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NO. 66455-7-I

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

GMAC MORTGAGE, LLC

Appellant,

v.

SUMMERHILL VILLAGE HOMEOWNERS ASSOCIATION,

Respondent.

APPELLANT GMAC MORTGAGE, LLC'S OPENING BRIEF

APPEAL FROM KING COUNTY SUPERIOR COURT

The Honorable Mary Yu

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I. ASSIGNMENTS OF ERROR

GMAC Mortgage, LLC as Attorney-in-Fact for Deutsche Bank Trust Company Americas as Trustee for RALI2007QS1 (“GMACM”), defendant-in-intervention as beneficiary under a deed of trust that encumbered the subject real property and appellant in this proceeding, makes the following assignment of error:

1. The trial court erred in determining GMACM, as beneficiary of a deed of trust recorded prior in time but junior in priority to the foreclosed condominium lien, is not a proper redemptioner of foreclosed real property under RCW 6.23.010(1)(b). *See*, CP 353-54 (Order Granting GMAC’s Motion to Intervene and Denying GMAC’s Motions to Vacate Judgment and for Declaratory Relief).¹

II. STATEMENT OF ISSUES

The following issues pertain to the single assignment of error:

1. **Is a deed of trust beneficiary, whose lien is extinguished by a “super-priority” condominium assessment lien, a proper redemptioner?**

When (1) appellant GMACM is the beneficiary under a deed of trust encumbering a condominium unit, (2) the unit owner defaults in payment of condominium assessments due after the deed of trust lien is

¹ GMACM waives all other grounds for appeal stated in its Notice of Appeal.

recorded, (3) the condominium association's lien for unpaid assessments is accorded "super-priority" over the deed of trust by statute, and (4) the condominium lien is foreclosed, extinguishing GMACM's lien interest in the property, is GMACM entitled to redeem under RCW 6.23.010(1)(b)?

2. Must the Sheriff issue her deed to a redemptioner who properly and timely tenders the correct amount required to redeem foreclosed real property?

When (1) the Sheriff of the county in which foreclosed real property is located twice fails to provide a redemption quote as timely requested by GMACM, (2) GMACM tenders sufficient funds to redeem, including the purchase price, costs, interest, expenses and fees as stated in the purchaser's Notice of Expiration of Redemption Period and a RCW 6.23.090(2) Declaration, to the Sheriff, (3) GMACM is a proven proper redemptioner, (4) redemption funds are tendered on or before the expiration of one year after the Sheriff's sale date, but (5) the Sheriff nevertheless fails to provide a quote and issues a deed to the Sheriff's sale purchaser, must the original Sheriff's deed be voided, and the Sheriff ordered to issue a deed to GMACM for the foreclosed real estate?

III. INTRODUCTION

In this case of first impression in Washington, the Court is required to consider the interplay of Washington's "super priority" condominium lien statute, RCW §64.34.364(2) and (3), with its redemption statute,

RCW §6.23.010(1)(b). One stated purpose of the condominium lien statute is the encouragement of first mortgagees to pay delinquent condominium assessments, in an effort to balance mortgagees' prior lien rights with condominium associations' need for operating funds.

The redemption statute's purpose is to encourage junior lien holders to redeem the property such that the best price is realized for all lien holders and the property owner. The intention is that full fair market value be realized at the foreclosure sale, as nearly as possible, for the protection of both the property owner and lien holders. Accordingly, as is the case with other statutory redemption schemes, Washington's redemption statute is designed to protect junior priority lien holders' and property owners' interests over those of third parties.

Washington's redemption statute, as historically worded, grants redemptioner status to lien holders who are "subsequent in time" to the foreclosed lien. Secondary sources such as *Washington Practice* have reasoned this phrase to mean "subsequent in priority." Consequently, a deed of trust dated and recorded before a delinquent lien assessment arises would be accorded junior priority under the Condominium Act and its beneficiary thus entitled to redeem the foreclosed property.

Plumblin Management Corporation Profit Sharing Plan ("Plumblin") is the Sheriff's sale purchaser and respondent here.

Plumblin argues the redemption statute's phrase, "subsequent in time," refers to the recording date of the security instrument. Under its analysis, the beneficiary of a deed of trust dated and recorded before a condominium assessment lien arises is the holder of a prior lien, who is not afforded redemption rights.

In agreeing with Plumblin, the trial court's decision below is contrary to the reasoning provided by the available secondary sources, case law, and underlying policy and purposes of the redemption statute. It ruled the beneficiary of a deed of trust that by statute is accorded junior priority status to a condominium assessment lien, and which is extinguished by a condominium lien foreclosure, is not a proper redemptioner, if that deed of trust is recorded prior to the date the condominium assessment lien arises.

Under the facts of this case, the trial court's statutory interpretation results in a third party Sheriff's sale purchaser obtaining the foreclosed real property free clear of all liens for less than 10% of its asserted fair market value, renders the property owner's deficiency on her secured note obligation considerably larger than it would otherwise have been, bars the deed of trust beneficiary from realizing anything on its secured interest from the foreclosure, and unjustly enriches Plumblin in the process.

In this appeal, GMACM requests the Court harmonize the condominium lien priority and redemption statutes by reading the statutory definition of “redemptioner” in RCW §6.23.010(1)(b) to include all junior lien holders, regardless of the date their security interest is recorded. Further, having held that the trial court erred in ruling GMACM does not qualify as a statutory redemptioner, appellant requests this Court mandate the trial court void the Sheriff’s deed issued to respondent Plumline, and direct the King County Sheriff to issue a deed to GMACM, because it is a proper redemptioner that timely and correctly tendered adequate funds to redeem the foreclosed real property.

IV. STATEMENT OF THE CASE

A. Facts

1. GMACM is the beneficiary under a first priority deed of trust lien on Dawn Roughley’s condominium unit.

In November of 2006, defendant Dawn Roughley borrowed \$191,800.00 and purchased a condominium unit in plaintiff Summerhill Village Condominium Association’s (“Summerhill”) complex, located in Issaquah and King County. CP 2-3, 187-88. Ms. Roughly obtained the loan from Homecomings Financial, LLC (the “Homecomings Loan”), evidenced by a Promissory Note and secured by a deed of trust (the “Homecomings deed of trust”) against Ms. Roughley’s Summerhill

condominium unit (the "Property"). CP 311-44. The Homecomings deed of trust was recorded on November 20, 2006, under King County Auditor's No. 20061120001533. CP 315.

Thereafter, the Note and Homecomings deed of trust were sold and assigned to Deutsche Bank Trust Company Americas as Trustee for RAL12007QS1 ("Deutsche Bank"). CP 120-21. An Assignment of the deed of trust dated January 28, 2010, was recorded on January 29, 2010, under King County Auditor's No. 20100129001549. CP 120-21, 158. GMACM is the loan servicer and Attorney-in-Fact for GMACM's principal and the Homecomings deed of trust beneficiary, Deutsche Bank. CP 188.

2. Summerhill forecloses its "super priority" condominium assessment lien on Ms. Roughley's unit.

Nearly two years after her purchase of the unit, and the recording of the Homecomings deed of trust, Ms. Roughley defaulted in payment of her condominium assessments to Summerhill, starting in August of 2008. CP 2-11, 29-35. This default gave rise to Summerhill's lien for delinquent assessments against Ms. Roughley's unit as provided for under RCW 64.34.364(1). CP 2-11, 29-35. Summerhill filed the underlying action in King County Superior Court to foreclose its lien on May 27, 2009. CP 2. Summerhill obtained an Order of Default against all defendants, including

Mortgage Electronic Registration Systems, Inc., nominee for the lender, under the Homecomings Deed of Trust, on September 24, 2009. CP 20-21. A Default Judgment, Order and Foreclosure Decree was entered against all defendants on October 6, 2009. CP 51-55.

3. Plumblin purchases Ms. Roughley's unit at the Sheriff's sale, GMACM states its intention to redeem, Plumblin objects, and the Sheriff does not provide a redemption quote.

Ms. Roughley's condominium unit was foreclosed and sold by the King County Sheriff on December 18, 2009. CP 70-71. Respondent Plumblin purchased the unit for \$10,301.84. CP 70-71. Under RCW 6.23.020(1)(b), the one year redemption period expired on Monday, December 20, 2010 (because December 18, 2010, fell on Saturday, a Court holiday). CP 112.

On behalf of the Homecomings deed of trust beneficiary, GMACM requested a redemption quote from the King County Sheriff by correspondence on September 15, 2010. CP 121, 160. It advised the Sheriff that it intended to redeem by October 31, 2010. CP 160. In response, Plumblin corresponded with the Sheriff on September 24, 2010. CP 121, 163-64. It objected that GMACM had no standing and that it was not a proper redemptioner under RCW 6.23.010(1)(b). CP 163-64. The King County Sheriff did not issue a redemption quote. CP 414, 444, 452.

