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COURT OF APPEALS

THE STATE OF WASHINGTON DIVISION I

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Viewcrest Condominium Association,

Plaintiff/Respondent

v.

Brenda L. Robertson,

Defendant/Appellant.

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**RESPONDENT VIEWCREST CONDOMINIUM  
ASSOCIATION'S AMENDED OPENING BRIEF**

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Veronica A. Galvan

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## I. INTRODUCTION

The case before the Court presents a critical issue the determination of which will affect condominium associations' rights as a community and their ability to collect assessments from unit owners necessary for the basic operation and survival of such associations. The fundamental issue before the Court is whether a unit owner after the foreclosure of such owner's condominium unit judicially, may remain in that unit post sheriff sale during the redemption period, without paying to the association the fair market value rent for occupancy. Associations have been seeking rent and/or occupancy post sheriff sale during the Great Recession as a means of recouping losses when Lenders have delayed pursuing foreclosure. Bankrupt or assetless owners have been occupying these properties pending delayed bank foreclosures without paying assessments, essentially creating "dead properties".

As the Association's interest is inferior to the Lender's mortgage (after the payment of the six (6) month super priority lien), the only effective tool for the Association to recover the delinquency owed is to pursue a sheriff sale and thereafter rent the unit until the Lender finally forecloses. The authority to do so is granted under RCW 64.34.364(2)

wherein the Legislature determined that RCW 6.13 and the homestead created therein do not apply to condominiums and, therefore the Association is entitled to rents and profits during the redemption period under RCW 6.23.110(1).

RCW 64.34.005 clarifies the legislative intent for the Washington State Condominium Act RCW 64.34 et seq. It states

- “1. The Legislature finds, declares, and determines that:
- (a) Washington’s Cities and Counties under the Growth Management Act are required to encourage urban growth and urban growth areas at densities that accommodate 20-year growth projections;
  - (b) The Growth Management Act’s planning goals include encouraging the availability of affordable housing for all residence of the state and promoting a variety of housing types;
  - (c) Quality condominium construction needs to be encouraged to achieve Growth Management Act mandated urban densities and to encourage that residents of the State, particular in urban growth areas have a broad range of ownership choices...”

In order for associations to function, certain costs of the association are uniformly shared among condominium owners. By way of illustration, sewer and water costs are billed to the association directly and not separately metered to each of the unit owners. Such costs are then incorporated into the operational budget and allocated to the individual owners by way of assessments, payable to the association.

If unit owners post foreclosure are allowed to remain in their unit

during the redemption period, the other unit owners have to pay for these operational costs in order to maintain the functioning of the association. At some point the associations can no longer function without the shared contribution. This problem fundamentally interferes with the aforesaid legislative intent. Accordingly, in promulgating the Condominium Act (RCW 64.34 et. seq.) the Legislature determined that all of the provisions of Chapter RCW 6.13 (the Homestead Act), do not apply to the association's lien, thereby allowing the association to recoup lost assessments by renting units post foreclosure. In so doing, the Legislature broadened the rights of the association from those set forth in RCW 64.32.200(2) and eliminated the right to claim a homestead in a condominium unit. Without the right to claim a homestead under RCW 6.13.010, RCW 6.23.110(4) allowing an owner, post foreclosure, to remain at the homestead without payment of rent during the redemption period is inapplicable.

## **II. ISSUES PERTAINING TO ASSIGNMENT OF ERROR**

- A. Whether the Court should ignore the clear and unambiguous language of RCW 64.34.364(2) and rule that, notwithstanding such section stating that the provisions of Chapter 6.13 do not apply to the association's lien, the homestead as created by RCW 6.13.010 applies

to condominium units?

