

ESSB 5408 - H COMM AMD

By Committee on Civil Rights & Judiciary

NOT ADOPTED 04/08/2021

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that the homestead
4 exemption is intended to protect the homeowner's equity in a home
5 against unsecured creditors. The legislature finds that changes to
6 the homestead exemption are necessary to modernize the law and to
7 address the case of *Wilson v. Rigby*, 909 F.3d 306 (2018) and to adopt
8 the reasoning in *In re Good*, 588 B.R. 573 (Bankr. W.D. Wash. 2018).

9 **Sec. 2.** RCW 6.13.010 and 1999 c 403 s 1 are each amended to read
10 as follows:

11 (1) The homestead consists of real or personal property that the
12 owner or a dependent of the owner uses as a residence. In the case of
13 a dwelling house or mobile home, the homestead consists of the
14 dwelling house or the mobile home in which the owner resides or
15 intends to reside, with appurtenant buildings, and the land on which
16 the same are situated and by which the same are surrounded, or
17 improved or unimproved land, regardless of area, owned with the
18 intention of placing a house or mobile home thereon and residing
19 thereon. A mobile home may be exempted under this chapter whether or
20 not it is permanently affixed to the underlying land and whether or
21 not the mobile home is placed upon a lot owned by the mobile home
22 owner or a dependent of the owner. Property included in the homestead
23 must be actually intended or used as the principal home for the
24 owner.

25 (2) As used in this chapter (~~(, the term "owner")~~):

26 (a) "Owner" includes but is not limited to a purchaser under a
27 deed of trust, mortgage, or real estate contract.

28 (~~((3) As used in this chapter, the term "net")~~) (b) "Net value"
29 means market value less all liens and encumbrances senior to the
30 judgment being executed upon and not including the judgment being
31 executed upon.

1 (c) "Forced sale" includes any sale of homestead property in a
2 bankruptcy proceeding under Title 11 of the United States Code. The
3 reinvestment provisions of RCW 6.13.070 do not apply to the proceeds.

4 (d) "Dependent" has the meaning given in Title 11 U.S.C. Sec.
5 522(a)(1).

6 **Sec. 3.** RCW 6.13.030 and 2007 c 429 s 1 are each amended to read
7 as follows:

8 ~~((A homestead may consist of lands, as described in RCW 6.13.010,~~
9 ~~regardless of area, but the homestead exemption amount shall not~~
10 ~~exceed the lesser of (1) the total net value of the lands,~~
11 ~~manufactured homes, mobile home, improvements, and other personal~~
12 ~~property, as described in RCW 6.13.010, or (2) the sum of one hundred~~
13 ~~twenty-five thousand dollars in the case of lands, manufactured~~
14 ~~homes, mobile home, and improvements, or the sum of fifteen thousand~~
15 ~~dollars in the case of other personal property described in RCW~~
16 ~~6.13.010, except where)) (1) The homestead exemption amount is the~~

17 greater of:

18 (a) \$125,000;

19 (b) The county median sale price of a single-family home in the
20 preceding calendar year; or

21 (c) Where the homestead is subject to execution, attachment, or
22 seizure by or under any legal process whatever to satisfy a judgment
23 in favor of any state for failure to pay that state's income tax on
24 benefits received while a resident of the state of Washington from a
25 pension or other retirement plan, ~~((in which event there shall be))~~
26 no dollar limit ~~((on the value of the exemption)).~~

27 (2) In determining the county median sale price of a single-
28 family home in the preceding year, a court shall use data from the
29 Runstad department of real estate at the University of Washington or,
30 if the Runstad department no longer provides the data, a successor
31 entity designated by the office of financial management.

32 **Sec. 4.** RCW 6.13.060 and 2008 c 6 s 634 are each amended to read
33 as follows:

34 The homestead of a spouse or domestic partner cannot be conveyed
35 or encumbered unless the instrument by which it is conveyed or
36 encumbered is executed and acknowledged by both spouses or both
37 domestic partners, except that either spouse or both or either
38 domestic partner or both jointly may make and execute powers of

1 attorney for the conveyance or encumbrance of the homestead. The
2 conveyance or encumbrance of the homestead does not require that any
3 dependent of the owner who is not a spouse or domestic partner
4 execute and acknowledge the instrument by which it is conveyed or
5 encumbered.

