
SUBSTITUTE SENATE BILL 5408

State of Washington

67th Legislature

2021 Regular Session

By Senate Law & Justice (originally sponsored by Senators Stanford, Das, Dhingra, Hasegawa, Kuderer, Lovelett, Nguyen, Randall, Robinson, Rolfes, Saldaña, and Wellman)

READ FIRST TIME 02/15/21.

1 AN ACT Relating to the homestead exemption; amending RCW
2 6.13.010, 6.13.030, 6.13.070, 6.13.090, and 61.24.100; and creating a
3 new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that the homestead
6 exemption is intended to protect the homeowner's equity in a home
7 against unsecured creditors. The legislature finds that changes to
8 the homestead exemption are necessary to modernize the law and to
9 address the case of *Wilson v. Rigby*, 909 F.3d 306 (2018), to adopt
10 the reasoning in *In re Good*, 588 B.R. 573 (Bankr. W.D. Wash. 2018),
11 and to overturn *In re Bankr. Petition of Wieber*, 182 Wn.2d 919
12 (2015).

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

15 (1) The homestead consists of real or personal property that the
16 owner or a dependent of the owner uses as a residence. In the case of
17 a dwelling house or mobile home, the homestead consists of the
18 dwelling house or the mobile home in which the owner resides or
19 intends to reside, with appurtenant buildings, and the land on which
20 the same are situated and by which the same are surrounded, or

1 improved or unimproved land, regardless of area, owned with the
2 intention of placing a house or mobile home thereon and residing
3 thereon. A mobile home may be exempted under this chapter whether or
4 not it is permanently affixed to the underlying land and whether or
5 not the mobile home is placed upon a lot owned by the mobile home
6 owner or a dependent of the owner. Property included in the homestead
7 must be actually intended or used as the principal home for the
8 owner.

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

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

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

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

19 (d) "Dependent" has the meaning given in Title 11 U.S.C. Sec.
20 522(a)(1).

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

23 (~~(A homestead may consist of lands, as described in RCW 6.13.010,~~
24 ~~regardless of area, but the homestead exemption amount shall not~~
25 ~~exceed the lesser of (1) the total net value of the lands,~~
26 ~~manufactured homes, mobile home, improvements, and other personal~~
27 ~~property, as described in RCW 6.13.010, or (2) the sum of one hundred~~
28 ~~twenty-five thousand dollars in the case of lands, manufactured~~
29 ~~homes, mobile home, and improvements, or the sum of fifteen thousand~~
30 ~~dollars in the case of other personal property described in RCW~~
31 ~~6.13.010, except where)) (1) The homestead exemption amount is the~~

32 greater of:
33 (a) \$125,000;

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

36 (c) Where the homestead is subject to execution, attachment, or
37 seizure by or under any legal process whatever to satisfy a judgment
38 in favor of any state for failure to pay that state's income tax on
39 benefits received while a resident of the state of Washington from a

1 pension or other retirement plan, ((in which event there shall be))
2 no dollar limit ((on the value of the exemption)).

3 (2) In determining the county median sale price of a single-
4 family home in the preceding year, a court may use data from the
5 Runstad department of real estate at the University of Washington or
6 any other research relied upon by the office of financial management
7 or department of licensing.

8 **Sec. 4.** RCW 6.13.070 and 1987 c 442 s 207 are each amended to
9 read as follows:

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

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

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

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

33 **Sec. 5.** RCW 6.13.090 and 2007 c 429 s 3 are each amended to read
34 as follows:

35 (1) A judgment against the owner of a homestead shall become a
36 lien on the value of the homestead property in excess of the
37 homestead exemption from the time the judgment creditor records the
38 judgment with the recording officer of the county where the property

1 is located. However, if a judgment of a district court of this state
2 has been transferred to a superior court, the judgment becomes a lien
3 from the time of recording with such recording officer a duly
4 certified abstract of the record of such judgment as it appears in
5 the office of the clerk in which the transfer was originally filed. A
6 department of revenue tax warrant filed pursuant to RCW 82.32.210
7 shall become a lien on the value of the homestead property in excess
8 of the homestead exemption from the time of filing in superior court.

9 (2) In the context of a bankruptcy case, the homestead exemption
10 defined in this chapter is intended to apply to Washington residents
11 to the extent that they move or purchase a replacement homestead in a
12 different state. This section specifically allows the former
13 Washington domiciliary to choose Washington exemptions when they
14 relocate to another state. It does not prohibit an extraterritorial
15 application and applies to property located in other states in the
16 context of a claim of exemptions under the United States bankruptcy
17 code.

