

ESB 6553 - H COMM AMD  
By Committee on Judiciary

ADOPTED 03/07/2014

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

3 "Sec. 1. RCW 6.21.110 and 1994 c 185 s 3 are each amended to read  
4 as follows:

5 (1) Upon the return of any sale of real estate, the clerk: (a)  
6 Shall enter the cause, on which the execution or order of sale issued,  
7 by its title, on the motion docket, and mark opposite the same: "Sale  
8 of land for confirmation"; (b) shall mail notice of the filing of the  
9 return of sale to all parties who have entered a written notice of  
10 appearance in the action and who have not had an order of default  
11 entered against them; (c) shall file proof of such mailing in the  
12 action; (d) shall apply the proceeds of the sale returned by the  
13 sheriff, or so much thereof as may be necessary, to satisfaction of the  
14 judgment, including interest as provided in the judgment, and shall pay  
15 any excess proceeds as provided in subsection (5) of this section by  
16 direction of court order; and (e) upon confirmation of the sale, shall  
17 deliver the original certificate of sale to the purchaser.

18 (2) The judgment creditor or successful purchaser at the sheriff's  
19 sale is entitled to an order confirming the sale at any time after  
20 twenty days have elapsed from the mailing of the notice of the filing  
21 of the sheriff's return, on motion with notice given to all parties who  
22 have entered a written notice of appearance in the action and who have  
23 not had an order of default entered against them, unless the judgment  
24 debtor, or in case of the judgment debtor's death, the representative,  
25 or any nondefaulting party to whom notice was sent shall file  
26 objections to confirmation with the clerk within twenty days after the  
27 mailing of the notice of the filing of such return.

28 (3) If objections to confirmation are filed, the court shall  
29 nevertheless allow the order confirming the sale, unless on the hearing  
30 of the motion, it shall satisfactorily appear that there were

1 substantial irregularities in the proceedings concerning the sale, to  
2 the probable loss or injury of the party objecting. In the latter  
3 case, the court shall disallow the motion and direct that the property  
4 be resold, in whole or in part, as the case may be, as upon an  
5 execution received as of that date.

6 (4) Upon a resale, the bid of the purchaser at the former sale  
7 shall be deemed to be renewed and continue in force, and no bid shall  
8 be taken, except for a greater amount. If on resale the property sells  
9 for a greater amount to any person other than the former purchaser, the  
10 clerk shall first repay to the former purchaser out of the proceeds of  
11 the resale the amount of the former purchaser's bid together with  
12 interest as is provided in the judgment.

13 (5)(a) If, after ((the satisfaction)) confirmation of the sale and  
14 the judgment is satisfied, there ((be)) are any proceeds of the sale  
15 remaining, the clerk shall pay such proceeds, as provided for in (b) of  
16 this subsection, to all interests in, or liens against, the property  
17 eliminated by sale under this section in the order of priority that the  
18 interest, lien, or claim attached to the property, as determined by the  
19 court. Any remaining proceeds shall be paid to the judgment debtor, or  
20 the judgment debtor's representative, as the case may be, before the  
21 order is made upon the motion to confirm the sale only if the party  
22 files with the clerk a waiver of all objections made or to be made to  
23 the proceedings concerning the sale; otherwise, the excess proceeds  
24 shall remain in the custody of the clerk until the sale of the property  
25 has been disposed of((; but if the sale be confirmed, such excess  
26 proceeds shall be paid to the judgment debtor or representative as a  
27 matter of course)).

28 (b) Anyone seeking disbursement of surplus funds shall file a  
29 motion requesting disbursement in the superior court for the county in  
30 which the surplus funds are deposited. Notice of the motion shall be  
31 served upon or mailed to all persons who had an interest in the  
32 property at the time of sale, and any other party who has entered an  
33 appearance in the proceeding, not less than twenty days prior to the  
34 hearing of the motion. The clerk shall not disburse such remaining  
35 proceeds except upon order of the superior court of such county.

36 (6) The purchaser shall file the original certificate of sale for  
37 record with the recording officer in the county in which the property  
38 is located.

