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NO. 66455-7-I

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

GMAC MORTGAGE, LLC

Appellant,

v.

SUMMERHILL VILLAGE HOMEOWNERS ASSOCIATION,

Respondent.

APPELLANT GMAC MORTGAGE, LLC'S REPLY BRIEF

APPEAL FROM KING COUNTY SUPERIOR COURT

The Honorable Mary Yu

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I. INTRODUCTION

This case of first impression requires application of the “first in time, first in right” redemption statute, RCW §6.23.010(1)(b), to the foreclosure of a “super priority” lien under the more recent condominium statute, RCW §64.34.364(2)-(3). Respondent Plumline asserts Appellant GMACM is not a proper redemptioner, even though GMACM is beneficiary of a trust deed that Plumline acknowledges was extinguished by the condominium lien foreclosure. Plumline’s reading is at odds with legislative intent, secondary sources, common sense, and the outcome in all other statutory redemption jurisdictions.

Plumline misconstrues the statutory wording of “subsequent in time” as referencing the execution, delivery and/or recording date of the prospective redemptioner’s lien instrument, rather than its respective *priority*. As understood by *all* secondary sources, and in *every* jurisdiction’s statutory redemption scheme, the meaning of “subsequent in time” is that the “junior,” “subordinate,” “inferior,” and/or “subsequent” lien is “subject to” another lien and thus, its holder may redeem once the junior lien interest is extinguished by foreclosure of a “prior,” “senior,” “first position,” “superior,” or “paramount” lien.

Even if Plumline’s reading has some credence, case law holds that when statutory language is “inept,” interpretation is guided by the

statute's intended purpose. Plumblin's construction of the redemption statute as worded over 50 years ago¹ – long before creation of super-priority liens or condominiums– allows Plumblin to pay a mere \$10,000 for a condominium free and clear of GMACM's foreclosed junior (*i.e.*, “subsequent”) lien of \$188,000, without recourse by GMACM.

Plumblin's statutory construction allows virtually all lien holders to redeem other than the holder of the largest, earliest executed, delivered, and/or recorded lien. Plumblin's self-serving construction necessarily results in the purchase money lender *never* being a proper redeemer.² No authority has articulated a public policy or a practical legal basis for such an inequitable result.

Plumblin urges GMACM's ostensible delay in preserving its interests merits the trial court's draconian result. But fault, neglect, and/or delay have nothing to do with statutory redemption rights. The whole point of redemption is about second chances – allowing redemption regardless of prior failures to pay taxes, mortgages, assessments,

¹ GMACM's Opening Brief stated the current version of the redemption statute was adopted over 100 years ago. GMACM regrets this inadvertent misstatement.

² This construction gives rise to a new type of real property speculator. The Court may judicially notice that Plumblin's counsel is one such individual who personally purchased real property at a judicial foreclosure sale arising from a delinquent condominium assessment lien. As in this case, he is asserting the identical statutory construction argument in similar litigation to which he is a party, opposing the condominium lender's efforts to redeem. [Reply App., Exs. I-J.]

judgments, or liens. There is no reason to distinguish between redemption by the holder of a foreclosed first lien, and the holder of any lower priority lien. Similarly, there is no reason to distinguish between a lien holder who redeems the first day of the redemption period, and one who redeems the last day – the entire period is allotted to all redemptioners.

This Court should read the redemption statute as the legislature intended, and confirm that all holders of lien interests extinguished by a prior lien have a statutory right to redeem. This Court should reverse the trial court's holding that GMACM is not a proper redemptioner. Because there is no issue of fact, this Court should also mandate the trial court to direct the King County Sheriff issue its Sheriff's Deed to GMACM.

II. STATUTORY CONSTRUCTION MANDATES GMACM IS A PROPER REDEMPTIONER

The redemption statute phrase “subsequent in time” can only be properly understood to reference a lien instrument's respective priority. “Subsequent in time” cannot mean “subsequent in date” because there is no statutory indication precisely what date is referenced: instrument, execution, delivery, recording, or some other date. Instead, “subsequent in time” can only be understood in the context of lien priorities as they existed at common law when the redemption statute was enacted, *i.e.*, subsequent in time is subsequent in priority. If read with the

understanding that respective lien priorities are addressed, the redemption provisions present a cohesive statute that is consistent with legislative intent, relevant case law, authoritative secondary sources, and the outcome in all other jurisdictions, and achieves a fair and equitable result.

A. When Statutory Language is Susceptible to More than One Reasonable Interpretation, the Statute Must be Construed to Effectuate Legislative Intent.

Appellate courts review *de novo* statutory meaning determinations with the principal objective to effectuate legislative intent, looking first to the statute's language. *Cockle v. Dept. of Labor & Indus.*, 142 Wn.2d 801, 807, 16 P.3d 583 (2001); *In re Custody of Smith*, 137 Wn.2d 1, 8, 969 P.2d 21 (1998). Statutory language must be evaluated in the context of the entire statute – if clear and unambiguous, the court goes no further. *In Re Sehome Park Care Ctr., Inc.*, 127 Wn.2d 774, 778, 903 P.2d 443 (1995); *Cherry v. Municipality of Metro. Seattle*, 116 Wn.2d 794, 799, 808 P.2d 746 (1991). If susceptible to more than one reasonable interpretation, statutory language is ambiguous. *Cockle, supra*, 142 Wn.2d at 808, 16 P.3d 583. When construing ambiguity, resorting to legislative history is appropriate, while unlikely, strained, or absurd consequences resulting from literal reading are avoided. *Harmon v. Dept. of Soc. & Health Serv.*, 134 Wn.2d 523, 520, 951 P.2d 770 (1998); *Alderwood Water Dist. v. Pope & Talbot, Inc.*, 62 Wn. 2d 319, 321, 382 P. 2d 639 (1963).

Washington's redemption statute is ambiguous because "subsequent in time" may reference recording date, as Plumline argues, instrument date, some other date, or "subsequent in priority," as GMACM asserts. Thus, it is appropriate and prudent to discern statutory intent.

B. The Intent of the Condominium Lien Act – to Promote Assessment Payments and Protect Mortgage Lenders' Interests – Must be Effectuated.

'[T]he spirit or the purpose of legislation should prevail over the express but inept language ...' ... Thus, we will not mechanically apply the literal meaning of words absent an arguably rational basis and when to do so will result in absurd or irrational consequences.

Sidis v. Brodie/Dohrmann, Inc., 58 Wn. App. 665, 668-69, 794 P.2d 1309 (1990), *rev'd. on other grounds*, 117 Wn.2d 325, 815 P.2d 781 (1991) (citations omitted) (emphasis supplied).

Condominium assessment liens are granted super priority status as "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 lenders." UNIFORM COMMON INTEREST OWNERSHIP ACT (1982) §3-116, cmt. 1 ("UCIOA"). Ignoring mortgage lenders' need to protect their secured interests is "folly." *James L. Winokur*, "MEANER LIENOR COMMUNITY ASSOC.," 27 Wake Forest L. Rev. 353, 359 (1992) ("Winokur"). This same intent is revealed by Washington's adoption of UCIOA's super priority lien provision:

“[M]ortgage lenders will *most likely* pay the assessments demanded by the association which are *prior* to its mortgage rather than having the association foreclose on the unit and eliminate the lender’s mortgage lien.” RCW §64.34.364, Official Comments, cmt. 3 (emphasis supplied); *accord*, Winokur, at 380 (“[M]ortgagee payment of the [condominium lien] was the lender response envisioned by UCIOA’s drafters.”).

Plumblin contends that because the legislature foresaw delinquent assessment payments as the mortgage lenders’ “most likely” response, that mortgage lenders are completely barred from redemption. Regardless whether the legislature may have “expected the lenders to pay the lien priority before the sheriff’s sale occurs” [Plumblin Brief, p.15], nothing suggests a requirement that lenders must pay the lien at that time as their sole recourse.

Plumblin also asserts allowing first mortgagee redemption discourages rather than encourages delinquent assessment payments. [Plumblin Brief, p.15.] This novel concept is counterintuitive. Having gone through the trouble and expense of foreclosing its lien, a condominium association that is the winning Sheriff’s sale bidder must reject redemption payment from the first mortgagee – the very delinquency for which it sued? The result is absurd.

The rules of statutory construction provide guidance: “We should avoid a literal reading resulting in unlikely, absurd, or strained consequences. The spirit or purpose of an enactment should prevail over the express but inept wording.” *State v. Day*, 96 Wn.2d 646, 648, 638 P.2d 546 (1981).

The legislative intent underlying the condominium lien statute is not advanced by affirming the trial court’s ruling that GMACM is not a proper redemptioner. Statutory construction mandates *all* foreclosed junior lien holders have redemption rights, including GMACM.

C. The Intent of the Redemption Statute – to Protect All Junior Lien Holders’ and Not Third Parties’ Interests – Must Be Effectuated.

Redemption’s express purpose is to protect secured parties’ property interests – not third parties’ interests. *Millay v. Cam*, 135 Wn.2d 193, 207, 955 P.2d 791 (1998) (“[T]he purpose of redemption statutes ... is to allow creditors to recover their just demands.”)). The result in this case turns that stated purpose on its head – for \$10,301.84, third-party Plumblin purchased realty worth an estimated \$188,135, over 18 times the price it paid. CP 70-71; CP 458. There is no rational basis entitling Plumblin to that inequitable windfall profit, and preventing GMACM from recovering anything on its \$188,000 lien. The trial court erred by failing to effectuate the express statutory purpose of protecting GMACM

as the holder of an extinguished junior lien, over the third-party purchaser, Plumblin.

