Washington Land Title Association

For Land's Sake

Issue No. 8

August 2015

President's Message

Gale Hickok

I realize that it is typical for me as outgoing President to talk about what I enjoyed or appreciated during the past year. It goes without saying that that I have high appreciation for all that I have experienced. However, I would rather take this opportunity to speak a little about the language of "Used to Be".

With age we learn the Language of "Used to Be"

For those of us who've been in this industry since the 60's there are many "Used to Be" examples that need not be here recalled, because we know that they are forever gone. Now we deal with the language of "Here and Now" – a roller coaster ride that evaporates all of our concentration. Thus, if for nothing more than good time management, maybe we need to forget all we know about "Used to Be".

We appear to be recovering from the worst recession most of us have experienced, which especially affected the stability of real estate as we see it. In particular, we have come to conclude that it doesn't hold the value or stability that it once held in our "Used to Be" thinking. We now have a new observant generation that would rather "rent" than "own" and have similar feelings about owning cars vs. riding a bike or using public transportation. We have long come to accept that we can only own some stuff with the help of a lender, who will then assign the rights to another entity. To talk with our new partner or assignee, we must first contact their answering services or devices, and then must enter layer upon layer of verbal or key stroke entries to ultimately, hopefully, reach a person – or a robot. We are then asked to give our birth date, the last 4 digits of our TIN or perhaps the loan number. After this memory test, we likely are told that we need to talk to someone else, another department or that they will get back to us, which they never do. Recently, I tried to cancel a credit card for my 90 year old dementia stricken dad. It took a virtual litany of conversations and paperwork to get it done. One of the bank's request was to talk to my dad, who doesn't have a clue what day it is. On the other hand, to get the card my dad only had to call a number and perhaps at most sign a single piece of paper (but I am not even positive on the signing part…).

Most of us on-the-ground title or escrow personnel forward claims received locally to our underwriter's network. Our contact with our local customer then ends and the matter becomes beyond our control or out of sight. Yet we are still expected to go out and "sell" the title product or services to the same customer who feels disregarded in the handling of claims.

As to claims, I am amazed by the unique ones being submitted these days. A recent claim was for loan in foreclosure when it was discovered additional property was unintentionally included in the legal description. The hardest part of the ultimate solution was getting everyone to understand that a partial reconveyance would be a simple fix.

There isn't enough room here to summarize the TILA-RESPA Integrated Disclosure (TRID) regulation or the proposed changes to the tax code affecting real estate. It's a perfect example of how it's not possible to differentiate between the "Used to Be" and the "Here and Now".

Am I glad to survive in this industry another year? That would be a yes. Am I looking forward to retirement, where I can get back to a vocabulary of "Used to Be"? To that, I give another loud YES..

Inside This Issue	

WLTA NEWS

WLTA Honors Retired and Deceased Members

The WLTA has honored several retired members who contributed much to the Association and the industry during their careers. All have been made honorary members. Honored recently were Gene Kennedy*, Marci Dray, Rush Riese*, Carolyn Finney, Warren Olson*, Bob Severns*, Carl Woods, Joe Zelazny*, Chris Zook, Collyer Church, Betty Schall, Joe Seabeck* and Rich Weidenbach.* (* denotes a past president of the WLTA.)

Visit the directory page on our website for a full list of Honorary Members of the WLTA.

The Washington Land Title Association remembers those who have passed away during the last year at its annual meeting during the convention. This year we lost two members, Joe Seabeck and Betty Schall, who contributed greatly to the title industry and served the WLTA. Both were Board members for many years, and Joe served as President of the WLTA from 1984 to 1985.

The following resolution, which will be sent to their families, will be read, followed by a moment of silence. We ask that you also tak a moment to remember them.

WHEREAS, **Betty Schall and Joe Seabeck**, valued members of this Association for many years have passed on, and during their many years of involvement in the title business, and as members of this Association, Betty and Joe contributed greatly to the advancement of the title insurance industry in the State of Washington,

NOW THEREFORE, BE IT RESOLVED:

That the Association pause in its deliberations to pay tribute to their memory;

BE IT FURTHER RESOLVED:

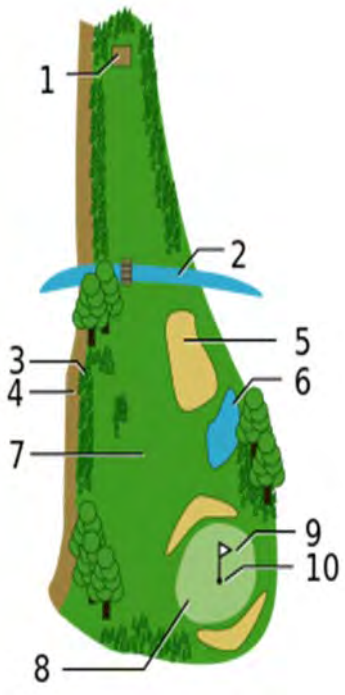
That this resolution be spread upon the minutes of annual meeting of the Association, and a copy thereof be forwarded by the Executive Director to the families of Betty and Joe.

