

71591-7

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Case No. 71591-7

In the Court of Appeals of the State of Washington,
Division One

Vantage Capital, L.L.C.,

Appellant

v.

P.H.T.S., LLC,

Respondent

Brief of Respondent

On Appeal from Snohomish County Superior Court

Case No. 14-2-01985-6

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FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2014 JUN 26 PM 2:33

Table of Contents

I. Introduction and Statement of Issue	1
II. Statement of the Case	1
A. Facts	1
B. Procedure.....	3
III. Argument	5
A. The purpose of the 1981 reform of the laws governing sheriff sales was to preserve debtors' equity in their real property, particularly their homes.....	5
B. The purpose of RCW 6.23.120 is to increase excess proceeds for judgment debtors by increasing bid amounts.....	10
1. The statute is a written bid process that follows the oral auction of a sheriff's sale.	11
2. The statute benefits judgment debtors to the disadvantage of low-bidding sheriff's sale purchasers.	13
3. The statute enlists the initiative and competitiveness of real estate brokers to drive up the price of unredeemed property....	14
4. A broker authorized to list the property for sale under RCW 6.23.120 is the agent of the buyer, not the seller.	17
C. Because Thomas Sullivan was authorized to sell the property, he was "a broker listing the property for sale" under RCW 6.23.120.	19
D. The statute does not compel the placement of a written advertisement.	21
E. Even if it was required by RCW 6.23.120, the Zillow ad met the requirement.	24
F. RCW 6.23.120 creates a statutory right, and courts do not apply equitable principles to determine whether statutory rights have been established.....	26
IV. Conclusion	28

Appendix A -- RCW 6.23.120

Appendix B -- Engrossed House Bill 599

Appendix C -- Laws of 1981, ch. 329

Table of Authorities

Cases

<i>Capital Investment Corp. of Washington v. King County</i> , 112 Wn.App. 216, 228, 225, 47 P.3d 161 (2002).....	3
<i>Doerhoefer v. Farrell</i> , 29 Or. 304, 45 P. 797, 798 (1896).....	25
<i>Fidelity Mut. Sav. Bank v. Mark</i> , 112 Wn.2d 47, 767 P.2d 1382 (1989)....	26
<i>Graham v. Findahl</i> , 122 Wn. App. 461, 93 P.3d 977 (2004).....	11, 12, 22, 24, 26
<i>Income Investors, Inc. v. Shelton</i> , 3 Wn.2d 599, 101 P.2d 973 (1940).....	27
<i>Kuper v. Stojack</i> , 57 Wash.2d 482, 483, 358 P.2d 132 (1960).	26
<i>Millay v. Cam</i> , 135 Wn.2d 193, 955 P.2d 791 (1998).....	25, 26
<i>Portion Pack, Inc. v. Bond</i> , 265 P.2d 1045, 44 Wn.2d 161, 170 (1954). ...	27
<i>Sing v. John L. Scott, Inc.</i> , 134 Wash.2d 24, 948 P.2d 8 16 (1997);	19
<i>Udall v. T.D. Escrow Services</i> , 159 Wn.2d 903, 154 P.3d 882 (2007).....	20

Statutes

Chapter 329, Laws of 1981	8, 10, 23
Engrossed House Bill 599.....	8, 15
RCW 11.56.110	12, 13
RCW 18.85.011 (16)(a)	19
RCW 18.86.010	17
RCW 18.86.030 (1)(b).....	19
RCW 6.21.110 (5).....	13

Other Authorities

Black's Law Dictionary 1016 (2009).....	20, 21
Webster's Third New International Dictionary 1320 (2002).	20, 24

I. Introduction and Statement of Issue

During the redemption period after a sheriff's sale of real property, P.H.T.S., LLC made an offer to buy the property from the sheriff's sale purchaser. It made the offer through Thomas Sullivan, a licensed real estate broker in Snohomish County, pursuant to RCW 6.23.120, which says:

- (1) "any licensed real estate broker within the county in which the property is located may nonexclusively list the property for sale," and
- (2) the offer must be made through "a licensed real estate broker listing the property."

Was Mr. Sullivan a real estate broker listing the property for sale?

Vantage Capital assumes without proving that by the term "listing" the legislature meant a written advertisement. It then argues that the court should concoct the elements of this advertisement because the legislature did not do so. It finally suggests a peculiar content for the advertisement that would defeat the purpose of the statute. In the guise of interpretation, Vantage invites the court to amend the legislation.

II. Statement of the Case

A. Facts

On July 23, 2012, the Rosemount Heights Condominium Homeowners Association commenced a judicial foreclosure under Snohomish County Superior Court Case No. 12-2-06757-9. CP 48. The

action sought to collect delinquent condominium assessments owed by the owner of Unit 1C, Vitaliy Glinsky. CP 48. The complaint named Glinsky and his lender, Bank of America, as defendants. CP 48. Both defaulted. CP 54. The trial court in that case entered a default judgment and order of sale. CP 54.

On December 14, 2013, Vitaliy Glinsky's home, located in Lynnwood, WA, was sold at a Snohomish County sheriff's sale enforcing the judgment. CP 90. Vantage Capital was the winning bidder for \$45,500. CP 90. Of that amount, \$11,957.92 went to the judgment creditor and \$33,542.08 to Vitaliy Glinsky. CP 90, 54.

The redemption period was one year and ended on Monday, December 16, 2013. CP 56; RCW 1.12.040. Prior to the end of the redemption period, PHTS offered to purchase the home from Vantage for \$70,000. CP 112. The offer (without the attachments) provided in full:

1. P.H.T.S., LLC offers to purchase the real property described in the attached Sheriff's Certificate of Sale for \$70,000.
2. Title to the real property will be conveyed by bargain and sale deed in the form attached. The title conveyed will be in a condition consistent with the covenants of a bargain and sale deed.
3. P.H.T.S., LLC will pay all recording fees, excise taxes and closing costs occasioned by this sale.
4. This offer is made pursuant to RCW 6.23.120. The supplementary terms, conditions and requirements contained in that statute are incorporated into this offer.

5. The licensed real estate broker through whom this offer is made is Thomas J. Sullivan, Broker License No. 8448, P.O. Box 1475, Edmonds, WA 98020, 206-396-5868.

CP 118. Vantage Capital received no other offers under RCW 6.23.120.

CP 46. The offer was signed by Thomas J. Sullivan as manager of PHTS.

Prior to making the offer, Sullivan advertised the property on zillow.com. CP 112. The December 14, 2014 ad described the condo as a 1000 square foot, two bedroom, two bathroom condominium built in 2003 with forced air heating. CP 115. It gave the address and a price of \$170,000. CP 115.

B. Procedure.

In November 2013, Viktor Klimenko attempted to redeem the property. CP 58. Vantage acquiesced in Klimenko's redemption and provided its calculation of the redemption amount. CP 58. Klimenko paid the amount and received a certificate of redemption and sheriff's deed. CP 58. PHTS challenged the validity of Klimenko's redemption because Klimenko had obtained an assignment of Vitaly Glinsky's redemption rights but not a conveyance of Glinsky's ownership of the condominium. CP 58. PHTS argued that such an assignment was ineffectual, relying upon *Capital Investment Corp. of Washington v. King County*, 112 Wn.App. 216, 228, 225, 47 P.3d 161 (2002) ("[T]he right to redeem cannot be severed from the interest that underlies it, and neither a judgment debtor nor a redemptioner

can effectively transfer the naked right to redeem without also transferring the interest that underlies such right.") Klimenko capitulated and on January 3, 2014, the trial court entered an agreed order voiding the redemption. CP 58.

PHTS then filed this action against Vantage in Snohomish County Superior Court seeking declaratory and injunctive relief. CP 123. Both parties filed cross-motions for summary judgment. CP 80, 103. On February 19, 2014, Judge Joseph Wilson ruled in favor of PHTS. CP 6. His order of summary judgment denied Vantage's motion and provided:

- (1) P.H.T.S., LLC has made the highest qualifying offer to Vantage Capital, LLC under the terms of RCW 6.23.120,
- (2) Vantage Capital, LLC is obligated to sell the above-described real property to P.H.T.S., LLC under the terms of the offer. There shall be added to the deed from Vantage Capital, L.L.C. to P.H.T.S., LLC the following language: title conveyed hereby shall not exceed in scope and quality of that which Vantage Capital, L.L.C. acquired from the Sheriff of Snohomish County and shall be subject to any and all infirmities now or hereafter pertaining to such Sheriff's deed.
- (3) The motion of Vantage Capital, LLC is denied.
- (4) The duties of the parties in the closing of the transaction, namely the plaintiff's deposit of the purchase price and the defendant's execution and deposit of the deed, are stayed for 30 days.
- (5) Upon closing, the purchase price shall be distributed in the following amounts:

Vantage Capital, LLC	\$61,187.90
Thomas J. Sullivan	\$ 3,671.27
Vitaliy Glinsky	<u>\$ 5,140.83</u>
Total	\$70,000.00

CP 7. The parties then stipulated to the stay of the closing pending this appeal.

