

Supreme Court No.- 102042-2

Court of Appeals No. 83947-0-1

**SUPREME COURT
OF THE STATE OF WASHINGTON**

MICHAEL SHIELDS AND BONNIE SHIELDS,

Plaintiffs-Petitioners,

v.

**DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE
FOR SAXON ASSET SECURITIES TRUST 2006-2 MORTGAGE
LOAN ASSET BACKED CERTIFICATES, SERIES 2006-2,**

Defendant-Respondent,

PETITION FOR REVIEW

**MICHAEL AND BONNIE SHIELDS
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INTRODUCTION

Plaintiffs are seeking acceptance for Review as Pro Se litigants. Plaintiffs have unshakable concerns that the Trial Court judge and the Division One Court of Appeals justices in plaintiffs case have demonstrated clear racism against plaintiffs, a black family. Plaintiffs have experienced undeniable racism in its case for years.

The Complaint plaintiffs filed before the State Court on 9/28/2021 was not complicated rather clear simply claims for damages caused by Deutsche Bank's lawyers massive statutory violations and illegal misconduct. The Trial Court and the Court of Appeals has condone the statutory violations committed by Deutsche lawyers including failure to pay plaintiff his constitutional right to homestead, and much more. The Court of Appeals decision is in conflict with multiple decisions of Supreme Court. (RAP 13.4(b)(1)(3)(4)) This case certainly deserves a review.

- a) Plaintiff's *constitutional right* to its homestead credit was not paid. **RCW 6.13.070**

- b) More than *Michael's 50% interest* in community property was sold. **RCW 6.17.170**

- c) Deutsche's lawyers committed *(15) statutory violations* causing plaintiffs damages.

- d) Due to Deutsche's statutory violation the writ was illegally issued **RCW 6.17.100**

- e) Because the writ of execution was illegally issued the *12/6/2019 Sheriff sale is void*

I IDENTITY OF PETITIONERS

Bonnie and Michael Shields are the Petitioners herein.

II CITATION TO COURT OF APPEALS DECISION

On March 27, 2023, the Court of Appeals filed its decision in this case and denied plaintiffs reconsideration on April 27, 2023 (*attached as Appendix*)

III ISSUE PRESENTED FOR REVIEW

RAP 13.4(b)(1)(3) The Court of Appeals decision is in conflict with three Supreme Court decision in plaintiffs case: (A) **Right to Homestead**: The Supreme Court held in *Donovick v. Seattle -First 111 Wn.2d 413,419 (1988)* which states: “*Since a sale under a decree of foreclosure is a forced sale, the state constitution requires that a certain portion of the value of residential property be preserved to the borrower as homestead. Const. art. 19. 1* Thus, *judicial foreclosure action provides for a significant level of protection for mortgagors and grantors of deeds of trust (“DOT”) including the right to an upset price, the right to redeem and the right to homestead”.*

Deutsche argued that the homestead is not available to Michael pursuant to RCW 6.13.080(2)(b) which states: “*The homestead exemption is not available against an execution or forced sale in satisfaction of judgments obtained on debts secured by mortgages or deeds of trust on the premises that have been executed and acknowledged by both spouses”.* But this statutory provision applies to a *non judicial foreclosure*. Additionally, given the *facts* in plaintiffs case, RCW 6.13.080(2)(b) would not even apply non judicially because the DOT was executed by Michael only. **The panel did not even address plaintiffs argument and right to homestead** in it’s opinion. Michael’s constitutional right to homestead was ignored by the panel.

(B) **Lack of personal jurisdiction:** The Court of Appeals decision is in conflict with the Supreme Court’s decision on *lack of personal jurisdiction*. The Trial Court found that plaintiffs failed to effectuate service of process upon Deutsche. Plaintiffs made its argument that the Trial Court lacked the power to dismiss plaintiffs case with prejudice and without leave to amend. It is undisputed that the Trial Court lacked personal jurisdiction which also left the Trial Court devoid of power to rule on the merits. Plaintiffs cited: *State v. Nw Magnesite Co, 28 Wn.2d1,42 182 P.2d 643 (1947)* and the panel actually **agreed with plaintiffs’ argument** that the Supreme Court held that the Trial Court is devoid of power to rule on the merits. But the Appeals Court panel concluded that: “*because one of the trial court rulings for the dismissal of plaintiffs claims was “res judicata” the panel proceeded “as though” plaintiff’s complaint was dismissed “solely” for failure to state a claim.*” But the Trial Court clearly did not “solely” dismiss plaintiffs complaint for failure to state a claim. The Trial Court ruled on **THE MERITS** including: failure to state a claim, res judicata and, amendment would be futile. (Appendix A- 1 thru 2 Trial Court Order)

(C) **Res Judicata:** Here again the Court of Appeals decision is in conflict with the Supreme Court decision on the doctrine of Res judicata . Plaintiffs cited *Harsin v. Oman, 68 Wn 281 123 P. 1(1912); Mellor 100, Wash .2d at 646-47,673 p.2d 610 (1983) and Michael Weaver v. City of Everett(2018)*. But the Court of Appeals denied plaintiff’s case for damages concluding that “plaintiffs claims are nothing more than an attempt to re-litigate what plaintiffs called a wrongful foreclosure thereby, plaintiffs claims are barred under the doctrine of res judicata.” Plaintiffs claims could not be more clearly stated in it’s Complaint. Plaintiffs claims are: (1) Deutsche failed to pay

plaintiffs constitutional right to its homestead exemption in violation of RCW 6.13.070. (2) Deutsche knowingly sold shared community interest in plaintiffs property in violation of RCW 6.17.170 and (3) Deutsche's lawyers knowingly violated fifteen (15) statutory laws including the required affidavit under RCW 6.17.100(1) resulting in an illegally issued writ that rendered the 12/6/2019 sale VOID. The statutory violations named above are just a few violations in plaintiffs complaint. The Court of Appeals and the Trial Court has unfairly viewed plaintiffs claims under the shadows of the prior foreclosure litigation and dismissed plaintiffs case on res judicata. This case deserves a review. Plaintiffs have unshakable concerns of racism against plaintiffs as there is no explanation for such an opinion.

In the Court of Appeals analysis the panel basically blames plaintiffs for Deutsche Bank lawyers unethical statutory violations pointing out in its opinion that it was plaintiffs who could have raised its new claims in Deutsche's 2014 judicial foreclosure proceedings. But the facts of the case are clear. It was not possible for plaintiffs to raised its claims in Deutsche's 2014 judicial foreclosure action because the statutory violations simply did not exist in the 2014 foreclosure proceedings.

This Court, in *Michael Weaver v City of Everett (2018)* held "'IF" a claim does not yet exist or not yet ripe" at the time of the "first action" then a "second action" is not subject to the doctrine of res judicata. Plaintiffs case is of this **identical principle.**

(D) The Court of Appeal decision also raises a substantial public interest question RAP 13.4(b)(4) because by virtue of it's affirmance of the Trial Court's ruling the Court of Appeals is in conflict with not upholding state laws warranting, this Court's review. Citizens rights are not protected if the violation of statutory laws are

allowed. The question involves: Whether licensed attorneys in Washington State are legally allowed to knowingly violate statutory laws and the provision under those laws as long as an opposing litigant is ignorant of the violations? And, whether any Court of Washington State have the authority to uphold and or ignore statutory violation of state laws being committed by licensed lawyers?

Plaintiffs as pro se litigants understand that if a case is not brought timely, statute of limitation laws will apply. In plaintiffs case it's complaint for damages was filed timely. Record show that plaintiffs filed it's complaint for damages in compliance with **RCW 4.16.080**. But despite plaintiffs timely filing of it's complaint, the Court of Appeal affirms the Trial Court's dismissal even though undisputed evidence of a multiplicity of statutory violations clearly caused plaintiff's damages. Plaintiffs complaint was rightfully filed on 9/28/2021 for this reason.

The Court of Appeals affirmance of the Trial Court's ruling is condoning a multiplicity of statutory violations that was knowingly committed by Deutsche's lawyers. The Court of Appeals did not and could not disagree that the 15 statutory violations did occur. The panel simply ignored the violation including failure to apply to the Court for an appointment of an appraisal to determine the true market value of plaintiffs' property which allowed Deutsche to sell plaintiffs property for approximately two times less the true market value a statutory valuation of **RCW 6.13.100**. If the afore mentioned violations named above did occur (and they did) and the Court of Appeal uphold the violation by affirmance then RAP 13.4(b)(4) applies and involve public interest because laws protect the rights of citizen.

OPINION

In the Court of Appeals analysis and opinion the panel COULD NOT and DID NOT **disagree** or even dispute not one of plaintiffs claims that Deutsche, knowingly, violated a multiplicity of statutory requirements that caused damages to plaintiffs. Nor, did the panel **disagree**, or cited a case that dispute plaintiff had no legal right to his homestead or community property rights. Nor, was there any analysis or dispute by the panel that the 2019 sale is **indisputably void** due to an illegally acquired writ that issued in violation of state laws. The Court of Appeals **could not** disagree with the facts presented before the Court in plaintiffs complaint because plaintiffs claims are incontrovertible.

The Court of Appeals summed up its analysis and opinion affirming the Trial Court's ruling to dismiss plaintiffs complaint by placing blame on plaintiffs. The panel concluded that plaintiffs could have brought it's claims long before 2019 despite the fact that plaintiffs claims was filed timely. The Court of Appeals panel basically concluded that Michael and Bonnie are not allowed to bring a lawsuit for their damages because it would effect the rights established by Deutsche's judgment and decree of foreclosure which nullified any legal rights of Bonnie, Michael or any third party to the property. But the panel in its analysis offered no argument on plaintiffs's constitutional right to its homestead exemption and community property laws which has been stolen by Deutsche lawyer's illegally and unethically. The panel made no argument in its analysis and opinion that plaintiff's rights and entitlements was nullified by Deutsche's statutory violations and unethical behavior. Instead, the panel condoned the violations by affirming the errors made by the Trial Court .

