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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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BANK OF AMERICA, N.A.

Petitioner,

v.

MICHAEL FULBRIGHT, et ux.,

Respondents.

ANSWER TO PETITION FOR REVIEW

MICHAEL FULBRIGHT

Of a Published Decision of

The Court of Appeals (Division One), No. 67608-3-I

Michael Fulbright, WSBA #11821
Respondent
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ORIGINAL

TABLE OF CONTENTS

IDENTITY OF RESPONDENTS..... 1

COURT OF APPEALS DECISION..... 1

ISSUES PRESENTED FOR REVIEW 1

STATEMENT OF THE CASE..... 2

 A. Key Facts 2

 B. Controlling Statutes 3

 C. Decisions Below 5

 D. Recent Statutory Amendment 8

ARGUMENT 8

 A. There is No Conflict with Supreme Court Decisions 9

 B. SB 5541 is a Substantive Change to the Redemption
 Statute, Not a Clarification 11

 C. SB 5541 is Not Retroactive 12

 D. There is No Other Substantial Public Importance 15

CONCLUSION..... 16

CERTIFICATE OF MAILING..... 18

APPENDIX..... A-1

 Court of Appeals No. 67608-3-I A-1

 RCW 64.34.364 (Condominium Lien Statute) A-8

 RCW 6.23.010 (Redemption Statute) A-10

SB 5541.....	A-11
RCW 64.34.020	A-14
RCW 64.34.304	A-17
RCW 64.34.308	A-19
RCW 64.34.360	A-21
RCW 6.23.060	A-22
RCW 6.23.030	A-23
CoreLogic Non-Judicial States Foreclosure Rankings	A-26

TABLE OF AUTHORITIES

A. Table of Cases

<i>Densley v. Department of Retirement Systems</i> , 162 Wn.2d, 210, 173 P.3d 885 (2007).....	11, 13, 14, 15
<i>Fidelity Mutual v. Mark</i> , 112 Wash.2d 47, 767 P.2d 1382, 1386 (1989).....	14
<i>GESA Federal Credit Union v. Mutual Life Insurance Company</i> , 105 Wn.2d 248, 713 P.2d 728 (1986).....	14
<i>Krutz v. Gardner</i> , 25 Wn. 396, 65 P. 771 (1901)	10
<i>McGee Guest Home, Inc. v. Dept of Soc. & Health Servs.</i> , 142 Wn.2d 316, 12 P.3d 144 (2000) (en banc).....	13
<i>Millay v. Cam</i> , 135 Wn.2d 193, 955 P. 791 (1998).....	9, 10
<i>Rustad Heating and Plumbing Company v. Waldt</i> , 91 Wn.2d 372, 588 P.2d 1153 (1979)	9

<i>In RE Personal Restraint W. Stewart</i> , 115 Wn.App. 319, 75 P.3d 521 (1992).....	11
<i>Summerhill v. Roughley</i> , __ Wn.App. __, 289 P.3d 645 (2012).....	passim
<i>Waggoner v. Ace Hardware Corp.</i> , 134 Wn.2d 748, 953 P.2d 88 (1998).....	11
<i>W.T. Watts, Inc. v. Sherrer</i> , 89 Wn.2d 245, 248-49, 571 P.2d 203 (1977).....	12

B. Statutes

RCW 6.21.080	4
RCW 6.23.010 (the “Redemption Statute”).....	passim
RCW 6.23.030	14
RCW 6.23.060	13
RCW 6.24.130	14
RCW 6.24.145	14
RCW 6.24.160	13
RCW 64.34.020(27).....	4
RCW 64.34.304(1)(b).....	8
RCW 64.34.308(3).....	8
RCW 64.34.360	4, 8
RCW 64.34.364 (the “Condominium Lien Statute”).....	passim
Laws of 2013, Ch. 53, § 1 (Senate Bill 5541)	passim

IDENTITY OF RESPONDENTS

Michael G. Fulbright and Jane Doe Fulbright are the Respondents. Michael G. Fulbright is an active member of the Washington State Bar Association representing Respondents in this matter.

COURT OF APPEALS DECISION

Petitioner Bank of America, N.A. (“Bank of America”) filed a petition (the “Bank Petition”) for Supreme Court review of the published opinion in BAC Home Loans Servicing, LP v. Fulbright, Court of Appeals (Division One) No. 67608-3-I, filed on April 8, 2013, 298 P.3d 779. A copy of the opinion is in the Appendix hereto, at pages A-1 to A-7.

ISSUES PRESENTED FOR REVIEW

Respondents are not seeking review of any additional issues, but would state the issues raised in the Bank Petition as follows.

1. Was the Court of Appeals correct in ruling against Bank of America’s redemption claim in accordance with the unambiguous terms of 64.34.364 (A-8 to A-9) (the “Condominium Lien Statute”) and RCW 6.23.010 (A-10) (the “Redemption Statute”)?
2. Does SB 5541 (A-11 to A-13), which was enacted almost two years after the one-year redemption period expired, retroactively allow redemption by Bank of America?

STATEMENT OF THE CASE

This case concerns redemption rights following judicial foreclosure of a condominium assessment lien. The key facts are straightforward and the controlling statutes are not ambiguous. The decisions below applied the Condominium Lien Statute and the Redemption Statute in accordance with their plain, unambiguous meanings.

A. Key Facts.

Tanglewood at Klahanie, a Condominium (“Tanglewood”), was established pursuant to a condominium declaration recorded on December 20, 2006 (CP 40-98). This action concerns one of the Tanglewood condominium units (the “Unit”). In March 2007, Bank of America made a loan that was secured by a deed of trust recorded against the Unit (the “2007 Deed of Trust”) (CP 138, 141-58).

The Unit owner stopped paying monthly condominium assessments in May 2008 (CP 370). Under the Condominium Lien Statute, unpaid assessments are a lien against the Unit from the time the assessment is due, and such lien has a limited priority over deeds of trust recorded before the lien arises. RCW 64.34.364(1), (2) and (3), (A-8).

In January 2009, the Tanglewood condominium association filed a foreclosure action against both the Unit owner and Bank of America (CP

165-69). After the owner and Bank of America both failed to respond, a Default Judgment, Order and Foreclosure Decree was entered against them on June 24, 2009 (CP 170-74). The judgment provided for a one-year redemption period after the sheriff's sale (CP 173).

On May 7, 2010, the King County Sheriff sold the Unit to Fulbright for \$14,481.83 (CP 175-76). Bank of America only needed to pay the Association either \$1,866.02 or \$3,027.02, depending upon when paid, to satisfy the assessment lien priority (CP 351-52). If it had done so, the sheriff's sale would not have extinguished the 2007 Deed of Trust. Because Bank of America failed to pay the limited priority lien amount or otherwise respond, the sheriff's sale extinguished the 2007 Deed of Trust.

On April 29, 2011, shortly before expiration of the redemption period on May 9, 2011, Bank of America attempted to redeem the Unit (CP 204-05). Fulbright objected because Bank of America is not an authorized redemptioner under RCW 6.23.010 (CP 228-29). Bank of America then filed this action seeking a declaratory judgment (CP 1-8).

B. Controlling Statutes.

The Condominium Lien Statute provides:

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

(2) A lien under this section shall be prior to all other liens and encumbrances on a unit except: (a) Liens and encumbrances recorded before the recording of the declaration; (b) a mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and (c) liens for real property taxes and other governmental assessments or charges against the unit....

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

...

(7) Recording of the declaration constitutes record notice and perfection of the lien for assessments. While no further recording of any claim of lien for assessment under this section shall be required to perfect the association's lien, the association may record a notice of claim of lien for assessment under this section in the real property records of any county in which the condominium is located....