III. Argument

A. The purpose of the 1981 reform of the laws governing sheriff sales was to preserve debtors' equity in their real property, particularly their homes.

RCW 6.23.120 was enacted as part of a comprehensive reform of the laws concerning the enforcement of judgments. The impetus for the reform was an investigation by the Seattle Post-Intelligencer detailed in an eleven-article series by Eric Holder and Timothy Egan over four days beginning February 1, 1981.¹ The P.I. reported about the plight of judgment debtors whose homes were sold at sheriff sales for a small fraction of their market value, some for only a few hundred dollars. In each case, the P.I. reported that the judgment debtors:

- had personal property from which the judgment could have been satisfied,

¹ *It's the Law: Dozens Lose their Homes Over Debts as Low as \$75*, Feb. 1, 1981, at A1; *If the Law Is Bad, Change It, Lawyer says*, Feb. 1, 1981, at A14; *How One Bellevue Family Lost Its House*, Feb. 1, 1981, at A15; *Here's How the Law Works - Owners Don't Have to Get a Cent From Sale of Homes*, Feb. 1, 1981, at A15; *Two Deputies Retire in Midst Of Gifts Probe*, Feb. 2, 1981, at A1; *Family May Lose Home Over \$210 Unpaid Bill*, Feb. 2, 1981, at A14; *A \$3 Way to Protect The Old Homestead*, Feb. 3, 1981, at A12; *Legislators Vow Debt Law Reform for Homeowners*, Feb. 3, 1981, at A1; *How a \$75 Debt Led To a Foreclosure*, Feb. 3, 1981, at A1; *Lawyer's Money Lending Probed*, Feb. 4, 1981, at A1; *A Batch of Candy Led to an Eviction Notice*, Feb. 4, 1981, at A6.

- did not understand that a sheriff's sale would occur,
- did not understand that a sheriff's sale had occurred,
- did not sell the property voluntarily to realize its fair market value,
- did not understand their redemption rights,
- did not redeem the property within the redemption period, and
- had not filed a homestead declaration.

The P.I. focused particularly on the activities of (later-disbarred) attorney

Gary E. Culver and the unseemly bargains he obtained at sheriff's sales:

Dozens of families, broken by tragedy and debt, have lost their homes because of an archaic state law that allows speculators to take their property for a fraction of its value.

For at least 10 years, two Seattle lawyers have specialized in using the law and the official muscle of the sheriff's office to buy and sell these families' homes – in some cases before the families realize what happened.

The attorneys, Gary E. Culver and C.E. "Buck" Austin, bought the houses as distressed properties at Sheriff's sales in several Western Washington counties with the original family owners receiving nothing in return – and lawyers say it is all perfectly legal.

...

Culver operates under a territorial law passed in 1854 that allows a creditor to foreclose on real estate for payment of even a nominal debt.²

Culver bought houses for, respectively, \$251, \$243, and \$368.³ The King

² Timothy Egan and Eric Nalder, *It's the Law: Dozens Lose their Homes Over Debts as Low as \$75*, SEATTLE POST-INTELLIGENCER, Feb. 1, 1981, at A1.

³ Timothy Egan and Eric Nalder, *It's the Law: Dozens Lose their Homes Over Debts as Low as \$75*, SEATTLE POST-INTELLIGENCER, Feb. 1, 1981, at A15.

County Sheriff called for a reform of the law:

"This civil law is so archaic," [Sheriff Lawrence] Waldt said. "In a sense, it permits sharp operators to use the law to operate in a legal sense – but to do almost total miscarriages of justice.

"A sharp dealer can literally be a thief and be legal. Anybody can go out and destroy a person and be legal.

"The legislature should study whether it is appropriate to have a 16th century law like this on the books."⁴

Legislators from both political parties promised to respond rapidly with protective legislation:

Legislators yesterday moved to change an antiquated state law under which dozens of families have lost their homes for failing to pay debts of as little as \$75.

One bill to patch up the 1854 law has been drafted and is expected to be introduced today or tomorrow in the Senate. Another legislator demanded similar action in the house.

And hundreds of homeowners, fearing that they would lose their homes over small debts, deluged the Seattle District Court, King County Superior Court, and the King County Sheriff's office with calls yesterday.

The law came under heavy fire after a Post-Intelligencer investigation disclosed that the law has allowed two Seattle lawyers and other speculators to buy debtors homes for a fraction of their value.

Sen. Phil Talmadge, D-Seattle, drafted a proposal that would provide more protection to homeowners whose houses are sold at sheriff sales. Talmadge, chairman of the Senate Judiciary Committee, said he expects to introduce the measure before the end of the week.

Rep. Nita Rinehard (sic, Rinehart), D-Seattle, urged the House Ethics, Law and Justice Committee to change the law yesterday. She stapled copies of the PI reports to a note to the committee chairman.

"Obviously, this is unjust." She said.

⁴ Eric Nalder and Timothy Egan, SEATTLE POST-INTELLIGENCER, *Two Deputies Retire in Midst Of Gifts Probe*, Feb. 2, 1981, at A1

"We will get right on it," said state representative William "Skeeter" Ellis, R-Seattle, chairman of the committee. "We are certainly going to find a way to make the system more just, and free of abuse."⁵

In the House of Representatives, the response was Engrossed House Bill 599, passed unanimously by the House on March 31, 1981.⁶ It included section 5, which eventually became RCW 6.23.120. EHB 599, § 5. The Senate's response was Substitute Senate Bill 3459. SSB 3459 did not include a provision comparable to section 5 of the House Bill. When EHB 599 arrived, the Senate Judiciary Committee gutted it, deleting everything after the enacting clause. It then grafted onto it the language of SSB 3459 plus section 4 from EHB 599 (which required notices to the judgment debtor during the redemption period).

Then the full Senate restored section 5 by amendment with one significant alteration⁷ (discussed below at p. 15). The final result was the Senate bill plus sections 4 and 5 of the House bill.⁸ Both houses passed the finalized bill with only one nay vote in either house, the governor signed it, and it became Laws of 1981, Chapter 329,⁹ which is reproduced in Appendix C.

⁵ Eric Nalder and Timothy Egan, *Legislators Vow Debt Law Reform for Homeowners*, SEATTLE POST-INTELLIGENCER, Feb. 3, 1981, at A1.

⁶ House Journal, at 622; Appendix B

⁷ Senate Journal, at 1703-4.

⁸ Compare Laws of 1981, ch. 329 with EHB 599 and SSB 3459.

⁹ House Journal, at 1198-1204; Senate Journal, at 2168.

Section 23 of ch. 329 was codified as RCW 6.24.250, and was recodified in 1987 as RCW 6.23.120.¹⁰

The Seattle P.I. series revealed that troubled judgment debtors were losing their equity when small judgments were satisfied by the forced sale of their homes for well below market value. The 1981 legislature addressed this problem with four strategies:

First, prohibit the judicial sale of real property unless there truly is insufficient personal property to pay the judgment.

Second, require the reliable mailing of multiple warning notices to the judgment debtor before the sheriff's sale, after the sheriff's sale and during the redemption period.

Third, make the homestead exemption automatic to protect some of the debtors' equity in their home if, after receiving all of the statutory warnings, they did not pay the debt and their home was sold on the courthouse steps.

Fourth, generate excess sale proceeds for the judgment debtor through a second round of bidding during the redemption period. It was this fourth strategy that RCW 6.23.120 implements.

¹⁰ The legislature recodified Chapter 6.24 RCW to provide separate chapters for sales under executions, RCW 6.21, and redemptions, RCW 6.23. Laws of 1987, ch. 442, part VII, p. 1837-46 (RCW ch. 6.23). The legislature placed RCW 6.23.120 was placed in the chapter on Redemptions.

B. The purpose of RCW 6.23.120 is to generate excess proceeds for judgment debtors by increasing bid amounts.

Selling real property at a sheriff's auction is far less effective at obtaining a fair market price than a conventional sale. The bidders at a sheriff's sale have no access to the property and are unable to inspect it except from the street. The property itself cannot be used to finance the sale because there is no opportunity to arrange for bank financing. Owners title insurance is unavailable. The price must be paid in cash at the time of the sale. And those who would take on these risks would need to obtain the property at a bargain in order to profit from reselling it. All of this leads to below-market bids. Judgment debtors would be far better off listing their property with a real estate broker and letting the market bring them an offer for fair value. The notices mandated by Laws of 1981, ch. 329 were designed to prompt judgment debtors to do just that.

But some judgment debtors might fail to respond to the multitude of statutorily-mandated notices and squander their equity. And it did not help that sheriff sales were not attracting enough bidders to be competitive, and there was evidence of collusive bidding. The P.I. reported:

Culver learned of the lucrative business from Austin in the late 1960s, when the two men became partners. Homes of people in debt were virtually theirs for the asking at King County sheriff sales, Culver said.

The reason: Austin and Culver frequently were the only bidders showing up.

