



For Land's Sake

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President's Message

JP Kissling



This last year has been a whirlwind, and I have enjoyed every moment of it. It has been very special for me, from building our new home, to receiving my WTP designation and becoming the 4th generation in my family to serve the WLTA as President. Some of my earliest memories are of walking through the offices of Fidelity Title Company and Schreiner Title Company. I remember seeing ashtrays on the desks and that awesome 70's style office wear. The combination of old records and stale smoke smell is one I will never forget. Oh, how far we have come.

I am truly grateful to my staff at Fidelity Title Company and Schreiner Title Company, as well as the amazing WLTA Board Members, Committee Chairs and our Executive Director for all the hard work and dedication they have all put in this year. I needed all the help I could get.

We lost a few extraordinary people this year with the passing of Jim Blair and Bill Reetz, and the retirement of Dwight Bickel, Ray Davis and Curt Johnson. We are all grateful for their service, dedication and mentorship.

I was lucky enough to attend two ALTA events this year. The ALTA ONE in Los Angeles last October was a great opportunity to meet a lot of great people, and the education, innovation, and positivity to our industry was invigorating. I also attended ALTA Advocacy in Washington DC in May. While in Washington DC we met with our state's representatives to discuss many issues facing our industry. We spoke about Anti Money Laundering in Real Estate through FinCEN. We requested new legislation allowing for the creation of a corporate beneficial ownership registry at the federal and/or state level. We talked to them about the increase in wire fraud in real estate and discussed the possibility of requiring that banks verify the wire payee's name as well as their account number when a wire is presented to the bank to help identify fraudulent wire instruction. We supported legislation to address inconsistencies in consumer mortgage disclosures (TILA) and asked for RESPA guidance. Marijuana was also on our agenda as ALTA pushed for support of the States Act and/or the Marijuana Banking Bill. Visiting Washington DC was a great experience for me and I would encourage all in our industry to attend once if you have the chance.

I am always impressed by the continued encouragement for membership participation to keep this association strong. I know we all will be in great hands moving forward when Sean Holland takes the reins in August. I would again like to thank you all for the opportunity to serve the WLTA and I hope to see you all at the 2019 Pacific NW Title Convention in Stevenson, Washington in August. ☞



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SEMINARS

Kennewick & Lynnwood Beckon — Time to Register

By John Martin and Gerry Guerin, Co-Chairs — Education Committee

It's that time of the year again, so mark your calendars for the WLTA Fall title and escrow seminars. This year's sessions will be September 14 in Kennewick and October 19 in Lynnwood. Each year, title and escrow experts convene for some great presentations on topics that are very relevant to your daily responsibilities. The agenda is being set and many of the presentations will be based on requests from last year's attendees. Also, if you have a topic that you like to learn about, please contact John Martin at johmartin@firstam.com or Gerry Guerin at gguerin@nextitle.com. We'll see what we can do to have it covered. Last year, the new Washington Uniform Common Interest Ownership Act, as well as receiverships, commercial transaction underwriting, claims, and of course, fraud prevention were all discussed. This year's topics promise to be just as relevant.

Not only are the sessions useful, they are an excellent value – just \$110 for members and \$160 for non-members. Plus, LPOs and attorneys get MCLE credits. That is a great deal.

Don't miss this wonderful opportunity to learn new things and catch up with old friends. For more information and to register, check the Washington Land Title Association website – www.washingtonlandtitle.com. REGISTRATION IS OPEN! Looking forward to seeing you in Kennewick or Lynnwood. ☞



WASHINGTON TITLE PROFESSIONAL

Maureen Pfaff, Chair

Washington Title Professional Committee

The Washington Land Title Association officially launched the Washington Title Professional program last year at the PNW Convention and the first year has been a success. The objectives of the program are to recognize those individuals who continue to educate themselves and others on current title and escrow matters; promote and maintain high standards in the title insurance profession; promote pride in the title insurance profession and establish education standards for the title insurance profession.

Nine people have earned the WTP designation so far. The roster of WTP designees as of July 2019 includes the following individuals: Kathy Backstrom, Dwight Bickel, Lori Bullard, J.P. Kissling, Kevin Howes, Maureen Pfaff, Bill Ronhaar, Marian Scott and Michelle Taylor.