- B. Whether the Legislature's decision to broaden the rights of the association formerly incorporated within RCW 64.32.200(2) within the new RCW 64.34.364(2) supports the clear intent of the Legislature to eliminate an owner's right to claim a homestead in a condominium unit?
- C. Whether RCW 6.13.010 creates the right of a homestead, and without which there is no homestead or is the reference to "homestead" within such statute merely definitional?
- D. Whether RCW 6.23.110(4) stands alone separate and apart from the Homestead Act (RCW 6.13 et seq) and allows an owner to remain in a condominium unit during the redemption period without payment of rent to the purchaser, notwithstanding such owner's inability to claim a right to a homestead in such unit under RCW 64.34.364(2)?
- E. Whether the Trial Court's decision to make no formal ruling as to the admissibility of the Declaration of James Strichartz forms the basis of any claim of reversible error; particularly since the Court's ruling showed no reliance upon such Declaration?

### III. STATEMENT OF CASE

On August 29, 2012, Respondent Viewcrest Condominium Association (“Viewcrest”) took a judgment against Appellant Brenda Robertson for past due condominium association assessments. *CP 61-65*. The delinquency began in October, 2008, and resulted in a judgment amount of \$10,878.58. *CP 61*. Ms. Robertson failed to pay any post-judgment assessments which had accrued to the date of the sheriff’s sale in the amount of \$7,112.49 and failed to make any payment arrangements with Viewcrest. *CP 57*. At all times material hereto the amount of the monthly assessment for Ms. Robertson’s unit was \$185. *CP 57*. Viewcrest did not proceed with a sheriff’s sale until June 12, 2015, as a result of Ms. Robertson’s utilization of bankruptcy laws and her filing of multiple bankruptcies. *CP 10 and CP 57*. Viewcrest was the successful purchaser at the sheriff’s sale. *CP 10*.

Viewcrest offered to allow Ms. Robertson to remain in her unit during the redemption period in exchange for fair market rent, which after application to post sheriff sale costs and assessments would function as a credit toward her redemption of the property. *CP 57*. However, she failed to respond to Viewcrest’s offer. Until vacating Ms. Robertson had essentially resided in her unit without paying her mortgage and condominium assessments since October 2008. *CP 57*.

Viewcrest filed a motion requesting the Court to issue a writ of assistance to remove her from the unit after receiving no response about renting. *CP 147-153*. The basis of Viewcrest's motion was that a homestead cannot be created in a condominium as RCW 64.34.364(2), provides that the chapter 6.13 RCW (the statute which creates the homestead) **in its entirety** does not apply. *CP 177-181*. Commissioner Velategui agreed with Viewcrest's interpretation of RCW 64.34.364(2) and granted its motion, but stayed the issuance of the writ in anticipation of Ms. Robertson's Motion for Revision. *CP 86*.

Ms. Robertson filed a Motion for Revision. *CP 187-198*. Judge Veronica Galvan denied the Motion after lengthy oral argument finding the reasoning of Judge Prochnau in the case of Redwood High Point v. Blumenthal persuasive. *RP 32, CP 76-78, and CP 88-90*. Recognizing that Ms. Robertson may choose to appeal the decision, the Court granted Viewcrest's request for the posting of a supersedeas bond as a condition of staying the enforcement of the Court's order granting Viewcrest its writ of assistance. *RP 34-37 and CP 90*.

#### IV. ARGUMENT

**A. The Clear Language Of RCW 64.34.364(2) Eliminates The Right Of A Unit Owner To Claim A Homestead In A Condominium Unit.**

Ms. Robertson's argument in a nutshell is that the homestead created by RCW 6.13.010(1) and RCW 6.13.040 survives a judicial foreclosure under RCW 64.34.364(9). Accordingly, she was entitled to possession of her unit during the redemption period without payment of rent to Viewcrest pursuant to RCW 6.23.110(4). Therefore, the Court erred in granting the writ of assistance to Viewcrest. This argument fails to acknowledge that the application of RCW 6.23.110(4) only applies if a homestead under RCW 6.13.010(1) and RCW 6.13.040 is created. Indeed not only does RCW 6.23.110 refer to the homestead created under RCW 6.13, but RCW 6.23.030 further acknowledges its application only, "...If the property is subject to a homestead as provided in Chapter 6.13 RCW..." (Emphasis Added).

