
United States Bankruptcy Appellate Panel of the Ninth Circuit

Docket No. WW-24-1002

Bk. No. 23-41097-BDL

In re:

ERIN SHARP,

Debtor

VITRUVIAN DESIGN, LLC,

Appellant

v.

ERIN SHARP

Appellee,

APPELLEE'S BRIEF

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CERTIFICATION REQUIRED BY BAP RULE 8010(A)-I(C)

The undersigned certifies that the following are known related cases and appeals:

Bankruptcy Case No. 23-41097-BDL; In re Sharp

BAP Case No WW-24-1001; Vitruvian Design, LLC v. Erin Sharp

Dated this March 22 2024
Law Office of David Carl Hill

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I. JURISDICTIONAL STATEMENT

The Appellant timely filed its Notice of appeal on January 2, 2024 pursuant to Fed.R.Bankr. P.8002. Neither party elected to refer the matter to The United States District Court. Therefore the United States Bankruptcy Appellate panel of the Ninth Circuit (quote BAP") has jurisdiction under 28 USC §158 (a) (1), (b) (1), and (c) (1).

II.STATEMENT OF ISSUES

1. Did the Bankruptcy Court err in confirming Debtors Chapter 13 Plan pursuant to 11 USC §1322(c)(1) after a judicial foreclosure sale?
2. Did the Bankruptcy Court err in confirming Debtors Chapter 13 Plan after the deadline set forth in 11 USC §108 (b) had expired?

III. STATEMENT OF THE CASE

A. Pre-filing Factual Background

Erin Sharp is the single mother of three children. She is the owner of the real property located at 391 E. Rainier Drive, Allyn, Washington. (App. 107)

In October of 2021, debtor received a Court Summons to pay her past due HOA dues. This summons stated that if she failed to take care of her past due debt to Lakeland Village they would take action to foreclose on her property. (App. 107).

Shortly before the complaint was filed, Erin was the victim of a domestic violent assault on herself and her daughter. This was a very traumatic event, and She did not remember a lot from that period of time. At the time she received the summons regarding her HOA dues, she had also received a summons on the domestic violence case and became consumed with that case. She was distraught over the traumatic events and from trying to navigate the judicial system. With all of

1 that going on she failed to recall that she had also received a summons on her HOA dues. (App.
2 107-108).

3 Subsequent to the entry of the judgement debtor became unemployed and fell behind
4 on her mortgage. After she found new employment she sought ways to reinstate her
5 mortgage. She applied for a loan modification through her lender and qualified for a
6 partial modification loan through the Department of Housing and Urban Development. It
7 does not appear that either Midland or HUD performed a title search. Presumably, had
8 either done so, the foreclosure sale would have been addressed. HUD subsequently
9 recorded a deed of trust on November 28, 2022.(see attached Exhibit A). Erin
10 recommenced mortgage payments in December, 2022 and remains current. (App. 108).
11
12

13 Erin only became aware of the foreclosure sale on June 8, 2023. She spent most of
14 the month of June trying to find out what had happened and what she needed to do.
15 When it became clear that the sale had occurred she filed a notice of intent to redeem.
16 This case followed. (App. 108).

17 B. Post Filing Events

18 Erin Sharp filed for relief under Chapter 13 of the bankruptcy code on July 10, 2023.
19 In connection there with she filed her schedules of assets and liabilities, which included
20 her homestead property located at 391 E. Rainier Drive, Allyn, Washington. (App. 109).
21 She valued her home at \$521,200. The home is subject to a first mortgage with Midland
22 Mortgage in the approximate amount of \$221,700 and a junior mortgage in favor of the
23 US Department of Housing and Urban Development in the amount of \$38,000. Pursuant
24 to Schedule C of the petition, she claimed the Washington homestead exemption under
25 RCW 6.13.010, et seq. (App. 51). She also filed a Plan which provided for a payment to
26 the homeowners association. (App. 90). On July 10, 2023, the Clerk filed Official Form

1 3091-Notice of Chapter 13 Bankruptcy Case. (App. 210-211). The notice scheduled
2 the 341 hearing for August 10, 2023 and hearing on confirmation for September 6, 2023.
3 (App. 211).

4 Vitruvian objected to the initial plan on September 15, 2023 and separately filed a
5 motion for relief from stay on October 3, 2023. (App. 99-106). In response, Ms. Sharp
6 asserted that she retained titled interest in the property, which made that property an asset
7 of the bankruptcy estate. (App. 108-110). She also subsequently filed an amended plan
8 which proposed to pay the Vitruvian within 30 days of confirmation. (App. 118-122).

9 The court heard both the motion for relief from stay and debtor's motion to
10 confirm the amended plan on November 8, 2023. Judge Lynch, after listening to
11 argument from both counsel for Erin Sharp and Vitruvian, made several observations.
12 He noted:

13
14 I'm assuming Vitruvian is pretty sharp at what it does. It's bid on a very small – an
15 \$8,000 homeowners association liability and is probably cutting a fat hog on this
16 property. When you start talking about socially beneficial behavior, I get a little bit
– I react poorly to that argument. (App. 27-28)

17
18 The Court then addressed the argument and stated:

19 If you read the BAP decision – I don't know if you looked at that, Mr. Muchinsky--
20 it does suggest that even though you can't cure and maintain, that there might be a
21 solution out there. And I don't mean to say that that – that the Fairbanks case,
22 which is obviously a non-judicial foreclosure – that that – you could make an
23 argument that it's not apposite to your client's situation.

24 Judge Lynch denied confirmation of the amended plan and directed Debtor to file a
25 feasible plan within 14 days, which Plan was filed shortly thereafter (App. 164-170). He
also continued the Motion for Relief from Stay.

26 Judge Lynch considered the Motion to Amend the Plan and the continued Motion

1 for Relief from stay on December 14, 2023. He considered further argument. Judge
2 Lynch then analyzed the case in light of this Courts decision in Fairbanks. In a very
3 lengthy oral opinion, Judge Lynch stated:

4

5 At the time the bankruptcy was filed, the redemption period under the judicial
6 foreclosure of the HOA lien had not expired. The debtor retained, not only legal
7 title, but the rights in the property and the right to redeem the property. While the
8 debtor may be prohibited from a cure and maintain provision after a foreclosure
9 sale, she may not be prohibited from other options, 15 including, under Fairbanks,
10 paying off a bidder at the foreclosure sale.

9

10 While the Richter decision is a well-reasoned decision about California law in the
11 bankruptcy context, it is not the last word about Washington law. The debtor,
12 having filed a Chapter 13 after the foreclosure sale but before the expiration of a
13 redemption period, has certain rights under Chapter 13 to propose a plan to pay that
14 amount.