After receiving Plumblin's objection and before expiration of the redemption period, counsel for GMACM and Plumblin communicated concerning their clients' positions and respective claims to the property, but the parties did not achieve resolution. CP 121-22, 413-14. Consequently, on December 9, 2010, GMACM moved to intervene in the underlying action, vacate the default judgment against its principal, and establish either the priority of its principal's lien, and/or its principal's right to redeem the property. CP 175-86.

4. GMACM reaffirms its intention to redeem, provides a sworn declaration, and also requests a written statement of rents, profits and expenses, which is provided by Plumblin.

On December 15, 2010, GMACM confirmed that the King County Sheriff had received GMACM's earlier written notice of intent to redeem, request for a redemption quote, and all required fees to issue the quote. CP 356, 359-60. GMACM reaffirmed its intent to redeem before expiration of the redemption period and again requested a redemption quote, both verbally and in writing, that same day. CP 355-405. GMACM provided the Sheriff its sworn Declaration concerning its relationship to the Homecomings deed of trust beneficiary, its standing and authority to act on behalf of Deutsche Bank, a copy of the Homecomings deed of trust, and the balance due thereunder from Ms. Roughley. CP 355-57, 367-400. At the same time,

GMACM also requested Plumblin provide a written statement of rents, profits and expenses, pursuant to RCW 6.23.090(2). CP 356, 363.

The following day, December 16, 2010, Plumblin delivered its RCW 6.23.090(2) Declaration regarding rents, profits and expenses, along with correspondence, via email to the King County Sheriff and GMACM. CP 413, 438-42. Plumblin continued to assert that GMACM was not a proper redemptioner, and further, that GMACM's redemption demand was untimely. CP 438-39. By operation of the redemption statute, RCW 6.23.090(2), Plumblin's service of its statement of rents and profits extended the redemption due date until no earlier than five calendar days thereafter, December 21, 2010. CP 452-53. However, the provisions of CR 6(a) served to extend the redemption period five court days, until December 23, 2010. CP 452-53.

5. The trial court determines GMACM is not a proper redemptioner.

GMACM's Motion to Intervene and for related relief was heard by the trial court on December 16, 2010. CP 352. Judge Mary Yu allowed GMACM to intervene, but denied all other relief. CP 353-54. Specifically, the trial court denied GMACM's request for "an order determining [GMACM's principal] had a right to redeem the property or that its deed of

trust was not extinguished by the Sheriff's sale." CP 354. In other words, the trial court found GMACM was not a proper redemptioner.

GMACM timely filed its notice appealing the trial court's denial of GMACM's redemptioner status on December 20, 2010. CP 406-11.

6. GMACM tenders funds to redeem, and Plumblin objects that the tender is untimely and GMACM is not a proper redemptioner.

The King County Sheriff did not respond to either GMACM's first or second requests for a redemption quote. CP 414, 444, 452. To preserve all its rights, GMACM completed the requirements necessary to redeem the real property by tendering redemption funds. CP 414, 444-47. GMACM delivered correspondence and a check to the King County Sheriff in the amount of \$14,019.20 on December 20, 2010. CP 414, 444-47.

In the absence of a redemption quote, GMACM's tendered redemption amount was based on the information provided by Plumblin in its Notice of Expiration of Redemption Period and RCW 6.23.090(2) Declaration. CP 111-14, 413-14, 441-42. GMACM provided the Sheriff with a break-down of its tendered redemption funds, which included the original Sheriff's sale price paid by Plumblin, interest on that price from the date of sale through date of tender, condominium assessments Plumblin reported it had paid through November 1, 2010, estimated additional condominium assessments paid by Plumblin through the date of tender,

interest on those assessments, and GMACM's acknowledgement that Plumblin reported no other costs, fees, expenses, rents or profits in its filings. CP 444-45. GMACM also informed the Sheriff that it had filed a Notice of Appeal of Judge Yu's ruling denying redemptioner status to GMACM, and provided the Sheriff a copy of the Notice. CP 446.

Plumblin corresponded with the Sheriff a third time via email on December 22, 2010, again objecting to issuance of a Sheriff's deed to GMACM or its principal. CP 414, 448-49. Plumblin claimed GMACM's redemption demand was untimely and that neither GMACM nor its principal was a proper redemptioner, as ruled by Judge Yu. CP 448-49.

GMACM responded to Plumblin's objections by correspondence delivered to the Sheriff on December 23, 2010. CP 414, 452-55. GMACM pointed out it had originally disclosed its notice of intent to redeem and requested a redemption quote from the Sheriff months before the deadline to do so, on September 15, 2010, and reaffirmed that notice and request on December 15, 2010. CP 452-55. It had also requested a written and verified statement of rents, profits and expenses, which served to extend the redemption period by, at a minimum, five additional calendar days after Plumblin's statement was received by the Sheriff on December 16, 2010, until no earlier than December 21, 2010. CP 452-55. Further, GMACM asserted CR 6(a) operated to extend the redemption period until five court

days after Plumblin's statement was served, until December 23, 2010. CP 452-55. Accordingly, GMACM asserted its tender of redemption funds was timely. CP 452-55.

7. Plumblin requests issuance of the Sheriff's deed, GMACM objects, but the deed is issued to Plumblin.

Plumblin again corresponded with the King County Sheriff on February 2, 2011, requesting issuance of the Sheriff's deed to it. Supp. CP ___ [Decl. of Michael Fulbright re Supersedeas, Ex. F]. By correspondence to the Sheriff on February 4, 2011, GMACM objected to the deed being issued. Supp. CP ___ [Decl. of Michael Fulbright re Supersedeas, Ex. G]. The Sheriff issued the deed to Plumblin, and it was recorded on February 8, 2011. Supp. CP ___ [Decl. of Michael Fulbright re Supersedeas, Ex. J]. In subsequent proceedings concerning GMACM's supersedeas bond, Plumblin asserted the fair market value of Ms. Roughley's condominium unit in March of 2011 is \$188,135.00. Supp. CP ___ [Decl. of Thomas D. Jonez re Supersedeas, ¶7].

V. ARGUMENT

A. Standard of Review.

The relevant facts considered by the trial court are largely uncontested. Consequently, this court must determine whether the trial court correctly applied the redemption statute to the undisputed facts of this case.

Interpretation of a statute is a question of law requiring *de novo* review. *Millay v. Cam*, 135 Wn.2d 193, 198, 955 P.2d 791, 793 (1998) (citing *Medcalf v. Department of Licensing*, 133 Wn.2d 290, 297, 944 P.2d 1014 (1997)); *Bank of Am., N.A. v. Prestance Corp.*, 160 Wn.2d 560, 564, 160 P.3d 17 (2007) (for all issues of law, this Court’s review is *de novo*).

B. The Priority of a Security Interest in Real Estate.

The general common law rule in Washington is that real property liens take precedence in order of time: “It may be admitted that, in the absence of statutory provision to the contrary and speaking generally, liens take precedence in order of time; the first in time being the first in right.” *Homann v. Huber*, 38 Wn.2d 190, 198, 228 P.2d 466, 470 (1951) (quoting *Hollenbeck v. City of Seattle*, 136 Wn. 508, 514, 240 P. 916 (1925)).

Washington's recording system was enacted to ensure that a deed recorded first in time was superior to any other conveyance and “generally, liens take precedence in order of time, the first in time being the first in right.” *Seattle Mortg. Co., Inc. v. Unknown Heirs of Gray*, 133 Wn. App. 479, 495, 136 P.3d 776, 785 (2006). As illustrated in *Stoebuck and Weaver*,

“When we consider the effect of recording, we need to assume there is a priority dispute between a party who first received an instrument that purports to transfer an interest in land to him (the “prior party”) and a party who subsequently received an instrument that purports to transfer to him a conflicting interest in the same land (the “subsequent” party)... A prior

party may, in effect, preserve his normal first-in-time priority by recording.”

STOEBUCK AND WEAVER, WASHINGTON PRACTICE, *Real Estate: Transactions* §14.8, at 141 (2004).

However, there are statutory exceptions to the first in time first in right rule. A mechanics’ and materialmen’s lien is one such statutory exception. *A.A.R. Testing Laboratory, Inc. v. New Hope Baptist Church*, 112 Wn. App. 442, 448, 50 P.3d 650 (2002). Another is a tax lien. RCW 84.60.010; *Seattle Mtg. Co., Inc. v. Unknown Heirs*, 133 Wn. App. 479, 495, n. 6, 136 P.3d 776 (2006); *Carstens & Earles v. City of Seattle*, 84 Wn. 88, 96, 146 P. 381 (1917) (legislature may create lien for taxes, superior to all other liens, regardless of priority of time). Lastly, and more importantly to the issues in this case, is a lien created in favor of a condominium association under RCW §64.34.364.

