

THE CHANGING LANDSCAPE OF COMMUNITY PROPERTY

From the Visagoths to the Dinosaurs

William H. Reetz

Pacific Northwest Underwriting Counsel

North American Title Insurance Company

September 7, 2013



Visigoth Explains Himself



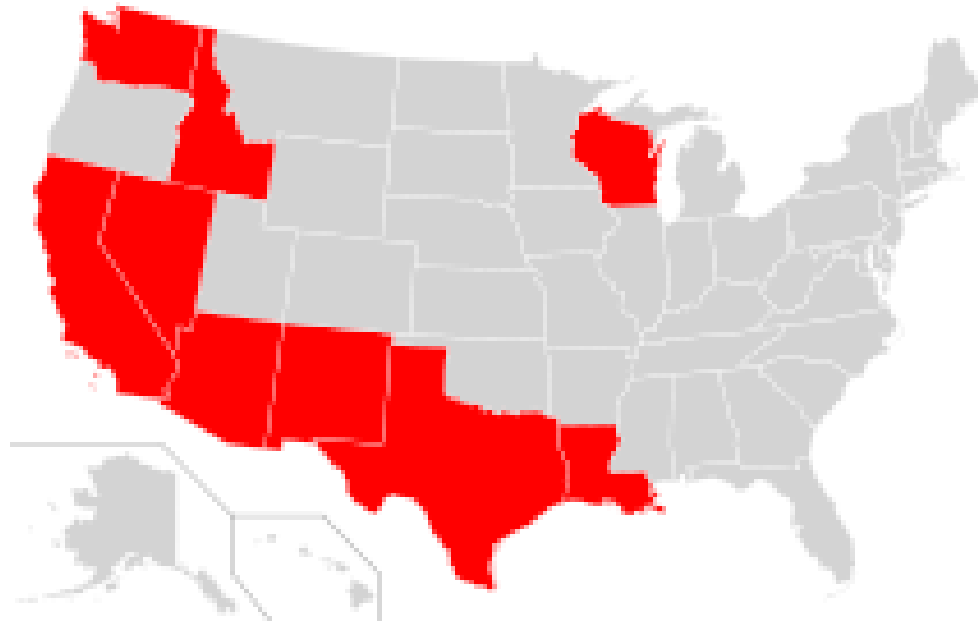
We wanted literature, music, art... we were starved for these things. We didn't sack Rome, really we were just looking for poems. I'm sorry we broke some stuff.



