

CLAIMS

WLTA 2012 Educational
Seminar

Seattle, WA

October 20, 2012

Ashley Callahan

Claims Counsel – Stewart Title

Agenda

What is a claim?

Claim Examples

Recent Case Law of Interest

What is A Claim?

Any time someone or something has a question about rights under a title policy.



Claim Procedure

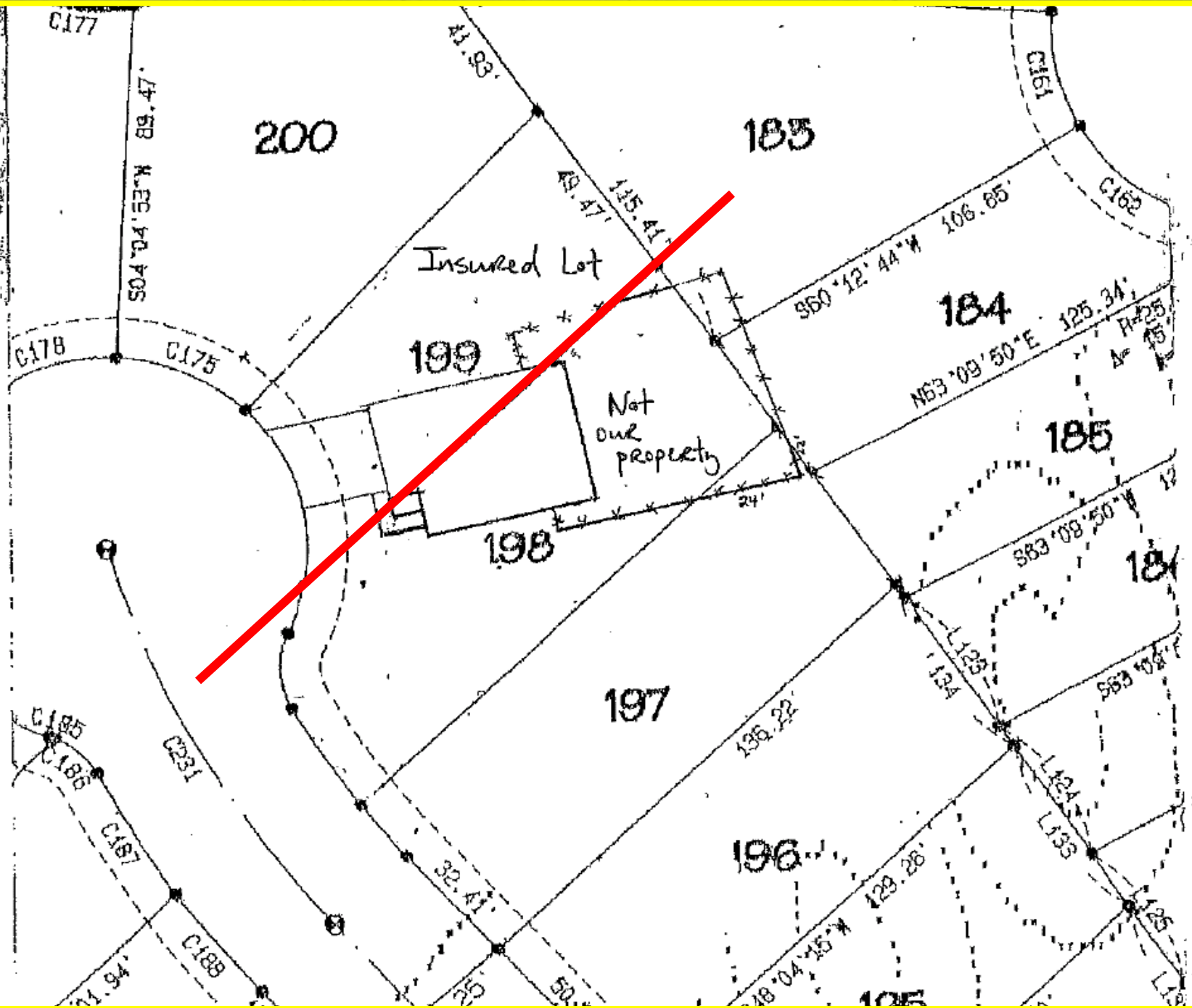
- Know How to Forward a Claim to the Claims Department
 - Notice of Claim
 - Copies of title and escrow files
 - Person most knowledgeable
- Watch what you put in writing
 - Potentially discoverable

Sampling of Claims

House on Two Lots

Encroachment







Certificate of Occupancy

Division of Building Safety and Inspection

This Certificate issued pursuant to the requirements of Section 110 of the International Residential Code certifying that at the time of issuance this structure was in compliance with the various ordinances of the County regulating building construction. If Impact Fees or Sewer Connection Charges were deferred on this permit, or any other permits that are a part of this project, those fees must be paid in full and any associated liens satisfied prior to occupancy.