6 **Sec. 5.** RCW 6.13.070 and 1987 c 442 s 207 are each amended to
7 read as follows:

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

11 (2) In a bankruptcy case, the debtor's exemption shall be
12 determined on the date the bankruptcy petition is filed. If the value
13 of the debtor's interest in homestead property on the petition date
14 is less than or equal to the amount that can be exempted under RCW
15 6.13.030, then the debtor's entire interest in the property,
16 including the debtor's right to possession and interests of no
17 monetary value, is exempt. Any appreciation in the value of the
18 debtor's exempt interest in the property during the bankruptcy case
19 is also exempt, even if in excess of the amounts in RCW 6.13.030(1).

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

26 ~~((+2))~~ (4) Every homestead created under this chapter is
27 presumed to be valid to the extent of all the property claimed
28 exempt, until the validity thereof is contested in a court of general
29 jurisdiction in the county or district in which the homestead is
30 situated.

31 **Sec. 6.** RCW 6.13.080 and 2019 c 238 s 215 are each amended to
32 read as follows:

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

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

1 (2) On debts secured:

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

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

10 (3) On one spouse's or one domestic partner's or the community's
11 debts existing at the time of that spouse's or that domestic
12 partner's bankruptcy filing where (a) bankruptcy is filed by both
13 spouses or both domestic partners within a six-month period, other
14 than in a joint case or a case in which their assets are jointly
15 administered, and (b) the other spouse or other domestic partner
16 exempts property from property of the estate under the bankruptcy
17 exemption provisions of 11 U.S.C. Sec. 522(d);

18 (4) On debts arising from a lawful court order or decree or
19 administrative order establishing a child support obligation or
20 obligation to pay maintenance;

21 (5) On debts owing to the state of Washington for recovery of
22 medical assistance correctly paid on behalf of an individual
23 consistent with 42 U.S.C. Sec. 1396p;

24 (6) On debts secured by a condominium, homeowners', or common
25 interest community association's lien; or

26 (7) On debts owed for taxes collected under chapters 82.08,
27 82.12, and 82.14 RCW but not remitted to the department of revenue.

28 **Sec. 7.** RCW 61.24.100 and 1998 c 295 s 12 are each amended to
29 read as follows:

30 (1) Except to the extent permitted in this section for deeds of
31 trust securing commercial loans, a deficiency judgment shall not be
32 obtained on the obligations secured by a deed of trust against any
33 borrower, grantor, or guarantor after a trustee's sale under that
34 deed of trust.

35 (2)(a) Nothing in this chapter precludes an action against any
36 person liable on the obligations secured by a deed of trust or any
37 guarantor prior to a notice of trustee's sale being given pursuant to
38 this chapter or after the discontinuance of the trustee's sale.

1 (b) No action under (a) of this subsection precludes the
2 beneficiary from commencing a judicial foreclosure or trustee's sale
3 under the deed of trust after the completion or dismissal of that
4 action.

5 (3) This chapter does not preclude any one or more of the
6 following after a trustee's sale under a deed of trust securing a
7 commercial loan executed after June 11, 1998:

8 (a)(i) To the extent the fair value of the property sold at the
9 trustee's sale to the beneficiary or an affiliate of the beneficiary
10 is less than the unpaid obligation secured by the deed of trust
11 immediately prior to the trustee's sale, an action for a deficiency
12 judgment against the borrower or grantor, if such person or persons
13 was timely given the notices under RCW 61.24.040, for (A) any
14 decrease in the fair value of the property caused by waste to the
15 property committed by the borrower or grantor, respectively, after
16 the deed of trust is granted, and (B) the wrongful retention of any
17 rents, insurance proceeds, or condemnation awards by the borrower or
18 grantor, respectively, that are otherwise owed to the beneficiary.

19 (ii) This subsection (3)(a) does not apply to any property that
20 is occupied by the borrower as its principal residence as of the date
21 of the trustee's sale;

22 (b) Any judicial or nonjudicial foreclosures of any other deeds
23 of trust, mortgages, security agreements, or other security interests
24 or liens covering any real or personal property granted to secure the
25 obligation that was secured by the deed of trust foreclosed; or

26 (c) Subject to this section, an action for a deficiency judgment
27 against a guarantor if the guarantor is timely given the notices
28 under RCW 61.24.042.