Joe Seabeck Obituary http://www.jonesjonesbetts.com/obituaries/Joseph-Seabeck/#%21/Obituary

Betty Schall Obituary http://www.legacy.com/obituaries/seattletimes/obituary-print.aspx?n=betty-jane-schall&pid=173894539

2015 PNW Land Title Convention

The WLTA will again participate in the 5-State Land Title Convention on August 6-8 at the Coeur d'Alene Resort. The convention is hosted this year by the Idaho Land Title Association. It is an opportunity to keep up on what's happening in our industry locally and around the country, including connecting with the American Land Title Association. Members renew friendships, meet industry vendors and more. Golf is always part of the experience. We hope to see you there!

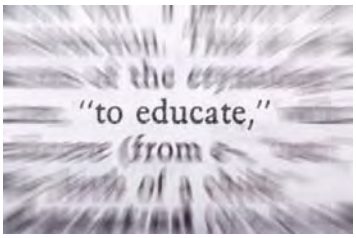


WLTA SEMINARS

Eastside/Westside Fall Seminars Scheduled

John Martin, Chair, Education Committee

The WLTA education seminars are always an excellent chance to learn more about title, escrow and regulatory topics that we face every day. They are also a great opportunity to catch up with old friends, meet new ones and enjoy a nice lunch…all for a very reasonable fee. This year's WLTA education seminars will be September 12 in Kennewick and October 17 in Lynnwood. As always, there will be LPO credits for the escrow sessions. Last year we had 340 attendees at the two locations and featured expert speakers on topics such as 1031 exchanges, CFPB developments, easements, probate and claims. The agenda is not yet set for this year's sessions, so if you have a topic you would like to see covered, contact John Martin at 206-780-2521 at jomartin@stewart.com. We hope to see you there.



Agenda Sampling:

- ***Homeowners Policies***
- ***Leasehold Insurance***
- ***Native American Underwriting***
- ***Railroad Property***
- ***Boundary Line Adjustments & Agreements***
- ***Escrow Forms***
- ***CFPB & Closing Disclosure***
- ***Conveyancing Problems***
- ***Earnest Money Statute***
- ***Reconveyances***

Watch your inbox and check the WLTA webpage for registration info

OIC LIAISON COMMITTEE

WLTA Meets with OIC

Sari-Kim Conrad, Chair, OIC Liaison Committee

The Washington Land Title Association meets with representatives of the Office of the Insurance Commissioner on occasion to discuss matters of importance to our industry. The most recent meeting took place in Olympia on Thursday, June 18. The WLTA was represented by members from both agents and underwriters.

Gale Hickok (WLTA President), David Lawson (WLTA Vice-President), Sari-kim Conrad (Chair of the WLTA-OIC Liaison Committee), Bill Ronhaar, Stuart Halsan, Jim Blair and Derek Matthews represented the WLTA. OIC attendees were Molly Nollette, John Hamje, and Lee Barclay. Joining them for a portion of the meeting that dealt with CFPB issues were Fritz Denzer and Donna Wells.

Many items were on the table for discussion.

Exhibit A Legal Description for Realtors®

The OIC understands that a legal description comes with a title commitment; however, it feels that an Exhibit A should not be provided prior to the commitment being completed. The OIC is willing to review this issue again if WLTA can provide convincing argument that Exhibit A is something we should be able to charge for pursuant to WAC 284-29-210 (Real Property). Another option would be to petition and request a change to the rules. OIC representatives John Hamje and Molly Nollette seemed to be open to further discussion on this matter.

The OIC also brought up the fact that title companies have the ability to charge cancellation fees if requests for providing an Exhibit A is causing more work because of an increase in title orders without closing them. The WLTA representatives pointed out that it is difficult to know who should be charged for the cancellation.

Inducement Regulations

Existing inducement regulations were also addressed. Highlights of comments made by the OIC:

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JUDICIARY REPORT

By John Lancaster, Chair, Judiciary Committee

***Riverview Community Group v. Spencer & Livingston*, 181 Wn.2d 888 (2014)**

The Washington Supreme Court held that land might be subjected to an equitable servitude requiring continued use as a golf course in the case of *Riverview Community Group v. Spencer & Livingston*.

The case involved a golf course development in Lincoln County. Beginning in the 1980s, a partnership built the Deer Meadows Golf Course Complex that included a course, club, and other features. The partnership also created residential subdivisions entitled Deer Meadows and Deer Heights on nearby property. A plat was recorded identifying the golf course. The partnership used an image of the golf course to advertise the residential lots. After 20 plus years the surviving partner shut down the golf course and proposed turning the property into residential lots.

Many of the surrounding homeowners believed that they had been promised that the golf course would be a permanent feature.

They sued the current owners of the golf course, requesting an order from the court imposing an equitable servitude that would require that the golf course property be permanently limited to golf course uses.

The trial court granted summary judgment in favor of the developers on the equitable servitude issue. The Court of Appeals reversed the trial court's order requiring joinder of all of the area's individual owners under CR 19, but affirmed the dismissal of the equitable servitude claim.

The Supreme Court held that it was not necessary to join every single owner, affirming the Court of Appeals on the CR 19, indispensable parties, issue. However, the Supreme Court reversed the Court of Appeals on the equitable servitude issue.

