Washington Land Title Association

For Land's Sake

Issue No. 7

March, 2014

President's Message

Derek Matthews

The Office of the Insurance Commissioner ("OIC") has long believed that they lack sufficient information about title insurer and title agent expenses to determine whether premium charges meet the statutory mandate of being neither "excessive, inadequate or unfairly discriminatory." To obtain more information about our expenses, the OIC has worked since 2010 on new rules that will require title insurers and agents to provide their expense data to the OIC. The latest draft of these rules came out in October of 2013 and included a requirement that title companies collect a cancelation fee for title policies. This is a requirement the OIC has been trying to impose for years and which the WLTA has always vehemently opposed. In October, however, it appeared our arguments had once again fallen on deaf ears as the OIC indicated they fully intended to include the cancellation fee provision when the rules were finalized in 2014.

In November the WLTA sent a "call to arms" to our membership and our members quickly mobilized. Dozens of our members made calls and wrote emails to their customers explaining why a cancellation fee would be harmful to consumers. This caused the OIC to be inundated with calls and emails from those in the real estate community objecting to the cancellation fee proposal. Within 10 days we were notified that the OIC was pulling the cancellation fee provision from the draft rules. This incident exemplifies how important it is for us to work together as an industry, and it shows how the WLTA is instrumental in forging the cooperation necessary for our industry to remain successful in Washington State.

As you can see from the articles below, it will be another busy year for the WLTA. Another draft of the rating rules is due out this spring. The WLTA legislative committee is working extremely hard to review all of the legislation being proposed in Olympia, and we are also hosting the 5-state Pacific Northwest Land Title Association meeting July 10-12 at Suncadia. I'm sure lots of unexpected things will occur as well, and as they do, we will continue to keep you informed through this bulletin and other means.

Inside This Issue	

Legislative Report

2014 Session

Dwight Bickel, Co-Chair, Legislative Committee

Current bills of interest to the WLTA

Watching:

SEHB 1117 (continued from 2013)
Transfer on Death Deeds
Sponsors: Representatives Hansen, Rodne, Pedersen
John Lancaster is WLTA primary contact. No objections.
Feb 17 passed by House 97-0
Bill as Passed
Feb 26 public hearing at Senate Law & Justice at 6:30pm
Feb 28 amended, sent to Rules

ESHB 1287
Indian Land
Subjecting federally recognized Indian tribes to the same conditions as state and local governments for property owned exclusively by the tribe.
Reviewed by Megan Powell (Chair, Indian Lands Committee). No objections.
Feb 14 passed by House.
Engrossed Substitute Bill as Passed
Feb 18 sent to Senate Ways & Means committee.
Mar 3 exec session at 1:30

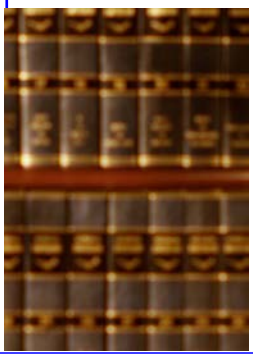
ESHB 2368
Extending Recording Fee Surcharge
No WLTA position; WLTA usually does not comment about recording fees.
Feb 13 passed by House 62-36
Engrossed Substitute Bill as Passed
Feb 17 sent to Senate Financial Institutions, Housing & Insurance committee.
Feb 25 scheduled for public hearing at 1:30 pm.

SHB 2461
Financial Solvency of Insurance Companies
(start at section 25 on page 53 of Own Risk Solvency Assessment)
Feb 17 passed by House
Bill as Passed
Feb 25 public hearing at Senate Financial Institutions, Housing & Ins. At 1:30 pm.
Feb 28 amended, sent to Rules

EHB 2558
Tax Foreclosure Property
Requires offering to city for affordable housing.
Gary and Dwight reviewed and found no objections.
Passed House 56-42
Bill as Passed
Feb 17 sent to Senate Financial Institutions, Housing & Insurance committee.
Feb 25 scheduled for public hearing at 1:30 pm.
Feb 28 sent to Ways & Means
Mar 3 scheduled for public hearing at 1:30 pm.

HB 2723
Revising Mortgage Foreclosure Procedures
Several minor changes to Foreclosure Fairness procedures. No objections raised by several committee reviewers.
Passed House 98-0
Bill as Passed
Feb 25 scheduled for public hearing at Senate Financial Institutions, Housing & Insurance at 1:30 pm.
Feb 28 sent to Rules

ESB 6553
Distribution of real property execution sale proceeds.
Changes RCW 6.21.110 to require excess proceeds after the judgment is satisfied to be paid to other persons holding junior liens as determined by the Court, then any remaining to the debtor. Now same as non-judicial sale proceeds.
Dwight recommends no objection.



Feb 17 Passed Senate 47-0
Bill as Passed
Feb 25 scheduled for public hearing at House Judiciary at 1:30 pm.
Feb 26 sent to Rules

Lien Law on the Horizon?

By Bill Reetz

On November 21, 2013, Representative James Moeller convened a meeting of "stakeholders" who might have interest in a legislative simplification of Washington's lien statutes and their accessibility by members of the public. On behalf of the Legislative Committee, lobbyist Stu Halsan and Bill Reetz attended. It was unclear from comments made at the meeting whether the scope of any such effort was general in nature (i.e. all lien statutes) or to be limited to mechanics' lien statutes. Since then, Rep. Moller's office has sought comment from the "stakeholders" on whether a central registry would be of benefit, on whether effort should be limited to RCW 60.04 (mechanics' lien statutes), whether mechanics' liens might be filed through internet filing, and whether certain lien statutes be moved to RCW 60.04. The Legislative Committee will continue to monitor this matter.

