HOUSE BILL REPORT
HB 1233

As Amended by the Senate

Title: An act relating to the net value of a homestead exemption.

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

Sponsors: Representatives Edmonds, Sheahan and Constantine.

Brief History:
  Committee Activity:
    Judiciary: 2/4/99, 2/16/99 [DP].
  Floor Activity:
    Passed House: 2/26/99, 96-0.
    Senate Amended.
    Passed Senate: 4/13/99, 48-0.

Brief Summary of Bill

· Clarifies that net value of a homestead is calculated at the time a judgment is executed.

· Clarifies that the judgment being executed is excluded from the calculation of net value.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 12 members: Representatives Carrell, Republican Co-Chair; Constantine, Democratic Co-Chair; Hurst, Democratic Vice Chair; Lambert, Republican Vice Chair; Cox; Dickerson; Esser; Kastama; Lantz; Lovick; McDonald and Schindler.

Staff: Bill Perry (786-7123).

Background:

A homestead, the property an owner uses as a residence, is exempted from attachment, execution, and forced sale for the debts of an owner 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 <u>Robin Miller Construction Co. (RMC) v. Coltran</u>, 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 <u>recorded</u>, the net value would exceed the homestead exemption. If the net value was calculated at the time the judgment was <u>executed</u>, 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, <u>as well as the specific judgment being executed</u>.

Summary of Bill:

Net value of a homestead is calculated at the time the judgment is executed. All liens and encumbrances incurred prior to the judgment being executed upon are included in the calculation. However, the specific judgment being executed is excluded from the calculation.

EFFECT OF SENATE AMENDMENT(S): <u>The amendment does two things:</u>
- <u>First, it further clarifies which liens and encumbrances are part of a "net value" calculation of a homestead. It expressly states that only liens and encumbrances with a claim against the homestead that is superior to the claim of the judgment being enforced may be used to reduce the net value of the homestead.</u>
- <u>Second, it raises the dollar limit of the homestead exemption from $30,000 to $40,000. (It is the lesser of this dollar limit or the "net value" calculation that determines how much of a person's homestead is actually protected from creditors.)</u>

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The <u>Coltran</u> decision was a literal reading of the statute, but it makes no practical sense. The bill clarifies that the law will operate as intended and as practitioners had assumed it did for many years.

Testimony Against: None.

Testified: Charles Helm and Dan Brink, Washington State Bar Association.