

SHB 2304 - S AMD 658
By Senator Prentice

ADOPTED 04/23/2005

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 43.20B
4 RCW to read as follows:

5 (1) When an individual receives medical assistance subject to
6 recovery under this chapter and the individual is the holder of record
7 title to real property or the purchaser under a land sale contract, the
8 department of social and health services may present to the county
9 auditor for recording in the deed and mortgage records of a county a
10 request for notice of transfer or encumbrance of the real property.
11 The department shall adopt a rule providing prior notice and hearing
12 rights to the record title holder or purchaser under a land sale
13 contract.

14 (2) The department shall present to the county auditor for
15 recording a termination of request for notice of transfer or
16 encumbrance when, in the judgment of the department, it is no longer
17 necessary or appropriate for the department to monitor transfers or
18 encumbrances related to the real property.

19 (3) The department shall adopt by rule a form for the request for
20 notice of transfer or encumbrance and the termination of request for
21 notice of transfer or encumbrance that, at a minimum:

22 (a) Contains the name of the public assistance recipient and a
23 departmental case identifier or other appropriate information that
24 links the individual who is the holder of record title to real property
25 or the purchaser under a land sale contract to the individual's public
26 assistance records;

27 (b) Contains the legal description of the real property;

28 (c) Contains a mailing address for the department to receive the
29 notice of transfer or encumbrance; and

1 (d) Complies with the requirements for recording in RCW 36.18.010
2 for those forms intended to be recorded.

3 (4) The department shall pay the recording fee required by the
4 county clerk under RCW 36.18.010.

5 (5) The request for notice of transfer or encumbrance described in
6 this section does not affect title to real property and is not a lien
7 on, encumbrance of, or other interest in the real property.

8 NEW SECTION. **Sec. 2.** A new section is added to chapter 64.04 RCW
9 to read as follows:

10 (1) If the department of social and health services has filed a
11 request for notice of transfer or encumbrance under section 1 of this
12 act:

13 (a) A title insurance company or agent that discovers the presence
14 of a request for notice of transfer or encumbrance when performing a
15 title search on real property shall disclose the presence of the
16 request for notice of transfer or encumbrance in any report preliminary
17 to, or any commitment to offer, a certificate of title insurance for
18 the real property; and

19 (b) Any individual who transfers or encumbers real property shall
20 provide the department of social and health services with a notice of
21 transfer or encumbrance. The department of social and health services
22 shall adopt by rule a model form for notice of transfer or encumbrance
23 to be used by a purchaser or lender when notifying the department.

24 (2) If the department of social and health services has caused to
25 be recorded a termination of request for notice of transfer or
26 encumbrance in the deed and mortgage records under section 1 of this
27 act, an individual transferring or encumbering the real property is not
28 required to provide the notice of transfer or encumbrance required by
29 subsection (1)(b) of this section.

30 **Sec. 3.** RCW 65.04.050 and 1996 c 143 s 4 are each amended to read
31 as follows:

32 Every auditor or recording officer must keep a general index,
33 direct and inverted. The index may be either printed on paper or
34 produced on microfilm or microfiche, or it can be created from a
35 computerized data base and displayed on a video display terminal. Any
36 reference to a prior record location number may be entered in the

1 remarks column. Any property legal description contained in the
2 instrument must be entered in the description of property column of the
3 general index. The direct index shall be divided into eight columns,
4 and with heads to the respective columns, as follows: Date of
5 reception, grantor, grantee, nature of instrument, volume and page
6 where recorded and/or the auditor's file number, remarks, description
7 of property, assessor's property tax parcel or account number. The
8 auditor or recording officer shall correctly enter in such index every
9 instrument concerning or affecting real estate which by law is required
10 to be recorded, the names of grantors being in alphabetical order. The
11 inverted index shall also be divided into eight columns, precisely
12 similar, except that "grantee" shall occupy the second column and
13 "grantor" the third, the names of grantees being in alphabetical order.
14 The auditor or recording officer may combine the direct and indirect
15 indexes into a single index if it contains all the information required
16 to be contained in the separate direct and indirect indexes and the
17 names of all grantors and grantees can be found by a person searching
18 the combined index. For the purposes of this chapter, the term
19 "grantor" means any person conveying or encumbering the title to any
20 property, or any person against whom any lis pendens, judgment, notice
21 of lien, order of sale, execution, writ of attachment, ((~~or~~)) claims of
22 separate or community property, or notice for request of transfer or
23 encumbrance under section 1 of this act shall be placed on record. The
24 auditor or recording officer shall also enter in the general index, the
25 name of the party or parties platting a town, village, or addition in
26 the column prescribed for "grantors," describing the grantee in such
27 case as "the public." However, the auditor or recording officer shall
28 not receive or record any such plat or map until it has been approved
29 by the mayor and common council of the municipality in which the
30 property so platted is situated, or if the property be not situated
31 within any municipal corporation, then the plat must be first approved
32 by the county legislative authority. The auditor or recording officer
33 shall not receive for record any plat, map, or subdivision of land
34 bearing a name the same or similar to the name of any map or plat
35 already on record in the office. The auditor or recording officer may
36 establish a name reservation system to preclude the possibility of
37 duplication of names.