A. The Facts of the Case

The Trial Court entered a judgment and decree of foreclosure on 3/15/2016 and was required to order plaintiffs premises sold in compliance with **RCW 61.12.060**. The sale was enforced pursuant to **RCW 61.12.090** whereby the *execution method* to sell real property is governed under **RCW Title 6. (6.17)**

Plaintiffs property was sold two (2) times. First, on 6/10/2016 and a second time on 12/6/2019. Under **RCW 6.17.100(1)** which states: “*Before a writ of execution may issue on any real property, the judgment creditor must file with the court an affidavit as described in subsection (4) of this section and must mail a copy to the judgment debtor at the debtor last known address*”

But Deutsche’s lawyers ignored the statutorily required affidavit that *must* be filed before a court can legally issue a writ. On 4/12/2016 Deutsche’s lawyers prepared its writ for order of sale and simply had a judge/commissioner sign it and the clerk issued the writ to the sheriff without the required affidavit which should have been included. The content of the writ nor the sheriff’s instruction indicated that the property was homestead and community property. The writ for order of sale was issued in violation of **RCW 6.17.100(1)(4)**. On 4/25/2016 using the illegally issued writ the Sheriff, levied upon the property taking all rights and interest in property. Resultantly, the 6/10/2016 sale is VOID. Selling any real property in Washington State in violation of the mandatory statutory provisions above invalidated the sale. Plaintiffs was clueless of the 2016 violations *but Deutsche’s lawyers was fully aware of their violations*.

On 2/3/2019, nearly three years after the 2016 Sheriff sale Deutsche motioned to

confirm the 2016 sale but Did Not serve the conformation notice upon plaintiffs.

Undisputed evidence was before both courts on this fact. Also in early 2019 plaintiff discovered that the Sheriff's return on sale violated statutory requirements therefore, plaintiffs filed a motion to rescind the sale. The Trial Court granted plaintiffs Motion rendering the 6/10/2016 sale null and void on 7/14/2019. The Trial Court ordered that Deutsche lawyers, (*in the 2019 sale*) "properly execute upon its "judgment" and "sale" of the property as prescribed by law". (***appendix A-3-4 Rescind Order***)

(***Second sale***). In the 9/23/2019 sale Deutsche's lawyers did not follow the Court's order to sale plaintiffs property as prescribed by law. Deutsche's lawyers committed the same statutory violations it had committed in the 2016 sale.

In the 2019 sale Deutsche did not apply to the court for an appointment of appraisal (*a valuation of RCW 6.13.100*), Deutsche did not file the required affidavit (*a valuation of RCW 6.17.100(1)*) Deutsche did not file the required verified petition with the court (*a valuation of RCW 6.13.110*), so that the court could determine the division of the homestead (*a violation of RCW 6.13.150*), Deutsche's lawyers did not instruct the Sheriff to levy upon only Michael's interest in the property and allowed the judgment to become a lien on homestead property (*a violation of RCW 6.17.170*) and *RCW 6.13.090.*) Deutsche fail to pay plaintiffs homestead exemption credit after the 2019 sale (*a violation RCW 6.13.170*) . (***statutes attached under Appendix***)

Approximately a year or so after the 2019 sale plaintiffs began discovering the multiplicity of statutory violations that was committed by Deutsche's lawyers in the 12/6/2019 sale and soon realized the violations had also been committed in the 2016 sale. In late 2020 early 2021 plaintiffs began preparing to bring its claims for damages

against Deutsche for a multiplicity of statutory violations in the 2019 sale that caused damages to plaintiffs including homestead damages and community property right laws including the violation under **6.17.100(1)** that rendered the 12/6/2019 sale Void.

On 9/28/2021 in compliance with **RCW 4.16.080**, plaintiffs timely filed it's Complaint for damages regarding the 12/6/2019 sale. *A void order, judgment or decree is a nullity and may be attacked at anytime and anyplace by a person adversely affected.* *Brown v. Brown*, 46, Wn. 2d370, 281 P. 2d 850 (1955); *France v. Freeze* 4 Wn. 2d 120, 102 P. 2d 687 (1940); *Picard v. Peck* 95 Wn. 474, 164 P. 65 (1917).

B Relevant Parts of the Record.

Records relevant to this Motion for Review are: Trial Court Order dated 4/1/2022 (appendix-A-1 thru 2); Rescind of Sale Order dated 7/14/2019 (Appendix-A- 3 thru 4); Loan Application ("URLA") dated 3/31/2006 (Appendix A-5) Deed of Trust ("DOT") dated 3/31/2006 (Appendix A-6 thru A-17); Deutsche's Affidavit of Service ("AOS") dated 11/12/2014 (Appendix A-18) (**documents attached appendix A**)

1) Loan Applications (URLA)

On 3/31/2006 Deutsche required Michael Shields to complete a loan application. This document provided clear proof to the Court of Appeals that Michael is a married man and the property had been his primary residence since 2003 thus the property was incontrovertible **homestead and community property.** Deutsche's lawyers full well knew this fact despite it's claims to the contrary. Therefore this document before the panel could only provide undisputed proof that Deutsche's lawyers knowingly sold plaintiff community and homestead property. (*appendix A-5*)

2) **DOT Executed by Michael Shields Only**

Pursuant to RCW 6.13.080(2)(b) which states: "*The homestead exemption is not available against an execution or forced sale in satisfaction of judgment obtained on debts secured by mortgages or deeds of trust on the premises that has been executed and acknowledged by both spouses.* In plaintiff's case, the DOT was not executed and acknowledged by Michael's wife when he purchased the property from Bonnie twenty three (23) years ago. (*appendix A-6 -17 DOT*). This document that bore only Michael's signature has been known to Deutsche since 2006. This document was clear proof before the panel that Deutsche's lawyers was fully aware when it filed its 2014 foreclosure action that RCW 6.13.080(2)(b) did not apply for two reasons (1) the statute applies to non judicial foreclosure and (2) the DOT was not executed by spouse.

3) **Affidavit Of Service (AOS)**

This fatal document (AOS) tells the Court of Appeals that Deutsche full well knew that Michael was a married man and *knowingly* violated the statutory requirement to sell real property in Washington state. The AOS clearly show Deutsche 2014 Summons and Complaint was served upon Michael's *wife* on 11/10/2014 (*appendix A-18*)

C ARGUMENT (why review should be granted)

1) The Court of Appeals decision is in conflict with three (3) of the Supreme Court's decisions. (RAP 13.4(b)(1)(3)(4)) 2) A review should be granted because plaintiff have a constitutional right to his homestead exemption credit. 3) Court of Appeals upheld a multiplicity of statutorily violated laws. If laws are in place to protect citizens rights then RAP13.4(b)(4) applies because citizens are concerned that their rights are

protected. 4) Plaintiffs claims for damages was filed timely in compliance with RCW 4.16.080 and it's complaint for damages was not barred by statute of limitation thus plaintiffs complaints and claims for damages should not have been dismissed by the Trial Court nor affirmed by the Court of Appeals. 5) It is incontrovertible that Deutsche's statutory violation under RCW 6.17.100(1)(4) has rendered the 12/6/2019 sale void. 6) The division one Court of Appeals in its own opinion in *Carter v. Fleischer* quoted from *City of Seattle v. Long* 198 Wn. 2d 137,147, 493 P.3d 94 (2021) stating: "*Pursuant to mandate our legislature enacted the homestead act in 1895 which implemented that each citizen have a home where family may shelter and live beyond the reach of financial misfortune*" **Yet, this same Court illegally denies plaintiffs rights to homestead and to the financial support that the exemption provides for the Shields families. The appeals Court outrageously ignored the constitutional rights of a "black family" who are citizens of this state and for nearly 50 years. If this is not racism the Shields family don't know what is.**


V CONCLUSION

No ethical lawyer would violate statutory laws as Deutsche lawyers did in plaintiffs case. And, no Court should uphold statutory violations as the Court of Appeals did in plaintiffs case. Plaintiffs pray it's Petition for Review is granted.


DATED this 27th day of May 2023.

Respectfully Submitted

MICHAEL SHIELDS


Michael Shields,
Appellant pro se

BONNIE SHIELDS


Bonnie Shields,
Appellant pro se

DECLARATION OF SERVICE

I, Bonnie Shields, certify under penalty of perjury under the laws of the State of Washington that, on the date stated below, I caused to be served on Deutsche Bank National Trust Company a copy of Appellants' Petition for Review, with Accompanying Appendix, by first class US mail to the address:

Joseph T McCormick
Wright, Finlay, & Zak, LLP
612 S. Lucile St., Suite 300
Seattle, WA 98108
Ph: (206) 946-8109
Fax: (949) 608-9142

DATED this 27th day of May 2023 at Renton, Washington

Respectfully Submitted

MICHAEL SHIELDS



Michael Shields, Plaintiff Pro se

BONNIE SHIELDS



Bonnie Shields, Plaintiff pro se

APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

MICHAEL SHIELDS AND BONNIE SHIELDS,)	No. 83947-1-1
)	
Appellants,)	DIVISION ONE
v.)	UNPUBLISHED OPINION
)	
DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE FOR SAXON ASSET SECURITIES TRUST 2006-2 MORTGAGE LOAN ASSET BACKED CERTIFICATES, SERIES 2006-2; and THE KING COUNTY SHERIFF,)	
)	
Respondents.)	
_____)	

ANDRUS, C.J. — Michael Shields and his sister, Bonnie, appeal the dismissal of their claims against the King County Sheriff and Deutsche Bank National Trust Company arising out of a 2016 judicial decree of foreclosure and subsequent sheriff’s sale of Michael’s home. Because the King County Sheriff is not an entity with the capacity to be sued and the trial court appropriately dismissed the claims against Deutsche Bank under the doctrine of res judicata, we affirm.

FACTS

In 2003, Michael Shields purchased the residential property at the center of this dispute—2805 Cedar Avenue South in Renton—from his sister, Bonnie

Shields.¹ The statutory warranty deed Bonnie executed identified the purchaser as “Michael Shields, a single man.” In 2006, in an effort to refinance the property, Michael obtained an adjustable rate loan in the amount of \$380,000.00 from Saxon Mortgage, Inc. In his loan application, Michael checked a box indicating he was married. Michael, however, executed the promissory note as the sole borrower. Saxon funded the loan and secured it with by a deed of trust encumbering the property. The loan was transferred to a trust with Deutsche Bank as trustee, who took possession of the original note. *Deutsche Bank Nat’l Tr. Co. v. Shields*, No. 75044-5-I, slip op. at *2 (Wash. Ct. App. Oct. 2, 2017) (unpublished),² review denied, 190 Wn.2d 1013 (2018) (*Shields I*). Saxon endorsed the note to Deutsche Bank. *Id.*

In August 2014, after Michael defaulted on the loan, Deutsche Bank filed a lawsuit seeking to judicially foreclose the deed of trust in King County Superior Court number 14-2-22618-7 KNT. Deutsche Bank named both Michael and Bonnie as defendants as well as “all other persons or parties unknown claiming any right, title, estate, lien, or interest” in the property. The court entered a judgment and decree of foreclosure in Deutsche Bank’s favor and against Michael and Bonnie on March 14, 2016. The judgment identified Michael as the judgment debtor, with a principal amount owing of \$443,284.02, with an additional \$212,127.09 owing in prejudgment interest, for a total judgment of \$655,375.11.

