

EARNEST MONEY DISPUTE RESOLUTION PROCEDURES; RECONVEYANCES

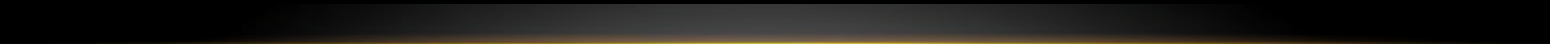
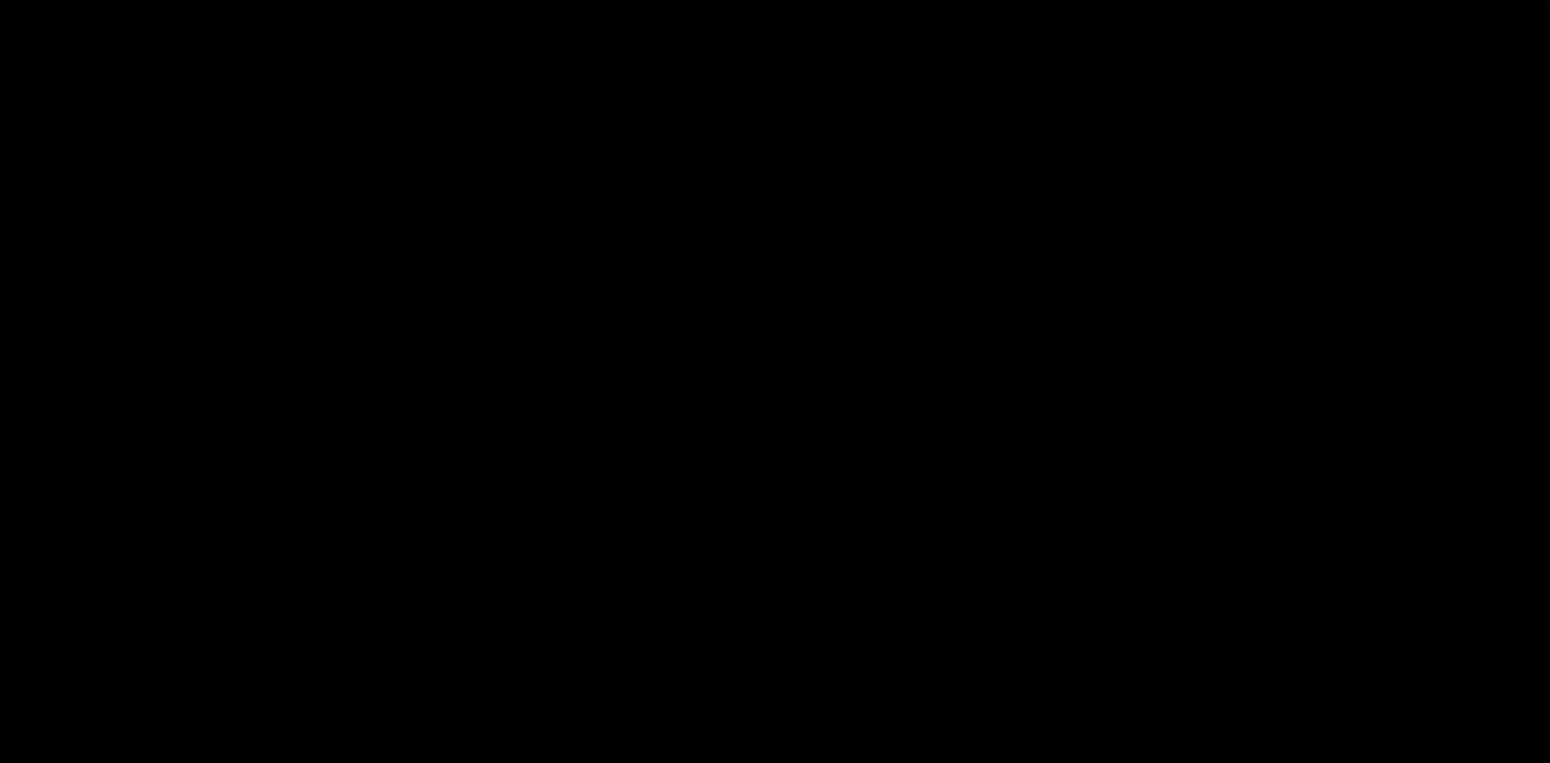
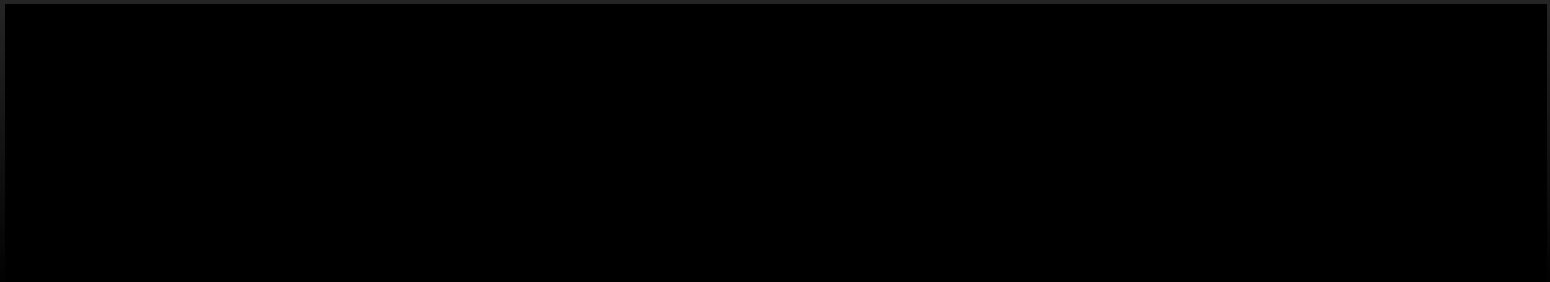
Washington Land Title Association Education Seminar