Earning the WTP designation gives the recipient a boost on the road to also earning the National Title Professional designation from the American Land Title Association. Bill Ronhaar and Maureen Pfaff both earned their NTP designations in 2018 in addition to earning the WTP designations.

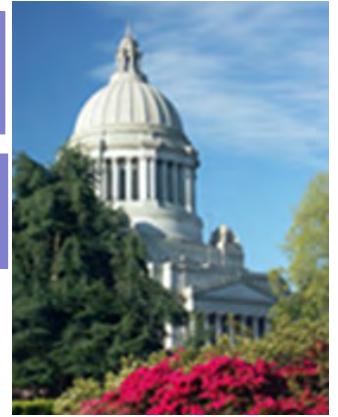
If you are interested in learning more about the WTP program and how to qualify for the designation, please go to the WLTA website, www.washingtonlandtitle.com, where you will find information and the application. The Washington Land Title Association recognizes these land title professionals who have demonstrated the knowledge, experience, and dedication essential to the safe and efficient transfer of real property. Congratulations to the Washington Title Professionals! ☞



LEGISLATIVE REPORT

2019 In Review

By Sean Holland and Bill Ronhaar, Legislative Committee Co-Chairs



Your Legislative Committee was busily engaged during the 2019 legislative session. The committee devoted the most time to three bills, “The Good, the Bad, and the Ugly.” The Good was SB 5641, the Washington Land Title Association’s remote online notary bill. Passage of SB 5641 will bring remote online notarization to Washington starting October 1, 2020. The Bad was HB 1514. That bill would have established wage earner liens with super priority and few of the limitations imposed on mechanic’s liens. The Ugly was a consumer data protection bill, SB 5376, which made its way from the Senate to the House. At the time of the crossover it was merely unattractive, but in the House it soon turned hideous. While neither HB 1514 nor SB 5376 passed this session, we can count on having to deal with them again next session. Several other bills passed that will affect the land title industry.

SB 5641 – Remote Online Notarization

SB 5641 will authorize remote online notarization by Washington licensed notaries who are physically located within the state for signings by parties anywhere in the world, effective October 1, 2020. The bill adopted the Uniform Law Commission’s 2018 amendments to the Revised Uniform Law on Notarial Acts. Those amendments are very similar the Model Bill jointly adopted by the Mortgage

Bankers Association and the American Land Title Association.

The Legislative Committee began laying the ground work for the bill in the fall of 2018. We met with legislators and the Department of Licensing. We were pleasantly surprised to find DOL receptive to the idea and willing to engage. We met with DOL multiple times. We originally had a package of two bills that included provisions regard-

out to October 1, 2020.

DOL did not back our bill, but it did not oppose it either. That was critical to success. When legislators asked about DOL, we could say WLTA had worked with it and the department had no objections to the bill.

Servicemembers deployed overseas will be benefited by being able to remotely notarize documents. That was a major selling point for our bill’s sponsor, Sen. Jeff Holy. His district includes Fairchild Air Force Base. The county auditors were in favor and so were the realtors. We encountered only temporary opposition from the Real Property, Probate & Trust Section of the state bar. To their credit the lawyers were willing to reconsider and wound up withdrawing their objection. Once the bill got moving, it progressed without a hiccup. SB 5641 wound up passing both the Senate and the House with zero votes against it.

A valid notarization depends on confirmation of the signer’s identity. Traditional in-person notarization has relied upon the signer producing some sort of identity document, such as a driver’s license. That won’t be enough under SB 5641. The bill requires two factor identification. In practice that will likely include both producing an identity document and answering questions that only the rightful signer would be able

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***Bill Ronhaar and Sean Holland are
the Co-Chairs of the WLTA
Legislative Committee***

ing electronic signatures. DOL wanted to see a bill that tracked the Uniform Law Commission’s 2018 amendments as closely as possible, so we dropped the electronic signature portion. DOL’s main concern was that it have enough time to develop regulations. It was happy with our pushing the effective date



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to answer.

A valid notarization also depends upon the signer being mentally competent at time of signing. SB 5641 requires making an audio-visual record of the interaction between notary and signer. The record must be retained for 10 years. It will be invaluable if challenges to the signer's competency are raised long after the fact.

