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Division I
State of Washington
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No. 75665-6-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

MICHELLE MERCERI, Petitioner,

v.

DEUTSCHE BANK AG a/k/a DEUTSCHE BANK doing business in the
United States as DEUTSCHE BANK USA, and as
DEUTSCHE BANK NATIONAL TRUST COMPANY,
a national banking association, as trustee for holders of the
BCAP LLC Trust 2007-AA2, Respondent

PETITION FOR REVIEW
TO THE SUPREME COURT

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I. Grounds for Acceptance of Review

Review should be accepted because Division One’s published Opinion (“Opinion”) conflicts with long-standing Supreme Court precedent and conflicts with its own published decision. RAP 13.4(b)(1), (b)(2). Review should be accepted because the Opinion presents significant Separation of Powers questions of law under Washington’s Constitution and Federal Preemption under the U.S. Constitution. RAP 13.4(b)(3). The Opinion involves issues of substantial public interest. RAP 13.4(b)(4).

II. Identity of Petitioner

The Petitioner is Michelle Merceri (“Ms. Merceri”), the Plaintiff who obtained a partial summary judgment ruling that Deutsche Bank was time-barred from pursuing foreclosure, as a matter of law.

III. Citation to Court of Appeals Decisions

Ms. Merceri seeks review of Division One’s published Opinion, filed on January 22, 2018, reversing the trial court (“Opinion,” Appendix 1) and the non-unanimous Order filed on February 21, 2018 denying Ms. Merceri’s Motion for Reconsideration, (“Order,” Appendix 2.)

IV. Issues Presented for Review

A. Does Division One’s published Opinion conflict with long-standing Supreme Court precedent in *Spokane County v. Prescott*; *Hinchman v. Anderson*, *Jones v. Jacobsen*, *Del Guzzi v. Global Northwest*, *Hazel v. Van Beek*, and *Inland Empire v. W. Sur. Co.*?

- B. Does Division One’s published Opinion conflict with its own decision in *Watson v. Northwest Trustee Services, Inc.*?**
- C. Does Division One’s published Opinion violate the Separation of Powers doctrine of the Washington Constitution and usurp the Legislature’s Article II authority by *sub silentio* amending the tolling statute, RCW 4.16.230, and expanding the six-year statute of limitations to eight years by adding the entire time the debtor’s property was in Chapter 7 bankruptcy? Does the Opinion violate Federal Preemption under the United States’ Constitution where the Opinion nullifies the lienholder’s protections to remove the bankruptcy stay under 11 U.S.C. § 362(d)(2)?**
- D. Does the Opinion upset the Legislature’s delicate balance of interests, presenting an issue of substantial public interest?¹**

V. Summary of Argument

Review should be accepted because Division One:

1. Failed to adhere to Supreme Court precedent in *Spokane County v. Prescott*; *Hinchman v. Anderson*, *Jones v. Jacobsen*, *Del Guzzi v. Global Northwest*, *Hazel v. Van Beek*, and *Inland Empire v. W. Sur. Co.* which do not permit tolling under RCW 4.16.230 when lienholder Deutsche Bank had available remedies and failed to use them. RAP 13.4(b)(1).
2. Conflicts with Division One’s own decision in *Watson v. Northwest Trustee Services*. RAP 13.4(b)(2).

¹ Ms. Merceri may need to add the issue of attorneys’ fees. RAP 2.4 (g). As of submission of this Petition, Division One has not yet ruled on Deutsche Bank’s application for attorneys’ fees for this interlocutory review, or Ms. Merceri’s objection under *Wachovia SBA Lending, Inc. v. Kraft*, 165 Wn.2d 481, 489, 200 P.3d 683 (2009).

3. Violates Washington Constitution's Separation of Powers and usurps the Legislature's Article II authority by *sub silentio* amending the tolling statute, RCW 4.16.230, expanding the six-year statute of limitations to eight years by adding the entire time the debtor's property was in Chapter 7 bankruptcy, and violating Federal Preemption under the United States' Constitution by nullifying lienholders' protections to remove a bankruptcy stay under 11 U.S.C. § 362(d)(2). RAP 13.4(b)(3)
4. Upsets the legislative balance of protections on both the state level in RCW 4.16.040 (six-year statute of limitations), RCW 4.16.230 (tolling), RCW 7.28.300 (removing outlawed lien) and RCW 61.24.130 (Deeds of Trust Act lienholder remedies), and on the federal level, nullifying the lienholder protections in 11 U.S.C. 362§ (d)(2). RAP 13.4(b)(4).

Deutsche Bank chose not to lift the automatic stay to continue its 2010 nonjudicial foreclosure and chose not to pursue judicial foreclosure in the 19 months after the Chapter 7 automatic stay was lifted by court order on December 4, 2012. Then, in 2016, two years after the statute of limitations had already expired, Deutsche Bank sought leave to amend its Answer to raise, for the first time, judicial foreclosure.

Judge Oishi followed the law and denied the amendment. He ruled

that foreclosure was time barred, being more than six years from the 2008 default/acceleration of the debt. Deutsche Bank then sought interlocutory on the following

TRIAL COURT’S RAP 2.3(b)(4) CERTIFIED QUESTION:

Even though 11 U.S.C. 108 does not, itself, toll a state statute of limitations, is RCW 4.16.230 a state statute incorporated into section 108(c)(1) to toll the statute of limitations during a bankruptcy stay? *Cf. Hazel v. Van Beek*, 135 Wn.2d 45, 64-66, 954 P.2d 1301 (1998). CP 732.

Without statutory analysis, a three-judge panel from Division One usurped the Legislature’s Article II authority, violated federal preemption, and upended Supreme Court’s precedent:

- *Spokane County v. Prescott*, 19 Wash. 418, 424, 53 P. 661 (1898) (a litigant cannot enlarge the statute of limitations by its own delinquency);
- *Jones v. Jacobsen*, 45 Wn.2d 265, 271, 273 P.2d 979 (1954) (a party cannot “suspend indefinitely” the running of the statute of limitations by failing to take action when the power to proceed lies with that party);
- *Del Guzzi Const. Co., Inc. v. Global Northwest, Ltd., Inc.*, 105 Wn.2d 878, 719 P.2d 120 (1986) (a party who failed to preserve its claim in superior court, despite knowing of its right to do so, was not entitled to any tolling); and

- *Hazel v. Van Beek*, 135 Wn.2d 45, 954 P.2d 1301 (1998).

(11 U.S.C. § 108(c) does not provide tolling where, as here, the statute of limitations did not run during bankruptcy and the lienholder sat on its rights.)

VI. Statement of the Case

Deutsche Bank could have commenced a judicial action to foreclose its interest on Ms. Merceri's home at any time within the six-year statute of limitations, beginning in June 2008, when she was unable to make the \$14,291.67 interest-only payments on a home that was by-then underwater, upon the collapse of the housing market. CP 46 ¶ 3(B); CP 283 ¶ 8.3.² Under federal bankruptcy, 11 U.S.C. § 362 (d)(2), secured creditors, like Deutsche Bank, have the right to lift the bankruptcy stay to foreclose on an "underwater" property. Deutsche Bank made no attempt to lift the bankruptcy stay at any time after the Chapter 7 bankruptcy petition was filed on November 17, 2010, CP 254, ¶ 1.3. Nor did it attempt to judicially foreclose when the bankruptcy trustee released the home as an asset of the bankruptcy estate on December 4, 2012. CP 125. The statute of limitations did not expire during Ms. Merceri's bankruptcy. Deutsche Bank had nineteen more months to judicially foreclose before the six-year statute of

² Deutsche Bank states "there is no equity in the property"); CP 337 ¶ 8 "Ms. Merceri conceded in the [bankruptcy] Adversary Proceeding that the debt exceeds the value of her house." The housing market had collapsed. CP 005 ¶ 3.9.

limitations expired in 2014. This chronology sets forth important dates:

Date	Event
06-01-2008	Default on 2006 Countrywide adjustable rate interest-only loan. CP 35, ¶6
08-17-2008	Defaulted loan fully accelerated. CP 259
11-17-2010	Debtor Ms. Merceri filed Chapter 7 bankruptcy with its stay being liftable by lienholder Deutsche Bank. CP 254, ¶1.3.
01-17-2012	Deutsche Bank's servicer, Recontrust, records discontinuance of foreclosure sale. <i>See</i> fn. 10, <i>infra</i> .
12-04-2012	Deutsche Bank did not lift the stay during the last two years. Home was released as Chapter 7 asset by bankruptcy trustee. CP 125. Deutsche Bank's lien survives bankruptcy.
08-18-2014	RCW 4.16.040 6-year statute of limitations expired. * * * * *
12-02-2015	Ms. Merceri sued Deutsche Bank over the deed of trust lien on her home. CP 3
02-08-2016	Deutsche Bank Filed Answer and did not include any judicial foreclosure claim. CP 271, 279, 285
06-29-2016	Judge Oishi denied Deutsche's amendment. CP 551
06-30-2016	On cross motions for partial summary judgment: Judge Oishi ruled that Deutsche Bank was time barred from raising foreclosure, years after the six-year statute of limitations had expired. CP 553
08-29-2016	Judge Oishi certified the tolling question. CP 118

Deutsche Bank chose not to pursue its judicial foreclosure remedy until June 2016 (CP 315), long after the statute of limitations had run. The trial court ruled that neither bankruptcy law, 11 U.S.C. § 108(c), applied by *Hazel v. Van Beek*, nor the tolling statute, RCW 4.16.230, provided any

tolling under these circumstances. CP 553-554, ¶ 3; CP 715, ¶ 2.³ Deutsche Bank was time-barred from foreclosing on the home after it allowed the passage of almost eight years from the 2008 default/acceleration. *Id.*

Deutsche Bank sought discretionary review. COA Dkt., Aug. 16, 2016. The trial court certified the question (*quoted* above) under RAP 2.3(b)(4). A commissioner granted discretionary review of this interlocutory decision and a Division One panel reversed the trial court on January 22, 2018, ruling that the liftable automatic bankruptcy stay was a “statutory prohibition” under RCW 4.16.230; the panel’s Opinion tolled the statute of limitations for the duration of the bankruptcy stay.

Reconsideration was denied by a non-unanimous order of the panel on February 21, 2018. Ms. Merceri timely petitions for review.

VII. Why Review Should Be Accepted

A. Review Should Be Accepted Under RAP 13.4(B)(1) Because Division One’s Published Opinion Conflicts With Long-Standing Supreme Court Precedent in *Spokane County v. Prescott*; *Jones v. Jacobsen*, *Del Guzzi v. Global Northwest*, *Hazel v. Van Beek*, and *Inland Empire v. W. Sur. Co.*

Under Supreme Court precedent, which has guided and informed practitioners for a hundred years, tolling has never been allowed under RCW 4.16.230 when a statute like 11 U.S.C. § 362 (d)(2) allowed a party

³ The court briefly elaborated on its reasoning when it denied Deutsche Bank’s motion to reconsider.

to lift the impediment with a simple motion. *See, e.g. Spokane County v. Prescott*, 19 Wash. at 424.

The analysis of RCW 4.16.230 in this case centers on the phrases “commencement of an action” and “statutory prohibition”:

When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action.

Division One did not perform the required plain language statutory analysis of RCW 4.16.040, RCW 4.16.230, RCW 61.24.130, RCW 7.28.300, and 11 U.S.C. § 362(d)(2). In *Inland Empire Dry Wall Supply Co. v. W. Sur. Co.*, 189 Wn.2d 840, ¶ 6, 408 P.3d 691 (Jan. 18, 2018) (*en banc*), this Court unanimously reiterated this duty:

Where a "statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). Such meaning "is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question, " and if the statute remains susceptible to more than one reasonable meaning, this court resorts to aids of construction, including legislative history. *Campbell & Gwinn*, 146 Wn.2d at 11, 12.

Division One erroneously applied RCW 4.16.230 to the “*continuation*” of Deutsche Bank’s 2010 nonjudicial foreclosure (Op. Br. pg. 5⁴), even though

⁴ “The statutory bankruptcy stay halted the trustee’s sale and enjoined Deutsche from proceeding with any action to enforce its defaulted loan.”

RCW 4.16.230 only applies to the “*commencement*” of a judicial “action.”, not to the “continuation” of a *nonjudicial* foreclosure.⁵ In lieu of disciplined statutory and precedential analysis, the Division One panel concluded that even though the stay was liftable, it was a “statutory prohibition” under RCW 4.16.230. Opinion at 1.⁶

1) Review Should Be Accepted Under RAP 13.4(B)(1) Because the Opinion Conflicts With Supreme Court Authority Analyzing Tolling Under RCW 4.16.230.

This Court has long disallowed tolling under RCW 4.16.230, where a party has a remedy but fails to take it or where it has a choice of remedies. In *Spokane County v. Prescott*, 19 Wash. 418, 424, 426, 53 P. 661 (1898), the Court rejected plaintiff’s contention that it was entitled to tolling:

The weight of authority and reason seems to be that when the respondent had the option at any time to obtain leave of court to bring its action, and did not ask for such leave, it

⁵ An unresolved issue in this appeal is whether there is any tolling for incomplete nonjudicial foreclosure attempts. Opinion, fn. 7. The Legislature did not provide for such tolling in the DTA, RCW 61.24. Lienholders’ like Deutsche Bank’s have recently cited to Division One’s *Bingham v. Lechner* decision for the proposition that tolling applies to an incomplete nonjudicial foreclosure (even where the parties do not agree to any tolling). 111 Wn. App. 118, 45 P.3d 562 (Div. 1, 2002), *review denied*, 149 Wn.2d 1018, 72 P.3d 761 (2003) (court denied tolling to a lienholder; public policy does not support indefinite tolling; parties agreed tolling applied to prior nonjudicial foreclosure attempt.) Because the parties agreed, *Bingham* did not conduct the required statutory analysis of RCW 4.16.170, RCW 4.16.230, CR 2, and CR 3, failed to explain *why* a lienholder should receive tolling for an incomplete nonjudicial foreclosure, and should not be cited in cases where the parties did *not* agree that tolling applied. *See Heintz v. U.S. Bank*, No. 76297-4-I, slip op. at 5-6 (Div. 1, Jan. 16, 2018), unpublished.

⁶ In one footnote, the Opinion summarily disposed of eight of the 10 Supreme Court cases directly applying the phrase “statutory prohibition” in RCW 4.16.230. Opinion, fn. 5. Division One did not address the holdings of these cases.

cannot enlarge the statute of limitations by its own delinquency.

In *Hinchman v. Anderson*, 32 Wash. 198, 206, 72 P. 1018 (1903), cited with approval on a related issue in *Deutsche Bank National Trust Co. v. Slotke*, 192 Wn.App. 166, 367 P.3d 600 (2016), this Court held that even where the plain language of Washington’s single action statute literally “prohibited” a creditor from pursuing a second simultaneous action to collect on a mortgage, such was not a “statutory prohibition” under the verbatim predecessor of RCW 4.16.230: “Where a party has a choice of remedies and makes his election, the statute does not cease to run as to other remedies.” *Hinchman*, at 207. Here, Deutsche Bank had a choice to lift the stay to continue its nonjudicial foreclosure but sat on its hands. Division One should not have given Deutsche Bank any tolling for that choice.

In *Bennett v. Thorne*, 36 Wash. 253, 269, 78 P. 936 (1904), this Court applied *Spokane County v. Prescott* to hold that

... the failure of a party to take the necessary steps to perfect his right of action, although such steps were conditions precedent to the right, [do] not prolong the statute[.]” because “it is not the policy of the law to put it within the power of a party to toll the statute of limitations.”

In *Douglas County v. Grant County*, 98 Wash. 355, 167 P. 928 (1917), analyzing the verbatim predecessor of RCW 4.16.230, this Court held that a party’s failure to take the necessary step of making demand, a prerequisite to filing suit, did not prolong the statute of limitations.

In Jones v. Jacobson, 45 Wn.2d 265, 271, 273 P.2d 979 (1954) this Court affirmed the longstanding and continuing rule laid out in *Spokane County, Bennett, and Douglas County*, explaining that where “the plaintiff has in its power at all times to do the act which fixes his right of action,” a party cannot “suspend indefinitely the running of the statute of limitations by delaying the performance of the preliminary act . . .” *Id.*, at 271.

In *Del Guzzi Const. Co., Inc. v. Global Northwest, Ltd., Inc.*, 105 Wn.2d 878, 719 P.2d 120 (Wash. 1986), a tort action was time-barred and leave to amend the pleadings was denied, because “[t]here is no *statutory* or contractual *prohibition* which prevented Global from instituting an action at any time within the period prescribed by the statute of limitation” because they knew of facts that would have permitted them to proceed. Since the stay would have been lifted if Deutsche Bank had simply asked, Division One should have applied *Del Guzzi* to conclude that the stay was not a “statutory prohibition” under RCW 4.16.230, because the stay did not prevent Deutsche Bank from timely foreclosing its lien. Unfortunately, Division One’s published opinion did not follow any of these Supreme Court precedents.

Instead, Division One disregarded binding Supreme Court precedent and based its decision on one inapposite case, *Seamans v. Walgren*, 82 Wn.2d 771, 514 P.2d 166 (1973). While *Seamans* correctly applied RCW

4.16.230 to the constitutional provision prohibiting service of process on a legislator during a legislative session, there is no provision in Art. II, Sec. 16 of the Washington State Constitution that would have permitted Seamans to lift the immunity clause to serve defendant Walgren. *Seamans* does not stand for the proposition that Deutsche Bank was “prohibited” from foreclosing, by *its own conduct*, when it could have continued its foreclosure by lifting the automatic stay with a simple motion.

