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Judicial Foreclosure and Receivership as Alternative Remedies for Washington Lenders After *Vargas*

***By Rhys W. Hefta, Matthew J. Micheli, Aaron E. Millstein, Kari L. Larson,
Christian Scarlett and Owen S. Haney****

In this article, the authors explain that, in the wake of a decision by the Washington Supreme Court that appears to eliminate the remedy of nonjudicial foreclosure for Washington lenders engaged in a broad range of commercial transactions, lenders should be familiar with the primary alternative remedies available under Washington law: judicial foreclosures and receiverships.

The Washington Supreme Court has ruled in *Vargas v. RRA CP Opportunity Trust*¹ that only a “holder” of a negotiable instrument, as contemplated by the Uniform Commercial Code (UCC), can satisfy the prerequisites for conducting a nonjudicial trustee’s sale of property under the Washington Deed of Trust Act (DTA). *Vargas* appears to eliminate the remedy of nonjudicial foreclosure for Washington lenders engaged in a broad range of commercial transactions, including deeds of trust securing certain credit agreements, bond indentures, letters of credit, guaranties, construction loans, and other instruments that, by their nature, provide for a variable principal amount that cannot be specified at the time of their inception. In the wake of *Vargas*, lenders should be familiar with the primary alternative remedies available under Washington law: judicial foreclosures and receiverships.

* The authors, attorneys with Arnold & Porter Kaye Scholer LLP, may be contacted at rhys.hefta@arnoldporter.com, matthew.micheli@arnoldporter.com, aaron.millstein@arnoldporter.com, kari.larson@arnoldporter.com, christian.scarlett@arnoldporter.com and owen.haney@arnoldporter.com, respectively.

Prior to press time, an important development occurred with respect to the *Vargas* decision discussed in this article. On September 4, 2026, the Washington Supreme Court issued an Order on Motion for Reconsideration of the *Vargas* decision, in which the original opinion was withdrawn. The court stated that it will issue a new opinion without further oral argument or briefing. It is unclear whether the court will significantly change or merely clarify its original holding. Nonetheless, in the absence of an opinion to the contrary, the original opinion issued by the court may still represent the clearest insight into the court’s interpretation of the Deed of Trust Act. At a minimum, the withdrawal of the original opinion results in continued uncertainty as to the ability of lenders to nonjudicially foreclose many deeds of trust in Washington State. As such, the authors believe the analysis of alternative enforcement options in this article remains very pertinent.

¹ *Marquez Vargas v. RRA CP Opportunity Tr. 1*, No. 103735-0 (Apr. 30, 2026).

JUDICIAL FORECLOSURE

The most direct alternative to a nonjudicial trustee's sale is a judicial foreclosure of the deed of trust as a mortgage under Washington's judicial foreclosure statute, Revised Code of Washington (RCW) 61.12. Judicial foreclosure is a well-established remedy, but it is critical for lenders to consider the process, its practical limitations, and the constraints it places on a lender after the sale.

The Process

To initiate a judicial foreclosure, the lender files a complaint in the appropriate Superior Court (a Washington state trial court) naming all parties with an interest in the property, including all owners, mortgagors, guarantors, junior lienholders, tenants, and the United States if a federal tax lien exists.

The complaint should describe the circumstances of the borrower's default, the key terms of the loan documents, a legal description of the property, and the full range of relief the lender seeks, including the right to bid at the foreclosure sale and the right to pursue a deficiency judgment. The lender should also record a notice of *lis pendens* in the county where the property is located to provide constructive notice of the action and bind third parties to the outcome of the litigation.²

The lender must then prosecute the litigation. If successful, the lender will obtain a judgment of foreclosure and can then request an order of sale from the county clerk, which authorizes the sheriff's office to conduct a public auction after at least 30 days' notice to the judgment debtor.³

After the auction, the sheriff delivers a copy of the certificate of sale to the purchaser, which reflects the price paid and whether the property is subject to a right of redemption.⁴

Before the sale may be finalized, the court must confirm it. Before ordering or confirming the sale, the court may hold a hearing to fix an "upset price" representing the property's minimum value, and may decline to confirm a sale that fails to meet that threshold.⁵ Only after confirmation does the court order disbursement of proceeds to lienholders in order of priority.