C. The Uniform Act’s Super Priority Condominium Lien.

Super priority liens are those which are granted statutory priority over all other liens, including those recorded prior in time. *See, e.g.*, RCW 60.40.010(3) (an attorney’s lien “is superior to all other liens”); RCW 84.60.010 (a tax lien “shall have priority to and shall be fully paid and satisfied before any ... mortgage, ..., debt, obligation or responsibility to or with which said real ... property may become charged or liable”); *contrast*,

Seattle Mtg. Co., Inc. v. Unknown Heirs, 133 Wn. App. 479, 495, 501, 136 P.3d 776 (2006) (where no specific statutory authorization existed to assert priority, the court held that by asserting its foreclosed lien, a public utility district “was attempting to establish super priority without legislative authorization”). Condominium associations are one entity typically granted a super priority lien. *See, e.g.*, UNIF. CONDOMINIUM ACT, 7 U.L.A. 421 (1980) (hereinafter “UCA”); *James L. Winokur*, “MEANER LIENOR COMMUNITY ASSOCIATIONS: THE “SUPER PRIORITY” LIEN AND RELATED REFORMS UNDER THE UNIFORM COMMON INTEREST OWNERSHIP ACT,” 27 Wake Forest L. Rev. 353 (1992).

The Uniform Common Interest Ownership Act (“UCIOA”) was promulgated in 1982 by the National Conference of Commissioners on Uniform State Laws, and consolidates previously promulgated uniform acts which address condominiums. *Winokur supra* at 354. In “its most heralded break with traditional law,” the UCIOA grants “super priority” to a condominium association lien, over first mortgages recorded before any condominium assessment delinquency arises. *Id.*, at 365. Washington has adopted the UCIOA’s super priority provisions for condominiums, subject to certain modifications not applicable here. *See, e.g.*, RCW §64.34.364(3) (providing that the super priority may be limited to three

months' assessments – rather than six – when the mortgagee has previously requested delinquency notices from the association); RCW §64.34.364 (providing that the super priority is waived if the lien is foreclosed non-judicially).

D. Washington's Super Priority Condominium Lien.

Specifically, Washington's version of the UCIOA, RCW §64.34.364, provides in pertinent part as follows:

(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,

...

(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.

...

(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. ...

Thus, with negligible changes in wording, Washington's version of the UCIOA retains the super priority of condominium assessment liens (if foreclosed judicially) over liens dated or recorded before the assessment lien arises. That is, despite the earlier recording of a deed of trust, the Condominium Act creates an exception to Washington's standard "first in

time, first in right” rule for a condominium assessment lien.

E. The Policy and Purpose Underlying Washington’s Super Priority Condominium Lien Statute is to Encourage a Deed of Trust Beneficiary’s Payment of Defaulted Condominium Assessments.

The UCIOA’s super priority provision was intended to strike a balance between the interests of existing lien holders and condominium associations. According to the UCIOA drafters’ comments, “A significant departure from existing practice, the 6 months’ priority for the assessment lien strikes an equitable balance between the need to enforce collection of unpaid assessments and *the obvious necessity for protecting the priority of the security interests of lenders.*” Unif. Common Interest Ownership Act (1982) §3-116, cmt. 1 (emphasis supplied). Indeed, one commentator asserts “it would be folly to ignore the needs of mortgage lenders,” since their investments are crucial to condominium ownership and homeowners’ associations. 27 Wake Forest L. Rev., *supra*, at 359.

In adopting the model act, the Washington legislature envisioned, “As a practical matter, mortgage lenders will most likely pay the assessments demanded by the association which are prior to its mortgage rather than having the association foreclose on the unit and eliminate the lender’s mortgage lien.” RCW §64.34.364, Official Comments, cmt. 3; *accord*, 27 Wake Forest L. Rev., *supra*, at 380 (“mortgagee payment of

the [condominium lien] was the lender response envisioned by UCIOA's drafters”).

Thus, Washington’s grant of super-priority status to condominium liens was enacted to encourage lenders to pay those liens. That is precisely what GMACM’s principal attempted to accomplish in this case, but has been barred from completing by the trial court’s ruling.

F. The Policy and Purpose Underlying Washington’s Redemption Statute is to Encourage Junior Lien Holders to Redeem to Increase the Foreclosed Property’s Purchase Price.

“Redemption signifies the process of canceling and annulling a defeasible title, such as is created by a mortgage, by paying the debt or fulfilling other conditions.” *Fidelity Mut. Svgs. Bank v. Mark*, 112 Wn.2d 47, 51, 767 P.2d 1382 (1989) (*en banc*). “The right of redemption is widely recognized as an important and significant property interest” *U.S. v. Bennett*, 2008 WL 2149440, *4 (D.Virgin Islands)). *See, e.g., Lee v. City of Chicago*, 330 F.3d 456, 470 (7th Cir. 2003) (“A redemption right is a ‘significant property interest.’ ”); *In re Sims*, 185 B.R. 853, 863 (N.D.Ala. 1995) (recognizing that the right of redemption is “one of the most important rights provided by the states to owners of real property”).

The mortgagor of real property has the statutory right of redemption after foreclosure. *Fidelity Mut., supra*, 112 Wn.2d at 51.

Redemptive rights were created to protect property owners and to foster home ownership. *See, In re Nossman*, 22 F.Supp. 645, 648 (D.Kan. 1938) (noting that “[t]he purpose of the redemption law is to prevent the sacrifice of the debtor's land ...”); *Meyerson v. Werner*, 683 F.2d 723, 729 (2d Cir. 1982) (noting that the equity of redemption is “deemed essential to the protection of the debtor”). “Redemption statutes ‘are benevolent and remedial in character, having as their main object the prevention of the oppression of a debtor and the sacrifice of his property.’” *Pumalite Tualatin, Inc. v. Cromb Leasing, Inc.*, 82 Wn. App. 767, 772, 919 P.2d 1256 (1996) (quoting, F.C. Hackman, *Statutory Redemption Rights*, 3 Wash.L.Rev. 177, 177 (1925)).

Another purpose of redemption statutes is to protect parties with junior or subsequent lien rights. *U.S. v. Stadium Apts., Inc.*, 425 F.2d 358, 364 (9th Cir. 1970) (noting post-foreclosure redemption statutes exist in just over half the states and describing generally their operation). “The objective of the redemption right is that the mortgagee or other bidders, if any, shall bid not less than the fair market value of the land, since otherwise the purchaser risks being divested of the land by redemption at less than its market value.” *Id.*, at 368 (dissenting opinion).

States considering the policies behind their redemption statutes have reached the same conclusions. “[T]he commonly stated purposes of

statutory redemption are to encourage full value bidding at foreclosure sales" *HSBC Bank*, 2005-NMCA-138, ¶ 7, 138 N.M. 665, 125 P.3d 644; *Brown v. Trujillo*, 2004-NMCA-040, ¶ 27, 135 N.M. 365, 88 P.3d 881 (redemption statutes "may increase the price of property at a foreclosure sale by creating the risk that a debtor will easily redeem his or her property from a purchaser who bids too low"). "Most states with statutory redemption make it available to junior encumbrancers as well as to mortgagors and their successors. Thus, junior encumbrancers whose interests were destroyed may be able to redeem." 12 David A. Thomas, *Thompson on Real Property* § 101.07(c)(3) (Thomas ed.1994) (footnote omitted).

In Washington certain lien creditors, along with the property owner, are granted the statutory right to redeem foreclosed property. *Fidelity Mut., supra*, 112 Wn.2d at 51. Washington's redemption statute protects not only the property owner, but parties with subsequent lien rights. Once a junior lien is extinguished by foreclosure, the holder of that lien may redeem the property from the foreclosing prior lienor. *DeYoung v. Cenex LTD*, 100 Wn. App. 885, 895, 1 P.3d 587 (2000) (*citing*, 18 WILLIAM B. STOEBOCK, WASHINGTON PRACTICE, *Real Estate: Transactions* §18.19, at 361-64 (1995)). Although the redemption statute refers to a "mortgage" lien, a deed of trust holder may exercise its

statutory redemption right from foreclosure sale under RCW 6.24.130(2), the same as a mortgagee. *Rustad Htg. & Plbg. Co. v. Waldt*, 91 Wn.2d 372, 377, 588 P.2d 1153 (1979) (*en banc*).

