

Foreclosure Prevention Fee Guidance

Reference – [Chapter 393, Laws of 2025 \(E2SSB 5686\(8\)\)](#)

Frequently Asked Questions (FAQ)

1. What type of loans must the closing agent collect the Foreclosure Prevention Fee on?

Closing agents must collect the Foreclosure Prevention Fee on all residential mortgage loans originated for personal, family, or household use that are secured by a mortgage, deed of trust, or other consensual security interest on a [dwelling](#) or residential real estate upon which is constructed or intended to be constructed a dwelling.

- Residential mortgage loans include, but are not limited to: acquisition, home equity, adjustable rate, FHA, VA, USDA, state and municipal special programs, Conventional, Construction, special purpose credit programs, etc.
- Lien position is not a factor in determining applicability of the Foreclosure Prevention Fee.

2. What type of properties must the closing agent collect the Foreclosure Prevention Fee on?

Closing agents must collect the Foreclosure Prevention Fee on all residential mortgage loans originated for “personal, family, or household use that are secured by a mortgage, deed of trust, or other consensual security interest on a dwelling, as defined in the [Truth In Lending Act](#), or residential real estate upon which is constructed or intended to be constructed a dwelling.”¹

- Pursuant to the Truth in Lending Act, “‘dwelling’ means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.”²

3. Can a third party, including the creditor, pay the Foreclosure Prevention Fee?

Yes, a creditor or other third-party can pay the Foreclosure Prevention Fee on behalf of the borrower.

4. Does the creditor disclose the Foreclosure Prevention Fee? If yes, where is the Foreclosure Prevention Fee listed by the creditor on the Loan Estimate and Closing Disclosure?

Yes, the Foreclosure Prevention Fee must be disclosed in Section E, the Taxes and Other Government Fees section, on the Loan Estimate and Closing Disclosure. The Foreclosure Prevention Fee is considered an “other government fee,” and subject to the requirements set forth in 12 C.F.R. §1026.19(e)(3)(ii).

- Specifically, the commentary to [Regulation Z, 1026.37\(g\)\(1\)-2](#) states:
Other government charges. Any charges or fees imposed by a State or local government that are not transfer taxes are aggregated with recording fees and disclosed under § 1026.37(g)(1)(i).

¹ RCW 31.04.015(24).

² 12 C.F.R. 1026.2(a)(19).

5. **Must all borrowers on a reverse mortgage transaction be over the age of 61 for the exception to apply?**
No, only one borrower is required to be over the age of 61 for the exception from collection of the Foreclosure Prevention Fee to apply.
6. **Does the disclosure notice need to be sent to Commerce with the payment?**
No, the Foreclosure Prevention Fee disclosure form provided to the borrowers is not required to be sent to the Washington State Department of Commerce with the remittance. However, closing agents must follow records retention requirements pursuant to other state or federal law.
7. **Must the creditor include the Foreclosure Prevention Fee in the calculation of the finance charge and Annual Percentage Rate (APR)?**
Yes, the Foreclosure Prevention Fee is a finance charge and must be included in the percentage rate calculation.
- The definition of “finance charge” is set forth in [12 CFR 1026.4](#). Section (e) sets forth certain charges that may be excluded from the finance charge. However, the Foreclosure Prevention Fee is neither a tax or fee that is paid “for determining the existence of or for perfecting, releasing, or satisfying a security interest,” nor a tax levied on security instruments or documents evidencing indebtedness. Rather, the Foreclosure Prevention Fee is a fee to support a suite of foreclosure prevention services as set forth in E2SSB 5686. Additionally, the Foreclosure Prevention Fee is not a premium for insurance in lieu of perfecting a security interest.
8. **Is there a provision for closing agents to remit Foreclosure Fairness Fees in bulk?**
Yes, remitting entities will be able to enter into individualized agreements with the Department of Commerce to remit collected fees in bulk payments on a weekly, monthly, or quarterly frequency. The Individualized Agreement Application and remittance instructions will be available for download on our [website](#) under the “Foreclosure Prevention Fee” dropdown menu prior to the July 27th implementation date.
9. **Are the exemptions found in [RCW 61.24.166\(1\)](#) and [RCW 61.24.190\(6\)\(a\)](#) applicable to the Foreclosure Prevention Fee?**
No, the only exemption to the Foreclosure Prevention Fee applies to reverse mortgage loans issued to seniors over the age of 61 ([Chapter 393, Laws of 2025 \(E2SSB 5686\(8\)\)](#)).
10. **Do we need to collect Washington state sales tax on the Foreclosure Prevention Fee?**
It depends, the Washington State Department of Revenue provided the following statement, “It appears the Foreclosure Prevention Fee is not subject to retail sales tax or [business and occupation \(B&O\) tax](#) because it is collected from the buyer on behalf of the Washington State Department of Commerce.” However, if inquiring entities would like to receive a binding ruling they can submit a request directly to the Washington State Department of Revenue [here](#).

QUESTION(S) UNDER REVIEW:

Should the Foreclosure Prevention Fee be collected on a loan that is for business purposes, such as an investment property which will be used as a residential rental?

With seller financing - since the seller is the lender, is the closing agent responsible for collecting the fee and providing the disclosure?

QUESTIONS? Call us at (360) 725-3040 or email us at ForeclosureMediation@commerce.wa.gov