

FINAL BILL REPORT

HB 1233

C 403 L 99

Synopsis as Enacted

Brief Description: Determining the net value of a homestead exemption.

Sponsors: Representatives Edmonds, Sheahan and Constantine.

House Committee on Judiciary

Senate Committee on Judiciary

Background:

A homestead, which is the property an owner uses as a residence, is exempted from attachment, execution, and forced sale for the owner's debts up to \$30,000. Judgments against a homestead owner that are greater than \$30,000 become liens on the value of the homestead in excess of the homestead exemption. In order to execute against the homestead, the judgment creditor must apply to the superior court of the county where the homestead is located for the appointment of an appraiser. The application for an appraiser must show: (1) an execution has been levied upon the homestead, (2) the name of the owner of the homestead property, and (3) that the net value of the homestead exceeds the amount of the homestead exemption. Net value is defined as market value less "all liens and encumbrances." The time at which net value should be calculated is not specified.

In *Robin Miller Construction Co. (RMC) v. Coltran*, a 1997 Washington Court of Appeals case, the questions of whether a judgment could be executed against a homestead turned on the time at which the net value of the homestead was calculated. If the net value was calculated at the time the judgment was recorded, the net value would exceed the homestead exemption. If the net value was calculated at the time the judgment was executed, the net value would not exceed the homestead exemption, due to additional encumbrances incurred by the owner after the judgment was recorded. The court of appeals affirmed the trial court decision to calculate net value at the latter time. The court interpreted the phrase "all liens and encumbrances" in the homestead law to include encumbrances incurred after the judgment was recorded, as well as the specific judgment being executed.

Summary:

Net value of a homestead is to be calculated at the time the judgment is executed. All liens and encumbrances that are senior to the judgment being executed upon are included in the calculation. That is, these senior liens and encumbrances will be used

to reduce the net value available for the judgment creditor. However, the specific judgment being executed is excluded from the calculation.

The maximum amount of the homestead exemption is increased from \$30,000 to \$40,000

Votes on Final Passage:

House 96 0

Senate 48 0 (Senate amended)

House 96 0 (House concurred)

Effective: July 25, 1999