1 **Sec. 4.** RCW 6.13.080 and 1993 c 200 s 4 are each amended to read
2 as follows:

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

5 (1) On debts secured by mechanic's, laborer's, construction,
6 maritime, automobile repair, materialmen's or vendor's liens arising
7 out of and against the particular property claimed as a homestead;

8 (2) On debts secured (a) by security agreements describing as
9 collateral the property that is claimed as a homestead or (b) by
10 mortgages or deeds of trust on the premises that have been executed and
11 acknowledged by the husband and wife or by any unmarried claimant;

12 (3) On one spouse's or the community's debts existing at the time
13 of that spouse's bankruptcy filing where (a) bankruptcy is filed by
14 both spouses within a six-month period, other than in a joint case or
15 a case in which their assets are jointly administered, and (b) the
16 other spouse exempts property from property of the estate under the
17 bankruptcy exemption provisions of 11 U.S.C. Sec. 522(d);

18 (4) On debts arising from a lawful court order or decree or
19 administrative order establishing a child support obligation or
20 obligation to pay spousal maintenance; (~~(or)~~)

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

24 (6) On debts secured by a condominium's or homeowner association's
25 lien. In order for an association to be exempt under this provision,
26 the association must have provided a homeowner with notice that
27 nonpayment of the association's assessment may result in foreclosure of
28 the association lien and that the homestead protection under this
29 chapter shall not apply. An association has complied with this notice
30 requirement by mailing the notice, by first class mail, to the address
31 of the owner's lot or unit. The notice required in this subsection
32 shall be given within thirty days from the date the association learns
33 of a new owner, but in all cases the notice must be given prior to the
34 initiation of a foreclosure. The phrase "learns of a new owner" in
35 this subsection means actual knowledge of the identity of a homeowner
36 acquiring title after June 9, 1988, and does not require that an
37 association affirmatively ascertain the identity of a homeowner.

1 Failure to give the notice specified in this subsection affects an
2 association's lien only for debts accrued up to the time an association
3 complies with the notice provisions under this subsection.

4 **Sec. 5.** RCW 43.20B.030 and 2003 c 207 s 1 are each amended to read
5 as follows:

6 (1) Except as otherwise provided by law, including subsection (2)
7 of this section, there will be no collection of overpayments and other
8 debts due the department after the expiration of six years from the
9 date of notice of such overpayment or other debt unless the department
10 has commenced recovery action in a court of law or unless an
11 administrative remedy authorized by statute is in place. However, any
12 amount due in a case thus extended shall cease to be a debt due the
13 department at the expiration of ten years from the date of the notice
14 of the overpayment or other debt unless a court-ordered remedy would be
15 in effect for a longer period.

16 (2) There will be no collection of debts due the department after
17 the expiration of twenty years from the date a lien is recorded
18 pursuant to RCW 43.20B.080.

19 (3) The department, at any time, may accept offers of compromise of
20 disputed claims or may grant partial or total write-off of any debt due
21 the department if it is no longer cost-effective to pursue. The
22 department shall adopt rules establishing the considerations to be made
23 in the granting or denial of a partial or total write-off of debts.

24 **Sec. 6.** RCW 43.20B.080 and 1999 c 354 s 2 are each amended to read
25 as follows:

26 (1) The department shall file liens, seek adjustment, or otherwise
27 effect recovery for medical assistance correctly paid on behalf of an
28 individual consistent with 42 U.S.C. Sec. 1396p. The department shall
29 adopt a rule providing for prior notice and hearing rights to the
30 record title holder or purchaser under a land sale contract.

31 (2) Liens may be adjusted by foreclosure in accordance with chapter
32 61.12 RCW.

