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Supreme Court No. 94171-8

Court of Appeals No. 74115-2-1

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**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

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Viewcrest Condominium Association,

Plaintiff/Petitioner,

v.

Brenda L. Robertson,

Defendant/Respondent.

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**ANSWER OF RESPONDENT BRENDA ROBERTSON TO  
PETITION FOR DISCRETIONARY REVIEW**

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## I. INTRODUCTION

The Redemption Act, Chapter 6.23 RCW, addresses the rights of parties during the redemption period that follows a judicial foreclosure sale. It provides, at RCW 6.23.110(4), that, in the case of a homestead, the judgment debtor is entitled to retain possession during the redemption period. This protection for homeowners has been in place since 1899.

In the present case, the Court of Appeals held correctly that RCW 6.23.110(4) entitled Respondent Brenda Robertson to possession of her home during the redemption period; that RCW 64.34.364(2), within the Condominium Act, did not create an exception to the rule of RCW 6.23.110(4); and that the Superior Court erred in issuing a writ to force Ms. Robertson from her home during the redemption period.

Petitioner Viewcrest Condominium Association (“Viewcrest”), the purchaser at the foreclosure sale (and previously the foreclosing creditor), contends that RCW 64.34.364(2) gave it, not Ms. Robertson, the right to possession during the redemption period. It has requested review pursuant to RAP 13.4(b)(4). Petition 5. Most of Viewcrest’s Petition, however, addresses alleged errors in the Court of Appeals’ analysis, rather than the “issue of substantial public interest” standard of the rule.

After reviewing the facts, this Answer first sets forth the relevant background regarding the rights the Constitution and legislature have

given to homestead owners since the late 1890s. Argument § A. It then addresses Viewcrest's argument that the case presents an issue of substantial public interest warranting determination by this Court. Argument § B. Finally, it explains the Court of Appeals correctly and clearly disposed of Viewcrest's arguments on the merits. Argument § C.

## II. STATEMENT OF THE CASE

Brenda Robertson purchased her home in Viewcrest Condominium in February 2007. CP 21. Thereafter, Ms. Robertson suffered financial difficulties, which were compounded by the effects of colon cancer and treatment for the cancer. The cancer and treatment prevented Ms. Robertson from working and forced her to take early retirement. CP 22.

These issues made it difficult for Ms. Robertson to keep up with her homeowner association dues. CP 22. Viewcrest sued Ms. Robertson for the dues and obtained a judgment against her. CP 1, 98, 103. The sheriff then sold Ms. Robertson's home. Viewcrest itself purchased the home for \$12,000. CP 118, 125, 145.

Viewcrest sought a writ of assistance to remove Ms. Robertson from her home. Ms. Robertson opposed the motion, relying on RCW 6.23.110(4). Viewcrest contended the protection granted by RCW 6.23.110(4) does not apply if the debt that led to the sale is owed to a condominium association, relying on RCW 64.34.364 (2). Commissioner



Carlos Velategui of King County Superior Court agreed with Viewcrest and issued the writ. CP 85, 149, 163.

Ms. Robertson filed a motion for revision. Judge Veronica Galván denied the motion, but, recognizing that her decision was inconsistent with that of other judges from the same court, encouraged Ms. Robertson to appeal. CP 88, 187; RP 30, 32-33.

Ms. Robertson appealed, CP 91, but could not afford a bond to stay the writ. Viewcrest enforced the writ, forcing Ms. Robertson to move and incur living expenses she would not have incurred had the writ not issued.<sup>1</sup>

The Court of Appeals reversed. It held that Ms. Robertson was entitled to possession of her home during the redemption period. Slip Op. 6-11. Viewcrest then filed the pending Petition for Discretionary Review.