Owner Name:

[REDACTED]

Owner Address:

[REDACTED]

City/St/Zip:

[REDACTED]

Permit No:

[REDACTED]

Fire Suppression System? N

Final Approved:

11/10/2009

Use Description:

Construct a 1 story 3 bedroom SFR
Base Plan # [REDACTED]

Site Address:

[REDACTED]

Pierce County Planning and Land Services
2401 South 35th Street
Tacoma, Washington 98409
(253)798-3152

Project Name: [REDACTED]
Project Desc: Construct a 1 story 3 bedroom SFR
Base Plan # [REDACTED]

Site Address: [REDACTED]
Contractor: [REDACTED] Construction Co
Applicant: [REDACTED]
Owner: [REDACTED]

License No: [REDACTED]
Phone No: [REDACTED] ext. [REDACTED]
Phone No: [REDACTED]

Building Type(s): House/plex
District: Puget Sound Energy Heat:
Min. Setbacks: Front: 20 Side 1: 3.1 Side 2: 3.1 Rear: 3.1
Other:

Work Type(s): New Structure

Inspection Requested: Final
Special Instructions:

Inspector's Comments: _____

Approved

Comment

Incomplete

To request _____ inspection go to: www.piercecountywa.org/pals

Signature: 

Date: 11.10.09

Inspector: Ken Jackson

Phone No: (253) 798-7167

Policy: Homeowner's and Loan

Coverage Analysis: Insured had coverage based on Covered Risk 31: "The residence with the address shown in Schedule A is not located on the Land at the Policy Date."

Solution: Hire counsel to file lawsuit to rescind sale.

Outcome

We won a motion to rescind but developer had no money to buy our insured out.

We paid insured amount necessary to pay off the insured loan and instructed counsel to obtain a judgment of rescission thereby relieving insured of further real estate tax burden, homeowner's insurance issues, etc.

Prevention

Property was inspected
because insured within lien
period.

Don't assume inspectors and
city officials are correct.

Fraudulent Conveyance



Dixiano's "Just For Men" mustache isn't fooling anyone, and neither are his attempts to embezzle the multi-million dollar inheritance of an unwittingly mentally-challenged man.



Chris Parker, White Collar Villians, True Crime Report, February 11, 2011.

Angela disappeared in 2010. Her friend finally went to the cops in December and reported it, telling them that Angela had threatened to expose her husband's embezzlement scheme.

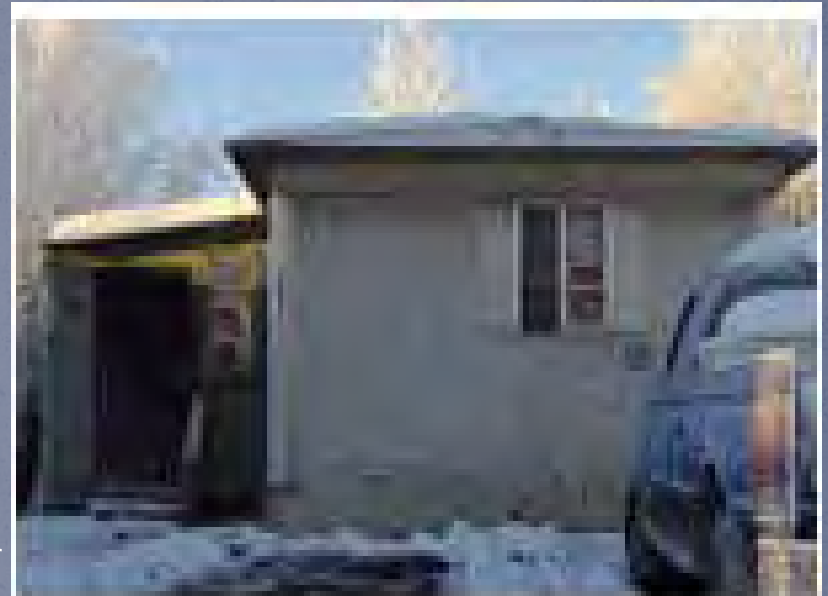


Chris Parker, True Crime Report (see above).

