

SB 5810 - S AMD TO S AMD (S2359.1) 239
By Senator Benton

NOT ADOPTED 03/12/2009

1 On page 6, beginning on line 33 of the amendment, strike all of
2 section 5 and insert the following:

3 "NEW SECTION. **Sec. 5.** A new section is added to chapter 61.24 RCW
4 to read as follows:

5 (1) The failure of the grantor to bring a civil action to enjoin a
6 foreclosure sale under this chapter may not be deemed a waiver of a
7 claim for damages asserting:

- 8 (a) Common law fraud or misrepresentation; or
9 (b) A violation of RCW 19.144.080.

10 (2) The nonwaived claims listed under subsection (1) of this
11 section may be (a) asserted in an unlawful detainer action brought by
12 the lender against the grantor as a holdover tenant or (b)
13 independently brought against a lender or trustee if a third party is
14 the successful bidder at the foreclosure sale.

15 (3) The nonwaived claims listed under subsection (1) of this
16 section are subject to the following limitations:

17 (a) The claim must be asserted or brought within one year from the
18 date of the foreclosure sale;

19 (b) The claim may not seek any remedy at law or in equity other
20 than direct monetary damages;

21 (c) The claim may not in any way affect the validity or finality of
22 the foreclosure sale or a subsequent transfer of the property to a bona
23 fide purchaser;

24 (d) A grantor who files such a claim is prohibited from recording
25 a lis pendens related to the real property foreclosed upon, or any
26 other document purporting to create a similar effect against that
27 property; and

28 (e) The claim may not otherwise operate to encumber or cloud the
29 title to the property that was subject to the foreclosure sale, except

1 to the extent that a judgment on the claim in favor of the grantor may,
2 consistent with RCW 4.56.190, become a judgment lien on real property
3 then owned by the lender.

4 (4) This section applies only to foreclosures of an owner-occupied
5 one-to-four, single-family residence, condominium unit, residential
6 cooperative unit, residential unit in any other type of planned unit
7 development, or manufactured home in which title has been eliminated
8 under RCW 65.20.040, which is the grantor's principal place of
9 residence.

10 (5) This section does not apply to the foreclosure of a deed of
11 trust used to secure a debt incurred for business, investment, or
12 commercial purposes or to secure a guaranty."

EFFECT: (1) Removes the following provisions in S2359.1
concerning what claims survive a foreclosure sale:

(a) Breach of contract;

(b) Failure of trustee to materially comply with provisions of this
chapter;

(c) Allowing damages where the beneficiary still owns the property
at the time the action is filed;

(d) Relief to the grantor, if in the same action, the grantor is
alleging a violation of chapter 19.86 RCW based on the same fact, is
limited to actual damages, treble damages, costs of suit, including
reasonable attorneys' fees.

(2) The term in which a claim must be asserted is amended to one
year from two.

(3) Language is also amended so that claims may not in any way
affect the validity or finality of the foreclosure sale or a subsequent
transfer of the property to a bona fide purchaser.

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