committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(5) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section within forty-five days of the service of notice from the seizing agency in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The notice of claim may be served by any method authorized by law or court rule including, but not limited to, service by first-class mail. Service by mail shall be deemed complete upon mailing within the forty-five day period following service of the notice of seizure in the case of personal property and within the ninety-day period following service of the notice of seizure in the case of real property. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any

other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of personal property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In all cases, the burden of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture.

The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section.

(6) In any proceeding to forfeit property under this title, where the claimant substantially prevails, the claimant is entitled to reasonable attorneys' fees reasonably incurred by the claimant. In addition, in a court hearing between two or more claimants to the article or articles involved, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees.

(7) When property is forfeited under this chapter the **board or seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public;

(c) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or

(d) Forward it to the drug enforcement administration for disposition.

(8)(a) When property is forfeited, the seizing agency shall keep a record indicating the identity of the prior owner, if known, a description of the property, the disposition of the property, the value of the property at the time of seizure, and the amount of proceeds realized from disposition of the property.

(b) Each seizing agency shall retain records of forfeited property for at least seven years.

(c) Each seizing agency shall file a report including a copy of the records of forfeited property with the state treasurer each calendar quarter.

(d) The quarterly report need not include a record of forfeited property that is still being held for use as evidence during the investigation or prosecution of a case or during the appeal from a conviction.

(9)(a) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the state general fund.

(b) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents, and the cost of any valid landlord's claim for damages under subsection (15) of this section.

(c) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when

possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(10) Forfeited property and net proceeds not required to be paid to the state treasurer shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of controlled substances related law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

(11) Controlled substances listed in Schedule I, II, III, IV, and V that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, II, III, IV, and V, which are seized or come into the possession of the **board, the owners of which are unknown, are contraband and shall be summarily forfeited to the **board.

(12) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the **board.

(13) The failure, upon demand by a **board inspector or law enforcement officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration or proof that he or she is the holder thereof constitutes authority for the seizure and forfeiture of the plants.

(14) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court, subject to court rules. Such an order shall be filed by the seizing agency in the county auditor's records in the county in which the real property is located.

(15)(a) A landlord may assert a claim against proceeds from the sale of assets seized and forfeited under subsection (7)(b) of this section, only if:

(i) A law enforcement officer, while acting in his or her official capacity, directly caused damage to the complaining landlord's property while executing a search of a tenant's residence; and

(ii) The landlord has applied any funds remaining in the tenant's deposit, to which the landlord has a right under chapter 59.18 RCW, to cover the damage directly caused by a law enforcement officer prior to asserting a claim under the provisions of this section;

(A) Only if the funds applied under (a)(ii) of this subsection are insufficient to satisfy the damage directly caused by a law enforcement officer, may the landlord seek compensation for the damage by filing a claim against the governmental entity under whose authority the law enforcement agency operates within thirty days after the search;

(B) Only if the governmental entity denies or fails to respond to the landlord's claim within sixty days of the date of filing, may the landlord collect damages under this subsection by filing within thirty days of denial or the expiration of the sixty-day period, whichever occurs first, a claim with the seizing law enforcement agency. The seizing law enforcement agency must notify the landlord of the status of the claim by the end of the thirty-day period. Nothing in this section requires the claim to be paid by the end of the sixty-day or thirty-day period.

(b) For any claim filed under (a)(ii) of this subsection, the law enforcement agency shall pay the claim unless the agency provides substantial proof that the landlord either:

- (i) Knew or consented to actions of the tenant in violation of this chapter or chapter **69.41** or **69.52** RCW; or
 - (ii) Failed to respond to a notification of the illegal activity, provided by a law enforcement agency under **RCW 59.18.075**, within seven days of receipt of notification of the illegal activity.
- (16) The landlord's claim for damages under subsection (15) of this section may not include a claim for loss of business and is limited to:
- (a) Damage to tangible property and clean-up costs;
 - (b) The lesser of the cost of repair or fair market value of the damage directly caused by a law enforcement officer;
 - (c) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection (7)(b) of this section; and
 - (d) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the tenant's property and costs related to sale of the tenant's property as provided by subsection (9)(b) of this section.
- (17) Subsections (15) and (16) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection (15) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency.

[2013 c 3 § 25 (Initiative Measure No. 502, approved November 6, 2012). Prior: **2009 c 479 § 46**; **2009 c 364 § 1**; **2008 c 6 § 631**; **2003 c 53 § 348**; **2001 c 168 § 1**; **1993 c 487 § 1**; **1992 c 211 § 1**; prior: (1992 c 210 § 5 repealed by 1992 c 211 § 2); **1990 c 248 § 2**; **1990 c 213 § 12**; **1989 c 271 § 212**; **1988 c 282 § 2**; **1986 c 124 § 9**; **1984 c 258 § 333**; **1983 c 2 § 15**; prior: **1982 c 189 § 6**; **1982 c 171 § 1**; prior: **1981 c 67 § 32**; **1981 c 48 § 3**; **1977 ex.s. c 77 § 1**; **1971 ex.s. c 308 § 69.50.505.**]

NOTES:

Reviser's note: *(1) The number 21 was inadvertently added in the document filed with the secretary of state's office.

** (2) Chapter 19, Laws of 2013 changed "state board of pharmacy" to "pharmacy quality assurance commission."

Intent—2013 c 3 (Initiative Measure No. 502): See note following RCW **69.50.101**.

Effective date—2009 c 479: See note following RCW **2.56.030**.

Part headings not law—Severability—2008 c 6: See RCW **26.60.900** and **26.60.901**.

Intent—Effective date—2003 c 53: See notes following RCW **2.48.180**.

Severability—2001 c 168: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [**2001 c 168 § 5.**]

Effective date—1990 c 213 §§ 2 and 12: See note following RCW **64.44.010**.

Findings—1989 c 271: "The legislature finds that: Drug offenses and crimes resulting from illegal drug use are destructive to society; the nature of drug trafficking results in many property crimes and crimes of violence; state and local governmental agencies incur immense expenses in the investigation, prosecution, adjudication, incarceration, and treatment of drug-related offenders and the compensation of their victims; drug-related offenses are difficult to eradicate because of the profits derived from the criminal activities, which can be invested in legitimate assets and later used for further criminal activities; and the forfeiture of real assets where a substantial nexus exists between the commercial production or sale of the substances and the real property will provide a significant deterrent to crime by removing the profit incentive of drug trafficking, and will provide a revenue source that will partially defray the large costs incurred by government as a result of these crimes. The legislature recognizes that seizure of real property is a very powerful tool and should not be applied in cases in which a manifest injustice would occur as a result of forfeiture of an innocent spouse's community property interest." [1989 c 271 § 211.]

Severability—1989 c 271: See note following RCW 9.94A.510.

Severability—1988 c 282: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 282 § 3.]

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW 3.30.010.

Intent—1984 c 258: See note following RCW 3.34.130.

Severability—1983 c 2: See note following RCW 18.71.030.

Effective date—1982 c 189: See note following RCW 34.12.020.

Effective date—1982 c 171: See RCW 69.52.901.

Severability—1981 c 48: See note following RCW 69.50.102.