Bill Reetz and John Lancaster will monitor this situation

Legislative Redux

REET, Death, Divorce and Title

Gary Kissling, Co-Chair, Legislative Committee

The Real Estate Excise Tax (REET) is becoming a roadblock to recording documents for WLTA members in many counties. The desire of County Treasurers to obtain current ownership information coupled with the desire of the Department of Revenue to eliminate any possibility of circumventing tax payment has led to a complex and contradictory administrative rule.

Washington's legislature enacted a tax on real property *sales* in 1951 (RCW 82.45.060). RCW 82.45.010 defines the term sale. Until 2008, when the legislature added RCW 82.45.197, the rule and the statute were consistent and affidavits were generally required for *conveyances* (deeds). As County Treasurers and the DOR began to scrutinize all transfers of real property in an effort to gain current ownership information the importance of the term "sale" got lost in the confusion.

In an effort to fix that which was not broken, County Treasurers introduced and promoted SSB 6851 in 2008. The bill passed and became RCW82.45.197. This new section provided an exemption from REET for transfers that were never subject to the tax, and provides that the exemption is applicable ***only if*** certain documentation is provided to the County Treasurer. It specifically targets non-conveyance transfers "by operation of law" (inheritance with no probate, for example) or resulting from court decree (examples: an award of property in a divorce or a distribution of property, without a deed, at the close of a probate).

Treasurers believe that they have a duty to provide ownership information to County Assessors. The single source of transfer information comes to County Treasurers from the REET affidavit. Treasurers continue to encourage DOR to require an excise tax affidavit for all transfers that result in a change of ownership or interest in real property – not just sales.

This can entail a significant delay in a closing. Consider the following scenario:

A transaction involves a sale by the grandchild who inherited 10 years ago ("lack of probate" because there was no will) from a parent who similarly inherited from a parent 10 years before that. There may be little time to sort out how many excise tax affidavits are necessary or who can or is even willing to sign them for the earlier transfers by operation of law. Add a community property agreement and later death of the spouse, or a divorce that awarded the property without a confirming deed as additional complications, and the level of difficulty and time needed increases.

After several years of effort by the WLTA to get some correction to the current statute and administrative rule, we now have a better understanding of why we have a problem at the excise counter – but no solution. Seemingly minor changes to language such as replacing the term "sale" with "transfer" only serves to make the recording an untimely process.

The DOR continues to amend rules allowing County Treasurers discretion in requiring justifying documentation. So, anyone currently recording a deed should be armed with supporting documentation for any intervening off record transfer when excise has to be paid or cleared prior to recording.

Indian Lands

Authority - New BIA Rule

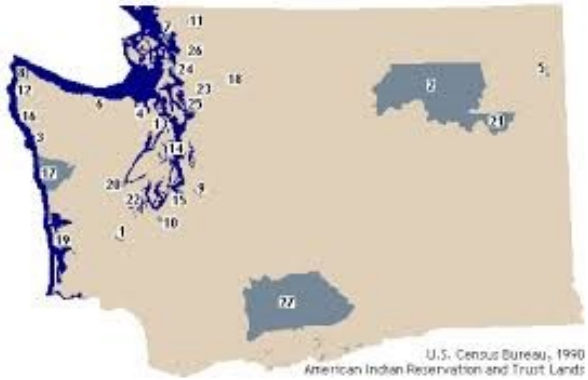
Megan Powell, Chair, WLTA Indian Lands Committee

A new rule issued by the Bureau of Indian Affairs ("BIA") impacting fee-to-trust transfers came into effect on December 13, 2013. The most notable change is the elimination of the 30 day waiting period following publication of notice which announces the decision to take land into trust. The historical purpose of the waiting period was to provide a specific time frame in which interested parties had an opportunity to seek judicial review of the transfer under the Administrative Procedure Act (APA) [5 U.S.C. 704] prior to acquisition by the Secretary of the Interior.

The new rule was established in response to the Supreme Court decision issued June 18, 2012 in *Match-E-Be-Nash-She-Wish, Band of Pottawatomi Indians v. Patchak*, 132 S. Ct. 2199 (2012) ("Patchak"). The Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians requested that the Secretary take into trust on its behalf a tract of land that they ultimately intended to use for gaming purposes. David Patchak filed suit under the APA asserting that such an acquisition would result in economic, environmental and aesthetic harm to him and his nearby property and requested declaratory relief reversing the acquisition.

The Match-E-Be-Nash-She-Wish Band intervened to defend the Secretary's decision and argued that Patchak's claims were barred due to sovereign immunity afforded to the United States under the Federal Quiet Title Act ("QTA"). The court found this defense invalid because Patchak's action was not a quiet title action. Patchak contested the ownership of the property by the Secretary, but he was not asserting for himself any competing interest in the title to the property. Patchak's suit was focused on the impact of the anticipated use of the property. The court held that neither the QTA or Federal sovereign immunity is a bar to APA challenges to the acquisition of the land in trust by the Secretary unless an individual is asserting a right, title or interest in the subject property.

