
ENGROSSED SUBSTITUTE SENATE BILL 5408

State of Washington

67th Legislature

2021 Regular Session

By Senate Law & Justice (originally sponsored by Senators Stanford, Das, Dhingra, Hasegawa, Kuderer, Lovelett, Nguyen, Randall, Robinson, Rolfes, Saldaña, and Wellman)

READ FIRST TIME 02/15/21.

1 AN ACT Relating to the homestead exemption; amending RCW
2 6.13.010, 6.13.030, 6.13.070, and 61.24.100; and creating a new
3 section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that the homestead
6 exemption is intended to protect the homeowner's equity in a home
7 against unsecured creditors. The legislature finds that changes to
8 the homestead exemption are necessary to modernize the law and to
9 address the case of *Wilson v. Rigby*, 909 F.3d 306 (2018) and to adopt
10 the reasoning in *In re Good*, 588 B.R. 573 (Bankr. W.D. Wash. 2018).

11 **Sec. 2.** RCW 6.13.010 and 1999 c 403 s 1 are each amended to read
12 as follows:

13 (1) The homestead consists of real or personal property that the
14 owner or a dependent of the owner uses as a residence. In the case of
15 a dwelling house or mobile home, the homestead consists of the
16 dwelling house or the mobile home in which the owner resides or
17 intends to reside, with appurtenant buildings, and the land on which
18 the same are situated and by which the same are surrounded, or
19 improved or unimproved land, regardless of area, owned with the
20 intention of placing a house or mobile home thereon and residing

1 thereon. A mobile home may be exempted under this chapter whether or
2 not it is permanently affixed to the underlying land and whether or
3 not the mobile home is placed upon a lot owned by the mobile home
4 owner or a dependent of the owner. Property included in the homestead
5 must be actually intended or used as the principal home for the
6 owner.

7 (2) As used in this chapter(~~(, the term "owner")~~):

8 (a) "Owner" includes but is not limited to a purchaser under a
9 deed of trust, mortgage, or real estate contract.

10 (~~((3) As used in this chapter, the term "net")~~) (b) "Net value"
11 means market value less all liens and encumbrances senior to the
12 judgment being executed upon and not including the judgment being
13 executed upon.

14 (c) "Forced sale" includes any sale of homestead property in a
15 bankruptcy proceeding under Title 11 of the United States Code. The
16 reinvestment provisions of RCW 6.13.070 do not apply to the proceeds.

17 (d) "Dependent" has the meaning given in Title 11 U.S.C. Sec.
18 522(a)(1).

19 **Sec. 3.** RCW 6.13.030 and 2007 c 429 s 1 are each amended to read
20 as follows:

21 (~~(A homestead may consist of lands, as described in RCW 6.13.010,~~
22 ~~regardless of area, but the homestead exemption amount shall not~~
23 ~~exceed the lesser of (1) the total net value of the lands,~~
24 ~~manufactured homes, mobile home, improvements, and other personal~~
25 ~~property, as described in RCW 6.13.010, or (2) the sum of one hundred~~
26 ~~twenty-five thousand dollars in the case of lands, manufactured~~
27 ~~homes, mobile home, and improvements, or the sum of fifteen thousand~~
28 ~~dollars in the case of other personal property described in RCW~~
29 ~~6.13.010, except where)) (1) The homestead exemption amount is the~~

30 greater of:

31 (a) \$125,000;

32 (b) The county median sale price of a single-family home in the
33 preceding calendar year; or

34 (c) Where the homestead is subject to execution, attachment, or
35 seizure by or under any legal process whatever to satisfy a judgment
36 in favor of any state for failure to pay that state's income tax on
37 benefits received while a resident of the state of Washington from a
38 pension or other retirement plan, (~~(in which event there shall be))~~
39 no dollar limit (~~(on the value of the exemption))~~).

1 (2) In determining the county median sale price of a single-
2 family home in the preceding year, a court shall use data from the
3 Runstad department of real estate at the University of Washington or,
4 if the Runstad department no longer provides the data, a successor
5 entity designated by the office of financial management.

