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CLERK OF SUPREME COURT  
STATE OF WASHINGTON

No. 54017-3-1

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

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JOY L. SHEPHERD,

Appellant,

vs.

UNITED COLLECTION SERVICE, INC.,

Respondent.

---

PETITION FOR REVIEW

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FILED  
COURT OF APPEALS DIVISION I  
STATE OF WASHINGTON

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**A. Identity of Petitioner:**

The petitioner in this matter is United Collection Service, Inc., the respondent herein in the Court of Appeals.

**B. Citation to Court of Appeals Decision:**

The petitioner seeks review of the decision of the Court of Appeals in this case which was entered on August 8, 2005, reversing the trial court. A copy of the decision is in the Appendix at pages A-1 through A-7. A copy of the petitioner's motion for reconsideration is in the Appendix at pages A-8 through A-16. A copy of the order dated October 14, 2005, denying petitioner's motion for reconsideration in the Appendix at page A-17.

**C. Issues Presented for Review:**

1. Does RCW 4.56.210 limit the enforcement of all judgments or merely limit the existence of the judgment lien created by RCW 4.56.190?
2. Does a decision of the Court of Appeals that a statute is unambiguous and not subject to judicial construction constitute such a judicial construction of the statute so as to prohibit retroactive application of a subsequent amendment to the statute?
3. Was the 2002 amendment to RCW 6.17.020 (3) providing that the assignee of a judgment, among others, could extend the judgment for an

additional ten years in conflict with the decision in *J.D. Tan, L.L.C. v. Summers*, 107 Wn. App. 266, 26 P.3d 1006 (2001)?

**D. Statement of the Case:**

Joy Shepherd, hereinafter referred to as Shepherd, was one of the defendants and a judgment debtor in King County, Washington Superior Court cause no. 84-2-08873-7 SEA, and is the appellant herein.

Judgment was entered in favor of American Discount Corporation, plaintiff, and against all of the defendants in the Superior Court case in this matter on August 21, 1986. Joy Shepherd was named as Jane Doe Shepherd in that case. She was at all time material hereto married to W. Austin Shepherd, Jr., a co-defendant. It is not contested that Joy Shepherd is the defendant named as Jane Doe Shepherd in the judgment.

The judgment was assigned to United Collection Service, Inc., hereinafter referred to as United on October 19, 1987. On July 8, 1996, United caused an order to be entered pursuant to R.C.W. 6.17.020 extending the judgment for ten years.

The Supreme Court of the State of Washington in *J.D. Tan, L.L.C. v. Summers*, 107 Wn. App. 266, 26 P.3d 1006 (2001), held that the plain unambiguous language of R.C.W. 6.17.020 did not permit anyone other than the original judgment creditor to extend the judgment.

In 2002 the Washington State Legislature amended R.C.W. 6.17.020 , hereinafter referred to as the 2002 amendment, to provide that the assignee of a judgment, among others, could extend the judgment for ten years, and made the amendment retroactive so as to validate all extensions of judgments made by assignees of judgments after June 9, 1994.

In January, 2004, United commenced proceedings to sell Shepherd's homestead and in pursuance thereof filed a Petition for Appointment of Appraiser of Homestead, as required by RCW 6.13.110.

In response to the petition, Shepherd brought a motion to vacate the order extending the judgment for the reason that retroactive application of the 2002 amendments to R.C.W. 6.17.020, as provided in R.C.W. 6.17.020(8), would be unconstitutional. On March 5, 2004, the lower court entered an order denying the defendant's motion to vacate the order extending the judgment for ten years and on April 16, 2004. an order was entered appointing an appraiser of Shepherd's homestead.

Shepherd appealed from the order denying her motion to vacate the order extending the judgment for ten years and the Court of Appeals, on August 8, 2005, filed an opinion reversing the trial court. The Court of Appeals held that this case was controlled by RCW 4.56.210. The

reasoning of the Court of Appeals is that RCW 4.56.210 is a nonclaim statute rather than a statute of limitations. The court reasoned that judgment liens are created by RCW 4.56.190 and the effect of RCW 4.56.210 is to entirely extinguish such judgment liens, and they cannot be revived by a subsequent act of the legislature providing for retroactive revival of such liens. The court held that RCW 4.56.210 prohibits any claim under a judgment after the ten year period, or extended period, has expired.

The Court of Appeals further said that the decision of the Court of Appeals in *J.D. Tan, L.L.C. v. Summers*, 107 Wn. App. 266, 26 P.3d 1006 (2001) was a prior judicial construction of RCW 6.17.020, that the 2002 amendment contravened that decision, and that the doctrine of separation of powers prevented retroactive application of the 2002 amendments.

#### **D. Argument Why Review Should Be Granted**

1. This petition for review should be granted because this case involves an issue of substantial public interest that should be decided by the Supreme Court. The result of this decision is that enforcement of all judgments will be subject to the limitation contained in RCW 4.56.210. United believes that the decision is erroneous

Pursuant to RCW 4.56.190, entry of a judgment creates a lien on real property of the judgment debtor, subject to the requirements contained in RCW 4.56.200. Such a lien never attached to Shepherd's real property in this case.

RCW 4.56.190 does not apply to this case. The lien created by RCW 4.56.190 does not extend to a judgment debtor's real property which is his/her homestead. *In re Deal*, 85 Wn. App. 580, 933 P.2d 1084 (1997); *Mahalko v. Arctic Trading Co.*, 99 Wn.2d 30, 34-36, 659 P.2d 502, 41 A.L.R.4th 280 (1983). United's lien is on the excess value of the homestead. It is the lien created by RCW 6.13.090.

The Court of Appeals has in this case expanded the definition of the liens created by RCW 4.56.190 to include judgments. A lien is an encumbrance on property as security for payment of a debt. *Kinne v. Kinne*, 27 Wn.App. 158, 617 P.2d 442 (1980). Judgments are more than mere liens. The existence of the judicial lien is dependent upon the existence of the judgment. There may be a judgment without a judgment lien, but there are no judgment liens without a judgment. RCW 4.56.210 only applies to the liens created by RCW 4.56.190. The statute which is the basis for the court's decision in this case is RCW 4.56.210. That statute states that the *liens* (emphasis added) cease to exist and no suit, action or other proceedings may be taken on taken on any judgment

rendered in this state *to extend the lien*. (Emphasis added) RCW 4.56.210 only speaks to liens and makes no mention of having any effect on enforcement of judgments. Judgments exist without reference to the lien statute and, as stated in the court's opinion herein, they exist after the expiration of the statute of limitations restricting judgment enforcement procedures. Judgment enforcement procedures are governed by 6 RCW, entitled "Enforcement of Judgments". These procedures are available to judgment creditors without reference to the judgment lien created by RCW 4.56.190.

There are situations where a judgment exists without the existence of a judgment lien on real property created by RCW 4.56.190. Several examples are set out herein. The first example, of course, is the case before the court. United had no judgment lien pursuant to RCW 4.56.190 on Shepherd's real property which was her homestead, but United could have unquestionably obtained a writ of execution on Shepherd's homestead pursuant to RCW 6.13.090 thru RCW 6.13.160.