The court further held that in Patchak's suit under the APA he established "prudential standing" for his case by asserting an interest that is "arguably within the zone of interests to be protected or regulated by the statute" that he says was violated. Such suits under APA can be brought any time within the APA's 6 year statute of limitations, even after the Secretary has acquired title to the property. Consequently, there is no longer a need for a 30 day waiting period to seek judicial review of the fee-to-trust acquisition under the APA. Title insurance underwriters may need to consider how they will manage the risk, if any, related to the six year statute of limitations.



Decisions to acquire land in trust are delegated either to the Assistant Secretary of Indian Affairs or to a BIA official, with the majority being delegated to BIA officials. In addition to elimination of the 30 day waiting period, other key changes are as follows:

1. Interested parties (as defined in BIA regulations) must make themselves known to the BIA in writing in order to receive written notice of the BIA's official decision.
2. When a BIA official approves a trust acquisition application, the official must now publish notice of that decision (and right to administrative appeal) in a newspaper of general circulation servicing the affected area to reach unknown interested parties. The time frame for unknown interested parties to file an administrative appeal begins to run upon the date of this publication.
3. When the official decision is issued by a BIA official, interested parties must exhaust all administrative remedies set forth in 25 C.F.R. Part 2 within 30 days before they can seek judicial review under the APA. If interested parties who have received notice of the BIA's official decision fail to file an administrative appeal within 30 days they are precluded from seeking judicial review under the APA.
4. There are no administrative remedies to exhaust when decisions are made directly by the Assistant Secretary of Indian Affairs. These decisions are deemed final for the Department.

The new rule established by the BIA in response to the Patchak decision is unofficially referred to as the "Patchak Patch".

JUDICIARY REPORT

Equitable Subrogation and the "Volunteer Rule"

The Washington Supreme Court rejected the "volunteer rule" as a bar to equitable subrogation in Columbia Community Bank v. Newman Park, LLC,177 Wn.2d 566 (2013).

Newman Park, LLC (Newman) owned property encumbered by a deed of trust to Hometown National Bank (Hometown). One of Newman's members, by way of altered and forged LLC documents, represented to Columbia Community Bank (Columbia) that he had authority to pledge the property as security for a loan. Columbia provided a new loan ostensibly secured by a deed of trust. A portion of the proceeds was used to pay off Hometown. The borrower's lack of authority was discovered when the Columbia loan went into default.

Newman filed suit to prevent foreclosure. Newman argued, and the trial court agreed, that Columbia's deed of trust was invalid because Newman had not agreed to the loan transaction; but the court held that, because Columbia had paid off the Hometown loan in order to ensure the priority of its security interest, Columbia was equitably subrogated to Hometown's position and acquired an equitable lien in the amount of the pay-off. The Appellate Court affirmed and Newman appealed to the Washington Supreme Court

Newman argued, that Columbia was a mere volunteer - that Newman did not ask Columbia to pay off its loan with Hometown and Columbia held no prior interest in the property nor legal obligation when it paid Hometown. Newman argued that, under the so called "volunteer rule" (equity will not aid a volunteer), Columbia should be barred from equitable subrogation regardless of whether Newman benefited from the pay off. Despite Newman's arguments, the Court, fully adopted the Restatement (Third) of Property: Mortgages § 7.6 regarding equitable subrogation and affirmed the lower court's decision and expressly rejected the volunteer rule in the context of a refinance.

Columbia was represented by WLTA Affiliate member Socius Law Group PLLC. ***John Lancaster, Judiciary Committee Chair***

Jack Lancaster is the Chair of the Judiciary Committee of the WLTA and the committee members are Bob Horvat and Nathan Jones

Borrower Can't Waive Judicial Foreclosure Requirement for Agricultural Loan

In another case, the Supreme Court, in Schroeder v. Excelsior Management Group, LLC, 177 Wn.2d 94, 297 P.3d 677 (2013), held that the requisite to a non-judicial foreclosure - that the land not be used principally for agricultural purposes - cannot be contractually waived.

The borrower had obtained a loan from the lender in exchange for a deed of trust as well as an express agreement from the borrower that the property was not agricultural for purposes of nonjudicial foreclosure. The supreme court held that the trial court erred in permitting the trustee to proceed with a non-judicial sale without first determining whether the land was agricultural, because agricultural land must be foreclosed judicially under RCW §§ 61.24.020,.030(2) and the borrower could not waive the statute.

The court found that, in order to honor the legislature's intent that additional protection be provided for land that is primarily used for agricultural purposes, strict compliance with the requisites set forth in Washington's Deed of Trust Act is required.

The court followed the reasoning used in an earlier case* in which it held that the statutory requirement that the beneficiary hold the note or other instrument of indebtedness prior to instituting a non-judicial foreclosure could not be waived. As in that case, the court found no indication that the legislature intended to allow the parties to vary the statutory procedures by contract.

The Court remanded the case to the lower court for, among other things, a determination of whether the property was indeed used principally for agriculture. If so, the Court ordered, "the nonjudicial sale shall be vacated." ***Bob Horvat, Judiciary Committee***

* Bain v. Metropolitan Mortgage Group, Inc., 175 Wn.2d 83, 285 P3d 34 (2012)

JUDICIARY REPORT—continued

Knowledge of the Insured Making a Claim under Title Insurance Policy

Title insurance policies may exclude from coverage matters for which the insured had actual knowledge. What determines whether the insured had knowledge of a particular matter? The Washington Court of Appeals answered this question in C 1031 Properties, Inc v. First American Title Insurance Company, 175 Wn. App. 27, 301 P.3d 500 (2013).