September 12, 2015

Presented by: John Martin

RECENT EARNEST MONEY DISPUTE





EARNEST MONEY DISPUTE V. ROOT CANAL



ROOT CANAL WINS



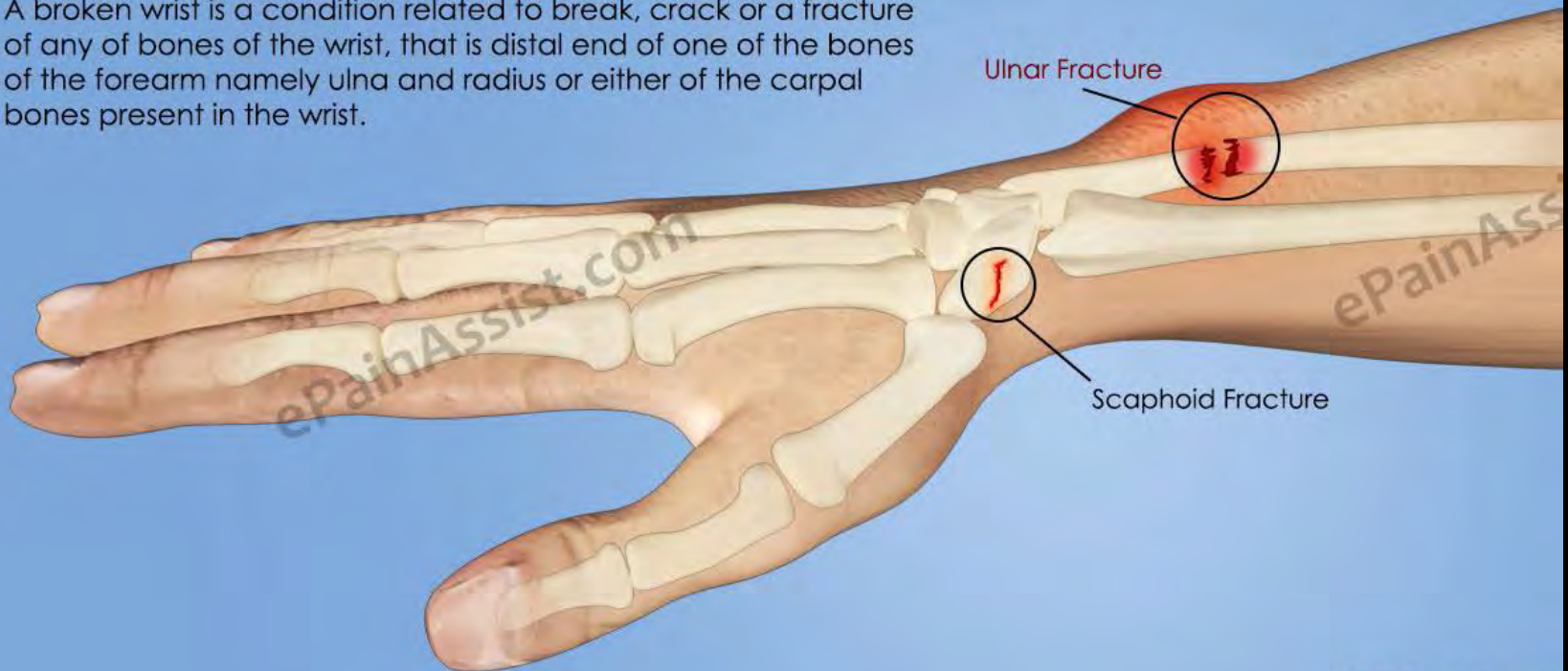
EARNEST MONEY DISPUTE V. BROKEN WRIST



BROKEN WRIST WINS

Broken Wrist