RCW 64.34.364 (emphasis added) (A-9 to A-10). The term "mortgage" includes a deed of trust. RCW 64.34.020(27) (A-14).

The Redemption Statute provides:

(1) Real property sold subject to redemption, as provided in RCW §6.21.080, or any part thereof separately sold, may be redeemed by the following persons, or their successors in interest:

(a) The judgment debtor, in whole or any part of the property separately sold.

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

RCW 6.23.010(1) (emphasis added) (A-8).

C. Decisions Below.

The Superior Court entered a summary judgment that Bank of America was not an authorized redemptioner (CP 410-13). The Court of Appeals affirmed the Superior Court judgment, following and amplifying another recent decision, *Summerhill Vill. Homeowners Ass'n v. Roughley*, ___ Wn. App. ___, 289 P.3d 645 (2012), involving similar facts and the same statutes (A-3). Bank of America wants this Court to reverse the appellate ruling in this case and overturn *Summerhill*.

As demonstrated by the opinion portions quoted below, the Superior Court and Court of Appeals decisions were based on the plain and unambiguous terms of the controlling statutes.

Key portions of *Summerhill* provide as follows:

A condominium homeowners' association enjoys a statutory super priority lien for certain delinquent assessments. Where such a lien is foreclosed, Washington's redemption statute offers no safe haven to mortgage lenders who ignore the proceedings. Here, the trial court properly ruled the lender is not a proper redemptioner. We affirm.

Therefore, under the statute, Summerhill's 2008 assessment lien had priority over the 2006 Deed of Trust to the extent of

Summerhill's assessments for common expenses.... The sale extinguished the 2006 deed of trust. The question now is whether Deutsche Bank can redeem. [footnote omitted.]

...

To qualify as a redemptioner, the holder of a lien by deed of trust must have acquired that lien "subsequent in time" to the one being foreclosed.

...

GMAC also contends a literal reading leads to absurd consequences such as those here, where a stranger to the property is allowed a windfall, the mortgage debtor is left with a deficiency, and the secured lender is punished....

The problem with this argument is that the language of the statute is unambiguous, and the expressed legislative intent is consistent with the language. The legislature created the super priority lien and did not amend the redemption statute. There is no sign of legislative confusion as to the difference between a lien subsequent in time but junior in priority. And it is evident from the official comment that the consequences of that difference were intentional: "As a practical matter, mortgage lenders will most likely pay the assessments ... *rather than having the association foreclose on the unit and eliminate the lender's mortgage lien.*" [footnote omitted.]

Nor does a literal reading lead to unlikely, absurd, or strained consequences. GMAC had both notice and opportunity to protect its interest and failed to do so.

This is a highly technical statutory scheme, not for casual tinkering by courts. We will not rewrite the redemption statute because a lien-holder's lack of diligence has had unexpected consequences. [footnote omitted.]

Summerhill, at 646, 648-49.

In this case, the Court of Appeals went on to amplify the reasons a condominium assessment lien does not arise or exist immediately upon

recording the condominium declaration (A-3). The decision provides:

As we held in *Summerhill*, the association's lien arises under RCW 64.34.364(1) "from the time the assessment is due." The reference to the recording of the condominium declaration in RCW 64.34.364(7) does not determine when the association's lien arises. If the unit on which the association forecloses a superpriority lien is already subject to a deed of trust, the holder of the deed of trust is not a proper redemptioner because its lien is not "subsequent in time" to the lien on which the property was sold. RCW 6.23.010(1)(b). The trial court properly entered summary judgment rejecting the lender's attempt to redeem.

...

The bank makes RCW 64.34.364(7) the centerpiece of its argument that an association's lien arises earlier, when the declaration of condominium is recorded.

...

According to the bank, the only function of [RCW 64.34.364(1)] is to state the time when the right to enforce the already existing lien begins. The bank argues that the lien comes into existence at the time the declaration of condominium is recorded because under subsection (7), the recording of the declaration "constitutes record notice and perfection of the lien for assessments."

The bank fails to explain its assertion that the terms "record notice and perfection" in subsection (7) necessarily signify the time at which a lien comes into being. The bank argues that a lien cannot be "perfected" that does not yet exist, but the bank does not cite authority for this proposition.

Subsection (1) speaks directly to timing. "The association has a lien on a unit for any unpaid assessment levied against a unit *from the time* the assessment is due." RCW 64.34.364(1). Stated another way, before "the time the assessment is due," the association has no lien.

... An assessment against a unit cannot be "unpaid" until a unit owner's association has been organized, the association levies

assessments against the unit, and the association receives no payment within the allotted time. At the time the declaration of condominium is recorded, none of these events have occurred. Therefore, a lien for unpaid assessments cannot exist at that time. [See RCW 64.34.304(1)(b), .308(3) and .360(1); (A-17 to A-21).]

The meaning of subsection (7) is that the recording of the condominium declaration “constitutes record notice and perfection of the lien for assessments” that may arise in the future as provided by subsection (1). Recording of the declaration does not accelerate when the actual lien for any given assessment arises or first exists. Recording of the declaration simply gives notice to the world that assessment liens may arise in the future against units in the condominium.

(A-1, A-4 to A-6). Furthermore, RCW 64.34.364(15) provides a method to determine if there is an assessment lien at any given time (A-9).

D. Recent Statutory Amendment.

On April 15, the Governor signed SB 5541 into law, with an effective date of July 28, 2013. Laws of 2013, Ch. 53, § 1 (A-11 to A-13). SB 5541 amends RCW 6.23.010(b) to read “subsequent in priority” instead of “subsequent in time” (A-12).

ARGUMENT

The Bank Petition is directed more at taking potshots at the decisions below than the criteria for Supreme Court review. Bank of America does not specifically refer to RAP 13.4(b), but it seems to be seeking review under RAP 13.4(b)(1) [conflict with a Supreme Court decision] and RAP 13.4(b)(4) [substantial public interest].

A. There is No Conflict with Supreme Court Decisions.

No Washington Supreme Court decision addresses redemption rights following foreclosure of a condominium assessment lien, but Bank of America claims conflict with three particular cases.

First, Bank of America claims conflict with *Rustad Heating and Plumbing Company v. Waldt*, 91 Wn.2d 372, 588 P.2d 1153 (1979). Bank Petition at 6. In *Rustad*, the Court ruled that a deed of trust is a type or “species” of mortgage under a prior version of the Redemption Statute that did not specifically reference deeds of trust. *Id.* at 376. *Rustad* did not disregard any plain, unambiguous language or rewrite the Redemption Statute as now requested by Bank of America. There is no conflict with *Rustad*.

Second, Bank of America claims conflict with *Millay v. Cam*, 135 Wn.2d 193, 955 P. 791 (1998). Bank Petition at 6-7. *Millay* did not involve any dispute over who was authorized to redeem, but rather, the procedure used to exercise the redemption right. *Id.* at 196. The *Millay* Court used the phrase “junior lien creditors” as a convenient shorthand description of the actual statute. *Id.* at 198. The difference between “junior lien creditors” and “subsequent in time” was never at issue.

Since there is no difference in most cases, it is not surprising to see phrases like “junior lienholder” and “subsequent in time” used somewhat

interchangeably by courts and secondary authorities. But *Millay* was not considering the effect of a super priority lien, and there is no indication that the dicta in *Millay* was intended to modify the Redemption Statute. To the contrary, *Millay* recognized that “a court will neither amend a statute in the guise of judicial construction nor rewrite a statute to avoid difficulties in construing or applying it.” *Id.* at 203. Likewise, none of the secondary authorities cited by Bank of America indicate any consideration of the effect of a super priority lien (like a condominium assessment lien), or the difference between subsequent in time and junior priority.