"One time there were two sales we both wanted," Culver recalled. "So he took one and I took the other."¹¹

Instead of adopting measures to boost attendance at the sheriff's auctions, the legislature invented a second process that harnesses itself to the real estate market. In RCW 6.23.120, the legislature created a free market approach to boost the bidding for sheriff's sale property. By giving real estate brokers the opportunity to earn a commission, the legislature hoped to generate offers that would increase the excess proceeds returnable to the judgment debtor.

1. The statute is a written bid process that follows the oral auction of a sheriff's sale.

In *Graham v. Findahl*, 122 Wn. App. 461, 466, 93 P.3d 977 (2004), the only case to interpret RCW 6.23.120, this court explained the operation of the statute as follows:

Washington's redemption statutes contain a relatively unique upset process whereby, during the redemption period, a third party can force a purchaser at a sheriff's sale to sell at a price not less than 120 percent greater than the redemption amount. The gist of this procedure is that, if a real estate broker lists the property on an open listing, a third party can make a "qualifying offer" through a real estate broker. A qualifying offer requires acceptance unless the buyer receives other qualifying offers, presumably greater in amount.

Graham v. Findahl, 122 Wn. App. 461, 463, 93 P.3d 977 (2004). The

¹¹ Timothy Egan and Eric Nalder, *It's the Law: Dozens Lose their Homes Over Debts as Low as \$75*, SEATTLE POST-INTELLIGENCER, Feb. 1, 1981, at A15.

Court defined a qualifying offer as follows:

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 6.23.020 and
 - (b) the normal commission of the real estate broker or agent handling the offer.

Graham v. Findahl, 122 Wn. App. at 466.

From a qualifying bid, the sheriff's sale purchaser receives 120% of the redemption amount, no more and no less. Assuming a judgment rate of 12% per annum, the redemption amount would be 112% of the sheriff's sale purchase price. The sheriff's sale purchaser receives 120% of that amount. The effective annual yield on the sheriff's sale purchaser's investment, then, would be 34.4% (120% of 112%). Applied to this case, of the \$70,000 offer price, Vantage will receive \$61,187.90, a return of \$15,687.90 (34.4%) on the \$45,500 it paid at the sheriff's auction. CP 7.

RCW 6.23.120 is an auction after the auction. It is similar to the bid process authorized under the probate code. Under RCW 11.56.110, after a personal representative's court-authorized public or private sale of real property, anyone may submit a sealed bid for a higher amount before

confirmation of the sale.¹²

2. The statute benefits judgment debtors to the disadvantage of low-bidding sheriff's sale purchasers.

The party benefited by multiple offers under RCW 6.23.120 is the same party benefitted by multiple bids at the sheriff's sale - the judgment debtor. At the sheriff's sale, the excess after payment of the judgment goes to the judgment debtor. RCW 6.21.110 (5). Under RCW 6.23.120 (2)(c), the excess after payment to the sheriff's sale purchaser and real estate broker goes to the judgment debtor. It makes no difference to the sheriff's sale purchaser whether there are one or one-hundred qualifying offers under RCW 6.23.120. The sheriff's sale purchaser receives the amount regardless of the amount of the offer. But it makes a difference to the judgment

¹² "If, at any time before confirmation of any such sale, any person shall file with the clerk of the court a bid on such property in an amount not less than ten percent higher than the bid the acceptance of which was reported by the return of sale and shall deposit with the clerk not less than twenty percent of his or her bid in the form of cash, money order, cashier's check, or certified check made payable to the clerk, to be forfeited to the estate unless such bidder complies with his or her bid, the bidder whose bid was accepted shall be informed of such increased bid by registered or certified mail addressed to such bidder at any address which may have been given by him or her at the time of making such bid. Such bidder then shall have a period of five days, not including holidays, in which to make and file a bid better than that of the subsequent bidder. After the expiration of such five-day period the court may refuse to confirm the sale reported in the return of sale and direct a sale to the person making the best bid then on file, indicating which is the best bid, and a sale made pursuant to such direction shall need no further confirmation." RCW 11.56.110; Laws of 1917 c 156 § 132.

debtors because they get the excess. RCW 6.23.120 (2)(c),

Despite its handsome return, the sheriff's sale purchaser is an unwilling seller under RCW 6.23.120. That is why the statute *requires* a party in Vantage's position to accept the highest qualifying offer. RCW 6.23.120 (1). If it were up to Vantage, it would not accept any offer. It does not want to lose the bargain it gained by successfully bidding at the sheriff's auction. But the legislature did not enact RCW 6.23.120 to benefit the interests of sheriff's sale purchasers. It enacted the statute in derogation of those interests.

3. The statute enlists the initiative and competitiveness of real estate brokers to drive up the price of unredeemed property.

One of the legislature's solutions to the problems documented by the P.I. investigation was to get real estate brokers involved and create a new market. This is a private sector, free market approach to a problem. It allows real estate brokers to do what they do best -- compete with each other and, by that competition, (hopefully) drive up the price. The legislature did not expect one broker to do all the work. It hoped that many brokers, competing with each other, would do the work.

RCW 6.23.120 places property sold at a sheriff's sale in the hands of every licensed real estate broker in the county for re-sale. It authorizes every real estate broker in the county to generate an offer, procure a sale and receive a commission. Its objective is to generate excess proceeds to

give back to the judgment debtor.

The drafting history is illuminating. RCW 6.23.120 (1) began as section 5 of Engrossed House Bill 599. The Senate Judiciary Committee eliminated section 5, but, on Senator Talmadge's amendment, the full senate restored it with one significant alteration to the first sentence:

During the period of redemption for any property which a person would be entitled to claim as a homestead, ~~the opportunity for multiple listings by~~ any licensed real estate brokers within the county in which the property is located ~~shall be offered~~ may nonexclusively list the property for sale whether or not there is a listing contract.¹³

The original language of this sentence from the House bill was problematic.

It was not clear whether anyone beyond the judgment debtor could authorize real estate brokers to sell the property.¹⁴ Since one problem was that judgment debtors were not voluntarily selling their property to pay their debts, the original draft of section 5 was not a solution. What was needed was a clear statement of authority. Real estate brokers needed to be confident they were authorized to sell the property even though they did not have a listing contract with the owner. Senator Talmadge's amendment solved the problem of authority.

Under the Senate amendment, any licensed real estate broker in the

¹³ Compare Engrossed House Bill 599, § 5, and amendment offered at Senate Journal, at 1703.

¹⁴ The judgment debtor owns fee title until end of redemption period. *W. T. Watts, Inc. v. Sherrer*, 89 Wn.2d 245, 248-49, 571 P.2d 203 (1977).

county is authorized *by the state* to nonexclusively list the property for sale. The real estate broker does not need a listing agreement in order to have the authority to sell the property. If the property has been sold at a sheriff's sale, and the redemption period has not expired, and the broker is in the same county, the broker has *statutory* authority to sell the property. And the statutory listing is nonexclusive, i.e. the broker does not earn the commission unless he or she procures the highest offer. Black's Law Dictionary, at 1302 ("open listing") (9th ed. 2009).

Like a sheriff's auction, under RCW 6.23.120, there is no opportunity for conventional financing or inspection of the property. The buyer must be sophisticated with an independent source of purchase money. The legislature apparently hoped real estate brokers would know such individuals, and seek them out, and promote the purchase of these properties. The legislature did not select one broker to solicit all buyers. It selected all brokers in the county to each select a buyer. It hoped, by this means, to generate multiple offers.

RCW 6.23.120 placed the Glinsky condominium in the hands of Thomas Sullivan, nonexclusively, for re-sale. Sullivan was a licensed real estate broker in Snohomish County. He took it upon himself to produce, and did produce, an offer. He is "a broker listing the property for sale" within the meaning of RCW 6.23.120.

4. A broker authorized to list the property for sale under RCW 6.23.120 is the agent of the buyer, not the seller.

Underlying Vantage's argument is the false assumption that a broker acting under RCW 6.23.120 is the agent of the seller. Vantage does not defend its assumption or even state it. With that false assumption, the offended tone of Vantage's argument makes sense. But without that assumption, its argument makes little sense.

In the typical real estate sale, the listing broker has a signed listing agreement with the seller. The execution of a written listing agreement makes the listing broker the agent of the seller.

(1) "Agency relationship" means the agency relationship created under this chapter or by written agreement between a real estate firm and a buyer and/or seller relating to the performance of real estate brokerage services.

...

(15) "Seller's agent" means a broker who has entered into an agency relationship with only the seller in a real estate transaction, and includes subagents engaged by a seller's agent.

RCW 18.86.010. RCW 18.86.010 (1) allows for the creation of an agency relationship by virtue of Chapter 18.86 RCW, but that chapter does not create such a relationship for sellers' agents. So the only way for a broker to create an agency relationship with a seller is by written agreement.