1       **Sec. 2.** RCW 61.24.080 and 1998 c 295 s 10 are each amended to read  
2 as follows:

3       The trustee shall apply the proceeds of the sale as follows:

4       (1) To the expense of sale, including a reasonable charge by the  
5 trustee and by his or her attorney: PROVIDED, That the aggregate of  
6 the charges by the trustee and his or her attorney, for their services  
7 in the sale, shall not exceed the amount which would, by the superior  
8 court of the county in which the trustee's sale occurred, have been  
9 deemed a reasonable attorney fee, had the trust deed been foreclosed as  
10 a mortgage in a noncontested action in that court;

11       (2) To the obligation secured by the deed of trust; and

12       (3) The surplus, if any, less the clerk's filing fee, shall be  
13 deposited, together with written notice of the amount of the surplus,  
14 a copy of the notice of trustee's sale, and an affidavit of mailing as  
15 provided in this subsection, with the clerk of the superior court of  
16 the county in which the sale took place. The trustee shall mail copies  
17 of the notice of the surplus, the notice of trustee's sale, and the  
18 affidavit of mailing to each party to whom the notice of trustee's sale  
19 was sent pursuant to RCW 61.24.040(1). The clerk shall index such  
20 funds under the name of the grantor as set out in the recorded notice.  
21 Upon compliance with this subsection, the trustee shall be discharged  
22 from all further responsibilities for the surplus. Interests in, or  
23 liens or claims of liens against the property eliminated by sale under  
24 this section shall attach to the surplus in the order of priority that  
25 it had attached to the property, as determined by the court. A party  
26 seeking disbursement of the surplus funds shall file a motion  
27 requesting disbursement in the superior court for the county in which  
28 the surplus funds are deposited. Notice of the motion shall be  
29 personally served upon, or mailed in the manner specified in RCW  
30 61.24.040(1)(b), to all parties to whom the trustee mailed notice of  
31 the surplus, and any other party who has entered an appearance in the  
32 proceeding, not less than twenty days prior to the hearing of the  
33 motion. The clerk shall not disburse such surplus except upon order of  
34 the superior court of such county.

35       **Sec. 3.** RCW 6.17.140 and 1988 c 231 s 11 are each amended to read  
36 as follows:

1 The sheriff shall, at a time as near before or after service of the  
2 writ on, or mailing of the writ to, the judgment debtor as is possible,  
3 execute the writ as follows:

4 (1) If property has been attached, the sheriff shall indorse on the  
5 execution, and pay to the clerk forthwith, if he or she has not already  
6 done so, the amount of the proceeds of sales of perishable property or  
7 debts due the defendant previously received, sufficient to satisfy the  
8 judgment.

9 (2) If the judgment is not then satisfied, and property has been  
10 attached and remains in custody, the sheriff shall sell the same, or  
11 sufficient thereof to satisfy the judgment. When property has been  
12 attached and it is probable that such property will not be sufficient  
13 to satisfy the judgment, the sheriff may, on instructions from the  
14 judgment creditor, levy on other property of the judgment debtor  
15 without delay.

16 (3) If then any portion of the judgment remains unsatisfied, or if  
17 no property has been attached or the same has been discharged, the  
18 sheriff shall levy on the property of the judgment debtor, sufficient  
19 to satisfy the judgment, in the manner described in RCW 6.17.160.

20 (4) If, after the judgment is satisfied, any property remains in  
21 custody, the sheriff shall deliver it to the judgment debtor.

22 (5) Until a levy, personal property shall not be affected by the  
23 execution.

24 (6) When property has been sold or debts received on execution, the  
25 sheriff shall pay the proceeds to the clerk who issued the writ, for  
26 satisfaction of the judgment as commanded in the writ or for (~~return~~)  
27 payment of any excess proceeds to all interests in, or liens against,  
28 the property eliminated by the sale in the order of priority that the  
29 interest, lien, or claim attached to the property, as determined by the  
30 court. Any remaining proceeds shall be paid to the judgment debtor.  
31 No sheriff or other officer may retain any moneys collected on  
32 execution more than twenty days before paying the same to the clerk of  
33 the court who issued the writ.

34 **Sec. 4.** RCW 6.17.150 and 1987 c 442 s 415 are each amended to read  
35 as follows:

36 Upon receipt of proceeds from the sheriff on execution, the clerk  
37 shall notify the party to whom the same is payable, and pay over the

1 amount to that party as required by law. If any proceeds remain after  
2 satisfaction of the judgment, the clerk shall pay the excess to all  
3 interests in, or liens against, the property eliminated by the sale in  
4 the order of priority that the interest, lien, or claim attached to the  
5 property, as determined by the court. Any remaining proceeds shall be  
6 paid to the judgment debtor."

7 Correct the title.

EFFECT: Retains all of the underlying bill and makes the following additions: Amends two additional statutes that pertain to execution on property, providing that the junior lienholders rather than the debtor are entitled first to excess proceeds.

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