Third, Bank of America claims conflict with *Krutz v. Gardner*, 25 Wn. 396, 65 P. 771 (1901). Bank Petition at 7. Although *Krutz* involved a super-priority public assessment lien, it deals with the right to equitable redemption before foreclosure of the lien: *i.e.*, the right to pay off the lien before a foreclosure sale occurs. *Id.* at 399-400. The junior lienholder in *Krutz* was not eliminated by the public lien foreclosure because it was not named in that action. *Id.* at 399. As a result, the *Krutz* lienholder could still pay off the public assessment lien to avoid a future foreclosure against its interest. *Krutz* did not involve statutory redemption by a lienholder otherwise eliminated by a foreclosure sale. Simply put, *Krutz* is not a statutory redemption case and has no bearing on this case or *Summerhill*.

**B. SB 5541 is a Substantive Change to the Redemption Statute,
Not a Clarification.**

After successfully lobbying the Legislature to amend the Redemption Statute, Bank of America argues that this Court should reinterpret the current Redemption Statute to match the amendment in SB 5541, which does not go into effect until July 28, 2013. Bank Petition at 5. Bank of America cites *Waggoner v. Ace Hardware Corp.* for this proposition, but fails to acknowledge that a subsequent amendment only comes into play in interpreting prior law “where the original enactment was ambiguous”. *Id.*; 134 Wn.2d 748, 755, 953 P.2d 88 (1998); *See also In RE Personal Restraint W. Stewart*, 115 Wn.App. 319, 339-40, 75 P.3d 521 (1992).

As stated in *Densley v. Department of Retirement Systems*:

Only statutes that are ambiguous require judicial construction and statutes are not ambiguous simply because different interpretations are conceivable.

162 Wn.2d, 210, 221, 173 P.3d 885 (2007) (citation and internal quotation marks omitted). The current Redemption Statute differs from SB 5541, but none of the seven Judges involved to date in this case and Summerhill found any ambiguity in the current Redemption Statute. Bank of America seems to argue that the Redemption Statute somehow became ambiguous because Bank of America convinced the Legislature to change it. A change in law may clarify a statute that was ambiguous before, but does

not create an ambiguity that did not previously exist. Bank of America cites no legal authority for its novel concept of retroactive ambiguity.

Bank of America claims “manifest public interest” because the Legislature amended the Redemption Statute. Bank Petition at 8. Bank of America cites no authority for the proposition that a successful lobbying effort means lower appellate court decisions about the prior law are *ipso facto* of substantial public interest. To the contrary, the legislative change in this case in fact lessens any potential public interest because it limits the affect of *Summerhill* and this case to foreclosure sales before the effective date of SB 5541. This case and *Summerhill* will not be relevant for much longer in any event.

C. SB 5541 is Not Retroactive.

Bank of America argues that SB 5541 should apply retroactively so that Bank of America can take the Unit away from Fulbright over two years after the redemption period expired. Bank of America cites *W.T. Watts, Inc. v. Sherrer* for the general proposition that a sheriff’s certificate of purchase does not pass title, but omits other more relevant portions, which state:

This court has recognized long ago that a sheriff’s certificate of purchase does not pass title but is only evidence of an inchoate interest which may or may not ripen into title.

... and RCW 6.24.160 [now 6.23.060] gives him the right to a conveyance at the expiration of the redemption period.

Bank Petition at 12; 89 Wn.2d 245, 248-49, 571 P.2d 203 (1977)

(emphasis added) (citations omitted) (A-22).

In this case, Fulbright's inchoate right ripened into a title right when no qualified redemptioner redeemed before the redemption period expired on May 9, 2011. Bank of America's attempt to redeem when it was not qualified does not extend the redemption period.

Retroactivity is summarized as follows:

As a general proposition, courts disfavor retroactivity. A statute is presumed to operate prospectively unless the Legislature indicates that it is to operate retroactively. This presumption can only be overcome if (1) the Legislature explicitly provides for retroactivity; (2) the amendment is curative; or (3) the statute is remedial.

Densley at 223 (citations and internal quotation marks omitted). SB 5541 does not mention retroactivity and Bank of America does not argue that retroactivity was intended, but Bank of America incorrectly claims SB 5541 is both curative and remedial. Bank Petition at 10-12.

An amendment is not curative unless "it clarifies or technically corrects an ambiguous statute." *McGee Guest Home, Inc. v. Dept of Soc. & Health Servs.*, 142 Wn.2d 316, 325, 12 P.3d 144 (2000) (en banc) (citation omitted) (emphasis added). There is nothing ambiguous about the "subsequent in time" wording in the Redemption Statute as it currently

stands and as applied by the Superior Courts and the Courts of Appeals in this case and *Summerhill*. Because RCW 6.23.010 is not ambiguous, SB 5541 is not curative.

The Washington Supreme Court has already addressed what is and what is not remedial when it comes to the Redemption Statute.

The redemption statute involves a number of provisions, some of which confer a statutory right, e.g., RCW 6.24.130 [now RCW 6.23.010 (A-10)], and some of which establish a procedure by which that right is perfected, e.g. RCW 6.24.145 [now 6.23.030 (A-23 to A-25)]. A statute is remedial when it relates to practice, procedure, or remedies and does not affect a substantive or vested right.

GESA Federal Credit Union v. Mutual Life Insurance Company, 105 Wn.2d 248, 254-55, 713 P.2d 728 (1986) (citation and internal quotation marks omitted). In *Fidelity Mutual v. Mark*, the Court held that the right to redeem under RCW 6.23.010 is a substantive right. 112 Wash.2d 47, 55, 767 P.2d 1382, 1386 (1989). Bank of America wants to use SB 5541 to divest Fulbright of the substantive title right that otherwise ripened and vested when the redemption period expired on May 9, 2011.

Effective July 28, 2013, SB 5541 grants deed of trust holders that are junior in priority, but not subsequent in time, a new substantive right to redeem. The Court was presented with a similar situation in *Densley* where the appellant “wants this amendment applied retroactively precisely because it provides him with a new substantive right”, and the Court ruled

that such an amendment is not remedial. *Densley* at 224. Because the right to redeem is a substantive right, SB 5541 is not remedial.

Simply put, SB 5541 is not retroactive because (1) there is no indication the Legislature intended it to be retroactive, (2) it is not curative (because the current statute is not ambiguous), and (3) it is not remedial (because it concerns a substantive right).

D. There is No Other Substantial Public Importance.

Bank of America also claims “substantial public interest” because this case and *Summerhill* affect an unknown number of deed of trust and other lienholders. Bank Petition at 9-11. But Bank of America points to only six other pending deed of trust cases, where the lenders also ignored the condominium foreclosure (five with Bank of America and one with The Bank of New York Mellon), and no cases involving any other types of liens. *Id.* at 11. By comparison, CoreLogic reports that 14,437 non-judicial (deed of trust) foreclosures were completed in Washington in the year period ending with February 2013 (A-26). Six deed of trust cases does not amount to even a footnote for these large lenders, let alone constitute a “substantial public interest”.

There is good reason why Bank of America does not point to any pending case regarding any other type of lien. Deed of trust lenders do not ordinarily lend on properties already subject to other types of liens.

Occasionally, a judgment or other lien can arise after a deed of trust, but prior to a condominium assessment lien that is ultimately foreclosed. Because its lien remains subordinate to the deed of trust, the chances are remote that such a lienholder would choose to redeem. Furthermore, any such lienholder that has a position worth protecting can pay off the condominium lien anytime before the sheriff's sale occurs. The suggestion that *Summerhill* and this case could affect a large number of lienholders is not supported in fact, and contrary to logic and experience. And as noted above, SB 5541 further limits the number of these theoretical lienholders to foreclosures occurring before its effective date.

The fact that deed of trust lenders like Bank of America will lose a handful of cases where they failed to respond to a condominium foreclosure action does not amount to a "substantial public interest".

