

SHB 1492 - H AMD 121

By Representative Pedersen

ADOPTED 03/01/2011

1 On page 9, line 23, after "necessary" strike "~~((indorsement))~~
2 endorsement" and insert "indorsement"

3 On page 24, line 7, after "~~((security—certificate))~~" strike
4 "certified" and insert "certificated"

5 On page 44, after line 40, insert the following:

6 **"DEFAULT**

7 **Sec. 501.** RCW 62A.9A-607 and 2000 c 250 s 9A-607 are each amended
8 to read as follows:

9 ~~((+a))~~ (1) **Collection and enforcement generally.** If so agreed,
10 and in any event after default, a secured party:

11 ~~((+1))~~ (a) May notify an account debtor or other person obligated
12 on collateral to make payment or otherwise render performance to or for
13 the benefit of the secured party;

14 ~~((+2))~~ (b) May take any proceeds to which the secured party is
15 entitled under RCW 62A.9A-315;

16 ~~((+3))~~ (c) May enforce the obligations of an account debtor or
17 other person obligated on collateral and exercise the rights of the
18 debtor with respect to the obligation of the account debtor or other
19 person obligated on collateral to make payment or otherwise render
20 performance to the debtor, and with respect to any property that
21 secures the obligations of the account debtor or other person obligated
22 on the collateral;

23 ~~((+4))~~ (d) If it holds a security interest in a deposit account
24 perfected by control under RCW 62A.9A-104(a)(1), may apply the balance
25 of the deposit account to the obligation secured by the deposit
26 account; and

1 ((+5)) (e) If it holds a security interest in a deposit account
2 perfected by control under RCW 62A.9A-104(a) (2) or (3), may instruct
3 the bank to pay the balance of the deposit account to or for the
4 benefit of the secured party.

5 ((+b)) (2) Nonjudicial enforcement of mortgage. If necessary to
6 enable a secured party to exercise, under subsection ((+a)(3)) (1)(c)
7 of this section, the right of a debtor to enforce a mortgage
8 nonjudicially, the secured party may record in the office in which a
9 record of the mortgage is recorded the secured party's sworn affidavit
10 stating that:

11 ((+1)) (a) ~~Default has occurred (under the security agreement~~
12 ~~that creates or provides for a security interest in the obligations~~
13 ~~secured by the mortgage)~~ with respect to the obligation secured by the
14 mortgage;

15 ((+2)) (b) A copy of the security agreement that creates or
16 provides for a security interest in the obligations secured by the
17 mortgage is attached to the affidavit; and

18 ((+3)) (c) The secured party is entitled to enforce the mortgage
19 nonjudicially.

20 If the secured party's affidavit and attached copy of the security
21 agreement in the form prescribed by chapter 65.04 RCW are presented
22 with the applicable fee to the office in which a record of the mortgage
23 is recorded, the affidavit and attached copy of the security agreement
24 shall be recorded pursuant to RCW 65.04.030(3).

25 ((+e)) (3) Commercially reasonable collection and enforcement. A
26 secured party shall proceed in a commercially reasonable manner if the
27 secured party:

28 ((+1)) (a) Undertakes to collect from or enforce an obligation of
29 an account debtor or other person obligated on collateral; and

30 ((+2)) (b) Is entitled to charge back uncollected collateral or
31 otherwise to full or limited recourse against the debtor or a secondary
32 obligor.

33 ((+d)) (4) Expenses of collection and enforcement. A secured
34 party may deduct from the collections made pursuant to subsection
35 ((+e)) (3) of this section reasonable expenses of collection and
36 enforcement, including reasonable attorneys' fees and legal expenses
37 incurred by the secured party.

1 ((+e)) (5) Duties to secured party not affected. This section
2 does not determine whether an account debtor, bank, or other person
3 obligated on collateral owes a duty to a secured party.

4 **PART 6"**

5 Renumber the remaining sections and parts consecutively, correct
6 any internal references accordingly, and correct the title.