C 1031 purchased property with the intent to develop. As part of their due diligence, C 1031 inspected the property and requested a title commitment from First American. The commitment required C 1031 to notify First American of any existing encumbrances on the property that were not shown in the commitment but were known to C 1031. C 1031 failed to inform First American about existing power lines discovered during its inspection.

After purchasing the property, C 1031 sought to have the power lines removed but the power company refused. The power company provided C 1031 with a copy of a 1949 easement in favor of the power company that granted rights to maintain power lines. The 1949 easement was recorded but had not been shown as an exception on the title commitment provided by First American.

First American acknowledged that it missed the recorded easement, but denied coverage based on the fact that C 1031 had actual knowledge of the presence of power lines. First American argued that loses related to the power lines were excluded from coverage. C 1031 argued that it did not have actual knowledge of the power line *easement* – rather it only had actual knowledge of the *existence* of power lines on the property.

The court ruled that "the policy definition unambiguously defines 'knowledge' as 'actual knowledge' of an easement, not 'constructive knowledge or notice that may be imputed to [C 1031]' constructively." Therefore, when C 1031 "saw the power lines on the property, it acquired at best inquiry notice, not actual knowledge of a recorded easement", and that First American had erred in denying the claim.

Nathan Jones, Judiciary Committee

Is it OK to Serially Foreclose Multiple Properties under Deed of Trust? Or is that an Unlawful Attempt to Get a Deficiency Judgment?

Under RCW 61.24.100 (1), if a lender chooses to nonjudicially foreclose a deed of trust on noncommercial property and the foreclosed property does not cover the debt owed, the lender (with some rare exceptions) can not obtain an additional judgment for the deficiency. That is a trade off for the ability to foreclose relatively quickly and simply by nonjudicial procedures.

In Gardner v. First Heritage Bank, 175 Wn. App. 650, 303 P.3d 1065 (2013), multiple properties secured the debt. The lender foreclosed nonjudicially on some of the property and then subsequently foreclosed in a separate nonjudicial proceeding against the remaining property. The borrower argued that the second sale was an unlawful attempt to seek a deficiency judgment, that it was "incumbent" upon the lender to foreclose on all properties in a single sale and that "serial" trustees sales of different properties securing the same loan violate RCW 61.24.100(1).

The lender argued that it did not violate the statute because it never sought nor received a "judgment." The Court agreed and refused to accept the borrower's argument that the second foreclosure was an attempt to seek a "judgment" within the meaning of the statute.

John Lancaster, Judiciary Committee Chair

JUDICIARY REPORT—continued

Mechanic's Lien Priority—Work Per Amended Contract after Deed of Trust Recorded

The issue in First-Citizens Bank & Trust Company V. Gibbs & Olson, Inc., 176 Wn. App. 335 (2013), heard by the Washington Appellate Court, Division II, was whether a mechanic's lien had priority over a deed of trust where the mechanic's lien was for services added by amendment to the original work contract after the deed of trust was recorded.

Gibbs and Olson, Inc. (G&O) began work on a project under a contract by which it was to initially perform certain engineering and surveying services. A deed of trust was then recorded securing a loan from Venture Bank, predecessor to First-Citizens Bank and Trust Company (collectively the Lender).

Subsequently, the property owner and G&O entered into several (5) amendments to the contract and, although the bill for work in the initial contract was paid, the owner defaulted on payment for the additional work described in the amendments. G&O filed a mechanic's lien for the unpaid amount and sued for foreclosure. The owner also defaulted on the loan and the Lender foreclosed and obtained title through a trustee's deed.

In the lien priority dispute between the two, the Lender argued that the amendments to G&O's contract, amendments dated after the recording of the deed of trust, constituted separate and independent contracts and therefore were junior to the lien of the deed of trust. G&O argued that there was only one contract, albeit amended several times, and that the work on that one contract commenced prior to the recording of the deed of trust.

The initial contract contained a provision that, following completion of the design phase and "after written authorization" from the owner, "[G&O] shall prepare an amendment to this Agreement for completion of the construction phase and the operational phase services. Upon approval of the amendment [G&O] shall proceed with the work on this project." Terms of the amendments themselves identified them as "attached to and part of" the initial contract.

G&O argued that the provisions showed the intent was one contract - amended as the parties moved through each phase of work. Testimony from the foreclosed property owner supported G&O's argument. The Lender argued that, because amendments to the contract required the parties' approval before proceeding, the provision in the initial contract was merely an agreement to consider entering into new contracts and that the amendments, once written and approved, were separate, independent and junior to the deed of trust.

The Court decided in favor of G&O and held that, based on the language referencing a possible amendment, there was only one contract and that therefore the lien for work under the amendments was prior to the lien of the deed of trust. The Court also noted that the Lender could have protected itself by obtaining a subordination agreement from G&O when it knew that work had commenced before it agreed to the loan.