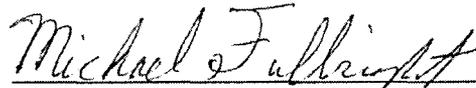
CONCLUSION

Bank of America had ample opportunity to protect its position and failed to do so. The Superior Court and Court of Appeals decisions in this case and *Summerhill* are based on the plain and unambiguous terms of the Condominium Lien Statute and the Redemption Statute. Those decisions do not conflict with any Supreme Court decisions. SB 5541 cannot be applied retroactively to deprive Fulbright of the title right that ripened and vested when the redemption period expired over two years ago. Neither

the handful of cases in which Bank of America failed to protect its interest, nor the speculative or theoretical impacts claimed by Bank of America, are of substantial public importance, especially considering that the Redemption Statute is already changing when SB 5541 becomes effective on July 28, 2013. This Court should deny the petition for review.

RESPECTFULLY SUBMITTED this 4th day of June, 2013.

LAW OFFICE OF MICHAEL FULBRIGHT

A handwritten signature in cursive script that reads "Michael Fulbright". The signature is written in black ink and is positioned above a horizontal line.

Michael Fulbright, WSBA #11821
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CERTIFICATE OF MAILING

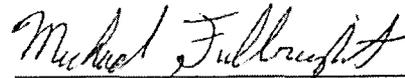
I certify that I mailed a copy of the foregoing Answer to Petition for Review and the attached Appendix to the Appellant's attorneys listed below, at the addresses listed below, postage prepaid, on June 4, 2013.

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I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Signed at Bellevue, Washington, on June 4, 2013.



Michael Fulbright, WSBA #11821

2013 APR -8 AM 10: 18

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

BAC HOME LOANS SERVICING, LP, a) foreign limited partnership,) Appellant,) v.) MICHAEL FULBRIGHT and JANE DOE) FULBRIGHT, individually and the) marital community composed thereof,) Respondents.)	No. 67608-3-1 DIVISION ONE PUBLISHED OPINION FILED: April 8, 2013
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BECKER, J. — This court addressed the priority of a lien for unpaid condominium assessments in Summerhill Vill. Homeowners Ass'n v. Roughley, ___ Wn. App. ___, 289 P.3d 645 (2012). As we held in Summerhill, the association's lien arises under RCW 64.34.364(1) "from the time the assessment is due." The reference to the recording of the condominium declaration in RCW 64.34.364(7) does not determine when the association's lien arises. If the unit on which the association forecloses a superpriority lien is already subject to a deed of trust, the holder of the deed of trust is not a proper redemptioner because its lien is not "subsequent in time" to the lien on which the property was sold. RCW 6.23.010(1)(b). The trial court properly entered summary judgment rejecting the lender's attempt to redeem.

The condominium in this case is Tanglewood at Klahanie in Issaquah. In 2006, the declaration of condominium was recorded. In 2007, Bank of America¹ recorded a deed of trust on a unit in the Tanglewood condominium. The deed of trust secured the bank's loan of \$277,000 to Jeanne Lewis for purchase of the unit.

In May 2008, Lewis became delinquent in paying the monthly condominium assessments due to the Tanglewood homeowners' association.

In 2009, the association began a judicial foreclosure proceeding to collect the delinquent assessments. The lawsuit named Lewis, her marital community, and Bank of America as defendants. The bank was served with the summons and complaint the following week, in early February 2009. The bank did not respond. Lewis also failed to respond. In June 2009, the trial court entered a default judgment, order, and foreclosure decree against all defendants.

In May 2010, the King County Sheriff's Office held a public auction. Michael Fulbright, respondent in this appeal, bought the unit at the auction for a high bid of \$14,481.83—the total of the unpaid assessments, plus \$100.00.

In June 2010, the sale was confirmed by court order.

In April 2011, within the statutory time limit for redemption, Bank of America notified the sheriff's office of its intent to redeem the unit under the Washington redemption law, chapter 6.23 RCW. The bank intended to redeem

¹ Although the caption refers to the appellant in this case as BAC Home Loans Servicing LP, the parties' briefs reflect that this entity has merged into Bank of America and that Bank of America is now the proper appellant.

No. 67608-3-1/3

the unit from Fulbright by paying him the purchase price he paid at the sheriff's sale, plus Fulbright's costs and accrued interest. The sheriff's office forwarded the notice to Fulbright. Fulbright objected that the bank was not a qualified redemptioner. The bank sent the sheriff's office a cashier's check. The sheriff's office refused to issue a certificate of redemption.

In May 2011, the bank sued Fulbright in superior court, seeking a declaratory judgment that it was authorized to redeem the property. Fulbright counterclaimed for an order quieting title in his favor. There were no disputed issues of fact. The trial court denied the bank's motion for summary judgment and quieted title in Fulbright. The bank then brought this appeal.

Bank of America contends the trial court erred in its interpretation of the condominium assessment lien statute, RCW 64.34.364, as it applies to Washington's redemption statute, RCW 6.23.010.

We considered the interaction of these statutes in our recent opinion in Summerhill, a factually similar case. Summerhill, 289 P.3d at 647-49. We adhere to that opinion and rely on it in affirming the trial court's decision in this case. The only difference between this opinion and Summerhill is that here, we have the opportunity to amplify our reasons for holding that a condominium association's superpriority lien for unpaid assessments for common expenses arises after the deed of trust lien on the unit, not before—notwithstanding RCW 64.34.364(7).

In Summerhill, the issue of the effect of RCW 64.34.364(7) was raised

No. 67608-3-1/4

belatedly in a motion for reconsideration by GMAC Mortgage LLC, the entity in the position that Bank of America occupies in the present case. We issued a substitute opinion in which we briefly addressed the new argument in a footnote.

The footnote stated:

RCW 64.34.364(7) provides that recording of a condominium association declaration "constitutes record notice and perfection of the lien for assessments." In a motion for reconsideration, GMAC contends this provision means any mortgage loan made after the filing of the declaration is subsequent in time for purposes of RCW 6.23.010(1)(b). We reject this contention. The association's lien does not arise until the "assessment is due." RCW 64.34.364(1).

Summerhill, 289 P.3d at 648 n.7.

In the present case, Bank of America disputes Summerhill's holding that an association's lien for an assessment does not arise until the assessment is due. The bank makes RCW 64.34.364(7) the centerpiece of its argument that an association's lien arises earlier, when the declaration of condominium is recorded. The bank thus argues that because the Tanglewood declaration of condominium was recorded in 2006 and the bank's deed of trust was not recorded until 2007, the bank's deed of trust was "subsequent in time" to the assessment lien and was therefore subject to redemption under RCW 6.23.010.

The relevant provisions of the condominium assessment lien statute are as follows:

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

....
(7) Recording of the declaration constitutes record notice and perfection of the lien for assessments. While no further recording of any claim of lien for assessment under this section shall be

required to perfect the association's lien, the association may record a notice of claim of lien for assessments under this section in the real property records of any county in which the condominium is located. Such recording shall not constitute the written notice of delinquency to a mortgagee referred to in subsection (2) of this section.

RCW 64.34.364(1), (7).

According to the bank, the only function of subsection (1) is to state the time when the right to enforce the already existing lien begins. The bank argues that the lien comes into existence at the time the declaration of condominium is recorded because under subsection (7), the recording of the declaration "constitutes record notice and perfection of the lien for assessments."

The bank fails to explain its assertion that the terms "record notice and perfection" in subsection (7) necessarily signify the time at which a lien comes into being. The bank argues that a lien cannot be "perfected" that does not yet exist, but the bank does not cite authority for this proposition.