Under the trial court's and Plumblin's interpretation, whether a junior lien holder qualifies as a redemptioner depends on the recording date [Plumblin Brief, pp. 1-2, 4, 10], not on relative lien priority; that is, the beneficiary of a trust deed recorded after the condominium dues became delinquent could redeem, whereas the beneficiary of a trust deed dated before the delinquency could not redeem. The statute should not be applied arbitrarily to choose which junior lien holder is entitled to redeem and which is not, when its stated purpose allows redemption by all junior lien holders. This Court should reject an interpretation allowing a third-party's interest to "trump" that of an extinguished junior secured creditor.

D. The Condominium Lien Statute Must be Read Contextually as Concerning Respective Priorities – Not Instrument Date.

The meaning of a statutory term depends on the context it is used: "[I]t is the contextual implications ... that lie at the bottom of every problem of textual interpretation." *Cooper's Mobile Homes, Inc. v. Simmons*, 94 Wn.2d 321, 329, 617 P.2d 415 (1980). Read in context, the condominium lien statute clearly concerns relative priorities between liens, not the execution, delivery, and/or recording date of a security instrument. At least eight times, it references relative priorities among

liens. In seven instances, it expressly modifies the common law “first in time, first in right” rule, but again does so in the terms of lien priority. [See, Reply App., Ex. A.]

First, the condominium lien is given priority over all but three liens, regardless of date. RCW §64.34.364(2). Second, an exception provides the assessment lien priority over an earlier mortgage. *Id.*, at (3). Third, the relative lien priority vis-à-vis a mortgage may be adjusted. *Id.*, at (4). Fourth, the association may lose its lien priority altogether by certain actions. *Id.*, at (5). Fifth, certain liens are granted equal priority regardless of date. *Id.*, at (6). Sixth, recording the assessment lien neither establishes nor alters it. *Id.*, at (7). Seventh, the association’s management of the unit, does not affect existing lien priorities. *Id.*, at (10).

Contextually reading the condominium lien law compels the conclusion that the statute references *respective priority* among liens, *not chronological* lien dates.

E. The Condominium Lien and Redemption Statutes Must be Read Together such that “Subsequent in Time” Means “Subsequent in Priority.”

Contextual reading “includes examining closely related statutes, because legislators enact legislation in light of existing statutes. ... [M]eaning ... is discerned from ... related statutes ...” *St. Dept. of*

Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 11-12, 43 P.3d 4 (1992) (*en banc*) (citations omitted). When the redemption statute was enacted over 50 years ago, super-priority condominium liens did not exist. Instead, the “first in time, first in right” common law rule controlled, and the legislature had instrument or recording date priorities in mind when drafting the redemption language.

The condominium statute, RCW §64.34.364, must be construed in relation to the redemption statute, RCW §6.23.010. That the two are closely related is obvious. Real property lien foreclosure is necessarily related to post-foreclosure redemption rights. Further, the assessment lien law specifically alters certain redemption rights. *See*, RCW §64.34.364(9) (“Upon an express waiver in the complaint ..., the period of redemption shall be eight months.”) Accordingly, the two statutes must be construed *in pari materia*. *Kirk v. Miller*, 83 Wn.2d 777, 781, 522 P.2d 843 (1974).

Contextually construing both laws results in the redemption statute’s reference to “a lien ... subsequent in time” meaning “a lien ... subsequent in priority,” for several reasons. [Reply App., Ex. B.] First, typically the holders of liens prior in time are first mortgagees with significant financial investments. Those creditors have the most to lose if denied redemption.

Why, then, would the legislature protect the typically smaller

interests of creditors holding junior liens, such as by judgment, over those of first mortgagees? Why would it assume those smaller creditors whose liens arose after the condominium lien attached, would be encouraged to pay off delinquent assessments post-sheriff's sale? Why would it determine that first mortgagees with larger interests should not be similarly encouraged to pay assessments – indeed, their post-foreclosure assessment payments must be refused? Equally puzzling is why the legislature would grant redemption rights to some later in time lienors, such as judgment creditors, but not others, such as second mortgagees. Why would the determining basis be the happenstance of execution, delivery, and/or recording date?

No sensible distinction may be made between different secured creditors when a coherent reading of the statute provides the condominium lien trumps them *all*. Under the recording act, RCW §65.08.070, recording dates matter only in a common law priority system, and even then only to impart constructive notice of the lien claim. Recording is not necessary to “perfect” a Deed of Trust, as suggested by Plumline. [Plumline Brief, p. 10.] Condominium lien law alters common law priorities by designating *all* lien holders – regardless of instrument, delivery, and/or recording dates – as *junior* to the assessment lien.

“A conflict between two statutory provisions can be resolved by

giving effect to the more specific and more recently enacted statute”
Morris v. Blaker, 118 Wn.2d 133, 147, 821 P.2d 482 (1992) (*en banc*).
The redemption statute wording has remained unchanged for over 50
years, while the condominium lien law is a mere youngster, enacted in
1989. If the two conflict, as the more specific and more recently enacted
statute, the relative lien priorities established by RCW §64.34.364 must be
read into RCW §6.23.010, such that “subsequent in *time*” means
“subsequent in *priority*.” The “inept” wording of RCW §6.23.010 should
be read to avoid the absurd result Plumblin argued, and the trial court
accepted, here.

**F. All Sections of the Redemption Statute Must be Reconciled
Such that “Subsequent in *Time*” Means “Subsequent in
Priority.”**

At least ten times, the redemption statute references liens that are
“prior to” – and not “prior in time to” – other liens. *See*, RCW
§§6.23.020-080. Nowhere other than RCW §6.23.010, does the phrase “in
time” modify the word “subsequent” or reference dates when referring to
lien priorities. Moreover, there is no basis to distinguish liens referenced
in RCW §6.23.010 from liens referenced by other sections of the
redemption statute. In other words, there is no reason the legislature
would reference relative lien priorities throughout the entire statute, and
the “time” of the instrument only in RCW §6.23.010.

In the case of competing redemptioners, the statute establishes their respective rights: “[i]f the redemptioner or purchaser has a lien prior *to* that of the lien creditor seeking to redeem,” certain evidence is required of it. RCW §6.23.080(3). By Plumblin’s reckoning, “[a] creditor does not even get to [RCW §6.23.080(3)] ... unless it is a qualified redemptioner, which requires satisfying the ‘subsequent in time’ requirement.” [Plumblin Brief, p. 17.] But if the only possible redemptioners’ liens are “subsequent in time,” then there is no reason to include the prefatory conditional phrase in RCW §6.23.080(3), because the condition would always occur. Under Plumblin’s formulation, qualifying as a redemptioner requires a later dated or recorded lien; accordingly, the existing redemptioner or purchaser would necessarily always have “a lien prior to that of the lien creditor seeking to redeem,” under RCW §6.23.080(3), rendering the condition unnecessary.

“Statutes should be construed in a manner that gives effect to all the language in them.” [Plumblin Brief, p. 18.] Following that mandate here supports that RCW §6.23.010’s reference to “subsequent in time” means “subsequent in priority.”

G. Denominating All Junior Lien Holders as Proper Redemptioners Enhances Statutory Intent.

Citing no authority, Plumblin asserts limiting redemption to only

the property owner encourages higher bidding. [Plumblin Brief, p. 19.] But eliminating all junior lien holders' redemption rights is clearly neither stated nor intended. Further, if the sole bidder is the unit owner, why would he run up the bid against himself – particularly to redeem from a condominium assessment he failed to pay initially?

Plumblin speculates that granting redemption rights to all junior lien holders would reduce third-parties' interest in bidding, leaving the condominium association as the sole bidder. [Plumblin Brief, pp. 19-20.] This contention does not hold water.

The creditor with the biggest financial stake, typically the first priority mortgage lender, is the creditor with the most incentive to redeem. The condominium association wants that creditor – or any creditor – to redeem, because the association undoubtedly prefers funds to owning condominium units. Encouraging assessment collections – and not the association's ownership of foreclosed units – is, after all, a purpose of the condominium lien act.

Washington protects junior lien holders' secured interests in real property, not the interests of third-parties purchased in a foreclosure “fire sale.” Denominating *all* junior lien holders as redemptioners, regardless of chronological time, effectuates legislative intent.

H. Well Reasoned Secondary Authorities Support that “Subsequent in Time” Means “Subsequent in Priority.”

Plumblin attempts to diminish all authorities cited in GMACM’s Opening Brief [Plumblin Brief, pp. 20-24], but agrees this is a case of first impression. As such, consideration of secondary authorities is useful in discerning statutory meaning. *See, Denny’s Restaurants, Inc. v. Sec’y. Union Tit. Ins. Co.*, 71 Wn. App. 194, 208-09, 859 P.2d 619 (1993) (relying on and quoting *Washington Real Property Deskbook*).

Plumblin castigates the secondary authorities because “[s]uper priority liens ... are an exception to the general rule [of first in time, first in right].” [Plumblin Brief, p. 24.] But that is precisely GMACM’s point: reading the redemption statute as applying to chronological time fails to acknowledge the lien act’s respective priority exception, and GMACM’s secondary authorities support that interpretation.

Washington Practice explains:

Under statutory redemption, ... *junior* lienors whose interests have been extinguished by a *senior* interest holder’s foreclosure sale, are allowed a stated time after the sale to buy the land from the sale purchaser
....

Marjorie D. Rombauer, 27 WA. PRAC. §3.19(a), p. 161 (1998) (emphasis supplied). Further:

“Redemptioner” is defined as a creditor who has a lien by ... deed of trust ..., which lien is *subsequent*

in priority to that being foreclosed [T]he redemptioner's lien must be *junior to that of the foreclosing mortgagee*; the idea is that only one whose title or lien has been extinguished may have "another bite of the apple."