Jack Lancaster is the Chair of the Judiciary Committee of the WLTA and the committee members are Bob Horvat and Sean Holland

The court held that the homeowners had produced evidence that the golf course owners had induced the homeowners to buy lots by promising that the gold course would be a permanent fixture. The Supreme Court did not rule on the sufficiency or believability of the evidence, but did rule that summary judgment was improper and sent the case back to the trial court for trial on the issues.

The "equity" aspect cuts both ways. The Supreme Court noted that even if the homeowners

proved they were entitled to an equitable servitude, the trial court would have to consider the effect on the golf course owners. Winning on the legal theory would not guarantee the homeowners a golf course in perpetuity. *Sean Holland*

***Bank of America v. Caulkett*, 135 S.Ct. 1995 (2015)**

In an opinion issued in June, the United States Supreme Court held that, in a bankruptcy liquidation (Chapter 7), the debtor cannot void a second mortgage based on the fact that the property is worth less than the first mortgage.

In 1992, the U.S. Supreme Court held that when a mortgage lien is worth more than the market value of the property at issue, the Bankruptcy Code does not allow courts to reduce the "partially underwater" lien's value to the property's market value (known as a "strip down"). In the recent case, *Bank of America v. Caulkett*, the Court was asked to decide if, in a chapter 7 bankruptcy, the lien could be voided altogether (known as a "strip off") if the lien was completely underwater.

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JUDICIARY REPORT

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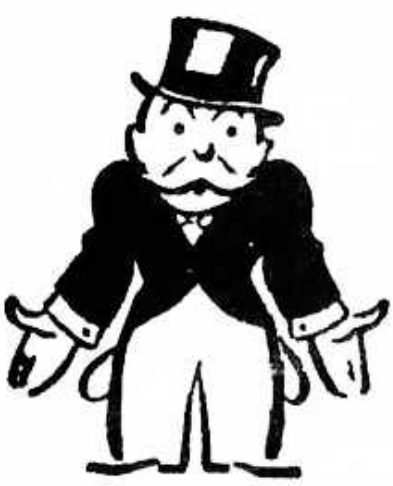
Corporate Authority (Continued from page 4)

Caulkett is a consolidation of two similar cases. In both cases Bank of America (Bank) held a second lien. In one, the house was worth $98,000 with a first mortgage of $183,000 and a second of $47,000. In the other case, the house was worth just under $78,000 with a $135,000 first mortgage and a $32,000 second.



The debtors asked the bankruptcy judge to void their second mortgages, noting that their homes had lost so much value that even the first mortgages involved debts beyond the value of the property. Both Bank liens (and loans) were wiped out by the bankruptcy court - decisions that were upheld by the U.S. Court of Appeals (11th Cir.).

The Bank appealed to the Supreme Court which reversed the lower courts' decision based in part upon its 1992 decision. The Court held that the "stripping off" of a second or lesser lien by the bankruptcy court in a chapter 7 proceeding (something that has been done quite often in recent years) is not allowed under the Bankruptcy Code even when the lien is completely beyond the value of the property ("underwater"). *Jack Lancaster*

One West Bank v. Erickson, 184 Wn. App. 462 (2014) - Court Orders from Other States

In November 2014 the Washington State Court of Appeals, Division III, invalidated a deed of trust on a Spokane residence executed by a conservator appointed by an Idaho court. In a case rife with sibling rivalry, multiple car wrecks, a hidden will, and a daughter suing her father to impoverish him for Medicaid purposes, the court held that the Idaho court order did not authorize the conservator to execute a deed of trust on Washington property.

The subject of the conservatorship, a gentleman who had resided in Idaho for 40 years, had purchased the Spokane property in 2001. In early 2007 he took up residence there with his daughter and deeded it to her (but the deed didn't get recorded). Later that year one of his sons filed suit in Shoshone County, Idaho. The son sought to be appointed guardian, or in the alternative, to have a third party appointed conservator for his father. The Idaho court appointed a conservator in August 2007. In October the Idaho court ordered the conservator to obtain a reverse mortgage on the Spokane house and she granted a deed of trust to the lender that same month.

The elderly gentleman resided at the Spokane house with his daughter until his death in early 2011. In December 2011 the daughter recorded a second deed to the property that her father had executed in June 2007. The assignee of the conservator's deed of trust commenced a judicial foreclosure in Spokane County in March 2012. The trial court granted summary judgment in favor of the assignee in the summer of 2013.

The Court of Appeals reversed. It held that the deed of trust executed by the conservator was invalid and sent the case back to the trial court with an order to enter judgment in favor of the daughter.

The Court of Appeals based its decision on the rule that only Washington courts have authority to affect title to land in Washington. The assignee of the deed of trust tried to argue that the father had been an Idaho resident at the time the Idaho court issued the conservatorship order, or that the daughter had been a party to the Idaho proceeding and was bound by it. The Court of Appeals rejected all of the assignee's arguments, holding instead that the property's location in Washington was the only relevant fact.

