Washington Land Title Association

For Land's Sake

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President's Message

Megan Powell

The last year has gone by incredibly fast – it feels like we were just at Suncadia and I was taking over the reins from Maureen Pfaff in acceptance of my new role as the Washington Land Title Association ("WLTA") President. I would like to take this opportunity to personally thank all of the WLTA Members for the honor of holding the title as President of this organization for the last year. I strongly believe that our association has an important voice in our industry and the work we have put in the last few years in Olympia has contributed to our impact with the legislature there.

I enjoyed recruiting some new faces this year for board and committee chair positions. It has been rewarding to see these new members of our organization be mentored by those who have been involved with the association for many years. I know that JP Kissling will continue to encourage this mentorship environment when he takes over as President of the WLTA in August.

This year the board voted to support legislation for "remote" or "online" notarization. In the past we have always been opposed to this approach in Washington, however, like our fellow colleagues at the American Land Title Association ("ALTA") we can see that this change is inevitable regardless of our feelings about the topic. Our board decided to be proactive instead of reactive, in hopes that we can have more control over whatever bill is passed so that remote notarization in Washington can be accomplished as safely as possible. No remote notarization bill was proposed in the last legislative session, but we will continue to push for a sponsor to support a bill that makes sense for our industry, and also appropriately interplays with legislation that is intact in Washington, such as the Electronic Authentication Act ("EAA").

Our legislative committee is led by Co-Chairs Sean Holland and Bill Ronhaar. They were hard at work this year making sure our voice was heard for proposed legislation impacting our industry including, but not limited to, predictable recording fees, registered land, racial covenant restrictions, and new notary requirements. All of our committees are important to the WLTA but the legislative committee has the biggest workload and I hope Sean and Bill know how much we appreciate all their efforts. We also appreciate the support we receive from the ALTA who tracks new legislation in all 50 states. Elizabeth Blosser with the ALTA is a good resource for us as she is able to notify us of new legislation and call attention to issues that may not be on our radar.

This year we also focused on completing our initial test for those who wish to become a Washington Title Professional. In order to utilize this title, you must pass a test administered by the WLTA. The test is not meant to be easy. Our committee worked hard to craft a test with questions that require the test taker to be an experienced title professional in order to pass. If you pass this test you can utilize the Washington Title Professional title, and it also helps contribute towards those requirements for becoming certified as an ALTA National Title Professional.

In October I attended the ALTA One Conference in Miami as the WLTA representative. There were many issues discussed on a global level, such as the continued struggle with cyber-fraud attacks on our industry, e-signatures and remote notarizations. Technology and disruption to the industry were themes, with the ALTA encouraging us to embrace these changes as positive motivators rather than something to fear. Continued modifications to the TRID rule were also discussed, which largely impacts residential real estate closings. This year I also helped plan and attended the first ever ALTA Commercial Conference in Chicago. The response was more favorable than expected; we actually had to turn potential attendees away due to size limitations. We will plan on a bigger meeting space next year. This inaugural event was very successful and showed those who work in our industry that ALTA is dedicated to supporting our commercial real estate market just as much as the residential real estate market. I appreciated the opportunity at both conferences to show that the WLTA is engaged with the ALTA on topics spanning our entire industry.

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SEMINARS

Yakima & Lynnwood Beckon—Time to Register

By John Martin, Chair—Education Committee

Mark your calendars for the WLTA Fall title and escrow seminars. This year's sessions will be September 15 in Yakima and October 20 in Lynnwood. Each year, title and escrow experts convene for some great presentations on topics that are very relevant to your daily responsibilities. Many of the presentations are based on requests from attendees and this year is no different. Want to learn about the new Washington Common Interest Ownership Statute? We'll cover that. Something else? The agenda is still being finalized, so if you have a subject you would like to learn about, please contact John Martin at johmartin@firstam.co. Not only are the sessions useful, they are an excellent value – just $110 for members and $160 for non-members.

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. Looking forward to seeing you there!

WASHINGTON TITLE PROFESSIONAL

By Maureen Pfaff, Chair—WTP Committee

When the Board of the WLTA set out to create a Washington Title Professional designation I don't believe any of us thought it would take three years to come to fruition. On the surface it sounded easy, but what does Washington Title Professional really mean? After much discussion, the committee distilled the objectives of the program down to the following:

- Recognize those individuals who continue to educate themselves and others on current title and escrow matters.
- Promote and maintain higher standards in the title insurance profession.
- Promote greater pride in the title insurance profession.
- Establish education standards for the title insurance profession.