A second example is the situation where the plaintiff has a judgment in the superior court of one county and has not transcribed the judgment to the county where the judgment debtor's real property is located. He does not have a judgment lien on the real property. Nevertheless he can have an execution issued by the superior court

where the judgment was taken, directed to the sheriff of the county where the real property is located and have the execution levied on the judgment debtor's real property located therein.

A third example is where the judgment creditor is executing on the judgment debtor's personal property. There is no judgment lien on personal property prior to the levy of the execution. A lien does attach at the time the property is levied upon. The right to proceed with an execution does not depend upon the existence of a lien.

A fourth example is the situation where a judgment has been entered in a district court and not filed in the superior court. There is no judgment lien on the judgment debtor's real property and RCW 4.56.210 clearly does not apply. Could that judgment be retroactively extended for ten years? It does not seem logical that district court judgments could be retroactively extended under the 2002 amendment, but superior court judgments could not.

United's position in this matter is that the decision of the Court of Appeals was erroneous in applying RCW 4.56.210 to all judgments, whether there is a judgment lien on real property or not. To allow the Court of Appeals decision to stand will cause confusion concerning this point of law.

The Supreme Court should accept this petition for review and decide that a judgment creditor's remedies for enforcing a judgment are governed by 6 RCW, entitled "Enforcement of Judgments", rather than RCW 4.56.210.

2. Further, this petition for review should be granted because there is a significant question of law under the Constitution of the State of Washington. The Court of Appeals is incorrect in its analysis of the constitutional issue in this case.

Under the doctrine of separation of powers an amendment of a statute contravening a prior judicial construction of the statute is an unconstitutional interference with the power of the courts in so far as the amendment is intended by the legislature to be applied retroactively. In *Johnson v. Morris*, 87 Wn. 2d, Wn.2d 922, 557 P.2d 1299 (1976), the court said:

Petitioner cites no authority for the proposition that the legislature is empowered to retroactively "clarify" an existing statute, when that clarification contravenes the construction placed upon that statute by this court. Such a proposition is disturbing in that it would effectively be giving license to the legislature to overrule this court, raising separation of powers problems

The Johnson case was decided on the basis that the statute in question was ex post facto punishment and thus clearly unconstitutional. In dicta the court discussed at length the question of the power of the

legislature to make retroactive amendments to a statute that had been previously interpreted by the Court of Appeals or the Supreme Court, and then declined to decide that question of law. The dicta in that case was a correct statement of the law.

United submits that the Court of Appeals came to the wrong conclusion concerning the constitutionality of the 2002 amendment.

There has been no judicial construction of RCW 6.17.020, as it existed prior to the 2002 amendments, which statute is hereinafter referred to as RCW 6.17.020 (1994). In *J.D. Tan, L.L.C. v. Summers*, 107 Wn. App. 266, 26 P.3d 1006 (2001) the court ruled that the statute in question, i.e. RCW 6.17.020 (1994), was clear and unambiguous, that its meaning was to be derived from the language of the statute alone and *it was not subject to judicial construction*. (Emphasis added.) This language in *J.D. Tan* was cited by the Court of Appeals in its opinion herein.

In this case the court ruled that the decision in *J.D. Tan* is an authoritative judicial construction of RCW 6.17.020 (1994). This reasoning is incorrect. A determination that a statute is not subject to judicial construction cannot be held to be authoritative judicial construction of said statute.

3. The prohibition against the legislature making retroactive amendments to a statute after a judicial construction of the statute is not a blanket prohibition. Even if the court is correct in its holding that J.D. Tan was such a judicial construction, nevertheless, in order for the 2002 amendment to be declared unconstitutional, it must contravene the prior judicial construction. The 2002 amendment does not contravene the ruling in J.D. Tan. The 2002 amendment adds new persons to the class of persons authorized under RCW 6.17.020 (1994) to extend judgments and makes the amendment retroactive. That does not conflict with the decision in J.D. Tan, supra, that RCW 6.17.020 (1994) was not ambiguous.

A distinction is made between statutes that amend rather than clarify a statute that has been the subject of a prior judicial interpretation. The general rule is that if the statute is ambiguous, the enactment clarifies the statute, and if the statute is unambiguous, as is RCW 6.17.020 (1994), the enactment amends the statute. The legislature has the power after a judicial construction to make an amendment to a statute apply retroactively adding remedies, for example the power to award damages, even where there has been a prior judicial decision holding that there was no power under the previous statute to make such an award of damages. *Marine Power v. Human Rights Comm'n*, 39 Wn. App. 609, at

615, 694 P.2d 697 (1985). In that case the Human Rights Commission awarded damages to the plaintiff. In a prior decision the court in *Human Rights Comm'n v. Cheney Sch. Dist.* 30, 97 Wn.2d 118, 641 P.2d 163 (1982) held that the statute controlling that case, RCW 49.60.250, was not ambiguous and did not authorize the Human Rights Commission to award damages. Subsequently, in 1983, the legislature amended the statute and gave the Human Rights Commission the power to award damages up to \$1,000.00. Allowing the retroactive application of the amendment, the court in *Marine Power*, supra said:

Under Washington law, a new legislative enactment is presumed to be an amendment rather than a clarification of existing law. *Johnson*, at 926. This presumption may be rebutted, however, if circumstances indicate that the Legislature intended to clarify an existing statute. *Johnson*, at 926. One well recognized indication of legislative intent to either clarify or amend is the existence or nonexistence of ambiguities in the original act. *Bowen v. Statewide City Employees Retirement Sys.* 72 Wn.2d 397, 403, 433 P.2d 150 (1967). In general, legislative amendments change *unambiguous* statutes and legislative clarifications interpret *ambiguous* statutes. *Overton v. Economic Assistance Auth.*, 96 Wn.2d 552, 557, 637 P.2d 652 (1981); *Vita Foods Prods., Inc. v. State*, 91 Wn.2d 132, 134, 587 P.2d 535 (1978); see *Bowen v. Statewide City Employees Retirement Sys.*, supra at 403. In the present case, since the *Cheney* court held that the original discrimination statute contained no express or implied authority for granting the damage awards at issue, any ambiguities in the statute regarding such authority were resolved as of the date of *Cheney*. We conclude, therefore, that the 1983 enactment was intended to amend the original statute and provide an additional remedy which, according to *Cheney*, had not previously

existed. This conclusion is supported by *Johnson v. Morris, supra*, and *Fairley v. Department of Labor & Indus.*, 29 Wn. App 477, 483, 627 P.2d 961, *review denied*, 95 Wn.2d 1032 (1981).

The 2002 amendment is likewise an amendment to, rather than a clarification of, 6.17.020 (1994). The 2002 amendment adds assignees or the current holders of judgments to the class of persons authorized to extend judgments as set forth in RCW 6.17.020 (1994), and specifically made the amendment retroactive.

There is no conflict between the court's opinion in J.D. Tan and no violation of the doctrine of separation of powers.

The decision in the Court of Appeals opinion herein is incorrect, and this petition for review should be accepted in order to correct the error.