The case is now headed for the Washington Supreme Court after it granted a petition for review on June 13, 2015. *Sean Holland*

City of Spokane v. Federal National Mortgage Association, 745 F.3d 1113 (9th Cir. 2014) - No Excise Tax on Sales by Fannie Mae and Freddie Mac

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JUDICIARY REPORT

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Corporate Authority (Continued from page 5)

The 9th Circuit Court of Appeals held that Fannie Mae and Freddie Mac are exempt from paying Washington's real estate excise tax. Federal law generally exempts Fannie and Freddie from state and local taxation, except that their real property is subject to state and local taxation "to the same extent…as other real property is taxed."

The City of Spokane claimed that Washington's excise tax fell into the exception for real estate taxes. The 9th Circuit rejected that argument. It cited a U.S. Supreme Court decision distinguishing excise taxes assessed only upon the use or transfer of real property and taxes imposed upon all real property. The court noted that Washington places taxes based on real property ownership in Title 84 of the RCW, entitled "Property Taxes," while taxes imposed on transfers of property are found in Title 82 of the RCW, entitled "Excise Taxes."

The court rejected several other arguments raised by Spokane and held that Washington's excise tax could not be collected on conveyances by Fannie and Freddie.

This decision confirms existing Washington practice. Section 458-61A-205 of the Washington Administrative Code exempts transfers by "governmental entities" and the Department of Revenue has not required the collection of excise tax on conveyances by Fannie Mae and Freddie Mac. *Sean Holland*

J*ametsky v. Olsen*, 179 Wn.2d 756 (2014) - Distressed Property

The Washington Supreme Court in *Jametsky v. Olsen* provided guidance as to the meaning of "distressed property" and "at risk of loss" in the context of the Distressed Property Conveyances Act (DPCA), RCW 61.34.

According to the court the purpose of the DPCA is to protect "vulnerable homeowners from equity skimming and other fraudulent and predatory practices." Lawrence Jametsky had been living in his inherited, mortgage free, home for over 25 years when he lost his job and suffered financial and personal hardship. He failed to pay his real estate taxes for two and a half years and was afraid that he would not be able to cure the $10,000 delinquency in order to avoid tax foreclosure.

Jametsky, described by the court as having "learning disabilities and limited education" making him "unable to read and understand legal documents," sought assistance in obtaining a loan. Michael Haber offered to assist and introduced Jametsky to a mortgage broker, Matthew Flynn.

Jametsky signed, at a local Starbucks, what he thought was an agreement to borrow $100,000, allowing him to pay his taxes and his other debts. Instead, what he signed was a deed conveying his house (estimated to be worth $230,000) to Rodney Olsen along with an 18 month lease with a buy-back option. Of the $100,000 that was paid for the house, Flynn received $7,000 in commission, Haber received $3,000 in commission, and Jametsky received only $4,697. The rest went to Jametsky's outstanding obligations and inflated fees.

After over a year of making what Jametsky thought were monthly loan payments to Olsen (but that were in fact rental payments), he began receiving eviction notices and learned for the first time that he had not received a loan but had deeded his house to Olsen. Jametsky filed a complaint for quiet title and alleged violations of the DPCA.

Despite the above facts, the trial court found in favor of Olsen and the Court of Appeals affirmed. Both held that the DPCA only applies to "distressed homes" or "distressed homeowners." The statute defines distressed homes, in part, as "in danger of foreclosure or *at risk of loss* due to nonpayment of taxes." Because Jametsky had not, as yet, received a certificate of delinquency from the county (something that is required to be issued after 3 years of tax delinquency), the court held that the property was not "distressed" at the time of the sale to Olsen. Therefore, the court

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JUDICIARY REPORT

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Corporate Authority (Continued from page 6)

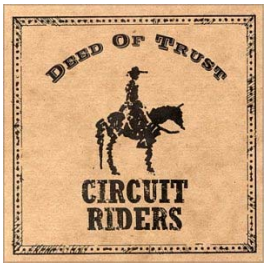
held, the act did not apply.

The Washington Supreme Court vacated the decisions of the lower courts and remanded the case for further proceedings. The court pointed out that it construes "remedial consumer protection statutes, such as the DPCA, liberally in favor of the consumers they aim to protect." The court held that "the operative term 'at risk' should be given its plain, dictionary meaning of 'vulnerable'." It held that a certificate of delinquency is not necessary for a property to be at risk of loss and deemed distressed.

The court suggested a "balancing" of "a variety of non-exclusive factors" in determining whether the property was *at risk of loss*. It suggested that on remand the lower court consider "(1) the total amount owed to the county including all fees and other costs; (2) the total number of payments the delinquency represents and when foreclosure could occur; (3) the financial ability of the homeowner to meet or cure this obligation at the time of the transaction; and (4) any discrepancy between the sale price and fair market value of the property…" as well as other unique factors or circumstances that may exist. *Jack Lancaster*

I*n re Tr.s Sale of the Real Prop. of John W. Ball*, 179 Wn, App. 559 (2014)

When John Ball died there were two deeds of trust in favor of JPMorgan Chase Bank (Chase) encumbering his property. The first was in the amount of $52,000 and the second (line of credit) in



the amount of $154,700. Ball's estate (Estate) defaulted on the first and it was foreclosed. A subsidiary of Chase purchased the property at the trustee's sale for $92,000 - over $35,000 of which was deposited with the court as surplus over the amount owed.