Thus, unless a homestead is created, possessory rights under RCW 6.23.110(4) cannot be claimed. This begs the question whether RCW 64.34.364(2) eliminates the homestead available under RCW 6.13.010(1). The answer is clearly yes based not only on the clear language, but the legislative history as such statute evolved from the former statute RCW 64.32.200(2).

RCW 64.34.364(2), in pertinent part expressly provides that: "A lien under this section is not subject to the provisions of chapter 6.13 RCW." *RCW 64.34.364(2). (Emphasis added).* In addition RCW

64.34.364(9) addresses a condominium association's ability to foreclose judicially under chapter 61.12 RCW and nonjudicially under chapter 61.24 RCW. Such section sets forth the condominium association's powers when purchasing the unit at a foreclosure sale specifically, "the association or its authorized representative shall have the power, unless prohibited by the declaration, **to purchase the unit at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same.**" (Emphasis added.) *RCW 64.34.364(9)*.

The provisions of chapter 6.13 RCW not only create the right to claim a homestead but once established, requires a homestead exemption in the sum of one hundred twenty-five thousand dollars under RCW 6.13.030.

Rules governing statutory interpretation provide that the "fundamental objective" of statutory interpretation "is to ascertain and carry out the Legislature's intent." *CalPortland Co. v. LevelOne Concrete, LLC*, 180 Wash.App.379, 385, 321 P.3d 1261, 1264 (2014) citing *Campbell & Gwinn*, 146 Wash.2d at 9-10, 43 P.3d 4 (2002). 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." *Id. at page 385*. Such plain 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.” *Id. at page 385*, citing *Campbell & Gwinn*, 146 Wash.2d at 11-12, 43 P.3d 4.

On its face, RCW 64.34.364(2) makes clear that the entire chapter 6.13 RCW does not apply to condominium assessment liens and the Association’s right to possession following a foreclosure sale as provided for under RCW 64.34.364(9). This includes **both** the actual homestead created under RCW 6.13.010(1) and RCW 6.13.040, and the homestead exemption established under RCW 6.13.030 and RCW 6.13.070. If the Legislature had intended that only the homestead exemption be excluded, as provided under RCW 6.13.080, it would have specifically stated so as it did formerly under RCW 64.32.200(2). Moreover it would not have given condominium associations the powers to “acquire, hold, lease, mortgage or convey” a unit purchased at a foreclosure sale under RCW 64.34.364(9). (Emphasis Added).

If there is more than one reasonable interpretation of a statute, the Court must resort to aids of construction, including legislative history. *CalPortland Co. v. LevelOne Concrete, LLC*, 180 Wash.App.379, 385, 321 P.3d 1261, 1264 citing *Campbell & Gwinn*, 146 Wash.2d at 12, 43 P.3d 4. If the language is clear and unambiguous the Court should not read any ambiguity into the statute.

Even assuming arguendo an ambiguity, the evolution of the pertinent provision from what was set forth in RCW 64.32.200(2) to RCW 64.34.364(2) is instructive.

RCW 64.32.200(2) provided in pertinent part the following:

Such Lien is not subject to the ban against execution or force sales of homesteads under RCW 6.13.080 and may be foreclosed by suit by the manager or Board of Directors, acting on behalf of the apartment owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, if so, provided in the Bylaws, and the Plaintiff in such foreclosures shall be entitled to the appointment of a receiver to collect the same. The manager or Board of Directors, acting on behalf of the apartment owners, shall have power, unless prohibited by the Declaration, to bid on the apartment at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same... (Emphasis Added).