Once we had our objectives outlined, the real work began. What basis would we use to decide if an applicant should earn the designation? We quickly determined that a minimum of five years industry experience was a must and looked at education from a variety of sources. While there is much value to be found in the educational resources of the ALTA, we wanted to also include a requirement for Washington specific education through the WLTA Seminars or other Washington specific resources. The final step of the process was the decision to include a test and this proved to be the biggest hurdle to quickly rolling out a program as the questions had to be written and then vetted for final approval by the WTP committee. All of this work was being done in addition to the committee members jobs and family obligations. It was a long process, but we are excited to announce that the Washington Title Professional designation is now available.

The application and details on the requirements will be found on the WLTA website under the Education tab. In addition to the WTP program information, you will also find links to the Land Title Institute courses available through the ALTA (with discounted pricing for WLTA members) and information on the WLTA Fall Seminars. 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 logo on their resume and in networking activities. For those interested in earning a national designation, the WTP designation will fulfill a portion of the requirements to earn the National Title Professional Designation offered through the ALTA.

The fall seminars sponsored by the WLTA are an economical way to earn the continuing educational credits that will be needed as part of the prerequisites for the WTP designation. Mark your calendar and plan to attend either the Yakima or the Lynnwood event and encourage your colleagues to join you!

President's Message (Continued from page 1)

In late July we were all surprised with the news that Michelle Korsmo resigned as CEO of the ALTA. Michelle has accepted a position as CEO as the Wine & Spirits Wholesalers of America. Michelle has been with the ALTA since 2008 and became CEO in 2011. I am interested to see who the ALTA selects as their next CEO; the ALTA Board of Governors is searching for a new CEO at this time.

I hope that all of our members see the value in their affiliation with the WLTA. This organization works hard to keep their members up to date on relevant legislation and case law. We also interface regularly with the Washington Office of the Insurance Commissioner. Being a part of our organization as a member ensures that you have the ability to contribute to the collective voice, and it also ensures that you will receive information impacting our industry on a local and national level. Thank you again for the opportunity to serve the association and its members as board President.

LEGISLATIVE REPORT

2018 In Review

By Sean Holland and Bill Ronhaar

The Washington Land Title Association did not advance any legislation in this year's session. We supported some bills sought by the county auditors that unfortunately went nowhere. We spent much of the session playing defense. Some seriously flawed bills were introduced. The Legislative Committee and WLTA members engaged with members of the Legislature to request amendments. The resulting laws were a major improvement over the original bills.

- **HB 1570 – Recording Fee Surcharge to Support Homeless Services**

HB 1570 was originally introduced in the 2017 session. The 2017 version provided for both a county and city option to add a recording fee surcharge to fund homeless services. Having a different surcharge in each of Washington's 39 counties would not be ideal. But it would not be nearly as bad as having every single city in the state impose its own surcharge. It was a relief to see the bill die in the 2017 session.

When the bill was re-introduced at the beginning of the 2018 session, it was much improved by the removal of the city option. The bill sailed through the House Rules and Appropriations Committees, with no unwelcome amendments. That changed when the bill was considered on the House floor. As passed by the House, the bill now included a provision permitting any city having a population greater than 150,000 and located in a county between 800,000 and 1,500,000 in size to impose its own homeless surcharge of up to $50 if the county legislative authority did not impose a charge. Only one city in the state fits the population parameters, Tacoma. But WLTA's concern was that once one city had the option, all the others would be back in the 2019 session to get their own surcharge authority. The potential proliferation of varying surcharges across the state would be a blow to any future effort to establish predictable recording fees.

The amended bill's first stop in the Senate was with the Human Services and Corrections Committee. WLTA focused on getting that committee to remove the Tacoma option from the bill. The Legislative Committee sent a letter to all members of the Senate committee in advance of the hearing. One of the Legislative Committee co-chairs testified at the hearing. The WLTA approach emphasized that a city option could complicate and delay the closing process. The Legislative Committee prepared a Title Action Network alert for the American Land Title Association to send out to TAN members all over Washington. The alert had a message supporting removal of the city option that each TAN member could immediately turn into an e-mail to that member's state senator. Not only did the Human Services and Corrections Committee remove the city option, it also stripped out the ability of individual counties to set their own surcharges. Instead, the new version of the bill raised the homeless surcharge from $40 to $62 statewide. The full Senate passed the bill without further changes and the House agreed to the Senate version. The bill was signed by the Governor on March 15.

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

- **HB 2514 – Removing Racially Restrictive Covenants**

It is a sad fact that plat covenants recorded in the first half of the twentieth century were frequently blighted by racially restrictive provisions. The United States Supreme Court ruled such provisions unenforceable in 1948. A Washington statute enacted in 1969 declared all such covenants void. The statutes provide that property owners may remove the offending provisions by court action or through a recording made by their homeowners association. The Legislative Committee was contacted in the fall of 2017 by a state representative who wished to provide individual homeowners with a cheap and easy way to remove the offending provisions from the public record. The committee co-chairs met with the representative and her staff, explained that nothing done today could obliterate the historic record, and suggested some ways to make the existing declaratory relief procedure easier.

