

FINAL BILL REPORT

ESB 6553

C 107 L 14
Synopsis as Enacted

Brief Description: Concerning the distribution of real property sale proceeds.

Sponsors: Senators Kline, Hobbs, Hatfield and Fain.

Senate Committee on Financial Institutions, Housing & Insurance
House Committee on Judiciary

Background: Real property may be foreclosed judicially or non-judicially.

Nonjudicial Foreclosures. The Deeds of Trust Act (RCW 61.24) provides that if there are any surplus funds from a foreclosure sale, the surplus remains with the clerk of the superior court of the county in which the sale took place. Notice of the sale and the surplus funds is provided to all known junior lien holders. Any interest or liens or claims of liens against the property attach to the surplus in the order that it had attached to the property. A party seeking disbursement of the surplus funds must file a motion requesting disbursement in the superior court in the county where the surplus funds are deposited. The clerk may only disburse any surplus by order of the superior court of that county.

Judicial Foreclosures. After the satisfaction of the judgment of a judicial foreclosure, and the sale is confirmed, the clerk of the superior court must pay the judgment debtor any excess proceeds.

Distribution of Excess Proceeds Following Sale of Property Under Execution. A writ of execution is a court order addressed to the sheriff directing the sheriff to seize and sell property of a judgment debtor that is not exempt from execution. Following entry of a judgment, a judgment creditor may request issuance of a writ of execution from the court clerk directed to the sheriff. There are a variety of statutory sections, found in two separate titles of the RCW, that specify how the sheriff levies against and sells property of the debtor and how any excess proceeds realized by the sale are distributed:

- Pursuant to one section found in the chapter dealing with sales under execution, real property must be sold to the highest bidder, after which the sheriff returns the money realized by the sale to the clerk that issued the execution. Following notice to all parties to the action of the sale, the clerk is empowered to apply as much of the proceeds as necessary to satisfy the judgment, and pay any excess proceeds to the judgment debtor, by direction of court order.

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.

- Pursuant to another section in the executions chapter, when property, whether real or personal, has been sold, the sheriff pays the proceeds to the clerk who issued the writ for satisfaction of the judgment or for return of any excess proceeds to the judgment debtor.

Pursuant to another section in the executions chapter, upon receipt of the proceeds from the sheriff following a sale, the clerk notifies the judgment creditor, satisfies the judgment, and then pays any excess to the judgment debtor.

Summary: In a judicial foreclosure, after confirmation of the sale and the judgment is satisfied, if there are any proceeds, the clerk must pay such proceeds to all interests in, or liens against, the property eliminated by the sale in the order of priority that the interest, lien, or claim attached to the property. Any remaining proceeds must be paid to the judgment debtor. Anyone seeking disbursement of surplus funds must file a motion requesting disbursement in the superior court for the county in which the surplus funds are deposited. Notice of the motion must be served upon or mailed to all persons who had an interest in the property at the time of the sale, not less than 20 days prior to the hearing of the motion. The clerk may only disburse any surplus by order of the superior court of that county. It is further clarified that the court, not the clerk, determines the order a priority attaches to any surplus funds. Rather than being paid first to the judgment debtor, excess sale proceeds realized in a sale of property under execution must be paid first to junior interest holders in the order of priority that the interest, lien, or claim attached to the property, as determined by the court. Only after these junior interests are paid, are the remaining proceeds paid to the judgment debtor.

Votes on Final Passage:

Senate	47	0	
House	97	0	(House amended)
Senate	49	0	(Senate concurred)

Effective: June 12, 2014