G. Washington’s Redemption Statute is Intended to Protect Junior Lien Holders.

Real property sold as the result of foreclosing a condominium assessment lien is subject to the redemption rights set forth in RCW §6.23.010, *et seq.* Washington’s redemption statute, as pertinent here, provides:

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

...

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

RCW §6.23.010 (emphasis supplied).

Secondary sources explain that the phrase “subsequent in time” as used in RCW §6.23.010(1)(b) refers to that lien instrument’s respective priority or right; that is, a “redemptioner” is one with a lien “subsequent in right” to the lien being foreclosed. Washington Practice explains:

Under statutory redemption, the mortgage debtor and certain others, generally *junior lienors whose interests have been extinguished by a senior interest*

holder's foreclosure sale, are allowed a stated time after the sale to buy the land from the sale purchaser by paying, not the mortgage debt, but what the purchaser paid at the sale.

Marjorie D. Rombauer, 27 WA. PRAC. §3.19(a), p. 161 (1998) (emphasis supplied). According to this explanation, GMACM, which had its lien extinguished by Summerhill's foreclosure, is a statutory redemptioner entitled to redeem:

'Redemptioner' is defined as a creditor who has a lien by ... deed of trust ..., which lien is *subsequent in priority* to that being foreclosed, or the successor in interest to any such creditor. ... [T]he redemptioner's lien must be *junior to that of the foreclosing mortgagee*; the idea is that *only one whose title or lien has been extinguished* may have 'another bite of the apple.'

Id., §3.19(b), p. 162 (emphasis supplied).

The *Washington Real Property Deskbook*, citing *Malm v. Griffith*, 109 Wash. 30, 33, 186 P. 647 (1919), similarly emphasizes it is the relative priority of the lien, and not the date on the instrument, that is the determining factor as to who may redeem:

A mortgage executed prior to the foreclosed mortgage but recorded subsequent thereto is subsequent in time within the statute, and, therefore, such a mortgage has redemption rights.

WASHINGTON REAL PROPERTY DESKBOOK, 3d ed., §46.15(2) (Wash. St. Bar Ass'n. 1996).

This critical distinction between lien holders that are prior or subsequent to the foreclosed lien is confirmed by the *Washington Real Property Deskbook*. It states:

[T]o qualify as a redemptioner, one having a lien by ... mortgage ... must have a lien subsequent in time to the lien being foreclosed; if the lien of the [mortgage] is *prior* to the one being foreclosed, the holder of the *prior lien* does not have a right of redemption because *the prior lienholder's lien is not affected by the foreclosure.*"

WASHINGTON REAL PROPERTY DESKBOOK, 3d ed., §46.15(2)
(Wash. St. Bar Ass'n. 1996) (emphasis supplied).

The policy considerations underlying Washington's statutory redemption scheme are served by interpreting the "redemptioner" definition to refer to respective lien priority rights, rather than the date of the instrument or recording date:

Washington's redemption [statute] is designed to promote several public policies. Most obviously, it gives the debtor, whose title has been lost, and *junior lienors, whose liens have been extinguished*, a grace period, beyond the sale, to salvage something.

WASHINGTON REAL PROPERTY DESKBOOK, 3d ed., §3.19(b),
(Wash. St. Bar Ass'n. 1996), p. 161.

In the trial court, Plumblin agreed that, "Summerhill's assessment lien has priority over [GMACM's] 2006 deed of trust [and] the Default Judgment and resulting sheriff's sale extinguishe[d] the lien of the 2006

deed of trust. That's what normally happens to a junior lien when a senior lien is foreclosed." CP 203. Nevertheless, Plumblin persuaded the trial court that despite GMACM's status as a junior lienor, and the fact that GMACM's lien had been extinguished, GMACM was not a proper redemptioner because its lien was not "subsequent in time" to the foreclosed lien. The trial court's concurrence in Plumblin's position is unsupported for four reasons.

1. *Respective lien priority rather than the recording date or the date of the instrument comports with Washington's statutory redemption scheme.*

First, Washington's redemption statute contains two other provisions which reference competing lien priorities. Unlike the "redemptioner" definition in RCW §6.23.010, they refer to "prior liens" without an element of the date of the instrument or the recording date. RCW §6.23.070 provides that when the Sheriff receives two or more notices of intent to redeem at the same time, "the sheriff shall allow the person having the *prior lien* to redeem first, and so on." RCW §6.23.070 (emphasis supplied). Similarly, in a situation of competing redemptions under RCW §6.23.080(3), "[i]f the redemptioner or purchaser has *a lien prior to that of the lien creditor* seeking to redeem," certain evidence is required of it. RCW §6.23.080(3) (emphasis supplied).

By not including language referencing the date of the instrument or

the recording date of the “prior liens” referred to in RCW §6.23.070 and RCW §6.23.080(3), the legislature makes clear that the statutory scheme is concerned with the respective lien priority, not with the date of an instrument or its recording date.

2. ***Respective lien priority rather than the recording date or the date of the instrument comports with the history of redemption and super-priority condominium liens.***

Second, with respect to identifying redemptioners, Washington’s redemption statute has remained largely unchanged since it was first enacted in 1897. An overhaul of the statute in 1987 did not amend the language at issue here. APP. 1. It continued the historic definition of redemptioner – based on the common law priority rule of “first in time first in right” – as, “A creditor having a lien ... subsequent in time to that on which the property was sold.”

When the redemption statute was first enacted, there was no “super priority” condominium lien exception to the “first in time first in right” common law rule in Washington. The condominium assessment lien was not created – and granted priority status – until nearly 100 years later, in 1989. *See*, RCW §64.34.364; APP. 2. Nevertheless, the redemption statute’s historical wording, “subsequent in time,” in no way alters the intended outcome.

Just as Washington’s general lien rule provides that a lien “first in time is first in right,” the converse is true: a lien “subsequent in time,” is generally “subsequent in right.” A lien that is “subsequent in right” is extinguished by a lien “first in right.” *Walker v. Transamerica Title Ins. Co., Inc.*, 65 Wn. App. 399, 403, 828 P.2d 621, 624 (1992) (foreclosure of a superior lien extinguishes inferior ones); *see, also*, RCW 61.24.050; *Glidden v. Municipal Authority of the City of Tacoma*, 111 Wn.2d 341, 347, n. 3, 758 P.2d 487 (1988).

In nearly all redemption scenarios, subsequent in time is understood to mean subsequent in priority or right, such that redemption is allowed. It is a logical syllogism that GMACM is a statutory redemptioner: If GMACM’s lien is subsequent in right to the lien Summerhill foreclosed; and if, under the common law, a lien subsequent in time is a lien subsequent in right; then GMACM’s lien must necessarily be a lien subsequent in time as contemplated by the redemption statute.

The redemption statute’s retention of the words “in time” after “subsequent” is a historical artifact of the common law “first in time is first in right” rule, which according to all relevant authority is understood to refer to respective lien priority.

3. ***Respective lien priority rather than the recording date or the date of the instrument comports with public policy of protecting property owners and***

junior lien holders.

Third, one of the articulated purposes of redemption statutes is to protect the interests of the property owner and secured parties in the property – not third parties’ interests. *See*, discussion at §F, *supra*; *Millay v. Cam*, 135 Wn.2d 193, 207, 955 P.2d 791 (1998) (a purpose of the redemption statute is served by “allowing lien creditors to recover their just demands”).

As the Alabama Supreme Court stated:

[The redemption statute] should be interpreted to give effect to the intent of the Legislature, which has always been to protect judgment creditors and junior mortgagees rather than to punish them and give them fewer rights than strangers to the property, such as the [third parties here], who purchase the property at the foreclosure sale and leave a deficiency on the lien for which the property was sold.

Southeast Ent., Inc. v. Byrd, 720 So.2d 873, 879 (Ala. 1998).

It is exactly such “punishment” that Plumblin urged – and the trial court agreed – should be meted on both GMACM and Ms. Roughley here. For \$10,301.84, Plumblin purchased realty which Plumblin contends is worth \$188,135 – over 18 times the purchase price it paid. CP 70-71; Supp. CP ____ [Decl. of Thomas D. Jonez re Supersedeas, ¶7].

Regardless of the outcome of this appeal or the underlying litigation, as the property owner and obligor, Ms. Roughley remains liable on the note

which the property secured. Plumblin has ensured that continuing liability is a significant one by its purchase of the property at a mere fraction of its fair market value. But one of the redemption statute's underlying purposes is precisely to ensure that, as nearly as possible, the realty is sold for fair market value. The facts of this case underscore why Plumblin should not be allowed to incur a windfall to the detriment of the property owner and secured parties.