A sale under RCW 6.23.120 is atypical. There is no written listing agreement and, therefore, in this atypical sale, the broker is not the agent of the seller. RCW 18.86.010 (1) & (15). Instead, the listing broker under

RCW 6.23.120 is the agent of the buyer because the broker performs real estate brokerage services for the buyer. RCW 18.86.020 (1) ("A broker who performs real estate brokerage services for a buyer is a buyer's agent" (with exceptions inapplicable here)). Real estate brokerage services include purchasing, negotiating the purchase or consulting concerning the purchase of real estate. RCW 18.86.010 (11); RCW 18.85.010 (16). So, under RCW 6.23.120, the listing agent is the buyer's agent and not the seller's agent.

In the typical sale, real property is placed in the hands of a broker by contract. Under RCW 6.23.120, it is placed in the hands of every broker in the county by statute. In the typical sale, the listing contract is exclusive, which means that the broker earns the commission when the property sells, whether or not the broker's efforts contribute to the sale. But under RCW 6.23.120, the statutory listing is non-exclusive or open, which means the broker earns the commission only by procuring the highest qualifying offer.

Vantage can and does rely upon RCW 18.86.030, which states the duties of a broker, regardless of whether the broker is an agent of the party. Specifically, Vantage relies upon the duty of a broker to deal with the seller honestly and in good faith:¹⁵

Regardless of whether a broker is an agent, the broker owes to all parties to whom the broker renders real estate brokerage services the following duties, which may not be waived: ... (b) To deal honestly and in good faith;

¹⁵ Appellant's Brief, at 6.

RCW 18.86.030 (1)(b). This duty is owed to "all parties to whom the broker renders real estate brokerage services," RCW 18.86.030 (1)(b). "Real estate brokerage services" includes listing real estate. RCW 18.85.011 (16)(a). The parties to whom Sullivan rendered real estate brokerage services are Vantage and PHTS.

Vantage complains that Thomas Sullivan, the broker, is also a member of P.H.T.S., LLC. But nothing in the laws of the State of Washington, including RCW 6.23.120, prohibits a broker from becoming a buyer of real property. *Sing v. John L. Scott, Inc.*, 134 Wash.2d 24, 32, 948 P.2d 8 16 (1997); RCW 18.85.011 (16)(a) (A real estate licensee may provide real estate brokerage services on the licensee's own behalf). A real estate broker is just the sort of sophisticated real estate investor that would be interested in making a purchase under RCW 6.23.120. There is nothing in the law that prohibits a real estate broker from being a buyer.

C. Because Thomas Sullivan was authorized to sell the property, he was "a broker listing the property for sale" under RCW 6.23.120.

The statute does not define "list," or "listing," or "listing broker." Nor are these defined anywhere in the Revised Code of Washington, the Washington Administrative Code or in any Washington appellate court opinion. The court should therefore determine the term's meaning from its ordinary meaning and from the context in which it is used in RCW 6.23.120

(1). *Udall v. T.D. Escrow Services*, 159 Wn.2d 903, 909, 154 P.3d 882 (2007). The ordinary meaning of a word can be learned from a standard dictionary. *ibid.*

Webster's dictionary defines "listing" as follows:

"listing n. ... 3 a: an authorization to a real estate broker to sell or rent property b: a broker's record of available properties c: a piece of property listed with a real estate broker."

Webster's Third New International Dictionary 1320 (2002).

A specialty dictionary, Black's Law Dictionary, defines the verb "list" as meaning "to place (property) for sale under an agreement with a real-estate agent or broker." Black's Law Dictionary 1016 (9th ed. 2009). *Webster's* provides virtually the same definition of "list": "to place (property) in the hands of a real estate agent for sale or rent." Webster's Third New International Dictionary 1320 (2002). Black's Law Dictionary also defines "listing", "open listing" (a synonym of nonexclusive listing), and "multiple listing" in a manner consistent with Webster's definitions:

listing. 1. *Real estate*. An agreement between a property owner and an agent, whereby the agent agrees to try to secure a buyer or tenant for a specific property at a certain price and terms in return for a fee or commission. – Also termed *listing agreement*; *authorization to sell*.

Multiple listing. A listing providing that the agent will allow other agents to sell the property. Under this agreement, the original agent gives the selling agent a percentage of the commission, or some other stipulated amount.

open listing. A listing that allows selling rights to be given to

more than one agent at a time, obligates the owner to pay a commission when a specified broker makes a sale, and reserves the owners right to personally sell the property without paying a commission. – Also termed *nonexclusive listing; general listing, simple listing*.

Black's Law Dictionary 1016 (9th ed. 2009). Applying these definitions, Thomas Sullivan is a broker listing the property for sale because he was authorized by RCW 6.23.120 to sell the property. Sullivan is a broker listing the property because he included the property in his record of available properties. Sullivan included the property in his record of available properties by making an offer to buy it. He also advertised it on zillow.com. In sum, a "broker listing the property for" is a broker authorized to sell the property and who includes it in his record of available properties. Sullivan was a licensed real estate broker in Snohomish County listing the subject property for sale.

D. The statute does not compel the placement of a written advertisement.

Vantage argues that the Zillow advertisement was not in good faith because it was not designed to generate offers under RCW 6.23.120. Vantage assumes without proving that RCW 6.23.120 compels a peculiar written advertisement by the listing broker. But the statute contains no such requirement. In the guise of interpreting the statute, Vantage would have the court amend it.

This case is not like *Graham v. Findahl*, in which the court was "compensating for the legislature's omissions," specifically the omission of the type of instrument of conveyance called for by RCW 6.23.120. *Graham v. Findahl*, 122 Wn.App. at 463. *Graham* decided that a bargain and sale deed is the comparable deed to a sheriff's deed . A deed is necessary to complete the sale of real property. RCW 64.04.010. A written advertisement is not necessary.

Vantage assumes without proving that the legislature expected real estate brokers to make public service announcements about the statute rather than look after the interest of their buyers. Vantage assumes that the legislature intended each broker to take upon him herself a public awareness campaign so that each broker would generate multiple offers. This obviously present a problem. Presenting offers from several buyers could rupture the broker's established business relations. The legislature knew this. The legislature did not require a single broker take on a public ad campaign. It expected a single broker to produce a single buyer to make a single offer, and hoped that other brokers would do the same, and that the judgment debtor would be the beneficiary of the competition between them.

Further, Vantage's interpretation of the statute would undermine the incentive the legislature created. One broker advertising the property in the manner Vantage suggests would invite other brokers in the county to

generate offers and earn the nonexclusive commission instead. Why would a broker go to the effort of providing information to other brokers so the other brokers could earn the commission? There is no provision in the statute for sharing the commission. The broker is supposed to make her lunch and then offer it to other brokers? The legislature had a different idea. The legislature gave many brokers an incentive, the hope of earning the commission, to get them to find buyers and generate offers. It did not command an advertisement or specify its content. It harnessed the competitiveness and knowledge of real estate brokers. It created an incentive for them to find buyers and generate offers. Vantage's interpretation of the statute would take away that incentive.

If the legislature had intended the broker to publish a written advertisement with peculiar content, it knew how to express that intent but chose not to. required the sheriff to give notice of the sheriff's sale and specified the seven items of information to include in the notice. Laws of 1981, ch. 329, §2. It even specified the typeface. *ibid.* Section 1 of Chapter 329 required the sheriff to publish the notice of sale in a newspaper. Section 21 of Chapter 329 required the sheriff's sale purchaser to send notices to the judgment debtor warning of the expiration of the redemption period. There is no such specification with respect to the definition or content of a "listing" in Laws of 1981, ch. 329, §23. The

legislature could have provided that specification, but did not do so. The legislature could have required the sheriff or the sheriff's sale purchaser or the real estate broker to publish a notice of the availability of the property under RCW 6.23.120, but did not do so. Under established rules of statutory interpretation, it is therefore presumed that the legislature intended the ordinary meaning of the term "listing," which does not include any kind of advertisement. *Udall v. T.D. Escrow Services*, 159 Wn.2d 903, 909, 154 P.3d 882 (2007); Webster's Third New International Dictionary 1320 (2002).

E. Even if it was required by RCW 6.23.120, the Zillow ad met the requirement.

On December 14, 2013, Thomas Sullivan advertised the property on the zillow.com website. CP 112. Zillow describes itself in the following terms:

1 million more listings. Not only does Zillow have for sale listings, but we also show you for sale by owner (FSBO) homes, foreclosures, new construction, and rentals. More than a million listings you won't find on an MLS.

CP 112-121. Vantage objects to the duration and substance of the ad.

The plain language of RCW 6.23.120 only requires that the listing occur during the redemption period:

An offer is qualifying if the offer is made during the redemption period through a licensed real estate broker listing the property

RCW 6.23.120 (1). Since the offer must be made during the redemption period, if "listing" means advertisement, it must occur during the redemption period. The legislature specified no content or duration for the listing, and the offer itself could be made moments before the redemption period expired. Vantage invites the court to add to the statute, which the court may not do because the addition is not imperatively required to make the statute rational. This is the rule the court in *Graham v. Findahl* followed, quoting the supreme court in *Millay v. Cam*:

Further, the court observed that it "refrains from adding to, or subtracting from, the language of a statute unless imperatively required to make it rational."¹⁶

The listing is timely as long as it occurs before the offer is made, which in turn must be made before the redemption period expires.