12

13 The Court does find particularly troubling the Vitruvian argument that the
14 proposed plan is inequitable to it. The debtor is not only paying its full investment
15 in the property – "its" meaning Vitruvian's full investment in the property; that is,
16 the amount bid at the sale and the utility payments which it advanced after it
17 became holder of the redemption rights and interest on the amount bid at the sale
18 and a significant amount on top of that, which would not only cover the attorney's
19 fees incurred in this case, even though it's not clear at all that Vitruvian would be
20 entitled to recovering attorney's fees, and even though it turns out Vitruvian is not
21 going to be the successful party in these proceedings. The proposal is to pay
22 60,000, which exceeds the amount bid, the interest, the utilities, and the attorney's
23 fees. And the debtor is proposing to pay Vitruvian – pay to Vitruvian, over and
24 above the 60,000, the residual funds remaining on hand with the Mason County
25 Superior Court, which I'm led to believe will be at least 15,000.

20

21 The Court concludes that this is not a cure and maintain plan. The Fairbanks
22 Court recognized that a plan can address a claim in other ways. The plan proposes
23 to pay the full amount owed to Vitruvian and additional funds as part of a
24 redemption from the judicial foreclosure. . . .

23

24 With respect to the motion for relief from stay, that motion is denied at this time.
25 There is insufficient evidence that there's no equity in the property. In fact, there is a
26 strong suggestion that there is equity in the property. The debtor has made an
adequate case to show that the property, which is her home, is necessary for her
effective reorganization. And it has shown that Vitruvian, as the holder of the
redemption rights, will either obtain the property for the price it paid at the sale or

1 will receive the full amount of its bid and all of the other amounts owing, plus an
2 additional close to \$30,000, maybe even \$35,000. I haven't done the precise math,
3 but a significant amount over and above what it bid covering accruing interest,
4 reimbursement of utilities bills advanced, and additional amounts, all of which, in
the Court's mind, constitutes adequate protection of Vitruvian's interest. (App. 198-
201).

5 On December 20, 2023, Judge Lynch issued his formal order denying Vitruvian's
6 Motion for Relief from Stay. (App. 164-165). The court further denied confirmation of
7 the pending Plan and directed Erin to file a new Plan that allowed Vitruvian to seek an
8 Order for Relief from Stay if the lump sum was not paid pursuant to the Plan. The
9 amended plan was duly filed on December 20, 2023 (App. 205-209) and Judge Lynch
10 confirmed the Plan on December 28, 2023 (App. 217-218).

12 The parties stipulated in a joint motion to supplement this record that Debtors father
13 timely tendered \$60,000 to Vitruvian, which sums are held in the conclusion of this
14 appeal. In addition, debtors counsel timely moved for an order directing Mason County
15 Superior Court to release the surplus funds to debtor's counsel to be held in trust for
16 Vitruvian upon the completion of this appeal. (App. 219-220). On January 29, 2023
17 Judge Monte D Cobb, Superior Court Judge for Mason County issued an order
18 directing the clerk to release the funds held in the registry of the court to debtor's counsel
19 to be held in trust for and further ordered that the underlying " . . judgment be satisfied in
20 full and that the defendant has redeemed the real property located at 391 E Rainier Dr.,
21 Allyn, Mason County, Washington. . . ." (App. 219, Exh. A)
22
23

24 IV .STANDARD OF REVIEW

25 This Court previously set for the standard of review applicable to the present case.
26

1 This Court stated:

2 "The decision to grant or deny relief from the automatic stay is committed to the
3 sound discretion of the bankruptcy court, and we review such decision under the
4 abuse of discretion standard." *Benedor Corp. v. Conejo Enters., Inc. (In re Conejo*

5 *Enters., Inc.)*, 96 F.3d 346, 351 (9th Cir. 1996).
6 To determine whether the court abused its discretion, we follow a two-step process.

7 "First, we determine de novo whether the bankruptcy court identified the correct
8 legal rule to apply to the relief requested." *In re MILA, Inc.*, 423 B.R. at 542. "If it
9 did, we next determine whether the bankruptcy court's application of the correct
10 legal standard to the evidence presented was (1) illogical, (2) implausible, or (3)
11 without support in inferences that may be drawn from the facts in the record." *Id.*
(quoting *United States v. Hinkson*, 585 F.3d 1247, 1262 (9th Cir. 2009) (en bane))
(internal quotation marks omitted). "If any of these three apply, only then are we
able to have a 'definite and firm conviction' that the district court reached a
conclusion that was a 'mistake' or was not among its 'permissible' options and thus
conclude that the court abused its discretion by making a clearly erroneous finding of
fact." *Hinkson*, 585 F.3d at 1262.

12 *In re Fairbanks*, No. 3:20-BK-42304-BDL, 2021 WL 3578937, at *2 (B.A.P. 9th Cir.
13 Aug. 12, 2021)

14 In applying the above principles to the case at hand, this Court must affirm Judge
15 Lynch's order confirming the Chapter 13 plan unless it finds that the confirmation
16 order was not warranted under the facts and law and therefore an abuse of discretion.

17 V.ARGUMENT

18 A A CHAPTER 13 PLAN MAY CURE A DEFAULT ON PROPERTY THAT
19 HAS BEEN FORECLOSED, NOTWITHSTANDING 11 USC §1322 (C)

20 Appellant raises, but does not directly address the application of 11 USC §1322 (c).

21 The text of that section reads as follows:

22 (c) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law--
23 (1) a default with respect to, or that gave rise to, a lien on the debtor's principal
24 residence may be cured under paragraph (3) or (5) of subsection (b) until such
25 residence is sold at a foreclosure sale that is conducted in accordance with
26 applicable nonbankruptcy law; and
(2) in a case in which the last payment on the original payment schedule for a
claim secured only by a security interest in real property that is the debtor's
principal residence is due before the date on which the final payment under the

1 plan is due, the plan may provide for the payment of the claim as modified
2 pursuant to section 1325(a)(5) of this title.
3 11 USC §1322 (c).

4 The language of the section is not unambiguous. First, by using the term "until"
5 rather than "unless", it suggests that the debtor may propose a cure and maintain plan
6 until such time as the foreclosure sale is completed, which anticipates some future
7 event. Second, a foreclosure sale is not defined.