### III. ARGUMENT

#### A. **RCW 6.23.110(4) Protects Homeowners During the Redemption Period.**

Washington's Constitution recognizes the existence of the homestead and directs the legislature to "protect by law from forced sale a certain portion of the homestead." Const. Art. XIX, § 1. The "humane purpose the people of this state had in mind when this constitutional

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<sup>1</sup> Viewcrest's Statement of the Case refers to an offer to rent to Ms. Robertson during the redemption period, which it made before obtaining the writ of assistance. *See* Petition 3, citing CP 57. After obtaining the writ, Viewcrest refused to rent to Ms. Robertson.

provision was adopted” was to protect “the improvident and unfortunate” and to “save the state and the community from the burden” they would incur if a person’s home had no protection from the demands of creditors. *Slyfield v. Willard*, 43 Wash. 179, 182-83, 86 P. 392 (1906); accord Slip Op. 4 & n.12 and cases cited therein.

In 1895, the legislature adopted the Homestead Act, now codified at Chapter 6.13 RCW, to implement the Constitution’s directive. RCW 6.13.010 defines the homestead as “real or personal property that the owner uses as a residence.” RCW 6.13.070 provides that, “[e]xcept 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 [presently \$125,000].” As RCW 6.13.040 summarizes, “[p]roperty described in RCW 6.13.010 constitutes a homestead and is automatically protected by the exemption described in RCW 6.13.070 from and after the time the real or personal property is occupied as a principal residence by the owner.”

The exemption from forced sale of the homestead set forth in RCW 6.13.070 is subject to exceptions set forth in RCW 6.13.080, which provides that “[t]he homestead exemption is not available against an execution or forced sale in satisfaction of judgments obtained” in seven categories of cases. The most common exception permits execution for

debts with security agreements describing the homestead property as collateral, such as mortgages and deeds of trust. RCW 6.13.080(2). An additional exception is provided for “debts secured by a condominium’s or homeowner association’s lien.” RCW 6.13.080(6).

In 1899, the legislature established an additional protection for homestead owners in the Redemption Act, presently codified at Chapter 6.23 RCW. The Act provides that, when a judicial foreclosure or other judgment leads to a sheriff’s sale, a redemption period of eight or twelve months follows the sale, during which the judgment debtor and others may redeem the property. RCW 6.23.020.

Generally, the purchaser at the sheriff’s sale is entitled to possession during the redemption period. RCW 6.23.110(1). With respect to homestead property, however, the Redemption Act provides: “In case of any homestead as defined in chapter 6.13 RCW and occupied for that purpose at the time of sale, the judgment debtor shall have the right to retain possession thereof during the period of redemption without accounting for issues or for value of occupation.” RCW 6.23.110(4).

Foreclosure sale purchasers have, on occasion, argued that because they had also been the foreclosing lienholder, like Viewcrest here, they were entitled to possession during the post-sale redemption period. On

each occasion, this Court has rejected that argument.<sup>2</sup> As *First Nat'l Bank of Everett v. Tiffany*, 40 Wn.2d 193, 242 P.2d 169 (1952) explained, the foreclosure and redemption statutes address the rights of the parties at two different times.

Prior to execution and forced sale, the rights of the parties are governed and defined by RCW 6.12.090 (Rem.Supp.1945, § 532) [now RCW 6.13.070] and RCW 6.12.100 (Rem.Rev.Stat. § 533) [now RCW 6.13.080]. The mortgaged homestead having been sold under execution or forced sale, these statutes have served their purpose and the future rights of the parties are then governed by an entirely different statute.

