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SENATE BILL 5068

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State of Washington

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By Senators A. Smith, McCaslin, Nelson, Erwin, Vognild and Roach

Read first time 01/11/93. Referred to Committee on Law & Justice.

1 AN ACT Relating to homestead exemptions; amending RCW 6.13.010,  
2 6.13.040, and 6.15.060; and reenacting and amending RCW 6.13.080.

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

4 **Sec. 1.** RCW 6.13.010 and 1987 c 442 s 201 are each amended to read  
5 as follows:

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

1 (2) As used in this chapter, the term "owner" includes but is not  
2 limited to a purchaser under a deed of trust, mortgage, or real estate  
3 contract.

4 (3) As used in this chapter, the term "net value" means market  
5 value less all liens and encumbrances.

6 **Sec. 2.** RCW 6.13.040 and 1987 c 442 s 204 are each amended to read  
7 as follows:

8 (1) Property described in RCW 6.13.010 constitutes a homestead and  
9 is automatically protected by the exemption described in RCW 6.13.070  
10 from and after the time the real or personal property is occupied as a  
11 principal residence by the owner or, if the homestead is unimproved or  
12 improved land that is not yet occupied as a homestead, from and after  
13 the declaration or declarations required by the following subsections  
14 are filed for record or, if the homestead is a mobile home not yet  
15 occupied as a homestead and located on land not owned by the owner of  
16 the mobile home, or is any other personal property, from and after  
17 delivery of a declaration as prescribed in RCW 6.15.060(3)(c).

18 (2) An owner who selects a homestead from unimproved or improved  
19 land that is not yet occupied as a homestead must execute a declaration  
20 of homestead and file the same for record in the office of the  
21 recording officer in the county in which the land is located. However,  
22 if the owner also owns another parcel of property on which the owner  
23 presently resides or in which the owner claims a homestead, the owner  
24 must also execute a declaration of abandonment of homestead on that  
25 other property and file the same for record with the recording officer  
26 in the county in which the land is located.

27 (3) The declaration of homestead must contain:

28 (a) A statement that the person making it is residing on the  
29 premises or intends to reside thereon and claims them as a homestead;

30 (b) A legal description of the premises; and

31 (c) An estimate of their actual cash value.

32 (4) The declaration of abandonment must contain:

33 (a) A statement that premises occupied as a residence or claimed as  
34 a homestead no longer constitute the owner's homestead;

35 (b) A legal description of the premises; and

36 (c) A statement of the date of abandonment.

1 (5) The declaration of homestead and declaration of abandonment of  
2 homestead must be acknowledged in the same manner as a grant of real  
3 property is acknowledged.

4 **Sec. 3.** RCW 6.13.080 and 1988 c 231 s 3 and 1988 c 192 s 1 are  
5 each reenacted and amended to read as follows:

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

8 (1) On debts secured by mechanic's, laborer's, construction,  
9 maritime, automobile repair, materialmen's or vendor's liens (~~upon the~~  
10 ~~premises~~) arising out of and against the particular property claimed  
11 as a homestead;

12 (2) On debts secured (a) by security agreements describing as  
13 collateral the (~~mobile home~~) property that is claimed as a homestead  
14 or (b) by mortgages or deeds of trust on the premises that have been  
15 executed and acknowledged by the husband and wife or by any unmarried  
16 claimant;

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

23 (4) On debts arising from a lawful court order or decree or  
24 administrative order establishing a child support obligation or  
25 obligation to pay spousal maintenance; or

26 (5) On debts secured by a condominium's or homeowner association's  
27 lien. In order for an association to be exempt under this provision,  
28 the association must have provided a homeowner with notice that  
29 nonpayment of the association's assessment may result in foreclosure of  
30 the association lien and that the homestead protection under this  
31 chapter shall not apply. An association has complied with this notice  
32 requirement by mailing the notice, by first class mail, to the address  
33 of the owner's lot or unit. The notice required in this subsection  
34 shall be given within thirty days from the date the association learns  
35 of a new owner, but in all cases the notice must be given prior to the  
36 initiation of a foreclosure. The phrase "learns of a new owner" in  
37 this subsection means actual knowledge of the identity of a homeowner  
38 acquiring title after June 9, 1988, and does not require that an

1 association affirmatively ascertain the identity of a homeowner.  
2 Failure to give the notice specified in this subsection affects an  
3 association's lien only for debts accrued up to the time an association  
4 complies with the notice provisions under this subsection.

5 **Sec. 4.** RCW 6.15.060 and 1988 c 231 s 7 are each amended to read  
6 as follows:

7 (1) Except as provided in subsection (2) of this section, property  
8 claimed exempt under RCW 6.15.010 shall be selected by the individual  
9 entitled to the exemption, or by the husband or wife entitled to a  
10 community exemption, in the manner described in subsection (3) of this  
11 section.