8 In In re Pellegrino, 284 B.R. 326 (Bankr. D. Conn. 2002) the Court addressed the
9 interpretation of this section. It stated:

10 Because Section 1322(c)(1) permits the curing of a mortgage default only until a
11 property "is sold at a foreclosure sale", an initial analytical hurdle is encountered in
12 attempting to interpret Section 1322(c)(1)'s foreclosure "sale" concepts in the
13 context of a Connecticut *strict* foreclosure. Although at least one court has concluded
14 that rights under 1322(c)(1) are simply unavailable to a debtor undergoing a non-sale
15 foreclosure, *In re Stephens*, 221 B.R. 290 (Bankr.D.Me.1998), that view does not
16 comport with the broad statement of Congressional purpose accompanying the
17 enactment of 1322(c)(1), and frustrates uniformity by inexplicably *331
18 discriminating against debtors undergoing non-sale foreclosure. The more
19 appropriate approach is to attempt to translate into a strict foreclosure context the
20 point of finality represented by Section 1322(c)(1)'s "sale" terminology. This is the
21 approach employed in *In re Donahue*, 231 B.R. 865, 869-70 (Bankr.D.Vt.1998),
22 wherein that court concluded that Section 1322(c)(1) permitted default cure until a
23 mortgagee completed the "final action necessary to foreclose", which it concluded
24 under Vermont *strict* foreclosure law was the recordation of a certified copy of the
foreclosure judgment following the expiration of the time for redemption. See 12
V.S.A. §§ 4529, -4530. *But cf Canney*, 284 F.3d at 369 n. 11. . .
(T)his Court looks to the essential concept embodied by Section 1322(c)(1)'s "sale"
terminology, namely the *vesting of title*. Thus this Court must identify that point in
the foreclosure process when title becomes vested in the mortgagee. Under the facts
of this case the Court concludes that Section 1322(c)(1) permits the Debtor to cure
his payment default under the Mortgage **until the foreclosure process vests unified**
legal and equitable title to the Residence in Nationwide.

25 Accordingly, for purposes of Section 1322(c)(1), a Connecticut property interest is
26 "sold" in a strict foreclosure only after *all* the law days have passed. Consequently,
where, as here, a mortgagee has not acquired unified, or absolute, title due to the fact

1 that the law days of all junior encumbrancers have not passed, Section 1322(c)(1)
2 affords the debtor-mortgagor an indefinite period of time¹⁷ to confirm a Chapter 13
3 plan which cures a mortgage default.

In re Pellegrino, 284 B.R. 326, 330-332 (Bankr. D. Conn. 2002)(emphasis added)

4 In In re Beeman, 235 B.R. 519 (Bankr. D.N.H. 1999) the Court also addressed the
5 conflict:

6 Section 1322(c) begins with "[n]otwithstanding subsection (b)(2) and applicable
7 nonbankruptcy law...." Thus, Congress unambiguously intended to preempt state
8 redemption law by fixing the time when a Chapter 13 debtor's rights to cure and
9 reinstate are terminated as when property "is sold at a foreclosure sale," regardless of
10 whether state law terminates redemption rights at an earlier time. Of course, this
11 begs the question of when property is "sold at a foreclosure sale."

12 Section 1322(c)(1) provides that a Chapter 13 debtor's cure and reinstatement rights
13 end when the subject property "is sold at a foreclosure sale that is conducted in
14 accordance with applicable nonbankruptcy law." The Court finds that this language
15 is not ambiguous and yields a plain meaning. By stating that a debtor's rights are cut
16 off when a residence is *sold* at a foreclosure sale, the language envisions the
17 completion of something; namely, the completion of a "sale" of property through
18 foreclosure. The word "sale" is generally defined as the transferring of ownership
19 and title regarding property to a buyer. *See Black's Law Dictionary* 1200 (5th
20 ed.1979) (defining "sale" as "by which [the seller], in consideration of the payment
21 or promise of payment of a certain price in money, transfers to [the buyer] the title
22 and the possession of property"); *Merriam Webster's Collegiate Dictionary* 1031
23 (10th ed.1997) (defining "sale" as "the transfer of ownership and title to property
24 from one person to another for a price"). **Thus, the statutory language envisions a
25 debtor's rights being terminated upon the completed transfer of title and
26 ownership to a buyer through a foreclosure sale.** Title and ownership generally
pass through foreclosure upon the completion of a *process*, and not upon the
occurrence of a single event such as a foreclosure auction. . . . By deciding to hinge a
debtor's cure and reinstatement rights on property being sold at a foreclosure sale,
rather than the occurrence of a foreclosure auction, Congress has envisioned the cut-
off time as occurring at the end of a process rather than at the end of one event
within that process. The issue then becomes what law governs the question of when
such a process is complete.

24 Congress did not define the term "foreclosure sale" under the Bankruptcy Code.
25 Accordingly, when a foreclosure sale is complete turns on state law. This conclusion
26 follows from the fact that § 1322(c)(1) modifies "sold at a foreclosure sale" with
"that is conducted in accordance with applicable nonbankruptcy law." This language
indicates that Congress intended state law to be determinative of when a foreclosure

1 sale is complete. *See MC. Schinckv. Stephens (In re Stephens)*, 221 B.R. 290,294
2 (Bankr.D.Me.1998) ("With this phrase Congress has, in effect, directed that I look to
3 the state law for the meaning of 'foreclosure sale.' "). **Thus, Congress has**
4 **effectively preempted state redemption law in the context of determining which**
5 **point in time a Chapter 13 debtor's rights to cure and reinstate are terminated,**
6 **but has directed that state foreclosure law be used in determining that point in**
7 **time. See id.**

8 ... (T)he Court notes that consideration of the legislative history does not weaken its
9 conclusion. Most courts have found the legislative history of § 1322(c)(1) to be
10 equivocal at best. *See, e.g., 0McCarn*, 218 B.R. at 161 tating that different
11 portions of the legislative history appear contradictory); *Tomlin*, 228 B.R. at 919
12 (same); *Stephens*, 221 B.R. at 294 (same). The House Committee Report provides
13 the following:

14 This section of the bill safeguards a debtor's right in a chapter 13 case by allowing
15 the debtor to cure home mortgage default at least through *completion* of a
16 foreclosure sale under applicable nonbankruptcy law. However, if the State provides
17 the debtor more extensive "cure" rights (through, for example, some later
18 redemption period), the debtor would continue to enjoy such rights in bankruptcy.
19 140 Cong.Rec. H10,769 (daily ed. Oct. 4, 1994) (emphasis added). This language
20 suggests that a debtor's cure and reinstatement rights will be cut off only upon
21 completion of all steps necessary to effectuate a foreclosure sale. However, Senator
22 Grassley provided the following floor remarks: "Section 301 will preempt
23 conflicting State laws, and permit homeowners to present a plan to pay off their
24 mortgage debt until the foreclosure sale actually occurs." 140 Cong.Rec. S14,462
25 (daily ed. Oct. 6, 1994). Some courts interpret this language as implying that a
26 debtor's cure and reinstatement rights terminate upon the occurrence of a foreclosure
auction. *See, e.g., Tomlin*, 228 B.R. at 919. The legislative history is arguably in
conflict with respect to exactly when a debtor's cure and reinstatement rights are
terminated. Thus, there is no indication of a uniform congressional intent that
contradicts this Court's conclusions. *See Beech Aircraft Corp. v. Rainey*, 488 U.S.
153, 165, 109 S.Ct. 439, 102 L.Ed.2d 445 (1988) (stating that when legislative
history is found to be conflicting it "affords no definitive guide to the congressional
understanding").

