

Areas of Escrow Liability

- Close in strict compliance with purchase and sale agreement.
- Legal malpractice in document preparation.
- Unfair or deceptive act or practice.
- Governing regulations and rules.

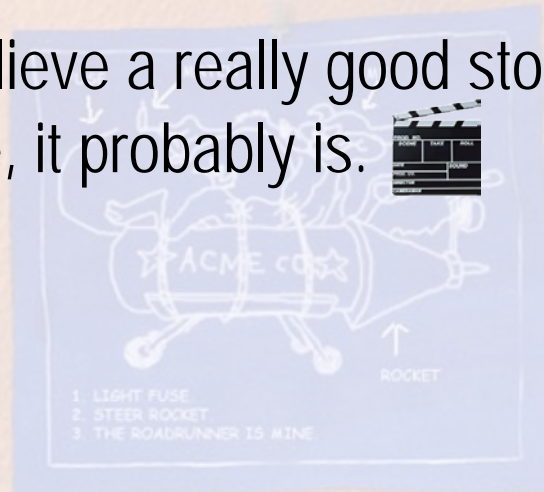


The Escrow Agreement and Standards of Care

1. The purchase and sale agreement is a contract. Escrow accepts the contract and must close in strict compliance with the terms and conditions of that contract. *National Bank of Washington v. Equity Investors.*
 - A. What happens with an ambiguity exists or develops?
 - B. Permitted or recommended contract document drafting.
 - i. Limited Practice Board controls forms and practices under APR12.
 - ii. Parties, lawyers and brokers prepare amendments and addenda.


The Escrow Agreement and Standards of Care

2. Closer is a fiduciary. Trust accounting and distribution of funds, instruments or other items of value.
 - A. Never believe a really good story. If it sounds too good to be true, it probably is.





The Escrow Agreement and Standards of Care

2. Closer is a fiduciary. Trust accounting and distribution of funds, instruments or other items of value.
 - A. Never believe a really good story. If it sounds too good to be true, it probably is. 
 - B. Transmittals and communications. Documentation is salvation.
 - C. Hacking in the Internet age. Recent horror stories.
 - D. Payoffs and clearing title versus closing table.

Legal Malpractice in Document Preparation

Liability must be proved by a preponderance of the evidence; the elements for a cause of action are:

- A legal duty owed to a party;
- Breach of the duty;
- Proximate causation; and
- Damages.



What is a Legal Duty?

➤ Who are the parties to the closing?

- Buyer
- Seller

➤ What about ...

- Brokers?
- Lenders?
- Lawyers?
- Vendors and lien payees

➤ *Hurlbert v. Gordon*



SCENE FROM "TRIAL BY JURY," AT THE ROYALTY THEATRE.

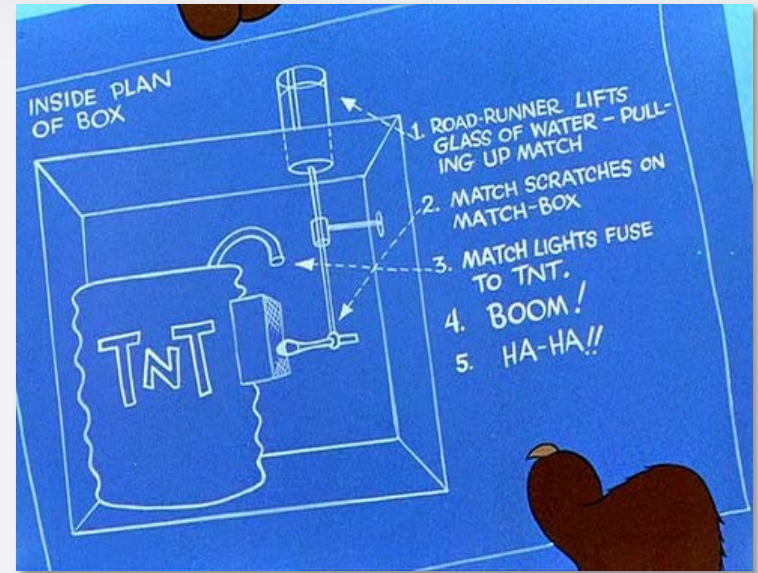
Historical Perspective on APR12

- *WSBA v. Great Western Union Federal S & L*
- *Hagan v. Kassler Escrow* and RCW 19.62
- *Bowers v. Transamerica Title*
- Adoption of APR12
- LPO Board