29 (4) Any action referred to in subsection (3)(a) and (c) of this
30 section shall be commenced within one year after the date of the
31 trustee's sale, or a later date to which the liable party otherwise
32 agrees in writing with the beneficiary after the notice of
33 foreclosure is given, plus any period during which the action is
34 prohibited by a bankruptcy, insolvency, moratorium, or other similar
35 debtor protection statute. If there occurs more than one trustee's
36 sale under a deed of trust securing a commercial loan or if trustee's
37 sales are made pursuant to two or more deeds of trust securing the
38 same commercial loan, the one-year limitation in this section begins
39 on the date of the last of those trustee's sales.

1 (5) In any action against a guarantor following a trustee's sale
2 under a deed of trust securing a commercial loan, the guarantor may
3 request the court or other appropriate adjudicator to determine, or
4 the court or other appropriate adjudicator may in its discretion
5 determine, the fair value of the property sold at the sale and the
6 deficiency judgment against the guarantor shall be for an amount
7 equal to the sum of the total amount owed to the beneficiary by the
8 guarantor as of the date of the trustee's sale, less the fair value
9 of the property sold at the trustee's sale or the sale price paid at
10 the trustee's sale, whichever is greater, plus interest on the amount
11 of the deficiency from the date of the trustee's sale at the rate
12 provided in the guaranty, the deed of trust, or in any other
13 contracts evidencing the debt secured by the deed of trust, as
14 applicable, and any costs, expenses, and fees that are provided for
15 in any contract evidencing the guarantor's liability for such a
16 judgment. If any other security is sold to satisfy the same debt
17 prior to the entry of a deficiency judgment against the guarantor,
18 the fair value of that security, as calculated in the manner
19 applicable to the property sold at the trustee's sale, shall be added
20 to the fair value of the property sold at the trustee's sale as of
21 the date that additional security is foreclosed. This section is in
22 lieu of any right any guarantor would otherwise have to establish an
23 upset price pursuant to RCW 61.12.060 prior to a trustee's sale.

24 (6) A guarantor granting a deed of trust to secure its guaranty
25 of a commercial loan shall be subject to a deficiency judgment
26 following a trustee's sale under that deed of trust only to the
27 extent stated in subsection (3)(a)(i) of this section. If the deed of
28 trust encumbers the guarantor's principal residence, the guarantor
29 shall be entitled to receive an amount up to ~~((the homestead~~
30 ~~exemption set forth in RCW 6.13.030))~~ \$125,000, without regard to the
31 effect of RCW 6.13.080(2), from the bid at the foreclosure or
32 trustee's sale accepted by the sheriff or trustee prior to the
33 application of the bid to the guarantor's obligation.

34 (7) A beneficiary's acceptance of a deed in lieu of a trustee's
35 sale under a deed of trust securing a commercial loan exonerates the
36 guarantor from any liability for the debt secured thereby except to
37 the extent the guarantor otherwise agrees as part of the deed in lieu
38 transaction.

1 (8) This chapter does not preclude a beneficiary from foreclosing
2 a deed of trust in the same manner as a real property mortgage and
3 this section does not apply to such a foreclosure.

4 (9) Any contract, note, deed of trust, or guaranty may, by its
5 express language, prohibit the recovery of any portion or all of a
6 deficiency after the property encumbered by the deed of trust
7 securing a commercial loan is sold at a trustee's sale.

8 (10) A trustee's sale under a deed of trust securing a commercial
9 loan does not preclude an action to collect or enforce any obligation
10 of a borrower or guarantor if that obligation, or the substantial
11 equivalent of that obligation, was not secured by the deed of trust.

12 (11) Unless the guarantor otherwise agrees, a trustee's sale
13 shall not impair any right or agreement of a guarantor to be
14 reimbursed by a borrower or grantor for a deficiency judgment against
15 the guarantor.

16 (12) Notwithstanding anything in this section to the contrary,
17 the rights and obligations of any borrower, grantor, and guarantor
18 following a trustee's sale under a deed of trust securing a
19 commercial loan or any guaranty of such a loan executed prior to June
20 11, 1998, shall be determined in accordance with the laws existing
21 prior to June 11, 1998."

22 Correct the title.

EFFECT: Clarifies that a dependent of a homeowner is not required to sign off on any documents needed to transfer the property.

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