Samuel Lee began receiving mental health services from Dixiano prior to 2006

Lee was the son of two research physicists ,who inherited a substantial sum when his father died

Lee purchased property in 2006 and then conveyed it to Dixiano



Sam Lee's Trailer

The Quit Claim Deed

Recording requested by:

and when recorded, please return this deed and tax statements to:

William M. Dixiano
P.O. Box 110915
Anchorage, AK 99502

Esrow No.:

Title Order No.:

A
L
A
S
K
A

2006-076720-0

Recording Dist: 301 - Anchorage
11/13/2006 1:07 PM Pages: 1 of 2



For recorder's use only

u

QUITCLAIM DEED

KNOW ALL MEN BY THESE PRESENTS THAT:

THIS QUITCLAIM DEED, made and entered into on NOVEMBER 6, 2006, between
X Samuel E. Lee ("Grantor") whose address is 4160 Lakeridge Cir.
Anchorage, AK 99502 and William M. Dixiano ("Grantee")
whose address is P.O. Box 110915 Anch. AK 99511.

FOR A VALUABLE CONSIDERATION, in the amount of \$1.00
DOLLARS (\$) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby CONVEYS and QUITCLAIMS to Grantee, all right, title, interest and claim to the plot, piece or parcel of land, with all the buildings, appurtenances and improvements thereon, if any, in the City of ANCHORAGE, County of _____ State of Alaska described as follows:

[Insert legal description]

Lot 2 Block 2 Lakeridge Subdivisions, PLAT NO. 84-116
Anchorage, AK 99502

SUBJECT TO all, if any, valid easements, rights of way, covenants, conditions, reservations and restrictions of record.

TO HAVE AND TO HOLD all of Grantor's right, title and interest in and to the above described property unto Grantee, Grantee's heirs, successors and/or assigns forever; so that neither Grantor nor Grantor's heirs, successors and/or assigns shall have claim or demand any right or title to the property described above, or any of the buildings, appurtenances and improvements thereon.

IN WITNESS WHEREOF, Grantor has executed this Quitclaim Deed on November 6, 2006.

X Mr. Samuel Edward Lee
Mr. Samuel Edward Lee

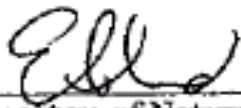
Type or Print Name of Grantor

The Quit Claim Deed Acknowledgment

State of Alaska
County of Anchorage } ss.

I, Erik Lind, notary public for the county aforesaid, in the State of Alaska, do certify that Samuel Edward Lee, whose name is signed to the writing above (or hereto annexed) bearing date on the November 6 day of November, 2006 has acknowledged the same before me in my county aforesaid.

Given under my hand this 6 day of November, 2006.



Signature of Notary Public

Erik Lind

Printed Name of Notary Public

My commission expires: 26 August 2008



Dixiano took out
a loan and
secured it with
the newly-
conveyed
property

We insured the
loan



Dixiano's Home

The Lawsuit to Void the Lien

- documents necessary to purchase a house, the subject property on Lakeridge, for cash. Title was granted to Mr. Lee on September 25, 2006.
15. Mr. Lee never resided in the subject property.
 16. On or about November 6, 2006, Mr. Dixiano, alternatively, forged Mr. Lee's signature on a quitclaim deed from Mr. Lee to Mr. Dixiano; or alternatively, Mr. Dixiano fraudulently caused Mr. Lee to sign a quitclaim deed from Mr. Lee to Mr. Dixiano in a manner that constituted fraud *in the factum*. The deed was void, *ab initio*.
 17. No valid delivery of the deed ever took place. Mr. Lee never intended to transfer any property to Mr. Dixiano.
 18. Dixiano paid no consideration for the property.
 19. Dixiano recorded the void deed in the Anchorage Recording District on November 13, 2006.
 20. On or about March 20, 2007 Dixiano obtained a real estate loan from Citimortgage and granted a deed of trust on the Lakeridge property to Citimortgage. The trustee was defendant First American Title.
 21. Lee was unaware of this transaction.
 22. Dixiano kept the funds he borrowed and did not give them to Lee. Dixiano made payments on this mortgage until some time in late 2010.
 23. In January 2011 Dixiano was arrested for fraud, forgery and other financial crimes related to stealing assets from Mr. Lee. One charge related to obtaining the subject property by fraud. Mr.