21 *In re Beeman*, 235 B.R. 519, 524-26 (Bankr. D.N.H. 1999)

22
23 With this context in mind, this Court must look to state law to determine how to
24 apply the provisions of 11 USC §1322 (c)(1).

25 1. REAL PROPERTY RIGHTS IN FORECLOSURE ARE DETERMINED BY
26 STATE LAW.

1 The Bankruptcy Code creates a delicate balance between state and federal law. State
2 law governs the laws regarding ownership and transfers of property. Federal law, as set
3 out in the Bankruptcy Code, governs the administration of those assets within the
4 bankruptcy estate.

5
6 In bankruptcy, the estate's "(p]roperty interests are created and defined by state law."
Butner v. United States, 440 U.S. 48, 55, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979).

7 The Bankruptcy Code "neither creates nor enhances" the property interests brought
8 into the bankruptcy estate, and the trustee takes the real property subject to those
9 state law limitations. See *Oregon v. Braker (In re Braker)*, 125 B.R. 798, 799 (9th
Cir. BAP 1991)

10 *In re Eternal Hills Mem'l Gardens & Funeral Home, Inc.*, 631 B.R. 756, 761 (Banlcr. D.
Or. 2021)

11 In Washington, title to real property is transferred by deed. This rule applies to both
12 voluntary and involuntary transfers. The purchaser may have a beneficial interest in
13 property prior to the issuance of the deed by contract or various judicial or non-judicial
14 orders, but title remains in the owner until a deed is actually recorded.

15
16 RCW 65.08.070 [cf. Rem.Rev.Stat. § 10596-2] provides, in part: "A conveyance of
17 real property * * * may be recorded in the office of the auditor of the county where
18 the property is situated. Such a conveyance not so recorded is void as against any
19 subsequent purchaser * * * in good faith and for a valuable consideration from the
same vendor, his heirs, or devisees, of the same real property or any portion thereof
whose conveyance is first duly recorded. * * *"

20 *Biles-Coleman Lumber Co. v. Lesamiz*, 302 P.2d 198, 49 Wn.2d 436 (Wash. 1956)

21 RCW 65.08.070 provides that conveyances of real property may be recorded and
22 that "[a]n instrument is deemed recorded the minute it is filed for record. The
23 purpose of the statute is to make a deed recorded first superior to any unrecorded
24 conveyance of the property unless there is actual knowledge of an unrecorded
transfer, *Tacoma Hotel, Inc. v. Morrison & Co., Inc.*, 193 Wash. 134, 74 P.2d 1003
(1938); a subsequent purchaser, without notice of the existing equities, is not
25 required to search outside the record to inquire about them. *Diimmel v. Morse*, 36
Wash.2d 344, 347, 218 P.2d 334 (1950).

26 *Altabet v. Monroe Methodist Church*, 777 P.2d 544, 54 Wn.App. 695 (Wash. App.
1989)

1 This Court addressed the issue in In re Fairbanks, No. 3:20-BK-42304-BDL,
2 2021 WL 3578937, at *3 (B.A.P. 9th Cir. Aug. 12, 2021).

3
4 The first sentence of this statute provides that title to real property sold at the
5 foreclosure trustee's sale passes to the purchaser when the foreclosure trustee
6 delivers the deed. This is consistent with another Washington statute, RCW
7 64.04.010, which provides that a deed is generally necessary to pass title to real
8 estate. Thus, the transfer to the purchaser is not completed, and the owner retains at
9 least some rights in the property, until the foreclosure trustee executes and delivers
10 the deed.

11 In re Fairbanks, No. 3:20-BK-42304-BDL, 2021 WL 3578937, at *3 (B.A.P. 9th Cir.
12 Aug. 12, 2021)

13 Thus, in the context of a foreclosure sale, Washington adopts the "deed delivery
14 rule", rather than the "gavel rule." It is a misnomer to characterize this as a minority
15 rule. As noted above, each state determines the laws by which property is transferred
16 within the state. Courts who adopt the "deed delivery" rule are merely following the law
17 of the state regarding the transfer of assets.

18 In Wilmington Savings Fund Society, FSB v. Fairbanks, BAP No. WW-21-1019-
19 FBS, Bk. No. 3:20-bk-42304-BDL (Filed August 12, 2021), this Court confirmed the
20 "deed delivery rule."

21 The Court went to great lengths to analyze the case at hand in relation to the effect of
22 a foreclosure sale. The BAP agreed with this Court that title passes on recording, rather
23 than on sale. The Court stated:

24 The relevant statute is Revised Code of Washington ("RCW") 61.24.050. It
25 provides:

26 **Upon physical delivery** of the trustee's deed to the purchaser ... the trustee's deed
shall **convey all of the right, title, and interest in the real and personal property**
sold at the trustee's sale.... Except as provided in subsection (2) of this section, if the
trustee accepts a bid, then the **trustee's sale is final** as of the date and time of such
acceptance **if the trustee's deed is recorded within fifteen days** thereafter.
RCW 61.24.050(1) (emphases added).

1 The first sentence of this statute provides that title to real property sold at the
2 foreclosure trustee's sale passes to the purchaser when the foreclosure trustee
3 delivers the deed. This is consistent with another Washington statute, RCW
4 64.04.010, which provides that a deed is generally necessary to pass title to real
5 estate. Thus, the transfer to the purchaser is not completed, and the owner retains at
6 least some rights in the property, until the foreclosure trustee executes and delivers
7 the deed.

8 Hence, we conclude from the first sentence of RCW 61.24.050(1) that Ms. Fairbanks
9 retained some interest in the property that had not yet passed to the buyer when she
10 filed her petition. That interest, whatever its nature, became property of the
11 bankruptcy estate.