Id., §3.19(b), p. 162 (emphasis supplied). Here, Professor Rombauer substitutes the term "priority" for "time" in the phrase "subsequent in time" to make clear the statute's intent and meaning. Consequently, as GMACM holds an extinguished junior lien, it is allowed "another bite of the apple." All secondary authorities concur that GMACM has a redemption right.

I. Well-Reasoned Out-of-State Authorities Support that "Subsequent in Time" Means "Subsequent in Priority."

When resolving a question of first impression, this Court may consider well-reasoned opinions from sister jurisdictions, providing persuasive authority and analysis. *See, State v. Chenoweth*, 160 Wn.2d 454, 470-71, 158 P.3d 595 (2007). *City of Seattle v. Mighty Movers, Inc.*, 152 Wn.2d 343, 356, 96 P.3d 979 (2004) ("[I]n the face of a statutory scheme which fail[s] to contemplate the scenario presented [and] ... a case of first impression in this state, a review of decisions of other jurisdictions is instructive.")

A survey of all states' laws reveals that the majority allow statutory redemption by creditors. [See, Reply App., Exs. C-H.] Of those

statutes:

- Only Alaska's has the same "subsequent in time" wording as Washington's, and Alaska would interpret that phrase as meaning "subsequent in priority";³
- None are construed as Plumblin urges, granting redemption rights to only those junior lien holders whose interests arose "subsequent in [chronological] time" to the foreclosed lien;
- Seven are virtually identical to Washington's, granting redemption rights to holders of foreclosed "subsequent" liens without reference to "time";
- Ten are similar to Washington's, granting redemption rights to holders of foreclosed "junior," "subordinate," or "inferior" liens without reference to "time"; and
- Another seven grant redemption rights to all lien holders, regardless of priority.

Thus, all states granting statutory redemption rights to creditors agree: redemption is allowed by any holder of a lien that is "subsequent," "junior," "subordinate," or "inferior" in relative priority to the foreclosed

³ In ruling on an equitable redemption issue, the Alaska Supreme Court noted, "This right of redemption for *junior* interest holders exists to protect their interests since a foreclosure cuts off all interests *junior to the one foreclosed.*" *Young v. Embley*, 143 P.3d 936, 942 (Ak.2006) (emphasis supplied).

lien, not subsequent in chronological date or “time” of the prospective redemptioner’s security instrument.

In this case of first impression, other states’ similar statutes should be considered. *Vance v. XXXL Devel., L.L.C.*, 150 Wn. App. 39, 43, 206 P.3d 679 (2009). Given Washington’s redemption and condominium lien priority laws, underlying policies, and interpretation of other jurisdictions’ redemption statutes, the trial court erred in ruling GMACM did not qualify as a redemptioner under RCW §6.23.010(1)(b).

III. GMACM CORRECTLY AND TIMELY COMPLIED WITH ALL PROCEDURAL REDEMPTION REQUIREMENTS

Plumblin acknowledges that a redemptioner need only substantially comply with the procedural requisites of the redemption statute [Plumblin Brief, p. 28], but ignores the Washington Supreme Court’s holding that, “Where a party, in exercising its redemption right, commits a technical but harmless procedural error, a forfeiture requirement is not only unjust, but *inconsistent with the very purpose of the statute.*” *GESA Fed. Credit Union v. Mut. Life Ins. Co. of New York*, 105 Wn.2d 248, 256, 713 P.2d 728 (1986) (emphasis supplied); *accord, Millay v. Cam, supra*, 35 Wn.2d at 204-05. Here, no one – and certainly neither the King County Sheriff nor Plumblin – was confused, blindsided, prejudiced or had rights violated by GMACM’s demanded redemption.

Windfalls to sheriff sale purchasers are to be avoided – especially when they come at the expense of an intended redemptioner. *Met. Fed. Sav. and Loan Ass’n., supra*, 72 Wn. App. at 112-13. Between GMACM and Plumblin, the equities heavily favor GMACM. This Court should mandate the trial court cancel the King County Sheriff’s Deed issued to Plumblin, and reissue the Sheriff’s Deed for the property to GMACM.

A. GMACM’s September Redemption Demand was Timely Made on Behalf of a Proper Redemptioner.

Plumblin asserts GMACM’s September 15, 2010, redemption demand “doesn’t count” because the correspondence did not mention GMACM or Deutsche Bank, and did not include an RCW §6.23.080(2) affidavit. Both issues are red herrings.

As to the first issue, a copy of the Homecomings Deed of Trust was included with the September redemption demand [Plumblin Brief, p. 25]. Moreover, Plumblin acknowledged it understood the September demand was on behalf of the beneficial interest holder, by voicing to the King County Sheriff the same improper redemptioner objection it presents this Court.⁴ Accordingly, when GMACM corresponded again with the Sheriff on December 15, 2010, it responded to Plumblin’s concerns by

⁴ “Plumblin does not believe *the beneficiary of that [Homecomings] Deed of Trust is legally entitled or authorized to redeem.*” CP 121, 163-64 (emphasis supplied).

providing detailed information on the beneficial interest holder's identity and the servicing relationships entitling it to demand redemption.⁵

Thus, GMACM's December letter to the Sheriff was not a new redemption demand, as Plumblin strives to portray it. Rather, it explained in detail the basis of GMACM's original September demand, responding to Plumblin's written objections. Because the Sheriff did not issue a redemption quote as previously requested, the December letter specifically reaffirmed and confirmed that redemption demand. CP 356. The Sheriff obviously understood the December correspondence as mere clarification of the September demand, because her office confirmed that no redemption demand fees were due, having already been paid in full. *Id.*

Second, Plumblin suggests the September redemption demand was untimely because "none of the other documentation [besides the Homecomings Deed of Trust] required by RCW §6.23.080(2) was included." [Plumblin Brief, p. 25.] But nowhere in the entire redemption statute is a deadline stated for production of the RCW §6.23.080(2) documentation. Certainly, the proof is not required any specific time

⁵ GMACM explained that Homecomings Financial is an operating subsidiary of GMACM, Deutsche Bank is the current beneficiary of the Homecomings Deed of Trust, and GMACM is the authorized servicer for that beneficiary, as it has been since the loan originated. CP 355-405.

before redemption funds are tendered. At the same time it tendered redemption funds, GMACM provided the requisite RCW §6.23.080(2) documentation. CP 355-57, 367-400. There being no requirement to submit those documents any earlier, GMACM timely redeemed.

B. Even Absent the September Letter, GMACM's December Correspondence was a Timely Redemption Demand.

Regardless whether GMACM's September redemption demand was untimely, incomplete, or ineffective, GMACM's December 15, 2010, demand was timely under these facts. That is because GMACM also served a written demand for a verified income statement, which automatically extends the redemption period an additional five days. CP 356, 363; RCW §6.23.090(2).

Plumblin acknowledges that the redemption period expired on Monday, December 20, 2010, if not extended. [Plumblin Brief, p. 26.] It provided the requested written statement of rents and profits to the Sheriff on Thursday, December 16, 2010, via email. CP 413, 438-42. Assuming email service was adequate, the redemption period was extended a minimum of five days until Tuesday, December 21, 2010 – or, using a CR 6(a) computation of five court days – until Thursday, December 23, 2010.

Plumblin novelly argues this Court should either ignore the RCW §6.23.090(2) sworn statement five day extension, or read into that statute a

requirement that the demand may not be served within the five days immediately prior to the redemption period expiring. But, Plumblin argues no basis or rationale for this Court to ignore RCW §6.23.090(2)'s specific language that, "[t]he period for redemption is extended five days," because there is none.

Plumblin proffers a single weak argument for reading RCW §6.23.080(1)'s advance notice requirement into RCW §6.23.090(2)'s verified statement request deadline: because otherwise redemptioners would not request a verified statement until the last possible redemption date. [Plumblin Brief, pp. 27-28.] So what? Is an additional five days after the allotted 365 days to redeem so significant that the legislature could not possibly mean what it wrote? If the one year redemption period is sacrosanct, then why did the legislature allow for successive redemptions, *each* of which may extend the redemption period another 60 days? *See*, RCW 6.23.040(1). In cases of multiple redemptions, a purchaser or redeemer cannot be certain its property interest will not be defeated for several months after the original redemption due date.

More significant, Plumblin's proposed statutory interpretation is contrary to express legislative intent. When the redemption statute does not speak to an issue, the appellate court's "function 'is to effectuate the object and intent of the Legislature.'" *Met. Fed. Sav. and Loan Ass'n.*,

supra, 72 Wn. App. at 111 (quoting, *Ravsten v. Dep't. of Labor and Indus.*, 108 Wn.2d 143, 150, 736 P.2d 265 (1987)). The redemption statute is intended to protect owners and lien holders – not third parties.

By virtue of its verified statement demand, GMACM had until at least December 21, 2010, to redeem the property. Redemption was completed on December 20, 2010, and thus was timely.

C. The Equities Favor GMACM, Not Plumblin.

Issues of statutory redemption allow for equitable considerations, and favor lien holders over third parties. The legislature saw fit to allow one full year for redemption, and months longer for successive redemptions. It saw fit to grant another five days after that year when a verified statement is requested. Neither the legislature nor the courts impose a preference for redemptions completed the first day of the redemption period over those completed the last day. All redemptioners are equal in the eyes of the law.