After execution or forced sale, the rights of the parties are governed by RCW 6.24.210 (Rem.Rev.Stat. (Sup.) § 602) [now RCW 6.23.110], which, so far as here material, reads as follows: "The purchaser from the day of sale \* \* \* shall be entitled to the possession of the property purchased \* \* \* in case of any homestead selected in the manner provided by law and occupied for that purpose at the time of sale, ***the judgment debtor shall have the right to retain possession thereof during the period of redemption without accounting for issues or value of occupation.***"

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<sup>2</sup> See, e.g., *First Nat'l Bank of Everett v. Tiffany*, 40 Wn.2d 193, 197, 242 P.2d 169 (1952); *State ex rel. White v. Douglas*, 6 Wn.2d 356, 358-60, 107 P.2d 593 (1940); *Pease v. Stephens*, 173 Wash. 12, 15, 21 P.2d 294 (1933); *State ex rel. Fed. Land Bank of Spokane v. Superior Ct.*, 169 Wash. 286, 288-91, 13 P.2d 890 (1932); see also *Perkins v. La Varne*, 171 Wash. 240, 242, 17 P.2d 857 (1933) (homeowner retained right to possession as against unspecified purchaser); *Union Cent. Life Ins. Co. v. Fischer*, 169 Wash. 75, 77, 13 P.2d 889 (1932) (same).

*Tiffany*, 40 Wn.2d at 197 (emphasis in *Tiffany*).

As the Court of Appeals recognized here, “[c]onsistent with *Tiffany*, a homeowner debtor’s statutory right to possession during the redemption period controls over the lienholder’s rights prior to the forced foreclosure sale.” Slip Op. 5 n.18.

**B. The Purported Danger to Condominium Associations Posited by Viewcrest Does Not Exist and Does Not Raise an Issue of Substantial Public Interest.**

Viewcrest contends the Court of Appeals’ failure to accept its argument that RCW 64.34.364(2) creates an exception to RCW 6.23.110(4) following condominium association foreclosures involves a substantial public interest under RAP 13.4(b)(4). Viewcrest argues the decision affects condominium associations’ “ability to collect assessments from unit owners necessary for the basic operation and survival of such associations.” Petition 5. According to Viewcrest, if RCW 6.23.110(4) is enforced as to condominium units, “the condominium would be destroyed if the association could not take possession of the unit following a foreclosure sale.” Petition 13.<sup>3</sup> Viewcrest’s argument is not supported by either the law or the facts.

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<sup>3</sup> In connection with this argument, Viewcrest implies that it pays for unit owners’ utilities and depends on the owners to repay it through assessments. Petition 6. This is not correct; the owners pay their own utility bills. *See* Declaration for Viewcrest, a Condominium, King County Recording No. 20060905000355 § 12.8 (“Each Unit may be individually metered and each Unit Owner will be solely responsible for all natural gas,

As a matter of law, the legislature has provided condominium associations with a method of being reimbursed for unpaid assessments. That method is to foreclose and be reimbursed from the foreclosure sale proceeds. *See* RCW 64.34.364(9).

In addition, the Condominium Act gives associations a choice between foreclosing judicially, pursuant to Chapter 61.12 RCW, or non-judicially, pursuant to Chapter 61.24 RCW. *See* RCW 64.34.364(9). The owner's right to possession during a redemption period exists only if the association chooses a judicial foreclosure. *See* RCW 6.23.110(4). If the association pursues a non-judicial foreclosure, there is no redemption period and the former owner must move out within twenty days after the sale. *See* RCW 61.24.060(1). Thus, the legislature has given associations the power to avoid the situation about which Viewcrest complains.

Viewcrest contends the declarations of some associations do not permit non-judicial foreclosures. Petition 16. If that is so, it is a choice made by the association. The alleged need to rescue an association from its choice does not present an issue of substantial public interest.

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water and electricity provided to their Unit"); *Rodriguez v. Loudeye Corp.*, 144 Wn. App. 709, 725-26, 189 P.3d 168 (2008) (court may take judicial notice of public documents).