12 In re Fairbanks, No. 3:20-BK-42304-BDL, 2021 WL 3578937, at *3 (B.A.P. 9th Cir.
13 Aug. 12, 2021)

14 Appellant argues that the Bankruptcy Court ruling in In re Richter, 525 B.R. 735, 741
15 (Bankr. C.D. Cal. 2015) should be applied in the present case. However, that case is
16 based on the "gavel rule" and is derived from the California statutes. The Courts stated:

17 Before the property is sold in the foreclosure sale, the owner has an equitable right of
18 redemption (or equity of redemption), which allows him to pay the entire debt owed
19 to the foreclosing lienholder "at any time prior to the sale **to avoid loss of the
20 property.**" *Knapp v. Doherty*, 123 Cal.App.4th 76, 87, 20 Cal.Rptr.3d 1 (2004)
21 (citing Cal. Civ.Code §§ 2903, 2905)... Following the foreclosure sale, a statutory
22 right of redemption (or statutory redemption) may be available under certain
23 circumstances, which gives the now-former owner "an opportunity **to regain
24 ownership** of the property by paying the foreclosure sale price [to the purchaser], for
25 a period of time after foreclosure." *Alliance Mortg. Co. v. Rothwell*, 10 Cal.4th 1226,
26 1236, 44 Cal.Rptr.2d 352, 900 P.2d 601 (1995).

27 In re Richter, 525 B.R. 735, 741 (Bankr. C.D. Cal. 2015)(emphasis added)

28 The "gavel rule is clearly set forth in that decision. In California, once the sale
29 occurs, the debtor loses ownership of the real property, but retains the ability to "**regain
30 ownership** of the property by paying the foreclosure sale price" In re Richter, 525 B.R.
31 735, 741 (Bankr. C.D. Cal. 2015).

32 In contrast to California law, ownership of Washington real property continues to
33 vest in the titled owner until a foreclosure deed is issued. Judge Lynch states:

1 While the Richter decision is a well-reasoned decision about California law in the
2 bankruptcy context, it is not the last word about Washington law. The debtor,
3 having filed a Chapter 13 after the foreclosure sale but before the expiration of a
4 redemption period, has certain rights under Chapter 13 to propose a plan to pay that
5 amount. (App. 198).

6
7 2. DEBTOR RETAINS AN INTEREST IN REAL PROPERTY UNTIL A
8 DEED IS RECORDED DIVESTING HER OF ALL INTEREST IN THE REAL
9 PROPERTY

10 A judicial foreclosure in Washington is a multi-step process, not dissimilar to the
11 process described in In re Beeman, 235 B.R. 519, 524-26 (Bankr. D.N.H. 1999) The
12 final step in the process is the issuance of the Sheriff's Deed. Debtor retains title to the
13 property until the deed is recorded.

14 Washington law states:

15 If no redemption is made within the redemption period prescribed by RCW
16 6.23.020 or within any extension of that period under any other provision of this
17 chapter, the purchaser is entitled to a sheriff's deed; or, if so redeemed, whenever
18 sixty days have elapsed and no other redemption has been made or notice given
19 operating to extend the period for re-redemption, and the time for redemption by the
20 judgment debtor has expired, the last redemptioner is entitled to receive a sheriff's
21 deed as provided in RCW 6.21.120.

22 Wash. Rev. Code 6.23.060 Sheriff's deed-When issued (Revised Code of
23 Washington (2024 Edition))

24 In addition, until the redemption period expires, the judgment debtor's interest,
25 (ownership of the property), is superior to a lien of creditor. RCW 6.23.060 and
26 6.21.120. RCW 6.23.040(2) provides that when a judgment debtor redeems, the
effect of the execution of sale is terminated and the estate of the judgment debtor is
restored.¹² By effectively extinguishing subsequent redemption rights of judgment
creditors, RCW 6.23.040(2) also suggests the legislature considers a judgment
debtor's ownership interest superior to a judgment creditor's interest.
Weldon v. Feldman, No. 53313-4-1 (WA 1/3/2005), No. 53313-4-1 (Wash. Jan 03,
2005)

At the date of filing, Erin Sharp continued to hold legal title to the property, subject

1 only to the completion of all of the steps necessary for judicial foreclosure. Vitruvian
2 held on the date of filing only an equitable interest in the property that dissolved when
3 Ms. Sharp redeemed the property through the confirmed plan.
4
5
6

7 B ANY CONFLICT BETWEEN 11 USC §108(B)(2) AND 11 USC §1322
8 SHOULD BE RESOLVED IN FAVOR OF THE LATIER

9 When there is a conflict between the language and or the intent of two Code
10 sections, the Court should look to the section that more specifically relates to disposition
11 of property.

12 In In re Frazer, 377 B.R. 621 (B.A.P. 9th Cir. 2007), The Ninth Circuit BAP
13 addressed the conflict between sections 108(b) and 1322. The Court stated:

14 Chapter 13 is designed to facilitate debtor rehabilitation by providing a debtor with
15 the ability to adjust his or her debts through a flexible repayment plan. *See* H.R.Rep.
16 No. 95-595, 95th Cong. 118 (1977) *reprinted in* 1978 U.S.C.C.A.N 5963, 6079.

17 Thus, in chapter 13, we look to the specific provisions of § 1322 to govern what a
18 debtor may include in a chapter 13 plan to meet his or her needs. . . .

19 We conclude that the more specific cure provisions of § 1322, which govern chapter
20 13 plans, apply rather than the more general provision of § 108(b), which applies in
21 general to bankruptcy cases. *See, e.g., D. Ginsberg & Sons, Inc. v. Popkin*, 285 U.S.
22 204, 208, 52 S.Ct. 322, 76 L.Ed. 704 (1932) ("Specific terms prevail over the general
23 in the same or another statute which otherwise might be controlling."); *Coleman Oil
24 Co. v. Circle K Corp. (In re Circle K Corp.)*, 127 F.3d 904, 909 n. 4 (9th Cir. 1997)
25 ("The curing of defaults in an executory contract or unexpired lease is governed by
26 section 365, not by the ... provisions of section 108(b."); *Moody*, 734 F.2d at 1215-
16 (same); 2 *Collier on Bankruptcy*, § 108.03[3] (15th ed. rev. 2007).

The Supreme Court's decision in *United States v. Whiting Pools, Inc.*, 462 U.S. 198,
103 S.Ct. 2309, 76 L.Ed.2d 515 (1983), cannot be ignored. In *Whiting Pools*, the
debtor had an interest in property, as of the date of filing bankruptcy, that a secured
creditor seized prepetition. The Supreme Court concluded that the property was
property of the estate that could be used on the condition that adequate protection be
provided. *Id.* at 204, 103 S.Ct. 2309. The creditor must look to the Bankruptcy
Code's adequate protection provision, rather than to its nonbankruptcy remedies. *Id.*
The Supreme Court pointed out that the Bankruptcy Code "modifies the procedural
rights available to creditors to protect and satisfy their liens" and that the protections

1 it provides "replace the protection afforded by" nonbankruptcy law. *Id.* at 206-07,
2 103 S.Ct. 2309. These fundamental propositions inform the analysis regarding the
3 implications of the Bankruptcy Code authority under § 1322 to cure defaults. The
4 Supreme Court's *Whiting Pools* analysis is not consistent with postpetition insistence
5 on strict compliance with a short-fused state law redemption procedure when a
6 debtor is proposing to cure a default through a plan. Hence, it supports our
7 conclusion that § 108 does not trump § 1322.