Subsection (1) speaks directly to timing. "The association has a lien on a unit for any unpaid assessments levied against a unit *from the time the assessment is due.*" RCW 64.34.364(1) (emphasis added). Stated another way, *before* "the time the assessment is due," the association has no lien.

The lien expressly belongs to the association. It is described in subsection (1) as "a lien . . . for any *unpaid* assessments levied" against a unit. RCW 64.34.364(1) (emphasis added). An assessment against a unit cannot be "unpaid" until a unit owner's association has been organized, the association levies assessments against the unit, and the association receives no payment

No. 67608-3-1/6

within the allotted time. At the time the declaration of condominium is recorded, none of these events have occurred. Therefore, a lien for unpaid assessments cannot exist at that time.

The meaning of subsection (7) is that the recording of the condominium declaration "constitutes record notice and perfection of the lien for assessments" that may arise in the future as provided by subsection (1). Recording of the declaration does not accelerate when an actual lien for any given assessment arises or first exists. Recording of the declaration simply gives notice to the world that assessment liens may arise in the future against units in the condominium.

The Tanglewood condominium declaration was recorded in 2006. When Bank of America's deed of trust against the Lewis unit was recorded in 2007, the recording of the declaration gave the bank notice that a future assessment lien might arise if Lewis became delinquent on her assessments. As it turned out, Lewis did become delinquent in May 2008. From May 2008 onward, the Tanglewood association had a lien against the Lewis unit. When the association initiated foreclosure proceedings, the bank was made a defendant and received notice. This was the bank's opportunity to step in and pay off the delinquent assessments in order to avoid having its own lien eliminated. See Summerhill, 289 P.3d at 648 & n.6. The bank missed this opportunity.

The bank's deed of trust was recorded before the lien for assessments came into existence, not afterwards. Because its lien was not "subsequent in

No. 67608-3-1/7

time" to the association's lien as required by RCW 6.23.010(2) for the bank to be an authorized redemptioner, the redemption statute does not afford the bank a second chance to protect its lien.

Affirmed.

Becker, J.

WE CONCUR:

Leach, C. J.

Schubert, J.

RCW 64.34.364
Lien for assessments.

*** CHANGE IN 2013 *** (SEE 5077-S.SL) ***

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

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

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

(4) The priority of the association's lien against units encumbered by a mortgage held by an eligible mortgagee or by a mortgagee which has given the association a written request for a notice of delinquent assessments shall be reduced by up to three months if and to the extent that the lien priority under subsection (3) of this section includes delinquencies which relate to a period after such holder becomes an eligible mortgagee or has given such notice and before the association gives the holder a written notice of the delinquency. This subsection does not affect the priority of mechanics' or 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 pursuant to chapter 61.24 RCW, as provided by subsection (9) of this section, the association shall not be entitled to the lien priority provided for under subsection (3) of this section.

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

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

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

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

(10) From the time of commencement of an action by the association to foreclose a lien for nonpayment of delinquent assessments against a unit that is not occupied by the owner thereof, the association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the unit as and when due. If the rental is not paid, the receiver may obtain possession of the unit, refurbish it for rental up to a reasonable standard for rental units in this type of condominium, rent the unit or permit its rental to others, and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the unit, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent assessments. Only a receiver may take possession and collect rents under this

subsection, and a receiver shall not be appointed less than ninety days after the delinquency. The exercise by the association of the foregoing rights shall not affect the priority of preexisting liens on the unit.

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

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

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

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

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

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

[1990 c 166 § 6; 1989 c 43 § 3-117.]

Notes:

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

RCW 6.23.010

Redemption from sale — Who may redeem — Terms include successors.

***** CHANGE IN 2013 *** (SEE 5541.SL) *****

(1) Real property sold subject to redemption, as provided in RCW 6.21.080, or any part thereof separately sold, may be redeemed by the following persons, or their successors in interest:

(a) The judgment debtor, in the whole or any part of the property separately sold.

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

(2) As used in this chapter, the terms "judgment debtor," "redemptioner," and "purchaser," refer also to their respective successors in interest.

[1987 c 442 § 701; 1899 c 53 § 7; RRS § 594. Prior: 1897 c 50 § 15. Formerly RCW 6.24.130.]

CERTIFICATION OF ENROLLMENT

SENATE BILL 5541

Chapter 53, Laws of 2013

63rd Legislature
2013 Regular Session

REAL PROPERTY--REDEMPTION

EFFECTIVE DATE: 07/28/13

Passed by the Senate March 11, 2013
YEAS 47 NAYS 2

BRAD OWEN

President of the Senate

Passed by the House April 9, 2013
YEAS 93 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved April 23, 2013, 4:34 p.m.

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5541** as passed by the Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN

Secretary

FILED

April 24, 2013

Secretary of State
State of Washington

SENATE BILL 5541

Passed Legislature - 2013 Regular Session

State of Washington 63rd Legislature 2013 Regular Session

By Senators Hobbs, Fain, Hatfield, and Harper

Read first time 02/04/13. Referred to Committee on Financial
Institutions, Housing & Insurance.

1 AN ACT Relating to redemption of real property; and amending RCW
2 6.23.010.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 6.23.010 and 1987 c 442 s 701 are each amended to read
5 as follows:

6 (1) Real property sold subject to redemption, as provided in RCW
7 6.21.080, or any part thereof separately sold, may be redeemed by the
8 following persons, or their successors in interest:

9 (a) The judgment debtor, in the whole or any part of the property
10 separately sold.

11 (b) A creditor having a lien by judgment, decree, deed of trust, or
12 mortgage, on any portion of the property, or any portion of any part
13 thereof, separately sold, subsequent in (~~time~~) priority to that on
14 which the property was sold. The persons mentioned in this subsection
15 are termed redemptioners.

16 (2) As used in this chapter, the terms "judgment debtor,"
17 "redemptioner," and "purchaser(~~τ~~)" refer also to their respective

1 successors in interest.

Passed by the Senate March 11, 2013.

Passed by the House April 9, 2013.

Approved by the Governor April 23, 2013.

Filed in Office of Secretary of State April 24, 2013.

RCW 64.34.020
Definitions.

In the declaration and bylaws, unless specifically provided otherwise or the context requires otherwise, and in this chapter:

(1) "Affiliate" means any person who controls, is controlled by, or is under common control with the referenced person. A person "controls" another person if the person: (a) is a general partner, officer, director, or employer of the referenced person; (b) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the referenced person; (c) controls in any manner the election of a majority of the directors of the referenced person; or (d) has contributed more than twenty percent of the capital of the referenced person. A person "is controlled by" another person if the other person: (i) is a general partner, officer, director, or employer of the person; (ii) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

(2) "Allocated interests" means the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit.

(3) "Assessment" means all sums chargeable by the association against a unit including, without limitation: (a) Regular and special assessments for common expenses, charges, and fines imposed by the association; (b) interest and late charges on any delinquent account; and (c) costs of collection, including reasonable attorneys' fees, incurred by the association in connection with the collection of a delinquent owner's account.

(4) "Association" or "unit owners' association" means the unit owners' association organized under RCW 64.34.300.

(5) "Baseline funding plan" means establishing a reserve funding goal of maintaining a reserve account balance above zero dollars throughout the thirty-year study period described under RCW 64.34.380.

(6) "Board of directors" means the body, regardless of name, with primary authority to manage the affairs of the association.

(7) "Common elements" means all portions of a condominium other than the units.

(8) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to RCW 64.34.224.

(9) "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

(10) "Condominium" means real property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real property is not a condominium unless the undivided interests in the common elements are vested in the unit owners, and unless a declaration and a survey map and plans have been recorded pursuant to this chapter.

(11) "Contribution rate" means, in a reserve study as described in RCW 64.34.380, the amount contributed to the reserve account so that the association will have cash reserves to pay major maintenance, repair, or replacement costs without the need of a special assessment.