Breach of Duty

- *Denaxas v. Sandstone Court*
- Expert testimony required
 - Who can be an expert?
 - Who decides whether expert is believed?
- Claimant must prove the conduct fell below the degree of skill, care and knowledge that must be exercised by a lawyer practicing law in the State of Washington and the time the events occurred. *Gonzales v. Pacific Northwest Title.*



Proximate Cause and Damages

- The escrow's act, error or omission must cause a loss.
- The claimant must sustain actual loss.
- The explanation is complex. 



Unfair or Deceptive Act or Practice

- Consumer Protection Act, RCW 19.86.
- *Hangman Ridge Training Stables, Inc. v. Safeco Title*
 - Conduct that is unfair or deceptive.
 - Occurred in conduct of trade or commerce.
 - Show of public interest.
 - Injury to business property.
 - Causal link.

Regulation of Escrow

- Department of Financial Institutions under Escrow Registration Act, RCW 18.44
- Washington State Supreme Court and Bar Association Admission to Practice Rule APR12 governing Limited Practice Officers




Conclusions and Practice Tips

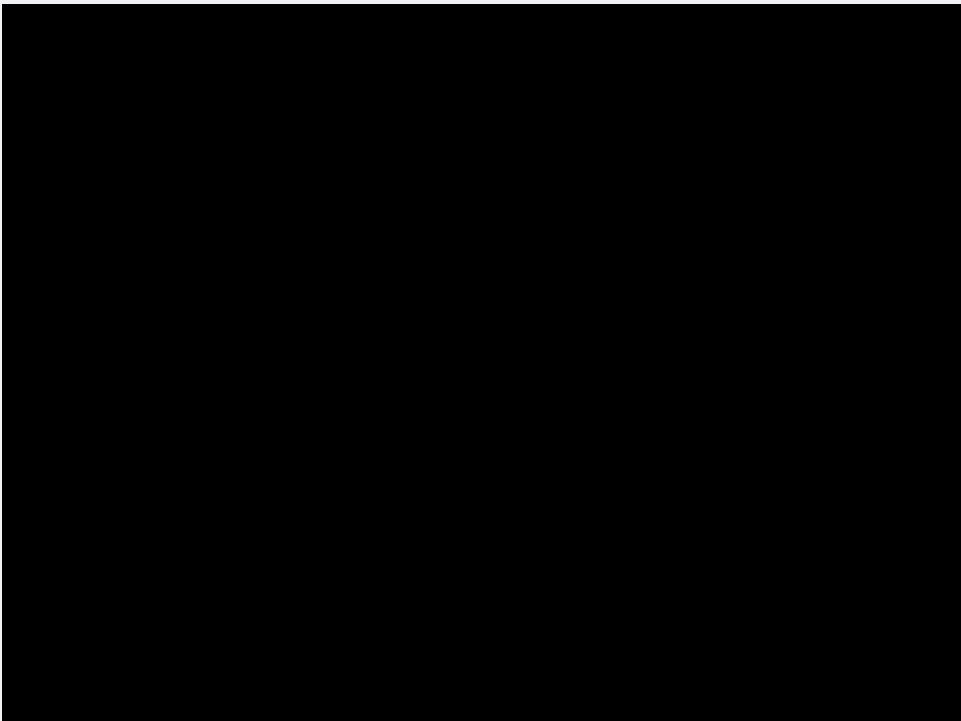


- Learn to communicate what you need and why you need it.

Conclusions and Practice Tips




- Learn to communicate what you need and why you need it.
- Develop processes and adhere to them. 



Conclusions and Practice Tips



- Learn to communicate what you need and why you need it.
- Develop processes and adhere to them.
- Take charge and stick to your training and principles. 



Conclusions and Practice Tips



- Learn to communicate what you need and why you need it.
- Develop processes and adhere to them.
- Take charge and stick to your training and principles.
- Escrow is a target for fraud and misconduct.

Behind the Curtain of Escrow Liability

Washington Land Title Association
Education Seminar Program
Everett, Washington
November 1, 2014

- ▶ Robert W. Sargeant
Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
(206)682-5981
rsargeant@williamskastner.com