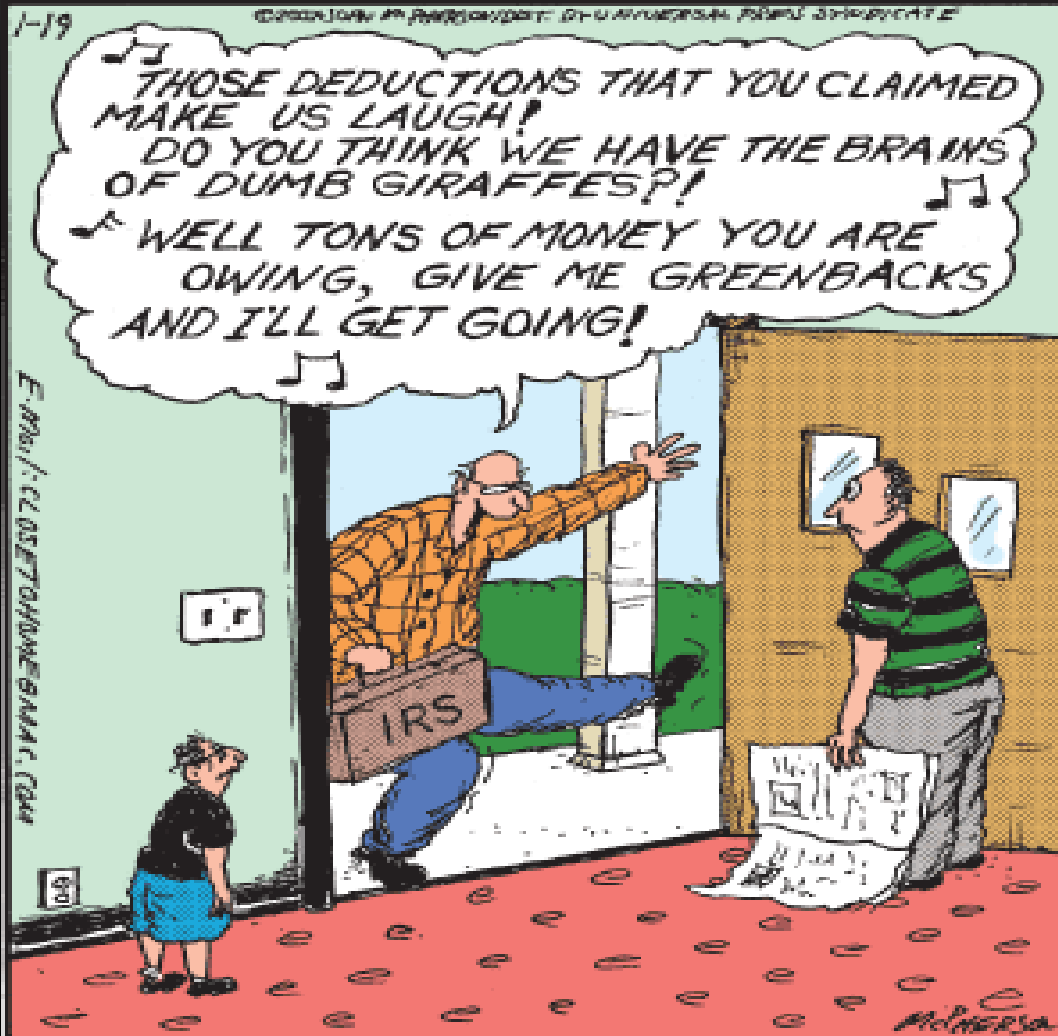
A broken wrist is a condition related to break, crack or a fracture of any of bones of the wrist, that is distal end of one of the bones of the forearm namely ulna and radius or either of the carpal bones present in the wrist.