(12) "Conversion condominium" means a condominium (a) that at any time before creation of the condominium was lawfully occupied wholly or partially by a tenant or subtenant for residential purposes pursuant to a rental agreement, oral or written, express or implied, for which the tenant or subtenant had not received the notice described in (b) of this subsection; or (b) that, at any time within twelve months before the conveyance of, or acceptance of an agreement to convey, any unit therein other than to a declarant or any affiliate of a declarant, was lawfully occupied wholly or partially by a residential tenant of a declarant or an affiliate of a declarant and such tenant was not notified in writing, prior to lawfully occupying a unit or executing a rental agreement, whichever event first occurs, that the unit was part of a condominium and subject to sale. "Conversion condominium" shall not include a condominium in which, before July 1, 1990, any unit therein had been conveyed or been made subject to an agreement to convey to any transferee other than a declarant or an affiliate of a declarant.

(13) "Conveyance" means any transfer of the ownership of a unit, including a transfer by deed or by real estate contract and, with respect to a unit in a leasehold condominium, a transfer by lease or assignment thereof, but shall not include a

transfer solely for security.

(14) "Dealer" means a person who, together with such person's affiliates, owns or has a right to acquire either six or more units in a condominium or fifty percent or more of the units in a condominium containing more than two units.

(15) "Declarant" means:

(a) Any person who executes as declarant a declaration as defined in subsection (17) of this section; or

(b) Any person who reserves any special declarant right in the declaration; or

(c) Any person who exercises special declarant rights or to whom special declarant rights are transferred; or

(d) Any person who is the owner of a fee interest in the real property which is subjected to the declaration at the time of the recording of an instrument pursuant to RCW 64.34.316 and who directly or through one or more affiliates is materially involved in the construction, marketing, or sale of units in the condominium created by the recording of the instrument.

(16) "Declarant control" means the right of the declarant or persons designated by the declarant to appoint and remove officers and members of the board of directors, or to veto or approve a proposed action of the board or association, pursuant to RCW 64.34.308 (5) or (6).

(17) "Declaration" means the document, however denominated, that creates a condominium by setting forth the information required by RCW 64.34.216 and any amendments to that document.

(18) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to: (a) Add real property or improvements to a condominium; (b) create units, common elements, or limited common elements within real property included or added to a condominium; (c) subdivide units or convert units into common elements; (d) withdraw real property from a condominium; or (e) reallocate limited common elements with respect to units that have not been conveyed by the declarant.

(19) "Dispose" or "disposition" means a voluntary transfer or conveyance to a purchaser or lessee of any legal or equitable interest in a unit, but does not include the transfer or release of a security interest.

(20) "Effective age" means the difference between the estimated useful life and remaining useful life.

(21) "Eligible mortgagee" means the holder of a mortgage on a unit that has filed with the secretary of the association a written request that it be given copies of notices of any action by the association that requires the consent of mortgagees.

(22) "Foreclosure" means a forfeiture or judicial or nonjudicial foreclosure of a mortgage or a deed in lieu thereof.

(23) "Full funding plan" means setting a reserve funding goal of achieving one hundred percent fully funded reserves by the end of the thirty-year study period described under RCW 64.34.380, in which the reserve account balance equals the sum of the deteriorated portion of all reserve components.

(24) "Fully funded balance" means the current value of the deteriorated portion, not the total replacement value, of all the reserve components. The fully funded balance for each reserve component is calculated by multiplying the current replacement cost of that reserve component by its effective age, then dividing the result by that reserve component's useful life. The sum total of all reserve components' fully funded balances is the association's fully funded balance.

(25) "Identifying number" means the designation of each unit in a condominium.

(26) "Leasehold condominium" means a condominium in which all or a portion of the real property is subject to a lease, the expiration or termination of which will terminate the condominium or reduce its size.

(27) "Limited common element" means a portion of the common elements allocated by the declaration or by operation of RCW 64.34.204 (2) or (4) for the exclusive use of one or more but fewer than all of the units.

(28) "Master association" means an organization described in RCW 64.34.276, whether or not it is also an association described in RCW 64.34.300.

(29) "Mortgage" means a mortgage, deed of trust or real estate contract.

(30) "Person" means a natural person, corporation, partnership, limited partnership, trust, governmental subdivision or agency, or other legal entity.

(31) "Purchaser" means any person, other than a declarant or a dealer, who by means of a disposition acquires a legal or equitable interest in a unit other than (a) a leasehold interest, including renewal options, of less than twenty years at the time of creation of the unit, or (b) as security for an obligation.

(32) "Real property" means any fee, leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements thereon and easements, rights and interests appurtenant thereto which by custom, usage, or law pass with a conveyance of land although not described in the contract of sale or instrument of conveyance. "Real property" includes parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water.

(33) "Remaining useful life" means the estimated time, in years, before a reserve component will require major maintenance, repair, or replacement to perform its intended function.

(34) "Replacement cost" means the current cost of replacing, repairing, or restoring a reserve component to its original functional condition.

(35) "Reserve component" means a common element whose cost of maintenance, repair, or replacement is infrequent, significant, and impractical to include in an annual budget.

(36) "Reserve study professional" means an independent person who is suitably qualified by knowledge, skill, experience, training, or education to prepare a reserve study in accordance with RCW 64.34.380 and 64.34.382.

(37) "Residential purposes" means use for dwelling or recreational purposes, or both.

(38) "Significant assets" means that the current total cost of major maintenance, repair, and replacement of the reserve components is fifty percent or more of the gross budget of the association, excluding reserve account funds.

(39) "Special declarant rights" means rights reserved for the benefit of a declarant to: (a) Complete improvements indicated on survey maps and plans filed with the declaration under RCW 64.34.232; (b) exercise any development right under RCW 64.34.236; (c) maintain sales offices, management offices, signs advertising the condominium, and models under RCW 64.34.256; (d) use easements through the common elements for the purpose of making improvements within the condominium or within real property which may be added to the condominium under RCW 64.34.260; (e) make the condominium part of a larger condominium or a development under RCW 64.34.280; (f) make the condominium subject to a master association under RCW 64.34.276; or (g) appoint or remove any officer of the association or any master association or any member of the board of directors, or to veto or approve a proposed action of the board or association, during any period of declarant control under RCW 64.34.308(5).

(40) "Timeshare" shall have the meaning specified in the timeshare act, RCW 64.36.010(11).

(41) "Unit" means a physical portion of the condominium designated for separate ownership, the boundaries of which are described pursuant to RCW 64.34.216(1)(d). "Separate ownership" includes leasing a unit in a leasehold condominium under a lease that expires contemporaneously with any lease, the expiration or termination of which will remove the unit from the condominium.

(42) "Unit owner" means a declarant or other person who owns a unit or leases a unit in a leasehold condominium under a lease that expires simultaneously with any lease, the expiration or termination of which will remove the unit from the condominium, but does not include a person who has an interest in a unit solely as security for an obligation. "Unit owner" means the vendee, not the vendor, of a unit under a real estate contract.

(43) "Useful life" means the estimated time, between years, that major maintenance, repair, or replacement is estimated to occur.

[2011 c 189 § 1; 2008 c 115 § 8; 2004 c 201 § 9; 1992 c 220 § 2; 1990 c 166 § 1; 1989 c 43 § 1-103.]

Notes:

Reviser's note: The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

Effective date -- 2011 c 189: See note following RCW 64.38.065.

Effective date -- 1990 c 166: "This act shall take effect July 1, 1990." [1990 c 166 § 16.]

RCW 64.34.304

Unit owners' association — Powers.