² See RCW 4.28.320.

³ See RCW 6.21.030 (detailing notice of sale requirements).

⁴ See RCW 6.21.100. No right of redemption exists if the property has been improved by a structure, is not used for agricultural purposes, and the court determines it has been abandoned for six months.

⁵ See RCW 61.12.060. If the court does not set an upset price before confirmation, the court may hold a hearing to establish the property's value and, as a condition to confirmation, require

Practical Implications: Time, Cost, and Unpredictability

Compared to nonjudicial foreclosure, judicial foreclosure adds procedural complexity, time, and expense. A judicial foreclosure requires litigation, can result in contested proceedings, and typically takes longer to complete than a nonjudicial trustee's sale. The time to implement a judicial foreclosure may increase if the volume of such actions increases materially in the wake of *Vargas*.

The expense of litigation is also a factor to be considered. Judicial foreclosure requires the lender to bear the costs of filing, service, title search, legal fees, and the attendant costs if the matter is contested. While some of these costs, or the equivalent, would also be incurred in a nonjudicial trustee's sale, it is reasonable to anticipate that the costs incurred in connection with a judicial foreclosure will be significantly higher.

The Right of Redemption: A Critical Constraint on Post-Sale Strategy

The most significant practical limitation of judicial foreclosure is the borrower's statutory right of redemption. Under RCW 6.23.020, borrowers are generally entitled to redeem the property for a period of one year following the completion of a judicial sale.⁶ This right is not merely procedural; it has practical implications for what a lender can do with the property it acquires at a foreclosure sale.

During the redemption period, the borrower may reacquire the property by paying the full amount of the outstanding debt as of the time of sale, plus interest, taxes, and certain assessments. Critically, the borrower may exercise this right even if the property has been sold or transferred to a third party following the sale.⁷ This statutory right of redemption may only be relinquished in limited circumstances and cannot be assigned as a naked right free from the redemptioner's underlying interest in the property.⁸ The right of redemption thus creates a cloud on title that can impair the marketability of the property and the price achieved at the foreclosure sale.

The right of redemption also creates substantial operational and financial risk for lenders who acquire property at a judicial sale. With very limited exceptions, the owner of the property during the redemption period (the lender or a

that the fair value of the property be credited upon the foreclosure judgment. *Id.*

⁶ The redemption period ends eight months after the sale if the lender waives its right to collect a deficiency and the property is not used for agricultural purposes. RCW 6.23.020(1).

⁷ RCW 6.23.020(1)-(2) (setting forth requirements to redeem from the purchaser).

⁸ *Performance Constr., LLC v. Glenn*, 195 Wash. App. 406, 417 (2016)("[R]eal property can only be conveyed by a valid deed and a valid transfer of an interest in the property's title is necessary to transfer the right of redemption.").

third-party purchaser) is not entitled to compensation for appreciation in the value of the property or investments made to operate, maintain, or improve the property after the foreclosure sale through the time of redemption. This risk can be particularly acute for properties that require ongoing operational expenditures, capital investment, or completion of construction.

The Benefits of a Judicial Foreclosure

There are potential benefits related to the judicial foreclosure process that merit consideration.

First, in a judicial foreclosure, the lender is entitled to a deficiency judgment under RCW 61.12.080, which enables the lender to pursue guarantors and other obligors for any deficiency in the amount it recovers in the sale. The right to pursue guarantors and other obligors for a deficiency judgment following a nonjudicial trustee's sale in Washington is more limited.

Second, the lender may attend and credit bid its claim at the public auction.

Third, the lender may request a money judgment against the judgment debtor, guarantor, or other obligor.

