

RCW 61.24.180 Trustee as defendant—Declaration of nonmonetary status—Objection. (1) If a trustee under a deed of trust is named as a defendant in an action or proceeding in which that deed of trust is the subject, and if there are no substantive allegations that seek damages from the trustee or seek to enjoin the foreclosure based on any alleged unlawful actions or omissions by the trustee, including causes of action where the trustee is a codefendant alleged to be jointly or derivatively liable with respect to the trustee's conduct as to the borrower or the trustee's statutory obligations, not less than thirty-five days after service of the summons and complaint on the trustee, the trustee may file a declaration of nonmonetary status. The declaration must be served on the parties in the manner set forth in superior court civil rule (CR) 5.

(2) The declaration of nonmonetary status must set forth:

(a) The status of the trustee as trustee under the deed of trust that is the subject of the action or proceeding;

(b) That the complaint or pleading does not assert any substantive allegations that seek damages from the trustee or seek to enjoin the foreclosure based on any alleged unlawful actions or omissions by the trustee;

(c) That it has been named as a defendant in the proceeding solely in its capacity as a trustee under the deed of trust and that the trustee agrees to be bound by whatever order or judgment is issued by the court regarding the subject deed of trust;

(d) A statement printed in no less than twelve-point font and bolded that reads:

"You have 30 days from service of this declaration to file and serve an objection with the court in compliance with RCW 61.24.180. If you do not timely object, the trustee will be deemed a nominal party to this action and you may not seek monetary relief against it. Your case may also be removed to federal court if the trustee was the only defendant domiciled in Washington."

(3) The parties who have appeared in the action or proceeding have thirty days from the service of the declaration by the trustee in which to object to the nonmonetary status of the trustee. Any objection must set forth the allegations against the trustee in a manner sufficient to satisfy the pleading standard of superior court civil rule (CR) 8(a).

(4) The objection must:

(a) Conform to superior court civil rule (CR) 10 and the caption must include the following identification: "Objection to Declaration of Nonmonetary Status of Defendant [trustee]";

(b) Contain a short and plain statement of the claim against defendant trustee as described in the complaint, showing that the plaintiff is entitled to relief. Allegations against the trustee may not be raised for the first time in the objection;

(c) Be filed with the court within thirty days of service of the trustee's declaration of nonmonetary status described in subsection (1) of this section;

(d) Be served on the trustee in the manner set forth in superior court civil rule (CR) 5.

(5) Upon filing of a timely objection with the court and timely service of the objection, the trustee must thereafter be required to participate in the action or proceeding.

(6) If an objection is not filed and served within the thirty-day objection period, the trustee: Is not required to participate any further in the action or proceeding; is not subject to any monetary awards as and for damages, attorneys' fees, or costs; and is bound by any court order relating to the subject deed of trust that is the subject of the action or proceeding. The trustee's nonmonetary status is not established until the thirty-day objection period has passed without filing and service of an objection pursuant to subsection (5) of this section.

(7) In the event a party or parties elect not to or fail to timely object to the declaration of nonmonetary status, but later through discovery or otherwise determine that the trustee should participate in the action, the parties may file and serve on all parties and the trustee a motion pursuant to superior court civil rule (CR) 15. Upon the court's granting of the motion, the trustee must thereafter be required to participate in the action or proceeding, and the court must provide sufficient time before trial for the trustee to be able to respond to the complaint, to conduct discovery, and to bring other pretrial motions in accordance with Washington superior court civil rules.

(8) Upon the filing of the declaration of nonmonetary status, the time within which the trustee is required to file an answer or other responsive pleading is tolled for the period of time within which the opposing parties may object to the declaration. Upon the timely service of an objection to the declaration of nonmonetary status, the trustee has thirty days from the date of service within which to file an answer or other responsive pleading to the complaint or cross-complaint.

(9) For purposes of this section, "trustee" includes any agent or employee of the trustee who performs some or all the duties of a trustee under this chapter and includes substituted trustees and agents of the trustee.

(10) If upon objection to the trustee's declaration of nonmonetary status the court finds that the declaration was filed without sufficient support based upon the allegations made in the complaint, the court may award the plaintiff attorneys' fees and costs associated with the objection together with any actual damages demonstrated. Any award may be made after notice and hearing with submission of evidence of the attorneys' fees and damages. [2018 c 306 s 8.]