

HOUSE BILL REPORT

ESB 6553

As Reported by House Committee On:
Judiciary

Title: An act relating to the distribution of real property sale proceeds.

Brief Description: Concerning the distribution of real property sale proceeds.

Sponsors: Senators Kline, Hobbs, Hatfield and Fain.

Brief History:

Committee Activity:

Judiciary: 2/25/14, 2/26/14 [DPA].

Brief Summary of Engrossed Bill
(As Amended by Committee)

- Provides that junior interest holders, rather than the judgment debtor, are first in line to receive excess proceeds following sales under execution.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 13 members: Representatives Jinkins, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; Nealey, Assistant Ranking Minority Member; Goodman, Haler, Kirby, Klippert, Muri, Orwall, Roberts, Shea and Walkinshaw.

Staff: Cece Clynch (786-7195).

Background:

Distribution of Excess Proceeds Following Nonjudicial Foreclosure.

A deed of trust may be foreclosed nonjudicially. Following a nonjudicial sale, the trustee is directed to apply the proceeds of the sale to the expense of the sale and to the obligation secured by the deed of trust. In the event there are any surplus proceeds, the trustee must deposit these funds with the clerk of the court in the county of sale and notify all parties to whom the notice of trustee's sale was directed that this has been done.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Any interests in, or liens or claims of liens against the property that were eliminated by the sale attach to the surplus in the order of priority that they attached to the property. A party seeking disbursement of the excess proceeds must file a motion with the court requesting disbursement and give notice to all parties at least 20 days before the date on which the motion is heard. The excess funds are distributed upon order of the court.

Distribution of Excess Proceeds Following Judicial Foreclosure.

In 2009 the judicial foreclosure law was amended with respect to surplus proceeds so as to mirror the laws governing excess proceeds in nonjudicial foreclosures.

When a mortgage is judicially foreclosed, any surplus proceeds from the sale that remain after the mortgage obligation has been paid must be applied to all other interests in, or liens or claims against, the property eliminated by the sale in the order of priority that the interest, lien, or claim attached to the property. Any remaining surplus must be paid to the mortgage debtor.

Distribution of Excess Proceeds Following Sale of Property Under Execution.

A writ of execution is a court order addressed to the sheriff directing him or her to seize and sell property of a judgment debtor that is not exempt from execution. Following entry of a judgment, a judgment creditor may request issuance of a writ of execution from the court clerk directed to the sheriff.

There are a variety of statutory sections, found in two separate titles of the Code, that specify how the sheriff is to levy against and sell property of the debtor and how any excess proceeds realized by the sale are to be distributed:

- Pursuant to one section found in the chapter dealing with sales under execution, real property must be sold to the highest bidder, after which the sheriff returns the money realized by the sale to the clerk that issued the execution. Following notice to all parties to the action of the sale, the clerk is empowered to apply as much of the proceeds as necessary to satisfy the judgment, and pay any excess proceeds to the judgment debtor, by direction of court order.
- Pursuant to another section in the executions chapter, when property, whether real or personal, has been sold, the sheriff pays the proceeds to the clerk who issued the writ for satisfaction of the judgment or for return of any excess proceeds to the judgment debtor.
- Pursuant to another section in the executions chapter, upon receipt of the proceeds from the sheriff following a sale, the clerk notifies the judgment creditor, satisfies the judgment, and then pays any excess to the judgment debtor.

Summary of Amended Bill:

Distribution of Excess Proceeds Following Sale of Property Under Execution.

Rather than being paid first to the judgment debtor, excess sale proceeds realized in a sale of property under execution are to be paid first to junior interest holders in the order of priority that the interest, lien, or claim attached to the property, as determined by the court. Only after these junior interests are paid, are the remaining proceeds paid to the judgment debtor.

Procedures are specified in the section dealing specifically with real property sales requiring that any junior interest holder seeking disbursement of excess sale proceeds must file a motion in the superior court in the county in which the surplus funds are deposited. At least 20 days prior to the hearing on the motion, notice must be given to all persons who had an interest in the property at the time of sale, as well as any other party who has entered an appearance in the proceeding. The clerk is prohibited from disbursing excess funds except upon order of the court.

Distribution of Excess Proceeds Following Nonjudicial Foreclosure.

The provision governing the payment of excess proceeds in nonjudicial foreclosure actions is amended to explicitly provide that the priority of junior interest holders is to be determined by the court.

Amended Bill Compared to Engrossed Bill:

The amended bill retains the underlying provisions of the engrossed bill and, in addition, amends two statutes found in chapter 6.17 RCW that pertain to execution on property. These statutes are amended to provide that the junior interest holders whose interests were eliminated by the sale, rather than the debtor, are entitled first to excess proceeds, in the order of priority that the interest attached to the property, as determined by the court.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill was brought forward at the request of the clerks. The purpose was to indicate that the clerks cannot make up their own minds regarding who is to receive the excess and in what amounts. This bill provides that the distribution is to be made per the direction of the court, not the clerk.

(Opposed) None.

Persons Testifying: Senator Kline, prime sponsor.

Persons Signed In To Testify But Not Testifying: None.