The bill changes existing law to put a remotely notarized document on the same legal footing as a document notarized in the traditional way. If there is some irregularity with a document notarized at an in-person signing, the recorded document will still impart constructive notice. SB 5641 gives the same constructive notice effect to documents notarized using remote online procedures. Some jurisdictions may not be able to accept completely electronic documents for recording. SB 5641 provides that an electronic document may be "papered out." The printed copy may then be recorded and is given the same legal effect as a traditional wet-ink signed document.

When the law goes into effect next year, Washington notaries will be able to notarize documents for customers across the state, out of the state, or abroad. No more sending customers overseas to US embassies or wondering if the "notary" in some foreign country was the right person under that country's law.

HB 1514 – Wage Earner Liens

HB 1514 would give wage earners the right to file a lien on their employer's property, even property unconnected with the employer's business, such as a personal residence. The bill would also allow persons performing maintenance, such a

janitorial staff or landscapers, to file liens on the properties where they worked.

The bill had the potential to undermine the land title records system by departing from Washington's general principle of

"first in time, first in right." The bill's liens would extend priority back in time, over earlier recorded interests, for up to as much as six years. A current search of the land title records would be no

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Dwight Bickel

Lifetime Achievement Award

Dwight Bickel recently retired from the Fidelity Family of Companies, but not from the Washington Land Title Association. The WLTA would like to note his immeasurable contributions to the Association, having a broad impact on the title and escrow industries.

Dwight has served on the WLTA board for many years, including as the President for 2005-2006, and most recently the chair of the Underwriters Section. He also served on the Washington Title Professional Committee, contributing to establishing the standards and qualifications for that designation, and obtained that designation for himself. Most notably, Dwight was bestowed the honor the WLTA's Lifetime Achievement Award for services and contributions to the WLTA and the title industry, one of only two members to be so honored.

Dwight's dedication to his profession certainly deserves recognition, but perhaps his greatest long-term impact was as the Legislative Committee co-chair. This required the ability to quickly analyze the many bills that were proposed during the legislative session. He was able to zero in on the impact the legislation would have and formulate a response for the WLTA to consider, quite often within extremely short time frames. Even more important was his ability to suggest changes to protect the industry without sacrificing the needs of consumers, insureds and other trade groups. To this end he has worked closely with Stu Halsan, the WLTA's lobbyist, members of the Legislature and with many trade groups, including the Washington State Bar Association, Escrow Association of Washington, the Mortgage Bankers Association and the Washington Association of Realtors®. He knew who to talk to, but more importantly, how to negotiate and work toward a satisfactory resolution of differences. This effort often involved sacrificing his own time while maintaining his regular work load.

Dwight has also been a mainstay at the annual WLTA seminars, and one of the most popular speakers on many topics of value to both title and escrow personnel. The WLTA is glad to have his continued participation in these annual events.

On a national level, Dwight's influence will be felt for many years based on his work with the ALTA Forms Committee. His ability to not only recognize an issue but address a solution that served the needs of both the title company and the insured is reflected in policy and endorsement language that will endure long after his retirement.

The WLTA is proud to have been served by Dwight. His continuing legacy will be remembered with gratitude and honor. ☞

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protection against a wage earner lien that could be filed as much as six years in the future. A recorded notice of lien under HB 1514 would not identify the property owner nor state a priority date for the wage claim. Wage earner liens would have priority over all previously recorded deeds of trust. The bill limited a lien to 4% of the amount of a loan. But if an employer defaulted on wage obligations to 25 employees or more, 100% of the loan value would be at risk. The Legislative Committee submitted a letter outlining its concerns with the bill. Stu Halsan, the WLTA's lobbyist, testified in opposition to the bill in the House Appropriations Committee. The bill failed to come up for vote on the House floor. It will be back in 2020.

SB 5376 – Protecting Consumer Data

SB 5376 would have imposed consumer data protections inspired by the European Union's General Data Protection Regulation. Individuals would have the right to receive copies of records relating to them that were in the possession of private businesses. Consumers could challenge the accuracy of records held by businesses. The law would impose security and assessment requirements on businesses holding records and impose penalties for improper release of the records. A companion bill was

introduced in the House, HB 1854.