6 **Sec. 4.** RCW 6.13.070 and 1987 c 442 s 207 are each amended to
7 read as follows:

8 (1) Except as provided in RCW 6.13.080, the homestead is exempt
9 from attachment and from execution or forced sale for the debts of
10 the owner up to the amount specified in RCW 6.13.030.

11 (2) In a bankruptcy case, the debtor's exemption shall be
12 determined on the date the bankruptcy petition is filed. If the value
13 of the debtor's interest in homestead property on the petition date
14 is less than or equal to the amount that can be exempted under RCW
15 6.13.030, then the debtor's entire interest in the property,
16 including the debtor's right to possession and interests of no
17 monetary value, is exempt. Any appreciation in the value of the
18 debtor's exempt interest in the property during the bankruptcy case
19 is also exempt, even if in excess of the amounts in RCW 6.13.030(1).

20 (3) The proceeds of the voluntary sale of the homestead in good
21 faith for the purpose of acquiring a new homestead, and proceeds from
22 insurance covering destruction of homestead property held for use in
23 restoring or replacing the homestead property, up to the amount
24 specified in RCW 6.13.030, shall likewise be exempt for one year from
25 receipt, and also such new homestead acquired with such proceeds.

26 ~~((2))~~ (4) Every homestead created under this chapter is
27 presumed to be valid to the extent of all the property claimed
28 exempt, until the validity thereof is contested in a court of general
29 jurisdiction in the county or district in which the homestead is
30 situated.

31 **Sec. 5.** RCW 61.24.100 and 1998 c 295 s 12 are each amended to
32 read as follows:

33 (1) Except to the extent permitted in this section for deeds of
34 trust securing commercial loans, a deficiency judgment shall not be
35 obtained on the obligations secured by a deed of trust against any
36 borrower, grantor, or guarantor after a trustee's sale under that
37 deed of trust.

1 (2) (a) Nothing in this chapter precludes an action against any
2 person liable on the obligations secured by a deed of trust or any
3 guarantor prior to a notice of trustee's sale being given pursuant to
4 this chapter or after the discontinuance of the trustee's sale.

5 (b) No action under (a) of this subsection precludes the
6 beneficiary from commencing a judicial foreclosure or trustee's sale
7 under the deed of trust after the completion or dismissal of that
8 action.

9 (3) This chapter does not preclude any one or more of the
10 following after a trustee's sale under a deed of trust securing a
11 commercial loan executed after June 11, 1998:

12 (a) (i) To the extent the fair value of the property sold at the
13 trustee's sale to the beneficiary or an affiliate of the beneficiary
14 is less than the unpaid obligation secured by the deed of trust
15 immediately prior to the trustee's sale, an action for a deficiency
16 judgment against the borrower or grantor, if such person or persons
17 was timely given the notices under RCW 61.24.040, for (A) any
18 decrease in the fair value of the property caused by waste to the
19 property committed by the borrower or grantor, respectively, after
20 the deed of trust is granted, and (B) the wrongful retention of any
21 rents, insurance proceeds, or condemnation awards by the borrower or
22 grantor, respectively, that are otherwise owed to the beneficiary.

23 (ii) This subsection (3) (a) does not apply to any property that
24 is occupied by the borrower as its principal residence as of the date
25 of the trustee's sale;

26 (b) Any judicial or nonjudicial foreclosures of any other deeds
27 of trust, mortgages, security agreements, or other security interests
28 or liens covering any real or personal property granted to secure the
29 obligation that was secured by the deed of trust foreclosed; or

30 (c) Subject to this section, an action for a deficiency judgment
31 against a guarantor if the guarantor is timely given the notices
32 under RCW 61.24.042.

