

SUPREME COURT OF THE
STATE OF WASHINGTON

No. 90085-0

WASHINGTON FEDERAL, a federally chartered savings association,

Respondent,

v.

KENDALL D. GENTRY and NANCY GENTRY

Petitioners.

Received
Washington State Supreme Court
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Ronald R. Carpenter
Clerk

and

No. 90078-7

WASHINGTON FEDERAL, a federally chartered savings association,

Respondent,

v.

LANCE HARVEY, individually and the marital community comprised of
LANCE HARVEY and "JANE DOE" HARVEY, husband and wife,

Petitioners.

CONSOLIDATED AMICI CURIAE BRIEF OF
F.R. MCABEE, INCORPORATED; GRANVILLE BRINKMAN;
AND SCOTT EDWARDS

4 Filed
Washington State Supreme Court

OCT 15 2014

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Ronald R. Carpenter
Clerk

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I. INTRODUCTION

F.R. McAbee, Incorporated; Granville Brinkman; and Scott Edwards (together, the “**Amici**”) submit this Consolidated Amici Curiae Brief in support of Petitioners Kendall D. and Nancy Gentry (the “**Gentrys**”) and Lance and “Jane Doe” Harvey (the “**Harveys**”).

II. IDENTITY AND INTEREST OF AMICI

Each of the Amici is a defendant in a lawsuit currently pending in the Court of Appeals. As more fully set forth in the accompanying Motion for Leave to File Consolidated Amici Curiae Brief, each of the Amici’s lawsuits calls for adjudication of the same issues presented by the Harveys and the Gentrys in the consolidated appeals pending before this Court—indeed, each of the Amici’s pending lawsuits has been stayed pending this Court’s resolution of these appeals. Consequently, the Amici have a substantial interest in this Court’s resolution of the matters presented.

III. ISSUES ADDRESSED BY AMICI

The Amici address two of the issues presented for review by the Court in this appeal: (A) whether the Deed of Trust Act (the “**DTA**,” or the “**Act**”), RCW 61.24.100, prohibits a secured lender from seeking a deficiency judgment against a guarantor, where the lender elects to nonjudicially foreclose a deed of trust securing the guarantor’s obligations; and (B) whether a secured lender can contractually avoid the

anti-deficiency protections of the DTA through boilerplate waiver provisions in its guaranty form.

IV. STATEMENT OF THE CASE

The Amici adopt by reference the Petitioners' statements of their respective cases, as set forth in their Petitions for Review.

V. ARGUMENT

A. RCW 61.24.100(10), when properly interpreted, prohibits post-foreclosure enforcement of an obligation, including a guaranty, secured by the very deed of trust foreclosed.

RCW 61.24.100(10) provides:

A trustee's sale under a deed of trust securing a commercial loan *does not* preclude an action to collect or enforce any obligation of a . . . guarantor *if* that obligation, or the substantial equivalent of that obligation, *was not* secured by the deed of trust.

In *Wash. Fed. v. Gentry*, 179 Wn. App. 470, 319 P.3d 823 (2014) and *Wash. Fed. v. Harvey*, 179 Wn. App. 1033 (unpublished), the Court of Appeals, Division I, interpreted RCW 61.24.100(10) as follows:

A trustee's sale under a deed of trust securing a commercial loan *does not* preclude an action to collect or enforce any obligation of a . . . guarantor *even if that obligation, or the substantial equivalent of that obligation, was secured by the deed of trust.*

Washington Federal ("WaFed") urges the Court to accept Division I's interpretation, arguing that RCW 61.24.100(10) only "confirms that foreclosure of a deed of trust securing a commercial loan does not affect a

lender's right to enforce an obligation *separate from an obligation to satisfy a deficiency on that loan.*" WaFed Supp. Br. at 13 (emphasis added). But that is *not* what subsection (10) says. Indeed, the emphasized language in WaFed's interpretation appears nowhere in the statute.

What subsection (10) says is that foreclosure of a deed of trust securing a commercial loan does not affect a lender's right to enforce an obligation *if it was not secured by the deed of trust foreclosed*, and if it is not the "substantial equivalent" of the obligation secured by the deed of trust. As WaFed correctly observes, this language allows the lender to expressly carve out from its deed of trust certain obligations that the lender intends to survive foreclosure of the deed of trust. WaFed Supp. Br. at 13.

Here, however, WaFed's predecessor not only failed to carve out guaranty obligations from its deed of trust—it expressly *included them* as obligations secured by the deed of trust. To conclude, as Division I did, that subsection (10) addresses only obligations that were *not* secured by the foreclosed deed of trust, but does not address obligations that *were* secured, defies common sense. Division I's reading of subsection (10) improperly ignores well-established rules of statutory interpretation.

Division I's refusal to imply subsection (10)'s inverse corollary—i.e., that if an obligation *is* secured by the foreclosed deed of trust, the lender *is* precluded from post-foreclosure enforcement of the obligation—

may have been proper if statutory interpretation amounted to nothing more than an exercise in propositional logic, but statutory interpretation involves more: Statutory interpretation requires determining legislative intent from the ordinary meaning of the words and phrases used. *State v. Sweany*, 174 Wn.2d 909, 914, 281 P.3d 305 (2012); *Nat'l Elec. Contractors Ass'n v. Riveland*, 138 Wn.2d 9, 19, 978 P.2d 481 (1999). Determining the legislature's intent as to what the outcome *should or should not be* under a given factual scenario—such as when a lender elects to secure a guarantor's obligations with the very same deed of trust that also secures the borrower's obligations—is not the same as determining whether “Q” *will or will not be true*, as a matter of pure logic, when “P” is true. As the California Supreme Court aptly put it:

Those who write statutes seek to solve human problems. Fidelity to their aims requires us to approach an interpretive problem not as if it were a purely logical game, like a Rubik's Cube, but as an effort to divine the human intent that underlies the statute.

Burris v. Superior Court, 34 Cal. 4th 1012, 1017, 22 Cal. Rptr. 3d 876, 879-80, 103 P.3d 276 (2005) (quoting *J.E.M. Ag Supply, Inc. v. Pioneer Hi-Bred Int'l, Inc.*, 534 U.S. 124, 156, 122 S.Ct. 593, 611, 151 L.Ed.2d 508 (2001) (Breyer, J., dissenting)).