4. *Respective lien priority rather than the recording date or the date of the instrument comports with similar redemption statutes.*

Fourth, Idaho's redemption statute is quite similar to Washington's statute. Indeed, its definition of "redemption" is virtually identical, but for the omission of the two words "in time." As is pertinent here, Idaho Code §11-401 provides:

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

...

2. A creditor having a lien by judgment or mortgage on the property sold, ... subsequent to that on which the property was sold. The persons mentioned in the second subdivision of this section are, in this chapter, termed redemptioners.

Idaho Code §11-401 (emphasis supplied). Thus, under Idaho's "redemption" definition, "only a junior mortgagee having a mortgage

subsequent to that lien for which the property was foreclosed can redeem.” *Eastern. Id. Prod. Credit Assoc. v. Placerton, Inc.*, 100 Idaho 863, 869, 606 P.2d 967 (1980). In other words, it is the respective lien priorities which control, not the record date of those liens. With virtually identical wording, Washington’s definition of a statutory redemptioner should be read the same as Idaho’s.

Considering the statutory scheme, underlying policies, and interpretation of similar statutes, the trial court erred in ruling GMACM did not qualify as a redemptioner under RCW §6.23.010(1)(b).

H. GMACM’s Redemption Demand was Procedurally Correct.

To exercise statutory redemption, the redemptioner need only do what the statute requires. *Schmidt v. Worley*, 134 Wn. 582, 589, 236 P. 111 (1925); *State ex re. Bryant v. Starwich*, 131 Wn. 101, 108, 229 P. 12 (1924). The Washington Supreme Court has held a party exercising its redemption rights need only substantially comply with the procedural aspects of the statute.

Where a party, in exercising its redemption right, commits a technical but harmless procedural error, a forfeiture requirement is not only unjust, but inconsistent with the very purpose of the statute.

...

Forfeitures are neither favored at law, nor at equity, and this court should be especially loath to exact a forfeiture for the most formal of procedural

violations.

GESA Federal Credit Union v. Mutual Life Ins. Co. of New York, 105 Wn.2d 248, 256, 713 P.2d 728, 733 (1986) (citations omitted); *Millay v. Cam*, 135 Wn.2d 193, 204-205, 955 P.2d 791 (1998).

The redemption process begins by providing written notice of intent to redeem at least five days before the redemption application. RCW §6.23.080(1). In addition, the redemptioner – if the holder of a foreclosed junior deed of trust, as here – must prove up its entitlement to redeem by providing the Sheriff with “the certificate of the record [of the mortgage] together with an affidavit, verified by the holder or agent, showing the amount then actually due thereon.” RCW §6.23.080(2)(a). Notably, this proof is not required to be provided any specific time before redemption funds are tendered. *Compare*, RCW §6.23.080(1) (“The person seeking to redeem shall give the sheriff at least five days’ written notice of intention to apply to the sheriff for that purpose.”) with RCW §6.23.080(2) (“A person seeking to redeem shall submit to the sheriff the evidence of the right to redeem,”).

Here, GMACM initially provided the Sheriff written notice of the Homecomings’ deed of trust holder’s intent to redeem at least six weeks before the intended redemption date. CP 160. After that date passed, GMACM provided both five days’ verbal and four days’ written

reaffirmation of its intention to redeem before the original expiration date of the redemption period. CP 355-405. At the same time, it provided the Sheriff a sworn statement including: (a) a verified copy of the deed of trust under which it was claiming, (b) a description of its relationship to the deed of trust's beneficial owner that entitled it to redeem, and (c) a statement of the balance then due thereunder. CP 355-57, 367-400. Accordingly, GMACM appropriately complied with all procedural requisites of the redemption statute.

I. GMACM's Redemption Demand was Timely.

For the type of real property at issue, redemption must be completed within one year of the Sheriff's sale date, under RCW §6.23.020(1)(b). Because the Sheriff's sale of Ms. Roughley's unit was conducted on December 18, 2009, the redemption period expired on December 18, 2010. However, since that date fell on a Saturday, the redemption period was extended to the following Monday, December 20, 2010. CR 6(a) ("In computing any period of time prescribed or allowed by ... any applicable statute, [t]he last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, a Sunday nor a legal holiday.")

The redemption period was further extended by GMACM's request for a written and verified statement of the amounts of rents and profits received and expenses paid and incurred by Plumblin, pursuant to RCW 6.23.090(2). CP 356, 363. That statute provides, "the period for redemption is extended five days after ... a sworn statement [of the amounts or rents and profits received and expenses paid and incurred] is given by the person receiving such rents and profits ... to the sheriff." *Id.* Assuming that the Sheriff's office received Plumblin's sworn statement on December 16, 2010, and that email service was adequate, then GMACM had a minimum of five calendar days thereafter, until Tuesday, December 21, 2010, to redeem the property. The provisions of CR 6(a) operate to further extend the redemption due date to five court days after service, until Thursday, December 23, 2010. CR 6(a) ("When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.").

Having satisfied all procedural requirements, GMACM tendered the redemption funds in the amount of \$14,019.20 to the Sheriff on December 20, 2010. Its redemption was timely under both the original and extended redemption due dates.

J. GMACM's Tender of Redemption Funds was Sufficient.

Redemption by the first redemptioner from a Sheriff's sale purchaser is governed by RCW §6.23.020; the statutory procedure for subsequent redemptioners is set forth in RCW §6.24.150. *Seattle Medical Center, Inc. v. Cameo Corp.*, 54 Wn.2d 188, 191, 339 P.2d 93 (1959). Under RCW §6.23.020, the redemption amount to be paid by the first redemptioner must include: (a) the Sheriff's sale amount with interest to the time of redemption (RCW §6.23.020(2)(a)), (b) assessments and taxes paid after purchase with interest to the time of redemption (*id.*, at subsection (b)), and (c) liens prior to the redemptioner's lien (*id.*, at subsection (d)). However, assessments, taxes and prior liens need be paid only to the extent they are proven by affidavit. *Id.*, at subsection (d).

Here, GMACM was the first – and only – redemptioner that applied to redeem the condominium unit. Accordingly, RCW §6.23.020 governs the amount of its redemption payment. Although GMACM twice requested a redemption quote from the Sheriff, one was never provided. CP 414, 444, 452. Having never received the requested redemption quote, GMACM relied on Plumblin's statutory filings and notices to compute the amount necessary to redeem the property.

Pursuant to RCW §6.23.020, Plumblin served its Notice of Expiration of Redemption Period on the unit owner, and filed it in the underlying action. CP 111-14. The notice itemized the amounts

necessary for Ms. Roughley to redeem her property, including the purchase price, interest and assessments. CP 111-14. Thereafter, at the request of GMACM, Plumblin presented the Sheriff with its RCW 6.23.090(2) Declaration. CP 413-14, 441-42. The declaration established the amount of assessments paid since Plumblin's purchase of the unit, and the fact that it had received no rents and profits during its ownership. CP 413-14, 441-42.

GMACM accepted Plumblin's sworn statements and representations as accurate accounts of the amounts paid and/or received by it, and relied thereon. Based on both of Plumblin's filings, on December 20, 2010, GMACM tendered \$14,019.20 to the King County Sheriff to redeem the property, including the following amounts:

\$10,301.84	Plumblin's bid/sale price at Sheriff's sale on December 18, 2009 (from Plumblin's Notice of Expiration of Redemption Period dated November 1, 2010)
\$1,077.04	12% interest on Plumblin's bid/sale price from December 18, 2009 to November 1, 2010 (from Plumblin's Notice of Expiration of Redemption Period dated November 1, 2010)
\$165.95	12% interest Plumblin's on bid/sale price from November 2, 2010 to December 20, 2010
\$2,249.43	Assessments which Plumblin paid after purchase, and interest thereon (from Plumblin's Notice of Expiration of Redemption Period dated November 1, 2010)

\$224.94	Estimated additional assessment which purchaser paid after November 1, 2010, and interest thereon
\$0.00	Real estate taxes which Plumblin paid after purchase, and interest thereon (from Plumblin's Notice of Expiration of Redemption Period dated November 1, 2010)
\$0.00	Payments for protection of judgment debtor's or redemptioner's interest, and interest thereon (from Plumblin's Notice of Expiration of Redemption Period dated November 1, 2010, and none reflected of record)
\$0.00	Purchaser's liens other than judgment under which purchase was made (from Plumblin's Notice of Expiration of Redemption Period dated November 1, 2010, and none reflected of record)
\$14,019.20	TOTAL

CP 444-45. Consequently, GMACM fully complied with RCW §6.23.020, by tendering funds to satisfy all payments required thereunder. Plumblin has never challenged the amount tendered by GMACM as inadequate; rather, it has only challenged GMACM's status as a redemptioner. GMACM's tender of redemption funds was timely, adequate and sufficient to redeem the real property.