**CONCLUSION:**

For the reasons stated above, this petition for review should be accepted.

November 8, 2005

Respectfully submitted,

  
W.D. Palmer, Sr.

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Number 2274.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

AMERICAN DISCOUNT CORPORATION, a Washington corporation,

Plaintiff,

and

UNITED COLLECTION SERVICE, INC.,

Respondent,

v.

W. AUSTIN SHEPHERD JR., and JOY L. SHEPHERD, husband and wife,

Appellants.

NO. 54017-3-1

DIVISION ONE

ORDER PUBLISHING OPINION

The hearing panel having reconsidered its prior determination not to publish the opinion filed for the above entitled matter on August 8, 2005, and finding that it is of precedential value and should be published. The appellant, Joy Shepherd having filed a motion to publish herein, and a panel of the court having determined that the motion should be granted.

Now, therefore, it is hereby

ORDERED that the written opinion shall be published and printed in the Washington Appellate Reports.

DATED this 8<sup>th</sup> day of September, 2005.

*Appelwick, CJ*  
Judge

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DO NOT CITE. SEE RAP 10.4(h).

Court of Appeals Division I  
State of Washington

Opinion Information Sheet

Docket Number: 54017-3-I  
Title of Case: JOY L. SHEPHERD, APPELLANT VS UNITED COLLECTION  
SERVICE, INC., RESPONDENT  
File Date: 08/08/2005

SOURCE OF APPEAL

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Appeal from Superior Court of King County  
Docket No: 84-2-08873-7  
Judgment or order under review  
Date filed: 03/05/2004  
Judge signing: Hon. James a Doerty

JUDGES

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AMERICAN DISCOUNT )  
CORPORATION, a Washington ) NO. 54017-3-I  
corporation, )  
 ) DIVISION ONE  
Plaintiff, )  
 ) UNPUBLISHED OPINION  
and )  
 )  
 )  
UNITED COLLECTION SERVICE, )  
INC., )  
 )  
Respondent, )  
 )  
v. )  
A-1 )

W. AUSTIN SHEPHERD JR., and )  
JOY L. SHEPHERD, husband and ) FILED: August 8, 2005  
wife, )  
)

Appellants.

APPELWICK, J. - A judgment was entered in 1986 against appellant, Joy Shepherd, and her husband. The judgment creditor assigned it to United Collection Service in 1987. In 1996, prior to its expiration date, United obtained an order extending the judgment for ten years. In 2001, the Court of Appeals determined that under then-existing statutory law, only judgment creditors could seek extension orders; assignees could not. Shepherd argues the extension was therefore void and the judgment expired. United argues that subsequent statutory amendments in 2002 retroactively validated the 1996 extension. We hold that the judgment expired on its ten-year anniversary in 1996 and cannot be revived. We reverse.

FACTS

On August 21, 1986, a judgment was entered in favor of American Discount, Inc. The judgment debtors were W. Austin Shepherd, Jr., and Jane Doe Shepherd, husband and wife.<sup>1</sup> It is uncontested that Joy Shepherd is Jane Doe Shepherd (Shepherd). On October 15, 1987, American Discount assigned the judgment to United Collection Service. United did not collect on the judgment within ten years of its entry. On July 8, 1996, United obtained an order extending the judgment for ten years and the judgment was reset to expire in 2006. On January 29, 2004, United moved to appoint an appraiser for Joy Shepherd's real property, on which an execution was levied and for which she claimed a homestead exception.

Shepherd moved to vacate the 1996 extension as void ab initio, arguing that existing law in 1996 permitted only a judgment creditor, not its assignee, to extend judgments. In 1996, RCW 6.17.020 permitted judgment creditors to extend the time for expiration of a judgment:

(1) Except as provided in subsections (2), (3), and (4) of this section, the party in whose favor a judgment of a court of record of this state or a district court of this state has been or may be rendered, or the assignee, may have an execution issued for the collection or enforcement of the judgment at any time within ten years from entry of the judgment.

. . .

(3) After June 9, 1994, a party in whose favor a judgment has been rendered pursuant to subsection (1) or (4) of this section may, within ninety days before the expiration of the original ten-year period, apply to the court that rendered the judgment for an order granting an additional ten years during which an execution may be issued.

RCW 6.17.020 (1996).

RCW 6.17.020(3) was amended effective June 13, 2002 to give assignees as well as judgment creditors the right to obtain an extension:

(3) After June 9, 1994, a party in whose favor a judgment has been filed as a foreign judgment or rendered pursuant to subsection (1) or (4) of this section, or the assignee or the current holder thereof, may, within ninety days before the expiration of the original ten-year period, apply to the court that rendered the judgment or to the court where the judgment was filed as a foreign judgment for an order granting an additional ten years during which an execution, garnishment, or other legal process may be issued.

RCW 6.17.020(3) (emphasis added); see Laws of 2002, Ch. 261. The 2002

amendments explicitly provide for retroactive application:

(8) The chapter 261, Laws of 2002 amendments to this section apply to all judgments currently in effect on June 13, 2002, to all judgments extended after June 9, 1994, unless the judgment has been satisfied, vacated, and/or quashed, and to all judgments filed or rendered, or both, after June 13, 2002.

RCW 6.17.020(8) (emphasis added).

United argues that the 2002 amendments retroactively validated the 1996 extension, and the judgment had therefore not expired. The trial court denied Shepherd's motion to vacate the order extending the judgment. Shepherd appeals.

ANALYSIS

#### I. The Judgment Expired in 1996 and Cannot Be Revived

Questions of statutory construction are reviewed de novo. *J.D. Tan, L.L.C., v. Summers*, 107 Wn. App. 266, 268, 26 P.3d 1006 (2001). A statute is ambiguous when it is susceptible to more than one reasonable interpretation. *J.D. Tan*, 107 Wn. App. at 269. A clear, unambiguous statute is not subject to judicial construction and its meaning must be derived from its language. *J.D. Tan*, 107 Wn. App. at 269.

While RCW 6.17.020 (1996) allowed both judgment creditors and their assignees to execute on a judgment, only judgment creditors were permitted to apply for an extension order. Compare RCW 6.17.020(1) (1996) with RCW 6.17.020(3) (1996). In *J.D. Tan*, this court held that assignees were excluded from the benefits of RCW 6.17.020(3) (1996). *J.D. Tan*, 107 Wn. App. at 267. The statute specifically entitled assignees to execute on judgments in section (1), but did not give assignees the right to extend judgments in section (3). *J.D. Tan*, 107 Wn. App. at 268. The court noted that although the legislature probably intended to give assignees the power to extend, the statute was not written to do so. *J.D. Tan*, 107 Wn. App. at 268. Because the statute was not subject to more than one reasonable interpretation, and thus not ambiguous, it was not susceptible to judicial construction. *J.D. Tan*, 107 Wn. App. at 268-69. The court held that it should be enforced as written: only judgment creditors, and not assignees, were entitled to extend judgments under RCW 6.17.020(3). *J.D. Tan*, 107 Wn. App. at 269.