2) Review Should Be Accepted Under RAP 13.4(B)(1) Because Division One Abjured Supreme Court Authority in *Hazel v. Van Beek*.

In *Hazel v. Van Beek*, this Court adopted the majority view in the United States, that the state statute of limitations continued to run during the bankruptcy stay, saying:

By its terms, section 108 (c) does not toll any applicable statute of limitations period. Instead, the statute of limitations period continues to run. If the limitations period expires while the bankruptcy stay is in effect, then section 108(c) provides creditors with an extra thirty days to pursue a claim once the creditor receives notice that the bankruptcy stay has been lifted. See 11 U.S.C. § 108(c)(2).

Hazel v. Van Beek, 135 Wn.2d at 64-5.⁷ *Hazel* concluded:

Van Beek’s 1984 bankruptcy petition did nothing to preclude Hazel from enforcing her judgment between August 1984 [when the bankruptcy was dismissed] and

⁷ In its majority/minority view discussion, *Hazel* relied on cases that did not involve a judicial lien. *Id.* at 64, citing *e.g. Rogers v. Corrosion Prods., Inc.*, 42 F.3d 292, 296 (5th Cir. 1995)6 (negligence); *Thurman v. Tafoya*, 895 P.2d 1050, 1055 (Colo. 1995) (promissory note).

November 2, 1993, [when she filed suit], [so] we find no facts in this case which would permit us to equitably extend the life of her judgment. While we sympathize with her plight, this does not excuse her unjustifiable delay in executing the judgment against Van Beek.

Id., at 66. Division One never applied the holding in *Hazel*.⁸ It dismissed *Hazel* out of hand because *Hazel* involved enforcing a judicial lien, rather than enforcing a deed of trust lien. Opinion at 9.

3) Review Should Be Accepted Under RAP 13.4(b)(1) Because Division One Nullified Congress' 11 U.S.C. § 362(d)(2) Lienholder Remedy.

Division One ignored the plain language of 11 U.S.C. § 362 (d)(2) and mistakenly determined that “creditors may not assert claims on property of the bankruptcy estate during the stay . . .” Opinion at 5. Section 362(d)(2) exists for the protection of the secured creditor:

On request of a party in interest and after notice and a hearing, *the court shall grant relief from the stay* provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization;

⁸ Despite the fact that Deutsche Bank was the party seeking tolling under RCW 4.16.230, Deutsche Bank did not present to Judge Oishi the Supreme Court precedent denying tolling (i.e. *Spokane County v. Prescott*, *Jones v. Jacobsen*, *Hinchman v. Anderson*). Judge Oishi reached the proper result denying tolling and certified the question without being provided by Deutsche Bank the long history of Supreme Court precedent applying RCW 4.16.230.

Federal law is clear. “[W]hen both factors necessary for relief under section § 362(d)(2) are met ‘the court *shall* grant relief [to lift the bankruptcy stay].’” *In re Indian Palms Associates*, 61 F.3d 197, 208 (3rd Cir. 1995). Sec. 362(d)(2) was enacted for creditors like Deutsche Bank, who began foreclosure before bankruptcy was filed:

To the extent we have located any legislative history that shines light on this issue, it appears *that section 362 (d)(2)(A) was intended to protect a creditor's right to foreclosure*. In a joint explanatory statement prepared by the floor managers on the ultimately enacted compromise bill, it was noted that "section [362(d)(2)] is intended to solve the problem of real property mortgage foreclosures of property where the bankruptcy petition is filed on the eve of foreclosure." 124 Cong.Rec. H11047, H11092-93; 124 Cong.Rec. S17403, S17409.

Grella v. Salem Five Cent Sav. Bank, 42 F.3d 26, fn. 5 (1st Cir. 1994) (emphasis added). The First Circuit further explained:

In certain situations, such as when a creditor has a security interest in the debtor's property and the value of the collateral is less than the amount of the debt, bankruptcy proceedings may only delay the inevitable result. There may be no reason to make the creditor wait for the distribution of the estate, and indeed, early release of the property may aid administration of the estate by allowing a quicker determination of the amount of an undersecured creditor's claim. *Id.* at 1231-32. Thus, Congress included the provision for relief from stay under Sec. 362 (d), allowing bankruptcy courts to lift the stay as to certain creditors if grounds for relief are presented. *Id.* at 1232; see 11 U.S.C. Sec. 362(d).

Grella, 42 F.3d at 31. Even though Washington has acknowledged a lienholder’s right to relief from stay under § 362 (d)(2) in *Puyallup Valley*

Bank v. Mosby, 44 Wn. App. 285, 286, 723 P.2d 2 (1986), Division One did not appreciate that § 362 (d)(2) protected Deutsche Bank’s right to lift the stay to foreclose and obviated any need for tolling.⁹

Review should be accepted where Division One failed to apply Supreme Court precedent, yet expanded the scope of RCW 4.16.230 tolling to permit a party, who has an available remedy and fails to use it, to enlarge the statute of limitations by its own inaction.

B. Review Should Be Accepted Under RAP 13.4(b)(2) Because the Opinion Conflicts with Its Own Court of Appeals Decision in *Watson v. Northwest Trustee Services, Inc.*

In the Deeds of Trust Act (“DTA”), RCW 61.24.130, our Legislature expressly created two remedies for secured creditor Deutsche Bank to continue its nonjudicial foreclosure notwithstanding the bankruptcy automatic stay by: (1) timely lifting the bankruptcy stay to continue the foreclosure sale within the 120 days allowed under the DTA; or (2) rescheduling the sale to 45 days after the stay is lifted. *Watson v. Northwest Trustee Services, Inc.*, 180 Wn. App. 8, 14, 321 P.3d 262 (Div. 1 2014).

The panel’s non-unanimous reconsideration Order ignored these

⁹ Instead, Division One relied on *Zuckerman v. 234-6 W. 22 St. Corp.*, 645 N.Y.S.2d 967, 167 Misc.2d 198 (1996), which is contrary to the Washington cases cited herein, and involved a Ch. 11 reorganization bankruptcy. *Finkelstein v. Security Properties, Inc.*, 76 Wn.App. 733, fn. 4, 888 P.2d 161 (Div. 1 1995) (declining to follow authority for Chapter 11 bankruptcy where the issue involved a Chapter 7 bankruptcy) citing, e.g., *In re LeRoux, Jr.*, 167 B.R. 318 (1994). In 21 years, *Zuckerman* has been cited only six times, and never outside of New York State. *Zuckerman* predates this Court’s decision in *Hazel v. Van Beek*.

DTA lienholder remedies and failed to apply its 2014 *Watson v. NWTS* decision. Division One permitted Deutsche Bank to ignore its available DTA remedies. Division One was unconcerned that Deutsche Bank's foreclosure trustee, Recontrust, formally discontinued the nonjudicial foreclosure in early 2012, eliminating the 45-day remedy *by its own hand*.¹⁰

C. Review Should Be Accepted Under RAP 13.4(B)(3) Because the Published Opinion Violates Separation of Powers of the Washington Constitution and Violates Federal Preemption Under the United States' Constitution.

The Division One panel exceeded its authority by *de facto* amending RCW 4.16.230 (usurping the Legislature's Article II authority) and failing to respect the Separation of Powers doctrine. If the tolling statute is going to be changed, it is for the Legislature, not Division One, to do the work. Washington Constitution Article II. Unfortunately, Division One failed to respect the Legislature's authority and the plain language of RCW 4.16.040 (the six-year statute of limitations), RCW 4.16.230 (tolling), RCW 7.28.300 (outlawed deed of trust), and RCW 61.24.130 (DTA lienholder remedies.)

Division One *sub silentio* extended the six-year statute of limitations in RCW 4.16.040 to eight years. Its published Opinion expanded the plain

¹⁰ Deutsche Bank did not disclose the January 17, 2012 Notice of Discontinuance of its 2010 nonjudicial foreclosure. Merceri discovered it after the Opinion was entered. Mtn. for Reconsideration, pp. 3-5. Merceri asks that this Court take judicial notice of the facts contained in the certified copy of the recorded Notice, attached as Appendix 3. *See Jackson v. Quality Loan Service Corp.*, 186 Wn. App. 838, 347 P.3d 487 (2015)), *citing* ER 201.

language of “commencement” in RCW 4.16.230 to include “continuation,” and expanded the meaning of “statutory prohibition” to include a “temporary prohibition” by ignoring § 362(d)(2), which permits, *not* prohibits, lienholder Deutsche Bank to continue its foreclosure. Division One then nullified the outlawed deed of trust removal statute, RCW 7.28.300 and permitted Deutsche Bank tolling, when it failed to avail itself of available DTA remedies in RCW 61.24.130. As explained in Section D, below, this usurpation of the Legislature’s Article II authority upset the delicate balance of interests crafted by our Legislature to stabilize the marketability of land titles.

Division One’s ruling violated Federal Preemption. By adopting the Constitution, which included the Bankruptcy Clause, the states ceded their authority in the area of bankruptcy to the federal government. U.S. Constitution, Article 1, Section 8, Clause 4; *In re Schafer*, 455 B.R. 590, 601-2 (9th Cir. BAP 2011), *citing Hood v. Tenn. Student Assist. Corp.* (*In re Hood*), 319 F.3d 755 (6th Cir.2003), *aff’d*, 541 U.S. 440, 124 S.Ct. 1905, 158 L.Ed.2d 764 (2004). “Geographic” uniformity under the Constitution requires that within a state, bankruptcy and non-bankruptcy debtors and creditors be treated the same. *Id.*, *citing Hanover Nat’l Bank v. Moyses*, 186 U.S. 181, 189-90, 22 S.Ct. 857, 861, 46 L.Ed. 1113 (1902). A creditor may not receive a “windfall merely by reason of the happenstance of

bankruptcy.” *Butner v. United States*, 440 U.S. 48, 55, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979) (internal citation omitted).

Division One impermissibly created a windfall for lienholders where the homeowner has filed bankruptcy. The Opinion condones a lienholder sleeping on its rights and extends the statute of limitations through tolling, despite many available remedies, if the homeowner files bankruptcy. But the non-bankruptcy lienholder is held accountable for its dilatory behavior and gets nothing. *See Spokane County v. Prescott, Hinchman v. Anderson, Jones v. Jacobsen, Del Guzzi v. Global Northwest, supra*. Review should be accepted to address this issue of Federal Preemption, as well as the Separation of Powers problem. RAP 13.4(b)(3)

D. Review Should Be Accepted Under RAP 13.4(B)(4) Because the Published Opinion Upsets the Legislature’s Delicate Balance of Interests, Impacts Homeowners Across the State, And Presents an Issue of Substantial Public Interest.

The Legislature has seen no need to amend RCW 4.16.230 to provide tolling for the duration of a Chapter 7 bankruptcy. Instead, the Legislature has delicately balanced protections of homeowners and lienholders, which Division One has now disregarded. For example, in RCW 7.28.300, the Legislature embodied strong public real estate policy:

Quieting title against outlawed mortgage or deed of trust.

The record owner of real estate may maintain an action to quiet title against the lien of a mortgage or deed of trust on the real estate where an action to foreclose such mortgage or

deed of trust would be barred by the statute of limitations, and, upon proof sufficient to satisfy the court, may have judgment quieting title against such a lien.

The ability of homeowners to quiet title to an outlawed deed of trust is an essential leg of the four-legged stool the Legislature created to balance competing interests in the marketability of land titles: RCW 4.16.040, RCW 4.16.230, RCW 7.28.300, and RCW 61.24.130. The Opinion kicks out the legs of the carefully crafted stool. Lienholders get additional time to foreclose. Homeowners lose their protection from protracted litigation.

Division One's Opinion directly conflicts with *Walcker v. Benson and McLaughlin*, P.S., 79 Wn. App. 739, 745-6, 904 P.2d 1176 (Div. 3 1995), *review denied*, 129 Wn.2d 1008 (1996), which refused to extend the six-year statute of limitations to foreclose on a deed of trust, because public policy does not support an indefinite period to foreclose:

Our policy is one of repose; the goals are to eliminate the fears and burdens of threatened litigation and to protect a defendant against stale claims. *Ruth v. Dight*, 75 Wash.2d 660, 664, 453 P.2d 631 (1969). *Stenberg v. Pacific Power & Light Co.*, 104 Wash.2d at 714, 709 P.2d 793. . . .These goals are generally applicable in foreclosure proceedings, whether based on mortgages or deeds of trust. . . . The plain language of RCW 61.24.020 states that, "[e]xcept as provided" in the deed of trust act, mortgage law applies to foreclosure of deeds of trust. The act does not address the applicability of statutes of limitations. Therefore, RCW 7.28.300, which expressly makes the statute of limitations a defense in mortgage foreclosure proceedings, applies to foreclosure of trust deeds as well. Because Benson and McLaughlin failed to initiate its foreclosure within the applicable six-year limitation period, the foreclosure should be barred.

Id., t 745-46. Using its Article II authority, the Legislature clearly adopted the public policy expressed in *Walcker*; amending RCW 7.28.300 to include deeds of trust while overhauling the DTA. Laws of 1998, Ch. 295, § 17.

Review should be accepted to restore the Legislature's delicate balance, an issue of substantial public importance. RAP 13.4(b)(4).

VIII. Conclusion

Division One's published Opinion was reached without required statutory analysis and without adherence to Supreme Court precedent. It erroneously upset the Legislature's delicate balance of protections expressed in RCW 4.16.040, 4.16.230, 7.28.300, and 61.24.130. Division One usurped the Legislature's Article II authority to change the law and erroneously granted an unprecedented extension of the statutes of limitation, creating a crisis in the world of foreclosure rights, which until now had been carefully protected by our Legislature, Congress, and a hundred years of Supreme Court precedent. Review should be accepted under RAP 13.4(b)(1), (b)(2), (b)(3), and (b)(4).

Respectfully submitted this March 23, 2018.

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IX. Appendix

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CERTIFICATE OF SERVICE

I certify that on March 23, 2018, a copy of the foregoing Petition for Review was served at the indicated address by:

- Hand delivery
- E-mail per agreement
- Appellate E-filing
- U.S. mail, postage pre-paid

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APPENDIX 1

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2018 JAN 22 AM 9:37

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

MICHELLE MERCERI,)	
)	No. 75665-6-1
Respondent,)	
)	DIVISION ONE
v.)	
)	
DEUTSCHE BANK AG a/k/a DEUTSCHE)	
BANK doing business in the United States as)	
DEUTSCHE BANK USA, and as DEUTSCHE)	
BANK NATIONAL TRUST COMPANY, a)	
national banking association, as trustee for)	
holders of the BCAP LLC Trust 2007-AA2;)	PUBLISHED OPINION
and NORTHWEST TRUSTEE SERVICES,)	
INC., a Washington corporation,)	
)	
Appellants.)	FILED: <u>January 22, 2018</u>

SPEARMAN, J. — Under RCW 4.16.230, the statute of limitations is tolled when the commencement of an action is stayed by a statutory prohibition. Under the federal bankruptcy code, actions to foreclose on a debtor’s property are stayed while the property at issue is part of the bankruptcy estate. We are asked to determine whether the bankruptcy stay is a statutory prohibition that tolls the statute of limitations. We conclude that it is.

Michelle Merceri defaulted on a home loan in 2008. Deutsche Bank and its predecessor in interest (Deutsche) initiated foreclosure proceedings on several

occasions between 2008 and 2015 but did not complete a foreclosure sale. For over two years during this period a bankruptcy stay was in place.

In 2015, Merceri asserted a variety of claims against Deutsche and alleged that Deutsche's interest in her home was unenforceable. In 2016, Merceri sought partial summary judgment on the theory that Deutsche's foreclosure claim was time barred. She asserted that a six year statute of limitations began to run on Deutsche's claim in 2008 and the statute expired in 2014. Deutsche moved to amend its answer to assert a counterclaim for judicial foreclosure. The trial court ruled that Deutsche's interest was time barred and granted Merceri's motion for partial summary judgment. But because the statute of limitations was tolled during the bankruptcy stay, we reverse.

FACTS

Merceri took out a \$2.8 million home loan in 2006 and defaulted in 2008. In August 2008, Deutsche sent Merceri a notice of default. A notice of trustee's sale was recorded in 2009 but the sale did not occur. Another notice of trustee's sale was recorded in June 2010. In November 2010, Merceri petitioned for chapter 7 bankruptcy. Her home remained part of the bankruptcy estate until December 4, 2012.

Deutsche initiated nonjudicial foreclosure proceedings in 2014. These proceedings were discontinued when Merceri sought foreclosure mediation. Deutsche and Merceri participated in mediation but were unable to reach an agreement. In September 2015, Deutsche again recorded a notice of trustee's sale.

In December 2015, Merceri filed the complaint in this action. She alleged that Deutsche failed to follow a number of statutory procedures and engaged in other wrongdoing, including manipulation of the LIBOR (London Interbank Offered Rate). Merceri sought damages and a declaration that Deutsche's interest in her property was unenforceable. The foreclosure sale was continued.

In May 2016, Merceri moved for partial summary judgment, arguing that Deutsche's claim on her home was time barred. Merceri asserted that the home loan had been accelerated in 2008, a six year statute of limitations began to run at that time, and the limitation period expired in 2014.