33 (4) Any action referred to in subsection (3) (a) and (c) of this
34 section shall be commenced within one year after the date of the
35 trustee's sale, or a later date to which the liable party otherwise
36 agrees in writing with the beneficiary after the notice of
37 foreclosure is given, plus any period during which the action is
38 prohibited by a bankruptcy, insolvency, moratorium, or other similar
39 debtor protection statute. If there occurs more than one trustee's
40 sale under a deed of trust securing a commercial loan or if trustee's

1 sales are made pursuant to two or more deeds of trust securing the
2 same commercial loan, the one-year limitation in this section begins
3 on the date of the last of those trustee's sales.

4 (5) In any action against a guarantor following a trustee's sale
5 under a deed of trust securing a commercial loan, the guarantor may
6 request the court or other appropriate adjudicator to determine, or
7 the court or other appropriate adjudicator may in its discretion
8 determine, the fair value of the property sold at the sale and the
9 deficiency judgment against the guarantor shall be for an amount
10 equal to the sum of the total amount owed to the beneficiary by the
11 guarantor as of the date of the trustee's sale, less the fair value
12 of the property sold at the trustee's sale or the sale price paid at
13 the trustee's sale, whichever is greater, plus interest on the amount
14 of the deficiency from the date of the trustee's sale at the rate
15 provided in the guaranty, the deed of trust, or in any other
16 contracts evidencing the debt secured by the deed of trust, as
17 applicable, and any costs, expenses, and fees that are provided for
18 in any contract evidencing the guarantor's liability for such a
19 judgment. If any other security is sold to satisfy the same debt
20 prior to the entry of a deficiency judgment against the guarantor,
21 the fair value of that security, as calculated in the manner
22 applicable to the property sold at the trustee's sale, shall be added
23 to the fair value of the property sold at the trustee's sale as of
24 the date that additional security is foreclosed. This section is in
25 lieu of any right any guarantor would otherwise have to establish an
26 upset price pursuant to RCW 61.12.060 prior to a trustee's sale.

27 (6) A guarantor granting a deed of trust to secure its guaranty
28 of a commercial loan shall be subject to a deficiency judgment
29 following a trustee's sale under that deed of trust only to the
30 extent stated in subsection (3)(a)(i) of this section. If the deed of
31 trust encumbers the guarantor's principal residence, the guarantor
32 shall be entitled to receive an amount up to (~~the homestead~~
33 ~~exemption set forth in RCW 6.13.030~~) \$125,000, without regard to the
34 effect of RCW 6.13.080(2), from the bid at the foreclosure or
35 trustee's sale accepted by the sheriff or trustee prior to the
36 application of the bid to the guarantor's obligation.

37 (7) A beneficiary's acceptance of a deed in lieu of a trustee's
38 sale under a deed of trust securing a commercial loan exonerates the
39 guarantor from any liability for the debt secured thereby except to

1 the extent the guarantor otherwise agrees as part of the deed in lieu
2 transaction.

3 (8) This chapter does not preclude a beneficiary from foreclosing
4 a deed of trust in the same manner as a real property mortgage and
5 this section does not apply to such a foreclosure.

6 (9) Any contract, note, deed of trust, or guaranty may, by its
7 express language, prohibit the recovery of any portion or all of a
8 deficiency after the property encumbered by the deed of trust
9 securing a commercial loan is sold at a trustee's sale.

10 (10) A trustee's sale under a deed of trust securing a commercial
11 loan does not preclude an action to collect or enforce any obligation
12 of a borrower or guarantor if that obligation, or the substantial
13 equivalent of that obligation, was not secured by the deed of trust.

14 (11) Unless the guarantor otherwise agrees, a trustee's sale
15 shall not impair any right or agreement of a guarantor to be
16 reimbursed by a borrower or grantor for a deficiency judgment against
17 the guarantor.

18 (12) Notwithstanding anything in this section to the contrary,
19 the rights and obligations of any borrower, grantor, and guarantor
20 following a trustee's sale under a deed of trust securing a
21 commercial loan or any guaranty of such a loan executed prior to June
22 11, 1998, shall be determined in accordance with the laws existing
23 prior to June 11, 1998.

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