The court in *J.D. Tan* vacated extensions obtained by an assignee under the 1996 version of the statute, and declared the judgments void as a matter of law. *J.D. Tan*, 107 Wn. App. at 267-68. The same circumstances exist in this case. American Discount was the judgment creditor, and United was its assignee. United had no authority under RCW 6.17.020(3) (1996) to seek an order extending the judgment. Thus, under *J.D. Tan*, the judgment expired in 1996 and the order extending the judgment should have been vacated. United argues that the 2002 amendments only changed a procedure in the enforcement of judgments, and that the judgment itself did not expire. United classifies the ten-year limitations period in RCW 6.17.020 as a 'statute of limitation,' citing cases which refer to it as such. See, e.g., *In re Marriage of Capetillo*, 85 Wn. App. 311, 317, 932 P.2d 691 (1997); *Hunter v. Hunter*, 52 Wn. App. 265, 270, 758 P.2d 1019 (1988). Courts have consistently held that when a statute of limitation expires, the underlying claim continues to exist even though the claimant cannot use the power of the courts to enforce it. See, e.g., *Stenberg v. Pac. Power & Light*, 104 Wn.2d 710, 714, 709 P.2d 793 (1985); *Walcker v. Benson & McLaughlin*, 79 Wn. App. 739, 904 P.2d 1176 (1995). United argues that RCW 6.17.020 only limited the right to obtain a writ of execution, and the legislature could retroactively change a procedure allowing the enforcement of the still-valid judgment.

But, when the allowable period to execute on a judgment expires, the judgment lien ceases to exist and no action can be taken under the

judgment:

(1) Except as provided in subsections (2) and (3) of this section, after the expiration of ten years from the date of the entry of any judgment heretofore or hereafter rendered in this state, it shall cease to be a lien or charge against the estate or person of the judgment debtor. No suit, action or other proceeding shall ever be had on any judgment rendered in this state by which the lien shall be extended or continued in force for any greater or longer period than ten years.

RCW 4.56.210.2 RCW 4.56.210(3) provides that if a judgment is extended under RCW 6.17.020, the judgment lien remains in force until expiration of the extended period.

'A judgment lien is born by statute, and dies by statute.' Grub v. Fogle's Garage, Inc., 5 Wn. App. 840, 843, 491 P.2d 258 (1971) (citations omitted); see also Mueller v. Miller, 82 Wn. App. 236, 247, 917 P.2d 604 (1996). In Grub, the judgment creditor obtained a writ of execution prior to the expiration of the judgment lien.<sup>3</sup> But, the sheriff's sale was not completed before the judgment lien expired. Grub, 5 Wn. App. at 840-41. The Grub court held that when the lien expired, any execution that was not completed also expired. Grub, 5 Wn. App. at 843. RCW 4.56.210 was 'not a mere statute of limitation affecting a remedy only.' Grub, 5 Wn. App. at 842 (quoting Roche v. McDonald, 136 Wn. 322, 326, 239 P. 1015 (1925) (discussing a predecessor of RCW 4.56.210 that contained essentially the same language)). The court held that the statute takes away all right of action under the judgment:

It not only makes a judgment cease to be a 'charge against the person or estate of the judgment debtor' after six years from the rendering of the judgment, but also in terms expressly takes away all right of renewal of or action upon the judgment looking to the continuation of its duration or that of the demand on which it rests, for a longer period than six years from the date of its rendition.

Grub, 5 Wn. App. at 842 (quoting Roche, 136 Wn. at 326).

Thus, expiration of the ten-year period extinguishes not only a remedy, but also the right of action on the judgment. This is the effect of a nonclaim statute:

There are two types of statutes which the courts had to apply. One of them is the statute which either by its plain terms or by the construction given it by the court makes the limitation of time inhere in the right or obligation rather than the remedy. It is sometimes referred to as a statute of nonclaim, and, strictly speaking, is not a statute of limitations at all. In its usual form the statute creates some right or obligation and a time is fixed within which the right must be asserted or the obligation sought to be enforced, or the same will be barred. When the limitation period expires the right or obligation is extinguished and cannot be revived by a subsequent statute enlarging the time limitation.

The other type of statute is one which relates only to the remedy and has nothing to do with any right or obligation, does not inhere in either, and is wholly independent of them. It is a statute of limitations in its strict sense, and, although a remedy may become barred thereunder, the right or obligation is not extinguished. It is a statute of repose.

There is no constitutional inhibition against the revival of a barred remedy.

Lane v. Dep't of Labor & Indus., 21 Wn.2d 420, 425-26, 151 P.2d 440 (1944) (emphasis added).

RCW 4.56.210 is a nonclaim statute, not a statute of limitation. See *Bellevue Sch. Dist. v. Brazier Constr. Co.*, 103 Wn.2d 111, 117, 691 P.2d 178 (1984) (listing RCW 4.56 as an example of a nonclaim statute, and noting that such statutes create a right together with an obligation to assert it within a certain time or be barred from enforcing it); *Ticor Title Ins. v. Nissell*, 73 Wn. App. 818, 821-22, 871 P.2d 652 (1994) (holding that the time limit set forth in RCW 4.56.210(1) is not an ordinary statute of limitations, and at the end of the period the lien ceases to exist and it is no longer possible to execute against it). RCW 4.56.210 extinguished the judgment lien and prohibits any claim under a judgment after the ten year period, or any extended period, has expired. By its express terms, RCW 4.56.210 prohibits revival of an expired judgment.

Here, the 1986 judgment expired in 1996 because United's attempted extension was void. Thus, under RCW 4.56.210, the judgment lien and United's right to bring a claim under the judgment were extinguished in 1996, on the ten-year anniversary of the judgment. The judgment creditor did not extend the judgment. The judgment expired. It cannot be revived. II. The Legislature Cannot Constitutionally Revive the Judgment by Retroactive Amendment

It is a basic rule of judicial restraint that the issue of the constitutionality of a statute will not be passed upon if the case can be decided without reaching that issue. *City of Kirkland v. Steen*, 68 Wn.2d 804, 809-810, 416 P.2d 80 (1966); see also *City of Seattle v. Williams*, 128 Wn.2d 341, 347, 908 P.2d 359 (1995). We hold that the judgment expired and cannot be revived under the nonclaim statute, and therefore do not need to address the constitutionality of the 2002 amendments. We believe it is nonetheless desirable here to explain why the legislature could not constitutionally revive the judgment by retroactive amendment.

United argues that: the 2002 amendments retroactively validated its 1996 extension and thus the judgment has not expired; the text of the 2002 amendments shows that the legislature expressly intended that it have retroactive effect; RCW 6.17.020(3) provides that assignees of the judgment creditor can seek an extension after June 9, 1994; and, RCW 6.17.020(8) states that the amendments apply to all judgments extended after June 9, 1994.