Moreover, if an association wants to change that choice, it may do so by amendment of the declaration. *See* RCW 64.34.264.<sup>4</sup>

As a factual matter, Viewcrest offers no substantiation for its assertion that homeowners who are delinquent in payment of assessments or who exercise their right to possession pursuant to RCW 6.23.110(4) pose an existential threat to Viewcrest or to any other condominium. The burden to Viewcrest of a homeowner exercising their rights under RCW 6.23.110(4) appears to be 98 cents per owner per month, or \$11.75 for a twelve-month redemption period.<sup>5</sup> Given the limited supply, high demand, and rising prices for condominiums, it is extremely unlikely a foreclosure sale would produce insufficient proceeds to satisfy the debt owed to a creditor association.<sup>6</sup>

**C. Viewcrest’s Desire to Reverse the Court of Appeals’ Decision Does Not Raise an Issue of Substantial Public Interest.**

To the extent that Viewcrest suggests a need to correct alleged error by the Court of Appeals constitutes a substantial public interest in

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<sup>4</sup> Viewcrest contends amendment in this regard would require approval by 90% of owners because it is a change to the “uses to which any unit is restricted.” *See* Petition 16, citing RCW 64.34.264(4). The language on which Viewcrest relies does not apply to how a lien may be foreclosed; it concerns questions such as whether the owner of a unit may use it for commercial purposes. The applicable percentage to approve an amendment is 67%. *See* RCW 64.34.264(1).

<sup>5</sup> *See* CP 28, 45-46 (there are 190 units at Viewcrest), 57 (monthly assessments are \$185).

<sup>6</sup> *See* Northwest Multiple Listing Service, *Brokers Report “High Velocity” Market*, Feb. 6, 2017, <http://www.northwestmls.com/index.cfm?/News-Information>.

this case, it is mistaken. The Court of Appeals correctly decided and clearly explained its decision, applying long-established legal principles. There is no need for a further determination by this Court.

Viewcrest contends the protection given to a homestead owner following a judicial foreclosure does not apply when the creditor was a condominium association. Viewcrest contends that, because RCW 64.34.364(2) provides that “[a] lien under this section is not subject to the provisions of chapter 6.13 RCW,” that means “[w]ithout the application of the entire Chapter [6.13], there is no homestead and without a homestead there is no right to claim possession post sheriff’s sale under RCW 6.23.110(4).” Petition 17. This argument is erroneous for multiple reasons, which we review below.

**1. The Plain Language of RCW 64.34.364(2) Permits Foreclosure of the Lien, But Does Not Affect Possession Following Foreclosure.**

The starting point for analyzing a statutory provision is the plain language of the statute. *State v. Barbee*, \_\_\_ Wn.2d \_\_\_, 386 P.3d 729, 733 (2017). The plain language of RCW 64.34.364(2) is that a creditor association’s “lien under this section is not subject to the provisions of chapter 6.13 RCW.” The section provides only that the creditor’s lien is not subject to the Homestead Act. It does not address the respective post-sale rights of the purchaser and the homeowner.



“A lien is merely an encumbrance to secure an obligation.”<sup>7</sup> As such, it provides a remedy against the land subject to the lien, in the form of a right to foreclose.<sup>8</sup>

The courts have emphasized repeatedly that a lien, as “merely an encumbrance,” does not convey any right, title, or interest in the land the lien encumbers.<sup>9</sup> Nor does a lien confer any right to possession.<sup>10</sup>

After the foreclosure sale, the lien is extinguished.<sup>11</sup> Thus, the lien has nothing to do with who has the right to possession after the sale. The statutes governing the right to foreclose “have served their purpose and the

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<sup>7</sup> *Byrne v. Ackerlund*, 108 Wn.2d 445, 450, 739 P.2d 1138 (1987); accord *Swanson v. Graham*, 27 Wn.2d 590, 597, 179 P.2d 288 (1947); *S.D. Deacon Corp. v. Gaston Bros. Excavating, Inc.*, 150 Wn. App. 87, 89, 206 P.3d 689 (2009).

<sup>8</sup> *In re Longey*, 2008 WL 2074041 at \*4 (Bankr. W.D. Wash. May 14, 2008), quoting *State v. Teuscher*, 111 Wn.2d 486, 491, 761 P.2d 49 (1988); *Fed. Intermediate Credit Bank of Spokane v. O/S Sablefish*, 111 Wn.2d 219, 226, 758 P.2d 494 (1988).

