

**SSB 5408 - S AMD 255**  
By Senator Padden

WITHDRAWN 03/02/2021

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 adopt the reasoning in *In re Good*, 588 B.R. 573 (Bankr. W.D. Wash.  
8 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:~~

17 (a) \$200,000 where the county median sale price of a single-  
18 family home is \$400,000 or less;

19 (b) \$400,000 where the county median sale price of a single-  
20 family home is \$600,000 or less;

21 (c) \$600,000 where the county median sale price of a single-  
22 family home is \$600,001 or greater; or

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

29 (2) Except for the year 2021, the county median sale price of a  
30 single-family home, as used for determining the homestead exemption  
31 in this section, is a fixed amount for consecutive two-year periods  
32 starting January 1, 2022, and updated every subsequent two years. In  
33 determining the county median sale price of a single-family home a  
34 court shall use the county median sale price of a single-family home  
35 in the preceding calendar year for 2021, or in the preceding calendar  
36 year for a new or subsequent two-year period, and a court may use  
37 data from the Runstad department of real estate at the University of  
38 Washington.

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

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

6       (2) In a bankruptcy case, the debtor's exemption shall be  
7 determined on the date the bankruptcy petition is filed. If the value  
8 of the debtor's interest in homestead property on the petition date  
9 is less than or equal to the amount that can be exempted under RCW  
10 6.13.030, then the debtor's entire interest in the property,  
11 including the debtor's right to possession and interests of no  
12 monetary value, is exempt.

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

19       ~~((2))~~ (4) Every homestead created under this chapter is  
20 presumed to be valid to the extent of all the property claimed  
21 exempt, until the validity thereof is contested in a court of general  
22 jurisdiction in the county or district in which the homestead is  
23 situated.

24       **Sec. 5.** RCW 61.24.100 and 1998 c 295 s 12 are each amended to  
25 read as follows:

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

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

35       (b) No action under (a) of this subsection precludes the  
36 beneficiary from commencing a judicial foreclosure or trustee's sale  
37 under the deed of trust after the completion or dismissal of that  
38 action.

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

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

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

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

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

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

36 (5) In any action against a guarantor following a trustee's sale  
37 under a deed of trust securing a commercial loan, the guarantor may  
38 request the court or other appropriate adjudicator to determine, or  
39 the court or other appropriate adjudicator may in its discretion  
40 determine, the fair value of the property sold at the sale and the

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

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

29 (7) A beneficiary's acceptance of a deed in lieu of a trustee's  
30 sale under a deed of trust securing a commercial loan exonerates the  
31 guarantor from any liability for the debt secured thereby except to  
32 the extent the guarantor otherwise agrees as part of the deed in lieu  
33 transaction.

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

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

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

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

9 (12) Notwithstanding anything in this section to the contrary,  
10 the rights and obligations of any borrower, grantor, and guarantor  
11 following a trustee's sale under a deed of trust securing a  
12 commercial loan or any guaranty of such a loan executed prior to June  
13 11, 1998, shall be determined in accordance with the laws existing  
14 prior to June 11, 1998."

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15 On page 1, line 1 of the title, after "exemption;" strike the  
16 remainder of the title and insert "amending RCW 6.13.010, 6.13.030,  
17 6.13.070, and 61.24.100; and creating a new section."

EFFECT: (1) Removes certain intent language.

(2) Creates a tiered homestead exemption amount based on the county median sale price of a single-family home.

(3) Makes the exemption amount fixed for a 2-year period starting January 1, 2022, and updated every subsequent 2 years.

(4) Removes the Department of Licensing and Office of Financial Management as resources a court may consider for the county median sale price.

(5) Removes an exemption for the appreciation of the property during the bankruptcy case.

(6) Prohibits the extraterritorial application of the exemption.

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