A statutory amendment is presumed to be prospective in application. *Pers. Restraint of Stewart*, 115 Wn. App. 319, 332, 75 P.3d 521 (2003). This presumption can be overcome and a statutory amendment will be applied retroactively if the legislature intended retroactivity, if the amendment is curative, or if the amendment is remedial. *Barstad v. Stewart Title Guar. Co.*, 145 Wn.2d 528, 536-37, 39 P.3d 984 (2002); *Stewart*, 115 Wn. App. at 332. Because the legislature intended that the 2002 amendments have retroactive effect, it is not necessary to determine whether the amendments are curative or remedial. Notwithstanding the express legislative intent, an amendment will apply only prospectively if retroactive application would violate a constitutional prohibition. *Stewart*, 115 Wn. App. at 333. Thus, the 2002 amendments can be given retroactive effect as long as retroactive application does not violate any constitutional prohibition.

The legislature is presumed to be aware of judicial constructions of existing statutes. *Hazel v. Van Beek*, 135 Wn.2d 45, 58, 954 P.2d 1301 (1998). An attempt by the legislature to retroactively change a statute in contravention of an existing judicial construction of that statute raises separation of powers issues:

Petitioner cites no authority for the proposition that the legislature is empowered to retroactively 'clarify' an existing statute, when that clarification contravenes the construction placed upon that statute by this court. Such a proposition is disturbing in that it would effectively be giving license to the legislature to overrule this court, raising

separation of powers problems.

Johnson v. Morris, 87 Wn.2d 922, 926, 557 P.2d 1299 (1976).

In Stewart, the court considered the retroactive application of statutory amendments. In a 2001 decision, the Washington State Court of Appeals had interpreted a statute and held that the statute allowed only the courts, and not the Department of Corrections, to impose the special probation conditions set out in the statute. Stewart, 115 Wn. App. at 326 (citing In re Capello, 106 Wn. App. 576, 24 P.3d 1074 (2001)). In 2002, the legislature amended the statute. Stewart, 115 Wn. App. at 329. The text of the amendment explicitly stated that it would apply retroactively, and the statutory history showed the legislature had this intent. Stewart, 115 Wn. App. at 330-31, 333. The legislature intended the amendment to clarify the law after Capello and affirm that since its initial enactment in 1998, the statute had given the DOC authority to impose those conditions. Stewart, 115 Wn. App. at 330.

The amendment was in direct contravention of the Capello court's construction of the statutory scheme in effect prior to its effective date. Stewart, 115 Wn. App. at 334. The Stewart court noted that the legislative amendment was attempting to overrule Capello. Stewart, 115 Wn. App. at 334. The Stewart court held that retroactive application of those amendments would 'violate the constitutional separation of powers doctrine because the legislative branch of government cannot retroactively overrule a judicial decision which authoritatively construes statutory language.' Stewart, 115 Wn. App. at 335. To apply the amendment retroactively would essentially make the legislature a 'court of last resort.' State v. Dunaway, 109 Wn.2d 207, 216 n.6, 743 P.2d 1237 (1987) (citation omitted). The application of the separation of powers principle is not limited to decisions of the Washington Supreme Court, but of the judiciary as a whole. Stewart, 115 Wn. App. at 336. Where the Supreme Court has not addressed an issue, an existing Court of Appeals decision is the law that must be followed on the issue. Stewart, 115 Wn. App. at 336. The Stewart court noted that in addressing the issue of legislative contravention of judicial statutory construction, the Supreme Court itself had used language that can be interpreted to mean that the separation of powers analysis includes contravention of a construction by the Court of Appeals. Stewart, 115 Wn. App. at 337 (citing Barstad, 145 Wn.2d at 537; In re F.D. Processing, Inc., 119 Wn.2d 452, 461, 832 P.2d 1303 (1992); Tomlinson v. Clarke, 118 Wn.2d 498, 510-11, 825 P.2d 706 (1992); Wash. Waste Sys. v. Clark County, 115 Wn.2d 74, 79, 794 P.2d 508 (1990); State v. Jones, 110 Wn.2d 74, 82, 750 P.2d 620 (1988); and Dunaway, 109 Wn.2d at 216 n.6)); see also State v. Dean, 113 Wn. App. 691, 698, 54 P.3d 243 (2002).

Retroactive application of a statutory amendment that contravenes a judicial construction of the prior version of the statute would be unconstitutional. Stewart, 115 Wn. App. at 339. Here, in 2001 the J.D. Tan court had interpreted RCW 6.17.020(3), as it existed prior to the 2002 amendments, to permit only judgment creditors, and not assignees, to obtain an extension of a judgment. J.D. Tan, 107 Wn. App. at 267. The legislature attempted to substantively change the statute that existed before the 2002 amendments, after the J.D. Tan court had construed it. Notwithstanding any legislative intent to apply the amendment retroactively, the separation of powers doctrine prevents the legislature from retroactively changing a statute in contravention of judicial construction of the original statute, and the 2002 amendments may only have prospective application. See Stewart, 115 Wn. App. at 342. Because the 2002 amendments cannot be applied retroactively, they do not validate the 1996 extension attempted by United. The 1986 judgment thus expired in 1996. United cannot collect on the judgment.

We reverse.

WE CONCUR:

1 Shepherd asks that this court clarify the judgment and determine that it named the marital community and not Joy Shepherd individually as judgment debtor. Shepherd did not seek this relief in her motion to vacate the order extending the judgment. She attempted to bring it in below by raising it in the reply brief for that motion. The issue was not properly raised before the trial court, and the trial court did not rule on it. The issue is not properly before this court. Furthermore, the only evidence in the record on the underlying matter is the summary judgment order itself, which specifically and separately names W. Austin Shepherd, Jr., Jane Doe Shepherd, and their marital community as judgment debtors. There is no basis in the record to grant the relief requested.

2 RCW 4.56.210(2) addresses child support judgments.

3 At the time, the limitation period was six years. Grub, 5 Wn. App. at 841-42.

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IN THE COURT OF APPEALS - DIVISION I

STATE OF WASHINGTON

JOY L. SHEPHERD,	)		
	)		
APPELLANT,	)	No. 54017-3-1	
	)		
VS	)	RESPONDENT UNITED	
	)	COLLECTION SERVICES,	
UNITED COLLECTION	)	INC.'S MOTION FOR	
SERVICE, INC.,	)	RECONSIDERATION	
	)		
	)		
	)		
RESPONDENT.	)		

Comes now United Collection Services, Inc., Respondent herein, by its attorneys, and moves the Court for reconsideration of the Court's opinion in this matter filed on August 8, 2005.

**MATTERS TO BE RECONSIDERED:**

1. The Respondent urges the Court to reconsider that portion of its opinion holding that R.C.W. 4.56. 010, et seq., is the statute governing the facts in this case.

2. Respondent further urges the Court to reconsider its explanation of why the 2002 Washington legislature could not retroactively modify R.C.W. 6.17.020.

**ARGUMENT:**

1. The opinion of the Court relies heavily upon the provisions of R.C.W. 4.56.010, et seq., which creates a judgment lien on the real property of a judgment debtor situated within the county in which the judgment is entered or filed, except real property which is the homestead of the judgment debtor..