Thus, the ordinary meaning of the words, “if an obligation is *not* secured by the foreclosed deed of trust, the lender is *not* precluded from

post-foreclosure enforcement of the obligation,” is their inverse corollary: “if an obligation *is* secured by the foreclosed deed of trust, the lender *is* precluded from post-foreclosure enforcement of the obligation.” Indeed, this is the very essence of *expressio unius est exclusio alterius*, the principle that “[e]xpression of one thing in a statute implies the exclusion of others, and this exclusion is presumed to be deliberate.” *State v. Kelley*, 168 Wn.2d 72, 83, 226 P.3d 773 (2010).

To that end, Division I’s refusal to apply this well-established rule of statutory construction in favor of a “pure logic” analysis has potentially broad implications for future statutory interpretation. After all, RCW 61.24.100(10) surely is not the only statute in Washington where the plain language clearly implies that the legislature intended the inverse corollary. In *Adams v. King Cnty.*, 164 Wn.2d 640, 650, 192 P.3d 891 (2008), this Court concluded that a statute stating that gifts of human body parts “may be accepted by any hospital,” implies that gifts of human body parts may *not* be accepted by a *non*-hospital. To give another example: RCW 7.60.120 requires utilities to give 15 days’ notice to a receiver before altering or discontinuing utility service. It goes on to state: “This section does not prohibit the court, upon motion by the receiver, to prohibit the alteration or cessation of utility service *if the receiver can furnish adequate assurance of payment . . .*” RCW 7.60.120 (emphasis added).

An ordinary understanding here would be that a court may *not prohibit* utilities from altering or discontinuing service if the receiver *cannot* furnish adequate assurance. But under Division I’s “pure logic” analysis, the receiver’s inability to furnish adequate assurance has no bearing on the court’s power to prohibit the alteration or cessation of utility service.

In short, when interpreted properly, RCW 61.24.100(10) prohibits post-foreclosure enforcement of obligations—including guaranty obligations—secured by the deed of trust foreclosed.¹ To that end, one commentator has confirmed that, when the “substantial equivalent” of a borrower’s indemnity of the lender—i.e., the borrower’s loan obligation—is secured by the deed of trust foreclosed, subsection (10) *does* preclude the lender from attempting to enforce the indemnity following a nonjudicial foreclosure of the deed of trust. 27 Rombauer, *Wash. Practice: Creditors’ Remedies—Debtors’ Relief* § 3.37 (1998 & Supp. 2014). The only way to arrive at this “generally agreed” result, *see id.*, is to apply *expressio unius exclusio alterius*, as Division I improperly refused to do.

Division I also failed to consider subsection (10)’s relation to other statutory provisions and to RCW 61.24.100’s statutory structure. *See In re Adams*, 178 Wn.2d 417, 423, 309 P.3d 451 (2013) (statutory construction

¹ It is worth noting that a borrower’s indemnity of the lender, a borrower’s loan obligations, and a guarantor’s guaranty obligations are *all* types of “obligations of the borrower or guarantor” that fall within the ambit of subsection (10), and that a deficiency obligation is just one category of guaranty obligations.

requires that provisions be analyzed together in order to fulfill the intent of the statute). Instead, Division I improperly viewed subsection (10) in isolation. *See id.* at 424. To properly interpret subsection (10)'s ordinary meaning, this Court must look to the context in which the provision is found, as well as the statute's scheme. *State v. Sweany*, 174 Wn.2d at 915.

Here, RCW 61.24.100 has a clear statutory scheme. It (1) states a general rule; (2) establishes certain exceptions to that general rule; and (3) qualifies those exceptions. The general rule is, "No deficiencies after a nonjudicial foreclosure," as reflected in RCW 61.24.100(1):

Except to the extent permitted in this section for deeds of trust securing commercial loans, ***a deficiency judgment shall not be obtained on the obligations secured by a deed of trust against any borrower, grantor, or guarantor after a trustee's sale under that deed of trust.*** (Emphasis added.)

The general rule has certain exceptions for deeds of trust securing commercial loans. *Id.* These exceptions appear in subsection (3), which lists, in subparts (a), RCW 61.24.100(3)(b), and (c), three categories of exceptions to the general rule prohibiting post-foreclosure deficiency judgments:

- Subpart (a) provides an exception that permits post-foreclosure recovery to the extent that the lender's recovery was diminished by the borrower or grantor's waste or wrongful retention of rents;
- Subpart (b) provides an exception that permits post-foreclosure recovery through foreclosure of collateral

(other than the foreclosed collateral) that also was pledged to secure the underlying commercial loan; and

- Subpart (c) provides an exception (subject to other qualifications discussed below) that permits post-foreclosure recovery from a guarantor who guaranteed the underlying commercial loan.

Specifically, subpart (c) provides:

This chapter does not preclude any one or more of the following after a trustee's sale under a deed of trust securing a commercial loan executed after June 11, 1998: . . . (c) ***Subject to this section***, an action for a deficiency judgment against a guarantor if the guarantor is timely given the notices under RCW 61.24.042. (Emphasis added.)

Notably, subpart (c) begins with, “Subject to this section” It is well established that the expression “subject to” denotes qualification. *Luther v. Ray*, 91 Wn.2d 566, 568, 588 P.2d 1188 (1979) (the expression “subject to” is a limiting expression). In other words, because subpart (c) begins with “Subject to this section,” the exception stated in subpart (c) is itself qualified by other provisions of RCW 61.24.100.

WaFed does not dispute that the words “subject to” mean that the exception stated in subsection (3)(c) is qualified or limited by other provisions of RCW 61.24.100. WaFed Supp. Br. at 11. That said, and without any analysis, WaFed urges the Court to accept that the *only* limitations on subsection (3)(c) are those stated in the three subsequent subsections—(4), (5), and (6)—even though there are an additional six

subsections that follow: (7), (8), (9), (10), (11), and (12). There is no basis for concluding, as WaFed has, that subsection (3)(c) is qualified by only subsections (4), (5), and (6). Rather, subsection (3)(c) is qualified by *all* of the subsections that follow, including subsection (10).

