

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5408

67th Legislature
2021 Regular Session

Passed by the Senate April 19, 2021
Yeas 42 Nays 7

President of the Senate

Passed by the House April 16, 2021
Yeas 94 Nays 3

**Speaker of the House of
Representatives**

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5408** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5408

AS AMENDED BY THE HOUSE

Passed Legislature - 2021 Regular Session

State of Washington

67th Legislature

2021 Regular Session

By Senate Law & Justice (originally sponsored by Senators Stanford, Das, Dhingra, Hasegawa, Kuderer, Lovelett, Nguyen, Randall, Robinson, Rolfes, Saldaña, and Wellman)

READ FIRST TIME 02/15/21.

1 AN ACT Relating to the homestead exemption; amending RCW
2 6.13.010, 6.13.030, 6.13.060, 6.13.070, 6.13.080, and 61.24.100;
3 creating a new section; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that the homestead
6 exemption is intended to protect the homeowner's equity in a home
7 against unsecured creditors. The legislature finds that changes to
8 the homestead exemption are necessary to modernize the law and to
9 address the case of *Wilson v. Rigby*, 909 F.3d 306 (2018) and to adopt
10 the reasoning in *In re Good*, 588 B.R. 573 (Bankr. W.D. Wash. 2018).

11 **Sec. 2.** RCW 6.13.010 and 1999 c 403 s 1 are each amended to read
12 as follows:

13 (1) The homestead consists of real or personal property that the
14 owner or a dependent of the owner uses as a residence. In the case of
15 a dwelling house or mobile home, the homestead consists of the
16 dwelling house or the mobile home in which the owner resides or
17 intends to reside, with appurtenant buildings, and the land on which
18 the same are situated and by which the same are surrounded, or
19 improved or unimproved land, regardless of area, owned with the
20 intention of placing a house or mobile home thereon and residing

1 thereon. A mobile home may be exempted under this chapter whether or
2 not it is permanently affixed to the underlying land and whether or
3 not the mobile home is placed upon a lot owned by the mobile home
4 owner or a dependent of the owner. Property included in the homestead
5 must be actually intended or used as the principal home for the
6 owner.

7 (2) As used in this chapter(~~(, the term "owner")~~):

8 (a) "Owner" includes but is not limited to a purchaser under a
9 deed of trust, mortgage, or real estate contract.

10 (~~((3) As used in this chapter, the term "net")~~) (b) "Net value"
11 means market value less all liens and encumbrances senior to the
12 judgment being executed upon and not including the judgment being
13 executed upon.

14 (c) "Forced sale" includes any sale of homestead property in a
15 bankruptcy proceeding under Title 11 of the United States Code. The
16 reinvestment provisions of RCW 6.13.070 do not apply to the proceeds.

17 (d) "Dependent" has the meaning given in Title 11 U.S.C. Sec.
18 522(a)(1).

19 **Sec. 3.** RCW 6.13.030 and 2007 c 429 s 1 are each amended to read
20 as follows:

21 (~~(A homestead may consist of lands, as described in RCW 6.13.010,~~
22 ~~regardless of area, but the homestead exemption amount shall not~~
23 ~~exceed the lesser of (1) the total net value of the lands,~~
24 ~~manufactured homes, mobile home, improvements, and other personal~~
25 ~~property, as described in RCW 6.13.010, or (2) the sum of one hundred~~
26 ~~twenty-five thousand dollars in the case of lands, manufactured~~
27 ~~homes, mobile home, and improvements, or the sum of fifteen thousand~~
28 ~~dollars in the case of other personal property described in RCW~~
29 ~~6.13.010, except where)) (1) The homestead exemption amount is the~~

30 greater of:

31 (a) \$125,000;

32 (b) The county median sale price of a single-family home in the
33 preceding calendar year; or

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

1 (2) In determining the county median sale price of a single-
2 family home in the preceding year, a court shall use data from the
3 Washington center for real estate research or, if the Washington
4 center no longer provides the data, a successor entity designated by
5 the office of financial management.

6 **Sec. 4.** RCW 6.13.060 and 2008 c 6 s 634 are each amended to read
7 as follows:

8 The homestead of a spouse or domestic partner cannot be conveyed
9 or encumbered unless the instrument by which it is conveyed or
10 encumbered is executed and acknowledged by both spouses or both
11 domestic partners, except that either spouse or both or either
12 domestic partner or both jointly may make and execute powers of
13 attorney for the conveyance or encumbrance of the homestead. The
14 conveyance or encumbrance of the homestead does not require that any
15 dependent of the owner who is not a spouse or domestic partner
16 execute and acknowledge the instrument by which it is conveyed or
17 encumbered.

18 **Sec. 5.** RCW 6.13.070 and 1987 c 442 s 207 are each amended to
19 read as follows:

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

23 (2) In a bankruptcy case, the debtor's exemption shall be
24 determined on the date the bankruptcy petition is filed. If the value
25 of the debtor's interest in homestead property on the petition date
26 is less than or equal to the amount that can be exempted under RCW
27 6.13.030, then the debtor's entire interest in the property,
28 including the debtor's right to possession and interests of no
29 monetary value, is exempt. Any appreciation in the value of the
30 debtor's exempt interest in the property during the bankruptcy case
31 is also exempt, even if in excess of the amounts in RCW 6.13.030(1).

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

1 (~~(2)~~) (4) Every homestead created under this chapter is
2 presumed to be valid to the extent of all the property claimed
3 exempt, until the validity thereof is contested in a court of general
4 jurisdiction in the county or district in which the homestead is
5 situated.