12 (2) If, at the time of seizure under execution or attachment of  
13 property exemptible under RCW 6.15.010(3) (a), (b), or (c), the  
14 individual or the husband or wife entitled to claim the exemption is  
15 not present, then the sheriff or deputy shall make a selection equal in  
16 value to the applicable exemptions and, if no appraisal is required  
17 and no objection is made by the creditor as permitted under subsection  
18 (4) of this section, the officer shall return the same as exempt by  
19 inventory. Any selection made as provided shall be prima facie  
20 evidence (a) that the property so selected is exempt from execution and  
21 attachment, and (b) that the property so selected is not in excess of  
22 the values specified for the exemptions.

23 (3)(a) A debtor who claims personal property as exempt against  
24 execution or attachment shall, at any time before sale, deliver to the  
25 officer making the levy a list by separate items of the property  
26 claimed as exempt, together with an itemized list of all the personal  
27 property owned or claimed by the debtor, including money, bonds, bills,  
28 notes, claims and demands, with the residence of the person indebted  
29 upon the said bonds, bills, notes, claims and demands, and shall verify  
30 such list by affidavit. The officer shall immediately advise the  
31 creditor, attorney, or agent of the exemption claim and, if no  
32 appraisal is required and no objection is made by the creditor as  
33 permitted under subsection (4) of this section, the officer shall  
34 return with the process the list of property claimed as exempt.

35 (b) A debtor who claims personal property exempt against  
36 garnishment shall proceed as provided in RCW 6.27.160.

37 (c) A debtor who claims as a homestead, under chapter 6.13 RCW, a  
38 mobile home that is not yet occupied as a homestead and that is located

1 on land not owned by the debtor shall claim the homestead as against a  
2 specific levy by delivering to the sheriff who levied on the mobile  
3 home, before sale under the levy, a declaration of homestead that  
4 contains (i) a declaration that the debtor owns the mobile home,  
5 intends to reside therein, and claims it as a homestead, and (ii) a  
6 description of the mobile home, a statement where it is located or was  
7 located before the levy, and an estimate of its actual cash value.

8 (d) A debtor who claims as a homestead, under RCW 6.13.040, any  
9 other personal property, shall at any time before sale, deliver to the  
10 officer making the levy a notice of claim of homestead in a statement  
11 that sets forth the following: (i) The debtor owns the personal  
12 property; (ii) the debtor does or intends to reside thereon as a  
13 homestead; (iii) the debtor's estimate of the fair market value of the  
14 property; and (iv) the debtor's description of the property in  
15 sufficient detail for the officer making the levy to identify the same.

16 (4)(a) Except as provided in (b) of this subsection, a creditor, or  
17 the agent or attorney of a creditor, who wishes to object to a claim of  
18 exemption shall proceed as provided in RCW 6.27.160 and shall give  
19 notice of the objection to the officer not later than seven days after  
20 the officer's giving notice of the exemption claim.

21 (b) A creditor, or the agent or attorney of the creditor, who  
22 wishes to object to a claim of exemption made to a levying officer, on  
23 the ground that the property claimed exceeds exemptible value, may  
24 demand appraisalment. If the creditor, or the agent or attorney of the  
25 creditor, demands an appraisalment, two disinterested persons shall be  
26 chosen to appraise the property, one by the debtor and the other by the  
27 creditor, agent or attorney, and these two, if they cannot agree, shall  
28 select a third; but if either party fails to choose an appraiser, or  
29 the two fail to select a third, or if one or more of the appraisers  
30 fail to act, the court shall appoint one or more as the circumstances  
31 require. The appraisers shall forthwith proceed to make a list by  
32 separate items, of the personal property selected by the debtor as  
33 exempt, which they shall decide as exempt, stating the value of each  
34 article, and annexing to the list their affidavit to the following  
35 effect: "We solemnly swear that to the best of our judgment the above  
36 is a fair cash valuation of the property therein described," which  
37 affidavit shall be signed by two appraisers at least, and be certified  
38 by the officer administering the oaths. The list shall be delivered to  
39 the officer holding the execution or attachment and be annexed to and

1 made part of the return, and the property therein specified shall be  
2 exempt from levy and sale, but the other personal estate of the debtor  
3 shall remain subject to execution, attachment, or garnishment. Each  
4 appraiser shall be entitled to fifteen dollars or such larger fee as  
5 shall be fixed by the court, to be paid by the creditor if all the  
6 property claimed by the debtor shall be exempt; otherwise to be paid by  
7 the debtor.

8 (c) If, within seven days following the giving of notice to a  
9 creditor of an exemption claim, the officer has received no notice from  
10 the creditor of an objection to the claim or a demand for appraisalment,  
11 the officer shall release the claimed property to the debtor.

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