Reading subsection (10) as a qualification on subsection (3)(c) is consistent with legislative history. As WaFed acknowledges, before the 1998 amendments to RCW 61.24.100, no appellate court had decided the issue of whether a lender could pursue a deficiency judgment against a guarantor following a nonjudicial foreclosure. In 1998, the legislature answered, “Yes, *but . . .*” Yes, the lender may in some circumstances obtain a deficiency judgment against a commercial guarantor following a nonjudicial foreclosure. But, that right to seek a deficiency judgment is subject to nine qualifications that follow subsection (3)(c): *But*, the guarantor has a right to a fair-value hearing. RCW 61.24.100(5). *But*, if the deed of trust foreclosed upon was granted by the guarantor to secure the guaranty, the deficiency will be limited to the guarantor’s waste or wrongful retention of rents. RCW 61.24.100(6). *But*, not if the lender accepted a deed in lieu of foreclosure. RCW 61.24.100(7). *But*, the lender may still elect to foreclose judicially. RCW 61.24.100(8). *But*, not if the parties have agreed by contract to prohibit such recovery. RCW 61.24.100(9). *But*, not if the guarantor’s obligations were secured by the

deed of trust foreclosed. RCW 61.24.100(10). **But**, the guarantor retains any rights it has to be reimbursed by the borrower. RCW 61.24.100(11). **But**, if the foreclosed deed of trust was executed before June 11, 1998, the law prior to June 11, 1998 governs. RCW 61.24.100(12).

The foregoing interpretation of subsection (10) is the only reasonable interpretation given RCW 61.24.100's "general rule; exception; qualification" structure. Division I's conclusion that subsection (10) is merely permissive, and not meant to qualify the exception stated in subsection (3)(c), fails to account for the structure of the statute in which that provision is found, related provisions, and the statutory scheme as a whole. *See State v. Sweany*, 174 Wn.2d at 915.

Finally, and contrary to WaFed's assertions, no conflict will result if subsection (10) is interpreted as a prohibition on post-foreclosure enforcement of the guaranties at issue in this appeal. *See* WaFed Supp. Br. at 15 n.3. Such a conflict could arise only in the unusual situation where a **guarantor** (1) grants a deed of trust to secure not only its own guaranty obligation, but **also** the borrower's underlying commercial loan obligation; **and** (2) commits waste or wrongfully retains rents. Importantly, that factual scenario is not presented in this appeal, or in any of the cases awaiting the outcome of this appeal. Moreover, even if such a conflict arose, subsections (6) and (10) must—and easily can—be harmonized.

Subsection (6) incorporates by reference subsection (3)(a)(i), which carves out a limited exception to RCW 61.24.100(1)'s general, "no deficiency after a nonjudicial foreclosure" rule. Specifically, subsection (3)(a)(i) permits a commercial lender's post-foreclosure recovery against a borrower or a grantor to the extent that the value of the lender's collateral was diminished by waste or wrongful retention of rents. The policy behind this exception is clear: It ensures that lenders realize the collateral's fair value, and discourages borrowers and grantors from taking actions in advance of foreclosure that diminish the lender's recovery.

Subsection (6) simply extends subsection (3)(a)(i) to apply to a guarantor that pledges its own property to secure its guaranty. Here, neither the Harveys nor the Gentrys pledged their own properties to secure their guaranties, and WaFed has not alleged that any guarantor committed waste or wrongfully retained rents. Subsection (6) does not apply; thus, there is no conflict with subsection (10) requiring resolution in this case.

If there were a conflict, "the rules of statutory construction direct the court to, if possible, reconcile them so as to give effect to each provision." *Anderson v. State*, 159 Wn.2d 849, 861, 154 P.3d 220 (2007); *State v. Ashenbner*, 171 Wn. App. 237, 246, 286 P.3d 984 (2012). Subsections (6) and (10) can easily be reconciled. As noted, subsection (6) is addressed to the specific situation in which a lender seeks a limited,

post-foreclosure recovery for the diminution in the value of its collateral due to the guarantor's waste or wrongful retention of rents. Although subsection (10) generally prohibits post-foreclosure recoveries of obligations secured by the deed of trust foreclosed, subsection (6)'s clear policy requires that it prevail to the extent of the specific situation to which it is addressed. In other words, if a *guarantor* grants a deed of trust to secure both its obligations and the obligations of the borrower, and the lender forecloses on that deed of trust, subsection (10) prohibits the lender from enforcing the guarantor's obligations following the foreclosure of the deed of trust, *except* to the extent that the guarantor committed waste or wrongfully retained rents—i.e., except to the extent specifically permitted by subsection (6). *Stephanus v. Anderson*, 26 Wn. App. 326, 332, 613 P.2d 533 (1980) (to the extent that two statutory provisions conflict, the one that treats the subject matter in a more specific manner prevails).

B. The DTA does not authorize contractual expansion of lenders' post-nonjudicial-foreclosure remedies, and the so-called "waivers" that purport to do so are unenforceable.

A lender's right to foreclose without judicial supervision is a statutorily created right subject to the DTA's express restrictions. Further, a lender's decision to use an efficient and inexpensive nonjudicial foreclosure imposes significant limitations on deficiency remedies that might otherwise be available in a judicial foreclosure. RCW 61.24.100.

The parties may disagree about the scope of those limitations as they relate to guarantors, but there is no dispute that a lender who elects to foreclose nonjudicially voluntarily sacrifices some deficiency remedies.

WaFed attempts to re-characterize a lender's legislatively limited post-foreclosure deficiency rights as debtor or guarantor rights or defenses that can be waived like other common law rights or defenses.² But what WaFed labels as a "waiver" of guarantor rights is in reality an attempt to *contractually expand its legislatively created remedy*. Lenders are without legal authorization to do so.

That said, the DTA *does* give broad authorization to a lender to contractually waive *its* limited right to post-foreclosure remedies. RCW 61.24.100(9) provides:

Any contract, note, deed of trust, or guaranty may, by its express language, *prohibit the recovery of any portion or all of a deficiency* after the property encumbered by the deed of trust securing a commercial loan is sold at a trustee's sale. (Emphasis added.)