In response, Deutsche moved to amend its answer to add a counterclaim for judicial foreclosure. Deutsche disputed that the loan was accelerated in 2008. But even if it was, Deutsche contended that its claim was not time barred because the statute of limitations was tolled during the bankruptcy stay, during foreclosure mediation, and while nonjudicial foreclosure proceedings were pending.

The trial court granted Merceri's motion for partial summary judgment. The court denied Deutsche's motion to amend and Deutsche's motion for reconsideration. The court granted Deutsche's motion to certify the question of whether the statute of limitations is tolled during a bankruptcy stay. This court granted discretionary review.

DISCUSSION

The trial court certified for review the question:

Even though 11 U.S.C. § 108(c)(1) does not, itself, toll a state statute of limitations, is RCW 4.16.230 a state statute incorporated

into section 108(c)(1) to toll the statute of limitations during a bankruptcy stay? Cf. Hazel v. Van Beek, 135 Wn.2d 45, 64-66, 954 P.2d 1301 (1998).

Clerk's Papers (CP) at 733. Certified questions are questions of law that we review de novo. Allen v. Dameron, 187 Wn.2d 692, 701, 389 P.3d 487 (2017). Where the question certified pertains to a motion for summary judgment, we perform the same inquiry as the trial court, considering the legal question in light of the record that was before the court.¹ Id.

The certified question in this case involves interpretation of the tolling provision in RCW 4.16.230 and its relation to the bankruptcy code. Our goal when interpreting statutes is to effect the intent of the legislature. Rivas v. Overlake Hosp. Medical Center, 164 Wn.2d 261, 266-67, 189 P.3d 753 (2008) (citing Wright v. Jeckle, 158 Wn.2d 375, 379, 144 P.3d 301 (2006)). We discern legislative intent from the plain meaning of the text and the statutory scheme as a whole. Id. We must "consider that tolling provisions, by nature, exist to assure all persons subject to a particular statute of limitations enjoy the full benefit of the limitation period." Id.

For purposes of this appeal, the parties assume that Merceri's promissory note was accelerated on August 17, 2008 and the six year statute of limitations

¹ We deny Merceri's motion to strike Deutsche's reply brief. Merceri objects to Deutsche's discussion of its motion for reconsideration and associated pleadings as beyond the scope of review. But the question the trial court certified for review is based on its order denying Deutsche's motion for reconsideration. Deutsche identified the denial of its motion for reconsideration in its notice of appeal. The motion for reconsideration is not beyond the scope of review. We also reject Merceri's assertion that Deutsche's reply brief exceeds the scope of its opening brief.

began to run at that time.² The parties do not dispute that the bankruptcy stay was in place for over two years, from November 17, 2010, when Merceri petitioned for bankruptcy, until December 4, 2012. Merceri does not dispute that the bankruptcy stay suspended Deutsche's ability to foreclose.

The bankruptcy stay is a provision of the Bankruptcy Reform Act of 1978, Title 11 of the U.S.C. Upon filing a petition for bankruptcy, a petitioner's property interests become property of the bankruptcy estate. 11 U.S.C. § 541(a). An automatic stay is imposed on proceedings to obtain possession or exercise control of property in the bankruptcy estate. 11 U.S.C. § 362(a)(3). The stay applies to "all acts by creditors to enforce their liens against the debtor's property." Seattle-First National Bank v. Westwood Lumber, Inc., 59 Wn. App. 344, 352, 796 P.2d 790 (1990) (quoting In re Ahlers, 794 F.2d 388 (8th Cir. 1986)). The stay serves two purposes: "first, to give the debtor a "breathing spell" from his creditors; and second, to prevent one creditor from rushing to enforce its lien to the detriment of the other creditors." Id. The automatic stay remains in force until the property at issue "is no longer property of the estate." 11 U.S.C. § 362(c)(1).

Because creditors may not assert claims on property of the bankruptcy estate during the stay, the bankruptcy code provides a thirty-day window following the end of the stay in which a creditor may bring a claim that would otherwise be time barred:

² Deutsche disputes that the note was accelerated but does not address the issue as it was not certified for review.

If applicable nonbankruptcy law ... fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, ... and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of—

...

(2) 30 days after notice of the termination or expiration of the stay

11 U.S.C. § 108(c).

A majority of jurisdictions, including Washington, have held that Section 108(c) “does not itself provide for tolling of a statute of limitation.” Hazel, 135 Wn.2d at 65 (citing Aslanidis v. United States Lines, Inc., 7 F.3d 1067, 1073-74 (2d Cir. 1993)). “[S]ection 108 merely ‘tolls’ a statute of limitation by allowing the creditor 30 days to act after the bankruptcy stay is lifted in those cases where the limitation period expires during the bankruptcy stay.” Id. Under the majority view, other than the 30 day window provided by 108(c), statutes of limitations and provisions for tolling those statutes are governed by nonbankruptcy law. See, e.g., 26 U.S.C. § 6502(a) (ten year statute of limitations on collecting federal tax) and 26 U.S.C. § 6503(h) (tolling that statute during a bankruptcy stay). The bankruptcy code “assur[es] the plaintiffs 30 days ...; if states want to give plaintiffs additional time, that is their business.” Pettibone Corp. v. Easley, 935 F.2d 120, 121 (7th Cir. 1991).

In this case, the six year statute of limitations that applies to Deutsche’s claim is set out in RCW 4.16.040. Chapter 4.16 RCW also contains a tolling provision. Under RCW 4.16.230, the statute of limitations is tolled “[w]hen the commencement of an action is stayed by injunction or a statutory prohibition”

RCW 4.16.230. Deutsche and Merceri dispute whether the bankruptcy stay is “a statutory prohibition” within the meaning of RCW 4.16.230.³

Deutsche contends the bankruptcy stay is a statutory prohibition for several reasons. First, relying on bankruptcy case law, it points out that “the filing of a bankruptcy petition operates as a stay of any act to enforce a lien against property in the custody of the bankruptcy court. The automatic stay prohibits the initiation of any steps ... that would lead to foreclosure of property of the debtor’s estate.” In re Capital Mortg. & Loan, Inc., 35 B.R. 967, 971 (Bkrcty E.D. Cal. 1983). Thus, according to Deutsche, because the automatic stay prohibited it from continuing with, or recommencing, its foreclosure for over two years, the statute falls within RCW 4.16.230’s meaning of a statutory prohibition.

Second, Deutsche relies on Seamans v. Walgren, 82 Wn.2d 771, 514 P.2d 166 (1973). In that case, our Supreme Court considered whether tolling applied where, based on a prohibition in the Washington Constitution, a legislator was immune from service of process while the legislature was in session. Seamans, 82 Wn.2d at 775. Because the prohibition was constitutional, not statutory, RCW 4.16.230 did not directly apply. Id. Nevertheless, the Seamans court relied on the statute as reflecting the policy of “adding to the time stated in the statute [of limitations], the period of disability.” Id. See Broad v. Mannesmann Anlagenbau, A.G., 141 Wn.2d 670, 682, 10 P.3d 371 (2000) (noting that, in Seamans, RCW 4.16.230 did not directly control but illustrated the principle of

³ Merceri also asserts that the bankruptcy stay is not an “injunction” because it is not within the legal meaning of that word set out in chapter 7.40 RCW and CR 65. Resp. Br. at 18. Deutsche does not address this issue. But in light of our disposition of this case, we do not reach the issue.

tolling). The Seamans court described the constitutional prohibition as a “positive rule of law” that prevented the plaintiff from exercising his legal remedy and held that the statute of limitations was tolled while the prohibition was in effect.

Seamans, 82 Wn.2d at 775. Deutsche argues that the bankruptcy stay is likewise a “positive rule of law” that prevented Deutsche from exercising its legal remedy.

Deutsche also relies on out of state case law. Deutsche asserts that, where jurisdictions with a tolling statute identical or similar to RCW 4.16.230 have considered the issue, they have uniformly held that the bankruptcy stay is a statutory prohibition that tolls the statute of limitations. A New York court, for example, considered the bankruptcy stay in light of a statute that provided for tolling “[w]here the commencement of an action has been stayed ... by a statutory prohibition. . . .” Zuckerman v. 234-6 W. 22 Street Corp., 645 N.Y.S.2d 967, 969 (Sup. Ct. 1996) (quoting Civil Practice Law and Rules (CPLR) § 204(a)). Based on the plain language of the tolling statute, the Zuckerman court concluded that it applied to toll the statute of limitations during the bankruptcy stay. Id. at 970-71.

Merceri contends the bankruptcy stay is not a statutory prohibition because it does not completely prohibit a creditor from exercising its rights. She asserts that the common meaning of “prohibition” is “forbidding by authority.” Resp. Br. at 18 (quoting Merriam-Webster.com). Merceri argues that the bankruptcy stay does not forbid action because a creditor may move for relief from the stay. She relies on a provision in the bankruptcy code, 11 U.S.C. § 362(d), under which a creditor may request relief from the stay. Id. Because of

the relief from stay provision, Merceri contends the bankruptcy stay is only a temporary obstacle that a creditor may surmount.

We agree with Deutsche. The tolling statute at issue in this case, RCW 4.16.230, applies “[w]hen the commencement of an action is stayed by ... a statutory prohibition. . . .” The bankruptcy code stays all acts to exercise control over property of the bankruptcy estate. 11 U.S.C. § 362(a)(3). The bankruptcy stay thus prohibits or forbids the commencement of a foreclosure action. The relief from stay provision emphasizes this meaning. If a creditor must move for relief in order to bring an action, the creditor is otherwise prohibited from bringing the action. And, contrary to Merceri’s position that a statutory prohibition must be permanent and complete, the tolling statute expressly applies when an action is “stayed.” Under the plain language of RCW 4.16.230, the statute of limitations is tolled during the bankruptcy stay.

Merceri raises several theories to argue against this result. First, she contends Washington courts have already determined that the bankruptcy stay does not toll the statute of limitations. The cases she relies on are distinguishable.

Merceri first relies on Hazel. But the case is inapposite because the issue there was whether the lifespan of a judgment lien was tolled during the bankruptcy stay. Hazel, 135 Wn.2d at 49. The Hazel court concluded that it was not. Id. at 64. The court held that the judicial lien statute, chapter 4.56 RCW, creates a statutory lien with a definite length and makes no provision for tolling. Id. The issue in this case, on the other hand, concerns a statute of limitations

under chapter 4.16 RCW. That same chapter contains a specific provision, RCW 4.16.230, that provides for tolling of the statute in certain circumstances. Thus, our concern is not whether tolling is applicable, it clearly is, but whether it is permitted in the circumstances present here. Hazel is not controlling on this question.

Merceri next relies on McDermott v. Tolt Land Co., 101 Wash. 114, 172 P. 207 (1918). That case also considered whether bankruptcy tolled the lifespan of a lien. McDermott, 101 Wash. at 118. The appellants relied on a statute identical to current RCW 4.16.230 to argue that the lifespan of their lien was tolled during a bankruptcy stay. Id. The court rejected the argument because the duration of the lien was not a statute of limitations. Id. But even if it were, the McDermott court held that, under the bankruptcy code of the time, a creditor could bring a foreclosure action during bankruptcy by suing the bankruptcy trustee. Id. at 118-19. Bankruptcy thus was not a statutory prohibition against foreclosure. Id.

Merceri asserts that the bankruptcy code in effect in 1918 included essentially the same stay that is currently in effect. She contends the holding in McDermott rests on the relief from stay provision, under which the lien holders could have sought leave to foreclose. Merceri is incorrect. The holding in McDermott does not rest on the relief from stay provision but instead on the view of the McDermott court that under the 1918 bankruptcy code, “no leave is

necessary to sue a trustee in bankruptcy.’” McDermott, 101 Wash. at 118.⁴ Here, on the other hand, there is no dispute that, under the current bankruptcy code, absent permission from the court, a creditor may not foreclose while the foreclosure stay is in place. We reject Merceri’s argument that McDermott governs in this case.

Merceri next argues that a bankruptcy stay is not a statutory prohibition because had Deutsche moved the bankruptcy court for relief from the stay, it necessarily would have been granted. She relies on 11 U.S.C. § 362(d), which directs the bankruptcy court to grant relief under certain conditions:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay ..., such as by terminating, annulling, modifying, or conditioning such stay—

...

(2) with respect to a stay of an act against property..., if—

- (A) the debtor does not have an equity in such property; and
- (B) such property is not necessary to an effective reorganization;

11 U.S.C. § 362(d). Merceri argues that she had no equity in the home and the property was not necessary for an effective reorganization because in a Chapter 7 bankruptcy there is no reorganization. Thus, she argues that by failing to move for relief, Deutsche slept on its rights and is not entitled to tolling.

⁴ The McDermott court surveyed federal cases addressing whether a creditor could foreclose during bankruptcy. McDermott, 101 Wash. at 118-19. The court quoted In re Smith, 121 Fed. 1014 (S.D. N.Y. 1903), for the proposition that “no leave is necessary to sue a trustee in bankruptcy.” McDermott, 101 Wash. at 118. The court also cited In re San Gabriel Sanatorium Co., 111 Fed. 892 (9th Cir. 1901), in which the court upheld a plaintiff’s right to make the trustee in bankruptcy a party to foreclosure proceedings. McDermott, 101 Wash. at 119. The McDermott court held that “[i]t seems plain from these holdings that these appellants might have brought their action to foreclose their liens notwithstanding the bankruptcy proceeding.” Id.

The argument is meritless because, as we have discussed, the fact that Deutsche could have sought relief from the stay has no bearing on whether the stay is a statutory prohibition. But even if it did, Merceri cites no authority for the proposition that statutory tolling requires a showing that the plaintiff exercised due diligence.⁵ RCW 4.16.230 includes no such requirement and we are not at liberty to “add words where the legislature has chosen not to include them, . . .” Lake v. Woodcreek Homeowners Ass’n., 169 Wn.2d 516, 527, 243 P.3d 1283 (2010), (quoting Rest. Dev., Inc., v. Cananwill, Inc., 150 Wn.2d 674, 682, 80 P.3d 598 (2003)). We reject the argument that statutory tolling under RCW 4.16.230 does not apply to the bankruptcy stay because a creditor may move for relief from the stay.

The bankruptcy stay is “a statutory prohibition” within the meaning of RCW 4.16.230. The six year statute of limitations on Deutsche’s claim was tolled for over two years while the bankruptcy stay was in place. Deutsche’s counterclaim

⁵ The authority Merceri does cite is inapposite. She relies on a number of cases addressing when a cause of action accrues. Del Guzzi Const. Co., Inc., v. Global Northwest, Ltd., Inc., 105 Wn.2d 878, 719 P.2d 120 (1986); Jones v. Jacobson, 45 Wn.2d 265, 271, 273 P.2d 979 (1954); Douglas County v. Grant County, 98 Wash. 355, 358-59 167 P. 928 (1917); Bennett v. Thorne, 36 Wash 253, 264, 269, 78 P. 936 (1904); Spokane County v. Prescott, 19 Wash. 418, 424-25, 53 P. 661 (1898). For purposes of this appeal, the accrual of Deutsche’s cause of action is not in dispute.

Merceri also cites three cases in which the court declined to extend the statute of limitations when a plaintiff had a choice of remedies and timely pursued one choice. Winston v. Richard W. Wines, Inc., 56 Wn.2d 192, 351 P.2d 929 (1960); Marshall-Wells Hardware Co. v. Title Guaranty & Sur. Co., 89 Wash. 404, 154 P. 801 (1916); Hinchman v. Anderson, 32 Wash. 198, 72 P. 1018 (1903). Two of the cited cases address statutory tolling. The Marshall-Wells Hardware court rejected an argument for statutory tolling where an injunction was threatened but not entered. Marshall-Wells Hardware, 89 Wash. at 409. In Hinchman, the court held that there was no statutory prohibition, and statutory tolling thus did not apply, where a statute prohibited a creditor from pursuing multiple actions on the same debt but did not prohibit the creditor from commencing an action or joining all debtors in the same action. Hinchman, 32 Wash. at 206. The cases do not support Merceri’s contention that statutory tolling applies only where the plaintiff exercises diligence.

No. 75665-6-1/13

for judicial foreclosure was timely when asserted on June 16, 2016.⁶ The trial court erred in granting Merceri's motion for partial summary judgment and denying Deutsche's motion to amend to assert its counterclaim.⁷

Deutsche requests attorney fees on appeal. Attorney fees may be awarded where allowed by statute or contract. Aiken v. Aiken, 187 Wn.2d 491, 506, 387 P.3d 680 (2017) (citing Malted Mousse, Inc., v. Steinmetz, 150 Wn.2d 518, 535, 79 P.3d 1154 (2003)). In this case, the deed provides that the lender is entitled to recover reasonable attorney fees in any action to enforce the deed. We grant Deutsche's request for fees.⁸

Reversed.

WE CONCUR:

Speelman, J.

Trickey, A&J

Becker, J.

⁶ Deutsche also asserts that its counterclaim relates back to Merceri's complaint in this action. See J.R. Simplot Co. v. Vogt, 93 Wn.2d 122, 605 P.2d 1267 (1980). Because we accepted review only on the question of tolling during the bankruptcy stay, we do not reach this issue.

⁷ Because of our resolution on this issue, we do not reach Deutsche's further arguments concerning tolling while nonjudicial foreclosure proceedings are pending and while complying with state and federal foreclosure prevention provisions.