VI. CONCLUSION

To the detriment of the property owner and GMACM – the precise parties intended to be served by Washington's redemption statute –

Plumblineline has been inequitably rewarded by purchasing real property for little more than 5% of that property's fair market value, as estimated by Plumblineline. Plumblineline attempts to fortuitously capitalize on the historically correct but, in the context of a super priority condominium lien, arcane wording of Washington's redemption statute. The trial court's agreement with Plumblineline's interpretation undermines the purposes of redemption, is inordinately weighted toward condominium lien priority, and ignores authoritative commentary that a foreclosed junior lienor, like GMACM here, is a proper redemptioner.

This Court should remedy this injustice by:

1. Reversing the trial court's Order entered December 16, 2010, which held that GMACM is not a proper redemptioner; and
2. Remanding this matter to the trial court with a mandate to:
 - a. void the Sheriff's Deed issued to Plumblineline for the subject real property dated February 8, 2011;
 - b. order the King County Sheriff provide GMACM with a redemption quote for Ms. Roughley's condominium unit;
 - c. allow GMACM a date certain by which to tender additional redemption funds, if any are due; and

d. upon payment of any additional redemption funds by GMACM, issue a Sheriff's deed to GMACM for the subject real property.

RESPECTFULLY SUBMITTED this 6th day of April, 2011.

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No. 66455-7-I

COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

SUMMERHILL VILLAGE HOMEOWNERS ASSOCIATION, Plaintiff,

vs.

DAWN M. ROUGHLEY, et al., Defendants,

and

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

Defendant-in-Intervention / *Appellant*,

vs.

PLUMBLINE MANAGEMENT PROFIT SHARING CORPORATION,

Sheriff Sale Purchaser / *Respondent*.

APPENDIX TO OPENING BRIEF OF APPELLANT

1. 1987 Session laws of the State of Washington, pp. 1837-46;
2. 1989 Session laws of the State of Washington, pp. 188, 223-26.

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1987
SESSION LAWS
OF THE
STATE OF WASHINGTON

REGULAR SESSION
FIFTIETH LEGISLATURE
Convened January 12, 1987. Adjourned April 26, 1987.
1st EXTRAORDINARY SESSION
FIFTIETH LEGISLATURE
Convened April 27, 1987. Adjourned May 21, 1987.



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DENNIS W. COOPER
Code Reviser

(3) Section 272, page 183, Laws of 1854, section 365, page 96, Laws of 1869, section 372, page 81, Laws of 1877, section 369, Code of 1881 and RCW 6.24.120.

PART VII

REDEMPTIONS OF REAL PROPERTY FROM FORCED SALES

Sec. 701. Section 7, chapter 53, Laws of 1899 and RCW 6.24.130 are each amended to read as follows:

(1) Real property sold subject to redemption, as ((above)) provided in RCW 6.24.030, or any part thereof separately sold, may be redeemed by the following persons, or their successors in interest:

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

((2)) (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 ((subdivision (2) of this section)) this subsection are termed redemptioners.

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

Sec. 702. Section 8, chapter 53, Laws of 1899 as last amended by section 4, chapter 276, Laws of 1984 and RCW 6.24.140 are each amended to read as follows:

(1) Unless redemption rights have been precluded pursuant to RCW 61.12.093 et seq., the judgment debtor ((or his successor in interest;)) or any redemptioneer((;)) may redeem the property from the purchaser at any time (a) within eight months after the date of the sale if the sale is pursuant to judgment and decree of foreclosure of any mortgage executed after June 30, 1961, which mortgage declares in its terms that the mortgaged property is not used principally for agricultural or farming purposes, and in which complaint the judgment creditor has expressly waived any right to a deficiency judgment, or (b) otherwise within one year after the date of the sale((, on paying)).

(2) The person who redeems from the purchaser must pay: (a) The amount of the bid, with interest thereon at the rate provided in the judgment to the time of redemption, together with (b) the amount of any assessment or taxes which the purchaser ((or his successor in interest may have)) has paid thereon after purchase, and like interest on such amount from time of payment to time of redemption, together with (c) any sum paid by the purchaser on a prior lien or obligation secured by an interest in the property to the extent the payment was necessary for the protection of the interest of the judgment debtor((, the judgment debtor's successor in interest;)) or a redemptioneer ((which the purchaser or the purchaser's successor in interest may have paid thereon with)), and like interest upon every

payment made (~~((by the purchaser or the purchaser's successor in interest at the rate provided in the judgment))~~) from the date of payment (~~((thereof))~~) to the time of redemption(~~((:))~~), and (d) if the redemption is by a redemptioner and if the purchaser (~~((be))~~) is also a creditor having a lien, by judgment, decree, deed of trust, or mortgage, prior to that of the redemptioner, other than the judgment under which such purchase was made, the redemptioner shall also pay the amount of such lien with like interest: PROVIDED, HOWEVER, That ((whenever there is an execution sale of property pursuant to judgment and decree of foreclosure of any mortgage executed after June 30, 1961, which mortgage declares in its terms that the mortgaged property is not used principally for agricultural or farming purposes, and in which complaint the judgment creditor has expressly waived any right to a deficiency judgment, the period of redemption shall be eight months after the said sale)) a purchaser who makes any payment as mentioned in (c) of this subsection shall submit to the sheriff the affidavit required by RCW 6.24.180, and any purchaser who pays any taxes or assessments or has or acquires any such lien as mentioned in (d) of this subsection must file the statement required in section 705 of this 1987 act and provide evidence of the lien as required by RCW 6.24.180.

Sec. 703. Section 6, chapter 329, Laws of 1981 as amended by section 5, chapter 276, Laws of 1984 and RCW 6.24.145 are each amended to read as follows:

(1) If the property is subject to a homestead as provided in ((RCW 6.17.045 or 6.17.050)) chapter 6.12 RCW, the purchaser ((or the purchaser's assignee)), or the redemptioner ((or the redemptioner's assignee)) 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, ((and by first class mail)) 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 ((notice)) 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 REDEMPTION PERIOD
Defendant.		

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 <u>plus interest</u>	\$
Assessments <u>plus interest</u>	\$
Liens or other costs paid <u>by purchaser</u> <u>or purchaser's successor during</u> <u>redemption period plus interest</u>	\$
<u>Lien of redemptioner</u>	\$
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

~~((NOTARY PUBLIC in and for the State of Washington, residing at:))~~

.....
Title

My appointment expires, 19..

~~((In the event that the redemption period is extended no further notice need be sent:~~

~~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. Failure to comply with this section extends the redemption period for six months.))~~

Sec. 704. Section 9, chapter 53, Laws of 1899 and RCW 6.24.150 are each amended to read as follows:

(1) If property ((be so)) is redeemed from the purchaser by a redemptioner, as provided in RCW 6.24.140, another redemptioner may, within sixty days after the ((last)) first redemption, ((again)) redeem it from the ((last)) first redemptioner ((by paying the sum paid on such last redemption with interest at the rate of eight percent per annum, and the amount of any taxes or assessment which the last redemptioner may have paid thereon after the redemption by him, with like interest on such amount, and in addition thereto by paying the amount of any liens, by judgment, decree or mortgage, held by said last redemptioner prior to his own, with interest, but the judgment under which the property was sold need not be so paid as a lien)). The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within sixty days after the last redemption, ((on)) and such sixty-day redemption periods may extend beyond the period prescribed in RCW 6.24.140 for redemption from the purchaser.

(2) The judgment debtor may also redeem from a redemptioner, but in all cases the judgment debtor shall have the entire redemption period prescribed by RCW 6.24.140, but no longer unless the time is extended under RCW 6.24.145 or 6.24.190. If the judgment debtor redeems, the effect of the sale is terminated and the estate of the debtor is restored.

(3) A redemptioner may redeem under this section by paying the sum paid on the last previous redemption with interest ((thereon)) at the rate of eight percent per annum, and the amount of any assessments or taxes which the last previous redemptioner paid on the property after ((the redemption by him)) redeeming, with like interest ((thereon)), and the amount of any liens by judgment, decree, deed of trust, or mortgage, other than the judgment under which the property was sold, held by the last redemptioner, ((previous)) prior to his own, with interest. ((If the purchaser or)) A judgment debtor who redeems from a redemptioner under this section must

make the same payments as are required to effect a redemption by a redemptioner, including any lien by judgment, decree, deed of trust, or mortgage, other than the judgment under which the property was sold, held by the redemptioner. A redemptioner ((shall pay)) who pays any taxes or assessments, or ((have or acquire)) has or acquires any such lien as herein mentioned, ((he)) must file a statement ((thereof with the auditor of the county where said property is situate before the property shall have been redeemed from him, otherwise the property may be redeemed without paying such tax, assessment or lien. Such statement shall be recorded by such auditor)) as required under section 705 of this 1987 act.