EARNEST MONEY DISPUTE V. IRS AUDIT



Cassandra Hubbard



Hoping to soften its image, the IRS devises the singing audit-gram.

EARNEST MONEY DISPUTE V. A VISIT WITH THE CFPB



USUAL CONTEXT OF EARNEST MONEY DISPUTE

- Buyers decide to terminate contract, often based on Inspection Contingency;
- Buyers send seller termination notice;
- Seller declines to sign termination;
- Buyer demands return of earnest money and seller won't agree;
- Seller demands they be paid earnest money;
- Escrow, being stuck in the middle, declines to tender deposit to either party;
- Buyers' Realtor calls demanding return of Earnest Money deposit to buyer, threatens to take all future business elsewhere;
- Sellers' Realtor calls demanding that sellers be paid Earnest money deposit; threatens to take all future business elsewhere.

CURRENT METHOD OF RESOLVING EARNEST MONEY DISPUTES

- Dear Crazy People:
- Please agree to split the earnest money. If you don't I will have no choice but to file an interpleader action. The costs and fees of me doing this will be paid out of the earnest money and that will eat up most of the deposit. Even if you win, you will receive less than if you split it right now. Let's all get on with our lives. Please respond in ten days. If I don't hear from you in ten days, I will file the action. I REALLY, REALLY MEAN IT.
- Have a nice day;
- John B. Martin

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HOUSE BILL 1730

- Collaborative effort between Washington Association of Realtors, State Bar Association and the WLTA;
- Effective July 24, 2015;
- Provides MANDATORY procedures for disbursing Earnest Money or initiating interpleader action.

HB 1730 APPLICABILITY

- Holder is defined as “the party holding the earnest money pursuant to an executed purchase and sale agreement....”
- Holder includes, but isn’t limited to:
 - Real estate firm;
 - Escrow Agent
 - Title insurance companies and agents

Residential real estate transactions, including vacant land zoned for residential property

PROCEDURES

- Party to the contract provides Holder written demand for all or part of the earnest money deposit
- Within 15 days of receiving the demand, the Holder MUST:
 - All other parties in writing that Holder has received a demand for the earnest money; or
 - Release the earnest money to one or more parties; or
 - Commence interpleader action.

CONTENTS OF NOTICE

- The Holder's written notice to other parties must:
 - Include a copy of the demand;
 - Specify an address where to send an objection to releasing the earnest money;
 - Advise the parties that:
 - They have twenty days to notify the Holder in writing that they object to the release of the earnest money;
 - Failure to deliver to Holder a timely objection to the release of the earnest money will result in the Holder releasing the earnest money to the demanding party.

HOW THE NOTICE MUST BE SENT

- Via U.S. postal service and email using the last known mailing address and email address to the extent that such information is provided by the parties and is in the Holder's files.
- The Holder is not responsible to look outside its records for the current addresses or the parties and is not responsible if it cannot find a current mailing address from outside records.

THE START OF THE TWENTY DAYS PERIOD

- Begins the date the Holder places the notice in the mail and emails the parties.
- The Holder is required to maintain a log or other method of proving when the notice was mailed.

WHAT HAPPENS AFTER TWENTY DAYS?

- If no written objection is received by the Holder within twenty days, the Holder MUST deliver the earnest money to the demanding party within ten days after the twenty days have lapsed.
- If Holder receives a timely written objection or inconsistent demand, the Holder must not release the earnest money. Instead, the Holder must begin an interpleader action within sixty days of receiving the objection, UNLESS, the parties provide joint/consistent instructions to the Holder to:
 - Disburse the earnest money; or
 - Refrain from beginning the interpleader action.

WHAT LIABILITY DOES THE HOLDER FACE UNDER THE STATUTE?

- The statute provides that unless the Holder releases the earnest money deposit, a Holder that complies with the statute is not liable to any party or any other person for releasing the earnest money to the demanding party.