By contrast, the DTA's authorization to contractually modify protections

² In this regard, WaFed relies on *Fruehauf Trailer Co. of Can. Ltd. v. Chandler*, 67 Wn.2d 704, 409 P.2d 651 (1966). There, the court addressed a guaranty following repossession of personal property. The court was not required to interpret *any* statutory limitations, because none were implicated. WaFed also cites *Seattle First Nat. Bank v. W. Coast Rubber Inc.*, 41 Wn. App. 604, 705 P.2d 800 (1985). There, the defendant attempted to avoid enforcement of a guaranty, asserting that its specific terms violated the Consumer Protection Act ("CPA"). *Id.* at 609. But the CPA, unlike the DTA, provides only general prohibitions against deceptive and unfair practices, not a fully articulated statutory scheme balancing lenders', borrowers', and guarantors' rights. Neither *Fruehauf* nor *Seattle First* addressed the impact of specific statutory mandates, much less DTA mandates, upon purported contractual waivers of those mandates.

accorded *guarantors* is extremely limited. Specifically:

- Subsection (4) of RCW 61.24.100 allows contractual modification of the one-year statute of limitations to file a deficiency suit; provided the contract is entered *after* the requisite notice of foreclosure is given and is signed by the liable party.
- Subsection (7) authorizes guarantors to waive the DTA prohibition against deficiencies, but only after a beneficiary receives title to the property by a deed-in-lieu of foreclosure *and* the agreement is part of the deed-in-lieu transaction.
- Subsection (11) authorizes guarantors to waive any right they might have to reimbursement from the borrower.

The narrow and limited authorizations in subsections (4), (7), (9) and (11) are the *only* circumstances in which the legislature allows contractual modification of DTA limitations on post-foreclosure deficiency claims. The DTA did *not* authorize contractual modification of RCW 61.24.100(10). *Expressio unius est exclusio alterius* again applies. Having expressly authorized contractual modification of RCW 61.24.100's limits in certain specified instances, contractual modification ("waivers") of other limits are deemed deliberately excluded. *Landmark Dev., Inc. v. City of Roy*, 138 Wn.2d 561, 571, 980 P.2d 1234 (1999).

This is particularly true here in light of this Court's recent decisions rejecting lender attempts to contractually avoid DTA mandates, stating "we will not allow waiver of statutory protections lightly." *See*

Bain v. Metro. Mortg. Grp., Inc., 175 Wn.2d 83, 107-08, 285 P.3d 34 (2012); *Schroeder v. Excelsior Mgmt. Grp., LLC*, 177 Wn.2d 94, 106-07, 297 P.3d 677 (2013). WaFed asserts that these decisions apply only to pre-foreclosure procedural requirements, but they are not so limited.

In *Bain*, this Court held that the DTA limited the power of nonjudicial foreclosure to a trustee appointed by a beneficiary that, as required by the Act, holds the promissory note secured. Although the designated beneficiary in *Bain* did not hold the note, the lender argued it could nonetheless foreclose nonjudicially because the parties contractually agreed to accept the party designated as beneficiary. This Court rejected that argument, holding that the DTA could not be contractually altered. *Bain*, 175 Wn.2d at 108.

The *Bain* court analogized the DTA to Washington's former Arbitration Act (the "WAA"), chapter 7.04 RCW,³ as construed in *Godfrey v. Hartford Cas. Ins. Co.*, 142 Wn.2d 885, 16 P.3d 617 (2001). The WAA did not authorize a trial *de novo* following an arbitration, but neither did it contain an express prohibition against contractual modification of the Act's provisions. Nonetheless, in rejecting a

³ In 2005, the Revised Uniform Arbitration Act ("RUAA"), chapter 7.04A RCW, replaced the WAA. See *Optimer Int'l v. RP Bellevue, LLC*, 170 Wn.2d 768, 246 P.3d 785 (2011). For convenient reference, the WAA is attached as Appendix A. While the RUAA identifies waivable and nonwaivable provisions, see RCW 7.04A.040, there was no such provision in the WAA. See Appendix A.

contractual *de novo* trial provision, the *Godfrey* court held that, once parties elect to invoke arbitration under the WAA, “efforts to alter fundamental provisions of the Act by agreement are inoperative,” noting that “arbitration in Washington is exclusively statutory.”⁴ *Id.* at 893, 895.

The *Bain* court relied on its analysis in *Godfrey* to conclude that contracts purporting to modify the DTA are also inoperative:

This is not the first time that a party has argued that we should give effect to its contractual modification of a statute. In *Godfrey*, Hartford . . . attempted to pick and choose what portions of the [WAA] it and its insured would use to settle disputes. The court noted that parties were free to decide whether to arbitrate, and what issues to submit to arbitration, but ‘once an issue is submitted to arbitration, [the WAA] applies.’ By submitting to arbitration, ***they have activated the entire chapter and the policy embodied therein, not just the parts useful to them.***’ The legislature has set forth in great detail how nonjudicial foreclosures may proceed. We find no indication the legislature intended to allow the parties to vary these procedures by contract. We will not allow waiver of statutory protections lightly.

Bain, 175 Wn.2d at 107-08 (emphasis added, citations omitted).

The analysis in *Bain* (and *Godfrey*) applies here. Like arbitration, nonjudicial foreclosure in Washington is exclusively statutory. Once WaFed elected to nonjudicially foreclose, it submitted to the entire DTA, not just the parts useful to WaFed. Having chosen to proceed under the DTA, WaFed cannot via contract jettison the DTA’s statutory limits on

⁴ This Court confirmed its holding in *Optimer Int’l, supra*, holding that parties submitting to arbitration under former chapter 7.04 RCW “were not free to either enlarge or diminish judicial review of arbitration awards established by statute.” 170 Wn.2d at 787.

post-foreclosure deficiency judgments.

This Court confirmed that DTA mandates may not be contractually modified in *Schroeder, supra*. There, the borrower had recited in the deed of trust that he “knowingly waives his right, pursuant to RCW 61.24.030(2) to judicial foreclosure on the subject property on the grounds it is used for agricultural purposes.” 177 Wn.2d at 100. The lender argued that this recitation amounted to the borrower’s waiver of the DTA’s statutory prohibition on nonjudicial foreclosures of agricultural land. Citing *Bain*, this Court rejected the lender’s argument, holding that the lender could not contract away the DTA’s statutory prohibitions.