While HB 1854 failed to advance out of the House, SB 5376 passed the Senate. In the House the bill was referred to the Innovation, Technology, and Economic Development Committee. The ITED Committee promptly substituted a variation of its own failed HB 1854 for the Senate version. The original version of SB 5376 did not cover "publicly available information," any records obtained from public sources. The House substitute bill ceased to exempt publicly available information, thus subjecting to the law every document a title company gets from a county auditor or court clerk. A member of the Legislative Committee pointed out during an ITED Committee hearing that subjecting public records in private hands to the bill's onerous requirements would provide no privacy benefit to consumers, because the records were already available from a public source. The ITED Committee chair responded that "if you are holding public data, you should still be under some obligations to protect that data and people should have some access and control over it." What's the point of that when his bill imposed zero requirements on the public holders of public data?

Proponents of SB 5376 sought to get it passed through the House down to the last hours of



the legislative session. They were not successful, but the bill will be back next year.

SB 5998 – Graduated Real Estate Excise Tax

Say goodbye to a flat rate real estate excise tax. Starting January 1, 2020, the state REET will be assessed at rates that go up as the sales price goes up. Local REET rates are not affected. Nor is the state REET for agricultural and timber properties, which will continue to be taxed at a flat 1.28%. The rates and brackets will be:



- \$500K or under 1.10%
- Next \$1 million 1.28%
- Next \$1.5 million 2.75%
- Over \$3 million 3.00%

The bill will impose a significant increase in REET for high value properties, but will provide a tax cut for most homeowners. Anyone selling property for \$1,561,224 or less will see their tab for the state REET go down. REET is currently assessed not only on sales of land, but also on the transfer of controlling interests in entities that own land. The tax is due when more than 50% of the controlling interest is transferred in a specified period. Under current law that period is 12 months. The new law will extend the period to 36 months and require annual reports to the Secretary of State. Penalties will be imposed for failure to make an annual report.

SB 5332 – Vital Statistics

The Department of Health sought a complete rewrite of the

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state's vital statistics laws.

The one area of concern to WLTA was the portion dealing with death certificates. Last fall the DOH was taking comments from interested parties on its draft legislation. The Legislative Committee wound up working with DOH on the parts of the bill that pertained to new short form death certificates that will not show the decedent's cause of death or Social Security number. The bill also would have dropped the names of the decedent's parents. The DOH put the parents' names back in the bill after being informed that the information could be useful in locating heirs in cases of intestate succession. Working with DOH was a real pleasure. The folks working on the legislation were curious about how the land title industry used death certificates and welcomed the Legislative Committee's input. For example, the original bill would have made the short form death certificate available to parties demonstrating a need for the form. Not wanting to have to make a case of need each time the form was requested, the Legislative Committee asked DOH to specify that the form would be released to "[a] title insurer or title insurance agent handling a transaction involving real property in which the decedent held some right, title, or interest." That provision is in the new law. The new short form death certificates will become available when

Note from Sean Holland

After two years as the Underwriter Co-Chair of the Legislative Committee, I am moving on to another WLTA position. WLTA is very fortunate that Megan Powell has agreed to become the new Underwriter Co-Chair.

I suppose a single individual could chair the Legislative Committee. But I'm not sure how that individual could chair the committee alone during the legislative session and hold down a day job. The Legislative Committee is a team effort. My Co-Chair Bill Ronhaar has been an outstanding teammate. During the session he reads the newly dropped bills every single day to identify those that may affect WLTA's members. There were times during the session when we were talking multiple times a day, especially when trying to figure out the best way to deal with the data protection bill. I've lost count of the number of trips he made from Bellingham to Olympia.

Thanks, Bill. It's been great working with you. Every WLTA member should be glad you'll be continuing as the Agent Co-Chair of the Legislative Committee. ☺

most of the act becomes effective on January 1, 2021.