⁸ Merceri requests fees as the prevailing party. Because she does not prevail, we deny the request.

APPENDIX 2

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

MICHELLE MERCERI,)
)
 Respondent,)
)
 v.)
)
 DEUTSCHE BANK AG a/k/a DEUTSCHE)
 BANK doing business in the United States as)
 DEUTSCHE BANK USA, and as DEUTSCHE)
 BANK NATIONAL TRUST COMPANY, a)
 national banking association, as trustee for)
 holders of the BCAP LLC Trust 2007-AA2;)
 and NORTHWEST TRUSTEE SERVICES,)
 INC., a Washington corporation,)
)
 Appellants.)

No. 75665-6-1

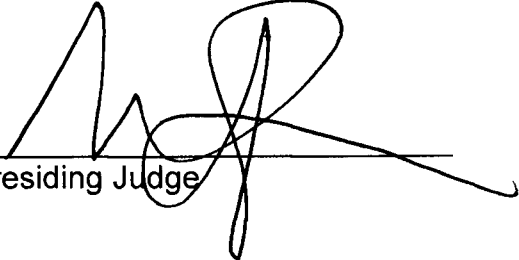
ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION

Respondent, Michelle Merceri filed a motion for reconsideration of the opinion filed in the above matter on January 22, 2018. A majority of the panel has determined the motion should be denied.

Now therefore, it is hereby

ORDERED that the respondent's motion for reconsideration is denied.

FOR THE COURT:


Presiding Judge

APPENDIX 3

Electronically Recorded

20120117000361

SIMPLIFILE DTS 63.00
Page 001 of 002
01/17/2012 10:44
King County, WA

After recording, return to:
Owner of Record
3009 FAIRWEATHER PL
HUNTS POINT, WA 98004-1002

TS No. 09-0021643

09072417 NOTICE OF DISCONTINUANCE OF TRUSTEE'S SALE
MICHELLE MERCERL, A SINGLE WOMAN AND SHAWN CASEY JONES, A SINGLE MAN

RECONTRUST COMPANY, N.A. is the grantor, and
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. is the trustee, and
under that certain deed of trust dated 12/15/2006 and recorded on 12/19/2006
under Auditor's File No. 20061219001044 records of KING County, Washington.

Said deed of trust encumbers the following property: (Tax Parcel# 247270005009)

SEE LEGAL DESCRIPTION ATTACHED AS EXHIBIT A

PTN OF LT. 10, FAIRWEATHER BASIN, VOL. 58, PG. 91.

The undersigned trustee hereby discontinues the trustee's sale set by the Notice of trustee's Sale's recorded under Auditor's # 20100616001419 , records of King County, Washington.

This discontinuance shall not be construed a waiving any breach or default under the above referenced deed of trust, or as impairing any right or remedy thereunder, or as modifying or altering in any respect any of the terms, covenants, conditions, or obligations thereof, but is and shall be deemed to be only an election to not allow the sale to be made pursuant to the above referenced Notice of Trustee's Sale.

DATED: January 12, 2012

RECONTRUST COMPANY, N.A.

BY: Steven Arredondo, Asst. Vice-President

State of: California
County of: Ventura

On JAN 12 2012 before me JEANINE HOFFMAN, notary public, personally appeared STEVEN ARREDONDO, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that he/she/they executed the same his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Jeanine Hoffman
JEANINE HOFFMAN

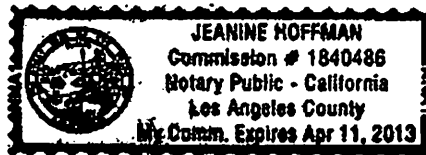


EXHIBIT A

REF.: 09-0021643

LOT 10, FAIRWEATHER BASIN, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 58 OF PLATS, PAGE(S) 91, RECORDS OF KING COUNTY, WASHINGTON. EXCEPT THE EAST 60 FEET THEREOF CONVEYED TO THE TOWN OF HUNTS POINT FOR ROAD BY DEED RECORDED UNDER RECORDING NUMBER 5757367; TOGETHER WITH THAT PORTION OF THE CIRCULAR TURN-AROUND AT THE SOUTH END OF 82ND AVENUE NORTHEAST (FAIRWEATHER PLACE) WHICH WAS VACATED BY TOWN OF HUNTS POINT ORDINANCE NO. 223, RECORDED UNDER RECORDING NUMBER 8904140795

NOTE FOR INFORMATIONAL PURPOSES ONLY:

THE FOLLOWING MAY BE USED AS AN ABBREVIATED LEGAL DESCRIPTION ON THE DOCUMENTS TO BE RECORDED, PER AMENDED RCW 65.04. SAID ABBREVIATED LEGAL DESCRIPTION IS NOT A SUBSTITUTE FOR A COMPLETE LEGAL DESCRIPTION WITHIN THE BODY OF THE DOCUMENT.

PTN OF LT. 10, FAIRWEATHER BASIN, VOL. 58, PG. 91.



APPENDIX 4

CONSTITUTION OF UNITED STATES
CONSTITUTION
Article I. LEGISLATIVE DEPARTMENT

Current through 2010

§ 1. Legislative Powers

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Repre:

CONSTITUTION OF UNITED STATES
CONSTITUTION
Article I. LEGISLATIVE DEPARTMENT

Current through 2010

§ 8. Powers of Congress

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and the general Welfare of the United States; and to borrow Money on the credit of the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;



To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, according to the Discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of Particular States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Benefit of the United States;

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States;

APPENDIX 5



CONSTITUTION OF THE STATE OF WASHINGTON

Legislative Information Center

Revised 01-12-11

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.

TABLE OF CONTENTS

- (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.

All current sections, whether original sections or constitutional amendments, are carried in Article and section order and are printed in regular type.

Following each section which has been amended, the original section and intervening amendments (if any) are printed in italics.

Appended to each amendatory section is a history note stating the amendment number and date of its approval as well as the citation to the session law wherein may be found the legislative measure proposing the amendment; e.g. "[**AMENDMENT 27**, 1951 House Joint Resolution No. 8, p 961. Approved November 4, 1952.]"

In part (B), the constitutional amendments are also printed separately, in order of their adoption.

(A) Constitution of the State of Washington

PREAMBLE

Article I — DECLARATION OF RIGHTS

Sections

- 1 Political power.
- 2 Supreme law of the land.
- 3 Personal rights.
- 4 Right of petition and assemblage.
- 5 Freedom of speech.
- 6 Oaths — Mode of administering.
- 7 Invasion of private affairs or home prohibited.
- 8 Irrevocable privilege, franchise or immunity prohibited.
- 9 Rights of accused persons.
- 10 Administration of justice.
- 11 Religious freedom.
- 12 Special privileges and immunities prohibited.
- 13 Habeas corpus.

- 14 Excessive bail, fines and punishments.
- 15 Convictions, effect of.
- 16 Eminent domain.
- 17 Imprisonment for debt.
- 18 Military power, limitation of.
- 19 Freedom of elections.
- 20 Bail, when authorized.
- 21 Trial by jury.
- 22 Rights of the accused.
- 23 Bill of attainder, ex post facto law, etc.
- 24 Right to bear arms.
- 25 Prosecution by information.
- 26 Grand jury.
- 27 Treason, defined, etc.
- 28 Hereditary privileges abolished.
- 29 Constitution mandatory.
- 30 Rights reserved.
- 31 Standing army.
- 32 Fundamental principles.
- 33 Recall of elective officers.
- 34 Same.
- 35 Victims of crimes — Rights.

Article II — LEGISLATIVE DEPARTMENT

Sections

- 1 Legislative powers, where vested.
- 1(a) Initiative and referendum, signatures required.
- 2 House of representatives and senate.
- 3 The census.
- 4 Election of representatives and term of office.
- 5 Elections, when to be held.
- 6 Election and term of office of senators.
- 7 Qualifications of legislators.
- 8 Judges of their own election and qualification — Quorum.
- 9 Rules of procedure.
- 10 Election of officers.
- 11 Journal, publicity of meetings — Adjournments.
- 12 Sessions, when — Duration.
- 13 Limitation on members holding office in the state.
- 14 Same, federal or other office.
- 15 Vacancies in legislature and in partisan county elective office.
- 16 Privileges from arrest.
- 17 Freedom of debate.
- 18 Style of laws.
- 19 Bill to contain one subject.
- 20 Origin and amendment of bills.
- 21 Yeas and nays.
- 22 Passage of bills.
- 23 Compensation of members.
- 24 Lotteries and divorce.
- 25 Extra compensation prohibited.
- 26 Suits against the state.

Constitution of the State of Washington

- 27 Elections — Viva voce vote.
- 28 Special legislation.
- 29 Convict labor.
- 30 Bribery or corrupt solicitation.
- 31 Laws, when to take effect.
- 32 Laws, how signed.
- 33 Alien ownership.
- 34 Bureau of statistics, agriculture and immigration.
- 35 Protection of employees.
- 36 When bills must be introduced.
- 37 Revision or amendment.
- 38 Limitation on amendments.
- 39 Free transportation to public officer prohibited.
- 40 Highway funds.
- 41 Laws, effective date, initiative, referendum — Amendment or repeal.
- 42 Governmental continuity during emergency periods.
- 43 Redistricting.

Article III — THE EXECUTIVE

Sections

- 1 Executive department.
- 2 Governor, term of office.
- 3 Other executive officers, terms of office.
- 4 Returns of elections, canvass, etc.
- 5 General duties of governor.
- 6 Messages.
- 7 Extra legislative sessions.
- 8 Commander-in-chief.
- 9 Pardon power.
- 10 Vacancy in office of governor.
- 11 Remission of fines and forfeitures.
- 12 Veto powers.
- 13 Vacancy in appointive office.
- 14 Salary.
- 15 Commissions, how issued.
- 16 Lieutenant governor, duties and salary.
- 17 Secretary of state, duties and salary.
- 18 Seal.
- 19 State treasurer, duties and salary.
- 20 State auditor, duties and salary.
- 21 Attorney general, duties and salary.
- 22 Superintendent of public instruction, duties and salary.
- 23 Commissioner of public lands — Compensation.
- 24 Records, where kept, etc.
- 25 Qualifications, compensation, offices which may be abolished.

Article IV — THE JUDICIARY

Sections

- 1 Judicial power, where vested.
- 2 Supreme court.
- 2(a) Temporary performance of judicial duties.
- 3 Election and terms of supreme court judges.
- 3(a) Retirement of supreme court and superior court judges.
- 4 Jurisdiction.

- 5 Superior court — Election of judges, terms of, etc.
- 6 Jurisdiction of superior courts.
- 7 Exchange of judges — Judge pro tempore.
- 8 Absence of judicial officer.
- 9 Removal of judges, attorney general, etc.
- 10 Justices of the peace.
- 11 Courts of record.
- 12 Inferior courts.
- 13 Salaries of judicial officers — How paid, etc.
- 14 Salaries of supreme and superior court judges.
- 15 Ineligibility of judges.
- 16 Charging juries.
- 17 Eligibility of judges.
- 18 Supreme court reporter.
- 19 Judges may not practice law.
- 20 Decisions, when to be made.
- 21 Publication of opinions.
- 22 Clerk of the supreme court.
- 23 Court commissioners.
- 24 Rules for superior courts.
- 25 Reports of superior court judges.
- 26 Clerk of the superior court.
- 27 Style of process.
- 28 Oath of judges.
- 29 Election of superior court judges.
- 30 Court of appeals.
- 31 Commission on judicial conduct.

Article V — IMPEACHMENT

Sections

- 1 Impeachment — Power of and procedure.
- 2 Officers liable to.
- 3 Removal from office.

Article VI — ELECTIONS AND ELECTIVE RIGHTS

Sections

- 1 Qualifications of electors.
- 1A Voter qualifications for presidential elections.
- 2 School elections — Franchise, how extended.
- 3 Who disqualified.
- 4 Residence, contingencies affecting.
- 5 Voter — When privileged from arrest.
- 6 Ballot.
- 7 Registration.
- 8 Elections, time of holding.

Article VII — REVENUE AND TAXATION

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- 1 Taxation.
- 2 Limitation on levies.
- 3 Taxation of federal agencies and property.
- 4 No surrender of power or suspension of tax on corporate property.
- 5 Taxes, how levied.
- 6 Taxes, how paid.
- 7 Annual statement.
- 8 Tax to cover deficiencies.

Constitution of the State of Washington

- 9 Special assessments or taxation for local improvements.
- 10 Retired persons property tax exemption.
- 11 Taxation based on actual use.
- 12 Budget stabilization account.

Article VIII — STATE, COUNTY, AND MUNICIPAL INDEBTEDNESS

Sections

- 1 State debt.
- 2 Powers extended in certain cases.
- 3 Special indebtedness, how authorized.
- 4 Moneys disbursed only by appropriations.
- 5 Credit not to be loaned.
- 6 Limitations upon municipal indebtedness.
- 7 Credit not to be loaned.
- 8 Port expenditures — Industrial development — Promotion.
- 9 State building authority.
- 10 Energy, water, or stormwater or sewer services conservation assistance.
- 11 Agricultural commodity assessments — Development, promotion, and hosting.

Article IX — EDUCATION

Sections

- 1 Preamble.
- 2 Public school system.
- 3 Funds for support.
- 4 Sectarian control or influence prohibited.
- 5 Loss of permanent fund to become state debt.

Article X — MILITIA

Sections

- 1 Who liable to military duty.
- 2 Organization — Discipline — Officers — Power to call out.
- 3 Soldiers' home.
- 4 Public arms.
- 5 Privilege from arrest.
- 6 Exemption from military duty.

Article XI — COUNTY, CITY, AND TOWNSHIP ORGANIZATION

Sections

- 1 Existing counties recognized.
- 2 County seats — Location and removal.
- 3 New counties.
- 4 County government and township organization.
- 5 County government.
- 6 Vacancies in township, precinct or road district office.
- 7 Tenure of office limited to two terms.
- 8 Salaries and limitations affecting.
- 9 State taxes not to be released or commuted.
- 10 Incorporation of municipalities.
- 11 Police and sanitary regulations.

- 12 Assessment and collection of taxes in municipalities.
- 13 Private property, when may be taken for public debt.
- 14 Private use of public funds prohibited.
- 15 Deposit of public funds.
- 16 Combined city-county.

Article XII — CORPORATIONS OTHER THAN MUNICIPAL

Sections

- 1 Corporations, how formed.
- 2 Existing charters.
- 3 Existing charters not to be extended nor forfeiture remitted.
- 4 Liability of stockholders.
- 5 Term "corporation," defined — Right to sue and be sued.
- 6 Limitations upon issuance of stock.
- 7 Foreign corporations.
- 8 Alienation of franchise not to release liabilities.
- 9 State not to loan its credit or subscribe for stock.
- 10 Eminent domain affecting.
- 11 Stockholder liability.
- 12 Receiving deposits by bank after insolvency.
- 13 Common carriers, regulation of.
- 14 Prohibition against combinations by carriers.
- 15 Prohibition against discriminating charges.
- 16 Prohibition against consolidating of competing lines.
- 17 Rolling stock, personalty for purpose of taxation.
- 18 Rates for transportation.
- 19 Telegraph and telephone companies.
- 20 Prohibition against free transportation for public officers.
- 21 Express companies.
- 22 Monopolies and trusts.

Article XIII — STATE INSTITUTIONS

Sections

- 1 Educational, reformatory, and penal institutions.

Article XIV — SEAT OF GOVERNMENT

Sections

- 1 State capital, location of.
- 2 Change of state capital.
- 3 Restrictions on appropriations for capitol buildings.

Article XV — HARBORS AND TIDE WATERS

Sections

- 1 Harbor line commission and restraint on disposition.
- 2 Leasing and maintenance of wharves, docks, etc.
- 3 Extension of streets over tide lands.

Article XVI — SCHOOL AND GRANTED LANDS

Constitution of the State of Washington

Sections

- 1 Disposition of.
- 2 Manner and terms of sale.
- 3 Limitations on sales.
- 4 How much may be offered in certain cases —
Platting of.
- 5 Investment of permanent common school fund.
- 6 Investment of higher education permanent funds.

Article XVII — TIDE LANDS

Sections

- 1 Declaration of state ownership.
- 2 Disclaimer of certain lands.

Article XVIII — STATE SEAL

Sections

- 1 Seal of the state.

Article XIX — EXEMPTIONS

Sections

- 1 Exemptions — Homesteads, etc.

Article XX — PUBLIC HEALTH AND
VITAL STATISTICS

Sections

- 1 Board of health and bureau of vital statistics.
- 2 Regulations concerning medicine, surgery and
pharmacy.

Article XXI — WATER AND WATER RIGHTS

Sections

- 1 Public use of water.

Article XXII — LEGISLATIVE APPORTIONMENT

Sections

- 1 Senatorial apportionment.
- 2 Apportionment of representatives.

Article XXIII — AMENDMENTS

Sections

- 1 How made.
- 2 Constitutional conventions.
- 3 Submission to the people.

Article XXIV — BOUNDARIES

Sections

- 1 State boundaries.

Article XXV — JURISDICTION

Sections

- 1 Authority of the United States.