Contrary to WaFed’s assertion, RCW 61.24.100’s limitations on post-foreclosure deficiencies are no less mandatory and no more subject to contractual modification than other sections of the DTA. The DTA is a carefully balanced statutory scheme: *All* of its provisions are necessary to implement its public policy. RCW 61.24.100 is not an isolated statutory provision creating only borrower and guarantor “rights and privileges” that may easily be waived like a common law right. It is part of a statutory framework that expressly limits post-foreclosure remedies upon all lenders, including WaFed, that voluntarily choose to reap the benefits of

an efficient and inexpensive nonjudicial foreclosure.⁵

Harvey and Gentry's position is further supported by the recent Division II decision in *First Citizens Bank & Trust Co. v. Reikow*, which interpreted waivers in guaranties identical to those presented here. 177 Wn. App. 787, 313 P.3d 1208 (2013). The *Reikow* court held that such waivers do not "entitle the bank to a larger deficiency judgment than the [DTA] allows." *Id.* at 796-97. WaFed dismisses *Reikow*, addressing only the discussion of whether the boilerplate waivers are sufficient to constitute an intentional waiver of a known right. *See* WaFed Supp. Br. at 29 n. 10; *see also Reikow*, 177 Wn. App. at 795 n.4. That discussion regarding the adequacy of the provision as a "waiver" was separate from *Reikow's* holding that a lender cannot, under the guise of a purported contractual waiver, enlarge the limited remedies set forth in RCW 61.24.100. *Reikow* is in accord with *Bain* and *Schroeder*, and is directly applicable to this case.

Finally, WaFed complains that, if its "waiver" is not enforced, lenders will be forced to forgo the efficient and inexpensive statutory remedy of nonjudicial foreclosure and pursue judicial foreclosures and/or

⁵ Statutory law in effect at the time of a contract must "enter in and form a part of it, as fully as if they had been expressly referred to and incorporated in the terms. *This principle embraces alike those laws which affect its construction and those which affect its enforcement or discharge.*" *Dopps v. Alderman*, 12 Wn.2d 268, 273-74, 121 P.2d 388 (1942) (emphasis added).

suits on the guaranties. Of course, WaFed ignores that its predecessor unilaterally created the “problem” about which it now complains, by drafting the deed of trust to secure guaranties. If WaFed’s predecessor wished to retain a deficiency action following a nonjudicial foreclosure, it need only have made a minor change to its deed of trust (defining “Related Documents” to exclude rather than include guaranties).

The DTA does not, as WaFed asserts, reflect “a clear policy to allow ‘an action for a deficiency judgment against a guarantor.’” WaFed Supp. Br. at p. 26 (quoting RCW 61.24.100(3)(c)). Instead, the clear policy of the DTA regarding deficiencies is reflected in the first sentence of RCW 61.24.100: “Except to the extent permitted in this section for deeds of trust securing commercial loans, *a deficiency judgment shall not be obtained* on obligations secured by a deed of trust against any borrower, grantor, or guarantor after a trustee’s sale under a deed of trust.” (Emphasis added.) The policy is that post-foreclosure deficiencies are prohibited unless expressly authorized by the DTA. WaFed’s attempt to *contractually eliminate express DTA limits* on post-foreclosure deficiencies in no way furthers the DTA’s policies.

Finally, the DTA’s protections are not limited to homeowners and “unsophisticated” borrowers as WaFed claims. It extends to commercial borrowers as well, limiting its authorization for any deficiency judgment

to cases where a commercial borrower causes a deficiency by waste or wrongful retention of rents. RCW 61.24.100(3)(a). Similarly, the DTA limits deficiencies against commercial guarantors. A lender's right to seek a deficiency against a guarantor is limited to:

- actions against guarantors that received proper notice (RCW 61.24.100(3)(c));
- actions commenced within one year of the trustee's sale (RCW 61.24.100(4));
- actions against grantor-guarantors who commit waste or wrongfully retain rents (RCW 61.24.100(6)); and
- actions on guaranties that are *not* secured by the foreclosed deed of trust (RCW 61.24.100(10)).

Even where legislatively authorized, the lender's right of recovery against a commercial guarantor is expressly limited to the difference between the guaranteed debt and the fair value of the foreclosed property at the time of trustee's sale, regardless of the actual sale price. RCW 61.24.100(5).

These provisions, together with the rest of the DTA, collectively set forth the public policy of the Act. That policy is advanced by enforcing the DTA as written, rather than allowing lenders to contractually modify the Act to expand its legislatively limited post-foreclosure remedies.

VI. CONCLUSION

This Court should reverse the Court of Appeal's decisions and reinstate the trial courts' dismissals of WaFed's claims against the Harveys and the Gentrys, respectively.

DATED this 6th day of October, 2014.

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APPENDIX A

Sexual psychopaths: Chapter 71.06 RCW.
Small claims courts: Chapter 12.40 RCW.
Subpoenas: Chapter 5.56 RCW.
Subversive activities: Chapter 9.81 RCW.
Superior court: State Constitution Art. 4 §§ 3(a) (Amendment 25), 6, 10 (Amendment 28).
Support: Chapter 26.21 RCW.
Support of dependent children—Alternative method—1971 act: Chapter 74.20A RCW.
Supreme court: State Constitution Art. 4 § 3(a) (Amendment 25).
Television, subscription services, unlawful sale or theft, civil cause of action: RCW 9A.56.250.
Tree spiking, action for damages: RCW 9.91.155.
Trial by jury: State Constitution Art. 1 § 21.
Unemployment compensation, review, etc.: Chapter 50.32 RCW.
Unlawful entry and detainer: Chapter 59.16 RCW.
Veterans—Uniform guardianship act: Chapter 73.36 RCW.
Warehouseman's lien: Chapter 62A.7 RCW.
Waste and trespass: Chapter 64.12 RCW.
Water rights, determination: RCW 90.03.110 through 90.03.240.
Waters, public ground, regulation of: Chapter 90.44 RCW.
Workers' compensation cases: Title 51 RCW.

Chapter 7.04 ARBITRATION

Sections	
7.04.010	Arbitration authorized.
7.04.020	Applications in writing—How heard—Jurisdiction.
7.04.030	Stay of action pending arbitration.
7.04.040	Motion to compel arbitration—Notice and hearing—Motion for stay.
7.04.050	Appointment of arbitrators by court.
7.04.060	Notice of intention to arbitrate—Contents.
7.04.070	Hearing by arbitrators.
7.04.080	Failure of party to appear no bar to hearing and determination.
7.04.090	Time of making award—Extension—Failure to make award when required.
7.04.100	Representation by attorney.
7.04.110	Witnesses—Compelling attendance.
7.04.120	Depositions.
7.04.130	Order to preserve property or secure satisfaction of award.
7.04.140	Form of award—Copies to parties.
7.04.150	Confirmation of award by court.
7.04.160	Vacation of award—Rehearing.
7.04.170	Modification or correction of award by court.
7.04.175	Modification or correction of award by arbitrators.
7.04.180	Notice of motion to vacate, modify, or correct award—Stay.
7.04.190	Judgment—Costs.
7.04.200	Judgment roll—Docketing.
7.04.210	Effect of judgment.
7.04.220	Appeal.