¹ Because Michael and Bonnie share a last name, we will refer to them by their first names for clarity. No disrespect is intended.

² <https://www.courts.wa.gov/opinions/pdf/750445.pdf>

The court also imposed postjudgment interest on the \$655,375.11 judgment at a rate of 12 percent per annum.

The court ordered the deed of trust foreclosed and authorized the sale of the property to satisfy the judgment. The court also adjudicated the rights of any other person claiming to hold an interest in the property. The judgment provided:

By foreclosure and sale, the rights of each of the defendants and all persons claiming through or under them, as purchasers, encumbrancers, or otherwise, are adjudged inferior and subordinate to the Deed of Trust and forever foreclosed of all interest, lien, or claim in the Subject Property described above and every portion thereof.

This court affirmed the judgment and decree of foreclosure in 2017. *Shields I*, slip op at 1. After the Supreme Court denied review, this court issued a mandate terminating review on July 27, 2018. *Deutsche Bank Nat'l Tr. Co. v. Shields*, No. 80913-0-I, slip op. at 3 (Wash. Ct. App. November 16, 2020) (unpublished),³ review denied, 197 Wn.2d 1010 (2021) (*Shields II*).

While *Shields I* was pending, on April 15, 2016, the clerk of court issued a writ for an order of sale and the Sheriff's Office sold the property at public auction to Deutsche Bank for \$352,900.00 on June 10, 2016. The court rescinded the sale on June 14, 2019 with Deutsche Bank's consent,⁴ but it ruled that the March 2016 judgment and decree of foreclosure remained valid and in full effect, including the ongoing accrual of post-judgment interest.

³ <https://www.courts.wa.gov/opinions/pdf/809130.pdf>.

⁴ The trial court's reason for rescinding the sale three years after the fact is not clear from the record before this court, but Michael alleged he was not provided notice of a February 2019 motion to confirm the sale in violation of RCW 6.21.110(2) and the Sheriff's return on the sale was not filed within 60 days of the issuance of the writ in violation of RCW 6.17.120.

At some point, Michael and Bonnie moved to vacate the judgment of foreclosure, claiming that the foreclosure order was void. *Shields II*, slip op. at 3. When the trial court denied this motion, Michael and Bonnie appealed a second time. *Id.* This court affirmed, concluding “there is no basis to conclude the judgment was void under CR 60(b)(5).” *Id.* at 7.

On October 4, 2019, at Deutsche Bank’s request, the court entered a new order of sale. The order required the Sheriff to file a return on the sale within 60 days and granted an automatic extension for purposes of the sale for an additional 30 days. The Sheriff sold the property to Deutsche Bank for \$392,590.00 on December 9, 2019. On January 16, 2020, Deutsche Bank notified Michael and Bonnie of its pending motion to confirm the Sheriff’s sale. They filed no objection and the court confirmed the sale on February 5, 2020.

On October 9, 2020, Deutsche Bank served Michael and all other occupants of the Renton property with a “Notice of Expiration of Redemption Period.” This notice revealed that the property had been sold by sheriff’s sale on December 6, 2019, that the redemption period commenced that day, that it expired on December 6, 2020, and that Michael could redeem the property by paying the bank the total amount of \$436,105.09.

On September 28, 2021, Michael and Bonnie Shields filed this lawsuit against Deutsche Bank and “the King County Sheriff,” arguing that the 2019 sale and the court’s confirmation of that sale was illegal. Specifically, they contended that Michael’s ex-wife, Nancy Shields, held a community interest in the property and had never consented to the deed of trust encumbering the property, and that,

as a result, Michael was entitled to the benefits of a homestead exemption under chapter 6.13 RCW. Michael and Bonnie also argued that Deutsche Bank illegally claimed interest between the date of the rescinded 2016 sale and the date of the September 2019 sale. Finally, they objected to the sale price as not representative of the property's true and fair value.

Michael and Bonnie alleged that they do not seek to have the sale rescinded, but instead sought declaratory relief relating to a variety of alleged statutory violations and an award of monetary damages equal to what they claim is Michael's homestead exemption, interest that accrued on the judgment between June 10, 2016 to the present, and the value of Nancy's community interest in the property.

Both defendants moved to dismiss the complaint under CR 12(b) and (c). The trial court granted the motions, dismissing all claims against both the King County Sheriff and Deutsche Bank with prejudice. Michael and Bonnie appeal.

ANALYSIS

We review a trial court's ruling to dismiss a claim under CR 12(b)(6) de novo. *Tenore v. AT&T Wireless Servs.*, 136 Wn.2d 322, 329-30, 962 P.2d 104 (1998). Dismissal is warranted only if the court concludes, beyond a reasonable doubt, the plaintiff cannot prove "any set of facts which would justify recovery." *Id.* The court presumes all facts alleged in the plaintiff's complaint are true and may consider hypothetical facts supporting the plaintiff's claims. *Id.* at 330. We treat a CR 12(c) motion for judgment on the pleadings identical to a CR 12(b)(6) motion

and review dismissal under that rule de novo as well. *P.E. Sys., LLC v. CPI Corp.*, 176 Wn.2d 198, 203, 289 P.3d 638 (2012).

Dismissal of Claims Against the King County Sheriff

Michael and Bonnie contend the trial court erred in dismissing their claims against the King County Sheriff's Office (KCSO) with prejudice. We disagree. As the KCSO correctly notes, in Washington, county agencies, departments, and boards are not separate entities with the capacity to sue and be sued. *Nolan v. Snohomish County*, 59 Wn. App. 876, 883, 802 P.2d 792 (1990); *Foothills Dev. Co. v. Clark County Bd. of County Comm'rs*, 46 Wn. App. 369, 376-77, 730 P.2d 1369 (1986). Michael and Bonnie appear to concede this point, stating "the court was obliged to dismiss the case against [KCSO] with prejudice, but with leave to amend the complaint, even if the court believed the claims were without merit. The court lacked subject matter jurisdiction over Plaintiffs' claims against [KCSO] and therefore lacked the legal authority to decide the merits of the claims." But this self-contradicting argument appears to stem from a misunderstanding of the trial court's order.

The trial court dismissed the claims against KCSO with prejudice on the basis that the KCSO may not be sued. Dismissal with prejudice is appropriate where dismissal without prejudice would be pointless. *Elliot Bay Adjustment Co. v. Dacumos*, 200 Wn. App. 208, 212, 401 P.3d 473 (2017). Because KCSO cannot legally be sued, it would be pointless to dismiss Shields's claims against that party without prejudice. Once a lawsuit is dismissed, there is no pending complaint to amend.

If Michael and Bonnie had wished to amend their complaint to name King County as the defendant, they could have moved to amend before the trial court dismissed their lawsuit. They did not do so and the trial court appropriately dismissed the complaint against KCSO for failure to state a claim.⁵ We affirm dismissal of the claims against KCSO with prejudice.

Insufficient Service on Deutsche Bank

Michael and Bonnie similarly challenge the trial court's dismissal of their claims against Deutsche Bank, arguing that if they failed to properly serve the bank, any dismissal should have been without prejudice.

Michael and Bonnie appear to concede on appeal that they failed to properly serve Deutsche Bank. In serving companies or corporations, plaintiffs are required to serve "the president or other head of the company or corporation, the registered agent, secretary, cashier or managing agent thereof or to the secretary, stenographer or office assistant of the president or other head of the company or corporation, registered agent, secretary, cashier or managing agent." RCW 4.28.080(9). Michael and Bonnie admit they did not effectuate service under RCW 4.28.080(9), but instead served an attorney, Synova Edwards, who represented Deutsche Bank in *Shields II*, but had not yet appeared as the bank's counsel in this case.⁶

⁵ KCSO asks this court to affirm the dismissal of Michael's and Bonnie's claims against the county as well as against the Sheriff's Office because the county owed no duty to these judgment debtors to ensure that Deutsche Bank complied with state law in conducting the foreclosure sale. But the trial court did not reach the merits of Michael and Bonnie's claims against King County and we need not reach that issue here to affirm the trial court's order of dismissal.

⁶ Michael and Bonnie argued below that Edwards represented to Bonnie's daughter, who delivered the summons and complaint to Edwards, that she had the authority to accept service of process on Deutsche Bank's behalf. Michael and Bonnie do not make that argument on appeal.

Deutsche Bank moved to dismiss for lack of proper service, in addition to several substantive grounds for dismissal, arguing that the court could assume the existence of personal jurisdiction and adjudicate the merits in its favor, thereby obviating the need to decide the jurisdictional question. The trial court held that Michael and Bonnie failed to effectuate service of process under CR 12(b)(5), but also failed to state a claim for which relief may be granted under CR 12(b)(6).

Michael and Bonnie argue that the trial court's ruling on service "left the court devoid of power to decree that (1) Plaintiffs' complaint failed to state a claim upon which relief could be granted and (2) amendment of the complaint would be futile." They cite *State v. Nw Magnesite Co.*, 28 Wn.2d 1, 42, 182 P.2d 643 (1947), in which our Supreme Court held that the trial court, having no personal jurisdiction over the defendants in that case by reason of lack of proper service, "had no power to pass upon the merits of the state's case as against those parties."

Michael and Bonnie are correct that Deutsche Bank's request that the trial court dismiss their claims with prejudice under the doctrine of res judicata is inconsistent with its defense of lack of personal jurisdiction. But a party may waive the defense of insufficient service of process. *Lybbert v. Grant County*, 141 Wn.2d 29, 38-39, 1 P.3d 1124 (2000). Deutsche Bank specified in its motion to dismiss that it raised the defense of improper service as an alternative to its arguments on the merits. Because the trial court concluded that the action was barred under res judicata—a dismissal based on the merits of one of the bank's defenses—we deem the defense of insufficient service to be waived and will proceed as though the complaint was dismissed solely for failure to state a claim under res judicata.

Res Judicata

Finally, Michael and Bonnie argue the trial court erred in dismissing their claims against Deutsche Bank under the doctrine of res judicata, claiming that their claims are unrelated to any issue litigated in *Shields I* or *Shields II*. But most of the claims could have been litigated in the foreclosure action because they are all based on the contention that Deutsche Bank lacked the statutory authority to foreclose on Michael's deed of trust.