HB 1908 – Repeal of the Electronic Authentication Act

Repealing the Electronic Authentication Act was akin to issuing a death certificate years after someone disappears. Nothing has changed recently, but the departed is now officially gone. Washington was an innovator when it adopted the EAA in the late 1990s. But not a single state followed our example. Instead, every other state either adopted the Uniform Electronic Transactions Act (47 states) or a local version of UETA (New York and Illinois). Formalizing digital signatures under the EAA requires certificate authorities to have licenses issued by the Washington Secretary of State. But it's been years since anyone held a license. A bill requested by the SOS to repeal the EAA was introduced in the 2018 session. The Legislative Committee weighed in last year to say repeal would be a great

idea, but it should be coupled with adoption of UETA. That seemed to stop all forward progress of the 2018 bill. When HB 1908 was introduced this session, the Legislative Committee did not make the same request it did last year. HB 1908 sailed through unopposed in either house. There is now a tombstone to mark the long departed EAA. Next up for 2020: get UETA adopted. Use of remote online notarization requires electronic signatures. The federal Electronic Signatures in Global and National Commerce Act (ESIGN) will cover a significant percentage of real property transactions, but not all. To close the gap we are going to need a state law. ☺



JUDICIARY REPORT

Ashley Callahan, Judiciary Committee Chair

McColl v. Anderson – Ct. of Appeals, Div. II, No. 50998-9-II (November 14, 2018)

McColl filed a lawsuit for declaratory relief against neighbor Anderson seeking a prescriptive easement to the water distribution system and water lines located on Anderson's property. Anderson objected arguing that state law prohibits the acquisition of water rights by prescriptive easement and that McColl did not satisfy the elements of prescription. The court granted Ander-



son's motion and awarded him \$35,610 in attorneys' fees. McColl appealed the attorneys' fee award. RCW 7.28.083(3) gives trial court discretion to award attorneys' fees to prevailing party in lawsuits asserting title to real property by adverse possession. McColl's easement claim involves *use* of property, not *title* to it. The attorneys' fee award under RCW 7.28.083 is reversed and vacated.

Robbins v. Mason County Title Insurance – Ct. of Appeals, Div. II, No. 50376-0-II (August 28, 2018), rev. granted (2019)

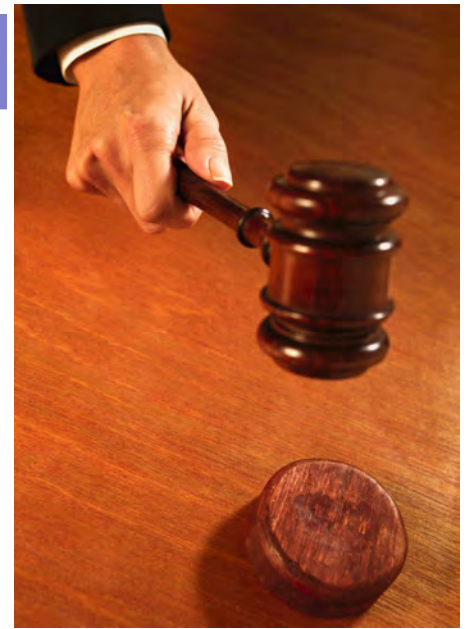
The Robbinses purchased land in 1978, including tidelands formerly owned by Washington state. The Robbinses obtained an owner's title insurance policy obligating the title insurer to "defend the insured with respect to all demands and legal proceedings founded upon a claim of title, encumbrance, or defect which existed or is claimed to have existed prior to the date hereof (June 12, 1978) and is not set forth or excepted herein." The title policy excepted "public or private easements not disclosed by the



public records" defined as "records which, under the recording laws, impart constructive notice with respect to said real estate."

In 2016, the Squaxin Tribe expressed a desire to harvest shellfish on the Robbinses tidelands pursuant to treaty rights. The Robbinses tendered the claim. The title insurer denied coverage of the Robbinses' claim. The Robbinses filed the lawsuit. The appellate court reversed the trial court and held that the title insurer had a duty to defend the Tribe's desire to harvest shellfish. The Tribe's intention constituted a "demand" which, in addition to a lawsuit under this particular title policy, could trigger a defense obligation. The Tribe's right to harvest shellfish was an encumbrance because it was a right adverse to the interest of the Robbinses, but which does not conflict with their right of conveyance. The general exception did not apply because the treaty right to harvest shellfish are servitudes, akin to a profit a prendre instead of an easement. Coverage for the claim existed and the court therefore held that the title insurer had a duty to defend. Because the title insurer had unreasonable withheld a defense, the court held that it acted in bad faith as a matter of law and was estopped from denying the Robbinses coverage under the title policy, subject to affirmative defenses previously pled but not litigated.

The Washington Supreme Court granted review of this case. Oral arguments are expected this Fall.