Article XXVI — COMPACT WITH THE
UNITED STATES

Article XXVII — SCHEDULE

Sections

- 1 Existing rights, actions, and contracts saved.
- 2 Laws in force continued.
- 3 Debts, fines, etc., to inure to the state.
- 4 Recognizances.
- 5 Criminal prosecutions and penal actions.
- 6 Retention of territorial officers.
- 7 Constitutional officers, when elected.
- 8 Change of courts — Transfer of causes.
- 9 Seals of courts and municipalities.
- 10 Probate court, transfer of.
- 11 Duties of first legislature.
- 12 Election contests for superior judges, how decided.
- 13 Representation in congress.
- 14 Duration of term of certain officers.
- 15 Election on adoption of Constitution, how to be
conducted.
- 16 When Constitution to take effect.
- 17 Separate articles.
- 18 Ballot.
- 19 Appropriation.

Article XXVIII — COMPENSATION OF
STATE OFFICERS

Sections

- 1 Salaries for legislators, elected state officials, and
judges — Independent commission —
Referendum.

Article XXIX — INVESTMENTS OF PUBLIC
PENSION AND RETIREMENT FUNDS

Sections

- 1 May be invested as authorized by law.

Article XXX — COMPENSATION OF
PUBLIC OFFICERS

Sections

- 1 Authorizing compensation increase during term.

Article XXXI — SEX EQUALITY — RIGHTS
AND RESPONSIBILITY

Sections

- 1 Equality not denied because of sex.
- 2 Enforcement power of legislature.

Article XXXII — SPECIAL REVENUE FINANCING

Sections

- 1 Special revenue financing.

trial by an impartial jury of the county in which the offense is alleged to have been committed, and the right to appeal in all cases; and, in no instance, shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.

SECTION 23 BILL OF ATTAINDER, EX POST FACTO LAW, ETC. No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed.

SECTION 24 RIGHT TO BEAR ARMS. The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain or employ an armed body of men.

SECTION 25 PROSECUTION BY INFORMATION. Offenses heretofore required to be prosecuted by indictment may be prosecuted by information, or by indictment, as shall be prescribed by law.

SECTION 26 GRAND JURY. No grand jury shall be drawn or summoned in any county, except the superior judge thereof shall so order.

SECTION 27 TREASON, DEFINED, ETC. Treason against the state shall consist only in levying war against the state, or adhering to its enemies, or in giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or confession in open court.

SECTION 28 HEREDITARY PRIVILEGES ABOLISHED. No hereditary emoluments, privileges, or powers, shall be granted or conferred in this state.

SECTION 29 CONSTITUTION MANDATORY. The provisions of this Constitution are mandatory, unless by express words they are declared to be otherwise.

SECTION 30 RIGHTS RESERVED. The enumeration in this Constitution of certain rights shall not be construed to deny others retained by the people.

SECTION 31 STANDING ARMY. No standing army shall be kept up by this state in time of peace, and no soldier shall in time of peace be quartered in any house without the consent of its owner, nor in time of war except in the manner prescribed by law.

SECTION 32 FUNDAMENTAL PRINCIPLES. A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government.

SECTION 33 RECALL OF ELECTIVE OFFICERS. Every elective public officer of the state of Washington except [except] judges of courts of record is subject to recall and discharge by the legal voters of the state, or of the political subdivision of the state, from which he was elected

whenever a petition demanding his recall, reciting that such officer has committed some act or acts of malfeasance or misfeasance while in office, or who has violated his oath of office, stating the matters complained of, signed by the percentages of the qualified electors thereof, hereinafter provided, the percentage required to be computed from the total number of votes cast for all candidates for his said office to which he was elected at the preceding election, is filed with the officer with whom a petition for nomination, or certificate for nomination, to such office must be filed under the laws of this state, and the same officer shall call a special election as provided by the general election laws of this state, and the result determined as therein provided. [AMENDMENT 8, 1911 p 504 Section 1. Approved November, 1912.]

SECTION 34 SAME. The legislature shall pass the necessary laws to carry out the provisions of section thirty-three (33) of this article, and to facilitate its operation and effect without delay: *Provided,* That the authority hereby conferred upon the legislature shall not be construed to grant to the legislature any exclusive power of lawmaking nor in any way limit the initiative and referendum powers reserved by the people. The percentages required shall be, state officers, other than judges, senators and representatives, city officers of cities of the first class, school district boards in cities of the first class; county officers of counties of the first, second and third classes, twenty-five per cent. Officers of all other political subdivisions, cities, towns, townships, precincts and school districts not herein mentioned, and state senators and representatives, thirty-five per cent. [AMENDMENT 8, 1911 p 504 Section 1. Approved November, 1912.]

SECTION 35 VICTIMS OF CRIMES — RIGHTS. Effective law enforcement depends on cooperation from victims of crime. To ensure victims a meaningful role in the criminal justice system and to accord them due dignity and respect, victims of crime are hereby granted the following basic and fundamental rights.

Upon notifying the prosecuting attorney, a victim of a crime charged as a felony shall have the right to be informed of and, subject to the discretion of the individual presiding over the trial or court proceedings, attend trial and all other court proceedings the defendant has the right to attend, and to make a statement at sentencing and at any proceeding where the defendant's release is considered, subject to the same rules of procedure which govern the defendant's rights. In the event the victim is deceased, incompetent, a minor, or otherwise unavailable, the prosecuting attorney may identify a representative to appear to exercise the victim's rights. This provision shall not constitute a basis for error in favor of a defendant in a criminal proceeding nor a basis for providing a victim or the victim's representative with court appointed counsel. [AMENDMENT 84, 1989 Senate Joint Resolution No. 8200, p 2999. Approved November 7, 1989.]

**ARTICLE II
LEGISLATIVE DEPARTMENT**

SECTION 1 LEGISLATIVE POWERS, WHERE VESTED. The legislative authority of the state of Washing-

ton shall be vested in the legislature, consisting of a senate and house of representatives, which shall be called the legislature of the state of Washington, but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature, and also reserve power, at their own option, to approve or reject at the polls any act, item, section, or part of any bill, act, or law passed by the legislature.

(a) Initiative: The first power reserved by the people is the initiative. Every such petition shall include the full text of the measure so proposed. In the case of initiatives to the legislature and initiatives to the people, the number of valid signatures of legal voters required shall be equal to eight percent of the votes cast for the office of governor at the last gubernatorial election preceding the initial filing of the text of the initiative measure with the secretary of state.

Initiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon, or not less than ten days before any regular session of the legislature. If filed at least four months before the election at which they are to be voted upon, he shall submit the same to the vote of the people at the said election. If such petitions are filed not less than ten days before any regular session of the legislature, he shall certify the results within forty days of the filing. If certification is not complete by the date that the legislature convenes, he shall provisionally certify the measure pending final certification of the measure. Such initiative measures, whether certified or provisionally certified, shall take precedence over all other measures in the legislature except appropriation bills and shall be either enacted or rejected without change or amendment by the legislature before the end of such regular session. If any such initiative measures shall be enacted by the legislature it shall be subject to the referendum petition, or it may be enacted and referred by the legislature to the people for approval or rejection at the next regular election. If it is rejected or if no action is taken upon it by the legislature before the end of such regular session, the secretary of state shall submit it to the people for approval or rejection at the next ensuing regular general election. The legislature may reject any measure so proposed by initiative petition and propose a different one dealing with the same subject, and in such event both measures shall be submitted by the secretary of state to the people for approval or rejection at the next ensuing regular general election. When conflicting measures are submitted to the people the ballots shall be so printed that a voter can express separately by making one cross (X) for each, two preferences, first, as between either measure and neither, and secondly, as between one and the other. If the majority of those voting on the first issue is for neither, both fail, but in that case the votes on the second issue shall nevertheless be carefully counted and made public. If a majority voting on the first issue is for either, then the measure receiving a majority of the votes on the second issue shall be law.

(b) Referendum. The second power reserved by the people is the referendum, and it may be ordered on any act, bill, law, or any part thereof passed by the legislature, except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions, either by petition signed by the required percentage of the legal voters, or by

the legislature as other bills are enacted: *Provided*, That the legislature may not order a referendum on any initiative measure enacted by the legislature under the foregoing subsection (a). The number of valid signatures of registered voters required on a petition for referendum of an act of the legislature or any part thereof, shall be equal to or exceeding four percent of the votes cast for the office of governor at the last gubernatorial election preceding the filing of the text of the referendum measure with the secretary of state.

(c) No act, law, or bill subject to referendum shall take effect until ninety days after the adjournment of the session at which it was enacted. No act, law, or bill approved by a majority of the electors voting thereon shall be amended or repealed by the legislature within a period of two years following such enactment: *Provided*, That any such act, law, or bill may be amended within two years after such enactment at any regular or special session of the legislature by a vote of two-thirds of all the members elected to each house with full compliance with section 12, Article III, of the Washington Constitution, and no amendatory law adopted in accordance with this provision shall be subject to referendum. But such enactment may be amended or repealed at any general regular or special election by direct vote of the people thereon.

(d) The filing of a referendum petition against one or more items, sections, or parts of any act, law, or bill shall not delay the remainder of the measure from becoming operative. Referendum petitions against measures passed by the legislature shall be filed with the secretary of state not later than ninety days after the final adjournment of the session of the legislature which passed the measure on which the referendum is demanded. The veto power of the governor shall not extend to measures initiated by or referred to the people. All elections on measures referred to the people of the state shall be had at the next succeeding regular general election following the filing of the measure with the secretary of state, except when the legislature shall order a special election. Any measure initiated by the people or referred to the people as herein provided shall take effect and become the law if it is approved by a majority of the votes cast thereon: *Provided*, That the vote cast upon such question or measure shall equal one-third of the total votes cast at such election and not otherwise. Such measure shall be in operation on and after the thirtieth day after the election at which it is approved. The style of all bills proposed by initiative petition shall be: "Be it enacted by the people of the State of Washington." This section shall not be construed to deprive any member of the legislature of the right to introduce any measure. All such petitions shall be filed with the secretary of state, who shall be guided by the general laws in submitting the same to the people until additional legislation shall especially provide therefor. This section is self-executing, but legislation may be enacted especially to facilitate its operation.

(e) The legislature shall provide methods of publicity of all laws or parts of laws, and amendments to the Constitution referred to the people with arguments for and against the laws and amendments so referred. The secretary of state shall send one copy of the publication to each individual place of residence in the state and shall make such additional distribution as he shall determine necessary to reasonably assure that each voter will have an opportunity to study the measures prior to election. [AMENDMENT 72, 1981 Substitute Sen-

ate Joint Resolution No. 133, p 1796. Approved November 3, 1981.]

Referendum procedures regarding salaries: Art. 28 Section 1.

Amendment 7 (1911) — Art. 2 Section 1 Legislative Powers, Where Vested — *The legislative authority of the state of Washington shall be vested in the legislature, consisting of a senate and house of representatives, which shall be called the legislature of the state of Washington, but the people reserve to themselves the power to propose bills, laws, and to enact or reject the same at the polls, independent of the legislature, and also reserve power, at their own option, to approve or reject at the polls any act, item, section or part of any bill, act or law passed by the legislature.*

(a) *Initiative: The first power reserved by the people is the initiative. Ten per centum, but in no case more than fifty thousand, of the legal voters shall be required to propose any measure by such petition, and every such petition shall include the full text of the measure so proposed. [Note: Signature requirements were superseded by Art. 2 Sec. 1(a), AMENDMENT 30.] Initiative petitions shall be filed with the secretary of state not less than four months before the election at which they are to be voted upon, or not less than ten days before any regular session of the legislature. If filed at least four months before the election at which they are to be voted upon, he shall submit the same to the vote of the people at the said election. If such petitions are filed not less than ten days before any regular session of the legislature, he shall transmit the same to the legislature as soon as it convenes and organizes. Such initiative measure shall take precedence over all other measures in the legislature except appropriation bills and shall be either enacted or rejected without change or amendment by the legislature before the end of such regular session. If any such initiative measures shall be enacted by the legislature it shall be subject to the referendum petition, or it may be enacted and referred by the legislature to the people for approval or rejection at the next regular election. If it is rejected or if no action is taken upon it by the legislature before the end of such regular session, the secretary of state shall submit it to the people for approval or rejection at the next ensuing regular general election. The legislature may reject any measure so proposed by initiative petition and propose a different one dealing with the same subject, and in such event both measures shall be submitted by the secretary of state to the people for approval or rejection at the next ensuing regular general election. When conflicting measures are submitted to the people the ballots shall be so printed that a voter can express separately by making one cross (X) for each, two preferences, first, as between either measure and neither, and secondly, as between one and the other. If the majority of those voting on the first issue is for neither, both fail, but in that case the votes on the second issue shall nevertheless be carefully counted and made public. If a majority voting on the first issue is for either, then the measure receiving a majority of the votes on the second issue shall be law.*

(b) *Referendum. The second power reserved by the people is the referendum, and it may be ordered on any act, bill, law, or any part thereof passed by the legislature, except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions, either by petition signed by the required percentage of the legal voters, or by the legislature as other bills are enacted. Six per centum, but in no case more than thirty thousand, of the legal voters shall be required to sign and make a valid referendum petition. [Note: Signature requirements were superseded by Art. 2 Sec. 1(a), AMENDMENT 30.]*

(c) *No act, law, or bill subject to referendum shall take effect until ninety days after the adjournment of the session at which it was enacted. No act, law, or bill approved by a majority of the electors voting thereon shall be amended or repealed by the legislature within a period of two years following such enactment. But such enactment may be amended or repealed at any general regular or special election by direct vote of the people thereon. [Note: Subsection (c) was expressly superseded by Art. 2 Sec. 41, AMENDMENT 26.]*

(d) *The filing of a referendum petition against one or more items, sections or parts of any act, law or bill shall not delay the remainder of the measure from becoming operative. Referendum petitions against measures passed by the legislature shall be filed with the secretary of state not later than ninety days after the final adjournment of the session of the legislature which passed the measure on which the referendum is demanded. The veto power of the governor shall not extend to measures initiated by or referred to the people. All elections on measures referred to the people of the state shall be had at the biennial regular elections, except when the legislature shall order a special election. Any measure initiated by the people or referred to the people as herein provided shall take effect and become the*

law if it is approved by a majority of the votes cast thereon: Provided, That the vote cast upon such question or measure shall equal one-third of the total votes cast at such election and not otherwise. Such measure shall be in operation on and after the thirtieth day after the election at which it is approved. The style of all bills proposed by initiative petition shall be: "Be it enacted by the people of the State of Washington." This section shall not be construed to deprive any member of the legislature of the right to introduce any measure. The whole number of electors who voted for governor at the regular gubernatorial election last preceding the filing of any petition for the initiative or for the referendum shall be the basis on which the number of legal voters necessary to sign such petition shall be counted. [Note: Cf. Art. 2 Sec. 1(a), AMENDMENT 30.] All such petitions shall be filed with the secretary of state, who shall be guided by the general laws in submitting the same to the people until additional legislation shall especially provide therefor. This section is self-executing, but legislation may be enacted especially to facilitate its operation.

The legislature shall provide methods of publicity of all laws or parts of laws, and amendments to the Constitution referred to the people with arguments for and against the laws and amendments so referred, so that each voter of the state shall receive the publication at least fifty days before the election at which they are to be voted upon. [Note: This paragraph was expressly superseded by subsection (e) of this section, which was added by AMENDMENT 36.]

(e) *The legislature shall provide methods of publicity of all laws or parts of laws, and amendments to the Constitution referred to the people with arguments for and against the laws and amendments so referred. The secretary of state shall send one copy of the publication to each individual place of residence in the state and shall make such additional distribution as he shall determine necessary to reasonably assure that each voter will have an opportunity to study the measures prior to election. These provisions supersede the provisions set forth in the last paragraph of section 1 of this article as amended by the seventh amendment to the Constitution of this state. [AMENDMENT 7, 1911 House Bill No. 153 p 136. Approved November, 1912; Subsection (e) added by AMENDMENT 36, 1961 Senate Joint Resolution No. 9, p 2751. Approved November, 1962.]*

Original text — Art. 2 Section 1 LEGISLATIVE POWERS, WHERE VESTED — *The legislative powers shall be vested in a senate and house of representatives, which shall be called the legislature of the State of Washington.*

Note: Art. 2 Sec. 31 was also stricken by AMENDMENT 7.

SECTION 1(a) INITIATIVE AND REFERENDUM, SIGNATURES REQUIRED. [Stricken by AMENDMENT 72, 1981 Substitute Senate Joint Resolution No. 133, p 1796. Approved November 3, 1981.]

Amendment 30 (1956) — Art. 2 Section 1(a) INITIATIVE AND REFERENDUM, SIGNATURES REQUIRED — *Hereafter, the number of valid signatures of legal voters required upon a petition for an initiative measure shall be equal to eight per centum of the number of voters registered and voting for the office of governor at the last preceding regular gubernatorial election. Hereafter, the number of valid signatures of legal voters required upon a petition for a referendum of an act of the legislature or any part thereof, shall be equal to four per centum of the number of voters registered and voting for the office of governor at the last preceding regular gubernatorial election. These provisions supersede the requirements specified in section 1 of this article as amended by the seventh amendment to the Constitution of this state. [AMENDMENT 30, 1955 Senate Joint Resolution No. 4, p 1860. Approved November 6, 1956.]*

SECTION 2 HOUSE OF REPRESENTATIVES AND SENATE. The house of representatives shall be composed of not less than sixty-three nor more than ninety-nine members. The number of senators shall not be more than one-half nor less than one-third of the number of members of the house of representatives. The first legislature shall be composed of seventy members of the house of representatives, and thirty-five senators.