Accordingly, GMACM's "overall course of conduct" asserted by Plumblin [Plumblin Brief, p. 29], has nothing to do with the outcome of this case – rather, GMACM's position as a junior lien holder who timely demanded a redemption quote, complied with the redemption requirements, and paid all redemption funds due, will dictate that outcome. The equities favors GMACM, the holder of a foreclosed junior

lien of \$188,000, over Plumblin, a third-party paying one-tenth that amount who will be fully reimbursed by GMACM's redemption, and suffers no prejudice thereby.

D. Since the Facts are Undisputed, This Court May Mandate the Trial Court to Act.

Plumblin agrees the facts of this case are "undisputed" [Plumblin Brief, p. 30], nevertheless, it incorrectly asserts this Court does not have adequate grounds to grant GMACM's requested relief. In reversing a trial court's erroneous redemption ruling, this Court may eliminate the need for further lengthy and costly litigation and award relief to the prevailing redemptioner by:

1. Vacating the trial court's judgment improperly denying redemption;
2. Reversing the trial court's judgment and mandating the prevailing redemptioner's entitlement to redeem;
3. Ordering the trial court toll the period for redemption until the prevailing redemptioner's right to redeem is effectively restored;
4. Ordering the trial court require an accounting of rents and profits received during the redemption period, as tolled, in the manner provided by law; and
5. Ordering the trial court cancel the Sheriff's Deed issued

because of the erroneous redemption denial order.

Met. Fed. Sav. and Loan Ass'n., supra, 72 Wn. App. at 113-14. There being no disputed fact issue here, GMACM requests this Court award it all of the foregoing relief.

IV. CONCLUSION

For all the foregoing reasons Appellant, GMAC Mortgage, LLC as Attorney-in-Fact for Deutsche Bank Trust Company Americas as Trustee for RALI2007QS, respectfully requests this Court reverse and vacate the trial court's order entered December 16, 2010, holding that GMACM is not a proper redemptioner, and award it the foregoing requested relief.

RESPECTFULLY SUBMITTED this 22nd day of July, 2011.

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No. 66455-7-I

COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

SUMMERHILL VILLAGE HOMEOWNERS ASSOCIATION, Plaintiff,

vs.

DAWN M. ROUGHLEY, et al., Defendants,

and

GMAC MORTGAGE, LLC, as Attorney-in-Fact for Deutsche Bank Trust
Company Americas as Trustee for RALI2007QS1,

Defendant-in-Intervention / *Appellant*,

vs.

PLUMBLINE MANAGEMENT PROFIT SHARING CORPORATION,

Sheriff Sale Purchaser / *Respondent*.

APPENDIX TO REPLY BRIEF OF APPELLANT

EX. TITLE

- A Condominium Lien Law, RCW §64.34.364 – selected portions
- B Redemption Statute, RCW §6.23.010 – selected portions
- C Redemption Statutes of Jurisdictions in Which Holder of *Only*
“*Subsequent*” Liens May Redeem
- D Redemption Statutes of Jurisdictions in Which Holders of *Only*
“*Junior*,” “*Subordinate*,” or “*Inferior*” Liens May Redeem

- E Redemption Statutes of Jurisdictions in Which Holders of *All* Liens May Redeem
- F Redemption Statutes of Jurisdictions in Which Holders of *All* Liens May Redeem, But Only From Tax Sale
- G Redemption Statutes of Jurisdictions in Which *Only Property Owners* May Redeem
- H Jurisdictions in Which There are *No Statutory Redemption Rights*
- I Complaint for Declaratory Relief in King County Superior Court Case No. 11-2-16855-7 SEA captioned *BAC Home Loans Servicing, LP v. Michael Fulbright, et ux*
- J Answer and Counterclaim for Quiet Title Judgment in King County Superior Court Case No. 11-2-16855-7 SEA captioned *BAC Home Loans Servicing, LP v. Michael Fulbright, et ux*

EXHIBIT A

Selected Portions of RCW §64.34.364 (emphasis supplied):

(2) A lien under this section shall be *prior to all other liens and encumbrances* on a unit *except: ... (b) a mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent;*

(3) ... *[T]he lien shall also be prior to the mortgages described in subsection (2)(b) of this section to the extent of assessments ... which would have become due during the six months immediately preceding the date of a sheriff's sale in an action for judicial foreclosure*

(4) The *priority of the association's lien* ... 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 *This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.*

(5) If the association forecloses its lien under this section nonjudicially ..., *the association shall not be entitled to the lien priority provided for under subsection (3)* of this section.

(6) ... *[I]f two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.*

(7) ... *[T]he 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.*

...

(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. ... *The exercise by the association of the foregoing rights shall not affect the priority of preexisting liens on the unit.*

EXHIBIT B

Selected Portions of RCW §6.23.010 (emphasis supplied):

(1) Real property sold subject to redemption, ... may be redeemed by the following persons, or their successors in interest: ...

(b) *A creditor having a lien by ... deed of trust, or mortgage, on any portion of the property, ... **subsequent in time to that on which the property was sold.** The persons mentioned in this subsection are termed *redemptioners*.*

EXHIBIT C

Redemption Statutes of Jurisdictions in Which Holder of *Only*
“*Subsequent*” Liens May Redeem

Alaska: “Property sold subject to redemption ... may be redeemed by the following persons or their successors in interest:

(1) the judgment debtor; and

(2) a creditor having *a lien by judgment or mortgage ... subsequent in time to that on which the property was sold*; a lien creditor after having redeemed the property is a *redemptioner*. [AS §09.35.220 (emphasis supplied).]

Arizona: “Property sold subject to redemption, ... may be redeemed by the following persons or their successors in interest:

1. The judgment debtor or his successor in interest

2. A creditor having *a lien by judgment or mortgage ... subsequent to that on which the property was sold.*” [A.R.S. § 12-1281 (emphasis supplied).]

A junior mortgagee has a statutory right of redemption. *Hummel v. Cit. Bldg. & Loan Ass’n.*, 38 Ariz. 54, 296 P. 1014 (1931).

Connecticut: “Unless otherwise ordered by the judicial authority at the time it renders the judgment of strict foreclosure, the following provisions shall be deemed to be part of every such judgment: (1) That, upon the payment of all of the sums found by the judicial authority to be due the

plaintiff, ... by any defendant, after *all subsequent parties in interest* have been foreclosed, the title to the premises shall vest absolutely in the defendant making such payment, subject to such unpaid encumbrances, if any, as precede the interest of the redeeming defendant.”

[CT. R. SUPER. CT. CIV. §23-17(b) (emphasis supplied).]

Idaho: “Property sold subject to redemption, ...may be redeemed in the manner hereinafter provided, by the following persons, or their successors in interest:

1. The judgment debtor,

2. A creditor having a *lien by judgment or mortgage* ..., *subsequent to that on which the property was sold*. The persons mentioned in the second subdivision of this section are, in this chapter, termed *redemptioners*.” [I.C. § 11-401 (emphasis supplied).]

“[O]nly a junior mortgagee having a mortgage *subsequent to that lien for which the property was foreclosed* can redeem.” *Eastern Id. Prod. Credit Assoc. v. Placerton, Inc.*, 100 Idaho 863, 869, 606 P.2d 967 (1980) (emphasis supplied).

Minnesota: “If no redemption is made by the mortgagor, ... the *most senior creditor having a legal or equitable lien* upon the mortgaged premises, ..., *subsequent to the foreclosed mortgage, may redeem* ...; and each *subsequent creditor* having a lien may redeem, in the order of

priority of their respective liens” [M.S.A. § 580.24(a) (emphasis supplied).]

Montana: “(1) Property sold subject to redemption, ... may be redeemed in the manner provided in this part by the following persons or their successors in interest:

(a) the judgment debtor, ...;

(b) a creditor having *a lien by judgment, mortgage, or attachment on the property sold ... subsequent to that on which the property is sold.*
...

(2) The persons mentioned in subsection (1)(b) are, in this part, termed ‘*redemptioners*.’” [MCA 25-13-801 (emphasis supplied).]

A junior mortgagee, as holder of existing mortgages on which sums were still owing, has the statutory right to redeem property from the foreclosure sale purchaser under MCA 25-13-801. *Savoy v. Cascade Co. Sheriff’s Dept.*, 268 Mont. 507, 515-16, 887 P.2d 160 (1995).

Nevada: “1. Property sold subject to redemption ... may be redeemed in the manner hereinafter provided by the following persons or their successors in interest: ... (b) A creditor having *a lien by judgment or mortgage on the property sold, ... subsequent to that on which the property was sold.*

2. The person mentioned in paragraph (b) of subsection 1 is termed a ‘redemptioneer’ in this chapter.” [N.R.S. Sec. 21.200 (emphasis supplied).]

North Dakota: “A property sold subject to redemption may be redeemed as provided in this chapter by the following person or successors in interest:

1. The judgment debtor; or

2. A creditor having a lien on the property, ... subsequent to that on which the property was sold, and is designated in this chapter as a redemptioneer.” [NDCC, 28-24-01 (emphasis supplied).]

“[R]edemption statutes are remedial in nature and are *intended not only for the benefit of creditors holding liens subsequent to the lien being foreclosed*, but are also for the purpose of making the property of the debtor pay as many of his debts as it can be made to pay and to prevent its sacrifice.” *Mehlhoff v. Pioneer St. Bank*, 124 N.W.2d 401, 407 (N.D.1963) (on petition for rehearing) (emphasis supplied).

EXHIBIT D

**Redemption Statutes of Jurisdictions in Which Holders of *Only*
*“Junior,” “Subordinate,” or “Inferior” Liens May Redeem***

Alabama: “Where real estate, or any interest therein, is sold the same may be redeemed by:

(1) Any debtor, including any surety or guarantor.