Merceri v. Bank of New York Mellon, Div. I, No. 76706-2-I (August 13, 2018)

Merceri borrowed \$468,000 in 2006 from the Bank, secured by a deed of trust on her property. Merceri defaulted in 2010. The Bank sent a notice stating that "if the default is not cured on or before March 18, 2010, the mortgage payments *will be accelerated* with the full amount remaining accelerated and becoming due and payable in full and foreclosure proceedings will be initiated at that time." The Bank thereafter sent Merceri letters presenting options: loan modification, short sale, repayment arrangements, and reinstatement.



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In June 2016, the Bank commenced foreclosure proceedings. Merceri filed a lawsuit seeking to quiet title to the property because the six-year statute of limitation barred the Bank's foreclosure. Merceri argued that the February 2010 notice letter accelerated payments so that all of them were due by March 2010 and the Bank had until March 2016 to foreclose. The trial court agreed and quieted title in Merceri. The Bank appealed. The appellate court reversed stating that to show acceleration based on a notice, Merceri needed to show that the lender subsequently took "an affirmative action in a clear and unequivocal manner indicating that the payments on the loan had been accelerated." Because the Bank never declared that the entire debt was due, did not refuse to accept installment payments, and sent notices of unpaid past due installments (not the full principal), the Bank did not take clear an unequivocal action to accelerate the debt.

Arnot & Related Case Update – Oregon District Court, D.C. No. 3:17-cv-00591-MO; Clackamas County Circuit Court, Case No. 19CV25816; Other state court cases may exist

Arnot is an Oregon bankruptcy trustee who is involved in litigation that seeks to challenge the title to property currently owned by individuals, most of whom

are insured under title policies. The challenge is based on Arnot's assertion that 2009, 2010, and 2011-era non-judicial foreclosures against former owners were invalid. When these former owners filed for bankruptcy, they did not list the purported invalid foreclosure claim as an asset. Therefore, Arnot argues that the allegedly invalid foreclosure, and claims arising therefrom, were not "abandoned" when the former owner's/debtor's bankruptcies were closed. It appears that Arnot and other trustees are moving to re-open the individual bankruptcies, appoint the former trustees, who then file a lawsuit against current owners (and lenders) seeking to 1) quiet title to the property in the plaintiff bankruptcy trustee and 2) collect damages for trespass and invalid encumbrance by the current owner and lender.

In November 2018, the 9th Circuit reversed the Multnomah County, Oregon District Court stating that the invalid foreclosure claims against the foreclosing lenders/servicers were not abandoned because they were not listed in the debtor's bankruptcy schedules. The case is now back in the District Court. In April 2019, Servicelink fka LSI Title Company of Oregon filed a motion for summary judgment regarding application of defenses to Arnot's claims: statute of

limitation for avoidance actions, dismissal of indispensable parties with prejudice, laches, no trespass, and no application of Oregon's Invalid Encumbrance Statute. Arnot also made a motion to file a Second Amended Complaint to change the name of the plaintiff to Huffman, as bankruptcy trustee for debtors the Neels. The proposed complaint seeks damages for trespass (not less than \$1,750/mo. from August 2010 until judgment is entered awarding Huffman possession of the property) and invalid encumbrance (\$5,000 for each invalid encumbrance recorded by the foreclosing parties and subsequent grantees). Servicelink opposed the motion. As of June 15, 2019 the summary judgment motion briefing appears complete and oral argument is anticipated. ☞



**TITLE
ACTION
NETWORK**



TITLE ACTION NETWORK

Maureen Pfaff, Chair TAN

Are you a member of the Title Action Network? Everyone working in our industry should be aware of and active in TAN. This is the premier grassroots organization promoting the value of the land title insurance industry. In the current regulatory environment, our industry faces threats of new policies at both the state and federal levels that could seriously affect our business. TAN provides an ideal opportunity to present a cohesive and energized voice on behalf of the industry.

TAN membership is free and only takes minutes to sign up for. TAN members receive action alerts for relevant state and federal issues. Rather than flood members' inboxes, TAN is strategically designed to ensure that you are only notified about issues that will affect you, your business, and your customers. TAN is fast, free and easy to understand. Go to www.alta.org/tan/join-tan.cfm to join today! You do not have to be a member of ALTA to be a member of TAN.