The Lender's petition for review by the Washington Supreme Court was denied. The WLTA, through Affiliate member, Bishop, Marshall & Weibel, P.S., submitted an amicus brief supporting review. ***John Lancaster, Judiciary Committee Chair***

Reforming Incorrect Legal Description after Trustee's Sale

The Washington Court of Appeals, in GLEPCO LLC v. Reinstra, 175 Wn. App. 545, 307 P.3d 744, (2013), reviewed a quiet title action concerning property allegedly sold at a non-judicial foreclosure sale. At the sale, the respondents bought the appellants' property, believing that they were purchasing a 3-acre lot with a house on it, based on the address and other references in the deed of trust and notice of trustee's sale. After the sale, however, the respondents discovered that the legal description in those documents only covered a small portion of the land - the drain field.

The respondents brought a quiet title action against the appellants, arguing that the deed of trust beneficiary's security interest was, in fact, on the entire 3-acre lot and that the erroneous legal description should be reformed because it was the result of scrivener's error (i.e. a clerical error) or mutual mistake in the deed of trust between the beneficiary and appellants.

The Washington Court of Appeals agreed and held that that, even though RCW 61.24.040 provides that trustee's sales are made "without warranty, express or implied, regarding title….", a trial court may reform conveyance documents where a defect in the legal description is the product of scrivener's error or mutual mistake. Despite the holding in this case, it is important to remember that reformation is an extraordinary remedy. No one should rely on a court coming to their rescue if there is a material error in the transaction documents. ***Bob Horvat, Judiciary Committee***

JUDICIARY REPORT—continued

Litigate Priority after Filing Release of Lien Bond?

RCW 60.04.161 permits the filing of a release-of-lien bond if there is a dispute concerning a mechanic's lien. Filing a release-of-lien bond allows the bond to act as security for the obligation, rather than the mechanics lien, and removes the lien as an encumbrance from title. Instead of foreclosing on the mechanics lien, a lien claimant must seek recourse against the bond proceeds - assuming they can establish the validity of the lien. Whether or not parties can dispute lien priorities after the filing of a release-of-lien bond, however, was an issue of first impression before the court in Olson Engineering, Inc., Respondent v. Keybank National Association , et al,171 Wn. App. 57, 286 P.3d 390 (2012.

In 2006, a developer hired Olson to perform survey/engineering work. In 2008, the developer granted KeyBank a deed of trust to finance the development. Thereafter, Olson recorded a mechanics lien against the property. In 2009, KeyBank filed a release-of-lien bond in order to remove Olson's mechanics lien and then moved to foreclose on its deed of trust.

Under Washington law, Olson's mechanic lien ostensibly had priority over the KeyBank deed of trust because Olson's priority date related back to when Olson started work – i.e. before KeyBank recorded its deed of trust. However, a question of fact existed as to whether or not Olson complied with the mechanic lien statute in order to properly establish priority. If KeyBank was successful in asserting priority over Olson's mechanic lien, Olson might not be entitled to benefit from the bond proceeds.

KeyBank argued that the purpose of

RCW 60.04.161 is to free up the property for sale, pending final determination of the lien claimant's rights. Filing a release-of-lien bond, KeyBank argued, did not preclude the bank from later asserting priority of its deed of trust.

Olson argued that KeyBank had waived its right to dispute lien priority once it filed the release-of-lien bond. Olson argued that the plain language of the statute does not expressly provide for the right to continue to assert lien priority. The court disagreed and held that the plain meaning of the release-of-lien bond statute does in fact allow a party to dispute lien priority after the filing of a release-of-lien bond. ***Nathan Jones, Judiciary Committee***

Trustee in Non-Judicial Foreclosure = Legal Obligation to Exercise Independent Discretion as Impartial Third Party

In Klem v. Washington Mutual Bank, 176 Wn.2d 771, 295 P.3d 1179 (2013), the borrower suffered from dementia and was subject to a guardianship. A foreclosure sale of the borrower's residence was scheduled. However, prior to the sale the guardian entered into an agreement to sell the borrower's residence for far more than the debt owed, but the closing under the agreement was scheduled to occur after the scheduled foreclosure sale.

Quality Loan Service ("QLS"), the foreclosing trustee, had been instructed by Washington Mutual not to continue any sale in the absence of instructions from the Bank. QLS advised the guardian to contact the Bank and try to obtain the Bank's consent to a delay. For reasons the case does not disclose, the Bank did not consent and the foreclosure sale proceeded as originally scheduled.

Subsequently, the guardian sued Washington Mutual and QLS for the difference between the bank debt and the purchase price set forth in the purchase and sale agreement and prevailed. The court in February 2013 held that a deed of trust and its resulting foreclosure are both three-party transactions (borrower, beneficiary and trustee), and stated the following regarding the trustee's role:

"Again, the trustee in a nonjudicial foreclosure action has been vested with incredible power. Concomitant with that power is an obligation to both sides to do more than merely follow an unread statute and the beneficiary's directions. If the trustee acts only at the direction of the beneficiary, then the trustee is a mere agent of the beneficiary and a deed of trust no longer embodies a three party transaction. If the trustee were truly a mere agent of the beneficiary there would be, in effect, only two parties with the beneficiary having tremendous power and no incentive to protect the statutory and constitutional property rights of the borrower. We hold that the practice of a trustee in a nonjudicial foreclosure deferring to the lender on whether to postpone a foreclosure sale and thereby failing to exercise its independent discretion as an impartial third party with duties to both parties is an unfair or deceptive act or practice…. Quality failed to act in good faith to exercise its fiduciary duty to both sides and merely honored an agency relationship with one." ***Bob Horvat, Judiciary Committee***