The Lawsuit to Void the Lien

FIRST CAUSE OF ACTION: QUIET TITLE (AS 09.45.010)

44. The above allegations are incorporated herein by reference.
45. Diane Hansten, as conservator for Samuel Lee, is in possession of the subject property.
46. Defendants Citimortgage, MERS, and First American Title, William M. Dixiano, and Alaska Trustee, LLC claim, or have claimed, an interest in the property described that is adverse to Mr. Lee.
47. The claims of defendants including the Deed of Trust recorded March 30, 2007 constitute a cloud on Mr. Lee's title to the property.
48. The claims of defendants are of no legal effect, as the subject property was never validly transferred from Mr. Lee to Mr. Dixiano due to, in the alternative or in the aggregate: fraud, forgery, undue influence, breach of fiduciary duty, lack of delivery of a deed, and lack of capacity by Mr. Lee.

Coverage Analysis:

Lender's claim was covered because the conservatorship for Lee was seeking to void the insured deed of trust

Solution: Title company paid money to settle as opposed to going to trial

Prevention: Notary, quit claim deed, anything else?



Vesting Claim



- Alpine General Contracting LLC owns property
- We insure a deed of trust executed by “Doug Smith, managing member.”
- Doug Smith files for bankruptcy
- Trustee tries to strip the property of our insured deed of trust by moving to sell property *free and clear* of all liens

We hire
counsel to
defend and
seek to reform
based on
mutual mistake



- Trustee argues BFP under Bankruptcy Code and wins
- Insured lender is now an unsecured creditor entitled to a 26% share of bankruptcy proceeds
- Loss under policy is FMV of property minus lender's share of proceeds

Other Vesting Issues

- Claims that one party with interest was never removed from title
 - Two property owners and only one executes deed of trust
 - Two sets of people buying the property and only one is borrower
- Takes time to clean these issues up and excise tax is sometimes owed

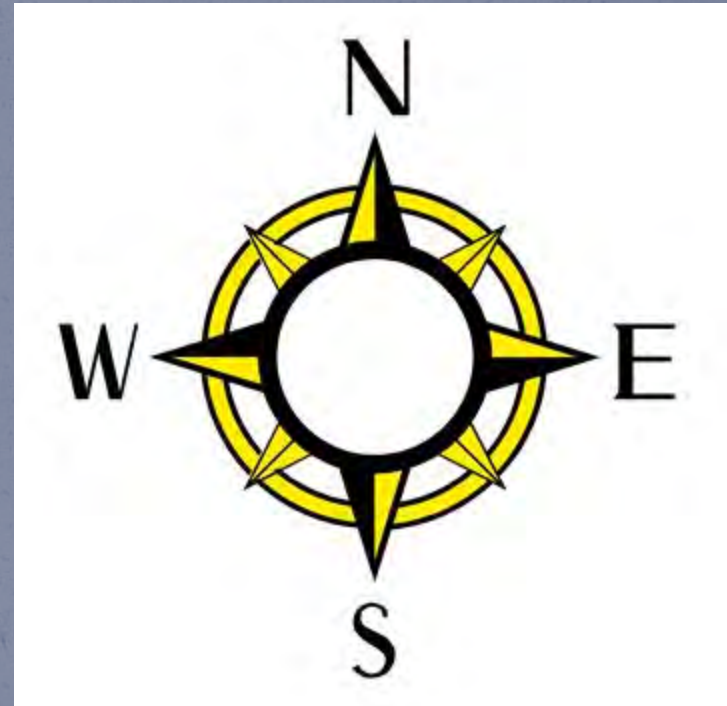
TSG Claim



East vs. West

Deed of Trust
Exhibit A describes
property lying West
of Haxton Way

Vesting Deed
correctly describes
property lying East
of Haxton Way



- Lender's counsel orders TSG in preparation to foreclose
- Schedule A vests title in Borrowers as to property lying *east* of Haxton Way
- The *incorrect Deed of Trust* is listed as an exception
- Lender forecloses on wrong property (the property to the *west* of Haxton Way)

- Lender files claim seeking recovery of foreclosure fees and costs.
- Claim denied.
- TSG properly reported information.
 - Could have made note under exception that deed of trust legal is incorrect.
- Tender a claim to title insurer on deed of trust with incorrect legal description.

