

RCW 61.24.127 Failure to bring civil action to enjoin foreclosure—Not a waiver of claims. (1) The failure of the borrower or grantor to bring a civil action to enjoin a foreclosure sale under this chapter may not be deemed a waiver of a claim for damages asserting:

- (a) Common law fraud or misrepresentation;
 - (b) A violation of Title 19 RCW;
 - (c) Failure of the trustee to materially comply with the provisions of this chapter; or
 - (d) A violation of RCW 61.24.026.
- (2) The nonwaived claims listed under subsection (1) of this section are subject to the following limitations:
- (a) The claim must be asserted or brought within two years from the date of the foreclosure sale or within the applicable statute of limitations for such claim, whichever expires earlier;
 - (b) The claim may not seek any remedy at law or in equity other than monetary damages;
 - (c) The claim may not affect in any way the validity or finality of the foreclosure sale or a subsequent transfer of the property;
 - (d) A borrower or grantor who files such a claim is prohibited from recording a lis pendens or any other document purporting to create a similar effect, related to the real property foreclosed upon;
 - (e) The claim may not operate in any way to encumber or cloud the title to the property that was subject to the foreclosure sale, except to the extent that a judgment on the claim in favor of the borrower or grantor may, consistent with RCW 4.56.190, become a judgment lien on real property then owned by the judgment debtor; and
 - (f) The relief that may be granted for judgment upon the claim is limited to actual damages. However, if the borrower or grantor brings in the same civil action a claim for violation of chapter 19.86 RCW, arising out of the same alleged facts, relief under chapter 19.86 RCW is limited to actual damages, treble damages as provided for in RCW 19.86.090, and the costs of suit, including a reasonable attorney's fee.
- (3) This section applies only to foreclosures of owner-occupied residential real property.
- (4) This section does not apply to the foreclosure of a deed of trust used to secure a commercial loan. [2011 c 364 § 2; 2009 c 292 § 6.]