JUDICIARY REPORT—continued

Relationship Between Insurer and Insured's Attorney Retained by the Insurer—Attorney's Duty to Insured

In Stewart Title Guaranty Co. v. Sterling Savings Bank, 178 Wn.2d 561, 311 P.3d 1 (2013), a case of first impression in Washington, the Washington Supreme Court held that a title insurance company could not maintain a malpractice suit against an attorney retained by the title insurer to represent its insured in litigation. The Court held that although the attorney and the insurance company had entered into a contract under which the company paid the attorney's fees and the attorney had a duty to keep the company informed, the attorney's client was the insured, not the insurance company. Contrary to decisions in other jurisdictions and the Restatement (Third) of the Law Governing Lawyers, the Washington court held that the attorney owed no duty to the insurance company that would sustain a malpractice suit despite the fact that the insurance company's interest in the underlying lawsuit aligned with that of the insured client. ***John Lancaster, Judiciary Committee Chair***

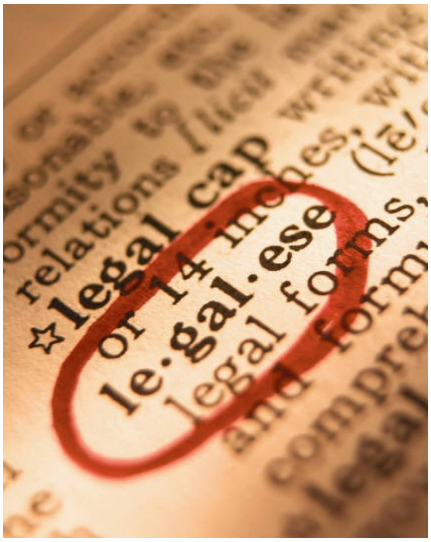
Successor Trustee Must be Properly Appointed; Proper Beneficiary Must Hold Note or Secured Obligation

In Bavand v. OneWest Bank, F.S.B., 176 Wn. App. 475, 309 P.3d 636 (2013), a deed of trust named IndyMac Bank ("IndyMac") as the "lender" and Mortgage Electronic Registration Systems, Inc. ("MERS") as "the beneficiary" and "as a nominee for the Lender and Lender's successors and assigns." In connection with the appointment of a successor trustee to institute a non-judicial foreclosure action, OneWest Bank ("OneWest") claimed to be the "present beneficiary" and executed the appointment. One day later MERS, as nominee for IndyMac, executed an assignment of the deed of trust in order to assign IndyMac's interest to OneWest. The successor trustee appointed by OneWest thereafter commenced a non-judicial foreclosure.

In September 2013, the Court of Appeals, Division One, held that OneWest was not the "present beneficiary" at the time it appointed the successor trustee and accordingly had no authority to appoint such trustee. As a consequence, the newly-appointed trustee had no authority to conduct the non-judicial foreclosure sale. The lower court's ruling that the trustee's sale was valid was reversed.

The Court, citing the Washington Supreme Court's opinion in Bain v. Metropolitan Mortgage Group, Inc., 175 Wn.2d 83, 285 P3d 34 (2012)*, also held that MERS was not a proper beneficiary under the Deed of Trust Act, since that Act requires the beneficiary be the "holder" of the note or secured obligation. Because MERS was not a proper beneficiary, it did not have the authority to cure the defect in the appointment of the successor trustee. ***Bob Horvat, Judiciary Committee***

*A summary of Bain can be found in Issue 1 (11-2012) of *For Land's Sake*.



Industry News

PREP

What is PREP?
The Property Records Industry
Working Together at the Local Level

PREP (Property Records Education Partners) provides a local structured forum for stakeholders of the property records industry to meet and work together more effectively. PREP chapters make it happen!

In 2002 it became evident that cooperation and communication needed to be improved between industry stakeholders at the local level. In addition, a way was needed to share perspectives and information between national and local industry participants.

Supported by the success of Property Records Industry Association (PRIA) at the national level, an alliance was formed by the American Land Title Association (ALTA), the American Escrow Association (AEA), the International Association of Clerks, Recorders, Election Officials & Treasurers (IACREOT) and the National Association of County Recorders, Election Officials & Clerks (NACRC) for the purpose of creating local industry workgroups.

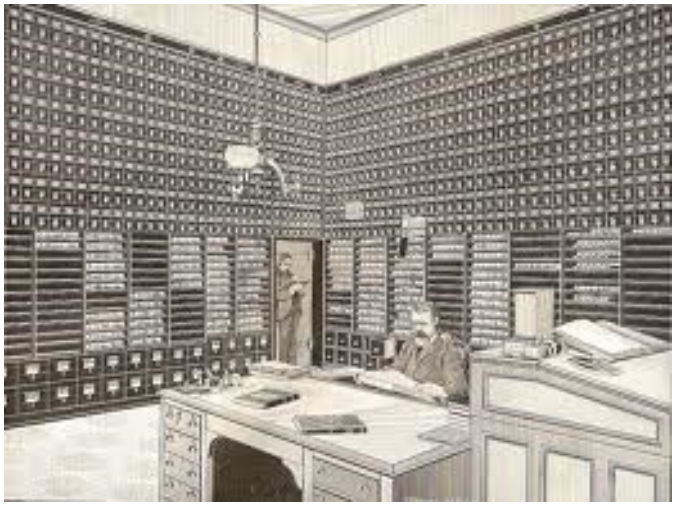
To provide a permanent structure and ongoing support, in 2004 this project became an official workgroup structured under the PRIA umbrella and named the Property Records Education Partners (PREP), with local units identified as PREP Chapters. PREP has its own operating rules and PRIA membership is not required for PREP participation.