The lender should request each of the foregoing types of relief in the foreclosure complaint.

RECEIVERSHIP

To the extent that a judicial foreclosure is not a practical remedy in light of the costs, time, and risks associated with the redemption right, the appointment of a general receiver with the power of sale under RCW 7.60 (the Washington State Receivership Act, or WSRA) is a potentially valuable alternative. A receivership provides a flexible, court-supervised process that can replicate the practical benefits of a nonjudicial foreclosure and provide other tools that may be unavailable in either the judicial or nonjudicial foreclosure context.

Types of Receivers and Initiating the Process

Under the WSRA, a receiver may be either “custodial” or “general” in nature. A custodial receiver administers only select assets designated by the court. By contrast, a general receiver displaces management of the subject business or property entirely and is empowered to administer and dispose of all estate assets for the benefit of the estate.⁹ For lenders seeking to maximize control and flexibility in a distressed scenario, appointment of a general receiver will ordinarily be the preferred option.

⁹ Although the Washington receivership statute does not define “estate assets,” an order appointing a general receiver over all estate assets would include “all right, title, and interests, both legal and equitable, . . . in or with respect to any property of a person with respect to which a receiver is appointed.” See RCW 7.60.005(3), (9). To resolve the administration of property beyond the jurisdiction of the court, the receiver may bring ancillary proceedings in foreign

Receivership proceedings are initiated by filing a petition in the appropriate Superior Court. The petition must identify the type of receiver sought, the grounds for appointment, and the identity of the proposed receiver.¹⁰ It should be supported by declarations from the petitioner and the prospective receiver establishing the factual basis for the appointment and the receiver's qualifications. The receiver must post bond in an amount set by the court before assuming its duties.¹¹ The WSRA provides thirty-three distinct statutory grounds upon which a receiver may be appointed,¹² including, among others: danger of material loss or injury to the property or its revenue-producing potential under RCW 7.60.025(1)(b)(i); the need to enforce an assignment of rents under RCW 7.60.025(1)(b)(ii); the need to preserve and protect property pending execution under RCW 7.60.025(1)(e); and insolvency or imminent danger of insolvency under RCW 7.60.025(1)(i). The WSRA also allows for the appointment of a receiver where such appointment "is provided for by agreement" under RCW 7.60.025(1)(b)(ii). Except where appointment is expressly mandated by statute, the court may only appoint a receiver if it finds that appointment is "reasonably necessary" and that other available remedies are inadequate, as provided in RCW 7.60.025(1).

Key Powers of a General Receiver

Once appointed, a general receiver under the WSRA exercises a broad range of powers that can be of substantial benefit to lenders and can operate in ways that parallel certain protections available under the United States Bankruptcy Code.

Automatic Stay

Under RCW 7.60.110, the entry of an order appointing a receiver automatically stays for sixty days, among other actions, the commencement or continuation of legal proceedings against the receivership estate, the enforcement of judgments, and any act to obtain possession of or interfere with estate property. The stay may be extended by the court for good cause shown. This breathing spell can help protect a lender's rights and collateral by halting the efforts of competing creditors, preventing the dissipation of assets, and creating an environment in which the lender can assess the property and formulate a strategy without the pressure of parallel enforcement actions.

jurisdictions requesting recognition of the Washington receivership. See RCW 7.60.270(1).

¹⁰ A receiver may not be, among other things, "a party to the action, a . . . director, officer, agent, attorney, employee, secured or unsecured creditor or lienor of, or holder of any equity interest in . . . the person whose property is to be held by the receiver." RCW 7.60.035.

¹¹ See RCW 7.60.045.

¹² See RCW 7.60.025(1)(a)-(nn).

Management Displacement and Operational Control

A general receiver appointed over an operating business or property has authority to “do all things which the owner of the business or property might do in the ordinary course of the operation of the business,” including purchasing goods, incurring expenses, and paying certain pre-receivership claims.¹³ The receiver may compel by subpoena any person to submit to examination and may demand, under threat of contempt of court, the turnover of estate property. These powers allow lenders to replace management, stabilize the property’s operations, and seek a value-maximizing disposition without the delays and uncertainties of litigation.