Appellant suggests that there are at least four situations involving executions on property that do not in any way involve RCW 4.56.010 et seq. They are:

1. Executions on real property which is the judgment debtor's homestead.

2. Executions on personal property issued by a superior court of this state.

3. Executions on personal property issued by a district court of this state.

4. Executions on real property issued by the superior court of a county other than the county in which the real property is situated and the judgment has not been filed in the county in which the real property is situated.

The existence or nonexistence of liens determines the respective priorities of claims against property, both real and personal. The case

before the Court does not involve a judgment lien on the real property of the Appellant Joy Shepherd created pursuant to RC.W. 4.56.020, and is not a case involving the respective claims of creditors of the judgment debtor.

The appellant's real property which was the subject of the execution obtained by the respondent, and which was subsequently sold by the King County, Washington Sheriff pursuant to such execution, was the homestead of the appellant. Judgment liens created by R.C.W.4.56.010, et seq., do not attach to the judgment debtor's homestead. *Malhako v. Artic Trading Co.*, 99 Wn.2d 30, 659 P.2d 502 (1983); *Lien v. Hoffman*, 49 Wn.2d 643, 306 P.2d (1957). In *Malhako*, supra, the court said:

"In Washington, a judgment lien usually attaches to the debtor's real property in the trial court's county at the time the judgment is entered. RCW 4..56.190. However, as long ago as 1898, this court stated in *TRADERS' NAT'L BANK v. SCHORR*, 20 Wash. 1, 8-9, 54 P. 543 (1898) that:

" Provision is made by our statutes for reaching the excess in value of real estate claimed as a homestead over the amount exempted, but it is not the ordinary enforcement of the lien or a sale under execution. It is a special mode of sale after an appraisalment. We think it is apparent, from an examination of the legislation creating and protecting the homestead in this state, and the construction placed upon such statutes by this court, that a general judgment lien does not operate upon, and does not attach to, premises which constitute a homestead, and the view taken by counsel for respondents that such lien may attach to the

excess in value above the homestead exemption is erroneous.”

Mahalko contends the above language is dicta and does not have precedential value. Lest there be any confusion about the effect of the above language in the TRADERS case, we affirm it here.”

The only judgment lien that involves a judgment debtor’s real property claimed as a homestead is that provided by R.C.W. 6.13.090. That lien in on the excess of the debtor’s equity in the real property over and above the liens prior to that of the judgment creditor.

A judgment against the owner of a homestead shall become a lien on the value of the homestead property in excess of the homestead exemption from the time the judgment creditor records the judgment with the recording officer of the county where the property is located. However, if a judgment of a district court of this state has been transferred to a superior court, the judgment becomes a lien from the time of recording with such recording officer a duly certified abstract of the record of such judgment as it appears in the office of the clerk in which the transfer was originally filed.

Nowhere in R.C.W. 6.13.010, et seq., is there a mention of a time limit for the forced sale of the judgment debtor’s homestead.

Respondent has followed the procedures specified in R.C.W. 6.13.010, et seq., for the forced sale of a homestead.

Another situation not addressed by the court’s opinion involves executions on the judgment debtor’s personal property. Surely the

provisions of R.C.W. 4.56.010, et seq., dealing with liens on real property, have no application to executions on personal property, whether such executions are issued by a superior court or a district court of this state. There are no judgment liens on personal property until the levy of the execution. A levy of execution will create a lien. *Casa del Rey v. Hart*, 31 Wn. App. 532, 643 P.2d 900 (1982); *Stafford v. Stafford*, 18 Wn.2d 775, 140 P.2d 545 (1943).

Finally, the superior court in the county in which a judgment is entered is the only county that has the authority to issue a writ of execution against the real property of the judgment debtor, and that superior court may issue a writ of execution to the Sheriff of any county in the State of Washington, commanding that Sheriff to levy the execution on the real property of the judgment debtor situated within that Sheriff's county. Respondent can find no authority for the proposition that filing a certified abstract of the judgment in the county in which the property is located is a condition precedent to the issuance of a writ of execution by the court in one county to the Sheriff of another county, and therefore submits that no such filing is required. In the cases where a duly certified abstract of the judgment is not filed there would be no lien on the real property prior to levy of the writ of execution. Clearly RCW 4.56.010, et seq. would not apply in this situation.

The only conclusion is that RCW 4.56.010, et seq., and specifically the time limitations therein, does not control the issuance of writs of execution.

Respondent submits that the issuance of writs of execution and the forced sale of the homestead of a judgment debtor, as is involved in this case, is controlled by Title 6 RCW, which is entitled Enforcement of Judgments. The statute does not create any right or obligation. The obligation of the judgment debtor to the judgment creditor is fixed by the judgment. The statute merely provides the method of enforcing the judgment, i.e. it is procedural in nature. It is a statute of repose, i.e. a statute of limitations, and the judgment continued to exist after the expiration of ten years. Title 6 RCW exactly fits the definition of a statute of repose as stated in this court's opinion in this case.

The other type of statute is one which relates only to the remedy and has nothing to do with any right or obligation, does not inhere in either, and is wholly independent of them. It is a statute of limitations in its strict sense, and, although a remedy may become barred thereunder, the right or obligation is not extinguished. It is a statute of repose.

From the above Respondent submits, the judgment was not extinguished in 1996. It continued to exist, however it could not be enforced under the decision in J.D. Tan, L.L.C v. Summers, 107 Wn. App. 266 (2001), prior to the 2002 amendments to RCW 6.17.020.

The 2002 amendment to RCW 6.17.020 set forth the procedure for extending judgments and retroactively made extensions by assignees of judgments, as the respondent herein is, valid. This amendment gave the respondent a ten year extension from the 1996 expiration of the judgment.

2. Respondent agrees that the rule is that retroactive application of a statutory amendment that contravenes a judicial construction of the prior version of the statute would be unconstitutional. However, this case, while involving retroactive application of the 2002 amendment, does not involve an amendment that contravenes a prior judicial construction. There simply is no prior judicial construction of the prior version of the statute to contravene.

The court in its opinion did not discuss the respondent's contention that there was no judicial construction of RCW 6.17.020 prior to the 2002 amendment. J.D. Tan, supra, relied upon by the court, did not contain a judicial construction of RCW 6.17.020. The court in that case specifically declined to make a judicial construction of the statute, saying at page 269:

*When a statute is clear and unambiguous, its meaning is to*

*be derived from the language of the statute alone and it is not subject to judicial construction. «2» (emphasis mine)*

Appellants argue that the trial court erred in finding that the statute is unambiguous and so not subject to interpretation. A statute is "ambiguous" and thus requires judicial interpretation whenever it is susceptible to more than one reasonable interpretation .«3»

This statute is not ambiguous. The statute clearly refers to "a party in whose favor a judgment has been rendered" as the only person that may extend a judgment. The statute cannot reasonably be understood to apply to assignees of judgments as well as to original judgment creditors. Since the statute is not amenable to more than one interpretation, it is not ambiguous, and the trial court did not err in enforcing it as written.

There was no judicial construction of RCW 6.17.020 in J.D. Tan, supra. This court recognized this, stating in its opinion:

Because the statute was not subject to more than one reasonable interpretation, and thus not ambiguous, it was not susceptible to judicial construction. J.D. Tan, 107 Wn. App. at 268-69.