The purpose of the ***Property Records Industry Association*** (PRIA) is to bring together the major participants in the property records industry, including public officials, associations and private concerns, to:

- Improve communication between industry stakeholders
- Facilitate recordation and access to public property records
- Formulate and disseminate model standards, systems and procedures
- Encourage adoption of model standards
- Track relevant proposed legislation to facilitate appropriate input
- Initiate and lead development of technical standards
- Establish and lead education programs for all sectors of the industry
- Preserve the integrity of public property records

All PREP meetings are open to all and there is no membership or dues. All we need is your participation!

Go to Prep Home



Next Meeting

The next Washington PREP meeting to be held Thursday **March 20th – Noon to 2 PM**. We will be meeting in the Danube Room at **THE ENZIAN INN in Leavenworth, WA**

Agenda:

1. Introductions
2. Roll call
3. Presentation
   a. eNotary
   b. eSignatures
4. eREET Panel discussion
   a. See what options are available, as well as upcoming solutions, to route documents to the Treasurer's office to process Real Estate Excise Tax
   b. Panel will consist of Simplifile, CSC/INGEO, ePN, Thomas Reuters and Melanie Muzatko from Spokane County
5. Closing remarks / next meeting discussion

If you are unable to attend in person, I have set up a remote meeting that you can join. Please use the login information below.

Please join my meeting.
https://www4.gotomeeting.com/join/789918767
Join the conference call:
Toll free: 1-877-820-7831
Passcode: 872873

Contact Info: Mike Shelton
mike@erecordingpartners.net
903.563.6752
2013 Washington State PREP Co-Chair

Mike is with eRecording Partners, an Affiliate Member of the WLTA and a leading provider of eRecording services.

Industry News

TAN Works for Everyone

Brenda Rawlins announced that Molly Brown, with Fidelity Title Company in Yakima, won a $100 Amazon gift certificate for signing up with TAN in November. Congratulations to Molly, and thanks to all who signed up during the promotion sponsored by the ALTA.

Washington has over 220 individual members of TAN at last count, and is at the Gold level by ALTA standards. We know that at least twice that many additional members is an achievable goal for our Association.

There are continuing benefits to joining TAN – and tt's very easy to sign up. It takes just 60 seconds to join TAN here and keep up-to-date on matters that affect our industry. Once you have joined, please help us grow by inviting others in your office and professional network to join and have a stake in the future of our business and industry. Together, our membership and voices will make a difference!

GET TAN TODAY! Click Here

If you have questions, or would like to learn more about the Title Action Network, please visit www.titleactionnetwork.com or contact Brenda Rawlins, TAN Committee Chair for the WLTA, at brawlins@firstam.com or 206-615-3024.

Have you seen something that doesn't look quite right in a recorded document? Send it in! The names will be changed to protect the guilty.

execdirector@wltaonline.org

Goldfinch

Washington State Bird

TITAC

TITAC of Washington is looking for your help. We are a political action committee created to provide support for title insurers and other real estate related companies in Washington State Government. We rely solely on donations in order to fund and operate our efforts. Together with the Washington Land Title Association, we generate information and political insight on topics that effect the real estate industry.

Please help our continued presence in Washington State by donating to our cause. Below is a link for a one time PayPal donation of $25. You can also pay by check made out to:

TITAC of Washington
18000 International Blvd
#500
SeaTac, WA 98188

Click here for PayPal Site

Together we can continue our support of Washington real estate.

Donate now with.. PayPal

Industry News—Events

SAVE THESE DATES!

2014 PNW Land Title Convention

The 2014 Convention is just around the corner. Washington hosts the Pacific Northwest Land Title Convention in this year. It will be at Suncadia Resort in Cle Elum. Our members will have the opportunity to see their peers and customers from Washington State as well as from Oregon, Idaho, Montana and Utah. Mark *July 10-12* on your calendar Let's show our visitors what good hosts we are and welcome them to the beautiful State of Washington.

- CFPB & Best Practices
- Education
- Renew Friendships
- Relax - it's not all Work!

Check out the location:

Suncadia Resort
REGISTER HERE

2014 Education Seminars

The WLTA will again hold seminars for title and escrow professionals. Last year's sessions in Wenatchee and Everett were a tremendous success, with about 350 attendees between the two sites. Those of you who have attended in the past know how fantastic these events are. Some sessions focus on escrow matters and others will be of particular interest for those working in title, and of course we include topics that either would find useful.

Yakima, Saturday, September 20 — Everett, Saturday, November 1

If you have a particular topic you'd like included in the seminar, email John Martin, WLTA Education Chair, at: jomartin@stewart.com.

LSAW Seminar

The Land Surveyors' Association of Washington 2014 Spring Seminar is set and will cover

Title vs. Survey – Statutes, Standards and Boundary Law Principles

Gary Kent, PLS, Chair of the ALTA/ACSM Standards Committee for ALTA & NSPS

Date: May 16, 2014

Where: UofW/Tacoma Campus – Carwein Auditorium, Keystone Building

AND – WLTA Members ***can register at the LSAW member rate***!