In this case, the ad was posted on December 14, 2013 and its content is no different from a typical ad on zillow. If RCW 6.23.120 requires an ad, it strictly complies.

Vantage fails to demonstrate how it was harmed by Sullivan's Zillow ad, nor can it. Regardless of the price offered, Vantage will receive 120% of the redemption amount, no more, no less. RCW 6.23.120 (2) (a).

¹⁶ *Graham v. Findahl*, 122 Wn. App. 461, 93 P.3d 977 (2004), quoting *Millay v. Cam*, 135 Wn.2d 193, 203, 955 P.2d 791 (1998), quoting in turn *Doerhoefer v. Farrell*, 29 Or. 304, 45 P. 797, 798 (1896).

Vantage will receive the same amount whether there are one or twenty offers.

Perversely, Vantage appears to be arguing that Vitaliy Glinsky is harmed by the Zillow ad. Under PHTS's offer, Glinsky receives \$5,140.83. Without PHTS's offer, Glinsky receives nothing.

F. RCW 6.23.120 creates a statutory right, and courts do not apply equitable principles to determine whether statutory rights have been established.

RCW 6.23.120 is part of the chapter the legislature codified as relating to Redemption, Chapter 6.23, RCW. "The right to redeem property sold under execution is not an equitable right created or regulated by principles of equity. It is a creature of statute and depends entirely upon the provisions of the statute creating the right." *Kuper v. Stojack*, 57 Wash.2d 482, 483, 358 P.2d 132 (1960). The Supreme Court reiterated this principle in *Fidelity Mutual Savings Bank v. Mark*, 112 Wn.2d 47, 54, 767 P.2d 1382 (1989), quoting *Kuper*, and declined to extend the statutory redemption period on equitable grounds. The supreme court explained that provisions in the redemption statutes that confer a statutory right are substantive and *not* subject to equitable adjustment, stating:

Here, however, the statute at issue creates a substantive right. Consequently, we may not alter the scheme the Legislature has established.

Fidelity Mutual Savings Bank v. Mark, 112 Wn.2d at 55. *Graham v. Findahl*, 122 Wn. App. 461, 93 P.3d 977 (2004), left no doubt that the principles applicable to determine the existence of rights under the redemption statutes should be applied when interpreting RCW 6.23.120. The *Graham* court applied *Millay v. Cam*, 135 Wn.2d 193, 955 P.2d 791 (1998), a case interpreting a different redemption statute, to interpret RCW 6.23.120. So, in determining whether PHTS has the right to buy the unredeemed property from Vantage, the issue is solely whether its offer is a qualifying offer under RCW 6.23.120.

Vantage cites the case of *Portion Pack, Inc. v. Bond*, 44 Wn.2d 161, 170, 265 P.2d 1045 (1954) in support of an unclean hands argument. In *Portion Pack v. Bond*, the supreme court denied a corporation an injunction to enforce a non-compete agreement against Bond. The corporation had stopped payment on a royalty check, which Bond had used to pay his hotel bill. As a consequence, the hotel management locked Bond out of his room, took his clothes and personal effects and told him to make the check good "or else." The corporation refused to make good on the check until Bond agreed not to compete with it for five years. The supreme court was deeply offended.

[W]hen the officers of the corporation had him where he could not wriggle one way or the other, they were not satisfied with exacting their pound of flesh--they chose to take more. They decided to force him to sign a restrictive clause. ... It was clearly an afterthought

when they realized his financial predicament. Whether or not it be considered that they forced him to agree not to compete through undue influence, business compulsion, or duress, nevertheless, that agreement was procured under such means that they should not be permitted to enforce it in a court of equity.

Portion Pack, Inc. v. Bond, 44 Wn.2d at 161. The court in *Portion Pack* relied upon *Income Investors, Inc. v. Shelton*, 3 Wn.2d 599, 602, 101 P.2d 973 (1940), which denied an accounting to a party who came into court "willfully concealing, withholding, and falsifying books and records."

Measured against *Portion Pack*, Vantage has failed to show that PHTS engaged in the kind of egregious behavior that merits denial of equitable relief, even if an equitable defense could be applied in this case.

IV. Conclusion

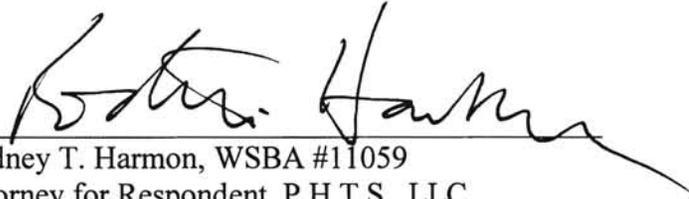
Thomas Sullivan was a licensed real estate broker in Snohomish County when P.H.T.S., LLC made a purchase offer through him to Vantage Capital, L.L.C. He was "a licensed real estate broker listing the property." RCW 6.23.120(1). The offer was a qualifying offer under that statute.

Vantage Capital assumes without proving that by the term "listing" the legislature meant a written advertisement. It then argues that the Court should concoct the elements of this advertisement because the legislature did not do so. It finally suggests a peculiar content for the advertisement that would defeat the purpose of the statute. In the guise of interpretation,

Vantage invites the Court to amend the legislation to meet a legislative purpose which Vantage does not describe. Instead, the Court should apply the ordinary meaning of "listing" found in a dictionary, which does not include the advertisement proposed by Vantage.

The trial court correctly decided that the offer of PHTS was a qualifying offer under RCW 6.23.120. The Court should affirm the trial court's decision. The parties will then close the sale. Further proceedings can be had before the trial court in the event any difficulties arise during the closing.

Respectfully submitted this 24th day of June, 2014

A handwritten signature in black ink, appearing to read "Rodney T. Harmon", written over a horizontal line.

Rodney T. Harmon, WSBA #11059
Attorney for Respondent, P.H.T.S., LLC

Appendix A

RCW 6.23.120 provides in full:

(1) Except as provided in subsection (4) of this section, **during the period of redemption for any property 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 6.21.120, 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 6.21.120 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 6.23.020 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 6.23.020 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 ch. 61.12 or 61.24 RCW.

(boldface added).

actually due thereon, and shall require substantially as follows:

(1) If the execution be against the property of the judgment debtor it shall require the officer to satisfy the judgment, with interest, out of the personal property of the debtor, and if sufficient personal property cannot be found, out of his real property upon which the judgment is a lien.

(2) If the execution be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the officer to satisfy the judgment, with interest, out of such property.

(3) If the execution be for the delivery of real or personal property, it shall require the officer to deliver possession of the same, particularly describing it, to the party entitled thereto, and may, at the same time, require the officer to satisfy any charges, damages, or rents and profits recovered by the same judgment, out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered, shall be specified therein. If a delivery of the property described in the execution cannot be had, and if sufficient personal property cannot be found to satisfy the judgment, it shall be satisfied out of the real property of the party against whom the judgment was rendered, PROVIDED HOWEVER, That if a sale of such property is required, the notice provisions for the sale of such property shall be followed.

(4) When the execution is to enforce obedience to any special order, it shall particularly command what is required to be done or to be omitted.

(5) When the nature of the case shall require it, the execution may embrace one or more of the requirements above mentioned. And in all cases the execution shall require the collection of all interest, costs, and increased costs thereon.

Sec. 2. Section 5, chapter 25, laws of 1929 and RCW 6.0 4.050 are each amended to read as follows:

The sheriff or other officer shall indorse upon the writ of execution the time when he received the same, and the execution shall be returnable within ~~((sixty))~~ one hundred twenty days after its date to the clerk who issued it. The sheriff or other officer shall retain any moneys collected on execution, more than twenty days before paying the same to the clerk of the court who issued the writ, under penalty of twenty percent interest on the amount collected, to be paid by the sheriff or other officer, one-half to the party to whom the judgment is payable, and the other half to the county treasurer of the county wherein the action was brought, for the use of the school fund of said county. The clerk shall, immediately after the receipt of any money collected on any judgment, notify the party to whom the same is payable, and pay over the amount to the said party on demand. On failure to so notify and pay over, without any reasonable cause shown for the delay, the clerk shall forfeit and pay the same penalty to the same parties as is above prescribed for the sheriff.

Sec. 3. Section 1, chapter 35, laws of 1935 and RCW 6.24.010 are each amended to read as follows:

Before the sale of property under execution, order of sale, or decree, notice thereof shall be given as follows:

(1) In case of personal property, by posting written or printed notice of the time and place of sale in three public places in the county where the sale is to take place, for a period of not less than ~~((ten))~~ thirty days prior to the day of sale, and by the transmittal of such notice thirty days prior to the sale to the judgment debtor or any successor in interest at his last known address by both first class and certified mail, return receipt requested.