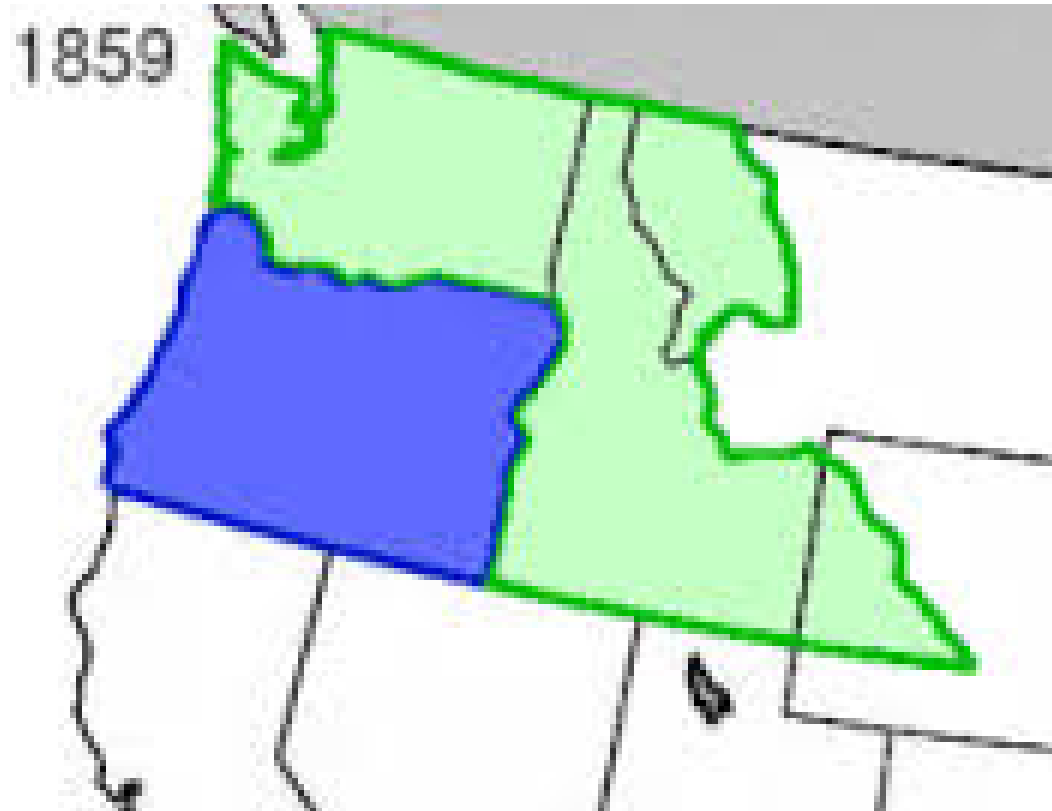
North America in 1700



Community Property States



Washington Territory & State of Oregon 1859



Why Community Property in WA

- Reasons:
 - Married Women's Property Acts
 - Influence of California
 - Shortage of women
 - Asa Mercer and the trip east
 - The reception in Seattle



1869 Statute

- Separate v. Community
- Inventory by W
- Marriage contract
- Management by H

1871 Statute

- Separate v. community
- Rents, profits, interest and proceeds
- Inventory by H & W
- Management by H limited

1881 Statute

- Kept main portions of prior Acts
- Right to contract (first CPA)
- Retained H management rights

Community

- Traditional marriage
- Domestic Partnerships
- Same sex marriage
- Committed intimate relationships

Traditional Marriage

- RCW 26.04.010
- (1) civil contract between person 18 or older
- (3) gender specific terms to be gender neutral
- (new following Referendum 74)
- (4 through 7) must be solemnized

- RCW 26.04.020
Prohibits certain “marriages”

Rights and Liabilities

- RCW 26.16.010: defines separate property
- RCW 26.16.030: defines community property and sets forth limitations:
 - a) cannot devise more than $\frac{1}{2}$
 - b) cannot make gift of C/P w/o consent
 - c) cannot convey real property w/o joinder

Additional Sections

- RCW 26.16.050: may convey C/P to spouse
- RCW 26.16.095: BFP protections
- RCW 26.16.100: non-title spouse may record
 - claim of C/P
- RCW 26.16.110: claim (i.e. cloud) may be removed by release or court order
-

Community Property Agreements

- RCW.16.125: authorizes agreements re status
- Three Prongs:
 - a) may convert S/P to C/P
 - b) may convert C/P to S/P
 - c) may provide for survivorship
- Originally part of 1881 code
- RCW 26.16.160: abolishes disabilities of W

Domestic Partnerships

- RCW 26.60.010: intent to make D/P same as
- married persons
- Requirements:
 - a) share a common residence
 - b) be 18 years of age
 - c) neither married to someone else
 - d) be of same sex or one over 62
- Note: only effective until June 30, 2014
-

Same Sex Marriage

- Engrossed Substitute Bill 6239
 - Authorized same sex marriage
- Referendum 74
 - Challenged SB 6239 – lost 53.7 to 43.3
- Windsor v. United States (June 26, 2013)
 - Supreme Court held Sec. 3 of federal DOMA unconstitutional

CIR – Five Factors

- Continuous cohabitation
- Duration of relationship
- Purpose of relationship
- Pooling of resources
- Intent

Olver v. Fowler

- Chung Ho (d) & Thuy Nguyen (d) in CIR
- Harry (s) & Rebecca (d) children
- Duong Nguyen (d) & Kathy Nguyen (d)
- Dalena (d) & Diana (s) (Kathy's children)
- Cung & Thuy had cross-wills, no beneficiaries
- Court divided assets
- Diana father objected (Chung - tort liability)

Extinct thinking