(2) Any mortgagor, even if such mortgagor is not personally liable for payment of a debt.

(3) *Any junior mortgagee*, or its transferee.” [Ala.Code 1975 § 6-5-248(a) (emphasis supplied).]

Colorado: “(1) ... A lienor ... is *entitled to redeem* if the following requirements are met to the satisfaction of the officer:

(a) *The lienor's lien is a deed of trust* or other lien that is created or recognized by state or federal statute or by judgment of a court of competent jurisdiction;

(b) The lien is a *junior lien* as defined in section 38-38-100.3(11); ...” [C.R.S.A. §38-38-302 (emphasis supplied).]

“(11) ‘*Junior lien*’ means a deed of trust or other lien or encumbrance upon the property for which the amount due and owing thereunder is *subordinate to* the deed of trust or other lien being foreclosed.

(12) ‘Junior lienor’ means a person who is a beneficiary, holder, or

grantee of a junior lien.” [C.R.S.A. § 38-38-100.3 (emphasis supplied).]

Florida: “[T]he mortgagor or *the holder of any subordinate interest* may cure the mortgagor's indebtedness and prevent a foreclosure sale by paying the amount of moneys specified in the judgment, order, or decree of foreclosure, Otherwise, there is no right of redemption.” [West's F.S.A. §45.0315 (emphasis supplied).]

Under Florida law, a junior mortgagee retains its right to redeem its interest in mortgaged property being foreclosed by a senior mortgagee until issuance of certificate to judicial sale purchaser. *In re Neely*, 256 B.R. 322 (Bkrcty.M.D.Fla.2000).

Michigan: “A purchaser's deed is void if the mortgagor, the mortgagor's heirs or personal representative, or any person lawfully claiming under the mortgagor or the mortgagor's heirs or personal representative redeems the entire premises sold by paying the amount required” [M.C.L.A. 600.3240(1).]

Junior mortgagee has right to redeem from mortgage sale by paying amount due on *senior mortgage* with interest. *Titus v. Cavalier*, 267 N.W. 799, 276 Mich. 117 (1936).

Montana: “All of the rights, powers, and privileges concerning the redemption from sales of real estate applicable to the sales of real estate under foreclosure proceedings or sales under execution shall be granted

and allowed to sales of real estate under and by virtue of the power of sale contained in any mortgage or deed of trust in this state,” [M.C.A. 71-1-228.]

Junior mortgagee, as holder of existing mortgages on which sums were still owing, had statutory right to redeem property from foreclosure sale purchaser. *Savoy v. Cascade Co. Sheriff'd Dept.*, 268 Mont. 507, 887 P.2d 160, cert. den'd., 115 S.Ct. 2276, 515 U.S. 1122, 132 L.Ed.2d 280 (1994).

New Mexico: “After sale of real estate pursuant to the order, judgment or decree of foreclosure in the district court, the real estate may be redeemed by the former defendant owner of the real estate or by *any junior mortgagee* or other junior lienholder whose rights were judicially determined in the foreclosure proceeding” [N. M. S. A. 1978, §39-5-18 (emphasis supplied).]

New York: “Where real property has been sold pursuant to a judgment in an action to foreclose a mortgage, ... the judgment, instead of directing a sale of the property, shall fix the right of any person having a right of redemption therein or the right to foreclose a *subordinate mortgage* or other lien and shall provide that a failure to redeem or commence an action for the foreclosure of such mortgage or other lien within such time shall preclude such person having a right of redemption or the holder of

such mortgage or other lien from redeeming such property”
[McKinney's RPAPL §1352 (emphasis supplied).]

Oklahoma: “*Every person having an interest in property* subject to a lien, has a *right to redeem* it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed.” [42 Okl. St. Ann. 1981 §18 (emphasis supplied).] “One who has a *lien, inferior to another* upon the same property, has a right: 1. To redeem the property in the same manner as its owner might, from the *superior lien*” [42 Okl. St. Ann. 1981 §19.]

Oregon: “Any person having a *lien subsequent to the plaintiff* upon the same property ..., shall be made a defendant in the suit, and any person having a prior lien may be made defendant at the option of the plaintiff, or by the order of the court when deemed necessary. The failure of any *junior lien or interest holder* who is omitted as a party defendant in the suit to *redeem* within five years of the date of a sheriff's sale ... shall bar such *junior lien* or interest holder from any other action or proceeding against the property by the person on account of such person's lien or interest.” [O.R.S. §88.030 (emphasis supplied).]

South Dakota: “The owner ... and the holders of *any lien*, legal or equitable, *subsequent and junior to that from which redemption is to be made*, on the property sold ..., *shall have the right to redeem from a sale*

of such property ..., in the manner hereinafter described. Such persons are denominated *redemptioners*.” [SDCL §21-52-5 (emphasis supplied).]

“Under South Dakota law, ... the holder of *any junior lien* may protect its interest by redeeming the property following a foreclosure sale.” *Donovan v. Farmers Home Admin*, 19 F.3d 1267, 1269 (8th Cir.1994) (emphasis supplied).

Wisconsin: “The mortgagor, the mortgagor's heirs, personal representatives or assigns may redeem the mortgaged premises at any time before the sale” [W.S.A. 846.13.]

“Any person having a *junior lien* upon the mortgaged premises ..., may, at any time before such sale, pay to the clerk of court, or the plaintiff or the plaintiff's assignee, the amount of such judgment, taxes, interest and costs, and costs subsequent to judgment, and shall thereupon be subrogated to all the rights of the plaintiff as to such judgment.” [W.S.A. 846.15.]

EXHIBIT E

**Redemption Statutes of Jurisdictions in Which Holders of *All Liens*
May Redeem**

District of Columbia: “Unless otherwise provided in this chapter, an *owner or other person who has an interest in the real property* sold by the Mayor may redeem the real property at any time until the foreclosure of the right of redemption is final.” [D.C. ST. §47-1360 (emphasis supplied).]

Iowa: “If no redemption is made by the debtor as above provided, thereafter, and at any time within nine months from the day of sale, said *redemption may be made by a mortgagee ...* or by any creditor whose claim becomes a lien prior to the expiration of the time allowed for such redemption.” [I.C.A. §628.5 (emphasis supplied).]

Kansas: “*Creditors who may redeem. Any* creditor whose claim is or becomes a *lien prior to the expiration of the time allowed by law for the redemption* by creditors may redeem. A mortgagee may redeem upon the terms prescribed by this section before or after the debt secured by the mortgage falls due.” [K.S.A. 60-2414(c) (emphasis supplied).]

Tennessee: “A bona fide creditor, who redeems from the purchaser at the sale, shall hold the property subject to redemption by the original debtor, or any other of the original debtor's creditors” [T. C. A. § 66-8-108.]

“Real estate sold for debt shall be redeemable at any time within

two (2) years after such sale: ...; (2) Where it is sold under any decree, judgment, or order of a court of chancery, whether founded upon a foreclosure of a mortgage, or deed of trust, or otherwise, unless, ... the court orders that the property be sold ... and that, upon confirmation thereof by the court, no right of redemption or repurchase shall exist in the debtor or *the debtor's creditor*, but that the title of the purchaser shall be absolute” [T. C. A. §66-8-101 (emphasis supplied).]

Texas: “The owner of property in a residential subdivision or *a lienholder of record may redeem* the property from any purchaser at a sale foreclosing a property owners' association's assessment lien not later than the 180th day after the date the association mails written notice of the sale to the owner and the lienholder under Section 209.010.” [V.T.C.A., Property Code §209.011(b) (emphasis supplied).] “Property that is redeemed remains subject to all liens and encumbrances on the property before foreclosure.” [V.T.C.A., Property Code §209.011(k).]

Utah: “*Any person interested in any real estate* sold at foreclosure sale under any decree *has the same right to redeem* the real estate from the sale, within the same time and upon the same terms as if the sale had been made upon execution.” [U.C.A. 1953 §59-2-1357 (emphasis supplied).]

Wyoming: “If no redemption is made within the redemption period ... any judgment creditor of the person whose real estate has been sold, or

any grantee or mortgagee of the real estate or person holding a lien on the real estate sold is entitled to redeem” [W.S.1977 §1-18-104(a) (emphasis supplied).]

EXHIBIT F

**Redemption Statutes of Jurisdictions in Which Holders of *All Liens*
May Redeem, But Only From Tax Sale**

Georgia: “Whenever any real property is sold under or by virtue of an execution issued for the collection of state, county, municipal, or school taxes or for special assessments, the defendant in fi. fa. or *any person having any right, title, or interest in or lien upon such property* may redeem the property from the sale by the payment of the redemption price” [Ga. Code Ann., § 48-4-40 (emphasis supplied).]

Hawaii: “The tax collector ... shall, on payment of the purchase price, make, execute, and deliver all proper conveyances necessary in the premises and the delivery of the conveyances shall vest in the purchaser the title to the property sold; ... provided further that *the taxpayer may redeem* the property sold by payment to the purchaser at the sale, within one year from the date thereof,” [HRS § 246-60 (emphasis supplied).]

Any person with a substantial interest affected by a tax sale of property are “taxpayers” having the right to redeem, including *any parties with liens in the property*, such as mortgagees and judgment creditors. *Serion v. Thornton*, 85 P.3d 186, 104 Hawai'i 79 (2004).

Mississippi: “The owner, or any persons for him with his consent, or *any person interested in the land* sold for taxes, may redeem the same,” [Miss. Code Ann. §27-45-3 (emphasis supplied).]