- (1) Except as provided in subsection (2) of this section, and subject to the provisions of the declaration, the association may:
- (a) Adopt and amend bylaws, rules, and regulations;
 - (b) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from unit owners;
 - (c) Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;
 - (d) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;
 - (e) Make contracts and incur liabilities;
 - (f) Regulate the use, maintenance, repair, replacement, and modification of common elements;
 - (g) Cause additional improvements to be made as a part of the common elements;
 - (h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, but common elements may be conveyed or subjected to a security interest only pursuant to RCW 64.34.348;
 - (i) Grant easements, leases, licenses, and concessions through or over the common elements and petition for or consent to the vacation of streets and alleys;
 - (j) Impose and collect any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in RCW 64.34.204 (2) and (4), and for services provided to unit owners;
 - (k) Impose and collect charges for late payment of assessments pursuant to RCW 64.34.364(13) and, after notice and an opportunity to be heard by the board of directors or by such representative designated by the board of directors and in accordance with such procedures as provided in the declaration or bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule thereof adopted by the board of directors and furnished to the owners for violations of the declaration, bylaws, and rules and regulations of the association;
 - (l) Impose and collect reasonable charges for the preparation and recording of amendments to the declaration, resale certificates required by RCW 64.34.425, and statements of unpaid assessments;
 - (m) Provide for the indemnification of its officers and board of directors and maintain directors' and officers' liability insurance;
 - (n) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration provides;
 - (o) Join in a petition for the establishment of a parking and business improvement area, participate in the rate payers' board or other advisory body set up by the legislative authority for operation of a parking and business improvement area, and pay special assessments levied by the legislative authority on a parking and business improvement area encompassing the condominium property for activities and projects which benefit the condominium directly or indirectly;
 - (p) Establish and administer a reserve account as described in RCW 64.34.380;
 - (q) Prepare a reserve study as described in RCW 64.34.380;
 - (r) Exercise any other powers conferred by the declaration or bylaws;
 - (s) Exercise all other powers that may be exercised in this state by the same type of corporation as the association; and
 - (t) Exercise any other powers necessary and proper for the governance and operation of the association.
- (2) The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons.

[2008 c 115 § 9; 1993 c 429 § 11; 1990 c 166 § 3; 1989 c 43 § 3-102.]

Notes:

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

RCW 64.34.308

Board of directors and officers.

(1) Except as provided in the declaration, the bylaws, subsection (2) of this section, or other provisions of this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors are required to exercise: (a) If appointed by the declarant, the care required of fiduciaries of the unit owners; or (b) if elected by the unit owners, ordinary and reasonable care.

(2) The board of directors shall not act on behalf of the association to amend the declaration in any manner that requires the vote or approval of the unit owners pursuant to RCW 64.34.264, to terminate the condominium pursuant to RCW 64.34.268, or to elect members of the board of directors or determine the qualifications, powers, and duties, or terms of office of members of the board of directors pursuant to subsection (7) of this section; but the board of directors may fill vacancies in its membership for the unexpired portion of any term.

(3) Within thirty days after adoption of any proposed budget for the condominium, the board of directors shall provide a summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of units to which a majority of the votes in the association are allocated or any larger percentage specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the board of directors.

(4) As part of the summary of the budget provided to all unit owners, the board of directors shall disclose to the unit owners:

(a) The current amount of regular assessments budgeted for contribution to the reserve account, the recommended contribution rate from the reserve study, and the funding plan upon which the recommended contribution rate is based;

(b) If additional regular or special assessments are scheduled to be imposed, the date the assessments are due, the amount of the assessments per each unit per month or year, and the purpose of the assessments;

(c) Based upon the most recent reserve study and other information, whether currently projected reserve account balances will be sufficient at the end of each year to meet the association's obligation for major maintenance, repair, or replacement of reserve components during the next thirty years;

(d) If reserve account balances are not projected to be sufficient, what additional assessments may be necessary to ensure that sufficient reserve account funds will be available each year during the next thirty years, the approximate dates assessments may be due, and the amount of the assessments per unit per month or year;

(e) The estimated amount recommended in the reserve account at the end of the current fiscal year based on the most recent reserve study, the projected reserve account cash balance at the end of the current fiscal year, and the percent funded at the date of the latest reserve study;

(f) The estimated amount recommended in the reserve account based upon the most recent reserve study at the end of each of the next five budget years, the projected reserve account cash balance in each of those years, and the projected percent funded for each of those years; and

(g) If the funding plan approved by the association is implemented, the projected reserve account cash balance in each of the next five budget years and the percent funded for each of those years.

(5)(a) Subject to subsection (6) of this section, the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by the declarant, may: (i) Appoint and remove the officers and members of the board of directors; or (ii) veto or approve a proposed action of the board or association. A declarant's failure to veto or approve such proposed action in writing within thirty days after receipt of written notice of the proposed action shall be deemed approval by the declarant.

(b) Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (i) Sixty days after conveyance of seventy-five percent of the units which may be created to unit owners other than a declarant; (ii) two years after the last conveyance or transfer of record of a unit except as security for a debt; (iii) two years after any development right to add new units was last exercised; or (iv) the date on which the declarant records an amendment to the declaration pursuant to which the declarant voluntarily surrenders the right to further appoint and remove officers and members of the board of directors. A declarant may voluntarily surrender the right to appoint and remove officers and members of the board of directors before termination of that period pursuant to (i), (ii), and (iii) of this subsection (5)(b), but in

that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or board of directors, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(6) Not later than sixty days after conveyance of twenty-five percent of the units which may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent of the members of the board of directors must be elected by unit owners other than the declarant. Not later than sixty days after conveyance of fifty percent of the units which may be created to unit owners other than a declarant, not less than thirty-three and one-third percent of the members of the board of directors must be elected by unit owners other than the declarant.

(7) Within thirty days after the termination of any period of declarant control, the unit owners shall elect a board of directors of at least three members, at least a majority of whom must be unit owners. The number of directors need not exceed the number of units then in the condominium. The board of directors shall elect the officers. Such members of the board of directors and officers shall take office upon election.

(8) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of the voting power in the association present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the board of directors with or without cause, other than a member appointed by the declarant. The declarant may not remove any member of the board of directors elected by the unit owners. Prior to the termination of the period of declarant control, the unit owners, other than the declarant, may remove by a two-thirds vote, any director elected by the unit owners.

[2011 c 189 § 2; 1992 c 220 § 15; 1989 c 43 § 3-103.]

Notes:

Effective date -- 2011 c 189: See note following RCW 64.38.065.

RCW 64.34.360

Common expenses — Assessments.

(1) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments must be made against all units, based on a budget adopted by the association.

(2) Except for assessments under subsections (3), (4), and (5) of this section, all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to RCW 64.34.224(1). Any past due common expense assessment or installment thereof bears interest at the rate established by the association pursuant to RCW 64.34.364.

(3) To the extent required by the declaration:

(a) Any common expense associated with the operation, maintenance, repair, or replacement of a limited common element shall be paid by the owner of or assessed against the units to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;

(b) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited;

(c) The costs of insurance must be assessed in proportion to risk; and

(d) The costs of utilities must be assessed in proportion to usage.

(4) Assessments to pay a judgment against the association pursuant to RCW 64.34.368(1) may be made only against the units in the condominium at the time the judgment was entered in proportion to their allocated common expense liabilities at the time the judgment was entered.

(5) To the extent that any common expense is caused by the misconduct of any unit owner, the association may assess that expense against the owner's unit.

(6) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.

[1990 c 166 § 5; 1989 c 43 § 3-116.]

Notes:

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

RCW 6.23.060

Sheriff's deed — When issued.

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

[1987 c 442 § 706; 1961 c 196 § 2; 1899 c 53 § 10; RRS § 597. Prior: 1897 c 50 § 16. Formerly RCW 6.24.160.]