SECTION 3 THE CENSUS. [Repealed by *AMENDMENT 74*, 1983 Substitute Senate Joint Resolution No. 103, p 2202. Approved November 8, 1983.]

Original text — Art. 2 Section 3 THE CENSUS — *The legislature shall provide by law for an enumeration of the inhabitants of the state in the year one thousand eight hundred and ninety-five and every ten years thereafter; and at the first session after such enumeration, and also after each enumeration made by the authority of the United States, the legislature shall apportion and district anew the members of the senate and house of representatives, according to the number of inhabitants, excluding Indians not taxed, soldiers, sailors and officers of the United States army and navy in active service.*

SECTION 4 ELECTION OF REPRESENTATIVES AND TERM OF OFFICE. Members of the house of representatives shall be elected in the year eighteen hundred and eighty-nine at the time and in the manner provided by this Constitution, and shall hold their offices for the term of one year and until their successors shall be elected.

SECTION 5 ELECTIONS, WHEN TO BE HELD. The next election of the members of the house of representatives after the adoption of this Constitution shall be on the first Tuesday after the first Monday of November, eighteen hundred and ninety, and thereafter, members of the house of representatives shall be elected biennially and their term of office shall be two years; and each election shall be on the first Tuesday after the first Monday in November, unless otherwise changed by law.

SECTION 6 ELECTION AND TERM OF OFFICE OF SENATORS. After the first election the senators shall be elected by single districts of convenient and contiguous territory, at the same time and in the same manner as members of the house of representatives are required to be elected; and no representative district shall be divided in the formation of a senatorial district. They shall be elected for the term of four years, one-half of their number retiring every two years. The senatorial districts shall be numbered consecutively, and the senators chosen at the first election had by virtue of this Constitution, in odd numbered districts, shall go out of office at the end of the first year; and the senators, elected in the even numbered districts, shall go out of office at the end of the third year.

SECTION 7 QUALIFICATIONS OF LEGISLATORS. No person shall be eligible to the legislature who shall not be a citizen of the United States and a qualified voter in the district for which he is chosen.

SECTION 8 JUDGES OF THEIR OWN ELECTION AND QUALIFICATION - QUORUM. Each house shall be the judge of the election, returns and qualifications of its own members, and a majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day and may compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Governmental continuity during emergency periods: Art. 2 Section 42.

SECTION 9 RULES OF PROCEDURE. Each house may determine the rules of its own proceedings, punish for contempt and disorderly behavior, and, with the concurrence of two-thirds of all the members elected, expel a member, but no member shall be expelled a second time for the same offense.

SECTION 10 ELECTION OF OFFICERS. Each house shall elect its own officers; and when the lieutenant governor shall not attend as president, or shall act as governor, the senate shall choose a temporary president. When presiding, the lieutenant governor shall have the deciding vote in case of an equal division of the senate.

SECTION 11 JOURNAL, PUBLICITY OF MEETINGS - ADJOURNMENTS. Each house shall keep a journal of its proceedings and publish the same, except such parts as require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall adjourn for more than three days, nor to any place other than that in which they may be sitting, without the consent of the other.

SECTION 12 SESSIONS, WHEN — DURATION.
(1) Regular Sessions. A regular session of the legislature shall be convened each year. Regular sessions shall convene on such day and at such time as the legislature shall determine by statute. During each odd-numbered year, the regular session shall not be more than one hundred five consecutive days. During each even-numbered year, the regular session shall not be more than sixty consecutive days.

(2) Special Legislative Sessions. Special legislative sessions may be convened for a period of not more than thirty consecutive days by proclamation of the governor pursuant to Article III, section 7 of this Constitution. Special legislative sessions may also be convened for a period of not more than thirty consecutive days by resolution of the legislature upon the affirmative vote in each house of two-thirds of the members elected or appointed thereto, which vote may be taken and resolution executed either while the legislature is in session or during any interim between sessions in accordance with such procedures as the legislature may provide by law or resolution. The resolution convening the legislature shall specify a purpose or purposes for the convening of a special session, and any special session convened by the resolution shall consider only measures germane to the purpose or purposes expressed in the resolution, unless by resolution adopted during the session upon the affirmative vote in each house of two-thirds of the members elected or appointed thereto, an additional purpose or purposes are expressed. The specification of purpose by the governor pursuant to Article III, section 7 of this Constitution shall be considered by the legislature but shall not be mandatory.

(3) Committees of the Legislature. Standing and special committees of the legislature shall meet and conduct official business pursuant to such rules as the legislature may adopt. [AMENDMENT 68, 1979 Substitute Senate Joint Resolution No. 110, p 2286. Approved November 6, 1979.]

Extraordinary sessions to reconsider vetoes: Art. 3 Section 12.

Sessions to convene on the second Monday in January: RCW 44.04.010.

Original text — Art. 2 Section 12 SESSIONS, WHEN — DURATION — *The first legislature shall meet on the first Wednesday after the first Monday in November, A. D., 1889. The second legislature shall meet on the first Wednesday after the first Monday in January, A. D., 1891, and sessions of the legislature shall be held biennially thereafter, unless specially convened by the governor, but the times of meeting of subsequent sessions may be changed by the legislature. After the first legislature the sessions shall not be more than sixty days.*

SECTION 13 LIMITATION ON MEMBERS HOLDING OFFICE IN THE STATE. No member of the legislature, during the term for which he is elected, shall be appointed or elected to any civil office in the state, which shall have been created during the term for which he was elected. Any member of the legislature who is appointed or elected to any civil office in the state, the emoluments of which have been increased during his legislative term of office, shall be compensated for the initial term of the civil office at the level designated prior to the increase in emoluments. [AMENDMENT 69, 1979 Senate Joint Resolution No. 112, p 2287. Approved November 6, 1979.]

Original text — Art 2 Section 13 LIMITATION ON MEMBERS HOLDING OFFICE IN THE STATE — *No member of the legislature, during the term for which he is elected, shall be appointed or elected to any civil office in the state, which shall have been created, or the emoluments of which shall have been increased, during the term for which he was elected.*

SECTION 14 SAME, FEDERAL OR OTHER OFFICE. No person, being a member of congress, or holding any civil or military office under the United States or any other power, shall be eligible to be a member of the legislature; and if any person after his election as a member of the legislature, shall be elected to congress or be appointed to any other office, civil or military, under the government of the United States, or any other power, his acceptance thereof shall vacate his seat, provided, that officers in the militia of the state who receive no annual salary, local officers and postmasters, whose compensation does not exceed three hundred dollars per annum, shall not be ineligible.

SECTION 15 VACANCIES IN LEGISLATURE AND IN PARTISAN COUNTY ELECTIVE OFFICE. Such vacancies as may occur in either house of the legislature or in any partisan county elective office shall be filled by appointment by the county legislative authority of the county in which the vacancy occurs: *Provided*, That the person appointed to fill the vacancy must be from the same legislative district, county, or county commissioner or council district and the same political party as the legislator or partisan county elective officer whose office has been vacated, and shall be one of three persons who shall be nominated by the county central committee of that party, and in case a majority of the members of the county legislative authority do not agree upon the appointment within sixty days after the vacancy occurs, the governor shall within thirty days thereafter, and from the list of nominees provided for herein, appoint a person who shall be from the same legislative district, county, or county commissioner or council district and of the same political party as the legislator or partisan county elective officer whose office has been vacated, and the person so appointed shall hold office until his or her successor is elected at the next general election, and has qualified: *Pro-*

vided, That in case of a vacancy occurring after the general election in a year that the office appears on the ballot and before the start of the next term, the term of the successor who is of the same party as the incumbent may commence once he or she has qualified and shall continue through the term for which he or she was elected: *Provided*, That in case of a vacancy occurring in the office of joint senator, or joint representative, the vacancy shall be filled from a list of three nominees selected by the state central committee, by appointment by the joint action of the boards of county legislative authorities of the counties composing the joint senatorial or joint representative district, the person appointed to fill the vacancy must be from the same legislative district and of the same political party as the legislator whose office has been vacated, and in case a majority of the members of the county legislative authority do not agree upon the appointment within sixty days after the vacancy occurs, the governor shall within thirty days thereafter, and from the list of nominees provided for herein, appoint a person who shall be from the same legislative district and of the same political party as the legislator whose office has been vacated. [AMENDMENT 96, 2003 House Joint Resolution No. 4206, p 2819. Approved November 4, 2003.]

Governmental continuity during emergency periods: Art. 2 Section 42.

Vacancies in county, etc., offices, how filled: Art. 11 Section 6.

Amendment 52, part (1967) — Art. 2 Section 15 VACANCIES IN LEGISLATURE AND IN PARTISAN COUNTY ELECTIVE OFFICE — *Such vacancies as may occur in either house of the legislature or in any partisan county elective office shall be filled by appointment by the board of county commissioners of the county in which the vacancy occurs: Provided, That the person appointed to fill the vacancy must be from the same legislative district, county or county commissioner district and the same political party as the legislator or partisan county elective officer whose office has been vacated, and shall be one of three persons who shall be nominated by the county central committee of that party, and in case a majority of said county commissioners do not agree upon the appointment within sixty days after the vacancy occurs, the governor shall within thirty days thereafter, and from the list of nominees provided for herein, appoint a person who shall be from the same legislative district, county or county commissioner district and of the same political party as the legislator or partisan county elective officer whose office has been vacated, and the person so appointed shall hold office until his successor is elected at the next general election, and shall have qualified: Provided, That in case of a vacancy occurring in the office of joint senator, or joint representative, the vacancy shall be filled from a list of three nominees selected by the state central committee, by appointment by the joint action of the boards of county commissioners of the counties composing the joint senatorial or joint representative district, the person appointed to fill the vacancy must be from the same legislative district and of the same political party as the legislator whose office has been vacated, and in case a majority of said county commissioners do not agree upon the appointment within sixty days after the vacancy occurs, the governor shall within thirty days thereafter, and from the list of nominees provided for herein, appoint a person who shall be from the same legislative district and of the same political party as the legislator whose office has been vacated. [AMENDMENT 52, part, 1967 Senate Joint Resolution No. 24, part; see 1969 p 2976. Approved November 5, 1968.]*

Amendment 32 (1956) — Art. 2 Section 15 VACANCIES IN LEGISLATURE AND IN PARTISAN COUNTY ELECTIVE OFFICE — *Such vacancies as may occur in either house of the legislature or in any partisan county elective office shall be filled by appointment by the board of county commissioners of the county in which the vacancy occurs: Provided, That the person appointed to fill the vacancy must be from the same legislative district and the same political party as the legislator whose office has been vacated, and shall be one of three persons who shall be nominated by the county central committee of that party, and the person so appointed shall hold office until his successor is elected at the next general election, and shall have qualified: Provided, That in case of a vacancy occurring in the*

office of joint senator, or joint representative, the vacancy shall be filled from a list of three nominees selected by the state central committee, by appointment by the joint action of the boards of county commissioners of the counties composing the joint senatorial or joint representative district, the person appointed to fill the vacancy must be from the same legislative district and of the same political party as the legislator whose office has been vacated, and in case a majority of said county commissioners do not agree upon the appointment within sixty days after the vacancy occurs, the governor shall within thirty days thereafter, and from the list of nominees provided for herein, appoint a person who shall be from the same legislative district and of the same political party as the legislator whose office has been vacated. [AMENDMENT 32, 1955 Senate Joint Resolution No. 14, p 1862. Approved November 6, 1956.]

Amendment 13 (1930) — Art. 2 Section 15 VACANCIES IN LEGISLATURE — Such vacancies as may occur in either house of the legislature shall be filled by appointment by the board of county commissioners of the county in which the vacancy occurs, and the person so appointed shall hold office until his successor is elected at the next general election, and shall have qualified: Provided, That in case of a vacancy occurring in the office of joint senator, the vacancy shall be filled by appointment by the joint action of the boards of county commissioners of the counties composing the joint senatorial district. [AMENDMENT 13, 1929 p 690. Approved November, 1930.]

Original text — Art. 2 Section 15 WRITS OF ELECTION TO FILL VACANCIES — The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislature.

SECTION 16 PRIVILEGES FROM ARREST. Members of the legislature shall be privileged from arrest in all cases except treason, felony and breach of the peace; they shall not be subject to any civil process during the session of the legislature, nor for fifteen days next before the commencement of each session.

SECTION 17 FREEDOM OF DEBATE. No member of the legislature shall be liable in any civil action or criminal prosecution whatever, for words spoken in debate.

SECTION 18 STYLE OF LAWS. The style of the laws of the state shall be: "Be it enacted by the Legislature of the State of Washington." And no laws shall be enacted except by bill.

SECTION 19 BILL TO CONTAIN ONE SUBJECT. No bill shall embrace more than one subject, and that shall be expressed in the title.

SECTION 20 ORIGIN AND AMENDMENT OF BILLS. Any bill may originate in either house of the legislature, and a bill passed by one house may be amended in the other.

SECTION 21 YEAS AND NAYS. The yeas and nays of the members of either house shall be entered on the journal, on the demand of one-sixth of the members present.

SECTION 22 PASSAGE OF BILLS. No bill shall become a law unless on its final passage the vote be taken by yeas and nays, the names of the members voting for and against the same be entered on the journal of each house, and a majority of the members elected to each house be recorded thereon as voting in its favor.

Governmental continuity during emergency periods: Art. 2 Section 42.

SECTION 23 COMPENSATION OF MEMBERS.

Each member of the legislature shall receive for his services five dollars for each day's attendance during the session, and ten cents for every mile he shall travel in going to and returning from the place of meeting of the legislature, on the most usual route.

Compensation of legislators, elected state officials, and judges: Art. 28 Section 1, Art. 30.

SECTION 24 LOTTERIES AND DIVORCE. The legislature shall never grant any divorce. Lotteries shall be prohibited except as specifically authorized upon the affirmative vote of sixty percent of the members of each house of the legislature or, notwithstanding any other provision of this Constitution, by referendum or initiative approved by a sixty percent affirmative vote of the electors voting thereon. [AMENDMENT 56, 1971 Senate Joint Resolution No. 5, p 1828. Approved November 7, 1972.]

Original text — Art. 2 Section 24 LOTTERIES AND DIVORCE — The legislature shall never authorize any lottery or grant any divorce.

SECTION 25 EXTRA COMPENSATION PROHIBITED. The legislature shall never grant any extra compensation to any public officer, agent, employee, servant, or contractor, after the services shall have been rendered, or the contract entered into, nor shall the compensation of any public officer be increased or diminished during his term of office. Nothing in this section shall be deemed to prevent increases in pensions after such pensions shall have been granted. [AMENDMENT 35, 1957 Senate Joint Resolution No. 18, p 1301. Approved November 4, 1958.]

Compensation of legislators, elected state officials, and judges: Art. 28 Section 1.

Increase during term of certain officers, authorized: Art. 30 Section 1.

Increase or diminution of compensation during term of office prohibited.

county, city, town or municipal officers: Art. 11 Section 8.

judicial officers: Art. 4 Section 13.

state officers: Art. 3 Section 25.

Original text — Art. 2 Section 25 EXTRA COMPENSATION, PROHIBITED — The legislature shall never grant any extra compensation to any public officer, agent, servant, or contractor, after the services shall have been rendered, or the contract entered into, nor shall the compensation of any public officer be increased or diminished during his term of office.

SECTION 26 SUITS AGAINST THE STATE. The legislature shall direct by law, in what manner, and in what courts, suits may be brought against the state.

SECTION 27 ELECTIONS — VIVA VOCE VOTE. In all elections by the legislature the members shall vote viva voce, and their votes shall be entered on the journal.

SECTION 28 SPECIAL LEGISLATION. The legislature is prohibited from enacting any private or special laws in the following cases:

1. For changing the names of persons, or constituting one person the heir at law of another.

2. For laying out, opening or altering highways, except in cases of state roads extending into more than one county, and

military roads to aid in the construction of which lands shall have been or may be granted by congress.

3. For authorizing persons to keep ferries wholly within this state.

4. For authorizing the sale or mortgage of real or personal property of minors, or others under disability.

5. For assessment or collection of taxes, or for extending the time for collection thereof.

6. For granting corporate powers or privileges.

7. For authorizing the apportionment of any part of the school fund.

8. For incorporating any town or village or to amend the charter thereof.

9. From giving effect to invalid deeds, wills or other instruments.

10. Releasing or extinguishing in whole or in part, the indebtedness, liability or other obligation, of any person, or corporation to this state, or to any municipal corporation therein.

11. Declaring any person of age or authorizing any minor to sell, lease, or encumber his or her property.

12. Legalizing, except as against the state, the unauthorised or invalid act of any officer.

13. Regulating the rates of interest on money.

14. Remitting fines, penalties or forfeitures.

15. Providing for the management of common schools.

16. Authorizing the adoption of children.

17. For limitation of civil or criminal actions.

18. Changing county lines, locating or changing county seats, provided, this shall not be construed to apply to the creation of new counties.

Corporations for municipal purposes shall not be created by special laws: Art. 11 Section 10.

SECTION 29 CONVICT LABOR. The labor of inmates of this state shall not be let out by contract to any person, copartnership, company, or corporation, except as provided by statute, and the legislature shall by law provide for the working of inmates for the benefit of the state, including the working of inmates in state-run inmate labor programs. Inmate labor programs provided by statute that are operated and managed, in total or in part, by any profit or nonprofit entities shall be operated so that the programs do not unfairly compete with Washington businesses as determined by law. [AMENDMENT 100, 2007 Senate Joint Resolution No. 8212, p 3143. Approved November 6, 2007.]

