Washington Land Title Association

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For Land's Sake

President's Report – Bill Ronhaar

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First, please let me thank you for the privilege of serving as your President for the 2012-2013 term. It is humbling to know that my fellow title industry professionals have enough confidence in my abilities to elect me to serve in this position. I will make every effort to prove worthy of that confidence. I have always been passionate about this association and our efforts in education, legislation and the advancement of ethical standards in the industry, and will remain so.

As your President I attended the annual convention of the American Land Title Association. The main focus of the convention was the efforts of ALTA in the new CFPB regulations and the potential increase in costs for agents due to some lenders hiring "vetting" companies to investigate them for potential compliance risks.

ALTA has developed its "Best Practices To Protect Consumers," and are working tirelessly on our behalf to have lenders accept these "best practices," and the underwriter's audit's based upon those practices, rather than relying on third party vendors who are unfamiliar with our business practices.

I have arranged for ALTA to sponsor a webinar especially for Washington agents to educate us on these practices and their efforts in this area. Time and date to be announced in early December.

Legislative Corner – Your Association at Work for You

The two most effective services the Washington Land Title Association provides for its members, the industries served by the title insurance industry, and the public are *education* and *legislation*. Each year the WLTA Legislative Committee and the Association's lobbyist review thousands of bills looking for issues which are adverse to real property. A proactive approach to legislation has proven to be the most effective means to influence legislation acceptable to the title industry. Each member of the WLTA can provide critical early information about bills being formulated and drafted even before they appear in the legislative hopper. Members should discuss information on legislative matters with one of the legislative chairpersons (*see the last page of this Newsletter*) in order to provide a unified position on any issue.

The 2013 legislative year begins January 14th. Among other bills affecting real property, a bill creating a "transfer on death deed" statute is expected. The draft of this bill is currently under review by the Legislative Committee. Also legislation dealing with requirements for recording Deed of Trust assignments is expected. The WLTA has had representation on the drafting committee of this bill. Other members of a special committee continue to work with the Office of Insurance Commissioner to draft amendments to title insurance rating statutes.

Gary Kissling

Bain and *Albice* – What do They Mean for Title Insurers?

Insuring the validity of foreclosures recently became more difficult.

In May, the WA Supreme Court set aside a Trustee sale purchased at auction by a third-party. In Albice vs. Premier Mortgage, the Court concluded a sale held 161 days after the initial sale date, due to six postponements, was void, because the Trustee had no authority to foreclose later than 120 days after the date shown by the initial NOTS. The borrower was not required to object before the sale, though the statutes and prior decisions require the borrower to stop the sale to assert a challenge. Most important, the purchaser was not protected from the post-sale challenge because the Court concluded the procedural errors should have been known.

Then in August, the Court concluded that MERS cannot act as the Beneficiary unless it is the actual holder of the Note. In the case of Bain vs. MERS, two property owners stopped foreclosures that were started by appointment of a Trustee signed by MERS. The Court agreed the appointments were void because the WA statute states the Beneficiary of a Deed of Trust must be the holder of the indebtedness.

The Courts and the Legislature do not understand that the servicing agent, that usually is the holder of the Note, signs in the name of MERS. Our statutes use the terms "holder" and "owner" of the Note as if they are same, but usually the servicing agent initiates foreclosures. A legislative task force is now meeting to propose statutory changes. *Dwight Bickel*

Other Cases of Note

ACCESS – Private Condemnation OK?

Ruvalcaba v. Kwang Ho Baek, 175 Wash.2d 1 (August 9, 2012)

In 1965, the Ruvalcabas bought land that was contiguous to a public road. In 1971 they sold off a portion of the land adjacent to the road, leaving the remaining parcel landlocked. In 2008, the Ruvalcabas filed a private condemnation action under RCW 8.24.010 to obtain an access easement from their landlocked property to the public road. RCW 8.24.010, as interpreted by Washington courts, allows a property owner to essentially privately condemn the land of another and obtain a private easement if the easement is "reasonably necessary" for the "proper use and enjoyment" of the condemning party's property.

The defendants in the action sought to have the Supreme Court set a bright line rule that one can never claim an easement by necessity if the "necessity" was created by the claimant's own voluntary decision to land lock their property. While the court declined to set such a bright line rule, it did conclude that under these facts, where the Ruvalcabas landlocked their own property and waited 35 years to file the action to establish the easement, no "reasonable necessity" was shown and the plaintiffs were not entitled to an easement.