However, the court did not discuss this point in the opinion.

There is no conflict between the decision in J.D. Tan, supra and the 2002 amendment to RCW 6.17.020, and thus the retroactive provisions of the 2002 amendment are not unconstitutional.

**CONCLUSION:**

The court should amend its opinion to provide as follows:

1. RCW 4.56.010, et seq., do not apply to this case.

2. Issuance of writs of execution are governed by RCW 6.17.010, et seq., and RCW 6.17.020, as amended in 2002, permits the issuance of a writ of execution in this case.

3. RCW 6.17.010, et seq., is a statute of repose, i.e. a statute of limitations, and not a nonclaim statute

4. The respondent's judgment herein was not extinguished by the passage of ten years from its entry.

5. The 2002 amendments to RCW 6.17.020 are not in contravention of the ruling in J.D. Tan, supra, and thus are constitutional.

6. That the decision of the trial court denying appellant's motion to vacate the 1996 extension as void ab initio should be affirmed.

Respectfully submitted:

August 23, 2005

W.D. Palmer, Sr. WSBA #2274

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**RCW 4.56.190**

**Lien of judgment.**

The real estate of any judgment debtor, and such as the judgment debtor may acquire, not exempt by law, shall be held and bound to satisfy any judgment of the district court of the United States rendered in this state and any judgment of the supreme court, court of appeals, superior court, or district court of this state, and every such judgment shall be a lien thereupon to commence as provided in RCW 4.56.200 and to run for a period of not to exceed ten years from the day on which such judgment was entered unless the ten-year period is extended in accordance with RCW 6.17.020(3). As used in this chapter, real estate shall not include the vendor's interest under a real estate contract for judgments rendered after August 23, 1983. If a judgment debtor owns real estate, subject to execution, jointly or in common with any other person, the judgment shall be a lien on the interest of the defendant only.

Personal property of the judgment debtor shall be held only from the time it is actually levied upon.

[1994 c 189 § 3. Prior: 1987 c 442 § 1103; 1987 c 202 § 116; 1983 1st ex.s. c 45 § 5; 1980 c 105 § 3; 1971 c 81 § 16; 1929 c 60 § 1; RRS § 445; prior: 1893 c 42 § 9; Code 1881 § 321; 1869 p 78 § 317; 1860 p 51 § 234; 1857 p 11 § 15; 1854 p 175 § 240.]

**RCW 4.56.200**

**Commencement of lien on real estate.**

The lien of judgments upon the real estate of the judgment debtor shall commence as follows:

- (1) Judgments of the district court of the United States rendered or filed in the county in which the real estate of the judgment debtor is situated, and judgments of the superior court for the county in which the real estate of the judgment debtor is situated, from the time of the entry or filing thereof;
- (2) Judgments of the district court of the United States rendered in any county in this state other than that in which the real estate of the judgment debtor to be affected is situated, judgments of the supreme court of this state, judgments of the court of appeals of this state, and judgments of the superior court for any county other than that in which the real estate of the judgment debtor to be affected is situated, from the time of the filing of a duly certified abstract of such judgment with the county clerk of the county in which the real estate of the judgment debtor to be affected is situated, as provided in this act;
- (3) Judgments of a district court of this state rendered or filed as a foreign judgment in a superior court in the county in which the real estate of the judgment debtor is situated, from the time of the filing of a duly certified transcript of the docket of the district court with the county clerk of the county in which such judgment was rendered or filed, and upon such filing said judgment shall become to all intents and purposes a judgment of the superior court for said county; and
- (4) Judgments of a district court of this state rendered or filed in a superior court in any other

county in this state than that in which the real estate of the judgment debtor to be affected is situated, a transcript of the docket of which has been filed with the county clerk of the county where such judgment was rendered or filed, from the time of filing, with the county clerk of the county in which the real estate of the judgment debtor to be affected is situated, of a duly certified abstract of the record of said judgment in the office of the county clerk of the county in which the certified transcript of the docket of said judgment of said district court was originally filed.

[2002 c 261 § 3; 1987 c 202 § 117; 1971 c 81 § 17; 1929 c 60 § 2; RRS § 445-1.]

**RCW 4.56.210**

**Cessation of lien -- Extension prohibited -- Exception.**

(1) Except as provided in subsections (2) and (3) of this section, after the expiration of ten years from the date of the entry of any judgment heretofore or hereafter rendered in this state, it shall cease to be a lien or charge against the estate or person of the judgment debtor. No suit, action or other proceeding shall ever be had on any judgment rendered in this state by which the lien shall be extended or continued in force for any greater or longer period than ten years.

(2) An underlying judgment or judgment lien entered after \*the effective date of this act for accrued child support shall continue in force for ten years after the eighteenth birthday of the youngest child named in the order for whom support is ordered. All judgments entered after \*the effective date of this act shall contain the birth date of the youngest child for whom support is ordered.

(3) A lien based upon an underlying judgment continues in force for an additional ten-year period if the period of execution for the underlying judgment is extended under RCW 6.17.020.

[1995 c 75 § 1; 1989 c 360 § 2; 1979 ex.s. c 236 § 1; 1929 c 60 § 7; RRS §§ 459, 460. Formerly RCW 4.56.210 and 4.56.220. Prior: 1897 c 39 §§ 1, 2.]

**RCW 6.13.090**

**Judgment against homestead owner -- Lien on excess value of homestead property.**

A judgment against the owner of a homestead shall become a lien on the value of the homestead property in excess of the homestead exemption from the time the judgment creditor records the judgment with the recording officer of the county where the property is located. However, if a judgment of a district court of this state has been transferred to a superior court, the judgment becomes a lien from the time of recording with such recording officer a duly certified abstract of the record of such judgment as it appears in the office of the clerk in which the transfer was originally filed.

[1988 c 231 § 4; 1987 c 442 § 209; 1984 c 260 § 30. Formerly RCW 6.12.105.]

**RCW 6.13.100**

**Execution against homestead -- Application for appointment of appraiser.**

When execution for the enforcement of a judgment obtained in a case not within the classes enumerated in RCW 6.13.180 is levied upon the homestead, the judgment creditor shall apply to the superior court of the county in which the homestead is situated for the appointment of a person to appraise the value thereof.

[1987 c 442 § 210; 1895 c 64 § 9; RRS § 537. Formerly RCW 6.12.140.]

**RCW 6.13.110**

**Application under RCW 6.13.100 must be made by verified petition -- Contents.**

The application under RCW 6.13.100 must be made by filing a verified petition, showing:

- (1) The fact that an execution has been levied upon the homestead.
- (2) The name of the owner of the homestead property.
- (3) That the net value of the homestead exceeds the amount of the homestead exemption.

[1987 c 442 § 211; 1981 c 329 § 15; 1895 c 64 § 10; RRS § 538. Formerly RCW 6.123.150.]

**RCW 6.13.120**

**Notice.**

A copy of the petition, with a notice of the time and place of hearing, must be served upon the owner and the owner's attorney of record, if any, at least ten days before the hearing.