In December the representative introduced HB 2514 authorizing recordation of a modification document. The bill had four provisions that made it objectionable to WLTA. First, it exempted the modification document from any recording fees, in effect making all other users of recording services subsidize those filing a modification document. Second, it required that the modification document be indexed under the names of the parties involved in the filing the original racially restrictive covenants. This departure from the normal indexing process addressed in RCW 65.04.050 would mean the modification document would be indexed outside the chain of title. Third, the modification would have to include a complete copy of the original recorded document containing the void provision. In other words, to get rid of a decades old racist covenant, the homeowner would place the racist covenant once more in the public records. Finally, the provision of greatest concern required that before the modification document could be recorded, county auditor staff would have to review the original document to verify that they contained a void racially restrictive covenant. In other words, recording operations would grind to a halt while auditor staff tried to locate the void needle in the haystack of a grainy reproduction of ancient plat

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Correspondence and phone calls with the bill's sponsor resulted in her amending it before the first committee hearing to strip out three of the four objectionable provisions. We could not convince her to impose at least a nominal recording fee. The revised bill went on to enactment and the provisions relating to the modification document go into effect January 1, 2019. The Legislative Committee will continue to work with the county auditors to prepare a standard form of the modification document to be used beginning next year.

- **HB 2643 – Repealing the Electronic Authentication Act**

Washington could have been a trendsetter with its first in the nation adoption of the Electronic Authentication Act in 1998. Except no one else joined the trend. Instead, 47 states adopted the Uniform Electronic Transactions Act. The EAA failed to flourish in Washington. Authentication of signatures under the EAA required use of certification authorities licensed by the Washington Secretary of State. But by 2018 no one held a valid license.

HB 2643 did nothing more than repeal the EAA. By itself that would be no loss. But it would place Washington in the unique position of having no state law governing digital signatures (the only two other states not to adopt UETA have their own electronic signature acts). Far better to enact UETA at the same time that the EAA was repealed. The Legislative Committee sent a letter to the sponsor, the committee chair, and the House Speaker, supporting repeal of the EAA, but requested that it be done in tandem with passing UETA.

The House did not amend the bill to add adoption of UETA. But the bill to abolish the EAA went no further. What Washington will ultimately decide to do about electronic signatures is a matter that will have to await a future session of the Legislature.

thank you

The work of the Legislative Committee boils up in an intense flurry with the start of each legislative session and remains at a high tempo for the duration. The co-chairs are busy, but they are by no means the only people working to protect and advance WLTA's interests in the Legislature. New bills must be scanned on a daily basis. Multiple members of the Legislative Committee contributed to the identification and analysis of bills that could affect the land title industry. Dwight Bickel, long time underwriter co-chair of the committee, provided valuable insight and guidance. Stu Halsan, WLTA's lobbyist, was a resource for legislative strategy. He also answered numerous questions about the arcana of the legislative process. Members of the WLTA Board of Directors joined the committee co-chairs in e-mailing members of the Legislature at critical points in the legislative process. Elizabeth Blosser, ALTA's Director of Grassroots & State Government Affairs immediately put out a TAN alert at our request to address concerns with HB 1570, the recording surcharge bill. WLTA members from around the state followed up on the TAN alert to send e-mails regarding HB 1570 to their respective senators. The Legislative Committee's co-chairs thank everyone whose dedication and participation contributed to our efforts this year.

- **HB 2315 – Establishing a Process for Eliminating Registered Land**
- **SB 6057 – Establishing a Recording Standards Commission**

The county auditors were the driving force behind both of these bills. The House bill would have established a process for converting the few thousand properties in just a couple of counties still under the registered land system to the recording system used for the overwhelming majority of properties in the state. The Senate bill would have set up a recording standards commission under the Secretary of State to make rules for uniform recording standards to apply state wide. The commission's membership would have included title industry representatives.

WLTA supported both bills by signing in at committee hearings as being favor. SB 6057, the recording standards commission bill, got off to a promising start, passing the Senate 48-1. There was a companion bill in the House, HB 2316, but it never made it out of the House State Government, Elections & Information Technology Committee. After passing the Senate, SB 6057 wound up in the House's SGE&IT Committee, where it…sat. The Legislative Committee and WLTA board members e-mailed the committee's leadership from both parties urging that the bill be given a "do pass out of committee" recommendation that would have allowed the bill to progress. The House SGE&IT Committee instead referred the bill back to the Senate Rules Committee.