Comparing the aforecited language to what is provided for in RCW 64.34.364(2) clearly demonstrates that the Legislature chose to broaden the association rights as related to the Homestead Act (RCW 6.13). The former statute cites specifically to RCW 6.13.080, which only protects the homestead exemption from execution and forced sale. Thus, under RCW 6.13.080 unless exempted, prior to a forced sale, the foreclosing party must pay the homestead exemption of \$125,000.00 as a condition precedent to conducting the sheriff's sale. As the association is exempt from the homestead exemption such payment under the former statute was

not required. While exempt from the homestead exemption, the right to claim a homestead remained under RCW 6.13.010 and RCW 6.13.040. Thus, under the former statute RCW 64.32.200(2), the association's lien was subject to the owner's homestead, but not to the homestead exemption under RCW 6.13.080(6). The Legislature, however, created an apparent contradiction in the former statute by further allowing the association within such statute to require the apartment owner to pay rent during the foreclosure proceeding. The foreclosure proceeding continues through the redemption period until the sheriff formally issues its sheriff's deed. Since that statute did not prohibit the creation of a homestead, but simply exempted the association's lien from the homestead exemption, as promulgated, the right to collect rent through the foreclosure proceeding was in contradiction with the prohibition against the same under RCW 6.23.110(4).

By eliminating the homestead in its entirety, the Legislature resolved this contradiction.

Clearly if the Legislature simply wanted to reiterate that the condominium lien was not subject to the homestead exemption, it would have retained the language set forth in RCW 64.32.200(2). Instead the Legislature broadened the language and clearly stated that the lien was not subject to the provisions of chapter RCW 6.13 in its entirety!

The legislative intent of Washington's Condominium Act (RCW 64.34) is also expressed in RCW 64.34.005 which states that the Legislature desired to ensure "that a broad range of affordable homeownership opportunities continue to be available to the residents of the state..." Allowing a homeowner to remain in the condominium unit after a forced sale would be contrary to such intent, as it precludes an association from recovering the underlying debt unpaid by the homeowner through renting the unit during the redemption period, thereby impeding its ability to provide for common expenses, fund repairs and reserves, necessary for the functioning and survival of the association.

**B. RCW 6.23.110(4) Requires A Homestead Under Chapter 6.13 RCW In Order For It To Apply.**

RCW 6.23.030(1) and RCW 6.23.110(4) both refer to the homestead as provided for under chapter 6.13 RCW, thereby incorporating its provisions. Chapter 6.23 RCW also predates condominium law. Had the Legislature intended to simply preclude a condominium homeowner from claiming a homestead exemption against an execution or forced sale, the amendments to RCW 6.13.080 were sufficient for this purpose and the references to the homestead statute in RCW 64.34.364(2) would be superfluous. RCW 6.23.110(1) specifically gives the purchaser the right of possession from the date of sale. Subsection (4) prohibits this

possession if and only if there is a homestead which can only be created if RCW 6.13.010(1) is applicable. Under RCW 64.34.364(2) the entire chapter of RCW 6.13 does not apply, therefore no homestead exists and the condition precedent necessary for RCW 6.23.110(4) to “kick in” is not present.

Ms. Robertson however, suggests a novel argument, specifically that the term “homestead” under RCW 6.13.010 is only a definition. She cites to Court decisions and notably *California v. Summer Del Caribe, Inc.* 821 F. Supp. 574, 579-80 (N.D. CAL. 1993), wherein the Court rejected the argument that the Defendant could not be responsible for disposal and treatment of solder dross under CERCLA, because CERCLA defined “disposal” and “treatment” by reference to the Solid Waste Disposal Act (SWDA), and solder dross was not regulated under SWDA. However, the “homestead” is not merely a definition as terms such as “disposal” or “treatment”. RCW 6.13.010 and RCW 6.13.040 specifically create the right to claim a homestead and without which there is no homestead. Likewise, without the creation of the homestead exemption under RCW 6.13.070, there would be no homestead exemption. The Legislature made the determination that to promote the functioning of an association, and condominium living, the right to claim a homestead should be eliminated

in this type of residence. It did so by stating that the association lien was not subject to the provisions of the entire Chapter RCW 6.13.