<sup>9</sup> *Longey*, 2008 WL 2074041 at \*4; *O/S Sablefish*, 111 Wn.2d at 225-26; *Swanson*, 27 Wn.2d at 597; *Capital Inv. Corp. v. King Cnty.*, 112 Wn. App. 216, 229-30, 47 P.3d 161 (2002).

<sup>10</sup> *Krueger v. Tippet*, 155 Wn. App. 216, 225, 229 P.3d 866 (2010), quoting BLACK’S LAW DICTIONARY 1006 (9th ed. 2009). See also *Borowski v. BNC Mtg., Inc.*, 2013 WL 4522253 at \*3 (W.D. Wash. Aug. 27, 2013) (Quiet title statute “recognizes that a deed of trust creates only a secured lien on real property and does not convey any ownership interest or right to possess the subject property.”).

<sup>11</sup> See *Capital Inv. Corp.*, 112 Wn. App. at 221, quoting 3 WASHINGTON STATE BAR ASS’N REAL PROPERTY DESKBOOK § 46.15(4) (“At A’s foreclosure sale . . . A bids in for the full amount of his lien and thereby becomes the purchaser of the property. . . . A’s lien was extinguished by the foreclosure sale.”); accord *Damascus Milk Co. v. Morriss*, 1 Wn. App. 501, 503-07, 463 P.2d 212 (1969); 18 WASH. PRAC., REAL ESTATE § 19.19 (foreclosing mortgage “was extinguished by the sale.”); 27 WASH. PRAC., CREDITORS’ REMEDIES – DEBTORS’ RELIEF § 3.19 (same).

future rights of the parties are then governed by an entirely different statute.” *Tiffany*, 40 Wn.2d at 197.

Viewcrest’s argument to the contrary ignores the fact that the dispute over the right to possession during the redemption period is between Ms. Robertson and Viewcrest in its capacity as foreclosure sale purchaser, not Viewcrest in its capacity as foreclosing lienholder.<sup>12</sup> A foreclosure sale purchaser’s right to obtain possession of the foreclosed property does not arise from the lien. It arises, instead, from the Redemption Act, at RCW 6.23.110(1), and that right is subject to the homestead owner’s right to possession set forth in RCW 6.23.110(4).

Thus, to state that a lien is not subject to the provisions of RCW 6.13 means merely that the lienholder has the right to foreclose, as an exception to the normal rule of RCW 6.13.070 that the homestead is exempt from execution. Because a lien does not convey any right to possession to either the lienholder or the foreclosure sale purchaser, excepting a lien from the normal rule against execution does not have any effect on the separate issue of the respective rights of the homeowner and the foreclosure sale purchaser to possession following foreclosure.

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<sup>12</sup> When the same party has acted in two different capacities, a reviewing court must identify in which capacity the party is acting with respect to the issue presented, and which rights and responsibilities are associated with that capacity. *See, e.g., Mistretta v. U.S.*, 488 U.S. 361, 404 (1989); *Tiffany*, 40 Wn.2d at 197; *Sauter v. Houston Cas. Co.*, 168 Wn. App. 348, 355-59, 276 P.3d 358 (2012).

**2. The Policies Governing Interpretation of Homestead Statutes Confirm the Court of Appeals Properly Applied the Statutes.**

As the Court of Appeals recognized, Slip Op. 4, 10, Viewcrest’s argument that the Condominium Act indirectly did away with the protection granted homestead owners under RCW 6.23.110(4) when the creditor is a condominium association runs afoul of three strong policies governing the protection of the homestead and the interpretation of statutes relating to the homestead. First, this Court has “repeatedly held that the homestead statutes are favored in the law and should be liberally construed.” *In re Wieber*, 182 Wn.2d 919, 925, 347 P.3d 41 (2015).<sup>13</sup> Second, legislative “[l]imitations on homestead rights must be specific, clear and direct.” Slip Op. 4.<sup>14</sup> Third, in contrast to homestead statutes, lien statutes are to be strictly construed; if there is a question regarding