18 **Sec. 6.** RCW 61.24.100 and 1998 c 295 s 12 are each amended to
19 read as follows:

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

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

29 (b) No action under (a) of this subsection precludes the
30 beneficiary from commencing a judicial foreclosure or trustee's sale
31 under the deed of trust after the completion or dismissal of that
32 action.

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

36 (a)(i) To the extent the fair value of the property sold at the
37 trustee's sale to the beneficiary or an affiliate of the beneficiary
38 is less than the unpaid obligation secured by the deed of trust
39 immediately prior to the trustee's sale, an action for a deficiency

1 judgment against the borrower or grantor, if such person or persons
2 was timely given the notices under RCW 61.24.040, for (A) any
3 decrease in the fair value of the property caused by waste to the
4 property committed by the borrower or grantor, respectively, after
5 the deed of trust is granted, and (B) the wrongful retention of any
6 rents, insurance proceeds, or condemnation awards by the borrower or
7 grantor, respectively, that are otherwise owed to the beneficiary.

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

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

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

18 (4) Any action referred to in subsection (3)(a) and (c) of this
19 section shall be commenced within one year after the date of the
20 trustee's sale, or a later date to which the liable party otherwise
21 agrees in writing with the beneficiary after the notice of
22 foreclosure is given, plus any period during which the action is
23 prohibited by a bankruptcy, insolvency, moratorium, or other similar
24 debtor protection statute. If there occurs more than one trustee's
25 sale under a deed of trust securing a commercial loan or if trustee's
26 sales are made pursuant to two or more deeds of trust securing the
27 same commercial loan, the one-year limitation in this section begins
28 on the date of the last of those trustee's sales.

29 (5) In any action against a guarantor following a trustee's sale
30 under a deed of trust securing a commercial loan, the guarantor may
31 request the court or other appropriate adjudicator to determine, or
32 the court or other appropriate adjudicator may in its discretion
33 determine, the fair value of the property sold at the sale and the
34 deficiency judgment against the guarantor shall be for an amount
35 equal to the sum of the total amount owed to the beneficiary by the
36 guarantor as of the date of the trustee's sale, less the fair value
37 of the property sold at the trustee's sale or the sale price paid at
38 the trustee's sale, whichever is greater, plus interest on the amount
39 of the deficiency from the date of the trustee's sale at the rate
40 provided in the guaranty, the deed of trust, or in any other

1 contracts evidencing the debt secured by the deed of trust, as
2 applicable, and any costs, expenses, and fees that are provided for
3 in any contract evidencing the guarantor's liability for such a
4 judgment. If any other security is sold to satisfy the same debt
5 prior to the entry of a deficiency judgment against the guarantor,
6 the fair value of that security, as calculated in the manner
7 applicable to the property sold at the trustee's sale, shall be added
8 to the fair value of the property sold at the trustee's sale as of
9 the date that additional security is foreclosed. This section is in
10 lieu of any right any guarantor would otherwise have to establish an
11 upset price pursuant to RCW 61.12.060 prior to a trustee's sale.

12 (6) A guarantor granting a deed of trust to secure its guaranty
13 of a commercial loan shall be subject to a deficiency judgment
14 following a trustee's sale under that deed of trust only to the
15 extent stated in subsection (3)(a)(i) of this section. If the deed of
16 trust encumbers the guarantor's principal residence, the guarantor
17 shall be entitled to receive an amount up to (~~the homestead~~
18 ~~exemption set forth in RCW 6.13.030~~) \$125,000, without regard to the
19 effect of RCW 6.13.080(2), from the bid at the foreclosure or
20 trustee's sale accepted by the sheriff or trustee prior to the
21 application of the bid to the guarantor's obligation.

22 (7) A beneficiary's acceptance of a deed in lieu of a trustee's
23 sale under a deed of trust securing a commercial loan exonerates the
24 guarantor from any liability for the debt secured thereby except to
25 the extent the guarantor otherwise agrees as part of the deed in lieu
26 transaction.

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

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

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

38 (11) Unless the guarantor otherwise agrees, a trustee's sale
39 shall not impair any right or agreement of a guarantor to be

1 reimbursed by a borrower or grantor for a deficiency judgment against
2 the guarantor.

3 (12) Notwithstanding anything in this section to the contrary,
4 the rights and obligations of any borrower, grantor, and guarantor
5 following a trustee's sale under a deed of trust securing a
6 commercial loan or any guaranty of such a loan executed prior to June
7 11, 1998, shall be determined in accordance with the laws existing
8 prior to June 11, 1998.

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