We review whether res judicata applies de novo. *Matter of Recall of Fortney*, 199 Wn.2d 109, 124, 503 P.3d 556 (2022). "Filing two separate lawsuits based on the same event—claim splitting—is precluded in Washington." *Landry v. Luscher*, 95 Wn. App. 779, 780, 976 P.2d 1274 (1999). Res judicata prohibits the relitigation of claims and issues that were litigated or could have been litigated in a prior action. *Loveridge v. Fred Meyer, Inc.*, 125 Wn.2d 759, 763, 887 P.2d 898 (1995). A threshold requirement of res judicata is a final judgment on the merits in the prior suit. *Matter of Rights to Use of Surface Waters of Yakima River Drainage Basin*, 198 Wn.2d 687, 706, 498 P.3d 911 (2021). The confirmation of a sheriff's sale in a judicial foreclosure action is a final judgment. *Mueller v. Miller*, 82 Wn. App. 236, 250, 917 P.2d 604 (1996).

Res judicata applies when the two actions have identity of (1) subject matter; (2) cause of action; (3) persons and parties; and (4) the quality of the persons for or against whom the claim is made. *Hadley v. Cowan*, 60 Wn. App. 433, 441, 804 P.2d 1271 (1991).

The persons and parties involved in *Shields I* and *Shields II* and the present lawsuit—Deutsche Bank and Michael and Bonnie Shields—are the same and appeared in the same capacity in each case, thereby satisfying the third and fourth elements.

The second element is also satisfied. Causes of action are identical for res judicata if (1) prosecution of the later action would impair the rights established in the earlier action, (2) the evidence in both actions is substantially the same, (3) infringement of the same right is alleged in both actions, and (4) the actions arise out of the same nucleus of facts. *Civil Serv. Comm'n v. City of Kelso*, 137 Wn.2d 166, 171, 969 P.2d 474 (1999) (citing *Rains v. State*, 100 Wn.2d 660, 664, 674 P.2d 165 (1983)).

Michael and Bonnie seek a ruling that the 2019 foreclosure sale was illegal as well as damages for what they contend is the “conversion” or theft of their interest (or Nancy Shields’s alleged interest) in the foreclosed property. Allowing Michael and Bonnie to prosecute a claim against Deutsche Bank for what is in essence a claim of wrongful foreclosure would affect the rights established by the judgment and decree of foreclosure, which effectively nullified any legal or equitable rights to the property that Michael, Bonnie or any third party had in the property.

Michael and Bonnie argue that there is no identity of subject matter because their new causes of action did not exist at the time the court entered the foreclosure judgment. They claim that “every Deutsche action about which [we] complain in

the [first amended complaint] occurred *after* Deutsche obtained the [2016] Judgment.” There are several problems with this argument.

First, their new claims are based on the underlying assertion that the Saxon deed of trust is invalid. The thrust of the new complaint is that even though the property is titled solely in Michael’s name as a “single person,” he was not single when he obtained refinancing from Saxon, that the property became community property, that his wife, Nancy, did not execute the promissory note or the deed of trust, that the deed of trust was therefore invalid, and there was no basis for ordering a foreclosure on that deed of trust. He also seems to argue that Nancy has some homestead rights in the property. But even though Nancy did not come forward to advance this specific factual claim in *Shields I* or *Shields II*, she certainly could have raised it there. And to the extent Michael contends that he can prosecute such a claim on Nancy’s behalf, he too could have raised this claim in *Shields I* or *Shields II*. The validity of Deutsche Bank’s deed of trust was explicitly the focus of Michael’s attempts to prevent foreclosure in 2014. Because these claims could have been raised in the foreclosure lawsuit, they are barred by res judicata.

Second, Michael and Bonnie are not seeking to rescind this sale. They are seeking monetary damages based on what they claim was an unlawful foreclosure sale. Michael and Bonnie argue that they could not object to the 2019 sale because they did not receive notice of the 2020 sale confirmation hearing. But they conceded below that Deutsche Bank provided the court with a certificate of service showing that it had sent notice of the confirmation hearing by first class

and certified mail, with a return receipt requested. Michael and Bonnie challenged this certificate of service was inadequate, arguing that Deutsche Bank did not produce a receipt showing that they had in fact received the documents the bank mailed to them. If their allegations of lack of notice are true, such a defect may have been a basis to rescind the sale. But that is not the relief they seek here. They fail to explain how a lack of notice of the 2019 sale or the 2020 sale confirmation hearing would entitle them to monetary damages based on an alleged homestead exemption or Nancy's alleged community property rights to some portion of the sale proceeds.

Finally, many of the statutory violations Michael and Bonnie now allege would have occurred long before the 2019 sheriff's sale. They argue, for example, that Deutsche Bank, before seeking a foreclosure sale, should have filed an affidavit under RCW 6.17.100 attesting that Michael lacked sufficient nonexempt personal property to satisfy the judgment. And they argue Deutsche Bank failed to apply for the appointment of an appraiser of homestead property under RCW 6.13.100. But whether Deutsche Bank was legally required to comply with these statutory provisions before foreclosing on the deed of trust were issues that Michael could have litigated in 2016 when the bank obtained its first writ for an order of sale.

Michael and Bonnie also claim that Deutsche Bank "illegally accrued interest" on the loan between the entry of the order rescinding the 2016 sale and the 2019 sale. But the trial court imposed post-judgment interest on the debt Michael owed to the bank in the March 2016 judgment. The interest now accruing

is on that judgment, not on the underlying promissory note. This court affirmed that judgment, including the award of post-judgment interest, in *Shields I*. To the extent Michael had a legal basis to challenge the imposition of post-judgment interest, he could have and should have litigated the issue at the time the court entered judgment against him or on the initial appeal.

Finally, Michael and Bonnie argue that the sale price did not reflect the property's fair market value and the auction price should have paid off the judgment in full. This allegation might provide a basis for voiding a sale on equitable grounds. See *Albice v. Premier Mortg. Servs. of Wash., Inc.*, 157 Wn. App. 912, 932-33, 239 P.3d 1148 (2010) (inadequate purchase price together with other unfair procedures may provide equitable grounds to set aside a foreclosure sale). But that is *not* the claim they pleaded below and they have affirmatively disavowed any request to rescind the sale.

Because the claims Michael and Bonnie allege against Deutsche Bank for which they seek monetary relief either were litigated or could have been litigated in the foreclosure proceeding, the claims are barred by the doctrine of res judicata.

Affirmed.

Andrus, C.J.

WE CONCUR:

Burman, J.

Smith, A.C.J.

**ARTICLE XIX
EXEMPTIONS**

SECTION 1 EXEMPTIONS — HOMESTEADS, ETC. The legislature shall protect by law from forced sale a certain portion of the homestead and other property of all heads of families.

**ARTICLE XX
PUBLIC HEALTH AND VITAL STATISTICS
SECTION 1 BOARD OF HEALTH AND BUREAU OF VITAL STATISTICS.** There shall be established by law a state board of health and a bureau of vital statistics in connection therewith, with such powers as the legislature may direct.

SECTION 2 REGULATIONS CONCERNING MEDICINE, SURGERY AND PHARMACY. The legislature shall enact laws to regulate the practice of medicine and surgery, and the sale of drugs and medicines.

**ARTICLE XXI
WATER AND WATER RIGHTS
SECTION 1 PUBLIC USE OF WATER.** The use of the waters of this state for irrigation, mining and manufacturing purposes shall be deemed a public use.

**ARTICLE XXII
LEGISLATIVE APPORTIONMENT
SECTION 1 SENATORIAL APPORTIONMENT.** Until otherwise provided by law, the state shall be divided into twenty-four (24) senatorial districts, and said districts shall be constituted and numbered as follows: The counties of Stevens and Spokane shall constitute the first district, and be entitled to one senator; the county of Spokane shall constitute the second district, and be entitled to three senators; the county of Lincoln shall constitute the third district, and be entitled to one



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CONSTITUTION OF THE STATE OF WASHINGTON

This Constitution was framed by a convention of seventy-five delegates, chosen by the people of the Territory of Washington at an election held May 14, 1889, under section 3 of the Enabling Act. The convention met at Olympia on the fourth day of July, 1889, and adjourned on the twenty-second day of August, 1889. The Constitution was ratified by the people at an election held on October 1, 1889, and on November 11, 1889, in accordance with section 8 of the Enabling Act, the president of the United States proclaimed the admission of the State of Washington into the Union.

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- (A) Constitution of the State of Washington
- (B) Constitutional Amendments (in order of adoption)
- (C) Index to State Constitution.

In part (A), for convenience of the reader, the latest constitutional amendments have been integrated with the currently effective original sections of the Constitution with the result that the Constitution is herein presented in its currently amended form.

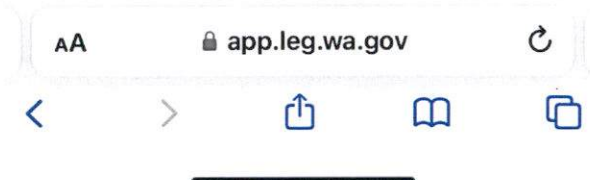
PDF RCW 6.17.100

Affidavit of judgment creditor—Filing required before issuance of writ—Contents.

(1) Before a writ of execution may issue on any real property, the judgment creditor must file with the court an affidavit as described in subsection (4) of this section and must mail a copy of the affidavit to the judgment debtor at the debtor's last known address.

(2) If the affidavit attests that the premises are occupied or otherwise 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 6.13.080 must comply with RCW 6.13.100 through 6.13.170.

(3) The term "due diligence," as used in subsection (4) of 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 recorded by the judgment debtor. An examination of the debtor in supplemental proceedings on the points to be covered in the affidavit constitutes "due diligence."



Print

RCWs > Title 61 > Chapter 61.12 > Section 61.12.090

61.12.080 << 61.12.090 >> 61.12.093

PDF RCW 61.12.090

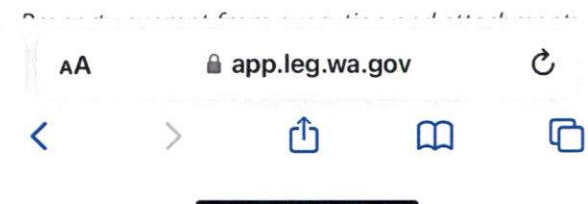
Execution on decree—Procedure.

A decree of foreclosure of mortgage or other lien may be enforced by execution as an ordinary judgment or decree for the payment of money. The execution shall contain a description of the property described in the decree. The sheriff shall endorse upon the execution the time when he or she receives it, and he or she shall thereupon forthwith proceed to sell such property, or so much thereof as may be necessary to satisfy the judgment, interest, and costs upon giving the notice prescribed in RCW 6.21.030.