If you joined TAN in the past remember that you need to renew your membership each year by either responding to a TAN alert email or by going to the ALTA website and renewing. There are currently 7,978 members of TAN, add your voice and support your industry! ☞

NATIVE AMERICAN AFFAIRS REPORT

Megan Powell, Native American Affairs Committee Chair

Carcieri Fix Bill Passed by U.S. House of Representatives

On May 15, 2019 the U.S. House of Representatives passed H.R. 375, a bill intended to fix the negative impact of the 2009 U.S. Supreme Court decision in *Carcieri v. Salazar*. The sponsor of the bill is Representative Tom Cole from Oklahoma.

In *Carcieri*, the court determined that the Secretary of the Interior may not acquire trust land for a Native American tribe unless the tribe was under federal jurisdiction when Indian Reorganization Act was passed in 1934. Logically this means any tribe that received federal recognition sometime after that date would not be qualified to apply for a fee to trust transfer. In that scenario, a tribe could provide documentation as evidentiary support that the tribe was under federal jurisdiction in 1934, but there is no guarantee that the evidence would be deemed sufficient by the Department of the Interior in the application process.

As a consequence of this decision, the validity of multiple fee to trust transfers completed prior to 2009 were challenged on the theory that the benefitting tribe was not “under federal jurisdiction” in 1934. These challenges came in the form of litigation around the country, sometimes filed years after the tribe had transferred their property into trust and developed it. If a title insurer provided a title insurance policy to the United States holding title in trust for the tribe and the validity of the underlying conveyance was challenged, this has the potential to create serious claims issues for the insurer.

H.R. 375 amends the language in the Indian Reorganization Act most signifi-

cantly by striking the words “any recognized Indian tribe now under Federal jurisdiction” and replaces that phrase with “any federally recognized Indian Tribe” which allows a tribe who has been federally recognized after 1934 to receive the same treatment as a tribe who was federally recognized when the Indian Reorganization Act was passed. The bill is supported by the National Congress of American Indians who are pushing for swift passage by the senate.

U.S. Supreme Court Interprets Treaty Rights in *Herrera v. Wyoming*

Clayvin Herrera is a member of the Crow Tribe of Indians, which has a reservation in southcentral Montana. The reservation is bordered by Wyoming on the south. In 1868 the tribe entered into a treaty with the United States ceding approximately 30 million acres of territory in the area now identified as the states of Montana and Wyoming.

In 2014, Herrera (along with other tribal members) pursued a group of elk outside the reservation boundary and into the Bighorn National Forest in Wyoming. Several elk were shot, and the meat was returned by the tribal members to the Crow Reservation. Herrera was charged by the State of Wyoming for hunting out of season and without a Wyoming state issued hunting license. Herrera argued that his hunting rights were protected under the 1868 treaty between the United States and the Crow Tribe through which the tribe ceded territory in exchange (in part) for the “...right to hunt on the unoccupied lands of the United States so long as game may be found thereon...”. Herrera lost at the state trial court. On appeal, the state appellate court held that the treaty right expired upon Wyoming’s statehood and further, the Bighorn National Forest does not qualify as “unoccupied lands”. The U.S. Supreme court disagreed, finding that the Wyoming Statehood Act



does not show that Congress “clearly expressed” an intent to abrogate treaty rights, including hunting rights. Further, there is no evidence in the treaty itself that Congress intended for the hunting rights to expire at statehood. They further held that at the time of execution of the treaty, the tribe would have understood the word “unoccupied” to mean area that has not been settled. Consequently, the Bighorn National Forest would be viewed by the tribe under the terms of the treaty to be categorically unoccupied.

However, the court acknowledged that there are likely areas within the forest that may be occupied. The court remanded the case to Wyoming state court to determine whether the exact site on which Herrera hunted the elk was “occupied” land as defined by the 1868 treaty.

ALTA Title Topics Webinar: Title Insurance and Native American Lands: An Introduction

On April 17, 2019 the monthly ALTA Title Topic webinar was dedicated to an introduction of issues involving Native American Lands which impact title insurance. The presenters were Nancy Appleby of Appleby Law PLLC and Megan Powell of First American Title Insurance Company. The presentation is recorded and can be accessed online at <https://www.alta.org/education/title-topics.cfm?2019>.



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