Normally, the surplus would then go to the lien holder next in priority, but the Estate argued that the merger doctrine precluded Chase, as junior lien holder, from receiving the excess funds. The Estate argued that since Chase now held title to the property, as purchaser at the sale, its interest as junior lien holder merged with its ownership. The Estate claimed that therefore, the excess should go to the Estate as next in line.

The Appellate Court, Division II, noting that the argument was one of first impression in Washington, pointed out that the merger doctrine is highly disfavored by the courts. Although accepted in the context of encumbrances such as easements, it is rarely, if ever, applied to mortgages.

More to the point in regard to claims for surplus funds, the court clarified that Chase did not simultaneously hold title to the property and a lien against the property, so its interests never merged and the doctrine never applied. At the moment Chase acquired the title to the real property at the trustee's sale, its junior lien interest in the real property was extinguished. By law, however, as former lien holder its lien attached to the surplus funds and, by law, it had a priority interest in those funds. *Jack Lancaster*

E*state of Alsup*, 181 Wn. App. 856 (2014) - Guardianship, Will, Marriage

Theodore Roosevelt Alsup was subject to a guardianship the last 14 years of his life. The county superior court had found that he required 24 hour nursing care in a nursing facility as well as a guardian to supervise his nursing care, give consent to medical providers and handle his financial affairs. During this time, Mr. Alsup executed a will and got married.

After he died, the personal representative challenged both the will and the marriage on the basis of incapacity. In other words, there was a dispute among those with claims to the estate. The trial court held that both the will and the marriage were void because Mr. Alsup, as a ward in a guardianship, lacked capacity to execute a will and to enter into a marriage contract.

Mr. Alsup's wife appealed to the Washington Appellate Court, which noted that there is a difference between competency to manage one's estate and testamentary capacity. Being under the care of a guardian does not necessarily mean that one is not of "sound mind" as required to exercise the right to devise one's estate by last will. The court further noted that, even if the county court adjudicating the incompetency had indicated a lack of testamentary capacity, the decision would only create a presumption that could be overcome by proponents of the will. The court found that "the trial court erred in concluding that the

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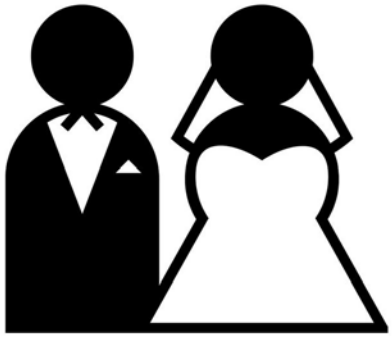


Corporate Authority (Continued from page 7)

appointment of a full guardian automatically divested Mr. Alsup of the right to make a will."

The court also found that it was too late to now challenge the validity of Mr. Alsup's 8 years of marriage, when no one did so before his death. *Jack Lancaster*

P*.H.T.S. v. Vantage Capital*, 186 Wn. App. 281 (2015) - Redemption

In March of this year, the Court of Appeals, Division I, heard arguments concerning the alleged opportunistic noncompliance with a little known statute regarding offers to purchase during a redemption period.

Pursuant to RCW 6.23.120, during the period of redemption following a sheriff's sale in foreclosure of a judgment lien against property that a person would be entitled to claim as a homestead, any licensed real estate broker in the same county may nonexclusively list the property for sale whether or not there is a listing contract. If the judgment debtor does not redeem the property and if the broker receives, during the redemption period, an offer of at least 120% of the redemption amount plus normal broker/agent commissions, the new owner (grantee of the sheriff's deed) must accept the highest of such offers and sell the property. The sale proceeds are then distributed to the new owner under the sheriff's deed (120% of the redemption amount), the broker (sale commission), and the judgment debtor (any excess). The idea is to get the highest value for the property to benefit the judgment debtor. (Note: The law does not apply to Mortgage or Deed of Trust foreclosures.)

In *P.H.T.S. v. Vantage Capital*, the owner under a sheriff's deed contended that the broker's listing of the property did not comply with RCW 6.23.120 because it was contrary to the intent of the statute to generate multiple offers and was not done in good faith.

The property was sold to Vantage Capital, LLC (Vantage) at a sheriff's sale after the judicial foreclosure of a condo association lien. Vantage paid $45,500. The sale was subject to a one year redemption period.

One day before the end of the redemption period a real estate broker listed the property on Zillow.com for $170,000. At 3 P.M. the next day, the last day to redeem, the broker tendered an offer to Vantage in the amount of $70,000. The offer was from P.H.T.S., LLC. The broker was a managing member of P.H.T.S.

The sheriff issued the deed to Vantage. Vantage rejected the purchase offer and P.H.T.S. requested that the court order Vantage to sell the property to P.H.T.S. pursuant to RCW 6.23.120. The trial court ordered Vantage to sell according to the terms of the offer and Vantage appealed.

Vantage argued that the listing, one day before the end of the redemption period and for more than double the minimum qualifying offer required by the statute, did not comply with the requirements for a qualifying offer because it was contrary to the intent of the statute – to generate multiple offers. Vantage also argued that the broker violated his duty of good faith.