Arbitration of labor disputes: Chapter 49.08 RCW.

7.04.010 Arbitration authorized. Two or more parties may agree in writing to submit to arbitration, in conformity with the provisions of this chapter, any controversy which may be the subject of an action existing between them at the time of the agreement to submit, or they may include in a written agreement a provision to settle by arbitration any controversy thereafter arising between them out of or in relation to such agreement. Such agreement shall be valid, enforceable and irrevocable save upon such

grounds as exist in law or equity for the revocation of any agreement.

The provisions of this chapter shall not apply to any arbitration agreement between employers and employees or between employers and associations of employees, and as to any such agreement the parties thereto may provide for any method and procedure for the settlement of existing or future disputes and controversies, and such procedure shall be valid, enforceable and irrevocable save upon such grounds as exist in law or equity for the revocation of any agreement. [1947 c 209 § 1; 1943 c 138 § 1; Rem. Supp. 1947 § 430-1.]

Saving—1943 c 138: "Sections 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, and 274 of the Code of 1881 (sections 420 to 430, both inclusive, Remington's Revised Statutes; sections 7339 to 7349, both inclusive, Pierce's Code) are hereby repealed: PROVIDED, HOWEVER, That arbitration proceedings pending upon the effective date of this act may be carried through to final judgment under the provisions of said sections, which are hereby continued in effect for such purposes only." [1943 c 138 § 23.] This applies to RCW 7.04.010 through 7.04.170 and 7.04.180 through 7.04.220.

7.04.020 Applications in writing—How heard—Jurisdiction. Any application made under authority of this chapter shall be made in writing and heard in a summary way in the manner and upon the notice provided by law or rules of court for the making and hearing of motions or petitions, except as otherwise herein expressly provided.

Jurisdiction under this chapter is specifically conferred on the district and superior courts of the state, subject to jurisdictional limitations. [1982 c 122 § 1; 1943 c 138 § 2; Rem. Supp. 1943 § 430-2.]

7.04.030 Stay of action pending arbitration. If any action for legal or equitable relief or other proceedings be brought by any party to a written agreement to arbitrate, the court in which such action or proceeding is pending, upon being satisfied that any issue involved in such action or proceeding is referable to arbitration under such agreement, shall, on motion of any party to the arbitration agreement, stay the action or proceeding until an arbitration has been had in accordance with the agreement. [1943 c 138 § 3; Rem. Supp. 1943 § 430-3.]

7.04.040 Motion to compel arbitration—Notice and hearing—Motion for stay. (1) A party to a written agreement for arbitration claiming the neglect or refusal of another to proceed with an arbitration thereunder may make application to the court for an order directing the parties to proceed with the arbitration in accordance with their agreement. Eight days notice in writing of such application shall be served upon the party alleged to be in default. Service thereof shall be made in the manner provided by law for service of a summons in a civil action in the court specified in RCW 7.04.020. If the court is satisfied after hearing the parties that no substantial issue exists as to the existence or validity of the agreement to arbitrate or the failure to comply therewith, the court shall make an order directing the parties to proceed to arbitrate in accordance with the terms of the agreement.

(2) If the court shall find that a substantial issue is raised as to the existence or validity of the arbitration

agreement or the failure to comply therewith, the court shall proceed immediately to the trial of such issue. If upon such trial the court finds that no written agreement providing for arbitration was made or that there is no default in proceeding thereunder, the motion to compel arbitration shall be denied.

(3) Either party shall have the right to demand the immediate trial by jury of any such issue concerning the validity or existence of the arbitration agreement or the failure to comply therewith. Such demand shall be made before the return day of the motion to compel arbitration under this section, or if no such motion was made, the demand shall be made in the application for a stay of the arbitration, as provided under subsection (4)(a) hereunder.

(4) In order to raise an issue as to the existence or validity of the arbitration agreement or the failure to comply therewith, a party must set forth evidentiary facts raising such issue and must either (a) make a motion for a stay of the arbitration. If a notice of intention to arbitrate has been served as provided in RCW 7.04.060, notice of the motion for the stay must be served within twenty days after service of said notice. Any issue regarding the validity or existence of the agreement or failure to comply therewith shall be tried in the same manner as provided in subsections (2) and (3) hereunder; or (b) by contesting a motion to compel arbitration as provided under subsection (1) of this section. [1943 c 138 § 4; Rem. Supp. 1943 § 430-4.]

7.04.050 Appointment of arbitrators by court.

Upon the application of any party to the arbitration agreement, and upon notice to the other parties thereto, the court shall appoint an arbitrator, or arbitrators, in any of the following cases:

(1) When the arbitration agreement does not prescribe a method for the appointment of arbitrators.

(2) When the arbitration agreement does prescribe a method for the appointment of arbitrators, and the arbitrators, or any of them, have not been appointed and the time within which they should have been appointed has expired.

(3) When any arbitrator fails or is otherwise unable to act, and his successor has not been duly appointed.

(4) In any of the foregoing cases where the arbitration agreement is silent as to the number of arbitrators, three arbitrators shall be appointed by the court.

Arbitrators appointed by the court shall have the same power as though their appointment had been made in accordance with the agreement to arbitrate. [1943 c 138 § 5; Rem. Supp. 1943 § 430-5.]

7.04.060 Notice of intention to arbitrate—Contents.

When the controversy arises from a written agreement containing a provision to settle by arbitration a controversy thereafter arising between the parties out of or in relation to such agreement, the party demanding arbitration shall serve upon the other party, personally or by registered mail, a written notice of his intention to arbitrate. Such notice must state in substance that unless within twenty days after its service, the party served therewith shall serve a notice of motion to stay the arbitration, he shall thereafter be barred from putting in issue the existence or validity of the agreement or the failure to comply therewith. [1943 c 138 § 6; Rem. Supp. 1943 § 430-6.]

7.04.070 Hearing by arbitrators. The arbitrators shall appoint a time and place for the hearing and notify the parties thereof, and may adjourn the hearing from time to time as may be necessary, and, on application of either party, and for good cause, may postpone the hearing to a time not extending beyond the date fixed for making the award.

All the arbitrators shall meet and act together during the hearing but a majority of them may determine any question and render a final award. The court shall have power to direct the arbitrators to proceed promptly with the hearing and determination of the controversy. [1943 c 138 § 7; Rem. Supp. 1943 § 430-7.]