8 *In re Frazer*, 377 B.R. 621, 631-32 (B.A.P. 9th Cir. 2007)

9 The *Frazer* decision has not been overturned or modified by the Ninth Circuit BAP or the
10 Ninth Circuit at large.

11 The binding effect of a BAP decision was addressed in *In re Vertullo*, 610 B.R. 399,
12 408 (B.A.P. 1st Cir. 2020). There the Court addressed the First Circuit BAP was bound
13 to follow previous rulings of that court. The Court stated:

14 A related question is whether we are bound by prior decisions of our court. Although
15 our First Circuit BAP has not declared as a formal jurisprudential rule that it is
16 bound by its prior decisions, it has acknowledged that "fidelity" to precedent
17 "promotes 'stability, predictability, and respect for judicial authority.'" ⁵ *Gentile v.*
18 *DeGiacomo On re Gentile*, 492 B.R. 580,585 (1st Cir. BAP 2013) (quoting *Gately*
19 *v. Commonwealth of Mass.*, 2 F.3d 1221, 1226 (1st Cir. 1993)); see also *Carpenters*
20 *Local Union No. 26 v. U.S. Fid. & Guar. Co.*, 215 F.3d 136, 142 (1st Cir. 2000)
21 ("We value finality, stability, and certainty in the law, particularly in the field of
22 statutory construction.") (citation omitted). Indeed, such stability was the impetus for
23 the creation of BAPs. See *Bank of Maui v. Estate Analysis, Inc.*, 904 F.2d 470,472
24 (9th Cir. 1990) (O'Scannlain, concurring).

25 The U.S. Court of Appeals for the First Circuit has stated that it is bound by its
26 earlier decisions, "unless an exception exists to the principles of stare decisis."
27 *United States v. Rodriguez-Pacheco*, 475 F.3d 434,441 (1st Cir. 2007) (citation
28 omitted). It explained:

29 The doctrine of stare decisis provides that courts must abide by or adhere to cases
30 that have been previously decided and that a legal decision on an issue of law that is
31 contained in a final judgment is binding in all future cases on the court that made the
32 legal decision and all other courts that owe obedience to that court. In other words,
33 the doctrine of stare decisis incorporates two principles: (1) a court is bound by its
34 own prior legal decisions unless there are substantial reasons to abandon a decision;
35 and (2) a legal decision rendered by a court will be followed by all courts inferior to
36 it in the judicial system.

Id. (quoting 3 J. Moore et al., *Moore's Manual-Federal Practice and Procedure* §

1 30.10[1] (2006)). The First Circuit recognizes two exceptions to the stare decisis
2 rule: (1) when an existing decision is "undermined by controlling authority,
3 subsequently announced, such as an opinion of the Supreme Court, an en bane
4 opinion of the circuit court, or a statutory overruling"; and (2) when "authority that
5 postdates the original decision, although not directly controlling, nevertheless offers
6 a sound reason for believing that the former panel, in light of fresh developments,
7 would change its collective mind." *Id.* at 441-42 (citations omitted) (internal
8 quotation marks omitted).

9 In re Vertullo, 610 B.R. 399,408 (B.A.P. 1st Cir. 2020)

10 The Frazer decision has been cited favorably by other courts. In

11 In re Johnson, 513 B.R. 364 (Bankr. W.D. Wis. 2014) the Court stated:

12 The B.A.P. in *Frazer* also concluded that section 108(b) should not be read to
13 curtail the general power to cure granted to Chapter 13 debtors. *Id.* at 631.
14 Generally speaking, as described in the legislative history, the purpose of
15 Chapter 13 is to support and promote the rehabilitation of financially distressed
16 individuals. *See id.* at 631 (citing *...In re Kokkinis*, 22 B.R. 353, 354-55
17 (Bankr.N.D.Ill.1982); H.R.Rep. No. 95-595, 95th Cong. (1977), *reprinted in*
18 1978 U.S.C.C.A.N. 5963; S.Rep. No. 95-989, 95th Cong. (1978), *reprinted in*
19 1978 U.S.C.C.A.N. 5787). This goal is accomplished, in part, by granting the
20 debtor **"the ability to adjust his or her debts through a flexible repayment
21 plan."** *Id.* (citing H.R.Rep. No. 95-595, 95th Cong. 118 (1977), *reprinted in*
22 1978 U.S.C.C.A.N. 5963, 6079). The provisions that convey this ability are
23 specific to the Chapter 13 context; they grant the debtor powers that are
24 unavailable in other chapters of the Code. *See id.*

25 By comparison, section 108(b) is a provision of general applicability. *See id.* at
26 632. It is well-settled that where two statutes may conflict, specific provisions
prevail over general provisions. *See id.* (citing *D. Ginsberg & Sons, Inc. v.*
Popkin, 285 U.S. 204,208, 52 S.Ct. 322, 76 L.Ed. 704 (1932)). Accordingly,
"the more specific cure provisions of [section] 1322, which govern chapter 13
plans, apply rather than the more general provision of [section] 108(b), which
applies in general to bankruptcy cases." *Id.* (citations omitted). In so finding, the
B.A.P. held that **"the cure provisions of [section] 1322 afford Debtors a
reasonable time to cure the default on the Contract... Therefore, Debtors
are entitled to cure the default through their plan and reinstate the debt."**
Id. at 632.

In re Johnson, 513 B.R. 364, 370-71 (Bankr. W.D. Wis. 2014)(emphasis added)

Judge Lynch correctly determined that the more specific provisions, as well as the

1 intent of 11 USC §1322 were applicable, rather than the more draconian limitations of 1
2 USC §108(b)(2).

3
4 C 11 USC 108(B)(2) DOES NOT PRECLUDE A CHAPTER 13
5 REHABILITATION WHERE DEBTOR RETAINS LEGAL TITLE TO
6 REALESATE

7 In his oral ruling, Judge Lynch noted:

8 At the time the bankruptcy was filed, the redemption period under the judicial
9 foreclosure of the HOA lien had not expired. The debtor retained, not only legal
title, but the rights in the property and the right to redeem the property.

10 While the debtor may be prohibited from a cure and maintain provision after a
foreclosure sale, she may not be prohibited from other options, including, under
11 Fairbanks, paying off a bidder at the foreclosure sale. . . . The Court concludes that
12 this is not a cure and maintain plan. The Fairbanks Court recognized that a plan can
address a claim in other ways. The plan proposes to pay the full amount owed to
13 Vitruvian and additional funds as part of a redemption from the judicial foreclosure.
(App.198-199).