The Appellate Court, attempting to ascertain and give effect to the intent of the legislature, looked first to the plain meaning of the statute. Since the court did not find any requirement that the listing broker had to list the property for a specific time or for a specific amount and since the statute did not bar the broker from making an offer right before the expiration of the redemption period, it concluded that, "under the plain language of the statute", P.H.T.S. had made a qualifying offer. As the court further stated, "It is up to the legislature, not the court, to amend the statute and impose additional requirements." [Stay tuned…?]

The court also found that equitable relief (that the broker violated his duty of good faith) was not appropriate where the statute created "a substantial right to purchase the property by making a qualified offer before the expiration of the redemption period." The order to sell was upheld. *Jack Lancaster.*

LEGISLATIVE REPORT

By Dwight Bickel, Chair, Legislative Committee

Legislative Report to the 2015 WLTA Annual Meeting

It may surprise many to hear that the 2015 Legislature worked on more than the budget. There are some changes to real property transactions that became effective July 24th and a change that will not begin until next year.

Earnest Money Dispute Procedures

The biggest change for our industry came from House Bill 1730 that was sponsored by the Washington Association of Realtors®. The new statutes are found in Chapter 64.04 and became effective July 24, 2015. These impose mandatory procedures for escrow companies closing residential transactions to promptly disburse earnest money after a cancellation, or to file an interpleader legal action if there is a dispute. The statutes are mandatory for escrow companies, title companies and real estate brokers. This is applicable also for vacant property transactions that are zoned for residential property.

The representatives for the Washington Association of Realtors® and several real property lawyers worked with WLTA during many calls and meetings, where they accepted many changes at our request, but did not waver on their primary goal to require prompt mandatory interpleader actions.

Please be aware that the new procedures apply to all funds that were on deposit on July 24th. If an old cancelled escrow still has any money held because the parties disputed the disbursement, an interpleader action will be necessary unless the parties can agree upon disbursement to avoid the costs of Superior Court.

Essentially, the new procedures are:

- A demand for payment triggers the escrow duty to comply with the statutory procedures.
- A Notice must then be sent within 15 days to other parties.
- Any objection to disbursement must be received within 20 days.
- If no objection, the Escrow Holder must disburse within 10 days.
- If there is an objection, the Escrow Holder must commence interpleader in Superior Court within 60 days.

Subsection (7) of the new statute will provide a protection against liability for disbursement without agreement of the other party:

> "…a holder that complies with this section is not liable to any party to the transaction, or to any other person, for releasing the earnest money to the demanding party."

There is no minimum deposit amount that exempts the Holder from the duty to commence the interpleader. However, if the parties are motivated to avoid the costs of court, the parties may agree upon disbursement at any point in the procedure (even after an Objection), allowing the Holder to disburse immediately and terminate the procedures.

Subsection (9) of the new statute will state a mandatory award of attorney's fees and costs to the Holder. Note, that is not limited to the amount of the funds on deposit: :

> "(9) If the holder commences an interpleader action, the court must award the holder its reasonable attorneys' fees and costs."

Two provisions of the act are intended to reduce the attorney's fees and costs incurred by Escrow Holders to commence an interpleader action:

1. The form for an Interpleader Summons and Complaint are adopted in subsection (10). In theory, no attorney is required to draft the initial pleadings.
2. Service of the Summons and Complaint for interpleader may be simply by mail using the address provided by the parties in the Purchase and Sale Agreement.

Deferral of Impact Fees Will be Mandatory Beginning in 2016

For at least five years the Legislature has been considering how to encourage city governments to let builders defer the payment of impact fees until the sale of the new building. Two years ago a Bill got to the Governor before the opposing factions stopped it. The debate gets complex, but at

LEGISLATIVE REPORT *continued*

its core is the desire to encourage development of new housing, versus the need of school districts to have funds to build infrastructure.

The building industry fiercely argued the importance that the payment of impact fees should be when the closing occurs, when there is money to pay it, and when the escrow and title people would ensure the payment with collected funds. The cities and schools never varied from insistence that the payment must be before the final inspection and Certificate of Occupancy [CO]. WLTA was represented by Dwight Bickel, primarily to ensure the lack of secret liens and a workable impact upon title and escrow. In addition to hearings at both houses, there were dozens of informal telephone meetings and four formal meetings at Olympia called by the Senators and Representatives to work on compromise.

A compromise Bill passed this year that will amend RCW 82.02.050, but won't be effective until after September 1, 2016. That date was chosen because "too late for permits for building that year."

The most important part of the new law is that cities must allow deferral of impact fees for up to 20 residential houses per builder, but not longer than 18 months. There are two methods they may choose. One alternative allows a system where payment is at the time of closing. The other alternative allows a system where the payment is at the final inspection or CO. It is quite apparent cities will only choose the latter. They would prefer a builder's check where they remain in control while holding the CO hostage until that check clears.

There is a significant risk to title and escrow companies that a builder could attempt to close on new construction without that CO. Therefore, WLTA required the recording of a notice of lien that the City must release regardless which procedure is chosen. 3 (c)(iii) ensures the lien is only binding upon successors after recording.

One provision could pose a problem. Under (3)(d)(ii), foreclosure of the lien could be by the City or the School District, but there is only one debt and one lien. Note that if the lien is extinguished by foreclosure, the City remains entitled to withhold a CO until payment.