[2012 c 117 § 161; 1988 c 231 § 36; 1899 c 53 § 1; RRS § 1121. Cf. Code 1881 § 613; 1869 p 146 § 567; 1854 p 208 § 412.]

NOTES:

Severability—1988 c 231: See note following RCW 6.01.050.



RCWs > Title 6 > Chapter 6.13 > Section 6.13.100

6.13.090 << 6.13.100 >> 6.13.110

PDF RCW 6.13.100

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

When execution for the enforcement of a judgment obtained in a case not within the classes enumerated in RCW 6.13.080 is levied upon the homestead, the judgment creditor shall apply to the superior court of the county in which the homestead is situated for the appointment of a person to appraise the value thereof.

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

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PDF RCW 6.13.120

2 times

Notice.

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

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

NOTES:

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

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PDF RCW 61.12.060

Judgment—Order of sale—Satisfaction—Upset price.

In rendering judgment of foreclosure, the court shall order the mortgaged premises, or so much thereof as may be necessary, to be sold to satisfy the mortgage and costs of the action. The payment of the mortgage debt, with interest and costs, at any time before sale, shall satisfy the judgment. The court, in ordering the sale, may in its discretion, take judicial notice of economic conditions, and after a proper hearing, fix a minimum or upset price to which the mortgaged premises must be bid or sold before confirmation of the sale.

The court may, upon application for the confirmation of a sale, if it has not theretofore fixed an upset price, conduct a hearing, establish the value of the property, and, as a condition to confirmation, require that the fair value of the property be credited upon the foreclosure judgment. If an upset price has been established, the plaintiff may be required to credit this amount upon the judgment as a condition to confirmation. If the fair value as found by the court, when applied to the mortgage debt, discharges it, no deficiency judgment shall be granted.

[1935 c 125 § 1; Code 1881 § 611; 1877 p 127 § 616; 1869 p 146 § 565; 1854 p 207 § 410; RRS § 1118. FORMER PART OF SECTION: 1935 c 125 § 1 1/2 now codified as RCW 61.12.061.]

NOTES:

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RCWs > Title 6 > Chapter 6.17 > Section 6.17.170

6.17.160 << 6.17.170 >> 6.17.180

PDF RCW 6.17.170

Levy on jointly owned real estate.

If a judgment debtor owns real estate jointly or in common with any other person, only the debtor's interest may be levied on and sold on execution, and the sheriff's notice of sale shall describe the extent of the debtor's interest to be sold as accurately as possible.

[1987 c 442 § 417.]

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6.13.120 << 6.13.130 >> 6.13.140

PDF RCW 6.13.130

Hearing—Appointment of appraiser.

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

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

NOTES:

Compensation of appraiser: RCW 6.13.190.

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homestead, the judgment creditor shall apply to the superior court of the county in which the homestead is situated for the appointment of a person to appraise the value thereof.

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

PDF RCW 6.13.110

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

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

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

[1987 c 442 § 211; 1981 c 329 § 15; 1895 c 64 § 10; RRS § 538. Formerly RCW 6.12.150.]

NOTES:

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

Judgment against homestead owner— Lien on excess value of homestead property.

A judgment against the owner of a homestead shall become a lien on the value of the homestead property in excess of the homestead exemption from the time the judgment creditor records the judgment with the recording officer of the county where the property is located. However, if a judgment of a district court of this state has been transferred to a superior court, the judgment becomes a lien from the time of recording with such recording officer a duly certified abstract of the record of such judgment as it appears in the office of the clerk in which the transfer was originally filed. A department of revenue tax warrant filed pursuant to RCW **82.32.210** shall become a lien on the value of the homestead property in excess of the homestead exemption from the time of filing in superior court.

[2007 c 429 § 3; 1988 c 231 § 4; 1987 c 442 § 209; 1984 c 260 § 30. Formerly RCW 6.12.105.]

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

Division of homestead.

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

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

NOTES:

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

PDF **RCW 6.13.070**

Homestead exempt from execution, when—Presumed valid.

(1) Except as provided in RCW 6.13.080, the homestead is exempt from attachment and from execution or forced sale for the debts of the owner up to the amount specified in RCW 6.13.030.

(2) In a bankruptcy case, the debtor's exemption shall be determined on the date the bankruptcy petition is filed. If the value of the debtor's interest in homestead property on the petition date is less than or equal to the amount that can be exempted under RCW 6.13.030, then the debtor's entire interest in the property, including the debtor's right to possession and interests of no monetary value, is exempt. Any appreciation in the value of the debtor's exempt interest in the property during the bankruptcy case is also exempt, even if in excess of the amounts in RCW 6.13.030(1).

(3) The proceeds of the voluntary sale of the homestead in good faith for the purpose of acquiring a new homestead, and proceeds from insurance covering destruction of homestead property held for use in restoring or replacing the homestead property, up to the amount specified in RCW 6.13.030, shall likewise be exempt for one year from receipt, and also such new homestead acquired with such proceeds.

(4) Every homestead created under this chapter is presumed to be valid to the extent of all the property 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.

PDF **RCW 6.13.080**

Homestead exemption, when not available.

The homestead exemption is not available against an execution or forced sale in satisfaction of judgments obtained:

(1) On debts secured by mechanic's, laborer's, construction, maritime, automobile repair, material supplier's, or vendor's liens arising out of and against the particular property claimed as a homestead;

(2) On debts secured:

(a) By security agreements describing as collateral the property that is claimed as a homestead; or

(b) By mortgages or deeds of trust on the premises that have been executed and acknowledged by both spouses or both domestic partners or by any claimant not married or in a state registered domestic partnership. The execution and acknowledgment of a mortgage or deed of trust by a dependent who is not a spouse or domestic partner is not required;

PDF RCW 6.13.170

Application of proceeds.

If the sale is made, the proceeds 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.

[1987 c 442 § 217; 1981 c 329 § 19; 1895 c 64 § 20; RRS § 548. Formerly RCW 6.12.250.]

NOTES:

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

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

PDF RCW 6.13.150

Division of homestead.

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

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

NOTES:

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

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6.13.110 << 6.13.120 >> 6.13.130

PDF RCW 6.13.120

Notice.

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

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

NOTES:

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

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

When execution for the enforcement of a judgment obtained in a case not within the classes enumerated in RCW 6.13.080 is levied upon the homestead, the judgment creditor shall apply to the superior court of the county in which the homestead is situated for the appointment of a person to appraise the value thereof.

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

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

MICHAEL SHIELDS; and BONNIE SHIELDS,

Plaintiffs,

v.

DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE FOR SAXON ASSET SECURITIES TRUST 2006-2 MORTGAGE LOAN ASSET BACKED CERTIFICATES, SERIES 2006-2; and THE KING COUNTY SHERIFF,

Defendants.

NO. 21-2-12863-3 KNT

ORDER GRANTING DEUTSCHE BANK'S MOTION TO DISMISS

~~PROPOSED~~

Defendant Deutsche Bank National Trust Company as Trustee for Saxon Asset Securities Trust 2006-2 Mortgage Loan Asset Backed Certificates Series 2006-2 ("Deutsche Bank") requested dismissal of the Amended Complaint pursuant to CR12(b)(6) and CR 12(b)(5) due to the Amended Complaint not meeting the burden required to state a claim upon which relief can be granted against Deutsche Bank.

The Court finds that Deutsche Bank has established that the complaint fails to meet the requirements to state a claim upon which relief can be granted. Having reviewed the Amended Complaint, the Motion, Plaintiff's Opposition, and any Reply, the Court hereby

FINDS AS FOLLOWS:

1. Plaintiffs Amended Complaint has failed to state claim for which relief may be granted pursuant to CR 12(b)(6).

1 2. Plaintiffs have failed to effectuate service on Deutsche Bank and therefore relief may
2 be granted pursuant to CR 12(b)(5).

3 3. Amendment of the Amended Complaint would be futile.

4 The Court does hereby ORDER, AJDJUDGE, AND DECREE:

- 5 1. Deutsche Bank's Request for Judicial Notice is GRANTED.
6 2. Deutsche Bank's Motion to Dismiss is GRANTED.
7 3. The Amended Complaint is hereby DISMISSED WITH PREJUDICE and without leave
8 to amend as to Deutsche Bank.

9
10 DONE IN OPEN COURT this 1st day of April, 2022.

11
12 
13 JUDGE

Samuel S. Chung

14 Presented by:

15 **WRIGHT, FINLAY & ZAK, LLP**

16 By: /s/Synova M. L. Edwards
17 Synova M. L. Edwards, WSBA # 43063
18 Attorneys for Deutsche Bank
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The Hon. Judge Donohue
Hearing: June 14, 2019, 10:00am
With Oral Argument

FILED
KING COUNTY WASHINGTON

JUN 14 2019

SUPERIOR COURT CLERK
BY LeAnne Symonds
DEPUTY

**IN THE SUPERIOR COURT OF THE STATE WASHINGTON
IN AND FOR THE COUNTY OF KING**

DEUTSCHE BANK NATIONAL TRUST
COMPANY AS TRUSTEE FOR SAXON
ASSET SECURITIES TRUST 2006-2
MORTGAGE LOAN ASSET BACKED
CERTIFICATE, SERIES 2006-2,

Plaintiff,

v.

MICHAEL SHIELDS et al.,

Defendants.

) No. 14-2-22618-7 KNT

) **ORDER ON DEFENDANTS' MOTION
TO RESCIND SALE**

This matter having come before the Court on the Motion of Defendants Michael and Bonnie Shields to Rescind Sheriff's Sale, and the Court having considered said Motion in addition to the response of Plaintiff Deutsche Bank National Trust Company as Trustee for Saxon Asset Securities Trust 2006-2 Mortgage Loan Asset Backed Certificates, Series 2006-2 ("Deutsche Bank as Trustee"), now therefore:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

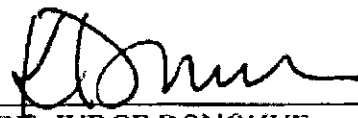
1) The Sheriff's sale of real property at 2805 Cedar Ave. S., Renton, WA 98055 (the "Property") on June 10, 2016 is declared void, and all subsequent certificates, orders, and/or deeds issued in connection with said sale are consequently nullified and rescinded;

2) The March 15, 2016 Judgment and Decree of Foreclosure entered in the above-

1 entitled case remains valid and in full effect, including interest accruing thereon. Plaintiff
2 Deutsche Bank as Trustee may properly execute on this Judgment as proscribed by law;


3 3) A copy of this Order may be recorded with the County Auditor to reflect the sale
4 rescission in the public record.