New Hampshire: “*Any person with a legal interest in land so sold may redeem* the same by paying or tendering to the collector, or in his absence, at his usual place of abode, at any time before a deed thereof is given by the collector, the amount for which the land was sold,” [N.H. Rev. Stat. §80:32 (emphasis supplied).]

New Jersey: “Except as hereinafter provided, the owner, his heirs, *holder of any prior outstanding tax lien certificate, mortgagee,* or occupant of land sold for municipal taxes, assessment for benefits ... or other municipal charges, may redeem it” [N.J.S.A. 54:5-54 (emphasis supplied).]

South Carolina: “The defaulting taxpayer, any grantee from the owner, or *any mortgage or judgment creditor* may within twelve months from the date of the delinquent tax sale redeem each item of real estate” [Code 1976 §12-51-90(a) (emphasis supplied).]

West Virginia: “After the sale of any tax lien on any real estate ..., the owner of, or *any other person who was entitled to pay the taxes* on, any real estate for which a tax lien on the real estate was purchased by an individual may redeem at any time before a tax deed is issued for the real estate.” [W. Va. Code, § 11A-3-23(a) (emphasis supplied).]

EXHIBIT G

**Redemption Statutes of Jurisdictions in Which *Only Property Owners*
May Redeem**

Arkansas: “In all cases where real property is sold under an order or decree of the circuit court ... in the foreclosure of mortgages and deeds of trust, *the mortgagor or his heirs or legal representatives shall have the right to redeem* the property so sold.” [A.C.A. § 18-49-106(a)(1) (emphasis supplied).]

California: “Property sold subject to the right of redemption may be redeemed *only by the judgment debtor ...*” [West's Ann.Cal.C.C.P. § 729.020 (emphasis supplied).]

Delaware: “The *owner* of any such real estate sold under this subchapter or his legal representatives may redeem the same at any time within 60 days from the day the sale thereof is approved by the Court,” [9 Del.C. § 8729 (emphasis supplied).]

Illinois: ““Owner of redemption” means a *mortgagor, or other owner* or co-owner of the mortgaged real estate.” [735 IL.C.S. 5/15-1212 (emphasis supplied).] “Except as provided in subsection (b) of Section 15-1402, only an owner of redemption may redeem from the foreclosure,” [735 ILCS 5/15-1603.]

Kentucky: “If real property sold in pursuance of a judgment or order of a court, other than an execution, does not bring two-thirds (2/3) of its

appraised value, *the defendant and his representatives may redeem it within a year*” [KRS § 426.530(1) (emphasis supplied).]

Despite the language in KRS 426.006 that junior lienholders are to be named as defendants in actions to enforce liens on property, second mortgagees are not deemed to be defendants under KRS 426.530 and do not have the right of redemption on their mortgages, as this right is intended only for the mortgagor. *Kirklevington Assocs., Ltd. V. Kirklevington North Assocs., Ltd.*, 848 S.W.2d 453 (Ky.App. 1993).

Maine: “Upon expiration of the period of redemption, if *the mortgagor or the mortgagor's successors, heirs or assigns* have not redeemed the mortgage, any remaining rights of the mortgagor to possession terminate,” [14 M.R.S.A. §6323 (emphasis supplied).]

Massachusetts: “The *mortgagor or person claiming or holding under him may, after breach of condition, redeem the land* mortgaged, unless the mortgagee, or person claiming or holding under him, has obtained possession of the land for breach of condition and has continued that possession for three years, or unless the land has been sold pursuant to a power of sale contained in the mortgage deed.” [M.G.L.A. 244 §18 (emphasis supplied).]

Missouri: Deeds of trust in the nature of mortgages of lands may, in addition to being forecloseable by suit, be also foreclosed by trustee's sale

... and all real estate which may be sold under any such power of sale in a mortgage deed of trust hereafter made and which at such sale shall be brought in by the holder of such debt or obligation or by any other person for such holder shall be subject to *redemption by the grantor in such mortgage deed of trust* or his heirs, devisees, executors, administrators, grantees or assigns at any time within one year from the date of the sale;” [V.A.M.S. 443.410 (emphasis supplied).]

Nebraska: “The *owners* of any real estate against which a decree of foreclosure has been rendered in any court of record, ..., *may redeem* the same from the lien of such decree or levy at any time before the sale of the same shall be confirmed by a court of competent jurisdiction” [Neb.Rev.St. § 25-1530(1) (emphasis supplied).]

After decree for foreclosure of prior mortgage has been rendered in action to which junior encumbrancer was a party, latter cannot then redeem from prior mortgage and claim decree of subrogation, since as mere junior mortgagee, his rights are sufficiently protected by opportunity to purchase at sale or to pay off prior encumbrance before sale. *Keller v. Boehmer*, 130 Neb. 763, 266 N.W. 577 (1936).

Ohio: “In sales of real estate on execution or order of sale, at any time before the confirmation thereof, the *debtor may redeem* it from sale” [R.C. §2329.33 (emphasis supplied).]

Rhode Island: “*No mortgagor*, his or her heirs, executors, administrators, successors, or assigns shall be allowed to redeem any mortgaged real estate, but shall be forever barred and foreclosed of all equity and right of redemption therein, unless the mortgagor, his or her heirs, executors, administrators, successors, or assigns shall pay to the mortgagee”

[Gen.Laws 1956, §34-23-3 (emphasis supplied).]

EXHIBIT H

Jurisdictions in Which There are *No Statutory Redemption Rights*

Maryland: “If the court finds for the plaintiff, the judgment vests in the plaintiff an absolute and indefeasible title in fee simple in the property, free and clear of all alienations and descents of the property occurring before the date of the judgment and encumbrances on the property,”

[MD Code, Tax - Property, §14-844(b).]

EXHIBIT I

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**SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF KING**

BAC HOME LOANS SERVICING, LP, a
foreign limited partnership,

Plaintiff,

v.

MICHAEL FULBRIGHT and JANE DOE
FULBRIGHT, individually and the marital
community comprised thereof,

Defendants.

No.

**COMPLAINT FOR
DECLARATORY RELIEF**

I. PARTIES

1. BAC Home Loans Servicing, LP ("BAC Servicing") is a Texas limited partnership registered with the State of Washington to transact business and is authorized to bring suit pursuant to RCW 25.05.130(1).

2. Michael Fulbright and Jane Doe Fulbright, individually and the marital community comprised thereof, are adult individuals believed to be domiciled in the State of Washington.

II. JURISDICTION AND VENUE

3. The Superior Court has original jurisdiction over this lawsuit pursuant to RCW 2.08.010.

4. Venue is appropriate in King County pursuant to RCW 4.12.010(1) as the subject real property is located in King County, Washington.

1 III. FACTUAL ALLEGATIONS

2 SUBJECT REAL PROPERTY

3 5. The real property to which this lawsuit relates is a condominium with an address of 25025
4 Southeast Klahanie Boulevard Unit D201, Issaquah, Washington 98029, and more particularly
5 described as follows (the "Condominium"):
6

7 Unit 201, Building D, Tanglewood at Klahanie, a Condominium, Survey Map and
8 Plans recorded in Volume 226 of Condominiums, Pages 73 through 76, inclusive,
9 and amendments thereto, if any, Condominium Declaration recorded under
Recording Number(s) 2006122000983, and amendments thereto, if any, in King
County, Washington.

10 Tax Parcel No.: 856360-0450-04

11 SUBJECT LOAN AND DEED OF TRUST

12 6. On or about March 6, 2007, Jeanne Lewis ("Borrower") borrowed \$277,000.00 from
13 Bank of America, N.A. The loan is evidenced by a promissory note executed by Borrower
14 ("Note"). Repayment of the Note is secured by a deed of trust recorded under King County
15 Auditor's File No. 20070309001521 ("Deed of Trust").
16

17 7. The unpaid principal balance owing on the Note as of April 29, 2011 is \$275,355.36.
18 Borrower has breached the terms of the Note and Deed of Trust by failing to pay the monthly
19 payments when due. From July 1, 2009 through August 29, 2011, interest in the amount of
20 \$33,952.08 accrued on the principal Note balance.
21

22 8. On or about April 25, 2011, Bank of America, N.A. assigned the Deed of Trust and Note
23 to BAC Servicing. The assignment is evidenced by an Assignment of Deed of Trust recorded
24 April 26, 2011 under King County Auditor's File No. 20110426000087.

25 9. BAC Servicing possesses the right to enforce the terms of the Deed of Trust pursuant to
26 BAC Servicing's status as holder of the Note.

COA FORECLOSURE LAWSUIT

10. On or about January 27, 2009, Tanglewood at Klahanie Condominium Association (the "COA"), commenced a judicial foreclosure lawsuit in order to collect delinquent condominium assessments owed by Borrower. The lawsuit was filed under King County Superior Court Cause No. 09-2-05222-1 SEA ("COA Lawsuit").

11. Bank of America, N.A. was a defendant in the COA Lawsuit pursuant to Bank of America, N.A.'s Deed of Trust encumbering the Condominium and the condominium association lien created under RCW 64.34.364.

12. A Default Judgment, Order and Foreclosure Decree were entered against Borrower and Bank of America, N.A. on June 24, 2009 ("Foreclosure Decree"). The Foreclosure Decree declared that Bank of America, N.A.'s Deed of Trust was "inferior and subordinate to the plaintiff's lien and be forever foreclosed except only for the statutory right of redemption allowed by law, if any; IT IS FURTHER ORDERED, ADJUDGED AND DECREEE that the period of redemption shall be one year from the date of the Sheriff's sale after which time the Sheriff shall issue the Sheriff's deed to the purchaser."