(2) In case of real property, (a) by personal service of a notice upon the owner of the real property in the same manner for the service of summons as required by RCW 4.28.080, 4.28.081, 4.28.090, 4.28.100, and 4.28.110 as amended, such service to be accomplished no less than three months prior to the sale; (b) by posting a ((similar)) notice specifying the time and place of the sale, particularly describing the property, for a period of not less than ((four)) twelve weeks prior to the day of sale in three public places in the county, one of which shall be at the courthouse door, where the property is to be sold, and in case of improved real estate, one of which shall be at the front door of the principal building constituting such improvement ((,)); and (c) by publishing a copy thereof once a week, consecutively, for ((the same)) a period of four weeks prior to the sale, in any daily or weekly legal newspaper of general circulation published in the county in which the real property to be sold is situated; PROVIDED, HOWEVER, That if there be more than one legal newspaper published in the county, then the plaintiff or moving party in the action, suit, or proceeding shall have the exclusive right to designate in which of such qualified newspapers such notice shall be published; PROVIDED, FURTHER, that if there is no legal newspaper published in the county, then such notice shall be published in the legal newspaper published in this state nearest to the place of sale.

(3) The notice that is to be personally served upon the owner of the real property should shall contain the following information:

(a) A description of the property which is then subject to the sale including the properties, street address, if any;

(b) That the court has issued a writ of execution upon such property directing the sheriff, coroner, or other public official to seize and sell the property;

(c) An itemized account of the amount of the judgment and interest to be satisfied by such sale;

(d) An itemized account of all other specific charges, costs, or fees that the owner of such property is or may be obliged to pay to stop such sale;

(e) The total of subparagraphs (c) and (d) of this subsection, designated clearly and conspicuously as the amount necessary to satisfy the amounts owing prior to the sale;

(f) That failure to pay the amounts within ninety days of the date of personal service thereof, will lead to the sale of the property by the officer specified in RCW 6.04.040, as now or hereafter amended;

(g) The date, time, and place of the sale;

(h) That the effect of the sale will be to increase the cost and fees;

(i) That the effect of the sale of the owner's property will be to deprive the owner or his successor in interest and all those who hold by, through, or under him of all their interest in the property described in subsection (3) (a) of this section and the owner may be required to move from the property and surrender possession of it;

(j) That the owner or any successor in interest may have a right of homestead exemption under chapter 6.12 RCW;

(k) That the owner or any successor in interest has recourse to the courts to contest the alleged default on any proper ground; and

(l) That the owner has rights of redemption as provided in this chapter.

NEW SECTION. Sec. 4. There is added to chapter 6.24 RCW a new section to read as follows:

Every two months during the redemption period provided by RCW

6.24.140, the purchaser or his assignee shall send by certified mail, return receipt requested, and by first class mail to the judgment debtor or his successor in interest, a notice advising the judgment debtor that the redemption period is expiring, how many months have expired, and how many months remain. The notice shall also state the amount for which the property may be redeemed and shall advise the judgment debtor that if the property is not redeemed he will face eviction at the end of the redemption period. The notice shall be sent to the judgment debtor at the judgment debtor's last known address and, if different, the property address. Such notice shall be sent between the first day and tenth day of the second calendar month after the calendar month of the sale and the equivalent days of each succeeding second calendar month thereafter during the redemption period. The sole effect of noncompliance with this section shall be that the redemption period provided by RCW 6.24.140 shall be extended two months for each missed or noncomplying notice.

NEW SECTION. Sec. 5. There is added to chapter 6.24 RCW a new section to read as follows:

(1) During the period of redemption for any property which a person would be entitled to claim as a homestead, the opportunity for multiple listings by licensed real estate brokers within the county in which the property is located shall be offered.² 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

² Boldface added. Discussed at Respondent's Brief, p.

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.

NEW SECTION. Section 1. There is added to chapter 18.71 RCW a new section to read as follows:

The right of medical treatment of an infant born alive in the course of an abortion procedure shall be the same as the right of an infant born prematurely of equal gestational age.

Passed the House April 1, 1981.

Passed the Senate April 25, 1981.

Approved by the Governor May 19, 1981.

Filed in Office of Secretary of State May 19, 1981.

CHAPTER 329

[House Bill No. 599]

PROPERTY—EXECUTION SALE—HOMESTEAD EXEMPTION

AN ACT Relating to enforcement of judgments; amending section 1, chapter 35, Laws of 1935 and RCW 6.24.010; amending section 6, chapter 53, Laws of 1899 and RCW 6.24.100; amending section 4, chapter 25, Laws of 1929 and RCW 6.04.040; amending section 1, chapter 64, Laws of 1895 as last amended by section 1, chapter 196, Laws of 1945 and RCW 6.12.010; amending section 2, chapter 64, Laws of 1895 as last amended by section 1, chapter 98, Laws of 1977 ex. sess. and RCW 6.12.020; amending section 24, chapter 64, Laws of 1895 as last amended by section 3, chapter 98, Laws of 1977 ex. sess. and RCW 6.12.050; amending section 32, chapter 64, Laws of 1895 and RCW 6.12.070; amending section 33, chapter 64, Laws of 1895 and RCW 6.12.080; amending section 4, chapter 64, Laws of 1895 as last amended by section 2, chapter 196, Laws of 1945 and RCW 6.12.090; amending section 7, chapter 64, Laws of 1895 and RCW 6.12.120; amending section 10, chapter 64, Laws of 1895 and RCW 6.12.150; amending section 12, chapter 64, Laws of 1895 and RCW 6.12.170; amending section 17, chapter 64, Laws of 1895 and RCW 6.12.220; amending section 18, chapter 64, Laws of 1895 and RCW 6.12.230; amending section 20, chapter 64, Laws of 1895 and RCW 6.12.250; amending section 21, chapter 64, Laws of 1895 as amended by section 10, chapter 154, Laws of 1973 1st ex. sess. and RCW 6.12.260; amending section 15, chapter 53, Laws of 1899 as last amended by section 3, chapter 196, Laws of 1961 and RCW 6.24.210; adding a new section to chapter 6.12 RCW; adding new sections to chapter 6.24 RCW; adding a new section to chapter 6.04 RCW; repealing section 3, chapter 64, Laws of 1895, section 7, chapter 154, Laws of 1973 1st ex. sess. and RCW 6.12.030; repealing section 30, chapter 64, Laws of 1895, section 8, chapter 154, Laws of 1973 1st ex. sess., section 2, chapter 98, Laws of 1977 ex. sess. and RCW 6.12.040; repealing section 31, chapter 64, Laws of 1895, section 9, chapter 154, Laws of 1973 1st ex. sess., section 4, chapter 98, Laws of 1977 ex. sess. and RCW 6.12.060; and repealing section 8, chapter 64, Laws of 1895 and RCW 6.12.130.

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

Section 1. Section 1, chapter 35, Laws of 1935 and RCW 6.24.010 are each amended to read as follows:

Before the sale of property under execution, order of sale or decree, notice thereof shall be given as follows:

(1) In case of personal property, (~~by posting written~~) the sheriff shall post typed or printed notice of the time and place of sale in three public places in the county where the sale is to take place, for a period of not less than (~~ten~~) thirty days prior to the day of sale. Not less than thirty days

prior to the day of sale, the judgment creditor shall cause a copy of the notice of sale to be transmitted by regular and certified mail, return receipt requested, to the judgment debtor at the debtor's last known address, and by mail to the attorney of record for the judgment debtor.

(2) In case of real property, (~~by posting a similar~~) the sheriff shall post a notice as provided in section 2 of this 1981 act, particularly describing the property for a period of not less than four weeks prior to the day of sale in three public places in the county, one of which shall be at the court house door, where the property is to be sold, and in case of improved real estate, one of which shall be at the front door of the principal building constituting such improvement(, ~~and publishing~~)). The sheriff shall publish a copy thereof once a week, consecutively, for the same period, in any daily or weekly legal newspaper of general circulation published in the county in which the real property to be sold is situated: PROVIDED, HOWEVER, That if there be more than one legal newspaper published in the county, then the plaintiff or moving party in the action, suit or proceeding shall have the exclusive right to designate in which of such qualified newspapers such notice shall be published: PROVIDED, FURTHER, That if there is no legal newspaper published in the county, then such notice shall be published in the legal newspaper published in this state nearest to the place of sale. Not less than thirty days prior to the date of sale, the judgment creditor shall cause a copy of the notice as provided in section 2 of this 1981 act to be (a) served on the judgment debtor in the same manner as a summons in a civil action, and (b) transmitted by both regular and certified mail, return receipt requested, to the judgment debtor at the debtor's last known address, and the judgment creditor shall mail a copy of the notice of sale to the attorney of record for the judgment debtor.

(3) The judgment creditor shall file an affidavit with the court that the judgment creditor has complied with the notice requirements of this section.