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<sup>13</sup> See also, e.g., *In re Dependency of Schermer*, 161 Wn.2d 927, 953, 169 P.3d 452 (2007) (“The act is favored in law and courts construe it liberally so it may achieve its purpose of protecting family homes.”); *O/S Sablefish*, 111 Wn.2d at 228-29; *Macumber v. Shafer*, 96 Wn.2d 568, 570, 637 P.2d 645 (1981) (“Homestead statutes are enacted as a matter of public policy in the interest of humanity and thus are favored in the law and are accorded a liberal construction.”); Slip Op. 4.

<sup>14</sup> See also, e.g., *In re Cunningham*, 163 B.R. 593, 594-96 (Bankr. W.D. Wash. 1994) (“[W]hen the legislature has wanted to add exceptions to the homestead exemption, it has done so clearly and directly.”); *City of Algona v. Sharp*, 30 Wn. App. 837, 843, 638 P.2d 627 (1982) (“Without a more specific statement, a legislative intent to supersede the homestead provisions as to sale cannot be implied.”); *Union Cent. Life Ins. Co.*, 169 Wash. at 77 (“A strictly technical interpretation” of statute arguably limiting the right to possession during the redemption period “would not harmonize with the policy which may be reasonably supposed to have dictated the enactment.”); Slip Op. 10; cf. *O.S.T. ex rel. G.T and E.S. v. Regence BlueShield*, 181 Wn.2d 691, 701-02, 335 P.3d 416 (2014) (repeals by implication are disfavored).

how to construe together statutes concerning the relationship between a lien and the homestead, the homestead prevails.<sup>15</sup>

Here, there is no specific, clear, and direct language in the Condominium Act, the Homestead Act, or the Redemption Act stating the legislature intended to eliminate a protection in existence since 1899 when the lienholder forcing the foreclosure sale is a condominium association. Instead, Viewcrest contends the Condominium Act should be read “as indirectly negating a right recognized under the Redemption Act by means of a hazy link to the Homestead Act.” Slip Op. 10. If the legislature had intended to negate the protection given to homeowners under RCW 6.23.110(4) when the creditor is a condominium association, it would have said so. It did not.

**3. The Condominium Act’s Legislative History Confirms the Court of Appeals Properly Applied the Statutes.**

The sentence in RCW 64.34.364(2) on which Viewcrest relies is derived from a sentence in Section 3-116 of the Uniform Condominium Act, which states: “The lien under this section is not subject to the provisions of (insert appropriate reference to state homestead, dower and curtesy, or other exemptions).” As the Court of Appeals noted, the “reference to ‘exemptions’ suggests the Uniform Condominium Act

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<sup>15</sup> See Slip Op. 10; *Pinebrook Homeowners Ass’n v. Owen*, 48 Wn. App. 424, 428-32, 739 P.2d 110 (1987); *Algona*, 30 Wn. App. at 842-43.

contemplated homestead exemptions precluding forced sales, not the right to possession during redemption.” Slip Op. 7.

The legislative history of RCW 64.34.364(2) confirms the Court of Appeals’ reading. The official comments to the section, as adopted by the legislature, state: “A lien for assessments is not subject to the homestead exemption of RCW 6.13 and an association will no longer need to give the notice regarding the effect of foreclosure which is required by that chapter in order to avoid the homestead exemption.” 2 Sen. Journal, 51st Leg., Reg., 1st & 2nd Spec. Sess. at 2081 (1990), referenced at 1 Sen. Journal, 51st Leg. Sess., Reg. Sess. at 376 (1990). Three aspects of this statement are significant.

First, as with the Uniform Act, the comment speaks of the lien as “not subject to the homestead exemption.” The section is intended to negate the protection of the homestead exemption set forth in RCW 6.13.070. It is not intended to eliminate the homestead itself.