14 Judge Lynch relied heavily on this Court's ruling in In re Fairbanks, No. 3:20-BK-
15 42304-BDL, 2021 WL 3578937, at *5 (B.A.P. 9th Cir. Aug. 12, 2021). The ruling in
16 that case is even more applicable in the current case. In that case, the debtor filed for
17 relief after the nonjudicial foreclosure sale was completed but before the trustee's deed
18 was issued. By contrast, Ms. Sharp filed the current case prior to the expiration of
19 redemption period. In the former case the court noted that the debtor had a ". . . very
20 small amount of equity." (Supra, page 20). By contrast, Judge Lynch noted ". . .there is a
21 strong suggestion that there is equity in the property." (App. 181). In Fairbanks,
22 in addressing the Banks Motion for Relief from Stay, inferentially questioned the
23 debtor's ability to propose and carry out a feasible plan to cure the deficiencies. By
24 contrast, Ms. Sharp's plan provided for a 10 day payout to Vitruvian in an amount that
25
26

1 substantially exceeded Vitruvian's initial bid, plus the utility bills and attorneys fees
2 expended in the case.

3 Appellant argues that the only case in Washington involving 11 USC §108(b) would
4 argue in favor of the strict application of that Code section. In re York, No. 16-01964-
5 FPC13, 2016 WL 6157432, at *2 (Bankr. E.D. Wash. Oct. 21, 2016). The argument is
6 misplaced for several reasons. Judge Corbett noted:
7

8 Although the scope of property included in the bankruptcy estate is broad, and
9 includes most of the debtor's legal and equitable interests in property, some
10 exceptions exist. *See* § 541(a) and (b). Relevant to this discussion is the subsection
11 raised by Pawn I, § 541 (b)(8), which provides that property of the estate *does not*
12 *include*:

13 (8) ... any interest of the debtor in property where the debtor pledged or sold tangible
14 property ... as collateral for a loan or advance of money given by a person licensed
15 under law to make such loans or advances, where-

16 (A) the tangible personal property is in the possession of the pledgee or transferee;
17 (B) the debtor has no obligation to repay the money, redeem the collateral, or buy
18 back the property at a stipulated price; and
19 (C) neither the debtor nor the trustee have exercised any right to redeem provided
20 under the contract or State law, in a timely manner as provided under State law and
21 section 108(b).]

22 If all three elements are satisfied, then the Collateral at issue is not part of the estate
23 and is not protected by the automatic stay.

24 In re York, No. 16-01964-FPC13, 2016 WL 6157432, at *2 (Bankr. E.D. Wash. Oct.
25 21, 2016)

26 Judge Corbett then limited his ruling with the following comment:

...that its decision is applicable to this narrow set of facts. The court is mindful that
§ 1322(b)(3) allows modification of rights of secured claim holders to "provide for
the curing or waiving of any default" and this court has not foreclosed the possibility
that a Chapter 13 plan confirmed prior to the expiration of the statutory redemption
period may entitle a Chapter 13 debtor to pay the redemption amount over the life of
his or her plan. However, such facts are not present in this case. Prior to the
expiration of the Redemption Dates, the debtor did not propose a plan that provided
for the redemption of the Collateral. Indeed, prior to the expiration of the redemption
period, Pawn I emailed both the trustee and attorney for the debtor inquiring

1 whether debtor planned to redeem the property. [ECF No. 29]. The trustee responded
2 that there were no plans to redeem the property. Additionally, although the debtor
3 alleges that "Debtor has made provision for the property in the Chapter 13 plan," the
4 court finds there is no provision in the plan for this property. [ECF No. 35, p. 4].
5 Pawn 1 is not even listed as a secured creditor on debtor's schedules.

6 In re York, No. 16-01964-FPCB, 2016 WL 6157432, at *4 (Bankr. E.D. Wash. Oct.
7 21, 2016)

8 The key difference between York and the present case is the nature of the
9 property interest itself. Mr. York delivered physical possession of the non-titled assets to
10 the pawnshop. Presumably a similar result would occur if a bank, as legal title holder of a
11 vehicle, repossess the vehicle. In both instances the dispossessed debtor must take
12 appropriate steps within certain time frames to retake possession of the asset

13 Redemption in the context of real property is different from personal property
14 redemptions under Washington law. The purchaser at a judicial foreclosure sale may
15 have an equitable interest in the real property. However title remains with the debtor until
16 such time as a statutory process is complete and a deed is issued by the sheriff in favor of
17 the purchaser. If the debtor files for bankruptcy relief before that process is completed,
18 the real property becomes an asset of the bankruptcy estate.

19 Ms. Sharp filed her petition relief before the expiration of the redemption period.
20 When she filed the case the subject homestead real property became an asset of the
21 bankruptcy estate. As such, Judge Lynch concluded that although she did not qualify for
22 a "cure and maintain" plan, she could provide an alternate treatment for Vitruvian which
23 would, in very short order, more than fully compensate Appellant for his expenditures.
24
25
26

1 VI CONCLUSION

2 Judge Lynch did not abuse his discretion by confirming Erin Sharp's Chapter 13
3 Plan dated December 20, 2023. Judge Lynch correctly applied the principal set forth in
4 this course decision in In re Fairbanks. At the time the case was filed, Ms. Sharp held
5 legal title to the subject real property and, hence, that property became property of the
6 bankruptcy estate and subject to administration under Chapter 13. The plan is in the
7 interest of all creditors and in particular more than adequately compensates the Appellant
8 for the funds expended at the foreclosure sale, as well as his subsequent expenses and
9 attorney's fees.
10

11 This court should, therefore, affirm the order confirming the December 20, 2023
12 Chapter 13 plan.
13

14
15 DATED this 22 day of March, 2024

16 Is/David Carl Hill
17 DAVID CARL HILL, WSBA #9560
18 Attorney for Appellee
19
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26

CERTIFICATE OF INTERESTED PARTIES

the undersigned certifies that the following parties have an interest in the outcome of this appeal. These representations are made to enable judges of the panel to evaluate possible disqualification or recusal:

1. Erin Sharp - Debtor
- 2 Vitruvian design, LLC-Buyer at foreclosure sale
3. Midland Mortgage-creditor
- 4 US Department of Housing and Urban development-creditor

dated this 22nd day of March, 2024

/S/David Carl Hill

DAVID CARL HILL, WSBA #9560
Attorney for Appellee

EXHIBIT A

21910 3 Mason County WA

11/28/2022 08:32:58 AM DEDTR
eRecordPd #182141 RecFee: \$210.50 Pages: 7
FIRST AMERICAN TITLE

COPY

When Recorded Mail To:
First American Title
FAMS-DTO RECORDING
3 FIRST AMERICAN WAY
SANTA ANA, CA 92707

FAT Doc. No.: 14870009

County: MASON

Document Title(s)
PARTIAL CLAIM DEED OF TRUST

Reference Number(s) of related documents:
2067737

Additional Reference #'s on page *i*

Grantor(s) (Last, First, and Middle Initial)
SHARP, ERIN A

Additional Grantors on page 2

Grantee(s) (Last, First, and Middle Initial)
SECRETARY OF HOUSING AND URBAN DEVELOPMENT

Additional Grantees on page 2

Legal Description (abbreviated form: i.e. lot, block, plat or section, township, range, quarter/quarter)
LOT 10, PLAT OF LAKE LAND VILLAGE NO. 8, MASON COUNTY, WASHINGTON.

