

HOUSE BILL REPORT

SB 5541

As Reported by House Committee On:
Judiciary

Title: An act relating to redemption of real property.

Brief Description: Concerning the redemption of real property.

Sponsors: Senators Hobbs, Fain, Hatfield and Harper.

Brief History:

Committee Activity:

Judiciary: 3/20/13, 3/27/13 [DP].

Brief Summary of Bill

- Provides that whether a lien is subsequent in "priority," rather than subsequent in "time," to the lien on which the property was sold, determines whether a lien holder is a "redemptioneer" for purposes of redeeming following a foreclosure sale.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 13 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Hope, Jenkins, Kirby, Klippert, Nealey, Orwall, Roberts and Shea.

Staff: Cece Clynch (786-7195).

Background:

Washington's redemption statutes permit "redemptioners" to redeem foreclosed property for the price paid at the foreclosure sale together with interest, any taxes the purchaser has paid, and certain other amounts. The statutory redemption laws, found in chapter 6.23 RCW, govern the redemption process and define who is a "redemptioneer." The debtor, as well as "[a] creditor having a lien by judgment, decree, deed of trust, or mortgage, on any portion of the property, ..., *subsequent in time* to that on which the property was sold" qualify as redemptioners.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Under the Washington Condominium Act, a condominium association's lien on a unit for unpaid assessments has "super priority" and is prior to all other liens and encumbrances on a unit except:

- liens and encumbrances recorded before the recording of the condominium declaration;
- a mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and
- liens for real property taxes and other governmental assessments or charges.

The Condominium Act further provides that, to the extent that the assessment is for common expenses, an association's lien is also prior to mortgages recorded before the date on which the assessment became delinquent.

In a 2012 case decided by Division One of the Court of Appeals, *Summerhill v. Roughley*, 166 Wn App 625, the issue was whether the lender qualified as a redemptioner. Despite the lender's argument that the Legislature intended to protect all junior lienholders, and that the statutory reference to a "lien subsequent in time" merely meant a "lien subsequent in priority," the court held that because a 2006 deed of trust, although subsequent in priority, was not subsequent in time to a condominium association's 2008 assessment lien, the lender did not qualify as a redemptioner and could not redeem from the purchaser who had purchased the property at the sheriff's sale.

Summary of Bill:

Whether a lien is subsequent in "priority," rather than subsequent in "time," to the lien on which the property was sold, determines whether a lien holder is a "redemptioner" for purposes of redeeming following a foreclosure sale.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The redemption laws were first written in the late 1800s. Some things have changed since that time, including the advent of condominium associations and the lien priority that such associations have by statute. The court case illustrates that it is time to update the redemption laws. Redemption is a grace period in which a redemptioner can find the money, pay the purchaser at the foreclosure sale, and void the sale. The use of the word "time" in the statute is archaic, and dates back to 1899. The correct word today is "priority."

Professor Stoebuck's treatise on the subject uses the term "priority" not "time." Statutes can rearrange priorities, an example of which can be seen in the super priority lien that condominium associations have. The court in the *Summerhill* case just said that "time" means "time" and that if the word should really be "priority" it was up to the Legislature to change the word. This change is agreeable to stakeholders such as the mortgage community, trustees, homeowners, and those providing legal services to low income persons.

(Opposed) None.

Persons Testifying: Senator Hobbs, prime sponsor; and Brian Sommer, RCO Legal.

Persons Signed In To Testify But Not Testifying: None.