5 _____
6 _____
7 _____
8 ORDERED this 14th day of JUNE, 2019.

9 _____
10 
11 _____
12 THE HON. JUDGE DONOHUE

13 Presented By:

14 **WRIGHT FINLAY & ZAK, LLP**

15 
16 By: /s/ Joshua Schaer
17 Joshua Schaer, WSBA No. 31491
18 Attorneys for Plaintiff Deutsche Bank National Trust Company
19 as Trustee for Saxon Asset Securities Trust 2006-2 Mortgage
20 Loan Asset Backed Certificates, Series 2006-2

21 Copy Received. Approved as to Form:

22 _____
23 Michael Shields,
24 Defendant *Pro Se*

25 _____
26 Bonnie Shields,
Defendant *Pro Se*

Uniform Residential Loan Application

This application is designed to be completed by the applicant(s) with the Lender's assistance. Applicants should complete this form as "Borrower" or "Co-Borrower", as applicable. Co-Borrower information must also be provided (and the appropriate box checked) when the income or assets of a person other than the "Borrower" (including the Borrower's spouse) will be used as a basis for loan qualification or the income or assets of the Borrower's spouse will not be used as a basis for loan qualification, but his or her liabilities must be considered because the Borrower resides in a community property state, the security property is located in a community property state, or the Borrower is relying on other property located in a community property state as a basis for repayment of the loan.

I. TYPE OF MORTGAGE AND TERMS OF LOAN

Mortgage Applied for:	<input type="checkbox"/> VA <input type="checkbox"/> FHA	<input checked="" type="checkbox"/> Conventional <input type="checkbox"/> USDA/Rural Housing Service	<input type="checkbox"/> Other (explain):	Agency Case Number	Lender Case Number
Amount \$	380,000	Interest Rate %	7.850	No. of Months %	360/360
Amortization Type:		<input checked="" type="checkbox"/> Fixed Rate <input type="checkbox"/> ARM (type):	<input type="checkbox"/> Other (explain):		

II. PROPERTY INFORMATION AND PURPOSE OF LOAN

Subject Property Address (street, city, state, ZIP)	2805 CEDAR AVE SOUTH, Renton, WA 98055 County: King			No. of Units	1
Legal Description of Subject Property (attach description if necessary)	PLEASE SEE PRELIMINARY TITLE LEGAL DESCRIPTION			Year Built	1984

Purpose of Loan:	<input type="checkbox"/> Purchase <input checked="" type="checkbox"/> Refinance	<input type="checkbox"/> Construction-Permanent <input type="checkbox"/> Construction-permanent loan.	Property will be:	<input checked="" type="checkbox"/> Primary Residence <input type="checkbox"/> Secondary Residence <input type="checkbox"/> Investment
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Year Lot Acquired	Original Cost	Amount Existing Liens	(a) Present Value of Lot	(b) Cost of Improvements	Total (a+b)
	\$		\$	\$	\$

Year Acquired	Original Cost	Amount Existing Liens	Purpose of Refinance	Describe Improvements	<input type="checkbox"/> made <input type="checkbox"/> to be made
2003	\$ 338,000	333,170	Cash-Out/Home Improvement	Cost: \$	

Title will be held in what Name(s)	MICHAEL SHIELDS	Manner in which Title will be held	Married As His Separate Estate	Estate will be held in	<input checked="" type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold (show expiration date)
Source of Down Payment, Settlement Charges and/or Subordinate Financing (explain)					

III. BORROWER INFORMATION

Borrower				Co-Borrower			
Borrower's Name (include Jr. or Sr. if applicable)				Co-Borrower's Name (include Jr. or Sr. if applicable)			
MICHAEL SHIELDS							
Social Security Number	Home Phone (incl. area code)	DOB (MM/DD/YYYY)	Yrs. School	Social Security Number	Home Phone (incl. area code)	DOB (MM/DD/YYYY)	Yrs. School
431-08-7128	425-235-4141	08/01/1956	14				
<input checked="" type="checkbox"/> Married <input type="checkbox"/> Unmarried (include single, divorced, widowed) <input type="checkbox"/> Separated		Dependents (not listed by Co-Borrower) no. 3 ages		<input type="checkbox"/> Married <input type="checkbox"/> Unmarried (include single, divorced, widowed) <input type="checkbox"/> Separated		Dependents (not listed by Borrower) no. ages	
Present Address (street, city, state, ZIP)		<input checked="" type="checkbox"/> Own <input type="checkbox"/> Rent 3 No. Yrs.		Present Address (street, city, state, ZIP)		<input type="checkbox"/> Own <input type="checkbox"/> Rent No. Yrs.	
2805 CEDAR AVE SOUTH Renton, WA 98055							
Mailing Address, if different from Present Address				Mailing Address, if different from Present Address			

If residing at present address for less than two years, complete the following:

Former Address (street, city, state, ZIP)	<input type="checkbox"/> Own <input type="checkbox"/> Rent No. Yrs.	Former Address (street, city, state, ZIP)	<input type="checkbox"/> Own <input type="checkbox"/> Rent No. Yrs.
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IV. EMPLOYMENT INFORMATION

Borrower		Co-Borrower	
Name & Address of Employer	Self Employed Yrs. on this job	Name & Address of Employer	Self Employed Yrs. on this job
THE BOEING COMPANY PO BOX 3707 SEATTLE, WA 98124	19 yr(s) Yrs. employed in this line of work/profession 19		
Position/Title/Type of Business	Business Phone (incl. area code)	Position/Title/Type of Business	Business Phone (incl. area code)
MECHANIC	206-356-1321		

If employed in current position for less than two years, or if previously unemployed, complete the following:

Return to: STEWART MORTGAGE SERVICES
ATTENTION: TRAIL DOCS
3910 KIRBY DRIVE, SUITE 300
HOUSTON, TX 77098



20060425001597

FIDELITY NATIONAL TITLE
PAGE 001 OF 028
04/28/2006 13:59
KING COUNTY, WA

Lot 117, Victoria Hills, according to the plat thereof recorded in Volume 113 of Plats, Page 79 through 83, records of King County Auditor; situated in the City of Renton, County of King, State of Washington.

Property Tax Parcel Number: 884870117005

Loan No: [REDACTED] [Space Above This Line for Recording Data] Data ID: 321
Borrower: MICHAEL SHIELDS *20/53*

DEED OF TRUST
INSURED BY
FIDELITY NATIONAL TITLE *1006346*

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

- (A) "Security Instrument" means this document, which is dated March 31, 2006, together with all Riders to this document.
- (B) "Borrower" is MICHAEL SHIELDS, AS HIS SEPARATE ESTATE. Borrower is the trustor under this Security Instrument.
- (C) "Lender" is SAXON MORTGAGE, INC.. Lender is a CORPORATION organized and existing under the laws of the State of VIRGINIA. Lender's address is 27121 TOWNE CENTRE DRIVE, SUITE 230, FOOTHILL RANCH, CA 92610. Lender is the beneficiary under this Security Instrument.
- (D) "Trustee" is ~~ACTION PACROW~~ *Fidelity National Title*



Loan No: [REDACTED]

Data ID: 321

(I) "Note" means the promissory note signed by Borrower and dated March 31, 2006. The Note states that Borrower owes Lender THREE HUNDRED EIGHTY THOUSAND and NO/100----Dollars (U.S. \$ 380,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than April 1, 2036.

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Riders" means all Riders to this Security Instrument that are executed by Borrower. The following Riders are to be executed by Borrower [check box as applicable]:

Adjustable Rate Rider Condominium Rider Second Home Rider
 Balloon Rider Planned Unit Development Rider
 1-4 Family Rider Biweekly Payment Rider
 Other(s) [specify] Arbitration Rider

(I) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(J) "Community Association Dues, Fees, and Assessments" means all dues, fees, assessments and other charges that are imposed on Borrower or the Property by a condominium association, homeowners association or similar organization.

(K) "Electronic Funds Transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, transfers initiated by telephone, wire transfers, and automated clearinghouse transfers.

(L) "Escrow Items" means those items that are described in Section 3.

(M) "Miscellaneous Proceeds" means any compensation, settlement, award of damages, or proceeds paid by any third party (other than insurance proceeds paid under the coverages described in Section 5) for: (i) damage to, or destruction of, the Property; (ii) condemnation or other taking of all or any part of the Property; (iii) conveyance in lieu of condemnation; or (iv) misrepresentations of, or omissions as to, the value and/or condition of the Property.

(N) "Mortgage Insurance" means insurance protecting Lender against the nonpayment of, or default on, the Loan.

(O) "Periodic Payment" means the regularly scheduled amount due for (i) principal and interest under the Note, plus (ii) any amounts under Section 3 of this Security Instrument.

(P) "RESPA" means the Real Estate Settlement Procedures Act (12 U.S.C. §2601 et seq.) and its implementing regulation, Regulation X (24 C.F.R. Part 3500), as they might be amended from time to time, or any additional or successor legislation or regulation that governs the same subject matter. As used in this Security Instrument, "RESPA" refers to all requirements and restrictions that are imposed in regard to a "federally related mortgage loan" even if the Loan does not qualify as a "federally related mortgage loan" under RESPA.

(Q) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.



Loan No: [REDACTED]

Date ID: 321

TRANSFER OF RIGHTS IN THE PROPERTY

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of KING:

Lot 117, Victoria Hills, according to the plat thereof recorded in Volume 113 of Plats, Page 79 through 83, records of King County Auditor, situated in the City of Renton, County of King, State of Washington.

which currently has the address of 2805 CEDAR AVENUE SOUTH,

RENTON, WASHINGTON
(City)

(State)

98056
(Zip Code)

("Property Address"):

WASHINGTON - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3049 1/01 (Page 3 of 12 Pages)



P+0011071040+0017+03+12+WACINACT

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note. Borrower shall also pay funds for Escrow items pursuant to Section 3. Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentally, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender in accordance with the notice provisions in Section 15. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have now or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Application of Payments or Proceeds. Except as otherwise described in this Section 2, all payments accepted and applied by Lender shall be applied in the following order of priority: (a) interest due under the Note; (b) principal due under the Note; (c) amounts due under Section 3. Such payments shall be applied to each Periodic Payment in the order in which it became due. Any remaining amounts shall be applied first to late charges, second to any other amounts due under this Security Instrument, and then to reduce the principal balance of the Note.