Complete legal on page 2

Assessor's Property Tax Parcel/Account Number
122205600010

Additional parcel #'s on page 2

THE AUDITOR/RECORDER WILL RELY ON THE INFORMATION PROVIDED ON THIS FORM. THE
RECORDING OFFICE IS NOT RESPONSIBLE FOR THE ACCURACY OF THE INFORMATION IS THAT OF THE
PREPARER.

UNRECORDED

THIS PARTIAL CLAIM DEED OF TRUST (Security Instrument) this 12th day of -, 2022. The grantor is ERIN A SHARP (Borrower), whose address is RAINIER DR, ALLYN, WA 98524. The trustee is OLYMPIC TITLE AND ESCROW, (Trustee) whose address is . . .

The beneficiary is the Secretary of Housing and Urban Development, whose address is 451 Seventh Street SW, Washington, DC 20410. Lender owes Lender the principal sum of THIRTY FOUR THOUSAND FIFTY ONE AND 881100/100ths (\$34,051.68). This debt is evidenced by Borrower's note dated the same date as this Security Instrument in Note 1, which provides for the full debt, if not paid earlier, due and payable on November 1, 2048.

This Security Instrument secures to Lender: (a) the performance of the debt evidenced by the Note, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under Paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower irrevocably grants and conveys to Trustee, with power of sale, the following described property located in the County of MASON, State of WASHINGTON:

See Exhibit "A" attached hereto and made a part hereof;

which has the address of 391 E RAINIER DRIVE, ALLYN, WA 98524 (property Address);

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances and interests now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing, is referred to in this Security Instrument as the "Property".

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property, and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims subject to encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal.** Borrower shall pay when due the principal of the debt evidenced by the Note.

2. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time of payment of the sums secured by this Security Instrument granted by Lender to any successor in interest shall not operate to release the liability of the original Borrower or Borrower's successor in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument for any reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

3. **Successors and Assigns Bound; Joint and Several Liability; Co-signers.** The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of



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this Security Instrument; (b) is not personally obligated to pay secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may extend, modify, forbear or make any accommodations with regard to the term of this Security Instrument or the Note without that Borrower's consent

4. Notices. Any notice to Borrower provided for this Security Instrument shall be given by delivering it or by mailing it by first class mail unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address that Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to: Department of Housing and Urban Development, Attention: Single Family Notes Branch, 461 Seventh Street SW, Washington, DC 20410 or any address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

5. Governing Law; Severability. This Security Instrument shall be governed by Federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

6. Borrower's Copy. Borrower shall be given one conformed copy of the Note and of this Security Instrument.

NON-UNIFORM COVENANTS. Lender and Borrower further covenant and agree as follows:

7. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument. The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property at public auction at a time not less than 120 days in the future. The notice shall further inform Borrower of the right to rescind after acceleration, the right to bring a court action to assert the non-existence of the debt or any other defense of Borrower to acceleration and sale, and any other matters required to be included in the notice by Applicable Law. If the default is not cured on or before the date specified in the notice, Lender at its option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and/or any other remedy permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 7, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee and Lender shall take such action regarding notice of sale and shall give such notices to Borrower and to other persons as Applicable Law may require. After the time required by Applicable Law and after publication of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of the Property for a period or periods permitted by Applicable Law by public announcement at the time and place fixed in the notice of sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable

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Trustee's and attorneys' fees; (b) 10 all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it or to the superior court of the county in which the sale took place.

If the Lender's interest in this Security Instrument is by the Secretary and the Secretary requires immediate payment in full under Paragraph 4 of the Promissory Note, the Secretary may invoke the non-judicial power of sale provided in the Uniform Residential Mortgage Foreclosure Act of 1994 ("Act" (12 U.S.C. 3751 et seq.)) by requesting the Washington Commissioner of Mortgage Services designated under the Act to commence foreclosure and to sell the Subject Property provided by the Act. Nothing in the preceding sentence shall deprive the Secretary of any rights otherwise available to the Secretary under applicable law.

8. Reconveyance. Upon payment of all sums secured by this Security Instrument, Lender shall request Trustee to reconvey the Property and shall surrender this Security Instrument and all notes evidencing debt secured by this Security Instrument to Trustee. Trustee shall reconvey the Property without warranty to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs and the Trustee's fee for preparing the reconveyance.

9. Substitute Trustee. In accordance with Applicable Law, Lender may from time to time appoint a successor trustee to any Trustee appointed hereunder who has ceased to act. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon Trustee herein and by Applicable Law.

10. Use of Property. The Property is not used principally for agricultural purposes.

11. Attorneys' Fees. Lender shall be entitled to recover its reasonable attorneys' fees and costs in any action or proceeding to construe or enforce any term of this Security Instrument. The term "attorneys' fees," whenever used in this Security Instrument, shall include without limitation attorneys' fees incurred by Lender in any bankruptcy proceeding or an appeal.

12. Bankruptcy Discharge. If Borrower, subsequent to October 12, 2022, receives a discharge in a Chapter 7, 11, or 13 bankruptcy, and there is no valid reaffirmation agreement of the underlying debt, Lender will not attempt to re-establish any personal liability for the underlying debt.

ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

BY SIGNING HEREIN, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument.

Erin A Sharp
ERIN A SHARP - Borrower

Date: 11/10/22

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{Space Below This Line For Acknowledgments}

State of Washington

County of Yakima

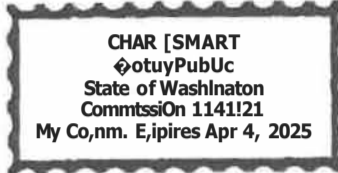
I certify that I know or have satisfactory evidence that [Name] is the person who appeared before me, a Notary Public and said person acknowledged that (he/she) signed this Instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: Nov 28 2022

Signature of Notary [Signature]

[Signature]

My Commission Expires Jan 5 2025



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