Upon payment, the City must execute a release, but is not responsible for its recording. The City representatives would not accept a requirement that the release would be prompt, or that it would be recorded.

The bankers and title companies negotiated a provision ensuring that builders could get construction loans secured by mortgages that were in first lien position over the deferred impact fees. 3(c)(iv) provides:

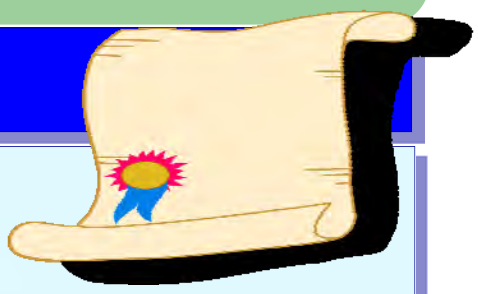
"3(c)(iv) The deferred impact fee lien, which must include the legal description, tax account number, and address of the property, must also be:…
(iv) Junior and subordinate to one mortgage for the purpose of construction upon the same real property granted by the person who applied for the deferral of impact fees." ☙

Other Business of the Legislative Committee

After countless years of diligent work for our Association, Gary Kissling has asked to step down as the Co-Chair. His contributions are a debt that WLTA could not repay, literally. If he were to ask for reimbursement for all the costs of driving to Olympia for testimony and meetings, we would need a significant dues increase. Dwight will miss working with him, especially relying on his knowledge of how things really work. Fortunately Jim Blair has agreed to assume that role for next year contributing his many contacts and experience in politics.

None of the level of respect and influence that WLTA now enjoys at the Legislature would be possible without the skills and patience of Stu Halsan. The Legislative Committee and WLTA members thank him again. ☙

ESCROW CORNER



"Consummation of Transaction" Definition (for CFPB)

One element of CFPB ties to the date a transaction is consummated. However, the law does not define that date. It is left to each state to determine the "consummation of transaction" date for that state. The WLTA turned to the Washington State Department of Financial Institutions for guidance, since it regulates certain types of lenders. In turn, the DFI noted that there was no statute defining that date. To the extent case law has established a standard date, the DFI could not make that determination. Similarly, if a date could be established, DFI could not impose that definition on lenders that it did not regulate, including private lenders.

The DFI proposed a meeting of parties who would have an interest in complying with the CFPB requirements. The goal is to reach a consensus definition. Once that is done, it is believed that the CFPB requirements would be met.

Bill Reetz and Chuck Trafton will represent the WLTA at the meeting (to be scheduled). Other groups will be lender groups (both those represented by DFI and other types of lenders), the Escrow Association of Washington, the Bar Association and Realtors® .

WLTA-OIC Meeting - *continued*

(Continued from page 3)

- The OIC's Executive Management Title Committee (EMT) reviews and discusses all title insurance related questions, including submitted claims of non-compliance, on a monthly basis.
- The OIC receives allegations of violations submitted by title companies fairly frequently. It stated that when any potential violation is submitted, the submitter should not expect any type of feedback following the OIC's investigation At the same time, violations submitted anonymously are put at the bottom of the stack.
- So far in 2015 there has been one fine imposed on a title insurance agent.

Statistical Reporting Requirements

Statistical reporting is another area of significant impact on WLTA agent members. In that regard, the OIC's Lee Barclay asked for patience as they review the information coming back from the data agent. They are still trying to figure out how they are going to use it. In addition, they are looking at breaking different counties into groups but weren't sure that it made sense to have counties grouped together, but that are not geographically close to each other. The OIC is still considering how to create groups based on similar costs based on the data being submitted.

How Can WLTA Assist OIC?

The WLTA asked if there are any issues where it could assist the OIC in the performance of its duties. Included in this discussion was the CFPB and all that it entails with respect to consumers. The OIC would like to work with the WLTA on providing useful links and other information that it can post on the OIC website to assist consumers. The WLTA representatives assured the OIC that it would continue to provide and update relevant links from the CFPB website as well as from the ALTA.

The OIC would also like to create scripts for their staff regarding fee quoting based on CFPB requirements and would like assistance from WLTA.

INDIAN AFFAIRS COMMITTEE

Status of New and Proposed Regulations by the Department of the Interior

Megan Powell, Chair

Part 83 – Federal Acknowledgement – Final Rule Issued

Many Indian tribes are recognized by the federal government through historical executive or congressional action. Tribes who do not benefit from this form of recognition have the option of submitting a petition for federal acknowledgment to the Department of the Interior through the regulatory process outlined in Part 83, Title 25 Code of Federal Regulations. Through this method, the applicant attempts to substantiate that they have met all the criteria necessary to support federal recognition as an Indian tribe. This recognition is important to many tribes because it allows them to form a tribal government that is acknowledged by the federal government as its own sovereign nation. It also allows them to request that their tribal lands be held in trust by the federal government. Finally, it allows the tribe to benefit from federal programs that provide support to the tribe in several areas including, but not limited to, housing, healthcare and education.

On June 29, 2015 the Department of the Interior released their final rule reforming this regulatory process. The Department began working on the revisions in 2009. Since that time they have solicited a substantial amount of feedback on their proposed amendments from several sources, including Indian tribes. The goal of the reform was to create a process that is more transparent, consistent and efficient than the regulations that have been in place for the last 40 years.