Private condemnation actions under RCW 8.24.010 can be used to resolve title claims involving land locked property. This case suggests such actions may not always be an option depending upon how the property became landlocked. *Derek Matthews*

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Other Cases of Note – continued

ADVERSE POSSESSION

Gorman v. City of Woodinville, 175 Wash 2d. 68 (August 16, 2012)

It is well established in Washington law that in order to establish title by adverse possession one must possess property of another for at least 10 years and the possession must be (1) open and notorious, (2) actual and uninterrupted, (3) exclusive, and (4) hostile. It is also well established in Washington that the 10 year period doesn't run while a governmental entity is in title to the property being possessed (RCW 4.16.160 says "no claim of right predicated upon the lapse of time shall ever be asserted against the state").

The question in this case was whether someone can successfully bring a quiet title action based on adverse possession when the government is now in title to the disputed property but the claimant alleges they adversely possessed property *before* the governmental took title. The court held that once the requirements for adverse possession are then met title vests automatically in the adverse possessor. The transfer of the title to the government has no impact because the grantor had no title to give.

Thus title insurers can't assume they won't be forced to defend an adverse possession action merely because the insured is a governmental entity. *Derek Matthews*

Regulatory Update

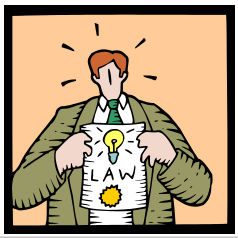
Several members of the Washington Land Title Association met in late October with representatives of the Office of the Insurance Commissioner ("OIC") to discuss the rate regulations that the OIC put on hold earlier this year. As you recall, these regulations (1) require title agents and title insurer's direct operations to report to the OIC annually on their title related income and expenses; (2) require all title insurers to file new rates based on this income and expense data; (3) require the collection of cancellation fees; and (4) prohibit higher liability policies from subsidizing lower liability policies (which would greatly flatten the rate structure, increasing rates for lower liability transactions).

The OIC is seeking the WLTA's support for a bill they will be offering in the upcoming legislative session. The bill will eliminate the current requirement that agents report their title income expense data to their underwriter and replace it with a requirement that agents and direct operations report their data to an independent third-party statistical data agent who will compile the data. The WLTA Executive Committee will be voting on whether to support the bill at its November 27th meeting.

Another issue raised by WLTA members is that the OIC should not require insurers to file new rates until several years of income and expense data is reported to the statistical data agent. The OIC seemed to agree with this point and indicated that insurers will likely not be required to file new rates under the new regulatory regime until 2015 at the earliest.

At the meeting, members of the WLTA sought to engage the OIC on potential changes to other provisions in the regulations (such as items 2-4 above). The OIC indicated that their primary focus now is passing a bill to create a statistical data agent. If that bill passes, they will need to adopt regulations to implement the statistical data agent plan. The OIC indicated that during that rulemaking process they will be open to discussing other changes to the existing rules.

During the meeting with the OIC members of the WLTA pressed the OIC to consider adoption of a rating bureau, given its popularity with both the industry and regulators in Oregon. However, the OIC indicated they have no interest in a rating bureau and prefer to have competitive forces determine rates. *Derek Matthews*



WLTA Education Seminars

The annual Washington Land Title Association Education Seminars provide one of the most visible and valuable benefits available to its members.

This year it was held in two locations, Kennewick and Lynnwood. Over 70 registered for Kennewick and more than 165 signed up for Lynnwood, which is a record.

The sessions in Kennewick also offered convenience for our members who work and live in Eastern Washington, and we expect to continue to make this option available in other locations in future years. Offering two seminars also provided the opportunity to accommodate scheduling conflicts for those who wanted to attend.

These seminars provide both title and escrow personnel at every level the opportunity to grow in their chosen profession, and take something meaningful back to the office. Of course, providing LPO credit to attendees at a reasonable cost is a huge benefit. In addition, these gatherings provide an opportunity to connect with others in the related industries, since they are open to non-members as well.

The member companies of the WLTA have many speakers who have a wealth of experience and knowledge, but each year speakers from other professions are invited to speak. The WLTA appreciates and thanks all who give generously of their time and expertise in these endeavors. The WLTA also thanks all of its members for supporting these education efforts by encouraging speakers and attendees alike to participate.

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