7 On page 71, after line 34, insert the following:

8 "**Sec. 622.** RCW 62A.9A-601 and 2000 c 250 s 9A-601 are each amended
9 to read as follows:

10 ((+a)) (1) Rights of secured party after default. After default,
11 a secured party has the rights provided in this part and, except as
12 otherwise provided in RCW 62A.9A-602, those provided by agreement of
13 the parties. A secured party:

14 ((+1)) (a) May reduce a claim to judgment, foreclose, or otherwise
15 enforce the claim, security interest, or agricultural lien by any
16 available judicial procedure; and

17 ((+2)) (b) If the collateral is documents, may proceed either as
18 to the documents or as to the goods they cover.

19 ((+b)) (2) Rights and duties of secured party in possession or
20 **control.** A secured party in possession of collateral or control of
21 collateral under RCW 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107
22 has the rights and duties provided in RCW 62A.9A-207.

23 ((+e)) (3) Rights cumulative; simultaneous exercise. The rights
24 under subsections ((+a) and (+b)) (1) and (2) of this section are
25 cumulative and may be exercised simultaneously.

26 ((+d)) (4) Rights of debtor and obligor. Except as otherwise
27 provided in subsection ((+g)) (7) of this section and RCW 62A.9A-605,
28 after default, a debtor and an obligor have the rights provided in this
29 part and by agreement of the parties.

30 ((+e)) (5) Lien of levy after judgment. If a secured party has
31 reduced its claim to judgment, the lien of any levy that may be made
32 upon the collateral by virtue of an execution based upon the judgment
33 relates back to the earliest of:

34 ((+1)) (a) The date of perfection of the security interest or
35 agricultural lien in the collateral;

1 ~~((2))~~ (b) The date of filing a financing statement covering the
2 collateral; or

3 ~~((3))~~ (c) Any date specified in a statute under which the
4 agricultural lien was created.

5 ~~((f))~~ (6) **Execution sale.** A sale pursuant to an execution is a
6 foreclosure of the security interest or agricultural lien by judicial
7 procedure within the meaning of this section. A secured party may
8 purchase at the sale and thereafter hold the collateral free of any
9 other requirements of this Article.

10 ~~((g))~~ (7) **Consignor or buyer of certain rights to payment.**
11 Except as otherwise provided in RCW 62A.9A-607~~((e))~~ (3), this part
12 imposes no duties upon a secured party that is a consignor or is a
13 buyer of accounts, chattel paper, payment intangibles, or promissory
14 notes.

15 ~~((h))~~ (8) **Enforcement restrictions.** All rights and remedies
16 provided in this part with respect to promissory notes or an agreement
17 between an account debtor and a debtor which relates to a health-care-
18 insurance receivable or a general intangible, including a contract,
19 permit, license, or franchise, are subject to RCW 62A.9A-408 to the
20 extent applicable.

21 **Sec. 623.** RCW 62A.9A-602 and 2000 c 250 s 9A-602 are each amended
22 to read as follows:

23 Except as otherwise provided in RCW 62A.9A-624, to the extent that
24 they give rights to an obligor (other than a secondary obligor) or a
25 debtor and impose duties on a secured party, the debtor or obligor may
26 not waive or vary the rules stated in the following listed sections:

27 (1) RCW 62A.9A-207(b)(4)(C), which deals with use and operation of
28 the collateral by the secured party;

29 (2) RCW 62A.9A-210, which deals with requests for an accounting and
30 requests concerning a list of collateral and statement of account;

31 (3) RCW 62A.9A-607~~((e))~~ (3), which deals with collection and
32 enforcement of collateral;

33 (4) RCW 62A.9A-608(a) and 62A.9A-615(c) to the extent that they
34 deal with application or payment of noncash proceeds of collection,
35 enforcement, or disposition;

36 (5) RCW 62A.9A-608(a) and 62A.9A-615(d) to the extent that they
37 require accounting for or payment of surplus proceeds of collateral;

1 (6) RCW 62A.9A-609 to the extent that it imposes upon a secured
2 party that takes possession of collateral without judicial process the
3 duty to do so without breach of the peace;

4 (7) RCW 62A.9A-610(b), 62A.9A-611, 62A.9A-613, and 62A.9A-614,
5 which deal with disposition of collateral;