13. BAC Servicing is an authorized redemptioner pursuant to RCW 6.23.010(1)(b) and (2) and as indicated herein below has taken actions to timely redeem.

SHERIFF SALE AND ATTEMPT BY BAC SERVICING TO REDEEM

14. On May 7, 2010, the Sheriff of King County pursuant to the Foreclosure Decree levied on and sold at public auction the Condominium to defendant Michael Fulbright ("Fulbright"). Fulbright was the highest bidder and paid \$14,481.83. The Sheriff of King County issued Fulbright a Certificate of Purchase of Real Estate, which was recorded under King County Auditor's File No. 20100615000422 ("Certificate of Purchase").

1 15. An Order Confirming Sheriff's Sale of Real Property and Disbursing Funds to the COA
2 was entered June 15, 2010.

3 16. On April 29, 2011, BAC Servicing initiated its right of redemption pursuant to RCW 6.23
4 *et. seq.* BAC Servicing delivered to the Sheriff of King County a redemption request letter,
5 affidavit from BAC Servicing showing the amount actually due, and certified copies of the Deed
6 of Trust and Assignment of Deed of Trust pursuant to RCW 6.23 *et seq.*, true and correct copies
7 of which are attached hereto as Exhibit A and incorporated herein by reference.

8
9 17. The letter further requested that Fulbright deliver a written and verified statement of the
10 amounts of rents and profits thus received and expenses paid and incurred pursuant to RCW
11 6.23.090.

12 18. On May 2, 2011, Fulbright delivered a letter to the Sheriff of King County, a true and
13 correct copy of which is attached hereto as Exhibit B and incorporated herein by reference. In
14 his letter, Fulbright claims that BAC Servicing is not an authorized redemptioner under RCW
15 6.23.010(1)(b). Accordingly, Fulbright refused to provide the redemption amount or otherwise
16 cooperate with the redemption process.

17
18 19. On May 3, 2011, BAC Servicing delivered a second letter to the Sheriff of King County,
19 a true and correct copy of which is attached hereto as Exhibit C and incorporated herein by
20 reference. BAC conservatively calculated in good faith the redemption sum due to Fulbright.
21 BAC Servicing conservatively calculated the redemption amount as \$20,748.10. BAC Servicing
22 requested confirmation that if BAC Servicing were to tender \$20,748.10 to the Sheriff of King
23 County, then the Sheriff of King County would issue the Certificate of Redemption to BAC
24 Servicing.
25
26

1 20. In response to Exhibit C, Mr. Fulbright delivered another letter to the Sheriff of King
2 County, a true and correct copy of which attached hereto as Exhibit D and incorporated herein by
3 reference.

4 21. On May 4, 2011, BAC Servicing delivered a third letter to the Sheriff of King County, a
5 true and correct copy of which attached hereto as Exhibit E and incorporated herein by reference.
6 BAC Servicing requested information from the Sheriff concerning whether the tender would be
7 accepted even if the Certificate of Redemption was not provided, or whether the tender would be
8 rejected.
9

10 22. On the same day, the Sheriff of King County responded with instructions that should
11 BAC Servicing tender the estimated redemption amount, the Sheriff would deposit the funds in a
12 trust account pending further direction from a court or an agreement between the parties. A true
13 and correct copy of the Sheriff's correspondence is attached hereto as Exhibit F and incorporated
14 herein by reference.
15

16 23. Acting in good faith and in reliance on the instructions from the Sheriff of King County
17 and intending the same as tender of the estimated redemption amount, on May 6, 2011, BAC
18 Servicing tendered a cashier's check for the estimated redemption amount of \$20,748.10 to the
19 Sheriff of King County and received a receipt evidencing its tender. A true and correct copy of
20 the cashier's check and the front and back of the receipt of tender is attached hereto as Exhibit G
21 and incorporated herein by reference.
22

23 24. Because of the alleged dispute over BAC Servicing's status as a redemptioner, the Sheriff
24 of King County did not provide a Certificate of Redemption to BAC Servicing upon tendering
25 the funds. On information and belief based on the Sheriff of King County letter dated May 4,
26

1 2011, BAC contends that the Sheriff of King County will only issue a certificate of redemption
2 or a Sheriff's Deed upon order by a court.

3 **IV. CAUSE OF ACTION - DECLARATORY RELIEF**

4 25. BAC Servicing realleges paragraphs 1 through 24 above, and incorporates such allegations
5 by reference as though fully set forth herein.

6 26. BAC Servicing is an authorized redemptioner under RCW 6.23.010(1)(b) and (2) and has
7 the right of redemption under RCW 6.23 *et seq.* BAC Servicing has redeemed or in the
8 alternative has taken the steps necessary to tender the estimated redemption given the lack of
9 cooperation from Fulbright.

10 27. Fulbright contends otherwise and denies BAC Servicing's right to redeem and has
11 refused and continues to refuse to provide the redemption amount. On information and belief,
12 Fulbright contends that Fulbright's real property interest should not be subject to the BAC Note
13 and Deed of Trust, or any equitable or other lien deriving there from. Such result would provide
14 an inequitable windfall to Fulbright and cause undue harm to redemptioner BAC Servicing.

15 28. Pursuant to RCW 7.24.010: "Courts of record within their respective jurisdictions shall
16 have power to declare rights, status and other legal relations whether or not further relief is or
17 could be claimed. An action or proceeding shall not be open to objection on the ground that a
18 declaratory judgment or decree is prayed for. The declaration may be either affirmative or
19 negative in form and effect; and such declarations shall have the force and effect of a final
20 judgment or decree."

21 29. Pursuant to RCW 7.24.020: "A person interested under a deed, will, written contract or
22 other writings constituting a contract, or whose rights, status or other legal relations are affected
23 by a statute, municipal ordinance, contract or franchise, may have determined any question of
24
25
26

1 construction or validity arising under the instrument, statute, ordinance, contract or franchise and
2 obtain a declaration of rights, status or other legal relations thereunder.”

3 30. There is a ripe and justiciable controversy between the litigants.

4 31. BAC Servicing seeks a judicial determination that it is an authorized redemptioner under
5 RCW 6.23.010 and that BAC Servicing has timely redeemed by tendering the estimated
6 redemption funds to the Sheriff of King County before the redemption period expired.
7

8 **V. PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff prays for the following relief:

10 1. That this Court declare BAC Servicing is an authorized redemptioner under RCW
11 6.23.010(1)(b) and (2);

12 2. That this Court declare that BAC Servicing timely tendered the estimated redemption
13 amount notwithstanding the lack of cooperation by Fulbright to provide the redemption amount;
14

15 3. That this Court declare that the one year redemption period for BAC Servicing is tolled
16 ten (10) days from the date judgment is entered, as BAC Servicing tendered its redemption
17 request on April 29, 2010, which was 10 days before the redemption period expired, and if the
18 tenth day falls on a Saturday, Sunday or legal holiday, then this tolled redemption period runs
19 until the end of the next day that is not a Saturday, Sunday or legal holiday;

20 4. That this Court declare that all statutory, legal and equitable rights, obligations and duties
21 conferred under RCW 6.23 *et seq.* are tolled ten (10) days from the date judgment is entered, and
22 if the tenth day falls on a Saturday, Sunday or legal holiday, then the period runs until the end of
23 the next day that is not a Saturday, Sunday or legal holiday;
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1 5. That this Court declare the redemption amount owed to Fulbright does not include
2 interest, assessments, taxes, fees, costs, penalties or any other amounts demanded by Fulbright
3 that accrue after May 9, 2011, which is when the redemption period expires;

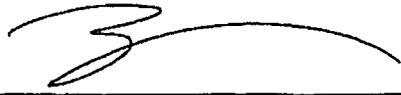
4
5 6. That this Court order Fulbright to provide the Sheriff of King County the redemption
6 amount owed within five (5) days from the date judgment is entered, and if the fifth day falls on
7 a Saturday, Sunday or legal holiday, then the period runs until the end of the next day that is not
8 a Saturday, Sunday or legal holiday;

9 7. That this Court award BAC Servicing costs incurred pursuant to RCW 4.84.030; and

10 8. Awarding BAC Servicing any further or additional relief, which this Court finds
11 equitable, necessary, appropriate or just.

12 DATED this 6th day of May, 2011.

13
14 **ROUTH CRABTREE OLSEN, P.S.**

15
16 By: 

17 Brian S. Sommer, WSBA No. 37019
18 Steven K. Linkon, WSBA No. 34896
19 Attorneys for Plaintiff
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EXHIBIT J

FILED

11 JUN 13 AM 9:47

KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 11-2-16855-7 SEA

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7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**
8 **IN AND FOR THE COUNTY OF KING**

9
10 BAC HOME LOAN SERVICING, L.P., a
foreign limited partnership

11 Plaintiff,

12 v.

13 MICHAEL FULBRIGHT and JANE DOE
14 FULBRIGHT, individually and the marital
15 community comprised thereof,

16 Defendant

Case No. 11-2-16855-7 SEA

ANSWER AND COUNTERCLAIM
FOR QUIET TITLE JUDGMENT

17
18 Defendants Michael Fulbright and Jane Doe Fulbright, individually and on behalf of the
19 marital community comprised thereof (referred to herein individually and collectively as
20 "Fulbright") hereby respond to Plaintiff's Complaint. Capitalized terms not otherwise defined in
21 this Answer have the same meaning as in Plaintiff's Complaint.
22

23 **I. Parties**

24 1. Fulbright does not have sufficient information to admit or deny the allegations of this
25 paragraph, and for this reason denies these allegations.