It is respectfully suggested that Ms. Robertson is requesting that this Court legislate and redefine a clear provision which was promulgated by the Washington State Legislature. As the Court is aware, that is not its role. Where the statute is clear and unambiguous, the Court should apply such language thereby deferring to the Legislature. See *CalPortland Co. v. LevelOne Concrete, LLC* 180 Wash.App. 379 -385, 321 P.3d 1261 (2014).

**C. Washington's Legislature Created Exceptions To Homestead Rights.**

Article XIX, Section 1 of Washington's Constitution is cited by Ms. Robertson. Notably the Article deals with the homestead exemption, not the homestead itself. The Legislature did create the homestead exemption under RCW 6.13.070 to ensure that an owner receive a sum of money to start over. However, it also created a carve-out to the homestead exemption pursuant to RCW 6.13.080. Moreover, the Legislature also carved out exceptions to the homestead; specifically **an exception to the application of the homestead itself exists when a deed of trust is foreclosed non-judicially pursuant to chapter 61.24 RCW. RCW 64.34.364(2) provides the same exception to the application of a homestead with respect to the judicial foreclosure of condominium liens.**

As to the claim that a lien is distinguishable from the right to possession after sale, a Deed of Trust is also a lien which requires foreclosure before possession. Moreover, at the time of the Sheriff Sale, the lien merges into the Purchaser's Certificate of Purchase, subject only to the right of redemption during the redemption period before the issuance of the Sheriff's Deed placing the Purchaser into title. Similarly, upon the issuance of the Trustee Deed, the Deed of Trust merges into the Trustee Deed.

The lien does not create the right to possession; the governing statute creates that right. Of critical importance, however, is the effect of the foreclosure of the lien upon junior interests. The sale operates to extinguish those interests. Without the right to claim a homestead against the lien under RCW 6.13.010 and RCW 6.13.040, upon foreclosure of the lien, the unit owner, as a junior interest, loses that interest and the right of possession post sale. Thus, the argument of distinguishing between the foreclosure of the lien and right of possession is nonsensical.

Ms. Robertson also argues that associations have the right, under RCW 64.34.364 to elect to foreclose non-judicially or judicially with the right of possession granted immediately upon completion of the trustee's sale under RCW 61.24 et seq. However, that argument ignores the fact that certain Declarations do not allow for non-judicial foreclosures and

furthermore, under RCW 64.34.264(4), any amendment to a Declaration which restricts use requires ninety percent (90%) approval of the association membership; virtually an unobtainable percentage. Thus, the Legislature chose to provide the right for associations to rent post sale whether judicially or non-judicially. Again, it is instructive to point out that the former RCW 64.32.200(2) granted the association the right to obtain rent from an owner during the foreclosure proceeding. Thus, not only did the Legislature resolve the apparently contradiction referenced hereinabove between such statute and RCW 6.23.110(4), but further allowed associations faced with the inability to conduct a non-judicial foreclosure to obtain rent post sheriff's sale, by the elimination of right to claim a homestead in a condominium unit.

**D. Ms. Robertson's Argument That If Lenders Cannot Avoid An Owner's Right To Possession Post Sheriff's Sale, So Too Should This Restriction Apply To Associations, Ignores The Distinction Between A Lending Institution And The Association Functioning As A Community And Relying Upon The Contribution Of Its Owners In Order To Operate.**

Ms. Robertson also argues that lenders which proceed with a judicial foreclosure are subject to an owner's right of possession during the redemption period under RCW 6.23.110(4) and that therefore the same

should apply to associations, ignores the fundamental difference between a lending institution and the condominium community. While the purpose of lenders issuing mortgages is for a return on the investment and profit, an association of unit owners is a functioning community relying upon the contributions of each of its members. The lien of the association is granted so that the association may recoup funds necessary for its functioning and survival.