The final rule carries forward the standard of proof and seven mandatory criteria that exist in the previous version of the rule. It also modifies the evaluation period to 1900 – present, which is an expansion of the prior evaluation period. The final rule makes access to petitions for federal acknowledgment available to the public (previously they were not). If the proposed finding is negative, the tribe has the option of requesting a hearing before an administrative law judge to hear testimony. The administrative law judge will issue a recommended decision after the hearing and the Assistant Secretary issues the final decision. A complete copy of the rule as well as an outline of all of the new amendments can be found on the Department's website at www.bia.gov.

A related decision issued by the Department of the Interior In July of 2015 found that the Duwamish Tribal Organization, a Washington state tribe, is ineligible for federal recognition under Part 83. The Duwamish Tribal Organization was denied federal recognition in 2001 (they have been pursuing recognition since 1977). The decision issued in July was a reconsideration of the 2001 decision which was vacated by the Western Washington District Court in 2013 and remanded to the Department of the Interior. The full decision is available on the Department's website at www.bia.gov under the Office of Federal Acknowledgment tab.

Part 169 – Right of Way – Proposed Rule Issued

The Department of the Interior has issued a proposed rule intended to modify 25 CFR 169 which governs rights-of-way over Indian Lands. The Department is required to approve rights-of-way across Indian lands under federal law. The existing regulations governing this approval process were last updated over 30 years ago.

The proposed rule would effectuate changes to the approval process, the way compensation and valuation is calculated, as well as to compliance and enforcement of the right-of-way.

The proposed rule would also place specific time limitations on the Department when presented with an application pertaining to a

(Continued on page 13)

Indian Affairs Report - *continued*

(Continued from page 12)
right-of-way. This includes the imposition of a 60 day time frame to make a determination regarding a right-of-way grant and a 30 day time frame on the Department to make a determination regarding an amendment, assignment or mortgage of an existing right-of-way.

The proposed rule is available on the Department's website at www.bia.gov. The comment period for the proposed rule expired on November 28, 2014. To date, there has been no announcement by the Department regarding formal implementation of the proposed rule.

Part 170 – Indian Reservation Roads Program – Proposed Rule Issued

The Department of the Interior has issued a proposed rule intended to modify 25 CFR 170 which governs the Tribal Transportation Program (formerly known as the Indian Reservation Roads Program).

All roads and facilities that are deemed eligible for funding under the Tribal Transportation Program are identified on the National Tribal Transportation Facility Inventory (formerly known as the Indian Reservation Roads Inventory). The roads on the Inventory consist of roads that are located on tribal lands or provide access to tribal lands. The Inventory also includes bridges, parking lots, transit centers and other types of transportation related public facilities. If the roadway or facility has been constructed using funds from the Tribal Transportation Program it must be open to the public.

Under a new section of the proposed rule the tribe must provide a description of the current use of the land and identify the fee owner of the land on which they intend to construct a road or facility. If the tribe will be the "owner" of the road or facility, they must provide documentation evidencing the consent of each fee owner to use their property for the road or facility that will appear on the Inventory. The consent document will most likely be a right-of-way easement.

"Owner" as contemplated in the proposed rule is not intended to be a reference to the fee owner of the property on which the road or facility will be constructed. The "owner" is defined as the party that has the authority to finance, build, operate or maintain the public road or facility. An "owner" can be a federal or state government, the BIA or a tribe and will be the party benefitting from the easement. Tribes are also required to provide a tribal resolution or other official action identifying support for the public facility and its placement on the Inventory. In other words, the tribe must consent in writing to the public use of the transportation facility.

The proposed rule outlines a new process for calculating how much funding is available to each tribe and how that funding can be properly attributed to the construction of public roads and facilities.

The proposed rule is available on the Department's website at www.bia.gov. The comment period for the proposed rule expired on March 20, 2015. To date, there has been no announcement by the Department regarding formal implementation of the proposed rule.

Washington Title Professional

By Maureen Pfaff

The Washington Title Professional program is in the works, and should be available for applicants this later this year. Remember to take advantage of the educational opportunities that come your way. The WTP represents a measure of achievement and commitment to career development.

Those awarded the designation will have demonstrated their knowledge and experience in the title industry, as well as a commitment to continuing education .

The WLTA believes the WTP program will highlight the level of professionalism in our industry and encourage investment in continuing education by individuals as they work to earn and maintain the designation. Designees will be able to use the title and WLTA logo on their resume and in networking activities. Mark your calendar and plan to attend either the Kennewick or the Everett event and encourage your colleagues to join you!

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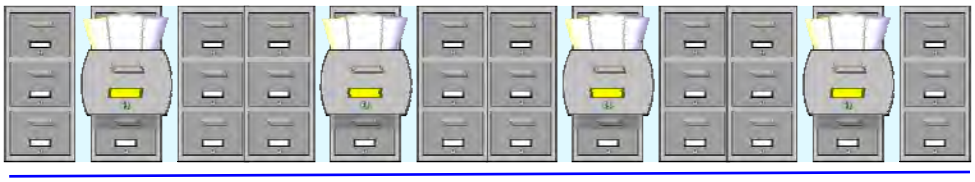

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