Second, as the Court of Appeals noted, Slip Op. 7-8, the comment states the purpose of the section is to exempt condominium associations from the requirement set forth in RCW 6.13.080(6) that they provide a notice to homeowners that the homestead exemption will not apply to the association’s lien. Viewcrest has argued that, unless RCW 64.34.364(2) means the homestead is eliminated, the section would not serve any

purpose not already served by RCW 6.13.080(6). Petition 13-14. The legislature's comment negates this argument. It demonstrates the purpose of RCW 64.34.364(2) was to eliminate the notice requirement, not to do away with the homestead.

Third, the legislature's official comment says nothing about eliminating a homeowner's right to possession during the redemption period when the lien that led to the sale was that of a condominium association. "While the comment expressly identifies the elimination of the requirement for 'notice['] . . . , there is no mention of any intent to directly or indirectly alter any provision of the Redemption Act." Slip Op. 8. Had the legislature intended to eliminate the right to possession, one would expect it to do so in clear, direct, and specific language, and to state in the legislative history that it was doing so. The fact the legislature did neither confirms it had no such intention.

**4. Viewcrest's Reliance on Other Statutory Provisions Does Not Assist It.**

Viewcrest has argued that other statutory provisions buttress its argument that RCW 64.34.364(2) was intended to eliminate the homeowner's right to possession. They do not.

**RCW 64.32.200(2):** *See* Petition 10-12; Slip Op. 8-9. As the Court of Appeals noted, the provision in question "undercut[s]

Viewcrest's position" because it shows "the legislature knew how to expressly require the owner to pay rent during the foreclosure process," language it did not use in the Condominium Act, Redemption Act, or Homestead Act, instead providing a receiver may collect rent during the foreclosure process as to "a unit that is not occupied by the owner." Slip Op. 8, 9, quoting RCW 64.32.200 (2) and RCW 64.34.364(10).

**RCW 64.34.364(9):** *See* Petition 9-10; Slip Op. 9. The right of an association to purchase at the foreclosure sale carries with it the rights granted to other purchasers, including the right to lease and convey, but those rights are subject to the rights of the former owner when a homestead exists.<sup>16</sup>

**Chapter 61.24 RCW:** *See* Petition 15. Contrary to Viewcrest's contention, a homestead is not a "junior interest" and is not extinguished by a deed of trust or mortgage foreclosure.<sup>17</sup>

**RCW 69.50.505:** *See* Petition 15 (not raised in Court of Appeals). The case cited by Viewcrest explains why forfeitures of properties used to manufacture controlled substances are not comparable to foreclosure sales.

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<sup>16</sup> *See also* RCW 6.21.120; RCW 6.23.060 (foreclosure sale purchaser does not obtain sheriff's deed, which would be necessary to convey, until end of redemption period).

<sup>17</sup> *See, e.g., Tiffany*, 40 Wn.2d at 197; *Sweet v. O'Leary*, 88 Wn. App. 199, 201-04, 944 P.2d 414 (1997); *Algona*, 30 Wn. App. at 843.

*See Tellevik v. Real Property Known as 6717 100<sup>th</sup> St. S.W. Located in Pierce Cnty.*, 83 Wn. App. 366, 376-79, 921 P.2d 1088 (1996).

#### IV. CONCLUSION

Viewcrest has not presented any issue of substantial public interest that warrants further review by this Court. There is no support for the assertion that application of RCW 6.23.110(4) poses an existential threat to condominium associations. Nor does the correct and well-reasoned decision of the Court of Appeals present a need for further review here. Viewcrest's petition should be denied.

DATED this 23<sup>d</sup> day of February, 2017.