26 2. Admit, except that the correct name of Jane Doe Fulbright is Dorothy Sanzi Fulbright.

ANSWER AND COUNTERCLAIM FOR QUIET TITLE
JUDGMENT - 1

Law Office of Michael Fulbright
11820 Northup Way, Suite E200
Bellevue, WA 98005
425-284-3081

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II. Jurisdiction and Venue

3. Admit.

4. Admit.

III. Factual Allegations

5. Admit.

6. Fulbright admits that the Condominium was encumbered by the Deed of Trust referenced in this paragraph, securing a promissory note in the face amount of \$277,000. The Deed of Trust referenced in the Complaint is referred to hereinafter as the "2007 Deed of Trust". Otherwise, Fulbright does not have sufficient information to admit or deny the other allegations of this paragraph, and for this reason denies the other allegations of this paragraph.

7. Fulbright does not have sufficient information to admit or deny the allegations of this paragraph, and for this reason denies these allegations.

8. Fulbright admits that an Assignment of Deed of Trust is recorded as referenced in this paragraph. Otherwise, Fulbright does not have sufficient information to admit or deny the other allegations of this paragraph, and for this reason denies the other allegations of this paragraph.

9. Fulbright does not have sufficient information to admit or deny the allegations of this paragraph, and for this reason denies these allegations.

10. Admit.

11. Admit.

12. Admit.

1 13. Deny. Plaintiff is not an authorized redemptioner under RCW 6.23.010(1)(b) and (2)
2 because the lien of the 2007 Deed of Trust is not subsequent in time to the assessment lien
3 foreclosed pursuant to the Foreclosure Decree and the sheriff's sale that followed.

4 14. The Condominium was levied upon by the King County Sheriff on March 24, 2010,
5 pursuant to documentation recorded under King County Recording No. 20100324000819.

6 Otherwise, Fulbright admits the allegations set forth in this paragraph.
7

8 15. Admit.

9 16. Fulbright denies that BAC Servicing has any right of redemption under RCW Ch.
10 6.23. Otherwise, Fulbright admits the allegations set forth in this paragraph.

11 17. Admit.

12 18. Admit.

13 19. Fulbright neither admits not denies the subjective characterizations as to the
14 conservative or good faith nature of Plaintiff's calculations, but Fulbright admits the other factual
15 allegations set forth in this paragraph.
16

17 20. Admit.

18 21. Admit.

19 22. Admit.

20 23. Fulbright neither admits not denies the subjective characterizations as to the good
21 faith nature of Plaintiff's actions or Plaintiff's intent, but Fulbright admits the other factual
22 allegations set forth in this paragraph.
23

24 24. Admit.
25
26

IV. Cause of Action – Declaratory Relief

1
2 25. Fulbright admits and denies the matters incorporated by this paragraph as set forth in
3 paragraphs 1-24 above.

4 26. Fulbright admits that BAC Servicing has taken adequate steps to redeem if it were an
5 authorized redemptioner, but Fulbright denies that BAC Servicing has any right to redeem under
6 RCW Ch. 6.23 or otherwise.

7
8 27. Fulbright denies the last sentence of this paragraph. Fulbright admits the other
9 allegations of this paragraph.

10 28. Admit.

11 29. Admit.

12 30. Admit.

13
14 31. Fulbright denies that BAC Servicing is an authorized redemptioner under RCW
15 6.23.010.

16 **V. Response to Plaintiff's Prayer for Relief**

17 1. This Court should declare that BAC Servicing is not an authorized redemptioner under
18 RCW 6.23.010(1)(b) and (2).

19
20 2. This request for relief is moot and should be denied because BAC Servicing is not an
21 authorized redemptioner.

22 3. This request for relief is moot and should be denied because BAC Servicing is not an
23 authorized redemptioner.

24 4. This request for relief is moot and should be denied because BAC Servicing is not an
25 authorized redemptioner.
26

1 5. This request for relief is moot and should be denied because BAC Servicing is not an
2 authorized redemptioner. If this Court should determine that BAC Servicing is an authorized
3 redemptioner, the redemption amount payable by BAC Servicing should include interest and
4 other amounts otherwise required by RCW Ch. 6.23 through the date of any actual redemption
5 by BAC Servicing. If BAC Servicing is an authorized redemptioner, the redemption period for
6 BAC Servicing does not expire until five days after Fulbright provides the income accounting
7 required by RCW 6.23.090(2).
8

9 6. This request for relief is moot and should be denied because BAC Servicing is not an
10 authorized redemptioner.

11 7. Since BAC Servicing is not entitled to any of the other relief requested, BAC
12 Servicing's request for a cost award should be denied.

13 8. BAC Servicing is not entitled to any further or additional relief as requested by this
14 paragraph.
15

16 **VI. Affirmative Defenses**

17 First Affirmative Defense

18 1. Fulbright re-alleges the allegations in paragraphs 2-6, 8, 10-12 and 14-24 of the
19 Complaint to the extent admitted above and as denied, limited or clarified above, and
20 incorporates such allegations by reference as though fully set forth herein.
21

22 2. The lien of the 2007 Deed of Trust arose and was perfected by recording no later than
23 March 9, 2007.
24
25
26

1 3. The earliest or oldest delinquent assessment subject of the COA Lawsuit was not due
2 before May, 2008. Accordingly, the assessment lien foreclosed upon by the COA Lawsuit did
3 not arise before May, 2008 under RCW 64.34.364(1), which was after the 2007 Deed of Trust.

4 4. A lis pendens concerning the COA Lawsuit was recorded against the Condominium
5 on February 2, 2009, under King County Recording No. 20090202000178, which was prior to
6 the assignment of the 2007 Deed of Trust to BAC Servicing in April of 2011. The Foreclosure
7 Decree and resulting sheriff's sale are binding upon BAC Servicing.
8

9 5. Since the 2007 Deed of Trust is not subsequent in time to the assessment lien subject
10 of the COA Lawsuit and the sheriff's sale thereunder, neither BAC Servicing nor any
11 predecessor or successor is an authorized redemptioner under RCW 6.23.010(1)(b).
12

13 Second Affirmative Defense

14 6. Fulbright re-alleges the allegations of paragraph 1 of this Affirmative Defenses section
15 and incorporates such allegations by reference as though fully set forth herein.

16 7. Fulbright has declined to provide a redemption quote and net income accounting
17 based upon a good faith belief that BAC Servicing is not an authorized redemptioner under the
18 plain language of RCW 6.23.010(1)(b).
19

20 8. If and only if BAC Servicing is an authorized redemptioner under RCW 6.23.010(b)
21 (which Fulbright denies), BAC Servicing's request for an accounting under RCW 6.23.090(2)
22 extended its redemption period until five days after such accounting is furnished. Consequently,
23 BAC Servicing's tender of redemption funds was unnecessary to preserve any redemption rights
24 it may have.
25
26

1 9. If BAC Servicing is permitted to redeem the Condominium, the redemption amount
2 should include all interest and amounts otherwise allowed by RCW Ch. 6.23 through the actual
3 date of redemption, with a credit for any net income through the actual date of any such
4 redemption.

5 **VII. Counterclaim**

6 1. Fulbright re-alleges the allegations of paragraphs 1-5 of the Affirmative Defenses
7 section of this Answer and incorporates such allegations by reference as though fully set forth
8 herein.
9

10 2. The Foreclosure Decree is fully and completely binding upon Bank of America, N.A.,
11 the beneficiary under the 2007 Deed of Trust when the COA Lawsuit was commenced, when the
12 Foreclosure Decree was entered, and when the resulting sheriff's sale occurred. All such actions
13 are fully and completely binding upon BAC Servicing as the successor in interest to Bank of
14 America, N.A. The sheriff's sale resulting from the Foreclosure Decree extinguished the lien of
15 the 2007 Deed of Trust on the Condominium.
16

17 3. BAC Servicing is not an authorized redemptioner under RCW 6.23.010(1)(b), and no
18 one else authorized to redeem under RCW 6.23.010 redeemed or made any attempt to redeem
19 the Condominium before the redemption period expired on May 9, 2011.
20

21 4. The Court has jurisdiction over quiet title actions. Venue for a quiet title action
22 concerning the Condominium is proper in King County, where the Condominium is located.
23

24 5. Fulbright is entitled to an order against BAC Servicing quieting title to the
25 Condominium in favor of Fulbright.
26

VIII. Relief Requested

1
2 WHEREFORE, Defendant Fulbright prays for judgment against Plaintiff BAC Servicing
3 as follows:

4 1. That this Court declare that Plaintiff BAC Servicing is not an authorized redemptioner
5 under RCW 6.23.010(1)(b) and that the lien of the 2007 Deed of Trust was extinguished by the
6 sheriff's sale that resulted from the COA Lawsuit and the Foreclosure Decree.
7

8 2. That this Court deny all other relief requested by Plaintiff BAC Servicing in its
9 Complaint.

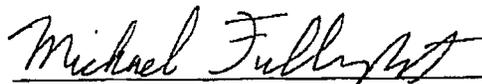
10 3. That this Court enter an Order against Plaintiff BAC Servicing quieting title to the
11 Condominium in favor of Defendant Michael Fulbright.

12 4. That this Court award Defendant Fulbright costs in this matter pursuant to RCW
13 4.84.030.
14

15 5. For such additional relief as the Court deems just and proper.

16 DATED this 13th day of June, 2011.
17

18 LAW OFFICE OF MICHAEL FULBRIGHT

19 
20 Michael Fulbright, WSBA #11821
21 Attorney for Defendants
22
23
24
25
26