If Lender receives a payment from Borrower for a delinquent Periodic Payment which includes a sufficient amount to pay any late charge due, the payment may be applied to the delinquent payment and the late charge. If more than one Periodic Payment is outstanding, Lender may apply any payment received from Borrower to the repayment of the Periodic Payments if, and to the extent that, each payment can be paid in full. To the extent that any excess exists after the payment is applied to the full payment of one or more Periodic Payments, such excess may be applied to any late charges due. Voluntary prepayments shall be applied first to any prepayment charges and then as described in the Note.

Any application of payments, insurance proceeds, or Miscellaneous Proceeds to principal due under the Note shall not extend or postpone the due date, or change the amount, of the Periodic Payments.



3. Funds for Escrow Items. Borrower shall pay to Lender on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the "Funds") to provide for payment of amounts due for: (a) taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on the Property; (b) leasehold payments or ground rents on the Property, if any; (c) premiums for any and all insurance required by Lender under Section 5; and (d) Mortgage Insurance premiums, if any, or any sums payable by Borrower to Lender in lieu of the payment of Mortgage Insurance premiums in accordance with the provisions of Section 10. These items are called "Escrow Items." At origination or at any time during the term of the Loan, Lender may require that Community Association Dues, Fees, and Assessments, if any, be escrowed by Borrower, and such dues, fees and assessments shall be an Escrow Item. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this Section. Borrower shall pay Lender the Funds for Escrow Items unless Lender waives Borrower's obligation to pay the Funds for any or all Escrow Items. Lender may waive Borrower's obligation to pay to Lender Funds for any or all Escrow Items at any time. Any such waiver may only be in writing. In the event of such waiver, Borrower shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Lender and, if Lender requires, shall furnish to Lender receipts evidencing such payment within such time period as Lender may require. Borrower's obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and agreement contained in this Security Instrument, as the phrase "covenant and agreement" is used in Section 9. If Borrower is obligated to pay Escrow Items directly, pursuant to a waiver, and Borrower fails to pay the amount due for an Escrow Item, Lender may exercise its rights under Section 9 and pay such amount and Borrower shall then be obligated under Section 9 to repay to Lender any such amount. Lender may revoke the waiver as to any or all Escrow Items at any time by a notice given in accordance with Section 15 and, upon such revocation, Borrower shall pay to Lender all Funds, and in such amounts, that are then required under this Section 3.

Lender may, at any time, collect and hold Funds in an amount (a) sufficient to permit Lender to apply the Funds at the time specified under RESPA, and (b) not to exceed the maximum amount a lender can require under RESPA. Lender shall estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with Applicable Law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentally, or entity (including Lender, if Lender is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Lender shall not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and Applicable Law permits Lender to make such a charge. Unless an agreement is made in writing or Applicable Law requires interest to be paid on the Funds, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Borrower and Lender can agree in writing, however, that interest shall be paid on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds as required by RESPA.

If there is a surplus of Funds held in escrow, as defined under RESPA, Lender shall account to Borrower for the excess funds in accordance with RESPA. If there is a shortage of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments. If there is a deficiency of Funds held in escrow, as defined under RESPA, Lender shall notify Borrower as required by RESPA, and Borrower shall pay to Lender the amount necessary to make up the deficiency in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Lender shall promptly refund to Borrower any Funds held by Lender.

4. Charges; Liens. Borrower shall pay all taxes, assessments, charges, fines, and impositions attributable to the Property which can attain priority over this Security Instrument, leasehold payments or ground rents on the Property, if any, and Community Association Dues, Fees, and Assessments, if any. To the extent that these items are Escrow Items, Borrower shall pay them in the manner provided in Section 3.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender, but only so long as Borrower is performing such agreement; (b) contests the lien in good faith by, or defends against enforcement of the lien in, legal proceedings which in Lender's opinion operate to prevent the enforcement of the lien while those proceedings are pending, but only until such proceedings are concluded; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which can attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Within 10 days of the date on which that notice is given, Borrower shall satisfy the lien or take one or more of the actions set forth above in this Section 4.

Lender may require Borrower to pay a one-time charge for a real estate tax verification and/or reporting service used by Lender in connection with this Loan.



5. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender under this Section 5 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2.

If Borrower abandons the Property, Lender may file, negotiate and settle any available insurance claim and related matters. If Borrower does not respond within 30 days to a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may negotiate and settle the claim. The 30-day period will begin when the notice is given. In either event, or if Lender acquires the Property under Section 22 or otherwise, Borrower hereby assigns to Lender (a) Borrower's rights to any insurance proceeds in an amount not to exceed the amounts unpaid under the Note or this Security Instrument, and (b) any other of Borrower's rights (other than the right to any refund of unearned premiums paid by Borrower) under all insurance policies covering the Property, insofar as such rights are applicable to the coverage of the Property. Lender may use the insurance proceeds either to repair or restore the Property or to pay amounts unpaid under the Note or this Security Instrument, whether or not then due.

6. **Occupancy.** Borrower shall occupy, establish, and use the Property as Borrower's principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy, unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control.



7. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspections of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such an interior inspection specifying such reasonable cause.

8. **Borrower's Loan Application.** Borrower shall be in default if, during the Loan application process, Borrower or any persons or entities acting at the direction of Borrower or with Borrower's knowledge or consent gave materially false, misleading, or inaccurate information or statements to Lender (or failed to provide Lender with material information) in connection with the Loan. Material representations include, but are not limited to, representations concerning Borrower's occupancy of the Property as Borrower's principal residence.

9. **Protection of Lender's Interest in the Property and Rights Under this Security Instrument.** If (a) Borrower fails to perform the covenants and agreements contained in this Security Instrument, (b) there is a legal proceeding that might significantly affect Lender's interest in the Property and/or rights under this Security Instrument (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture, for enforcement of a lien which may attain priority over this Security Instrument or to enforce laws or regulations), or (c) Borrower has abandoned the Property, then Lender may do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument, including protecting and/or assessing the value of the Property, and securing and/or repairing the Property. Lender's actions can include, but are not limited to: (a) paying any sums secured by a lien which has priority over this Security Instrument; (b) appearing in court; and (c) paying reasonable attorneys' fees to protect its interest in the Property and/or rights under this Security Instrument, including its secured position in a bankruptcy proceeding. Securing the Property includes, but is not limited to, entering the Property to make repairs, change locks, replace or board up doors and windows, drain water from pipes, eliminate building or other code violations or dangerous conditions, and have utilities turned on or off. Although Lender may take action under this Section 9, Lender does not have to do so and is not under any duty or obligation to do so. It is agreed that Lender incurs no liability for not taking any or all actions authorized under this Section 9.

Any amounts disbursed by Lender under this Section 9 shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

If this Security Instrument is on a leasehold, Borrower shall comply with all the provisions of the lease. If Borrower acquires fee title to the Property, the leasehold and the fee title shall not merge unless Lender agrees to the merger in writing.

10. **Mortgage Insurance.** If Lender required Mortgage Insurance as a condition of making the Loan, Borrower shall pay the premiums required to maintain the Mortgage Insurance in effect. If, for any reason, the Mortgage Insurance coverage required by Lender ceases to be available from the mortgage insurer that previously provided such insurance and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to obtain coverage substantially equivalent to the Mortgage Insurance previously in effect, at a cost substantially equivalent to the cost to Borrower of the Mortgage Insurance previously in effect, from an alternate mortgage insurer selected by Lender. If substantially equivalent Mortgage Insurance coverage is not available, Borrower shall continue to pay to Lender the amount of the separately designated payments that were due when the insurance coverage ceased to be in effect. Lender will accept, use and retain these payments as a non-refundable loss reserve in lieu of Mortgage Insurance. Such loss reserves shall be non-refundable, notwithstanding the fact that the Loan is ultimately paid in full, and Lender shall not be required to pay Borrower any interest or earnings on such loss reserve. Lender can no longer require loss reserve payments if Mortgage Insurance coverage (in the amount and for the period that Lender requires) provided by an insurer selected by Lender again becomes available, is obtained, and Lender requires separately designated payments toward the premiums for Mortgage Insurance. If Lender required Mortgage Insurance as a condition of making the Loan and Borrower was required to make separately designated payments toward the premiums for Mortgage Insurance, Borrower shall pay the premiums required to maintain Mortgage Insurance in effect, or to provide a non-refundable loss reserve, until Lender's requirement for Mortgage Insurance ends in accordance with any written agreement between Borrower and Lender providing for such termination or until termination is required by Applicable Law. Nothing in this Section 10 affects Borrower's obligation to pay interest at the rate provided in the Note.



Mortgage Insurance reimburses Lender (or any entity that purchases the Note) for certain losses it may incur if Borrower does not repay the Loan as agreed. Borrower is not a party to the Mortgage Insurance.

Mortgage insurers evaluate their total risk on all such insurance in force from time to time, and may enter into agreements with other parties that share or modify their risk, or reduce losses. These agreements are on terms and conditions that are satisfactory to the mortgage insurer and the other party (or parties) to these agreements. These agreements may require the mortgage insurer to make payments using any source of funds that the mortgage insurer may have available (which may include funds obtained from Mortgage Insurance premiums).

As a result of these agreements, Lender, any purchaser of the Note, another insurer, any reinsurer, any other entity, or any affiliate of any of the foregoing, may receive (directly or indirectly) amounts that derive from (or might be characterized as) a portion of Borrower's payments for Mortgage Insurance, in exchange for sharing or modifying the mortgage insurer's risk, or reducing losses. If such agreement provides that an affiliate of Lender takes a share of the insurer's risk in exchange for a share of the premiums paid to the insurer, the arrangement is often termed "captive reinsurance." Further:

(a) Any such agreements will not affect the amounts that Borrower has agreed to pay for Mortgage Insurance, or any other terms of the Loan. Such agreements will not increase the amount Borrower will owe for Mortgage Insurance, and they will not entitle Borrower to any refund.

(b) Any such agreements will not affect the rights Borrower has - if any - with respect to the Mortgage Insurance under the Homeowners Protection Act of 1998 or any other law. These rights may include the right to receive certain disclosures, to request and obtain cancellation of the Mortgage Insurance, to have the Mortgage Insurance terminated automatically, and/or to receive a refund of any Mortgage Insurance premiums that were earned at the time of such cancellation or termination.

11. Assignment of Miscellaneous Proceeds; Forfeiture. All Miscellaneous Proceeds are hereby assigned to and shall be paid to Lender.