Registration at LSAW web page.
(Registration opens March 12)

This new program delves deep into the many issues that revolve around matters of:
survey vs. matters of title…
distinct differences & the gray areas …
review of statutes and administrative rules…
unwritten rights…
junior/senior rights,…
recordation acts, marketable title acts…
role of title companies…
relationship between surveyors & title companies…
title aspects of ALTA/ACSM Standards...
state standard in the establishment of boundaries

Win a Tablet – CSC's eRecording Beginner's Guide & Unique Contest

Corporation Service Company® (CSC®), an Affiliate member of the WLTA and a leading provider of electronic document recording solutions for government recording offices and document submitters, has created a free new "Beginner's Guide to Document eRecording."

The guide, available here, walks document submitters and recorders through the history of electronic document recording, how the process works, and how to get started.

The Beginner's Guide will answer some of the questions that document submitters and recorders still have about the electronic recording process, but it's also intended to make the guide as interesting and fun as possible.

The challenge question for document submitters is: "What will you do with your extra paper once you switch to CSC eRecording?"

Contest participants should take a photograph of something they have created out of paper and submit it here. For inspiration, participants can view CSC's tutorial on how to make a paper crane, a classic origami figure. CSC will select the best entry in April 2014 and feature the photograph and submission on its website. The winner will also receive an Apple® iPad. CSC is looking for some unique submissions, and the winner will receive another paper reducer—a tablet.

Visit here (www.erecording101.com) to access the Beginner's Guide and to participate in CSC's contest.

Industry News

Uncovering the Mysteries of eRecording

For some, just mentioning electronic recording may cause a glazed-over stare. This mysterious process of electronically recording documents with the county may seem shrouded in complexity. However, electronic recording, otherwise known as eRecording, is straightforward and simple.

eRecording follows the same process of submitting, and processing documents for recording that is done every day by title companies across the nation with one change. Rather than send the documents to the county via runner, mail, express mail or courier service, documents are sent, received, and tracked via the Internet.

This simple change in process not only simplifies and accelerates all aspects of the recording process, it make recording documents fast and easy.

So, how does eRecording work?

eRecording consists of a very simple, five-step process:

Step 1. You, the document submitter, prepare a document for submission to the county and then scan the document. You then review the scanned file for accuracy and submit it via the Internet to the county along with any comments.

Step 2. Seconds after you send the document, the county recorder's office is notified that the document has arrived. The document is immediately placed in a queue that recognizes—based on county race-to-record policies—its position relative to other documents being submitted electronically, by mail, or by courier.

Step 3. The county reviews the document and accompanying data (fees, comments, etc.) and accepts the document for recording.

Step 4. Once the county accepts the document, it stamps and records it.

Step 5. Seconds after the document is recorded, it is returned to you via the Internet.

What does eRecording do for me?

Ask yourself: How much time do you spend processing documents today? How long do your customers have to wait for documents to be recorded? How many times are you resubmitting documents to correct errors? How much is it costing you to cut checks to pay recording fees? eRecording can save you time and money and enable you to provide superior services to your customers. Consider the following advantages of eRecording.

- ***Documents recorded in minutes.*** With eRecording, you reduce the time it takes to record documents with the county. Imagine, it's the last day of the month and you are able to close a file and record it the same day. Plus, once the county records your document, you can immediately return files to lenders the same day.
- ***Avoid mailing costs, paper costs, traffic, and wasted time.*** eRecording is a cost-effective alternative to courier fees and postage not to mention the time wasted in traffic, wasted fuel costs, and wasted paper.
- ***Correct and resubmit rejected documents quickly.*** When the county rejects a document, eRecording allows you to make the correction and resubmit it within minutes. There is no need to wait for your courier to bring back your document or wait for it in the mail.
- ***Eliminate check writing expenses.*** With eRecording, recording and submission fees are electronically processed—allowing you to bypass the check writing process altogether. Since payments are made electronically, if a document is rejected for incorrect submission fees, the time and expense to reissue a check is also eliminated.

The mystery of eRecording, once understood, becomes a truly beneficial solution to title professionals. eRecording simplifies and accelerates all aspects of the recording process.

Josh Holmes
Josh is a Regional Account Executive for Simplifile, an Affiliate member of the WLTA and a leading provider of eRecording services, helping title companies implement eRecording for their offices. Josh may be contacted at josh.holmes@simplifile.com *or at 1-800-460-5657 x1134.*

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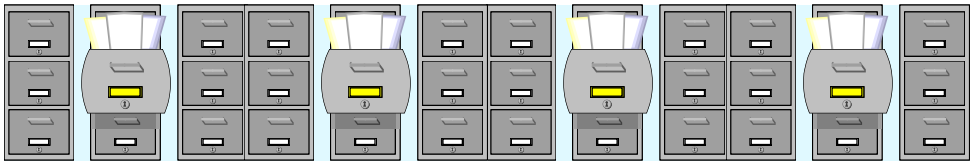

Calendar

March 20—PREP meeting
April 16—WLTA Board meeting
May 16—LSAW Seminar
July 10-12—PNW 5-State Annual Convention & State Meetings (Suncadia, Cle Elum)
September 20—WLTA Seminar (Yakima Convention Center)
October 15-18—ALTA Convention (Westin Seattle)
November 1—WLTA Seminar (Everett Convention Center)