Original text — Art. 2 Section 29 CONVICT LABOR — After the first day of January eighteen hundred and ninety the labor of convicts of this state shall not be let out by contract to any person, copartnership, company or corporation, and the legislature shall by law provide for the working of convicts for the benefit of the state.

SECTION 30 BRIBERY OR CORRUPT SOLICITATION. The offense of corrupt solicitation of members of the legislature, or of public officers of the state or any municipal division thereof, and any occupation or practice of solicitation of such members or officers to influence their official action, shall be defined by law, and shall be punished by fine and imprisonment. Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with having committed the

offense of bribery or corrupt solicitation, or practice of solicitation, and shall not be permitted to withhold his testimony on the ground that it may criminate himself or subject him to public infamy, but such testimony shall not afterwards be used against him in any judicial proceeding - except for perjury in giving such testimony - and any person convicted of either of the offenses aforesaid, shall as part of the punishment therefor, be disqualified from ever holding any position of honor, trust or profit in this state. A member who has a private interest in any bill or measure proposed or pending before the legislature, shall disclose the fact to the house of which he is a member, and shall not vote thereon.

SECTION 31 LAWS, WHEN TO TAKE EFFECT. [This section stricken by AMENDMENT 7, 1911 House Bill No. 153, p 136. Approved November, 1912.]

Original text — Art. 2 Section 31 LAWS, WHEN TO TAKE EFFECT — No law, except appropriation bills, shall take effect until ninety days after the adjournment of the session at which it was enacted, unless in case of an emergency (which emergency must be expressed in the preamble or in the body of the act) the legislature shall otherwise direct by a vote of two-thirds of all the members elected to each house; said vote to be taken by yeas and nays and entered on the journals.

Effective dates of laws: Art. 2 Sections 1 and 41.

SECTION 32 LAWS, HOW SIGNED. No bill shall become a law until the same shall have been signed by the presiding officer of each of the two houses in open session, and under such rules as the legislature shall prescribe.

SECTION 33 ALIEN OWNERSHIP. [Repealed by AMENDMENT 42, 1965 ex.s. Senate Joint Resolution No. 20, p 2816. Approved November 8, 1966.]

Amendment 29 (1954) — Art. 2 Section 33 ALIEN OWNERSHIP — The ownership of lands by aliens, other than those who in good faith have declared their intention to become citizens of the United States, is prohibited in this state, except where acquired by inheritance, under mortgage or in good faith in the ordinary course of justice in the collection of debts; and all conveyances of lands hereafter made to any alien directly, or in trust for such alien, shall be void: Provided, That the provisions of this section shall not apply to lands containing valuable deposits of minerals, metals, iron, coal, or fire clay, and the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom: And provided further, That the provisions of this section shall not apply to the citizens of such of the Provinces of the Dominion of Canada as do not expressly or by implication prohibit ownership of provincial lands by citizens of this state. [AMENDMENT 29, 1953 House Joint Resolution No. 16, p 853. Approved November 2, 1954.]

Amendment 24 (1950) — Art. 2 Section 33 ALIEN OWNERSHIP — The ownership of lands by aliens, other than those who in good faith have declared their intention to become citizens of the United States, is prohibited in this state, except where acquired by inheritance, under mortgage or in good faith in the ordinary course of justice in the collection of debts; and all conveyances of lands hereafter made to any alien directly, or in trust for such alien, shall be void: Provided, That the provisions of this section shall not apply to lands containing valuable deposits of minerals, metals, iron, coal, or fire clay, and the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom: And provided further, That the provisions of this section shall not apply to the citizens of such of the Provinces of the Dominion of Canada as do not expressly or by implication prohibit ownership of provincial lands by citizens of this state. Every corporation, the majority of the capital stock of which is owned by aliens, shall be considered an alien for the purposes of this prohibition. [AMENDMENT 24, 1949 Senate Joint Resolution No. 9, p 999. Approved November, 1950.]

Original text — Art. 2 Section 33 OWNERSHIP OF LANDS BY ALIENS, PROHIBITED — Exceptions — *The ownership of lands by aliens, other than those who in good faith have declared their intention to become citizens of the United States, is prohibited in this state, except where acquired by inheritance, under mortgage or in good faith in the ordinary course of justice in the collection of debts; and all conveyances of lands hereafter made to any alien directly or in trust for such alien shall be void: Provided, That the provisions of this section shall not apply to lands containing valuable deposits of minerals, metals, iron, coal, or fire-clay, and the necessary land for mills and machinery to be used in the development thereof and the manufacture of the products therefrom. Every corporation, the majority of the capital stock of which is owned by aliens, shall be considered an alien for the purposes of this prohibition.*

SECTION 34 BUREAU OF STATISTICS, AGRICULTURE AND IMMIGRATION. There shall be established in the office of the secretary of state, a bureau of statistics, agriculture and immigration, under such regulations as the legislature may provide.

SECTION 35 PROTECTION OF EMPLOYEES. The legislature shall pass necessary laws for the protection of persons working in mines, factories and other employments dangerous to life or deleterious to health; and fix pains and penalties for the enforcement of the same.

SECTION 36 WHEN BILLS MUST BE INTRODUCED. No bill shall be considered in either house unless the time of its introduction shall have been at least ten days before the final adjournment of the legislature, unless the legislature shall otherwise direct by a vote of two-thirds of all the members elected to each house, said vote to be taken by yeas and nays and entered upon the journal, or unless the same be at a special session.

SECTION 37 REVISION OR AMENDMENT. No act shall ever be revised or amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length.

SECTION 38 LIMITATION ON AMENDMENTS. No amendment to any bill shall be allowed which shall change the scope and object of the bill.

SECTION 39 FREE TRANSPORTATION TO PUBLIC OFFICER PROHIBITED. It shall not be lawful for any person holding public office in this state to accept or use a pass or to purchase transportation from any railroad or other corporation, other than as the same may be purchased by the general public, and the legislature shall pass laws to enforce this provision.

SECTION 40 HIGHWAY FUNDS. All fees collected by the State of Washington as license fees for motor vehicles and all excise taxes collected by the State of Washington on the sale, distribution or use of motor vehicle fuel and all other state revenue intended to be used for highway purposes, shall be paid into the state treasury and placed in a special fund to be used exclusively for highway purposes. Such highway purposes shall be construed to include the following:

(a) The necessary operating, engineering and legal expenses connected with the administration of public highways, county roads and city streets;

(b) The construction, reconstruction, maintenance, repair, and betterment of public highways, county roads, bridges and city streets; including the cost and expense of (1) acquisition of rights-of-way, (2) installing, maintaining and operating traffic signs and signal lights, (3) policing by the state of public highways, (4) operation of movable span bridges, (5) operation of ferries which are a part of any public highway, county road, or city street;

(c) The payment or refunding of any obligation of the State of Washington, or any political subdivision thereof, for which any of the revenues described in section 1 may have been legally pledged prior to the effective date of this act;

(d) Refunds authorized by law for taxes paid on motor vehicle fuels;

(e) The cost of collection of any revenues described in this section:

Provided, That this section shall not be construed to include revenue from general or special taxes or excises not levied primarily for highway purposes, or apply to vehicle operator's license fees or any excise tax imposed on motor vehicles or the use thereof in lieu of a property tax thereon, or fees for certificates of ownership of motor vehicles. [AMENDMENT 18, 1943 House Joint Resolution No. 4, p 938. Approved November, 1944.]

SECTION 41 LAWS, EFFECTIVE DATE, INITIATIVE, REFERENDUM — AMENDMENT OR REPEAL. No act, law, or bill subject to referendum shall take effect until ninety days after the adjournment of the session at which it was enacted. No act, law or bill approved by a majority of the electors voting thereon shall be amended or repealed by the legislature within a period of two years following such enactment: *Provided,* That any such act, law or bill may be amended within two years after such enactment at any regular or special session of the legislature by a vote of two-thirds of all the members elected to each house with full compliance with section 12, Article III, of the Washington Constitution, and no amendatory law adopted in accordance with this provision shall be subject to referendum. But such enactment may be amended or repealed at any general regular or special election by direct vote of the people thereon. These provisions supersede the provisions of subsection (c) of section 1 of this article as amended by the seventh amendment to the Constitution of this state. [AMENDMENT 26, 1951 Substitute Senate Joint Resolution No. 7, p 959. Approved November 4, 1952.]

Reviser's note: (1) In third sentence, comma between "general" and "regular" omitted in conformity with enrolled resolution.

(2) Subsection (c) of section 1 of this article was amended by Amendment 72, approved November 3, 1981.

SECTION 42 GOVERNMENTAL CONTINUITY DURING EMERGENCY PERIODS. The legislature, in order to insure continuity of state and local governmental operations in periods of emergency resulting from enemy attack, shall have the power and the duty, immediately upon and after adoption of this amendment, to enact legislation

providing for prompt and temporary succession to the powers and duties of public offices of whatever nature and whether filled by election or appointment, the incumbents and legal successors of which may become unavailable for carrying on the powers and duties of such offices; the legislature shall likewise enact such other measures as may be necessary and proper for insuring the continuity of governmental operations during such emergencies. Legislation enacted under the powers conferred by this amendment shall in all respects conform to the remainder of the Constitution: *Provided*, That if, in the judgment of the legislature at the time of disaster, conformance to the provisions of the Constitution would be impracticable or would admit of undue delay, such legislation may depart during the period of emergency caused by enemy attack only, from the following sections of the Constitution:

Article 14, Sections 1 and 2, Seat of Government;

Article 2, Sections 8, 15 (Amendments 13 and 32), and 22, Membership, Quorum of Legislature and Passage of Bills;

Article 3, Section 10 (Amendment 6), Succession to Governorship: *Provided*, That the legislature shall not depart from Section 10, Article III, as amended by Amendment 6, of the state Constitution relating to the Governor's office so long as any successor therein named is available and capable of assuming the powers and duties of such office as therein prescribed;

Article 3, Section 13, Vacancies in State Offices;

Article 11, Section 6, Vacancies in County Offices;

Article 11, Section 2, Seat of County Government;

Article 3, Section 24, State Records. [AMENDMENT 39, 1961 House Joint Resolution No. 9, p 2758. Approved November, 1962.]

Continuity of government act: Chapter 42.14 RCW.

SECTION 43 REDISTRICTING. (1) In January of each year ending in one, a commission shall be established to provide for the redistricting of state legislative and congressional districts.

(2) The commission shall be composed of five members to be selected as follows: The legislative leader of the two largest political parties in each house of the legislature shall appoint one voting member to the commission by January 15th of each year ending in one. By January 31st of each year ending in one, the four appointed members, by an affirmative vote of at least three, shall appoint the remaining member. The fifth member of the commission, who shall be nonvoting, shall act as its chairperson. If any appointing authority fails to make the required appointment by the date established by this subsection, within five days after that date the supreme court shall make the required appointment.

(3) No elected official and no person elected to legislative district, county, or state political party office may serve on the commission. A commission member shall not have been an elected official and shall not have been an elected legislative district, county, or state political party officer within two years of his or her appointment to the commission. The provisions of this subsection do not apply to the office of precinct committee person.

(4) The legislature shall enact laws providing for the implementation of this section, to include additional quali-

cations for commissioners and additional standards to govern the commission. The legislature shall appropriate funds to enable the commission to carry out its duties.

(5) Each district shall contain a population, excluding nonresident military personnel, as nearly equal as practicable to the population of any other district. To the extent reasonable, each district shall contain contiguous territory, shall be compact and convenient, and shall be separated from adjoining districts by natural geographic barriers, artificial barriers, or political subdivision boundaries. The commission's plan shall not provide for a number of legislative districts different than that established by the legislature. The commission's plan shall not be drawn purposely to favor or discriminate against any political party or group.

(6) The commission shall complete redistricting as soon as possible following the federal decennial census, but no later than January 1st of each year ending in two. At least three of the voting members shall approve such a redistricting plan. If three of the voting members of the commission fail to approve a plan within the time limitations provided in this subsection, the supreme court shall adopt a plan by April 30th of the year ending in two in conformance with the standards set forth in subsection (5) of this section.

(7) The legislature may amend the redistricting plan but must do so by a two-thirds vote of the legislators elected or appointed to each house of the legislature. Any amendment must have passed both houses by the end of the thirtieth day of the first session convened after the commission has submitted its plan to the legislature. After that day, the plan, with any legislative amendments, constitutes the state districting law.

(8) The legislature shall enact laws providing for the reconvening of a commission for the purpose of modifying a districting law adopted under this section. Such reconvening requires a two-thirds vote of the legislators elected or appointed to each house of the legislature. The commission shall conform to the standards prescribed under subsection (5) of this section and any other standards or procedures that the legislature may provide by law. At least three of the voting members shall approve such a modification. Any modification adopted by the commission may be amended by a two-thirds vote of the legislators elected and appointed to each house of the legislature. The state districting law shall include the modifications with amendments, if any.

(9) The legislature shall prescribe by law the terms of commission members and the method of filling vacancies on the commission.

(10) The supreme court has original jurisdiction to hear and decide all cases involving congressional and legislative redistricting.

(11) Legislative and congressional districts may not be changed or established except pursuant to this section. A districting plan and any legislative amendments to the plan are not subject to Article III, section 12 of this Constitution. [AMENDMENT 74, 1983 Substitute Senate Joint Resolution No. 103, p 2202. Approved November 8, 1983.]

APPENDIX 6

U.S. Code › Title 11 › Chapter 1 › § 108

11 U.S. Code § 108 - Extension of time

(a) If applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor may commence an action, and such period has not expired before the date of the filing of the petition, the trustee may commence such action only before the later of—

- (1)** the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
- (2)** two years after the order for relief.

(b) Except as provided in subsection (a) of this section, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period within which the debtor or an individual protected under section 1201 or 1301 of this title may file any pleading, demand, notice, or proof of claim or loss, cure a default, or perform any other similar act, and such period has not expired before the date of the filing of the petition, the trustee may only file, cure, or perform, as the case may be, before the later of—

- (1)** the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
- (2)** 60 days after the order for relief.

(c) Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of—

- (1)** the end of such period, including any suspension of such period occurring on or after the commencement of the case; or
- (2)** 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2556; Pub. L. 98–353, title III, § 424, July 10, 1984, 98 Stat. 369; Pub. L. 99–554, title II, § 257(b), Oct. 27, 1986, 100 Stat. 3114; Pub. L. 109–8, title XII, § 1203, Apr. 20, 2005, 119 Stat. 193.)

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APPENDIX 7

TITLE 11 - BANKRUPTCY
CHAPTER 3 - CASE ADMINISTRATION
SUBCHAPTER IV - ADMINISTRATIVE POWERS

§ 362. Automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

- (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
- (2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
- (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
- (4) any act to create, perfect, or enforce any lien against property of the estate;
- (5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
- (6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
- (7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and
- (8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

- (1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;
- (2) under subsection (a)—
 - (A) of the commencement or continuation of a civil action or proceeding—
 - (i) for the establishment of paternity;
 - (ii) for the establishment or modification of an order for domestic support obligations;
 - (iii) concerning child custody or visitation;
 - (iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or
 - (v) regarding domestic violence;
 - (B) of the collection of a domestic support obligation from property that is not property of the estate;
 - (C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;
 - (D) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;

- (E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;
 - (F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or
 - (G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;
- (3) under subsection (a) of this section, of any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546 (b) of this title or to the extent that such act is accomplished within the period provided under section 547 (e)(2)(A) of this title;
- (4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993, to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power;
- [(5) Repealed. Pub. L. 105-277, div. I, title VI, § 603(1), Oct. 21, 1998, 112 Stat. 2681-866;]
- (6) under subsection (a) of this section, of the exercise by a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency of any contractual right (as defined in section 555 or 556) under any security agreement or arrangement or other credit enhancement forming a part of or related to any commodity contract, forward contract or securities contract, or of any contractual right (as defined in section 555 or 556) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such contracts, including any master agreement for such contracts;
- (7) under subsection (a) of this section, of the exercise by a repo participant or financial participant of any contractual right (as defined in section 559) under any security agreement or arrangement or other credit enhancement forming a part of or related to any repurchase agreement, or of any contractual right (as defined in section 559) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;
- (8) under subsection (a) of this section, of the commencement of any action by the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units;
- (9) under subsection (a), of—
- (A) an audit by a governmental unit to determine tax liability;
 - (B) the issuance to the debtor by a governmental unit of a notice of tax deficiency;
 - (C) a demand for tax returns; or
 - (D) the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment (but any tax lien that would otherwise attach to property of the estate by reason of such an assessment shall not take effect unless such tax is a debt of the debtor that will not be discharged in the case and such property or its proceeds are transferred out of the estate to, or otherwise revested in, the debtor).