33 (3) In the case of an individual who was fifty-five years of age or
34 older when the individual received medical assistance, the department
35 shall seek adjustment or recovery from the individual's estate, and
36 from nonprobate assets of the individual as defined by RCW 11.02.005,

1 but only for medical assistance consisting of nursing facility
2 services, home and community-based services, other services that the
3 department determines to be appropriate, and related hospital and
4 prescription drug services. Recovery from the individual's estate,
5 including foreclosure of liens imposed under this section, shall be
6 undertaken as soon as practicable, consistent with 42 U.S.C. Sec.
7 1396p.

8 (4) The department shall apply the medical assistance estate
9 recovery law as it existed on the date that benefits were received when
10 calculating an estate's liability to reimburse the department for those
11 benefits.

12 (5)(a) The department shall establish procedures consistent with
13 standards established by the federal department of health and human
14 services and pursuant to 42 U.S.C. Sec. 1396p to waive recovery when
15 such recovery would work an undue hardship.

16 (b) Recovery of medical assistance from a recipient's estate shall
17 not include property made exempt from claims by federal law or treaty,
18 including exemption for tribal artifacts that may be held by individual
19 Native Americans.

20 (6) A lien authorized under (~~(subsections (1) through (5) of)~~) this
21 section relates back to attach to any real property that the decedent
22 had an ownership interest in immediately before death and is effective
23 as of that date or date of recording, whichever is earlier.

24 (7) The department may enforce a lien authorized under this section
25 against a decedent's life estate or joint tenancy interest in real
26 property held by the decedent immediately prior to his or her death.
27 Such a lien enforced under this subsection shall not end and shall
28 continue as provided in this subsection until the department's lien has
29 been satisfied.

30 (a) The value of the life estate subject to the lien shall be the
31 value of the decedent's interest in the property subject to the life
32 estate immediately prior to the decedent's death.

33 (b) The value of the joint tenancy interest subject to the lien
34 shall be the value of the decedent's fractional interest the recipient
35 would have owned in the jointly held interest in the property had the
36 recipient and the surviving joint tenants held title to the property as
37 tenants in common on the date of the recipient's death.

1 (c) The department may not enforce the lien provided by this
2 subsection against a bona fide purchaser or encumbrancer that obtains
3 an interest in the property after the death of the recipient and before
4 the department records either its lien or the request for notice of
5 transfer or encumbrance as provided by section 1 of this act.

6 (d) The department may not enforce a lien provided by this
7 subsection against any property right that vested prior to July 1,
8 2005.

9 (8)(a) Subject to the requirements of 42 U.S.C. Sec. 1396p(a) and
10 the conditions of this subsection (8), the department is authorized to
11 file a lien against the property of an individual prior to his or her
12 death, and to seek adjustment and recovery from the individual's estate
13 or sale of the property subject to the lien, if:

14 (i) The individual is an inpatient in a nursing facility,
15 intermediate care facility for individuals with mental retardation, or
16 other medical institution; and

17 (ii) The department has determined after notice and opportunity for
18 a hearing that the individual cannot reasonably be expected to be
19 discharged from the medical institution and to return home.

20 (b) If the individual is discharged from the medical facility and
21 returns home, the department shall dissolve the lien.

22 (9) The department is authorized to adopt rules to effect recovery
23 under this section. The department may adopt by rule later enactments
24 of the federal laws referenced in this section.

25 ~~((+8))~~ (10) It is the responsibility of the department to fully
26 disclose in advance verbally and in writing, in easy to understand
27 language, the terms and conditions of estate recovery to all persons
28 offered long-term care services subject to recovery of payments.

29 ~~((+9))~~ (11) In disclosing estate recovery costs to potential
30 clients, and to family members at the consent of the client, the
31 department shall provide a written description of the community service
32 options.

33 ~~((+10) The department of social and health services shall develop~~
34 ~~an implementation plan for notifying the client or his or her legal~~
35 ~~representative at least quarterly of the types of services used and the~~
36 ~~cost of those services (debt) that will be charged against the estate.~~
37 ~~The estate planning implementation plan shall be submitted by December~~

1 ~~12, 1999, to the appropriate standing committees of the house of~~
2 ~~representatives and the senate, and to the joint legislative and~~
3 ~~executive task force on long term care.))"~~

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4 On page 1, line 2 of the title, after "debts;" strike the remainder
5 of the title and insert "amending RCW 65.04.050, 6.13.080, 43.20B.030,
6 and 43.20B.080; adding a new section to chapter 43.20B RCW; and adding
7 a new section to chapter 64.04 RCW."

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