MERS Claim



- Centralbanc loaned money to Borrower and secured it with a deed of trust recorded in 2005. Nominee was MERS.
- In June of 2010, MERS assigned the deed of trust to Bank of New York.
- General contractor brings lawsuit to foreclose a mechanic's lien in February 2009 and gets a litigation guaranty.
- LG lists borrowers and Cenralbanc, but not MERS so lawsuit names Borrowers and Cenralbanc, not MERS.
- Plaintiff obtains judgment in August 2010 that lien is superior.

- Bank of New York files *lawsuit* against General Contractor in February 2011 seeking *declaratory relief* and to *quiet title* on grounds that *MERS was not named* as a party to the lawsuit
- We won at trial court and case is currently on appeal
- Court recently requested briefing on Bain

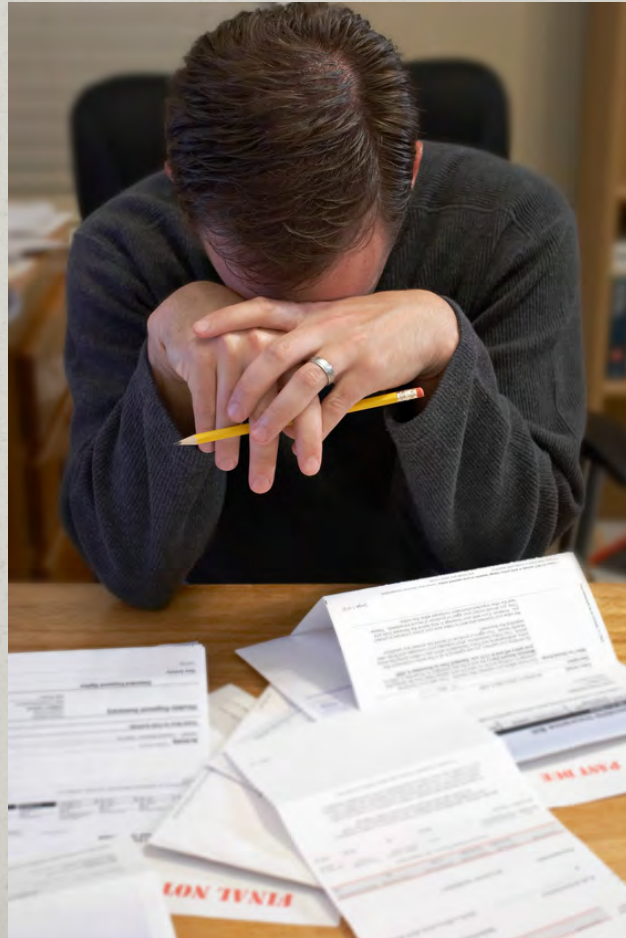
What is *Bain*?

- The WA Supreme Court filed an opinion on August 16, 2012 in *Kristin Bain v. Metropolitan Mortgage Group, et al*
- The Court says that MERS is not a lawful beneficiary under the WA Deed of Trust Act unless it holds the underlying note
- Without the note, MERS cannot appoint trustees to conduct non-judicial foreclosures

Practical Effect

- Some insurers are taking a conservative approach to the MERS situation
 - Want to see that MERS has conveyed its interest back to the lender prior to the non-judicial foreclosure, i.e., when the lender appoints the successor trustee to commence foreclosure
- Other insurers have already insured the transactions and are continuing to do so

Missed Prior Deed of Trust



- Loan policy issued April 2011 for \$250,000
- \$300,000 loan paid off at closing – secured by a September 2004 deed of trust
- \$50,000 loan secured by a January 2005 deed of trust was subordinated
- We missed an \$850,000 loan secured by a November 2007 deed of trust

Equitable Subrogation to the Rescue

The theory is that an intervening lienholder should not be permitted to enjoy an unearned windfall

When proceeds from a new loan are used to pay off a prior loan, the new loan is equitably subrogated in an amount used to pay off the prior loan.