6 **Sec. 6.** RCW 6.13.080 and 2019 c 238 s 215 are each amended to
7 read as follows:

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

10 (1) On debts secured by mechanic's, laborer's, construction,
11 maritime, automobile repair, material supplier's, or vendor's liens
12 arising out of and against the particular property claimed as a
13 homestead;

14 (2) On debts secured:

15 (a) (~~(by)~~) By security agreements describing as collateral the
16 property that is claimed as a homestead; or

17 (b) (~~(by)~~) By mortgages or deeds of trust on the premises that
18 have been executed and acknowledged by both spouses or both domestic
19 partners or by any claimant not married or in a state registered
20 domestic partnership. The execution and acknowledgment of a mortgage
21 or deed of trust by a dependent who is not a spouse or domestic
22 partner is not required;

23 (3) On one spouse's or one domestic partner's or the community's
24 debts existing at the time of that spouse's or that domestic
25 partner's bankruptcy filing where (a) bankruptcy is filed by both
26 spouses or both domestic partners within a six-month period, other
27 than in a joint case or a case in which their assets are jointly
28 administered, and (b) the other spouse or other domestic partner
29 exempts property from property of the estate under the bankruptcy
30 exemption provisions of 11 U.S.C. Sec. 522(d);

31 (4) On debts arising from a lawful court order or decree or
32 administrative order establishing a child support obligation or
33 obligation to pay maintenance;

34 (5) On debts owing to the state of Washington for recovery of
35 medical assistance correctly paid on behalf of an individual
36 consistent with 42 U.S.C. Sec. 1396p;

37 (6) On debts secured by a condominium, homeowners', or common
38 interest community association's lien; or

1 (7) On debts owed for taxes collected under chapters 82.08,
2 82.12, and 82.14 RCW but not remitted to the department of revenue.

3 **Sec. 7.** RCW 61.24.100 and 1998 c 295 s 12 are each amended to
4 read as follows:

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

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

14 (b) No action under (a) of this subsection precludes the
15 beneficiary from commencing a judicial foreclosure or trustee's sale
16 under the deed of trust after the completion or dismissal of that
17 action.

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

21 (a)(i) To the extent the fair value of the property sold at the
22 trustee's sale to the beneficiary or an affiliate of the beneficiary
23 is less than the unpaid obligation secured by the deed of trust
24 immediately prior to the trustee's sale, an action for a deficiency
25 judgment against the borrower or grantor, if such person or persons
26 was timely given the notices under RCW 61.24.040, for (A) any
27 decrease in the fair value of the property caused by waste to the
28 property committed by the borrower or grantor, respectively, after
29 the deed of trust is granted, and (B) the wrongful retention of any
30 rents, insurance proceeds, or condemnation awards by the borrower or
31 grantor, respectively, that are otherwise owed to the beneficiary.

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

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

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

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

15 (5) In any action against a guarantor following a trustee's sale
16 under a deed of trust securing a commercial loan, the guarantor may
17 request the court or other appropriate adjudicator to determine, or
18 the court or other appropriate adjudicator may in its discretion
19 determine, the fair value of the property sold at the sale and the
20 deficiency judgment against the guarantor shall be for an amount
21 equal to the sum of the total amount owed to the beneficiary by the
22 guarantor as of the date of the trustee's sale, less the fair value
23 of the property sold at the trustee's sale or the sale price paid at
24 the trustee's sale, whichever is greater, plus interest on the amount
25 of the deficiency from the date of the trustee's sale at the rate
26 provided in the guaranty, the deed of trust, or in any other
27 contracts evidencing the debt secured by the deed of trust, as
28 applicable, and any costs, expenses, and fees that are provided for
29 in any contract evidencing the guarantor's liability for such a
30 judgment. If any other security is sold to satisfy the same debt
31 prior to the entry of a deficiency judgment against the guarantor,
32 the fair value of that security, as calculated in the manner
33 applicable to the property sold at the trustee's sale, shall be added
34 to the fair value of the property sold at the trustee's sale as of
35 the date that additional security is foreclosed. This section is in
36 lieu of any right any guarantor would otherwise have to establish an
37 upset price pursuant to RCW 61.12.060 prior to a trustee's sale.

38 (6) A guarantor granting a deed of trust to secure its guaranty
39 of a commercial loan shall be subject to a deficiency judgment
40 following a trustee's sale under that deed of trust only to the

1 extent stated in subsection (3)(a)(i) of this section. If the deed of
2 trust encumbers the guarantor's principal residence, the guarantor
3 shall be entitled to receive an amount up to (~~the homestead~~
4 ~~exemption set forth in RCW 6.13.030~~) \$125,000, without regard to the
5 effect of RCW 6.13.080(2), from the bid at the foreclosure or
6 trustee's sale accepted by the sheriff or trustee prior to the
7 application of the bid to the guarantor's obligation.

8 (7) A beneficiary's acceptance of a deed in lieu of a trustee's
9 sale under a deed of trust securing a commercial loan exonerates the
10 guarantor from any liability for the debt secured thereby except to
11 the extent the guarantor otherwise agrees as part of the deed in lieu
12 transaction.

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

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

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

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

28 (12) Notwithstanding anything in this section to the contrary,
29 the rights and obligations of any borrower, grantor, and guarantor
30 following a trustee's sale under a deed of trust securing a
31 commercial loan or any guaranty of such a loan executed prior to June
32 11, 1998, shall be determined in accordance with the laws existing
33 prior to June 11, 1998.

34 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
35 preservation of the public peace, health, or safety, or support of
36 the state government and its existing public institutions, and takes
37 effect immediately.

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