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Security Transactions

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linquent taxes "shall be subject to such easement . . . provided [it was] established of record prior to the year for which the tax was foreclosed."

Easements created by express grant or reservation, *i.e.* by adequate writing, and appearing of record unquestionably affect the value of both dominant and servient estates and therefore the assessed value, but their existence did not appear on tax rolls or in tax deeds. Thus the court held the full title, unrestricted by easement, passed by the tax deed of the former servient estate. Whether a tax deed of the dominant estate would pass title to an easement appurtenant to a tract foreclosed without the new statute is not clear, though consistency should indicate it would not. Such result would be a windfall to the servient owner. The statute can be construed to *declare* (not change) the law applicable to existing situations as regards taxation of dominant estates so that tax deeds will carry appurtenant easements without express mention as is true of private grants, but clearly there is a change in the effect of tax foreclosure of servient estates.

Ordinary easements by implication and implied ways of necessity are not covered by the new law. They may still be susceptible to destruction. Private easements in subdivisions may not be covered depending upon the interpretation chosen for the "matter of public record" and "established of record" language. If these latter easements are within the statute, acquisition of a dominant tract through a tax deed might now qualify the title holder to enforce his easement against other lot owners ("common grantees") to the confounding of the creation by estoppel reasoning previously suggested by the Washington cases. See 34 WASH. L. REV. 212, 215 (1959).

Aspects of the pre-existing law were discussed in King, *The Assessment and Taxation of Easements,* 16 WASH. L. REV. 36 (1941); Note, 23 WASH. L. REV. 75 (1948). HARRY M. CROSS

SECURITY TRANSACTIONS

Material and Equipment Suppliers' Liens—Time of Giving Notice of Lien to Property Owners and Priorities between Liens. RCW chapter 60.04, the basic construction-industry lien statute, has been amended again. Heretofore, a supplier of material to a contractor has had a lien only if he notified the owner within a period set in the statute[1] that material was being supplied and a lien might be claimed. (If notice is timely given the lien covers all material delivered by the

[1] Ten days in the instance of "any single family residence or garage" and sixty days in other instances. RCW 60.04.020.

lienor.) Chapter 278, Session Laws of 1959 amends RCW 60.04.020 and makes an important change, creating a lien for material delivered subsequent to a notice which was not given within the prescribed period. The amendment goes on to make this lien subordinate to the liens of materialmen whose notices were given within the prescribed period. RCW 60.04.130, which fixes the relative priority of chapter 60.04 liens, was not amended to conform and continues to direct the placing of "all persons furnishing material" in one class. This section thus conflicts with RCW 60.04.020 as amended. The conflict is not apt to cause serious controversy about the priority of liens based on timely notices, since the legislative purpose is as to this detail amply apparent in chapter 278. The failure of the legislature to say anything in chapter 278 about priorities *inter sese* the new late-notice liens is another matter. Whether such liens will form a class or take time-order priorities as to each other is unclear.

RCW chapter 60.04 has heretofore covered "Every person performing labor upon or furnishing material . . ."[2] This language has been construed as not covering persons who rent equipment to a contractor.[3] Chapter 279, Session Laws of 1959 remedies the gap in coverage, by amending the various sections of RCW chapter 60.04 so as to bring within the protected classes "Every person . . . renting, leasing or otherwise supplying equipment . . ." The marked increase of late years in the use by contractors of rented and leased construction machinery emphasizes both the desirability and the importance of the amendment. These new liens will rank with the liens of materialmen[4] and will no doubt be regulated by the notice and priority provisions of chapter 278.

The session laws referred to above, chapters 278 and 279, contain no cross-references to each other. The resulting opportunities for dispute (each chapter repeats the prior statutory language save for the changes made by that chapter) should not lead to litigation, thanks to RCW 1.12.025.[5]

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[2] So reads RCW 60.04.010. The following section, relating to notices, reads in part: "Every person, firm or corporation furnishing materials or supplies. . . ."

[3] See the discussion in Willett v. Davis, 30 Wn.2d. 622, 193 P.2d 321 (1948); and Sundberg v. Boeing Airplane Co., 52 Wn.2d 734, 328 P.2d 692 (1958).

[4] Chapter 279 Laws of 1959, amendment of RCW 60.04.130.

[5] This statute, enacted in 1955, reads: "If at any session of the legislature there are enacted two or more acts amending the same section of the session laws or of the official code, each act shall be given effect to the extent that the amendments do not conflict in purpose, otherwise the act last filed in the office of the secretary of state in point of time, shall control." There does not appear to be any reason why chapters 278 and 279 cannot both be operative insofar as they change the basic statute which each amends.