- Practically speaking, this doctrine comes into play when the intervening lender (here, the \$850,000 lienholder) wants to foreclose and wipe out the insured lien.
- We try to convince the lienholder to stipulate to an order of priority or we will move to intervene in the foreclosure to obtain such order.

Recent Equitable Subrogation Case Law

- In addition to *Bank of America, N.A. v. Prestance Corp.*, 160 Wn.2d 560 (2007), there are the following cases:
 - *Columbia Community Bank v. Newman Park LLC*, 166 Wn.App. 634 (2012) , and
 - *JP Morgan Chase, N.A. v. BANC of America Practice Solutions, Inc.*, 2012 Cal.App. LEXIS 1021.

Transfer Terminates Title



- Owner's policy issued in 1992 to John and Mary Harris
- In 2002, John and Mary *transfer* their property to their *living trust*
- In 2012, they *tender a claim* because the new neighbor *claims* a right to a *10 foot strip* of property on the side of house, located just outside of John and Mary's fence

Coverage Analysis

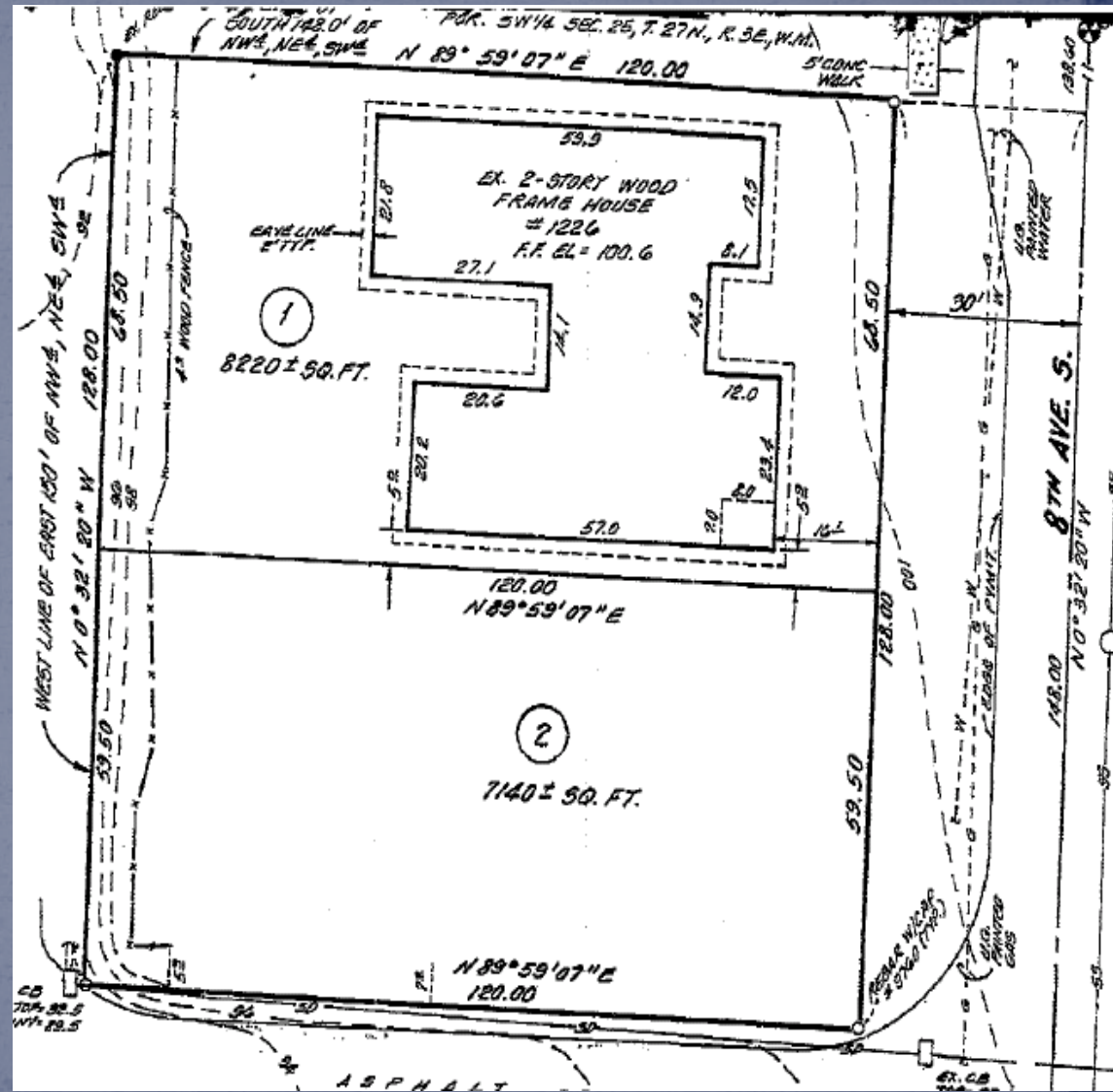
Under a 1992 owner's policy, the *voluntary transfer terminated* coverage



