

SENATE BILL REPORT

SB 5541

As of February 19, 2013

Title: An act relating to redemption of real property.

Brief Description: Concerning the redemption of real property.

Sponsors: Senators Hobbs, Fain, Hatfield and Harper.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 2/12/13.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Staff: Alison Mendiola (786-7483)

Background: Dating back to the 19th century, a debtor whose real property is sold at a sheriff's foreclosure sale may have the opportunity to purchase back the real property by reimbursing the winning bid amount to the sheriff sale purchaser. This process is known as redemption. Redemption voids the sheriff's sale.

Redemption can occur:

- within eight months after the date of the sale if the sale is pursuant to judgment and decree of foreclosure of any mortgage executed after June 30, 1961, which mortgage declares in its terms that the mortgaged property is not used principally for agricultural or farming purposes, and in which complaint the judgment creditor has expressly waived any right to a deficiency judgment; or
- within one year after the date of the sale.

Parties entitled to redeem include the judgment debtor and creditors who have a lien on the real property by judgment, decree, deed of trust, or mortgage on any portion of the property, or any portion separately sold subsequent in time to when the property was sold. In other words, the time that a creditor's interest is recorded determines a creditor's priority to redeem a foreclosure sale.

Super Lien Priority. Under RCW 64.34.364 condominium associations have super lien priority. If a unit holder is delinquent in assessments, the association can file a lien against a unit. The association lien is limited to the assessment amount for the six months prior to foreclosure. When an association forecloses upon a lien, and there is a mortgage on the unit

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recorded before the date on which the assessment became delinquent, the mortgagee must receive notice of the pending foreclosure and has the opportunity to pay off the lien prior to the sheriff's sale to preserve its deed of trust lien. If the mortgage lender does not pay the off the lien in this instance, the mortgage lender's lien is extinguished.

Summerhill Village Homeowner's Association v. Roughley. In a recent Court of Appeals Division 1 case, a unit owner was delinquent in paying the condominium association assessments, and the condominium association placed a lien on the unit and moved to foreclose on the lien. The condominium association named and served the mortgage lender in its judicial lien foreclosure action. Because the lender did not respond or pay the six-month priority before the sheriff's sale, the lender's deed of trust was extinguished. The lender's servicer subsequently instituted foreclosure proceedings against the borrower who was in default. According to the case, it was at this time the lender learned of the association's lien and foreclosure sale and tried to redeem. The court held that the lender was not a redemptioner. By not paying off the association's lien, the lender's rights were extinguished and they were not considered a redemptioner.

Summary of Bill: A creditor's priority to redeem an interest in foreclosed real property is determined by the creditor's priority, not the time in which the interest was recorded.

In the instance where a condominium association uses its super lien priority to foreclose on a unit owner for unpaid assessments, the lender's priority is not extinguished for failing to pay off the association's lien.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: At issue here is who qualifies as a party who can redeem. The current law was enacted in 1899. Lending and priorities have become more complicated since then. If a property has a homeowners' association (HOA) line, if that property is redeemed, the HOA is paid in full plus 12 percent interest. This bill restores certainty in the redemption process and preserves a healthy lending environment for condominiums moving forward.

CON: Foreclosures hurt condominium associations dealing with bad loans as condominium assessments are divided by all units. When an owner does not pay, the association still has to insure and maintain property; others pay for it. Currently, a lender gets notice and can pay the limited amount before a sheriff's sale. A recent court of appeals case only applies to limited situations and does not impact an owner's redemption rights. There is a group out of the Washington State Bar Association working on an overhaul of these statutes and we should wait to make any more changes until then.

Persons Testifying: PRO: Brian Sommer, Realty in Motion; Denny Eliason, WA Bankers Assn.

CON: Kathryn Hedrick, Michael Fullbright, WA State Chapter of Community Assns. Institute.