During the August 27, 2015 hearing, Commissioner Velategui emphasized the fact that condominium associations are a unique form of homeownership and are dependent upon all unit owners for payment of assessments in his colloquy with Defendant's attorney, Mr. Tarshes. *CP 207*. Commissioner Velategui asked Mr. Tarshes what would happen if 100 percent of the owners decided to go through bankruptcy and pointed out that "water would be turned off for everybody, power would be turned off for everybody,"... "[g]arbage would not be pick up because they've got not money,"... "[m]aintenance wouldn't be paid because they've got no money." *CP 207*. He correctly emphasized that the condominium would be destroyed if the association could not take possession of the unit following a foreclosure sale in order to mitigate its damages and pay for its operational expenses.

The Legislature, in creating the Condominium Act (RCW 64.34), envisioned how to protect the condominium community and avoid financial crisis in a depressed economy or in a small condominium development when many unit owners may become delinquent in paying assessments. By preventing condominium owners from claiming a right to a homestead after the condominium association forecloses its assessment lien and allowing the association to mitigate its damages, the Legislature found a way to effectively and fairly govern this unique form of homeownership.

Ms. Robertson also argues by granting possession to associations whether the sale is judicial or nonjudicial, allows for possession and a deficiency judgment, the effect of which is to grant greater rights than those available to a Lender under the Deed of Trust Act (RCW 61.24). However, associations can waive the right to a deficiency judgment in return for a reduced redemption period. Moreover an owner may demand an upset price, under which a sale will not be confirmed by the Court. These protections remain for the owner. Furthermore, as noted above, there is a fundamental difference between an association operating as a community and a lender seeking profit.

**E. RCW 64.34.364 Also Governs Rights of Creditors And Debtors Following An Execution and Forced Sale.**

Defendant argues that the lien does not grant a creditor the right of possession after a foreclosure sale and that RCW 6.23.110 governs the rights of creditors and debtors following execution and forced sale. It is not the lien but the statute, RCW 64.34.364, that creates that right of possession. As noted above all mortgages, including Deeds of Trust are liens. Possessory rights post foreclosure are granted as noted by the terms of the governing statute. In this regard, RCW 64.34.364 provides a mechanism under which a condominium association may foreclose upon its lien and obtain a right of possession following execution and forced sale, by eliminating the right to claim a homestead in condominiums. As discussed above, the foreclosure of the lien extinguishes the owner's junior interest and right of possession due to the owner being unable to claim a right of homestead against the lien.

Ms. Robertson relies upon *First Nat'l Bank v. Tiffany* 40 Wash. 2d 193, 242 P.2d 169 (1952), which was decided by this State's Supreme Court in 1952, long before the 1989 enactment of the Condominium Act and the provisions upon which Viewcrest relies to support its position that a unit owner may not claim a right to a homestead following execution and forced sale. The decision rendered therein has no application to the plain language of a statute promulgated 37 years after the fact.

In this regard it is important to note that the *Tiffany* Court discussed the application and effect of the homestead exemption. It was without question that the property foreclosed was subject to a homestead under the former statute now codified as RCW 6.13.010. Since the homestead applied, right of possession as granted under the former statute now codified as RCW 6.23.110(4) applied. As noted above, the Legislature chose to revise RCW 64.32.200(2) to avoid its apparently contradiction with RCW 6.23.110(4) and broaden the rights granted to the association by eliminating the entire chapter RCW 6.13, and the right to claim a homestead created therein under RCW 6.13.010.

In support of her argument, Ms. Robertson further cites to the desk reference book 28 WASH. PRAC., Creditors' Remedies-Debtors' Relief § 7.22. While that desk reference carries no controlling precedent, it is further worthy to note that the drafter ignored the rights granted to the Association under the former RCW 64.32.200(2) with the right to demand rent during the pendency of the foreclosure proceeding, and further ignored the fundamental revision in RCW 64.34.364(2), whereby the application of the provisions of the entire chapter RCW 6.13 and the right to claim a homestead created therein to the condominium lien were eliminated. Thus, arguably when originally drafted, the drafter of this section was fundamentally wrong and failed to address the apparent

contradiction between RCW 64.32.200(2) and RCW 6.23.110(4). That drafter clearly failed to address the elimination of the right to claim a homestead as set forth in RCW 64.34.364(2).