- **BUT** under 2006 owner's policy, **IF** John & Mary were the grantees for estate planning purposes, the claim is likely covered
- **Resolution:** Send "cease and desist" letter to neighbors regarding invalid adverse possession claim. If that fails, retain counsel to defend

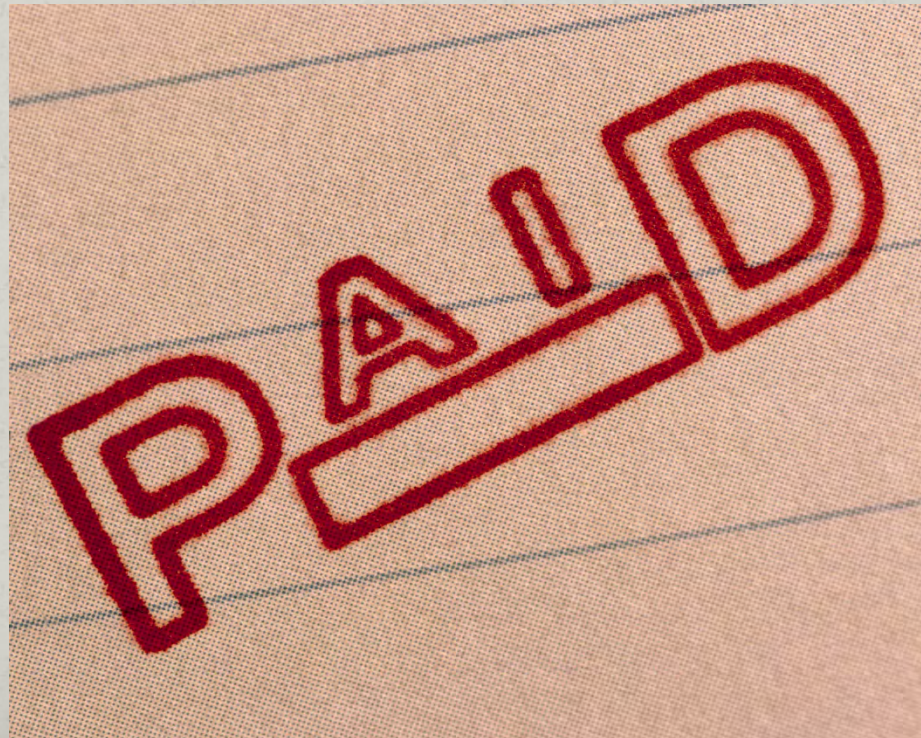
Prevention

Except matters on recorded short subdivision – in particular, placement of wood fence located several feet inside of the sloping property line



Incorrect Payoff

Sometimes you can do everything right and still have a claim



- Escrow obtained payoff from lender to close sale transaction
- File contained payoff statement, fed ex receipt, disbursement ledger
- Shortly after closing, new owners receive notice of default for loan that was purportedly paid off

- During investigation, we learned that seller's last check to lender bounced
- Payoff amount was therefore insufficient and lender would not release lien on property
- After one year of back and forth, we paid small settlement in exchange for lien release
- **Prevention:** Make sure instructions are clear and you understand them. If seller is disputing lender, red flag. Contact lender after closing for release