NEW SECTION. Sec. 705. A purchaser or redemptioner who pays any taxes or assessments or has or acquires a lien on the property by judgment, decree, deed of trust, or mortgage prior to that of a prospective redemptioner must file a statement thereof, for recording, with the recording officer of the county in which the property is situated before the property has been redeemed from him or her. Otherwise, the property may be redeemed without paying such tax, assessment, or lien, but if actual notice of such payments or liens has been given to the person who redeems, failure to file the statement shall not affect the right to payment from that person absent that person's demonstration of prejudice resulting from the failure to file the statement.

Sec. 706. Section 10, chapter 53, Laws of 1899 as amended by section 2, chapter 196, Laws of 1961 and RCW 6.24.160 are each amended to read as follows:

If no redemption ((be)) is made within the redemption period prescribed by RCW 6.24.140 or within any extension of that period under any other provision of this chapter, the purchaser ((or his assignee)) is entitled to a ((conveyance)) 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 ((of redemption)) for re-redemption, and the time for redemption by the judgment debtor has expired, the last redemptioner ((or his assignee)) is entitled to receive a sheriff's deed((;but in all cases the judgment debtor shall have the entire redemption period prescribed by RCW 6.24.140 from the date of the sale to redeem the property. If the judgment debtor redeem he must make the same payments as are required to effect a redemption by the redemptioner. If the judgment debtor redeem, the effect of the sale is terminated and he is restored to his estate. A certificate of redemption must be filed and recorded in the office of the auditor of the county in which the property is situated, and the auditor must note the record thereof in the margin of the record of the certificate of sale)) as provided in RCW 6.24.220.

Sec. 707. Section 11, chapter 53, Laws of 1899 and RCW 6.24.170 are each amended to read as follows:

When two or more persons apply to the sheriff to redeem at the same time ~~((he))~~, the sheriff shall allow the person having the prior lien to redeem first, and so on. The sheriff shall immediately pay the money over to the person from whom the property is redeemed, if ~~((he attend at the))~~ that person is present at time of redemption; or if not, at any time thereafter when demanded. When a sheriff ~~((shall))~~ wrongfully ~~((refuse))~~ refuses to allow any person to redeem, ~~((his))~~ the right to redeem shall not be prejudiced ~~((thereby))~~ by such refusal, and the sheriff may be required, by order of the court, to allow such redemption.

Sec. 708. Section 12, chapter 53, Laws of 1899 as amended by section 6, chapter 276, Laws of 1984 and RCW 6.24.180 are each amended to read as follows:

~~((The mode of redeeming shall be as provided in this section.))~~ (1) The person seeking to redeem shall give the sheriff at least five days' written notice of ~~((his))~~ intention to apply to the sheriff for that purpose. It shall be the duty of the sheriff to notify the purchaser or redemptioner, as the case may be, or ~~((his))~~ the purchaser's or redemptioner's attorney, of the receipt of such notice, if such person ~~((be))~~ is within such county. At the time ~~((and place))~~ specified in such notice, the person seeking to redeem may do so by paying to the sheriff the sum required. The sheriff shall give the person redeeming a certificate stating ~~((therein))~~ the sum paid on redemption, from whom redeemed, the date thereof and a description of the property redeemed. A certificate of redemption must be filed and recorded in the office of the recording officer of the county in which the property is situated, and the recording officer must note the record thereof in the margin of the record of the certificate of sale.

(2) A person seeking to redeem shall submit to the sheriff the evidence of ~~((his))~~ the right ~~((thereto))~~ to redeem, as follows:

~~((1) If he be a))~~ (a) A lien creditor ~~((;))~~ shall submit a copy of the docket of the judgment or decree under which ~~((he claims))~~ the right to redeem is claimed, certified by the clerk of the court where such judgment or decree is docketed; or ~~((if he seeks to redeem upon mortgage;))~~ the holder of a mortgage or deed of trust shall submit the certificate of the record thereof ~~((; also))~~ together with an affidavit, verified by ~~((himself))~~ the holder or agent, showing the amount then actually due thereon.

~~((2) A))~~ (b) An assignee shall submit a copy of any assignment necessary to establish ~~((his))~~ the claim, verified by the affidavit of ~~((himself))~~ the assignee or agent, showing the amount then actually due on the judgment, decree, deed of trust, or mortgage.

(3) If the redemptioner or purchaser has a lien prior to that of the lien creditor seeking to redeem, such redemptioner or purchaser shall submit to the sheriff the same kind of evidence thereof as is required from a person seeking to redeem under subsection (2) of this section, and the amount due thereon, or the same may be disregarded.

(4) ~~((if the))~~ A purchaser ~~((or the purchaser's successor in interest))~~ who has paid a sum on a prior lien or obligation secured by an interest in the property ~~((; he or she))~~ shall submit to the sheriff an affidavit, verified by the purchaser ~~((or the purchaser's successor in interest))~~ or an agent, showing the amount paid on the prior lien or obligation, or the prior lien or obligation may be disregarded.

Sec. 709. Section 13, chapter 53, Laws of 1899 and RCW 6.24.190 are each amended to read as follows:

(1) Except as provided in subsection (3) of this section and in RCW 6.24.210, the purchaser, from the time of the sale until the redemption, and the redemptioner from the time of ((his)) the redemption until another redemption, ((except as hereinafter provided;)) is entitled to receive from the tenant in possession the rents of the property sold ~~((;))~~ or the value of the use and occupation thereof. But when any rents or profits have been received ~~((by such person or persons thus entitled thereto;))~~ from the property ~~((thus sold))~~ by such purchaser or redemptioner, preceding the redemption thereof from him or her, the amount of such rents and profits, over and above the expenses paid for operating, caring for, protecting and insuring the property, shall be a credit upon the redemption money to be paid ~~((; and if the))~~.

(2) If a redemptioner or other person entitled to ((make such redemption)) redeem, before the expiration of the time allowed for such redemption, files with the sheriff a demand in writing for a written and verified statement of the amounts of ((such)) rents and profits thus received ~~((;))~~ and expenses paid and incurred, the period for redemption is extended five days after such a sworn statement is given by ((such)) the person ((thus)) receiving such rents and profits, or by his or her agent, to the person making ((such)) the demand, or to the sheriff. It shall be the duty of the sheriff to serve a copy of such demand upon the person receiving such rents and profits, his or her agent or his or her attorney, if ((such)) service can be made in the county where the property is situate. If such person shall, for a period of ten days after such demand has been given to the sheriff, fail or refuse to give such statement, ((such)) the redemptioner or other person entitled to redeem ((from such sale, making such demand;)) who made the demand may bring an action within sixty days after making such demand, but not later, in any court of competent jurisdiction, to compel an accounting and disclosure of such rents, profits and expenses, and until fifteen days from and after the final determination of such action the right of redemption is extended to such redemptioner or other person ((making such demand who shall be)) entitled to redeem who made the demand. If a sworn statement is given by the purchaser or other person receiving such rents and profits, and ((such)) the redemptioner or other person entitled to redeem ~~((;))~~ who ~~((makes such))~~ made the demand, desires to contest the correctness of the ~~((same))~~ statement, he or she must first redeem in

accordance with such sworn statement, and if he or she desires to bring an action for an accounting thereafter he or she may do so within thirty days after such redemption, but not later ~~(-PROVIDED, That if)~~.

(3) If such property ~~(be)~~ is farming or agricultural property and ~~(be)~~ is in possession of any purchaser or any previous redemptioner and is redeemed after the first day of April and before the first day of December, and the purchaser or previous redemptioner or ~~(his)~~ the tenant of either has performed any work in preparing such property for crops ~~(;)~~ or has planted crops, ~~(he)~~ such purchaser or previous redemptioner shall ~~(be entitled to)~~ have the option to demand reimbursement for such work and labor or ~~(the right)~~ to retain possession of such property until the first day of December following, and the new redemptioner shall be entitled to collect the reasonable rental value thereof during such farming year, unless such reasonable rental shall have been collected by such purchaser or previous redemptioner and accounted for to the new redemptioner.

