

SENATE BILL REPORT

SB 5408

As of February 9, 2021

Title: An act relating to the homestead exemption.

Brief Description: Concerning the homestead exemption.

Sponsors: Senators Stanford, Das, Dhingra, Hasegawa, Kuderer, Lovelett, Nguyen, Randall, Robinson, Rolfes, Saldaña and Wellman.

Brief History:

Committee Activity: Law & Justice: 2/11/21.

Brief Summary of Bill

- Changes the homestead exemption to the greater of \$125,000 or the county median sale price of a single family home.
- Defines a forced sale to include any sale of the homestead property in a bankruptcy proceeding.
- Allows appreciation of the property to be included in the exemption after a bankruptcy filing.
- Allows Washington residents to claim the homestead exemption for property in other states.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Tim Ford (786-7423)

Background: A creditor who obtains a judgment against a delinquent debtor often can force the debtor to sell property to repay those obligations. The homestead exemption protects from a forced sale, a debtor's equity in the real or personal property the debtor uses or plans to use as a principal home for the owner, including a house or mobile home,

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appurtenant buildings, and the related land even if unimproved.

The homestead exemption amount shall not exceed the lesser of:

- the total net value of the lands, manufactured homes, mobile home, improvements, and other personal property, or
- \$125,000 in the case of lands, manufactured homes, mobile home, and improvements, or \$15,000 in the case of other personal property.

Net value is defined as the market value of the property less all liens and encumbrances that are senior to the judgment being executed upon.

The homestead is exempt from attachment and from execution or forced sale for the debts of the owner up to the amount specified. The proceeds of a voluntary sale of the homestead in good faith for the purpose of acquiring a new homestead, and proceeds from insurance covering destruction of homestead property held for use in restoring or replacing the homestead property, up to the amount specified, are likewise exempt for one year from receipt, and also the new homestead acquired with the proceeds.

A judgment against the owner of a homestead may be recorded as a lien on the value of the homestead property in excess of the homestead exemption. If the sale is made, the proceeds must be applied in the following order:

- to the amount of the homestead exemption, to be paid to the judgment debtor;
- up to the amount of the execution, to be applied to the satisfaction of the execution; and
- the balance to be paid to the judgment debtor.

Wilson v. Rigby. In the bankruptcy case *Wilson v. Rigby*, the 9th Circuit Court of Appeals held that the exemption amount is fixed at the date of the filing of the petition, and could not be amended for a greater exemption amount due to post filing appreciation of the homestead property.

In re Good. In the bankruptcy case *In re Good*, the U.S. bankruptcy court held while the Washington law on homestead exemptions does not define a forced sale, bankruptcy sales are forced sales. It also held that the one year reinvestment requirement does not apply to forced sales of a homestead.

In re the Bankruptcy Petition of Wieber. In the bankruptcy case of *In re Wieber*, the Washington State supreme court held that Washington residents may not claim a homestead exemption for property in other states.

Summary of Bill: Homestead includes real or personal property a dependent of the owner uses as a residence.

A forced sale is defined to include any sale of the homestead property in a bankruptcy

proceeding. The reinvestment provisions do not apply to the proceeds. This adopts the holding of the court in the decision of *In re Good*.

The homestead exemption amount is the greater of \$125,000 or the county median sale price of a single family home in the preceding calendar year.

In a bankruptcy case, the debtor's exemption shall be determined on the date of the bankruptcy petition. If the value of the debtor's interest in homestead property on the petition date is less than or equal to the amount that can be exempted under the homestead law, then the debtor's entire interest in the property, including the debtor's right to possession and interests of no monetary value, is exempt. Any appreciation in the value of the debtor's exempt interest in the property during the bankruptcy case is also exempt. This language is to address the case of *Wilson v. Rigby*.

The homestead exemption would allow Washington residents to apply the exemption to property in other states. This language addresses the case of *In re Wieber*.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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