7.04.080 Failure of party to appear no bar to hearing and determination. If any party neglects to appear before the arbitrators after reasonable notice of the time and place of hearing, the arbitrators may nevertheless proceed to hear and determine the controversy upon the evidence which is produced before them. [1943 c 138 § 8; Rem. Supp. 1943 § 430-8.]

7.04.090 Time of making award—Extension—Failure to make award when required. If the time within which the award shall be made is not fixed in the arbitration agreement, the award shall be made within thirty days from the closing of the proceeding, unless the parties, in writing, extend the time in which that award may be made. If the arbitrator fails to make an award when required, the court, upon motion and hearing, shall order the arbitrator to enter an award within the time fixed by the court, and may impose sanctions or terms deemed reasonable by the court. Failure to make an award within the time required shall not divest the arbitrators of jurisdiction to make an award or to correct or modify an award as provided in RCW 7.04.175. [1985 c 265 § 1; 1943 c 138 § 9; Rem. Supp. 1943 § 430-9.]

7.04.100 Representation by attorney. Any party shall have the right to be represented by an attorney at law in any arbitration proceeding or any hearing before the arbitrators. [1943 c 138 § 10; Rem. Supp. 1943 § 430-10.]

7.04.110 Witnesses—Compelling attendance. The arbitrators, or a majority of them, may require any person to attend as a witness, and to bring with him any book, record, document or other evidence. The fees for such attendance shall be the same as the fees of witnesses in the superior court. Each arbitrator shall have the power to administer oaths.

Subpoenae shall issue and be signed by the arbitrators, or any one of them, and shall be directed to the person and shall be served in the same manner as subpoenae to testify before a court of record in this state. If any person so summoned to testify shall refuse or neglect to obey such subpoenae, upon petition authorized by the arbitrators or a majority of them, the court may compel the attendance of such person before the said arbitrator or arbitrators, or punish said person for contempt in the same manner now provided for the attendance of witnesses or the punishment of them in the courts of this state. [1943 c 138 § 11; Rem. Supp. 1943 § 430-11.]

Witnesses, compelling attendance: Chapter 5.56 RCW.

7.04.120 Depositions. Depositions may be taken with or without a commission in the same manner and upon the same grounds as provided by law for the taking of depositions in suits pending in the courts of record in this state. [1943 c 138 § 12; Rem. Supp. 1943 § 430-12.]

Depositions: Rules of court: Cf. CR 28-CR 32; see also Title 5 RCW.

7.04.130 Order to preserve property or secure satisfaction of award. At any time before final determination of the arbitration the court may upon application of a party to the agreement to arbitrate make such order or decree or take such proceeding as it may deem necessary for the preservation of the property or for securing satisfaction of the award. [1943 c 138 § 13; Rem. Supp. 1943 § 430-13.]

7.04.140 Form of award—Copies to parties. The award shall be in writing and signed by the arbitrators or by a majority of them. The arbitrators shall promptly upon its rendition deliver a true copy of the award to each of the parties or their attorneys. [1943 c 138 § 14; Rem. Supp. 1943 § 430-14.]

7.04.150 Confirmation of award by court. At any time within one year after the award is made, unless the parties shall extend the time in writing, any party to the arbitration may apply to the court for an order confirming the award, and the court shall grant such an order unless the award is beyond the jurisdiction of the court, or is vacated, modified, or corrected, as provided in RCW 7.04.160 and 7.04.170. Notice in writing of the motion must be served upon the adverse party, or his attorney, five days before the hearing thereof. The validity of an award, otherwise valid, shall not be affected by the fact that no motion is made to confirm it. [1982 c 122 § 2; 1943 c 138 § 15; Rem. Supp. 1943 § 430-15.]

7.04.160 Vacation of award—Rehearing. In any of the following cases the court shall after notice and hearing make an order vacating the award, upon the application of any party to the arbitration:

(1) Where the award was procured by corruption, fraud or other undue means.

(2) Where there was evident partiality or corruption in the arbitrators or any of them.

(3) Where the arbitrators were guilty of misconduct, in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence, pertinent and material to the controversy; or of any other misbehavior, by which the rights of any party have been prejudiced.

(4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a final and definite award upon the subject matter submitted was not made.

(5) If there was no valid submission or arbitration agreement and the proceeding was instituted without either serving a notice of intention to arbitrate, as provided in RCW 7.04.060, or without serving a motion to compel arbitration, as provided in RCW 7.04.040(1).

An award shall not be vacated upon any of the grounds set forth under subdivisions (1) to (4), inclusive, unless the

court is satisfied that substantial rights of the parties were prejudiced thereby.

Where an award is vacated, the court may, in its discretion, direct a rehearing either before the same arbitrators or before new arbitrators to be chosen in the manner provided in the agreement for the selection of the original arbitrators and any provision limiting the time in which the arbitrators may make a decision shall be deemed applicable to the new arbitration and to commence from the date of the court's order. [1943 c 138 § 16; Rem. Supp. 1943 § 430-16.]

7.04.170 Modification or correction of award by court. In any of the following cases, the court shall, after notice and hearing, make an order modifying or correcting the award, upon the application of any party to the arbitration:

(1) Where there was an evident miscalculation of figures, or an evident mistake in the description of any person, thing or property, referred to in the award.

(2) Where the arbitrators have awarded upon a matter not submitted to them.

(3) Where the award is imperfect in a matter of form, not affecting the merits of the controversy. The order must modify and correct the award, as to effect the intent thereof. [1943 c 138 § 17; Rem. Supp. 1943 § 430-17.]

7.04.175 Modification or correction of award by arbitrators. On application of a party or, if an application to the court is pending under RCW 7.04.150, 7.04.160, or 7.04.170, on submission to the arbitrators by the court under such conditions as the court may order, the arbitrators may modify or correct the award upon the grounds stated in RCW 7.04.170 (1) and (3). The application shall be made, in writing, within ten days after delivery of the award to the applicant. Written notice thereof shall be given forthwith to the opposing party, stating that objections, if any, must be served within ten days from the notice. The arbitrators shall rule on the application within twenty days after such application is made. Any award so modified or corrected is subject to the provisions of RCW 7.04.150, 7.04.160, and 7.04.170 and is to be considered the award in the case for purposes of this chapter, said award being effective on the date the corrections or modifications are made. If corrections or modifications are denied, then the award shall be effective as of the date the award was originally made. [1985 c 265 § 2.]