RCW 6.23.030

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

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

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

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

IN THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR COUNTY
Plaintiff, | CAUSE NO.
vs. | NOTICE OF EXPIRATION OF
Defendant. | REDEMPTION PERIOD

>

TO: [Judgment Debtor]

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

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

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

THE REDEMPTION PERIOD FOR THE PROPERTY
IS MONTHS. THE REDEMPTION PERIOD
COMMENCED ON, 19. . . ., AND WILL EXPIRE AT
4:30 p.m. ON, 19. . . .

If you intend to redeem the property described above
you must give written notice of your intention to the
County Sheriff on or before, 19. . . .

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

Item	Amount
Purchase price paid at sale	\$
Interest from date of sale to date of this notice at percent per annum	\$
Real estate taxes plus interest	\$
Assessments plus interest	\$

Liens or other costs paid by purchaser or purchaser's successor during redemption period plus interest \$
 Lien of redemptioner \$
TOTAL REQUIRED TO REDEEM AS OF THE DATE OF THIS NOTICE \$

You may redeem the property by 4:30 p.m. on or before the day of, 19. . . , by paying the amount set forth above and such other amounts as may be required by law. Payment must be in the full amount and in cash, certified check, or cashier's check. Because such other amounts as may be required by law to redeem may include presently unknown expenditures required to operate, preserve, protect, or insure the property, or the amount to comply with state or local laws, or the amounts of prior liens, with interest, held by the purchaser or a redemptioner, it will be necessary for you to contact the County Sheriff at the address stated below prior to the time you tender the redemption amount so that you may be informed exactly how much you will have to pay to redeem the property.

. SHERIFF-DIRECTOR, COUNTY, WASHINGTON.

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

IF YOU FAIL TO REDEEM THE PROPERTY BY 4:30 p.m. ON OR BEFORE THE DAY OF, 19. . . , THE DATE UPON WHICH THE REDEMPTION PERIOD WILL EXPIRE, THE PURCHASER OR THE PURCHASER'S SUCCESSOR WILL BE ENTITLED TO POSSESSION OF THE PROPERTY AND MAY BRING AN ACTION TO EVICT YOU FROM POSSESSION OF THE PROPERTY.

DATED THIS DAY OF, 19. . .

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

STATE OF WASHINGTON |

ss.

COUNTY OF |

>

The undersigned being first duly sworn on oath states: That on this day affiant deposited in the mails of the United States of America a properly stamped and addressed envelope directed to the judgment debtor at the address stated on the face of this document and to "occupant" at the

property address, both by certified mail, return receipt requested, and by first-class mail, all of the mailings containing a copy of the document to which this affidavit is attached.

SIGNED AND SWORN TO BEFORE ME THIS
DAY OF, 19. . . . , BY (name of person
making statement)

.
Title
My appointment expires
., 19. . . .

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

Notes:

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

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



CoreLogic

FOR IMMEDIATE RELEASE

March 28, 2013

Non-Judicial Foreclosure States Foreclosure Ranking (Ranked by Completed Foreclosures):

February 2013				
Non-Judicial States	Foreclosure Inventory	Foreclosure Inventory Pct. Point Change from a Year Ago	Completed Foreclosures (12 months ending February 2013)	Number of Mortgages per Completed Foreclosure (12-month sum ending February 2013)
National	2.8%	-0.7%	743,903	55
California	1.1%	-1.4%	90,147	59
Michigan	1.3%	-0.7%	72,518	18
Texas	1.2%	-0.3%	56,935	51
Georgia	1.9%	-0.6%	48,723	30
Arizona	1.3%	-1.5%	38,098	27
North Carolina	2.0%	-0.5%	26,317	51
Tennessee	1.3%	-0.6%	22,359	33
Missouri	1.1%	-0.5%	18,346	42
Colorado	0.9%	-0.5%	15,794	57
Washington	2.5%	1.0%	14,437	78
Minnesota	1.1%	-0.7%	13,680	62
Virginia	1.0%	-0.5%	13,038	98
Nevada	4.6%	-0.6%	12,543	35
Wisconsin	1.6%	-0.6%	11,546	66
Alabama	1.3%	-0.2%	6,986	78
Oregon	2.9%	-0.2%	5,957	101
Utah	1.4%	-0.5%	4,820	87
Idaho	2.0%	-0.4%	4,130	55
Arkansas	2.4%	0.8%	3,854	75
New Hampshire	1.3%	-0.4%	2,448	76
Rhode Island	3.1%	0.0%	1,657	77
Montana	0.9%	-0.5%	1,523	84
Mississippi	2.1%	-0.7%	1,138	203
Wyoming	0.5%	-0.2%	885	81
Alaska	0.6%	-0.2%	882	94
West Virginia	1.2%	-0.3%	588	219
District of Columbia	2.3%	-0.3%	96	964

Source: CoreLogic February 2013

OFFICE RECEPTIONIST, CLERK

To: Mike Fulbright
Subject: RE: Filing Answer to Petion for Review

RECEIVED 6-4-13

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Mike Fulbright [<mailto:mike@fulbrightlegal.com>]
Sent: Tuesday, June 04, 2013 3:52 PM
To: OFFICE RECEPTIONIST, CLERK
Subject: Filing Answer to Petion for Review

Sir or Madame,

Please file the attached Answer to Petition for Review (including Appendix) for the following:

Case Name: Bank of America, N.A. v. Michael Fulbright, et ux.
Supreme Court Case No. 88853-1.

Bank of America, N.A. is the successor by merger to the original Plaintiff, BAC Home Loans Servicing.

My contact info:

Michael G. Fulbright
425-284-3081
WSBA #11821
mike@fulbrightlegal.com

I called and was told that my 26-page Appendix is okay. Page 18 of the Answer is a Certificate of Mailing to Petitioner's attorneys.

Yours truly,

Mike Fulbright
11820 Northup Way, Suite E200
Bellevue, WA 98005

OFFICE RECEPTIONIST, CLERK

To: Kurt Madsen
Subject: RE: Your email

RECEIVED 6-4-13

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Kurt Madsen [<mailto:madsen.appellant@gmail.com>]
Sent: Tuesday, June 04, 2013 3:45 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: jim.whisman@kingcounty.gov
Subject: Fwd: Your email

This message from the transcriptionist, may perhaps solidify the need for access to the JIS-Link, moreover, just because I was arrested and held on excessive bail in September, 2011 should not have abilitated the state from eliminating my access to my email, to communicate regarding the case I was wrongfully charged with, or those I was appealing at the time. I am now unable to restore my access to my original email address madsen.appellate@gmail.com.

----- Forwarded message -----

From: <r.landberg@comcast.net>
Date: Tue, Jun 4, 2013 at 9:50 AM
Subject: Your email
To: madsen.appellant@gmail.com

Hi Kurt. Sorry to have not responded earlier. Got sidetracked going through things. Anyway, I'm unable to send you a copy of the VRP as I no longer have it. My computer crashed sometime after I did it and I don't have it any longer. I provided a copy on a disk to the people at WAP and filed one with the original VRP, so maybe if you get your file from WAP it should be there. As for the Auburn stuff, I remember getting that from you in the mail a long time ago. You had an order of indigency in the superior court case for the appeal filing fee as I recall, but it didn't provide for payment of the cost of transcribing anything, especially district court stuff. I was confused somewhat as there was no correspondence or anything from you accompanying it, so I did nothing. Then after WAP got involved in the appeal and they gave me a statement of arrangements, I transcribed what was on there. I can't find the correspondence I got from you and surmise I tossed it after not hearing from you and having transcribed the hearings for WAP.

Sorry to be the bearer of bad news. If you get an order authorizing payment for transcription of any additional hearings I'd be happy to do them. Unfortunately, you'll have to get the CDs again though.

Rose