THE INTERPLEADER OPTION

- The Holder may file the interpleader at any time. For example, after receiving the written demand and before the end of the twenty day period.
- If the Holder initiates the interpleader action, the court **MUST** award the Holder its reasonable attorneys' fees and costs.
- The statute provides the form for the Summons and Complaint
- The Summons and Complaint may be served by mail using the address in the purchase and sale agreement.

NEW MLS PROVISIONS

Upon termination of this Agreement, a party or the Closing Agent may deliver a form authorizing the release of Earnest Money to the other party or the parties. The party(s) shall execute such form and deliver the same to the Closing Agent. If either party fails to execute the release form, a party may make a written demand to the Closing Agent for the Earnest Money. Pursuant to RCW 64.04, Closing Agent shall deliver notice of the demand to the other party within 15 days. If the other party does not object to the demand within 20 days of Closing Agent's notice, Closing Agent shall disburse the Earnest Money to the party making the demand within 10 days of the expiration of the 20 day period. If Closing Agent timely receives an objection or an inconsistent demand from the other party, Closing Agent shall commence an interpleader action within 60 days of such objection or inconsistent demand, unless the parties provide subsequent consistent instructions to Closing Agent to disburse the earnest money or refrain from commencing an interpleader action for a specified period of time. Pursuant to RCW 4.28.080, the parties consent to service of the summons and complaint for an interpleader action by first class mail, postage prepaid at the party's usual mailing address or the address identified in this Agreement. If the Closing Agent complies with the preceding process, each party shall be deemed to have released Closing Agent from any and all claims or liability related to the disbursement of the Earnest Money. If either party fails to authorize the release of the Earnest Money to the other party when required to do so under this Agreement, that party shall be in breach of this Agreement. For the purposes of this section, the term Closing Agent includes a Selling Firm holding the Earnest Money. The parties authorize the party commencing an interpleader action to deduct up to \$500.00 for the costs thereof.

- “The parties authorize the party commencing an interpleader action to deduct up to \$500 for the costs thereof.”

DEED OF TRUST RECONVEYANCES

- HB 1435, effective May 1, 2013
- Codified at RCW 61.24.110
- Allows certain parties that pay off a beneficiary of a deed of trust, based on the beneficiary's demand, to record a Declaration of payment, that if not objected to, will extinguish the lien of the deed of trust

HOW FAST SOME LENDERS REQUEST RECONVEYANCES



HOW FAST THE LENDER WANTS US TO SIGN
CUSTOMERS AFTER WE GET DOCUMENTS



RCW 61.24.110

- The trustee of record shall reconvey all or any part of the property encumbered by the deed of trust to the person entitled thereto on written request of the beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the beneficiary or the person entitled thereto.

PARTIES THAT MAY RECORD A DECLARATION OF PAYMENT

- Licensed title company or agent;
- Licensed escrow agent
- Licensed attorney
- That paid off the beneficiary:
 - In full;
 - Based on written payoff from the beneficiary;
 - Upon receiving notice of the beneficiary's failure to request the reconveyance within sixty days after being paid.

PROCEDURE AND TIME FRAME

- After sixty days, submit to trustee of record, written proof of satisfaction and request the trustee to reconvey the deed of trust;
- After one hundred twenty days the trustee is unable or unwilling to reconvey, record Declaration of Payment in the county where the deed of trust was recorded.

CONTENTS OF DECLARATION

- The declaration must: a) be captioned "Declaration of Payment; b) be notarized; c) identify the deed of trust including original grantor, beneficiary and trustee; loan number if available; recording number and date; d) amount, date and means of payment and beneficiary paid; e) include a declaration that the payment tendered was sufficient to meet the demand and that no written objection has been received.

PROCEDURE AND TIME FRAME CONTINUED

- Two days after recording, we must mail it to the beneficiary and trustee's last known address.
- Beneficiary or trustee have sixty days from the date of recording to file an objection.
- Contents of Objection:
 - Must be captioned "Objection to Declaration of Payment and refer to recording number of declaration and original deed of trust.

- If no objection to the declaration is filed in the sixty day time period, the lien of the deed of trust must cease to exist.

- The WLTA has promulgated forms for the Request for Full Reconveyance to the Trustee and Declaration of Payment