- (10) under subsection (a) of this section, of any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property;
- (11) under subsection (a) of this section, of the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument;
- (12) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Transportation under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage, or a security interest in or relating to a vessel or vessel under construction, held by the Secretary of Transportation under chapter 537 of title 46 or section 109 (h) of title 49, or under applicable State law;
- (13) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Commerce under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage in a vessel or a mortgage, deed of trust, or other security interest in a fishing facility held by the Secretary of Commerce under chapter 537 of title 46;
- (14) under subsection (a) of this section, of any action by an accrediting agency regarding the accreditation status of the debtor as an educational institution;
- (15) under subsection (a) of this section, of any action by a State licensing body regarding the licensure of the debtor as an educational institution;
- (16) under subsection (a) of this section, of any action by a guaranty agency, as defined in section 435(j) of the Higher Education Act of 1965 or the Secretary of Education regarding the eligibility of the debtor to participate in programs authorized under such Act;
- (17) under subsection (a) of this section, of the exercise by a swap participant or financial participant of any contractual right (as defined in section 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any swap agreement, or of any contractual right (as defined in section 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;
- (18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition;
- (19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer—
- (A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or is subject to section 72(p) of the Internal Revenue Code of 1986; or
- (B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;
- but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414 (d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title;

- (20) under subsection (a), of any act to enforce any lien against or security interest in real property following entry of the order under subsection (d)(4) as to such real property in any prior case under this title, for a period of 2 years after the date of the entry of such an order, except that the debtor, in a subsequent case under this title, may move for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing;
- (21) under subsection (a), of any act to enforce any lien against or security interest in real property—
- (A) if the debtor is ineligible under section 109 (g) to be a debtor in a case under this title; or
 - (B) if the case under this title was filed in violation of a bankruptcy court order in a prior case under this title prohibiting the debtor from being a debtor in another case under this title;
- (22) subject to subsection (l), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor;
- (23) subject to subsection (m), under subsection (a)(3), of an eviction action that seeks possession of the residential property in which the debtor resides as a tenant under a lease or rental agreement based on endangerment of such property or the illegal use of controlled substances on such property, but only if the lessor files with the court, and serves upon the debtor, a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of the filing of the certification, has endangered property or illegally used or allowed to be used a controlled substance on the property;
- (24) under subsection (a), of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;
- (25) under subsection (a), of—
- (A) the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization’s regulatory power;
 - (B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by such securities self regulatory organization to enforce such organization’s regulatory power; or
 - (C) any act taken by such securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements;
- (26) under subsection (a), of the setoff under applicable nonbankruptcy law of an income tax refund, by a governmental unit, with respect to a taxable period that ended before the date of the order for relief against an income tax liability for a taxable period that also ended before the date of the order for relief, except that in any case in which the setoff of an income tax refund is not permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action, unless the court, on the motion of the trustee and after notice and a hearing, grants the taxing authority adequate protection (within the meaning of section 361) for the secured claim of such authority in the setoff under section 506 (a);
- (27) under subsection (a) of this section, of the exercise by a master netting agreement participant of any contractual right (as defined in section 555, 556, 559, or 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any master netting agreement, or of any contractual right (as defined in section 555, 556, 559, or 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such master netting agreements to the extent that such participant is eligible to exercise such rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue; and

(28) under subsection (a), of the exclusion by the Secretary of Health and Human Services of the debtor from participation in the medicare program or any other Federal health care program (as defined in section 1128B(f) of the Social Security Act pursuant to title XI or XVIII of such Act). The provisions of paragraphs (12) and (13) of this subsection shall apply with respect to any such petition filed on or before December 31, 1989.

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707 (b)—

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) as to all creditors, if—

(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to—

(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

(bb) provide adequate protection as ordered by the court; or

(cc) perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—

(aa) if a case under chapter 7, with a discharge; or

(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; and

- (4) (A) (i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707 (b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and
- (ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;
- (B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;
- (C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect; and
- (D) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—
- (i) as to all creditors if—
- (I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;
- (II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor’s attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or
- (III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or
- (ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.
- (d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—
- (1) for cause, including the lack of adequate protection of an interest in property of such party in interest;
- (2) with respect to a stay of an act against property under subsection (a) of this section, if—
- (A) the debtor does not have an equity in such property; and
- (B) such property is not necessary to an effective reorganization;
- (3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later—



- (A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or
- (B) the debtor has commenced monthly payments that—
 - (i) may, in the debtor’s sole discretion, notwithstanding section 363 (c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and
 - (ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor’s interest in the real estate; or
- (4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either—
 - (A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or
 - (B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.
- (e)
 - (1) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances.
 - (2) Notwithstanding paragraph (1), in a case under chapter 7, 11, or 13 in which the debtor is an individual, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—
 - (A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or
 - (B) such 60-day period is extended—
 - (i) by agreement of all parties in interest; or
 - (ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.
 - (f) Upon request of a party in interest, the court, with or without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (d) or (e) of this section.

- (g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—
- (1) the party requesting such relief has the burden of proof on the issue of the debtor’s equity in property; and
 - (2) the party opposing such relief has the burden of proof on all other issues.
- (h) (1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521 (a)(2)—
- (A) to file timely any statement of intention required under section 521 (a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524 (c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365 (p) if the trustee does not do so, as applicable; and
 - (B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor’s intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.
- (2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521 (a)(2), after notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor’s interest, and orders the debtor to deliver any collateral in the debtor’s possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion.
- (i) If a case commenced under chapter 7, 11, or 13 is dismissed due to the creation of a debt repayment plan, for purposes of subsection (c)(3), any subsequent case commenced by the debtor under any such chapter shall not be presumed to be filed not in good faith.
- (j) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.
- (k) (1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys’ fees, and, in appropriate circumstances, may recover punitive damages.
- (2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.
- (l) (1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that—
- (A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and
 - (B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.
- (2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of

the debtor) has cured, under nonbankruptcy law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

- (3) (A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.
- (B) If the court upholds the objection of the lessor filed under subparagraph (A)—
- (i) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and
 - (ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court’s order upholding the lessor’s objection.
- (4) If a debtor, in accordance with paragraph (5), indicates on the petition that there was a judgment for possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2)—
- (A) subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and
 - (B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).
- (5) (A) Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name and address of the lessor that obtained that pre-petition judgment on the petition and on any certification filed under this subsection.
- (B) The form of certification filed with the petition, as specified in this subsection, shall provide for the debtor to certify, and the debtor shall certify—
- (i) whether a judgment for possession of residential rental housing in which the debtor resides has been obtained against the debtor before the date of the filing of the petition; and
 - (ii) whether the debtor is claiming under paragraph (1) that under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment of possession was entered, and has made the appropriate deposit with the court.
- (C) The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended to reflect the requirements of this subsection.
- (D) The clerk of the court shall arrange for the prompt transmittal of the rent deposited in accordance with paragraph (1)(B) to the lessor.
- (m) (1) Except as otherwise provided in this subsection, subsection (b)(23) shall apply on the date that is 15 days after the date on which the lessor files and serves a certification described in subsection (b)(23).
- (2) (A) If the debtor files with the court an objection to the truth or legal sufficiency of the certification described in subsection (b)(23) and serves such objection upon the lessor, subsection (b)(23) shall not apply, unless ordered to apply by the court under this subsection.

- (B)** If the debtor files and serves the objection under subparagraph (A), the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the situation giving rise to the lessor’s certification under paragraph (1) existed or has been remedied.
- (C)** If the debtor can demonstrate to the satisfaction of the court that the situation giving rise to the lessor’s certification under paragraph (1) did not exist or has been remedied, the stay provided under subsection (a)(3) shall remain in effect until the termination of the stay under this section.
- (D)** If the debtor cannot demonstrate to the satisfaction of the court that the situation giving rise to the lessor’s certification under paragraph (1) did not exist or has been remedied—
 - (i)** relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to proceed with the eviction; and
 - (ii)** the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court’s order upholding the lessor’s certification.
- (3)** If the debtor fails to file, within 15 days, an objection under paragraph (2)(A)—
 - (A)** subsection (b)(23) shall apply immediately upon such failure and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and
 - (B)** the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating such failure.
- (n)** **(1)** Except as provided in paragraph (2), subsection (a) does not apply in a case in which the debtor—
 - (A)** is a debtor in a small business case pending at the time the petition is filed;
 - (B)** was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;
 - (C)** was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or
 - (D)** is an entity that has acquired substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C), unless such entity establishes by a preponderance of the evidence that such entity acquired substantially all of the assets or business of such small business debtor in good faith and not for the purpose of evading this paragraph.
- (2)** Paragraph (1) does not apply—
 - (A)** to an involuntary case involving no collusion by the debtor with creditors; or
 - (B)** to the filing of a petition if—
 - (i)** the debtor proves by a preponderance of the evidence that the filing of the petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and
 - (ii)** it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.
- (o)** The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (27) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.

(Pub. L. 95–598, Nov. 6, 1978, 92 Stat. 2570; Pub. L. 97–222, § 3, July 27, 1982, 96 Stat. 235; Pub. L. 98–353, title III, §§ 304, 363 (b), 392, 441, July 10, 1984, 98 Stat. 352, 363, 365, 371; Pub. L. 99–509, title V, § 5001(a), Oct. 21, 1986, 100 Stat. 1911; Pub. L. 99–554, title II, §§ 257(j), 283 (d), Oct. 27, 1986, 100 Stat. 3115, 3116; Pub. L. 101–311, title I, § 102, title II, § 202, June 25, 1990, 104 Stat. 267, 269; Pub. L. 101–508, title III, § 3007(a)(1), Nov. 5, 1990, 104 Stat. 1388–28; Pub. L. 103–394, title I, §§ 101,

NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscpri.html>).

116, title II, §§ 204(a), 218 (b), title III, § 304(b), title IV, § 401, title V, § 501(b)(2), (d)(7), Oct. 22, 1994, 108 Stat. 4107, 4119, 4122, 4128, 4132, 4141, 4142, 4144; Pub. L. 105–277, div. I, title VI, § 603, Oct. 21, 1998, 112 Stat. 2681–886; Pub. L. 109–8, title I, § 106(f), title II, §§ 214, 224 (b), title III, §§ 302, 303, 305 (1), 311, 320, title IV, §§ 401(b), 441, 444, title VII, §§ 709, 718, title IX, § 907(d), (o)(1), (2), title XI, § 1106, title XII, § 1225, Apr. 20, 2005, 119 Stat. 41, 54, 64, 75, 77, 79, 84, 94, 104, 114, 117, 127, 131, 176, 181, 182, 192, 199; Pub. L. 109–304, § 17(b)(1), Oct. 6, 2006, 120 Stat. 1706; Pub. L. 109–390, § 5(a)(2), Dec. 12, 2006, 120 Stat. 2696; Pub. L. 111–327, § 2(a)(12), Dec. 22, 2010, 124 Stat. 3558.)



APPENDIX 8

RCW 4.16.170**Tolling of statute—Actions, when deemed commenced or not commenced.**

For the purpose of tolling any statute of limitations an action shall be deemed commenced when the complaint is filed or summons is served whichever occurs first. If service has not been had on the defendant prior to the filing of the complaint, the plaintiff shall cause one or more of the defendants to be served personally, or commence service by publication within ninety days from the date of filing the complaint. If the action is commenced by service on one or more of the defendants or by publication, the plaintiff shall file the summons and complaint within ninety days from the date of service. If following service, the complaint is not so filed, or following filing, service is not so made, the action shall be deemed to not have been commenced for purposes of tolling the statute of limitations.

[**1971 ex.s. c 131 § 1**; **1955 c 43 § 3**. Prior: **1903 c 24 § 1**; Code 1881 § 35; **1873 p 10 § 35**; **1869 p 10 § 35**; RRS § 167, part.]

APPENDIX 9

RCW 4.16.230**Statute tolled by judicial proceedings.**

When the commencement of an action is stayed by injunction or a statutory prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time limited for the commencement of the action.

[Code 1881 § 40; 1877 p 10 § 41; 1854 p 365 § 14; RRS § 172.]

APPENDIX 10

RCW 7.28.300**Quieting title against outlawed mortgage or deed of trust.**

The record owner of real estate may maintain an action to quiet title against the lien of a mortgage or deed of trust on the real estate where an action to foreclose such mortgage or deed of trust would be barred by the statute of limitations, and, upon proof sufficient to satisfy the court, may have judgment quieting title against such a lien.

[**1998 c 295 § 17**; **1937 c 124 § 1**; RRS § 785-1.]

NOTES:

*Limitation of actions, generally: Chapter **4.16** RCW.*

*Real estate mortgages, foreclosure: Chapter **61.12** RCW.*

APPENDIX 11

RCW 61.12.120**Concurrent actions prohibited.**

The plaintiff shall not proceed to foreclose his or her mortgage while he or she is prosecuting any other action for the same debt or matter which is secured by the mortgage, or while he or she is seeking to obtain execution of any judgment in such other action; nor shall he or she prosecute any other action for the same matter while he or she is foreclosing his or her mortgage or prosecuting a judgment of foreclosure.

[**2012 c 117 § 164**; Code 1881 § 614; **1877 p 128 § 619**; **1869 p 146 § 568**; **1854 p 208 § 413**; RRS § 1125.]

APPENDIX 12

RCW 61.24.130

Restraint of sale by trustee—Conditions—Notice.

(1) Nothing contained in this chapter shall prejudice the right of the borrower, grantor, any guarantor, or any person who has an interest in, lien, or claim of lien against the property or some part thereof, to restrain, on any proper legal or equitable ground, a trustee's sale. The court shall require as a condition of granting the restraining order or injunction that the applicant pay to the clerk of the court the sums that would be due on the obligation secured by the deed of trust if the deed of trust was not being foreclosed:

(a) In the case of default in making the periodic payment of principal, interest, and reserves, such sums shall be the periodic payment of principal, interest, and reserves paid to the clerk of the court every thirty days.

(b) In the case of default in making payment of an obligation then fully payable by its terms, such sums shall be the amount of interest accruing monthly on said obligation at the nondefault rate, paid to the clerk of the court every thirty days.

In the case of default in performance of any nonmonetary obligation secured by the deed of trust, the court shall impose such conditions as it deems just.

In addition, the court may condition granting the restraining order or injunction upon the giving of security by the applicant, in such form and amount as the court deems proper, for the payment of such costs and damages, including attorneys' fees, as may be later found by the court to have been incurred or suffered by any party by reason of the restraining order or injunction. The court may consider, upon proper showing, the grantor's equity in the property in determining the amount of said security.

(2) No court may grant a restraining order or injunction to restrain a trustee's sale unless the person seeking the restraint gives five days notice to the trustee of the time when, place where, and the judge before whom the application for the restraining order or injunction is to be made. This notice shall include copies of all pleadings and related documents to be given to the judge. No judge may act upon such application unless it is accompanied by proof, evidenced by return of a sheriff, the sheriff's deputy, or by any person eighteen years of age or over who is competent to be a witness, that the notice has been served on the trustee.

(3) If the restraining order or injunction is dissolved after the date of the trustee's sale set forth in the notice as provided in RCW 61.24.040(1)(f), the court granting such restraining order or injunction, or before whom the order or injunction is returnable, shall, at the request of the trustee, set a new sale date which shall be not less than forty-five days from the date of the order dissolving the restraining order. The trustee shall:

(a) Comply with the requirements of RCW 61.24.040(1) (a) through (f) at least thirty days before the new sale date; and

(b) Cause a copy of the notice of trustee's sale as provided in RCW 61.24.040(1)(f) to be published in a legal newspaper in each county in which the property or any part thereof is situated once between the thirty-fifth and twenty-eighth day before the sale and once between the fourteenth and seventh day before the sale.

(4) If a trustee's sale has been stayed as a result of the filing of a petition in federal bankruptcy court and an order is entered in federal bankruptcy court granting relief from the stay or closing or dismissing the case, or discharging the debtor with the effect of removing the stay, the trustee may set a new sale date which shall not be less than forty-five days after the date of the bankruptcy court's order. The trustee shall:

(a) Comply with the requirements of RCW 61.24.040(1) (a) through (f) at least thirty days before the new sale date; and

(b) Cause a copy of the notice of trustee's sale as provided in RCW 61.24.040(1)(f) to be published in a legal newspaper in each county in which the property or any part thereof is situated, once between the thirty-fifth and twenty-eighth day before the sale and once between the fourteenth and seventh day before the sale.

(5) Subsections (3) and (4) of this section are permissive only and do not prohibit the trustee from proceeding with a trustee's sale following termination of any injunction or stay on any date to which such sale has been properly continued in accordance with RCW **61.24.040(6)**.

(6) The issuance of a restraining order or injunction shall not prohibit the trustee from continuing the sale as provided in RCW **61.24.040(6)**.

[**2008 c 153 § 5; 1998 c 295 § 14; 1987 c 352 § 5; 1981 c 161 § 8; 1975 1st ex.s. c 129 § 6; 1965 c 74 § 13.**]

APPENDIX 13



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Superior Court Civil Rules

RULE 2 ONE FORM OF ACTION

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Superior Court Civil Rules

RULE 3 COMMENCEMENT OF ACTION

(a) Methods. Except as provided in rule 4.1, a civil action is commenced by service of a copy of a summons together with a copy of a complaint, as provided in rule 4 or by filing a complaint. Upon written demand by any other party, the plaintiff instituting the action shall pay the filing fee and file the summons and complaint within 14 days after service of the demand or the service shall be void. An action shall not be deemed commenced for the purpose of tolling any statute of limitations except as provided in RCW 4.16.170.

(b) Tolling Statute. (Reserved. See RCW 4.16.170.)

(c) Obtaining Jurisdiction. (Reserved. See RCW 4.28.020.)

(d) Lis Pendens. (Reserved. See RCW 4.28.320 and 4.28.160.)

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Transmittal Information

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Appellate Court Case Number: 75665-6
Appellate Court Case Title: Michelle Merceri, Respondent v. Deutsche Bank AG a/k/a , et al., Petitioner
Superior Court Case Number: 15-2-28838-5

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