Sec. 710. Section 14, chapter 53, Laws of 1899 and RCW 6.24.200 are each amended to read as follows:

Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property. But it is not waste for the person in possession of the property at the time of the sale or entitled to possession afterwards during the period allowed for redemption to continue to use it in the same manner in which it was previously used, or to use it in the ordinary course of husbandry, or to make the necessary repairs of buildings thereon, or to use wood or timber on the property therefor, or for the repairs of fences, or for fuel in his or her family while ~~(he occupies)~~ occupying the property.

Sec. 711. Section 15, chapter 53, Laws of 1899 as last amended by section 21, chapter 329, Laws of 1981 and RCW 6.24.210 are each amended to read as follows:

(1) Except as provided in this section and RCW 6.24.190, the purchaser from the day of sale until a resale or redemption, and the redemptioner from the day of ~~(his)~~ redemption until another redemption, shall be entitled to the possession of the property purchased or redeemed, unless the same be in the possession of a tenant holding under an unexpired lease, and in such case shall be entitled to receive from such tenant the rents or the value of the use and occupation thereof during the period of redemption ~~(-PROVIDED, That when)~~.

(2) If a mortgage contains a stipulation that in case of foreclosure the mortgagor may remain in possession of the mortgaged premises after sale and until the period of redemption has expired, the court shall make its decree to that effect and the mortgagor shall have such right ~~(-PROVIDED; FURTHER, That as)~~.

(3) As to any land so sold which is at the time of the sale used for farming purposes, or which is a part of a farm used, at the time of sale, for

farming purposes, the judgment debtor shall be entitled to retain possession thereof during the period of redemption and the purchaser or his successor in interest shall, if the judgment debtor does not redeem, have a lien upon the crops raised or harvested thereon during said period of redemption, for interest on the purchase price at the rate of six percent per annum during said period of redemption and for taxes becoming delinquent during the period of redemption together with interest thereon(~~(= AND, PROVIDED FURTHER, That)~~).

(4) In case of any homestead as defined in chapter 6.12 RCW and occupied for that purpose at the time of sale, the judgment debtor shall have the right to retain possession thereof during the period of redemption without accounting for issues or for value of occupation.

Sec. 712. Section 23, chapter 329, Laws of 1981 and RCW 6.24.230 are each amended to read as follows:

(1) Except as provided in subsection (4) of this section, during the period of redemption for any property (~~(which)~~) that a person would be entitled to claim as a homestead, any licensed real estate broker within the county in which the property is located may nonexclusively list the property for sale whether or not there is a listing contract. If the property is not redeemed by the judgment debtor and a sheriff's deed is issued under RCW 6.24.220, then the property owner shall accept the highest current qualifying offer upon tender of full cash payment within two banking days after notice of the pending acceptance is received by the offeror. If timely tender is not made, such offer shall no longer be deemed to be current and the opportunity shall pass to the next highest current qualifying offer, if any. Notice of pending acceptance shall be given for the first highest current qualifying offer within five days after delivery of the sheriff's deed under RCW 6.24.220 and for each subsequent highest current qualifying offer within five days after the offer becoming the highest current qualifying offer. An offer is qualifying if the offer is made during the redemption period through a licensed real estate broker listing the property and is at least equal to the sum of: (a) One hundred twenty percent greater than the redemption amount determined under RCW 6.24.140 and (b) the normal commission of the real estate broker or agent handling the offer.

(2) The proceeds shall be divided at the time of closing with: (a) One hundred twenty percent of the redemption amount determined under RCW 6.24.140 paid to the property owner, (b) the real estate broker's or agent's normal commission paid, and (c) any excess paid to the judgment debtor.

(3) Notice, tender, payment, and closing shall be made through the real estate broker or agent handling the offer.

(4) This section shall not apply to mortgage or deed of trust foreclosures under chapter 61.12 or 61.24 RCW.

1989
SESSION LAWS
OF THE
STATE OF WASHINGTON

REGULAR SESSION
FIFTY-FIRST LEGISLATURE
Convened January 9, 1989. Adjourned April 23, 1989.

1st EXTRAORDINARY SESSION
FIFTY-FIRST LEGISLATURE
Convened April 24, 1989. Adjourned May 10, 1989.

2nd EXTRAORDINARY SESSION
FIFTY-FIRST LEGISLATURE
Convened May 17, 1989. Adjourned May 20, 1989.



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Chapter 6, Laws of 1969.

DENNIS W. COOPER
Code Reviser

CHAPTER 42

[Substitute Senate Bill No. 5297]

OPEN PUBLIC MEETINGS—VOTING BY SECRET BALLOT PROHIBITED

AN ACT Relating to the use of secret ballots at meetings required to be open to the public; and amending RCW 42.30.060.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 6, chapter 250, Laws of 1971 ex. sess. and RCW 42-.30.060 are each amended to read as follows:

(1) No governing body of a public agency shall adopt any ordinance, resolution, rule, regulation, order, or directive, except in a meeting open to the public and then only at a meeting, the date of which is fixed by law or rule, or at a meeting of which notice has been given according to the provisions of this chapter. Any action taken at meetings failing to comply with the provisions of this ~~(section)~~ subsection shall be null and void.

(2) No governing body of a public agency at any meeting required to be open to the public shall vote by secret ballot. Any vote taken in violation of this subsection shall be null and void, and shall be considered an "action" under this chapter.

Passed the Senate March 6, 1989.

Passed the House April 3, 1989.

Approved by the Governor April 18, 1989.

Filed in Office of Secretary of State April 18, 1989.

CHAPTER 43

[Substitute Senate Bill No. 5208]

CONDOMINIUM ACT

AN ACT Relating to condominiums; reenacting and amending RCW 58.17.040; adding a new chapter to Title 64 RCW; creating a new section; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

ARTICLE I

GENERAL PROVISIONS

NEW SECTION. Sec. 1-101. This chapter shall be known and may be cited as the Washington condominium act or the condominium act.

NEW SECTION. Sec. 1-102. APPLICABILITY. (1) This chapter applies to all condominiums created within this state after the effective date of this act. Sections 1-105 (separate titles and taxation), 1-106 (applicability of local ordinances, regulations, and building codes), 1-107 (condemnation), 2-103 (construction and validity of declaration and bylaws), 2-104 (description of units), 3-102(1)(a) through (f) and (k) through (q) (powers

(4) Assessments to pay a judgment against the association pursuant to section 3-118(1) of this act 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.

NEW SECTION. Sec. 3-117. 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. Unless the declaration provides otherwise, fees, late charges, fines, and interest charged pursuant to section 3-102(1) (j), (k), and (l) of this act are enforceable as assessments under this section. If an assessment is payable in installments, the association has a lien for the full amount of the assessment from the time the first installment thereof 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. If the association elects to foreclose its lien under this section judicially pursuant to chapter 61.12 RCW rather than nonjudicially pursuant to chapter 61.24 RCW, as provided by subsection (6) of this section, the lien shall also be prior to the mortgages described in (b) of this subsection 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 section 3-116(1) of this act which would have become due, in the absence of acceleration, during the six months immediately preceding institution of an action to enforce the lien: **PROVIDED,** That the priority of the association's lien against units encumbered by a mortgage held by an eligible mortgagee or by a first 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 its foreclosure 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. A lien under this section is not subject to the provisions of chapter 6.13 RCW.

(3) 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.

(4) 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.

(5) A lien for unpaid assessments is extinguished unless proceedings to enforce the lien are instituted within three years after the amount of the assessments sought to be recovered becomes due.

(6) 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 or nonjudicially in the manner set forth in chapter 61.24 RCW for nonjudicial foreclosure of deeds of trust if the declaration so provides and contains the prerequisites therefor set forth in such chapter. 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.

(7) 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.

(8) Except as provided in subsection (2) 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 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.

(9) 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. 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.

(10) 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.

(11) 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.

(12) 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.

(13) 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.

NEW SECTION. Sec. 3-118. OTHER LIENS AFFECTING THE CONDOMINIUM. (1) Except as provided in subsection (2) of this section, a judgment for money against the association perfected under RCW 4.64.020 is a lien in favor of the judgment lienholder against all of the units in the condominium and their interest in the common elements at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

(2) If the association has granted a security interest in the common elements to a creditor of the association pursuant to section 3-113 of this act, the holder of that security interest shall exercise its right first against such common elements before its judgment lien on any unit may be enforced.

Via U. S. Mail
Michael Fulbright
Attorney at Law
11820 Northup Way, Suite E200
Bellevue, WA 98005

Dated this 6th day of April, 2011.



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SIGNED AND SWORN TO (or affirmed) before me on the 6th
day of April, 2011.



ANA I. TODAKONZIE
Notary Public in and for the
State of Washington.
Residing in Seattle, Washington.
My appointment expires: 2/28/2015.