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## STATUTORY APPENDIX

### **RCW 6.21.120: Sheriff's deed to real property sold.**

In all cases where real estate has been, or may hereafter be sold by virtue of an execution or other process, it shall be the duty of the sheriff or other officer making such sale to execute and deliver to the purchaser, or other person entitled to the same, a deed of conveyance of the real estate so sold. The deeds shall be issued upon request immediately after the confirmation of sale by the court in those instances where redemption rights have been precluded pursuant to RCW 61.12.093 et seq., or immediately after the time for redemption from such sale has expired in those instances in which there are redemption rights, as provided in RCW 6.23.060. In case the term of office of the sheriff or other officer making such sale shall have expired before a sufficient deed has been executed, then the successor in office of such sheriff shall, within the time specified in this section, execute and deliver to the purchaser or other person entitled to the same a deed of the premises so sold, and such deeds shall be as valid and effectual to convey to the grantee the lands or premises so sold, as if the deed had been made by the sheriff or other officer who made the sale.

### **RCW 6.23.020: Time for redemption from purchaser—Amount to be paid.**

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

(2) The person who redeems from the purchaser must pay: (a) The amount of the bid, with interest thereon at the rate provided in the judgment to the time of redemption, together with (b) the amount of any assessment or taxes which the purchaser has paid thereon after purchase, and like interest on such amount from time of payment to time of redemption, together with (c) any sum paid by the purchaser on a prior

lien or obligation secured by an interest in the property to the extent the payment was necessary for the protection of the interest of the judgment debtor or a redemptioner, and like interest upon every payment made from the date of payment to the time of redemption, and (d) if the redemption is by a redemptioner and if the purchaser is also a creditor having a lien, by judgment, decree, deed of trust, or mortgage, prior to that of the redemptioner, other than the judgment under which such purchase was made, the redemptioner shall also pay the amount of such lien with like interest: PROVIDED, HOWEVER, That a purchaser who makes any payment as mentioned in (c) of this subsection shall submit to the sheriff the affidavit required by RCW 6.23.080, and any purchaser who pays any taxes or assessments or has or acquires any such lien as mentioned in (d) of this subsection must file the statement required in RCW 6.23.050 and provide evidence of the lien as required by RCW 6.23.080.

**RCW 6.23.060: Sheriff's deed—When issued.**

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

**RCW 61.24.060: Rights and remedies of trustee's sale purchaser—Written notice to occupants or tenants.**

(1) The purchaser at the trustee's sale shall be entitled to possession of the property on the twentieth day following the sale, as against the borrower and grantor under the deed of trust and anyone having an interest junior to the deed of trust, including occupants who are not tenants, who were given all of the notices to which they were entitled under this chapter. The purchaser shall also have a right to the summary proceedings to obtain possession of real property provided in chapter 59.12 RCW.

(2) If the trustee elected to foreclose the interest of any occupant or tenant, the purchaser of tenant-occupied property at the trustee's sale shall

provide written notice to the occupants and tenants at the property purchased in substantially the following form:

"NOTICE: The property located at . . . . . was purchased at a trustee's sale by . . . . . on . . . . . (date).

1. If you are the previous owner or an occupant who is not a tenant of the property that was purchased, pursuant to RCW 61.24.060, the purchaser at the trustee's sale is entitled to possession of the property on . . . . . (date), which is the twentieth day following the sale.

2. If you are a tenant or subtenant in possession of the property that was purchased, pursuant to RCW 61.24.146, the purchaser at the trustee's sale may either give you a new rental agreement OR give you a written notice to vacate the property in sixty days or more before the end of the monthly rental period."

(3) The notice required in subsection (2) of this section must be given to the property's occupants and tenants by both first-class mail and either certified or registered mail, return receipt requested.

CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the State of Washington that on this 24<sup>th</sup> day of February, 2017, I caused to be delivered via ABC Legal Messenger, Inc., a true and correct copy of this ANSWER OF RESPONDENT BRENDA ROBERTSON TO PETITION FOR DISCRETIONARY REVIEW, addressed to following:

OSERAN HAHN P.S.  
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SIGNED at Seattle, Washington, this 24<sup>th</sup> day of February, 2017.

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