If the Property is damaged, such Miscellaneous Proceeds shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such Miscellaneous Proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may pay for the repairs and restoration in a single disbursement or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such Miscellaneous Proceeds, Lender shall not be required to pay Borrower any interest or earnings on such Miscellaneous Proceeds. If the restoration or repair is not economically feasible or Lender's security would be lessened, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such Miscellaneous Proceeds shall be applied in the order provided for in Section 2.

In the event of a total taking, destruction, or loss in value of the Property, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is equal to or greater than the amount of the sums secured by this Security Instrument immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the sums secured by this Security Instrument shall be reduced by the amount of the Miscellaneous Proceeds multiplied by the following fraction: (a) the total amount of the sums secured immediately before the partial taking, destruction, or loss in value divided by (b) the fair market value of the Property immediately before the partial taking, destruction, or loss in value. Any balance shall be paid to Borrower.

In the event of a partial taking, destruction, or loss in value of the Property in which the fair market value of the Property immediately before the partial taking, destruction, or loss in value is less than the amount of the sums secured immediately before the partial taking, destruction, or loss in value, unless Borrower and Lender otherwise agree in writing, the Miscellaneous Proceeds shall be applied to the sums secured by this Security Instrument whether or not the sums are then due.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the Opposing Party (as defined in the next sentence) offers to make an award to settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date the notice is given, Lender is authorized to collect and apply the Miscellaneous Proceeds either to restoration or repair of the Property or to the sums secured by this Security Instrument, whether or not then due. "Opposing Party" means the third party that owes Borrower Miscellaneous Proceeds or the party against whom Borrower has a right of action in regard to Miscellaneous Proceeds.

Borrower shall be in default if any action or proceeding, whether civil or criminal, is begun that, in Lender's judgment, could result in forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. Borrower can cure such a default and, if acceleration has occurred, reinstate as provided in Section 19, by causing the action or proceeding to be dismissed with a ruling that, in Lender's judgment, precludes forfeiture of the Property or other material impairment of Lender's interest in the Property or rights under this Security Instrument. The proceeds of any award or claim for damages that are attributable to the impairment of Lender's interest in the Property are hereby assigned and shall be paid to Lender.

All Miscellaneous Proceeds that are not applied in restoration or repair of the Property shall be applied in the order provided for in Section 2.

WASHINGTON - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

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12. **Borrower Not Released; Forbearance by Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

13. **Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Subject to the provisions of Section 18, any Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind (except as provided in Section 20) and benefit the successors and assigns of Lender.

14. **Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

15. **Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any one Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless Borrower has designated a substitute notice address by notice to Lender. Borrower shall promptly notify Lender of Borrower's change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to Borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

16. **Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

17. **Borrower's Copy.** Borrower shall be given one copy of the Note and of this Security Instrument.

WASHINGTON - Single Family - Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

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18. **Transfer of the Property or a Beneficial Interest in Borrower.** As used in this Section 18, "Interest in the Property" means any legal or beneficial interest in the Property, including, but not limited to, those beneficial interests transferred in a bond for deed, contract for deed, installment sales contract or escrow agreement, the intent of which is the transfer of title by Borrower at a future date to a purchaser.

If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if such exercise is prohibited by Applicable Law.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is given in accordance with Section 15 within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

19. **Borrower's Right to Reinstatement After Acceleration.** If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earliest of: (a) five days before sale of the Property pursuant to any power of sale contained in this Security Instrument; (b) such other period as Applicable Law might specify for the termination of Borrower's right to reinstate; or (c) entry of a judgment enforcing this Security Instrument. These conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees, property inspection and valuation fees, and other fees incurred for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument; and (d) takes such action as Lender may reasonably require to assure that Lender's interest in the Property and rights under this Security Instrument, and Borrower's obligation to pay the sums secured by this Security Instrument, shall continue unchanged. Lender may require that Borrower pay such reinstatement sums and expenses in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentally or entity; or (d) Electronic Funds Transfer. Upon reinstatement by Borrower, this Security Instrument and obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under Section 18.

20. **Sale of Note; Change of Loan Servicer; Notice of Grievance.** The Note or a partial interest in the Note (together with this Security Instrument) can be sold one or more times without prior notice to Borrower. A sale might result in a change in the entity (known as the "Loan Servicer") that collects Periodic Payments due under the Note and this Security Instrument and performs other mortgage loan servicing obligations under the Note, this Security Instrument, and Applicable Law. There also might be one or more changes of the Loan Servicer unrelated to a sale of the Note. If there is a change of the Loan Servicer, Borrower will be given written notice of the change which will state the name and address of the new Loan Servicer, the address to which payments should be made and any other information RESPA requires in connection with a notice of transfer of servicing. If the Note is sold and thereafter the Loan is serviced by a Loan Servicer other than the purchaser of the Note, the mortgage loan servicing obligations to Borrower will remain with the Loan Servicer or be transferred to a successor Loan Servicer and are not assumed by the Note purchaser unless otherwise provided by the Note purchaser.

Neither Borrower nor Lender may commence, join, or be joined to any judicial action (as either an individual litigant or the member of a class) that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party has breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party (with such notice given in compliance with the requirements of Section 15) of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action. If Applicable Law provides a time period which must elapse before certain action can be taken, that time period will be deemed to be reasonable for purposes of this paragraph. The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.

21. **Hazardous Substances.** As used in this Section 21: (a) "Hazardous Substances" are those substances defined as toxic or hazardous substances, pollutants, or wastes by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials; (b) "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection; (c) "Environmental Cleanup" includes any response action, remedial action, or removal action, as defined in Environmental Law; and (d) an "Environmental Condition" means a condition that can cause, contribute to, or otherwise trigger an Environmental Cleanup.



Borrower shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, or threaten to release any Hazardous Substances, on or in the Property. Borrower shall not do, nor allow anyone else to do, anything affecting the Property (a) that is in violation of any Environmental Law, (b) which creates an Environmental Condition, or (c) which, due to the presence, use, or release of a Hazardous Substance, creates a condition that adversely affects the value of the Property. The preceding two sentences shall not apply to the presence, use, or storage on the Property of small quantities of Hazardous Substances that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property (including, but not limited to, hazardous substances in consumer products).

Borrower shall promptly give Lender written notice of (a) any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which Borrower has actual knowledge, (b) any Environmental Condition, including but not limited to, any spilling, leaking, discharge, release or threat of release of any Hazardous Substance, and (c) any condition caused by the presence, use or release of a Hazardous Substance which adversely affects the value of the Property. If Borrower learns, or is notified by any governmental or regulatory authority, or any private party, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, Borrower shall promptly take all necessary remedial actions in accordance with Environmental Law. Nothing herein shall create any obligation on Lender for an Environmental Cleanup.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

22. **Acceleration; Remedies.** Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property at public auction at a date not less than 120 days in the future. The notice shall further inform Borrower of the right to reinstate after acceleration, the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale, and any other matters required to be included in the notice by Applicable Law. If the default is not cured on or before the date specified in the notice, Lender at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and/or any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee and Lender shall take such action regarding notice of sale and shall give such notices to Borrower and to other persons as Applicable Law may require. After the time required by Applicable Law and after publication of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of the Property for a period or periods permitted by Applicable Law by public announcement at the time and place fixed in the notice of sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it or to the clerk of the superior court of the county in which the sale took place.

23. **Reconveyance.** Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs and the Trustee's fee for preparing the reconveyance.

24. **Substitute Trustee.** In accordance with Applicable Law, Lender may from time to time appoint a successor trustee to any Trustee appointed hereunder who has ceased to act. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

25. **Use of Property.** The Property is not used principally for agricultural purposes.

26. **Attorneys' Fees.** Lender shall be entitled to recover its reasonable attorneys' fees and costs in any action or proceeding to construe or enforce any term of this Security Instrument. The term "attorneys' fees," whenever used in this Security Instrument, shall include without limitation attorneys' fees incurred by Lender in any bankruptcy proceeding or on appeal.



Loan No: [REDACTED]

Date ID: 321

**ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY,
EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT
OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any Rider executed by Borrower and recorded with it.

Michael Shields (Seal)
MICHAEL SHIELDS - Borrower

[Space Below This Line For Acknowledgment]

State of Washington
County of KING

§
§

On this day personally appeared before me MICHAEL SHIELDS to me known to be the person described in and who executed the within and foregoing instrument, and acknowledged that they executed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 31st day of March, 2006

(Seal)

Molly Joy Mack
Notary Public in and for the State of WA
residing at Kingland

Molly Joy Mack
(Printed Name)

My commission expires: 03/22/09



FILED

16 FEB 01 PM 1:30

KING COUNTY
SUPERIOR COURT CLERK
E-FILED

CASE NUMBER: 14-2-22618-7 KNT

KING COUNTY SUPERIOR COURT IN AND FOR THE STATE OF
WASHINGTON

Deutsche Bank National Trust Company as Trustee for
Saxon Asset Securities Trust 2006-2 Mortgage Loan
Asset Backed Certificates, Series 2006-2

Case No.: 14-2-22618-7 KNT

Plaintiff(s),

AFFIDAVIT OF SERVICE

vs

Michael Shields, et al.



Defendant(s)

State of Washington
County of King ss

The undersigned, being first duly sworn on oath deposes and says: That he/she is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen years, not a party to or interested in the above entitled action and competent to be a witness therein

That on 11/10/2014 at 11:48 AM, at the address of 329 26th Avenue, Seattle, within King County, WA, the undersigned duly served the following document(s): First Amended Complaint for Deed of Trust Foreclosure, Quiet Title, and Declaratory Relief in the above entitled action upon Michael Shields, by then and there, at the residence and usual place of abode of said person(s), personally delivering 1 true and correct set(s) of the above documents into the hands of and leaving same with Nancy Shields, Wife and Co-Resident, being a person of suitable age and discretion, who is a resident therein
Desc: Sex: Female - Skin: Black - Hair: Black - Age: 60 - Height: 5' 8" - Weight: Medium Build

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

Date: 11/17/14

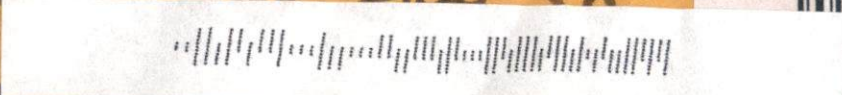
X
J. DeWitt
Registered Process Server
License#: 1030264 - Exp 6/2/2015
First Legal Network
3600 Lime Street, #626
Riverside, CA 92501
951-779-1110



Subscribed and sworn to before me on
this 17 day of November,
2014

Peter A. Valente
Notary Public

2805 Cedar Ave SE
Renton, WA 98058



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RDC 99



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Olympia, WA 98504-0929