6 (8) [Reserved]

7 (9) RCW 62A.9A-616, which deals with explanation of the calculation
8 of a surplus or deficiency;

9 (10) RCW 62A.9A-620, 62A.9A-621, and 62A.9A-622, which deal with
10 acceptance of collateral in satisfaction of obligation;

11 (11) RCW 62A.9A-623, which deals with redemption of collateral;

12 (12) RCW 62A.9A-624, which deals with permissible waivers; and

13 (13) RCW 62A.9A-625 and 62A.9A-626, which deal with the secured
14 party's liability for failure to comply with this Article."

15 Renumber the remaining sections and parts consecutively, correct
16 any internal references accordingly, and correct the title.

17 On page 74, after line 3, insert the following:

18 "**Sec. 624.** RCW 62A.9A-625 and 2001 c 32 s 44 are each amended to
19 read as follows:

20 ~~((a))~~ (1) **Judicial orders concerning noncompliance.** If it is
21 established that a secured party is not proceeding in accordance with
22 this Article, a court may order or restrain collection, enforcement, or
23 disposition of collateral on appropriate terms and conditions.

24 ~~((b))~~ (2) **Damages for noncompliance.** Subject to subsections
25 ~~((c), (d), and (f))~~ (3), (4), and (6) of this section, a person is
26 liable for damages in the amount of any loss caused by a failure to
27 comply with this Article or by filing a false statement under RCW
28 62A.9A-607~~((b))~~ (2) or 62A.9A-619. Loss caused by a failure to
29 comply may include loss resulting from the debtor's inability to
30 obtain, or increased costs of, alternative financing.

31 ~~((e))~~ (3) **Persons entitled to recover damages; statutory damages**
32 **in consumer-goods transaction.** Except as otherwise provided in RCW
33 62A.9A-628:

34 ~~((1))~~ (a) A person that, at the time of the failure, was a
35 debtor, was an obligor, or held a security interest in or other lien on

1 the collateral may recover damages under subsection ~~((b))~~ (2) of this
2 section for its loss; and

3 ~~((2))~~ (b) If the collateral is consumer goods, a person that was
4 a debtor or a secondary obligor at the time a secured party failed to
5 comply with this part may recover for that failure in any event an
6 amount not less than the credit service charge plus ten percent of the
7 principal amount of the obligation or the time-price differential plus
8 ten percent of the cash price.

9 ~~((d))~~ (4) **Recovery when deficiency eliminated or reduced.** A
10 debtor whose deficiency is eliminated under RCW 62A.9A-626 may recover
11 damages for the loss of any surplus. However, a debtor or secondary
12 obligor may not recover under subsection ~~((b) or (e)(2))~~ (2) or
13 (3)(b) of this section for noncompliance with the provisions of this
14 part relating to collection, enforcement, disposition, or acceptance to
15 the extent that its deficiency is eliminated or reduced under RCW
16 62A.9A-626.

17 ~~((e))~~ (5) **Statutory damages: Noncompliance with specified**
18 **provisions.** In addition to any damages recoverable under subsection
19 ~~((b))~~ (2) of this section, the debtor, consumer obligor, or person
20 named as a debtor in a filed record, as applicable, may recover five
21 hundred dollars in each case from a person that:

22 ~~((1))~~ (a) Fails to comply with RCW 62A.9A-208;

23 ~~((2))~~ (b) Fails to comply with RCW 62A.9A-209;

24 ~~((3))~~ (c) Files a record that the person is not entitled to file
25 under RCW 62A.9A-509(a);

26 ~~((4))~~ (d) Fails to cause the secured party of record to file or
27 send a termination statement as required by RCW 62A.9A-513 (a) or (c)
28 within twenty days after the secured party receives an authenticated
29 demand from a debtor;

30 ~~((5))~~ (e) Fails to comply with RCW 62A.9A-616(b)(1) and whose
31 failure is part of a pattern, or consistent with a practice, of
32 noncompliance; or

33 ~~((6))~~ (f) Fails to comply with RCW 62A.9A-616(b)(2).