HB 2315, to eliminate registered land, began in the House Judiciary Committee. The bill was hijacked by a committee member who drafted an alternative that would have established a planning group led by the Secretary of State that would make registered land the new standard in Washington. While most measures backed by WLTA are non-partisan, good governance-type proposals, the alternative measure quickly led to a partisan fissure of the Judiciary Committee. The Legislative Committee and WLTA board members e-mailed committee members from the same party as the alternative proponent to try to keep HB 2315 moving forward. Unfortunately the hard partisan split prevented the committee from taking any further action on HB 2315.

With the end of the 2018 session, both HB 2315 and SB 6057 are now dead. It remains to be seen if the auditors will seek to have new legislation introduced in the upcoming 2019 session.

JUDICIARY REPORT

Ashley Callahan, Judiciary Committee Chair

***Garcia v. Henley* – WA Supreme Ct. No. 94511-0 (April 19, 2018).**

Issue:
When can a party obtain the extraordinary remedy of compelling the sale of a neighbor's property (in lieu of ordering ejectment) as a result of an encroachment?

Ruling:
If the encroaching party proves the *Arnold* factors by clear and convincing evidence:
(1) innocent encroachment, not in bad faith;
(2) damage to neighbor is slight, benefit in removal of encroachment is small;
(3) ample room for neighbor's structure and future use of property;
(4) impractical to move encroaching structure;
(5) enormous disparity in hardship.
If these are not proven, order of ejectment may be appropriate.

***Muridan v. Redl* – Ct. of Appeals, Div. II, No. 49436-1-II (March 27, 2018)**

Issue:
A. When does a committed intimate relationship ("CIR") exist?
B. How are assets acquired during the CIR distributed?

Ruling:
A CIR existed between the parties from January 2009 to February 2015 based on the *Connell* factors:

(1) continuous cohabitation;
(2) duration of relationship;
(3) purpose of the relationship;
(4) pooling of resources;
(5) intent of the parties.
Property acquired during the CIR is presumed to be "community-like property" and distributed equally. Presumption may be rebutted if distribution would unjustly enrich one party at the expense of another.

***T & B Washington, Inc. dba Coldwell Banker v. Dullanty & Sawyer*, Ct. of Appeals, Div. III, No. 35036-3-III (May 1, 2018)**

Issue:
Is the superior court's award of $36,510.75 in attorney's fees under RCW 4.84.250 (attorneys' fees as cost in damages actions of $10K or less) to disbursement recipient in interpleader action appropriate?

Ruling:
No. The interpleader action is not an "action for damages" and therefore the attorney fee award was inappropriate. Nor is an attorney fee award appropriate under RCW 4.84.330 (action on contract which provides for attorneys' fee and cost award). The interpleader action was not a suit instituted by either buyer or seller so the real estate contract language providing for damages does not apply.

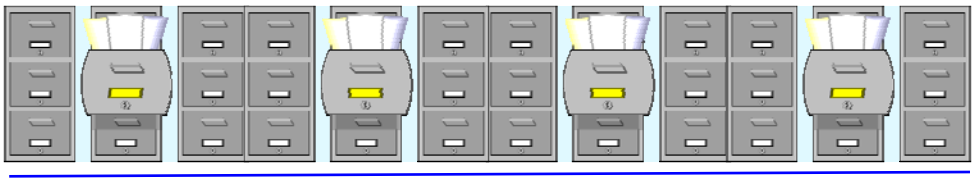
Status of Arnot Cases

In July 2017, the district court (Multnomah County, Oregon) ruled that plaintiff (trustee Arnot) had no standing to pursue relief because his claims of wrongful foreclosure, trespass, and invalid encumbrance were abandoned when the Chapter 7 individual debtor bankruptcy cases were closed (in 2010 and 2011). Arnot appealed. Briefing to 9th Circuit complete. Oral argument date not set.

Arnot's general position:
Claims were not abandoned because they were not listed in Schedule B nor disclosed in the Statement of Financial Affairs.

Defendants' general positions:
(a) the first bankruptcy trustee had adequate experience and evidence in front of him/her to pursue such claims if he/she believed it would be worthwhile and since that trustee did not pursue such claims, they were abandoned as a matter of law;
(b) even if claims not abandoned, affirming dismissal on statute of limitations grounds is appropriate (avoiding transfer is 2-year SOL);
(c) adopting Arnot's arguments destabilizes the land title and ownership records which rely on finality of bankruptcy closures, the resulting harm of which outweighs Arnot's claims.

Washington Land Title Association
http://wltaonline.org
PO Box 328, Lynnwood, WA 98046 (mail)
6817 208th St SW, #328, Lynnwood, WA 98036 (deliveries)
Contact: George Peters
206-437-5869 (Mobile)
206-260-4731 (Fax)
execdirector@wltaonline.org



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