**F. The Decision Of The Trial Court To Grant The Plaintiff's Motion For Writ Of Assistance Failed To Demonstrate Any Reliance Upon The Declaration Of James Strichartz.**

Ms. Robertson argues that the Declaration of James Strichartz, *CP 83-84*, should have been stricken from the Court record. It is respectfully argued that such an argument is a red herring due to the fact that the Court's ruling did not specifically reflect any reliance upon that Declaration. Indeed, in the Court's ruling, Judge Galvan specifically relied upon the reasoning set forth in Judge Prochnau's decision in the decision of *Redwood High Point v. Blumenthal. RP 32 and CP 76-78*. Thus, even assuming arguendo that the Declaration should have been struck, the failure to do so is absolutely harmless error.

It is respectfully argued, however, that the Declaration of James Strichartz, *CP 83-84*, was indeed admissible. Ms. Robertson's citations of authorities to the contrary involve circumstances where the declaration or statement sought to be admitted was in contradiction to the clear and unambiguous language of the statute. Mr. Strichartz's Declaration, as the

original drafter of the statute, simply supported the clear and unambiguous language set forth in the statute.

As to the Comment to the Senate Bill cited by Ms. Robertson, that comment simply recognized that the homestead exemption under RCW 6.13.080 did not apply. See 2 Sen. Journal, 51<sup>st</sup> Leg., Reg. 1<sup>st</sup> & 2<sup>nd</sup> Spec. Sess. at 2081 (1990), referenced at 1 Sen Journal, 51<sup>st</sup> Leg. Sess. at 376 (1990). That comment does not narrow nor contradict the broad language of RCW 64.34.364(2). Without a homestead under RCW 6.13.010, there is no homestead exemption.

#### **IV. CONCLUSION**

RCW 64.34.364(2) clearly states that the provisions of Chapter RCW 6.13 do not apply to the condominium lien. Under RCW 6.13 the Legislature not only codified the right to claim a homestead, but also the right to claim a homestead exemption, currently in the amount of \$125,000.00 from any forced sale or execution.

Without the application of the entire Chapter, there is no homestead and without a homestead there is no right to claim possession post sheriff's sale under RCW 6.23.110(4).

RCW 64.34.364(9) further grants the association the right to lease post sale. The statute must be reconciled to give effect to the clear legislative intent to create a modern urban functioning community, sharing

the costs necessary to operate such community and to provide for homeownership with denser urban populations.

It is respectfully argued that this Court should defer to the clear and unambiguous language of RCW 64.34.364(2) and rule that the right to claim a homestead does not apply to this unique form of home ownership.

Dated this 11<sup>th</sup> day of April, 2016.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "D M Tall", written over a horizontal line.

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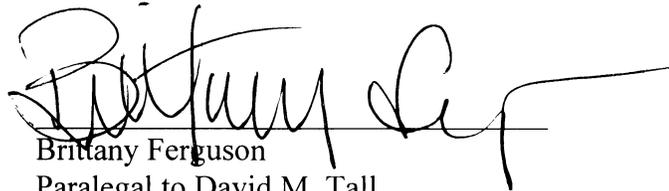
**CERTIFICATE OF SERVICE**

The undersigned certifies that on the date below she forwarded for filing with the Court of Appeals for the State of Washington, Division I in Seattle, the original and one copy of the foregoing pleading entitled Respondents Viewcrest Condominium Association's Amended Opening Brief. Additionally, a true and correct copy of the aforementioned pleading was emailed pdf and forwarded for delivery via ABC Legal Messenger, on this date to the following persons:

David Tarshes  
Northwest Justice Project  
401 Second Ave S, Ste 407  
Seattle, WA 98104  
davidt@nwjustice.org

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Dated this 11<sup>th</sup> day of April, 2016 at Bellevue, Washington.

  
Brittany Ferguson  
Paralegal to David M. Tall