34 ~~((f))~~ (6) **Statutory damages: Noncompliance with RCW 62A.9A-210.**
35 A debtor or consumer obligor may recover damages under subsection
36 ~~((b))~~ (2) of this section and, in addition, five hundred dollars in
37 each case from a person that, without reasonable cause, fails to comply
38 with a request under RCW 62A.9A-210. A recipient of a request under

1 RCW 62A.9A-210 which never claimed an interest in the collateral or
2 obligations that are the subject of a request under RCW 62A.9A-210 has
3 a reasonable excuse for failure to comply with the request within the
4 meaning of this subsection.

5 ~~((g))~~ (7) **Limitation of security interest: Noncompliance with**
6 **RCW 62A.9A-210.** If a secured party fails to comply with a request
7 regarding a list of collateral or a statement of account under RCW
8 62A.9A-210, the secured party may claim a security interest only as
9 shown in the list or statement included in the request as against a
10 person that is reasonably misled by the failure.

11 **Sec. 625.** RCW 62A.9A-628 and 2001 c 32 s 45 are each amended to
12 read as follows:

13 ~~((a))~~ (1) **Limitation of liability of secured party for**
14 **noncompliance with article.** Unless a secured party knows that a person
15 is a debtor or obligor, knows the identity of the person, and knows how
16 to communicate with the person:

17 ~~((1))~~ (a) The secured party is not liable to the person, or to a
18 secured party or lienholder that has filed a financing statement
19 against the person, for failure to comply with this Article; and

20 ~~((2))~~ (b) The secured party's failure to comply with this Article
21 does not affect the liability of the person for a deficiency.

22 ~~((b))~~ (2) **Limitation of liability based on status as secured**
23 **party.** A secured party is not liable because of its status as secured
24 party:

25 ~~((1))~~ (a) To a person that is a debtor or obligor, unless the
26 secured party knows:

27 ~~((A))~~ (i) That the person is a debtor or obligor;

28 ~~((B))~~ (ii) The identity of the person; and

29 ~~((C))~~ (iii) How to communicate with the person; or

30 ~~((2))~~ (b) To a secured party or lienholder that has filed a
31 financing statement against a person, unless the secured party knows:

32 ~~((A))~~ (i) That the person is a debtor; and

33 ~~((B))~~ (ii) The identity of the person.

34 ~~((e))~~ (3) **Limitation of liability if reasonable belief that**
35 **transaction not a consumer-goods transaction or consumer transaction.**

36 A secured party is not liable to any person, and a person's liability
37 for a deficiency is not affected, because of any act or omission

1 arising out of the secured party's reasonable belief that a transaction
2 is not a consumer-goods transaction or a consumer transaction or that
3 goods are not consumer goods, if the secured party's belief is based on
4 its reasonable reliance on:

5 ~~((1))~~ (a) A debtor's representation concerning the purpose for
6 which collateral was to be used, acquired, or held; or

7 ~~((2))~~ (b) An obligor's representation concerning the purpose for
8 which a secured obligation was incurred.

9 ~~((d))~~ (4) Limitation of liability for statutory damages. A
10 secured party is not liable to any person under RCW
11 62A.9A-625~~((e)(2))~~ (3)(b) for its failure to comply with RCW
12 62A.9A-616.

13 ~~((e))~~ (5) Limitation of multiple liability for statutory damages.
14 A secured party is not liable under RCW 62A.9A-625~~((e)(2))~~ (3)(b)
15 more than once with respect to any one secured obligation."

16 Renumber the remaining sections and parts consecutively, correct
17 any internal references accordingly, and correct the title.

EFFECT: Amends the section of Article 9A that addresses the enforcement of an obligation where the collateral consists of a mortgage note or other obligation secured by a mortgage on real property. Provides that there must be a default in the obligation that secures the mortgage before the secured party may exercise any right the debtor has to foreclose the mortgage nonjudicially.

Corrects the use of an inaccurate term and removes the change of the term "indorsement" to "endorsement" in order to maintain consistency with other articles of the uniform commercial code.

Amends additional sections of Article 9A to correct cross-references.

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