NEW SECTION. Sec. 2. There is added to chapter 6.24 RCW a new section to read as follows:

The notice of sale shall be printed or typed and shall contain the following information:

(1) That the court has directed the sheriff or other officer to sell the property described in the notice to satisfy a judgment;

(2) The caption, cause number, and court in which the judgment to be executed upon was entered;

(3) A legal description of the property to be sold, including the street address;

(4) The scheduled date, time, and place of the sale;

(5) An itemized account of the amount required to satisfy the judgment prior to sale, where the debtor can satisfy the judgment to avoid sale, and that failure to pay this amount will result in the sale of the property on the date specified in the notice;

(6) A statement that the sheriff has been informed that there is not sufficient personal property to satisfy the judgment; that if the debtor does have sufficient personal property to satisfy the judgment, the debtor should contact the sheriff's office immediately. However, this subsection is not applicable if the sale of real property is pursuant to a judgment of foreclosure of a mortgage; and

(7) Unless redemption rights have been precluded under RCW 61.12-.093, the date by which the debtor may redeem the property; that the debtor may redeem the property by paying the amount of the bid at sale, with interest at the rate of eight percent per annum to the time of redemption, together with the amount of any assessment or taxes which may have been paid after purchase, and interest on such amount; that other creditors having a lien against the property by judgment, decree, or mortgage may also have a right to redeem the property and, if they redeem the property, the debtor may be required to pay additional sums in order to redeem; and that if the property to be sold is the permanent residence of the judgment debtor and is occupied by the debtor at the time of sale, the judgment debtor has the right to retain possession during the redemption period, if any, without payment of any rent or occupancy fee. The information contained in this subsection shall be captioned "IMPORTANT NOTICE" and shall be in boldface print or typed in capital letters.

Sec. 3. Section 6, chapter 53, Laws of 1899 and RCW 6.24.100 are each amended to read as follows:

Upon the return of any sale of real estate as aforesaid, the clerk shall enter the cause, on which the execution or order of sale issued, by its title, on the motion docket, and mark opposite the same: "Sale of land for confirmation(;)"; notice of the filing of the return of sale shall be mailed by the clerk to all parties appearing in the action and proof of such mailing filed in the action; and the following proceedings shall be had:

(1) The ((plaintiff)) judgment creditor or successful purchaser at the sheriff's sale at any time after ((ten)) twenty days ((from)) have elapsed from the mailing of the notice of the filing of such return shall be entitled, on motion ((therefor)) with notice given to all parties appearing in the action, to have an order confirming the sale, unless the judgment debtor, or in case of his death, his representative, shall file with the clerk within ((ten)) twenty days after the mailing of the notice of the filing of such return, his objections thereto.

(2) If such objections be filed the court shall, notwithstanding, allow the order confirming the sale, unless on the hearing of the motion, it shall satisfactorily appear that there were substantial irregularities in the proceedings concerning the sale, to the probable loss or injury of the party objecting. In the latter case, the court shall disallow the motion and direct that the property be resold, in whole or in part, as the case may be as upon an execution received of that date.

(3) Upon the return of the execution, the sheriff shall pay the proceeds of sale to the clerk, who shall then apply the same, or so much thereof as may be necessary, in satisfaction of the judgment. If an order of resale be afterwards made, and the property sell for a greater amount to any person other than the former purchaser, the clerk shall first repay to such purchaser the amount of his bid out of the proceeds of the latter sale.

(4) Upon a resale, the bid of the purchaser at the former sale shall be deemed to be renewed and continue in force, and no bid shall be taken, except for a greater amount. An order confirming a sale shall be a conclusive determination of the regularity of the proceedings concerning such sale as to all persons in any other action, suit or proceeding whatever.

(5) If, after the satisfaction of the judgment, there be any proceeds of the sale remaining, the clerk shall pay such proceeds to the judgment debtor, or his representative, as the case may be, at any time before the order is made upon the motion to confirm the sale: PROVIDED, Such party file with the clerk a waiver of all objections made or to be made to the proceedings concerning the sale; but if the sale be confirmed, such proceeds shall be paid to said party of course; otherwise they shall remain in the custody of the clerk until the sale of the property has been disposed of.

NEW SECTION. Sec. 4. There is added to chapter 6.04 RCW a new section to read as follows:

(1) Before a writ of execution may issue on any real property, the judgment creditor must file an affidavit with the court stating:

(a) That the judgment creditor has exercised due diligence to ascertain if the judgment debtor has sufficient nonexempt personal property to satisfy the judgment with interest; a list of the personal property so located and whether the judgment creditor believes the items to be exempt; and a statement that, after diligent search, there is not sufficient nonexempt personal property belonging to the judgment debtor to satisfy the judgment;

(b) That the judgment creditor has exercised due diligence in ascertaining whether the property is occupied or claimed as a homestead by the judgment debtor, as defined in chapter 6.12 RCW;

(c) Whether or not the judgment debtor is currently occupying the property as the judgment debtor's permanent residence and whether there is a declaration of homestead or nonabandonment of record. If the affidavit alleges that the property is not occupied or claimed as a homestead, the creditor must list the facts relied upon to reach that conclusion; and

(d) If the judgment debtor is not occupying the property and there is no declaration of nonabandonment of record, that the judgment debtor has been absent for a period of at least six months and the judgment debtor's current address if known.

(2) The term "due diligence," as used in this section, includes but is not limited to the creditor or the creditor's representative personally visiting the premises, contacting the occupants and inquiring about their relationship to

the judgment debtor, contacting immediate neighbors of the premises, and searching the records of the auditor of the county in which the property is located to determine if a declaration of homestead or nonabandonment has been filed by the judgment debtor.

A copy of the affidavit must be mailed to the judgment debtor at the debtor's last known address.

If the affidavit attests that the premises are occupied or claimed as a homestead by the judgment debtor, the execution for the enforcement of a judgment obtained in a case not within the classes enumerated in RCW 6.12.100 must comply with RCW 6.12.140 through 6.12.250.

Sec. 5. Section 4, chapter 25, Laws of 1929 and RCW 6.04.040 are each amended to read as follows:

The writ of execution shall be issued in the name of the state of Washington, sealed with the seal of the court, and subscribed by the clerk, and shall be directed to the sheriff of the county in which the property is situated, or to the coroner of such county, or the officer exercising the powers and performing the duties of coroner in case there be no coroner, when the sheriff is a party, or interested, and shall intelligibly refer to the judgment, stating the court, the county where the judgment was rendered, the names of the parties, the amount of the judgment if it be for money, and the amount actually due thereon, and shall require substantially as follows:

(1) If the execution be against the property of the judgment debtor it shall require the officer to satisfy the judgment, with interest, out of the personal property of the debtor (~~(; and if sufficient personal property cannot be found, out of his real property upon which the judgment is a lien)~~) unless an affidavit has been filed with the court pursuant to section 4 of this 1981 act, in which case it shall require that the judgment, with interest, be satisfied out of the real property of the debtor.

(2) If the execution be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants of real property, or trustees, it shall require the officer to satisfy the judgment, with interest, out of such property.

(3) If the execution be for the delivery of real or personal property, it shall require the officer to deliver possession of the same, particularly describing it, to the party entitled thereto, and may, at the same time, require the officer to satisfy any charges, damages, or rents and profits recovered by the same judgment, out of the personal property of the party against whom it was rendered, and the value of the property for which the judgment was recovered, shall be specified therein. If a delivery of the property described in the execution cannot be had, and if sufficient personal property cannot be found to satisfy the judgment, it shall be satisfied out of the real property of the party against whom the judgment was rendered.

(4) When the execution is to enforce obedience to any special order, it shall particularly command what is required to be done or to be omitted.

(5) When the nature of the case shall require it, the execution may embrace one or more of the requirements above mentioned. And in all cases the execution shall require the collection of all interest, costs, and increased costs thereon.

NEW SECTION. Sec. 6. There is added to chapter 6.24 RCW a new section to read as follows:

Every two months during the redemption period provided by RCW 6.24.140, the purchaser or his assignee shall send by certified mail, return receipt requested, and by first class mail to the judgment debtor or his successor in interest a notice advising the judgment debtor that the redemption period is expiring, how many months have expired, and how many months remain. The notice shall also state the amount for which the property may be redeemed and shall advise the judgment debtor that if the property is not redeemed he will face eviction at the end of the redemption period. The notice shall be sent to the judgment debtor at the judgment debtor's last known address and, if different, the property address. The notice shall be sent between the first day and tenth day of the second calendar month after the calendar month of the sale and the equivalent days of each succeeding second calendar month thereafter during the redemption period. The sole effect of noncompliance with this section shall be that the redemption period provided by RCW 6.24.140 shall be extended two months for each missed or noncomplying notice.

Sec. 7. Section 1, chapter 64, Laws of 1895 as last amended by section 1, chapter 196, Laws of 1945 and RCW 6.12.010 are each amended to read as follows:

The homestead consists of the dwelling house(;) or the mobile home in which the ((claimant)) owner resides, with appurtenant buildings, and the land on which the same are situated, and by which the same are surrounded, or land without improvements purchased with the intention of building a house and residing thereon(~~(, selected at any time before sale, as in this chapter provided)~~). A mobile home may be exempted under this chapter whether or not it is permanently affixed to the underlying land and whether or not the mobile home is placed upon a lot owned by the mobile home owner. As used in this chapter, the term "owner" includes but is not limited to a purchaser under a deed of trust, mortgage, or real estate contract.