[1987 c 442 § 212; 1981 c 329 § 16; 1895 c 64 § 12; RRS § 540. Formerly RCW 6.12.170.]

**RCW 6.13.130**

**Hearing -- Appointment of appraiser.**

At the hearing, the judge may, upon the proof of the service of a copy of the petition and notice and of the facts stated in the petition, appoint a disinterested qualified person of the county to appraise the value of the homestead.

[1987 c 442 § 213; 1984 c 118 § 1; 1895 c 64 § 13; RRS § 541. Formerly RCW 6.12.180.]

**RCW 6.13.140**

**Appraiser -- Oath -- Duties.**

The person appointed, before entering upon the performance of duties, must take an oath to faithfully perform the same. The appraiser must view the premises and appraise the market value thereof and, if the appraised value, less all liens and encumbrances, exceeds the homestead exemption, must determine whether the land claimed can be divided without material injury.

Within fifteen days after appointment, the appraiser must make to the court a report in writing, which report must show the appraised value, less liens and encumbrances, and, if necessary, the determination whether or not the land can be divided without material injury and without violation of any governmental restriction.

[1987 c 442 § 214; 1895 c 64 § 14; RRS § 542. Formerly RCW 6.12.190.]

**RCW 6.13.150**

**Division of homestead.**

If, from the report, it appears to the court that the value of the homestead, less liens and encumbrances senior to the judgment being executed upon and not including the judgment being executed upon, exceeds the homestead exemption and the property can be divided without material injury and without violation of any governmental restriction, the court may, by an order, direct the appraiser to set off to the owner so much of the land, including the residence, as will amount in net value to the homestead exemption, and the execution may be enforced against the remainder of the land.

[1999 c 403 § 2; 1987 c 442 § 215; 1981 c 329 § 17; 1895 c 64 § 17; RRS § 545. Formerly RCW 6.12.220.]

**RCW 6.13.160**

**Sale, if not divisible.**

If, from the report, it appears to the court that the appraised value of the homestead property, less liens and encumbrances senior to the judgment being executed upon and not including the judgment being executed upon, exceeds the amount of the homestead exemption and the property is not divided, the court must make an order directing its sale under the execution. The order shall direct that at such sale no bid may be received unless it exceeds the amount of the homestead exemption.

[1999 c 403 § 3; 1987 c 442 § 216; 1981 c 329 § 18; 1895 c 64 § 18; RRS § 546. Formerly RCW 6.12.230.]

**RCW 6.17.020**

**Execution authorized within ten years -- Exceptions -- Fee -- Recoverable cost.**

(1) Except as provided in subsections (2), (3), and (4) of this section, the party in whose favor a judgment of a court has been or may be filed or rendered, or the assignee or the current holder thereof, may have an execution, garnishment, or other legal process issued for the collection or enforcement of the judgment at any time within ten years from entry of the judgment or the filing of the judgment in this state.

(2) After July 23, 1989, a party who obtains a judgment or order of a court or an administrative order entered as defined in RCW 74.20A.020(6) for accrued child support, or the assignee or the current holder thereof, may have an execution, garnishment, or other legal process issued upon that judgment or order at any time within ten years of the eighteenth birthday of the youngest child named in the order for whom support is ordered.

(3) After June 9, 1994, a party in whose favor a judgment has been filed as a foreign judgment or rendered pursuant to subsection (1) or (4) of this section, or the assignee or the current holder thereof, may, within ninety days before the expiration of the original ten-year period, apply to the court that rendered the judgment or to the court where the judgment was filed as a foreign judgment for an order granting an additional ten years during which an execution, garnishment, or other legal process may be issued. If a district court judgment of this state is transcribed to a

superior court of this state, the original district court judgment shall not be extended and any petition under this section to extend the judgment that has been transcribed to superior court shall be filed in the superior court within ninety days before the expiration of the ten-year period of the date the transcript of the district court judgment was filed in the superior court of this state. The petitioner shall pay to the court a filing fee equal to the filing fee for filing the first or initial paper in a civil action in the court, except in the case of district court judgments transcribed to superior court, where the filing fee shall be the fee for filing the first or initial paper in a civil action in the superior court where the judgment was transcribed. The order granting the application shall contain an updated judgment summary as provided in RCW 4.64.020. The filing fee required under this subsection shall be included in the judgment summary and shall be a recoverable cost. The application shall be granted as a matter of right, subject to review only for timeliness, factual issues of full or partial satisfaction, or errors in calculating the judgment summary amounts.

(4) A party who obtains a judgment or order for restitution, crime victims' assessment, or other court-ordered legal financial obligations pursuant to a criminal judgment and sentence, or the assignee or the current holder thereof, may execute, garnish, and/or have legal process issued upon the judgment or order any time within ten years subsequent to the entry of the judgment and sentence or ten years following the offender's release from total confinement as provided in

chapter 9.94A RCW. The clerk of superior court, or a party designated by the clerk, may seek extension under subsection (3) of this section for purposes of collection as allowed under RCW 36.18.190, provided that no filing fee shall be required.

(5) "Court" as used in this section includes but is not limited to the United States supreme court, the United States courts of appeals, the United States district courts, the United States bankruptcy courts, the Washington state supreme court, the court of appeals of the state of Washington, superior courts and district courts of the counties of the state of Washington, and courts of other states and jurisdictions from which judgment has been filed in this state under chapter 6.36 or 6.40 RCW.

(6) The perfection of any judgment lien and the priority of that judgment lien on property as established by RCW 6.13.090 and chapter 4.56 RCW is not altered by the extension of the judgment pursuant to the provisions of this section and the lien remains in full force and effect and does not have to be rerecorded after it is extended. Continued perfection of a judgment that has been transcribed to other counties and perfected in those counties may be accomplished after extension of the judgment by filing with the clerk of the other counties where the judgment has been filed either a certified copy of the order extending the judgment or a certified copy of the docket of the matter where the judgment was extended.

(7) Except as ordered in RCW 4.16.020(2) or (3), chapter 9.94A RCW, or chapter 13.40 RCW,

no judgment is enforceable for a period exceeding twenty years from the date of entry in the originating court. Nothing in this section may be interpreted to extend the expiration date of a foreign judgment beyond the expiration date under the laws of the jurisdiction where the judgment originated.

(8) The chapter 261, Laws of 2002 amendments to this section apply to all judgments currently in effect on June 13, 2002, to all judgments extended after June 9, 1994, unless the judgment has been satisfied, vacated, and/or quashed, and to all judgments filed or rendered, or both, after June 13, 2002.

[2002 c 261 § 1; 1997 c 121 § 1; 1995 c 231 § 4; 1994 c 189 § 1; 1989 c 360 § 3; 1987 c 442 § 402; 1980 c 105 § 4; 1971 c 81 § 26; 1929 c 25 § 2; RRS § 510. Prior: 1888 p 94 § 1; Code 1881 § 325; 1877 p 67 § 328; 1869 p 79 § 320; 1854 p 175 § 242. Formerly RCW 6.04.010.]