Free and Clear Sales

Perhaps the most compelling feature of the receivership remedy for lenders confronting the limitations of judicial foreclosure is the general receiver’s authority to conduct sales free and clear of liens and rights of redemption. Following notice and a hearing, a court may order the sale of property “free and clear of liens and rights of redemption . . . whether or not the sale will generate proceeds sufficient to fully satisfy all claims secured by the property.”¹⁴ The receivership statute eliminates the right of redemption that attaches to judicial sales. Security interests encumbering the property transfer and attach to the proceeds of the sale, net of the receiver’s reasonable expenses incurred in the disposition of the property.¹⁵

Credit Bidding

As in bankruptcy proceedings, a secured creditor may credit bid its claims at a receiver’s sale, provided it can satisfy, in cash, all secured claims senior to its secured claims in full.¹⁶

Deficiency Judgments

The WSRA does not prohibit lenders from pursuing deficiency judgments following a receiver’s sale.¹⁷

Receivership Financing

¹³ RCW 7.60.060.

¹⁴ See RCW 7.60.260.

¹⁵ It should be noted that the authority to sell free and clear does not extend to homesteads, property used in agriculture, or, if a creditor objects, sales likely to recover less than the property would realize in a reasonable time absent the sale.

¹⁶ RCW 7.60.260(3).

¹⁷ The Washington Court of Appeals has twice rejected arguments that the WSRA precludes a secured creditor from pursuing a post-sale deficiency judgment. See *Umpqua Bank v. Shasta*

A general receiver may seek court approval for receivership financing secured by estate property,¹⁸ enabling the receiver to fund necessary operations, repairs, or improvements during the pendency of the receivership.

Potential Limitations of Receivership

Receivership is not without its drawbacks, and lenders should weigh these against the potential advantages.

Cost and Administrative Burden

Receivers may retain attorneys, accountants, and other professionals whose fees and costs constitute administrative expenses that must be paid in full before any distributions to creditors. Receivers must also prepare a final report cataloging all receipts and disbursements before they may be discharged by the court. In complex cases, these costs can add up and may reduce the net recovery available to the lender.

Court Supervision and Unpredictability

Receivership proceedings are public and court-supervised. All parties with an interest in estate property or in the proceedings may appear and be heard on almost any issue, which borrowers can use to complicate the proceedings and cause delay.

The collective and widely publicized nature of a receivership can complicate a lender's strategy, invite competing claims, and generate unforeseen litigation.

No Prohibition on Filing Bankruptcy

Nothing in the WSRA forbids an entity from seeking bankruptcy protection while under receivership. Nevertheless, an order appointing a general receiver may divest the officers and directors of the company of the requisite authority to file bankruptcy petitions on the company's behalf.¹⁹ In any case, an unauthorized bankruptcy filing may lead to unwanted litigation and expense for the receivership estate.

CONCLUSION

In the wake of *Vargas*, lenders should carefully consider the strategic implications of the available alternatives for resolving distressed scenarios in

Apartments, LLC, 194 Wash. App. 685 (2016); MUFG Union Bank, N.A. v. Campadore, 198 Wash. App. 1006 (2017).

¹⁸ The receiver may also obtain unsecured credit in the ordinary course of business without court authorization. See RCW 7.60.140.

¹⁹ See *In re Sino Clean Energy, Inc.*, 901 F.3d 1139 (9th Cir. 2018). If the bankruptcy petition succeeds, the receiver must turn over property to the bankruptcy trustee and file an accounting of property that came into its possession with the bankruptcy court. 11 U.S.C. § 543(b).

Washington. Judicial foreclosures and receiverships are both powerful tools, and post-*Vargas*, we expect that receiverships will increasingly be relied upon by lenders.