Sec. 8. Section 2, chapter 64, Laws of 1895 as last amended by section 1, chapter 98, Laws of 1977 ex. sess. and RCW 6.12.020 are each amended to read as follows:

If the ((claimant be)) owner is married, the homestead may ((~~be selected from~~)) consist of the community property(~~(, or, with the consent of the husband, from his separate property, or, with the consent of the wife, from her)~~) or the separate property of either spouse: PROVIDED, That the same premises may not be claimed separately by the husband and wife with the

effect of increasing the net value of the homestead available to the marital community beyond the amount specified in RCW 6.12.050 as now or hereafter amended (~~((either at the time the declaration of homestead is filed or at any subsequent time))~~). When the ~~((claimant))~~ owner is not married, the homestead may ~~((be selected from))~~ consist of any of his or her property.

NEW SECTION. Sec. 9. There is added to chapter 6.12 RCW a new section to read as follows:

(1) The homestead exemption described in RCW 6.12.050 applies automatically to the homestead as defined in RCW 6.12.010 if the occupancy requirement of RCW 6.12.050 is met. However, the homestead exemption does not apply to those judgments defined in RCW 6.12.100.

(2) If an owner elects to select the homestead from unimproved land purchased with the intention of residing thereon, the owner must execute a declaration of homestead and file the same for record. However, if the owner also owns another parcel of property on which the owner presently resides, the owner must also execute a declaration of abandonment of homestead on the property on which the owner presently resides, and file the same for record.

(3) The declaration of homestead must contain:

(a) A statement that the person making it is residing on the premises or has purchased the same for a homestead and intends to reside thereon and claims them as a homestead;

(b) A description of the premises; and

(c) An estimate of their actual cash value.

(4) The declaration of homestead and declaration of abandonment of homestead must be acknowledged in the same manner as a grant of real property is acknowledged.

Sec. 10. Section 24, chapter 64, Laws of 1895 as last amended by section 3, chapter 98, Laws of 1977 ex. sess. and RCW 6.12.050 are each amended to read as follows:

Homesteads may ~~((be selected and claimed in))~~ consist of lands and tenements with the improvements thereon, as defined in RCW 6.12.010, regardless of area but not exceeding in net value, of both the lands and improvements, the sum of twenty thousand dollars. The premises thus included in the homestead must be actually intended or used as a home for the ~~((claimant))~~ owner, and shall not be devoted exclusively to any other purpose.

Sec. 11. Section 32, chapter 64, Laws of 1895 and RCW 6.12.070 are each amended to read as follows:

The declaration of homestead and declaration of abandonment of homestead referred to in section 9(2) of this 1981 act and the declaration of

nonabandonment of homestead referred to in RCW 6.12.120 must be recorded in the office of the auditor of the county in which the land is situated.

Sec. 12. Section 33, chapter 64, Laws of 1895 and RCW 6.12.080 are each amended to read as follows:

From and after the time the property is occupied as a permanent residence by the owner or the declaration is filed for record (~~((the premises therein described))~~) if unimproved real property, the property constitutes a homestead. (~~((If the selection was made by a married person from the community property, the land, on the death of either of the spouses, vests in the survivor, subject to no other liability than such as exists or has been created under the provisions of this chapter, in other cases, upon the death of the person whose property was selected as a homestead, it shall go to his heirs or devisees, subject to the power of the superior court to assign the same for a limited period to the family of the decedent; but in no case shall it be held liable for the debts of the owner, except as provided in this chapter:))~~)

Sec. 13. Section 4, chapter 64, Laws of 1895 as last amended by section 2, chapter 196, Laws of 1945 and RCW 6.12.090 are each amended to read as follows:

The homestead is exempt from attachment and from execution or forced sale, except as in this chapter provided; and the proceeds of the voluntary sale of the homestead in good faith for the purpose of acquiring a new homestead, shall likewise be exempt for one year, and also such new homestead acquired with such proceeds. Every homestead (~~((claimed in the manner provided by law, shall be))~~) created under this chapter is presumed to be valid to the extent of all the lands claimed exempt, until the validity thereof is contested in a court of general jurisdiction in the county or district in which the homestead is situated.

Sec. 14. Section 7, chapter 64, Laws of 1895 and RCW 6.12.120 are each amended to read as follows:

A homestead (~~((can be))~~) is presumed abandoned (~~((only by a declaration of abandonment, or a grant thereof, executed and acknowledged:~~

~~(1) By the husband and wife if the claimant is married:~~

~~(2) By the claimant, if unmarried))~~ if the owner vacates the property for a continuous period of at least six months. However, if an owner is going to be absent from the homestead for more than six months but does not intend to abandon the homestead, and has no other permanent residence, the owner may execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of nonabandonment of homestead and file the declaration for record.

The declaration of nonabandonment of homestead must contain:

(1) A statement that the owner claims the property as a homestead, that the owner intends to occupy the property in the future, and that the owner claims no other property as a homestead;

(2) A statement of where the owner will be residing while absent from the premises, the estimated duration of the owner's absence, and the reason for the absence; and

(3) A legal description of the premises.

Sec. 15. Section 10, chapter 64, Laws of 1895 and RCW 6.12.150 are each amended to read as follows:

The application under RCW 6.12.140 must be made upon verified petition, showing—

(1) The fact that an execution has been levied upon the homestead.

(2) The name of the ~~((claimant))~~ owner.

(3) That the value of the homestead exceeds the amount of the homestead exemption.

Sec. 16. Section 12, chapter 64, Laws of 1895 and RCW 6.12.170 are each amended to read as follows:

A copy of the petition, with a notice of the time and place of hearing, must be served upon the ~~((claimant))~~ owner and the owner's attorney at least ten days before the hearing.

Sec. 17. Section 17, chapter 64, Laws of 1895 and RCW 6.12.220 are each amended to read as follows:

If, from the report, it appears to the court that the ~~((land-claimed))~~ homestead can be divided without material injury, the court must, by an order, direct the appraisers to set off to the ~~((claimant))~~ owner so much of the land, including the residence, as will amount in value to the homestead exemption, and the execution may be enforced against the remainder of the land.

Sec. 18. Section 18, chapter 64, Laws of 1895 and RCW 6.12.230 are each amended to read as follows:

If, from the report, it appears to the court that the ~~((land-claimed))~~ homestead exceeds in value the amount of the homestead exemption and that it cannot be divided, the court must make an order directing its sale under the execution.

Sec. 19. Section 20, chapter 64, Laws of 1895 and RCW 6.12.250 are each amended to read as follows:

If the sale is made, the proceeds ~~((thereof, to the amount of the homestead exemption, must be paid to the claimant and the balance applied to the satisfaction of the execution))~~ must be applied in the following order: First, to the amount of the homestead exemption, to be paid to the judgment debtor; second, up to the amount of the execution, to be applied to the satisfaction of the execution; third, the balance to be paid to the judgment debtor.

Sec. 20. Section 21, chapter 64, Laws of 1895 as amended by section 10, chapter 154, Laws of 1973 1st ex. sess. and RCW 6.12.260 are each amended to read as follows:

The money paid to the ((claimant)) owner is entitled to the same protection against legal process and the voluntary disposition of the husband or wife which the law gives to the homestead.

Sec. 21. Section 15, chapter 53, Laws of 1899 as last amended by section 3, chapter 196, Laws of 1961 and RCW 6.24.210 are each amended to read as follows:

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 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 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 in case of any homestead ((~~selected in the manner provided by law~~)) 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 for value of occupation.

NEW SECTION. Sec. 22. The following acts or parts of acts are each repealed:

(1) Section 3, chapter 64, Laws of 1895, section 7, chapter 154, Laws of 1973 1st ex. sess. and RCW 6.12.030;

(2) Section 30, chapter 64, Laws of 1895, section 8, chapter 154, Laws of 1973 1st ex. sess., section 2, chapter 98, Laws of 1977 ex. sess. and RCW 6.12.040;

(3) Section 31, chapter 64, Laws of 1895, section 9, chapter 154, Laws of 1973 1st ex. sess., section 4, chapter 98, Laws of 1977 ex. sess. and RCW 6.12.060; and

(4) Section 8, chapter 64, Laws of 1895 and RCW 6.12.130.

NEW SECTION. Sec. 23. There is added to chapter 6.24 RCW a new section to read as follows:

(1) During the period of redemption for any property which 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 foreclosures under chapter 61.12 RCW.

NEW SECTION. Sec. 24. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the House April 26, 1981.

Passed the Senate April 26, 1981.

Approved by the Governor May 19, 1981.

Filed in Office of Secretary of State May 19, 1981.

Court of Appeals
Division I
State of Washington
Case No. 71591-7

Certificate of Service

I hereby certify that on June 24, 2014, I served a copy of Respondent's Brief on counsel for Appellant, Vantage Capital, L.L.C. by email in accord with prior agreed practice as follows:

Bruce Fine
bfine@fineps.com

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated 6/24/2014 at Bothell, Washington.


Rodney T. Harmon
Attorney for P.H.T.S., LLC

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