State and Local Improvement District (LID) Liens

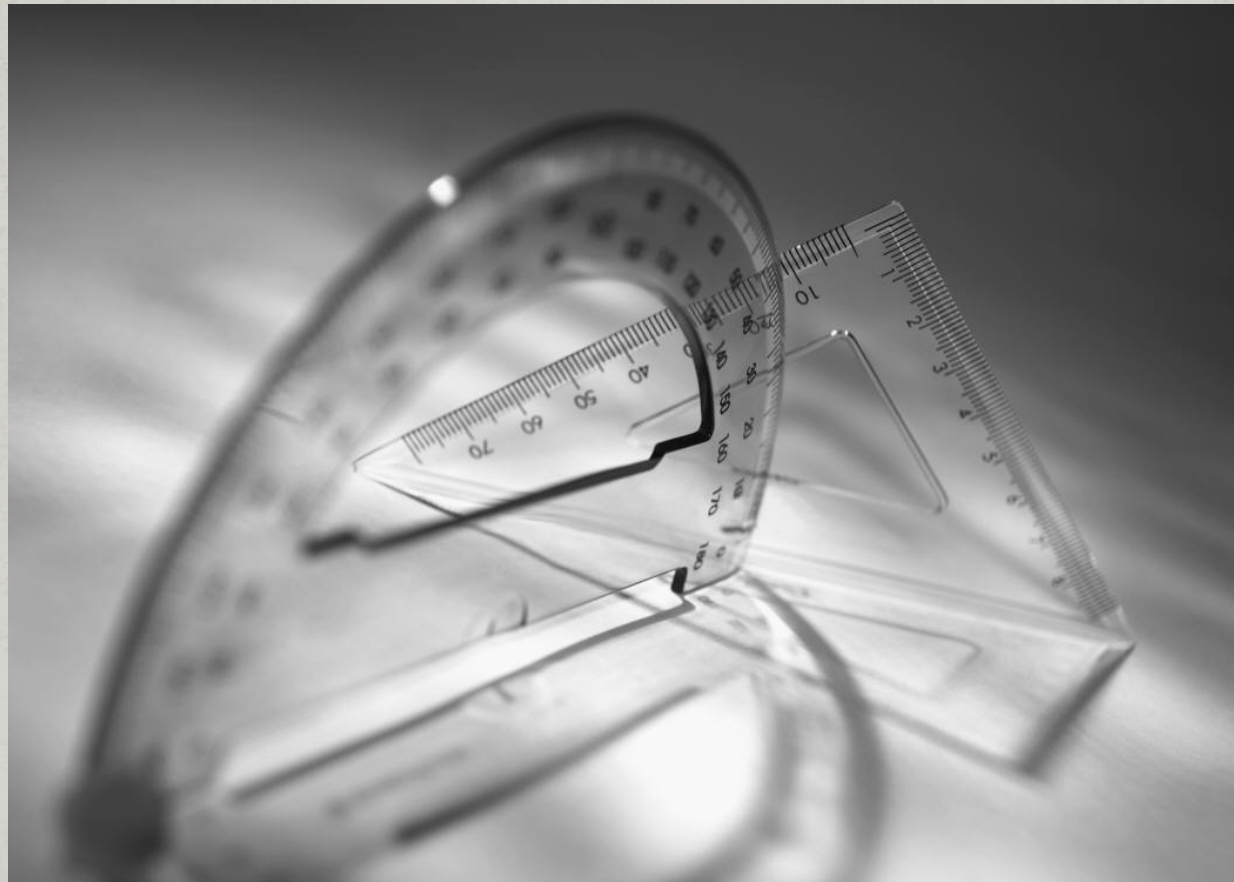
Think big picture:

What is the Status of the Person Selling The
Property?



- Statutory liens or liens not recorded with county recorder (...yet)
- When surviving spouse sells, exception for State support should be made and escrow should contact State to determine if *deferred liens* exist
- Watch for differences in tax parcel numbers – county may have segregated parcel for senior status and provided new parcel number after senior was foreclosed upon and property sold after trustee's sale

Incorrect or Missing Legals



- Claim from foreclosing lender
- **Resolution:** re-recording certified copy to hiring counsel to reform the deed of trust.
- Examples:
 - Bldg 5 Unit 2 should have been Bldg 5 Unit 1
 - Short Plat number 200600288 and it should have been 200600228
 - Legal should have been Parcel 1 (house) and 2 (alley) and only contained Parcel 2 (alley)

QUESTIONS