7.04.180 Notice of motion to vacate, modify, or correct award—Stay. Notice of a motion to vacate, modify or correct an award shall be served upon the adverse party, or his attorney, within three months after a copy of the award is delivered to the party or his attorney. Such motion shall be made in the manner prescribed by law for the service of notice of a motion in an action. For the purposes of the motion any judge who might make an order to stay the proceedings, in an action brought in the same court, may make an order to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award. [1943 c 138 § 18; Rem. Supp. 1943 § 430-18.]

7.04.190 Judgment—Costs. Upon the granting of an order, confirming, modifying, correcting or vacating an award, judgment or decree shall be entered in conformity therewith. Costs of the application and of the proceedings subsequent thereto, not exceeding twenty-five dollars and disbursements, may be awarded by the court in its discretion. [1943 c 138 § 19; Rem. Supp. 1943 § 430-19.]

7.04.200 Judgment roll—Docketing. Immediately after entering judgment, the clerk must attach together and file the following papers, which constitute the judgment roll:

(1) The agreement; the selection or appointment, if any, of an additional arbitrator, or umpire; and each written extension of the time, if any, within which to make the award.

(2) The award.

(3) Each notice, affidavit or other paper used upon an application to confirm, modify or correct the award, and a copy of each order of the court upon such an application.

(4) A copy of the judgment.

The judgment may be docketed as if it was rendered in an action. [1943 c 138 § 20; Rem. Supp. 1943 § 430-20.]

7.04.210 Effect of judgment. The judgment so entered has the same force and effect, in all respects as, and is subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered. [1943 c 138 § 21; Rem. Supp. 1943 § 430-21.]

7.04.220 Appeal. An appeal may be taken from any final order made in a proceeding under this chapter, or from a judgment entered upon an award, as from an order or judgment in any civil action. [1943 c 138 § 22; Rem. Supp. 1943 § 430-22.]

Chapter 7.06

MANDATORY ARBITRATION OF CIVIL ACTIONS

Sections	
7.06.010	Authorization.
7.06.020	Actions subject to mandatory arbitration—Court may authorize mandatory arbitration of maintenance and child support.
7.06.030	Implementation by supreme court rules.
7.06.040	Qualifications, appointment and compensation of arbitrators.
7.06.050	Decision and award—Appeals—Trial—Judgment.
7.06.060	Costs and attorney's fees.
7.06.070	Right to trial by jury.
7.06.900	Severability—1979 c 103.
7.06.910	Effective date—1979 c 103.

Rules of court: See Superior Court Mandatory Arbitration Rules (MAR).

7.06.010 Authorization. In counties with a population of seventy thousand or more, the superior court of the county, by majority vote of the judges thereof, or the county legislative authority may authorize mandatory arbitration of civil actions under this chapter. In all other counties, the superior court of the county, by a majority vote of the judges thereof, may authorize mandatory arbitration of civil actions under this chapter. [1991 c 363 § 7; 1984 c 258 § 511; 1979 c 103 § 1.]

(2000 Ed.)

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

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

7.06.020 Actions subject to mandatory arbitration—Court may authorize mandatory arbitration of maintenance and child support. (1) All civil actions, except for appeals from municipal or district courts, which are at issue in the superior court in counties which have authorized arbitration, where the sole relief sought is a money judgment, and where no party asserts a claim in excess of fifteen thousand dollars, or if approved by the superior court of a county by two-thirds or greater vote of the judges thereof, up to thirty-five thousand dollars; exclusive of interest and costs, are subject to mandatory arbitration.

(2) If approved by majority vote of the superior court judges of a county which has authorized arbitration, all civil actions which are at issue in the superior court in which the sole relief sought is the establishment, termination or modification of maintenance or child support payments are subject to mandatory arbitration. The arbitrability of any such action shall not be affected by the amount or number of payments involved. [1987 c 212 § 101; 1987 c 202 § 127; 1985 c 265 § 3; 1982 c 188 § 1; 1979 c 103 § 2.]

Rules of court: MAR 1.2.

Reviser's note: This section was amended by 1987 c 202 § 127, and by 1987 c 212 § 101, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1987 c 212 §§ 101 and 102: "Sections 101 and 102 of this act shall take effect July 1, 1988." [1987 c 212 § 1902.]

Intent—1987 c 202: See note following RCW 2.04.190.

7.06.030 Implementation by supreme court rules. The supreme court shall by rule adopt procedures to implement mandatory arbitration of civil actions under this chapter. [1979 c 103 § 3.]

7.06.040 Qualifications, appointment and compensation of arbitrators. The appointment of arbitrators shall be prescribed by rules adopted by the supreme court. An arbitrator must be a member of the state bar association who has been admitted to the bar for a minimum of five years or who is a retired judge. The parties may stipulate to a nonlawyer arbitrator. The supreme court may prescribe by rule additional qualifications of arbitrators.

Arbitrators shall be compensated in the same amount and manner as judges pro tempore of the superior court. [1987 c 212 § 102; 1979 c 103 § 4.]

Effective date—1987 c 212 §§ 101 and 102: See note following RCW 7.06.020.

7.06.050 Decision and award—Appeals—Trial—Judgment. Following a hearing as prescribed by court rule, the arbitrator shall file his decision and award with the clerk of the superior court, together with proof of service thereof on the parties. Within twenty days after such filing, any aggrieved party may file with the clerk a written notice of appeal and request for a trial de novo in the superior court on all issues of law and fact. Such trial de novo shall thereupon be held, including a right to jury, if demanded.

Certificate of Service

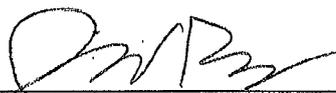
I, Danielle Rees, certify under penalty of perjury of the laws of the State of Washington that on October 6, 2014, I caused a copy of the documents to which this is attached to be served on the following individual(s) via e-mail by consent of counsel.

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Please file the attached in the following case:

Consolidated Case Name:
WASHINGTON FEDERAL v. LANCE HARVEY, individually and the marital community comprised of LANCE HARVEY and "JANE DOE" HARVEY, husband and wife (90078-7)
and
WASHINGTON FEDERAL v. KENDALL D. GENTRY and NANCY GENTRY (90085-0)

Case Number: 90078-7 (consolidated w/90085-0)

Documents: Praecepte with attached Consolidated Amici Curiae Brief of F.R. McAbee, Incorporated; Granville Brinkman; and Scott Edwards

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