



The Escrow Closer's Guide to Clearing Title

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NW Regional Underwriting
Counsel

Our mission is to provide knowledgeable and responsive underwriting solutions to support our network of title insurance agents across America. Title Resources is dedicated to growing lifelong relationships and maintaining quality through integrity and financial stability.

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Escrow closers clear title!



Escrow closers perform many functions, including the important task of title clearance!

- Request payoffs
- Make payments according to the demand
- Obtain releases; and
- **Clear title!**



QUIZ: 'Clearing' Title Scenarios

**How much do you know
about clearing title?**

Keep score:

**Number your paper
1 through 16.**





Scenario A – \$500 Dollar Criminal Judgment

Rule: Judgment from a criminal sentence for a crime committed July 1, 2000 or later remains in effect until fully satisfied. RCW 4.56.190.





Scenario A – \$500 Dollar Criminal Judgment

Facts: A King County title commitment shows an exception for a \$500 criminal judgment for possession of marijuana 9 ½ years ago.



- 1. Should the exception be retained or cleared?
Why?**



Scenario B – \$20,000 Civil Judgment for ‘Slip and Fall’

Rule: Judgments are a lien against debtor’s real estate for ten years from date of entry, unless the judgment is extended for an additional ten years within 90 days before the judgment expires.

- **RCW 4.56.190**
- **RCW 6.17.020(1) & (3)**





Scenario B – \$20,000 Civil Judgment for ‘Slip and Fall’

Facts: In August 2008, Dizzy obtained a \$20,000 judgment against Zero after falling on Zero’s icy front steps. In September 2018, Dizzy extended the judgment for an additional ten years; now Zero’s refi commitment shows an exception for the \$20,000 judgment.



2. Should the exception be retained or cleared? Why?



Scenario C – \$46,000 Judgment Before Bankruptcy

Rule: Judgments obtained before a bankruptcy petition is filed, listed as a debt in the bankruptcy petition, and discharged in bankruptcy do not attach to debtor's post-bankruptcy petition real property.





Scenario C – \$46,000 Judgment Before Bankruptcy

Facts: In 2016, Big Bank obtained a credit card judgment against Deb for \$46,000. In 2017, Deb filed bankruptcy, listed Big Bank's debt in the bankruptcy petition, and the debt was discharged. Deb did not obtain an order to avoid the judgment. In 2018, Deb decides to buy a new home. Deb's commitment shows an exception for the \$46,000 judgment.

3. Should the exception be retained or cleared? Why?





Scenario D – 1980 Unfulfilled Real Estate Contract

Rules: Real estate contract sellers hold bare legal title, and real estate contract purchasers hold their interest subject to the seller's right to forfeit the contract. Chapter 61.30 RCW. When the contract is paid in full, the sellers issue a fulfillment deed vesting title in the purchasers; the fulfillment deed should be recorded.





Scenario D – 1980 Unfulfilled Real Estate Contract

Facts: Barb bought a home under a real estate contract from Sally in 1980. Barb paid off the contract in 2010, but Sally didn't issue a Fulfillment Deed.

Now, Brett wants to buy Barb's home to for cash and agrees to purchase the home subject to the real estate contract. Brett's commitment shows an exception for the real estate contract.





Scenario D – 1980 Unfulfilled Real Estate Contract

4. Should the real estate contract exception be retained or cleared?





Scenario D – 1980 Unfulfilled Real Estate Contract

5. Who should be the proposed insured in Brett's commitment?





Scenario D – 1980 Unfulfilled Real Estate Contract

6. The purchase and sale agreement calls for a Warranty Deed. Can you prepare a Warranty Deed from Barb to Brett? Why or why not?





Scenario D – 1980 Unfulfilled Real Estate Contract

Barb should give Brett a Deed and Purchaser's Assignment of Contract.

7. Can an LPO prepare that document?





Scenario D – 1980 Unfulfilled Real Estate Contract

8. Who will be vested in title in Bob's owner's policy?

- Sally
- Barb, or
- Brett?





Scenario D – 1980 Unfulfilled Real Estate Contract

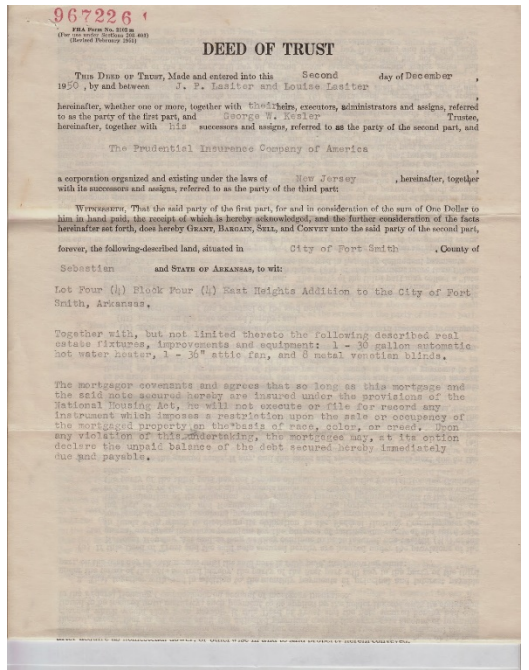
- **Before closing, amend the PSA to show that a DPAC will be prepared by Barb outside of closing.**
- **In the commitment, Brett should initial the REK exception to confirm acceptance.**
- **At closing, Brett should initial the DPAC to confirm acceptance of the form and content of the document.**





Scenario E – Old Deed of Trust Can't be Cleared Before Closing

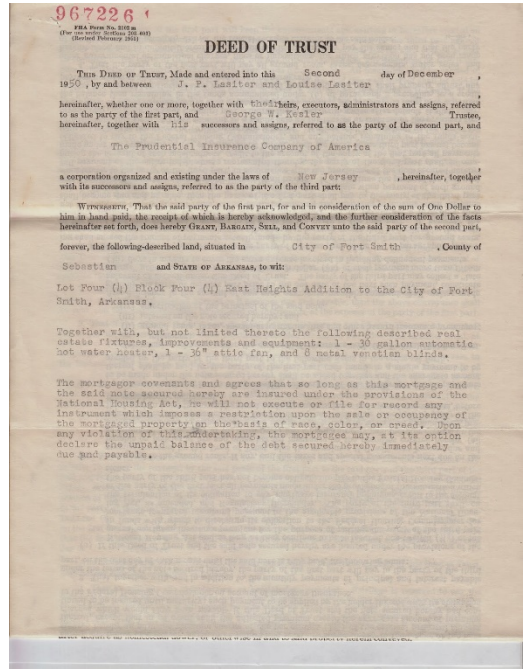
Rule: The trustee of record shall reconvey...the property encumbered by the deed of trust to the person entitled thereto (the grantor/borrower) on written request of the beneficiary (the lender), or upon satisfaction of the obligation secured and written request for reconveyance made by the beneficiary or the person entitled thereto. RCW 61.24.110.





Scenario E – Old Deed of Trust Can't be Cleared Before Closing

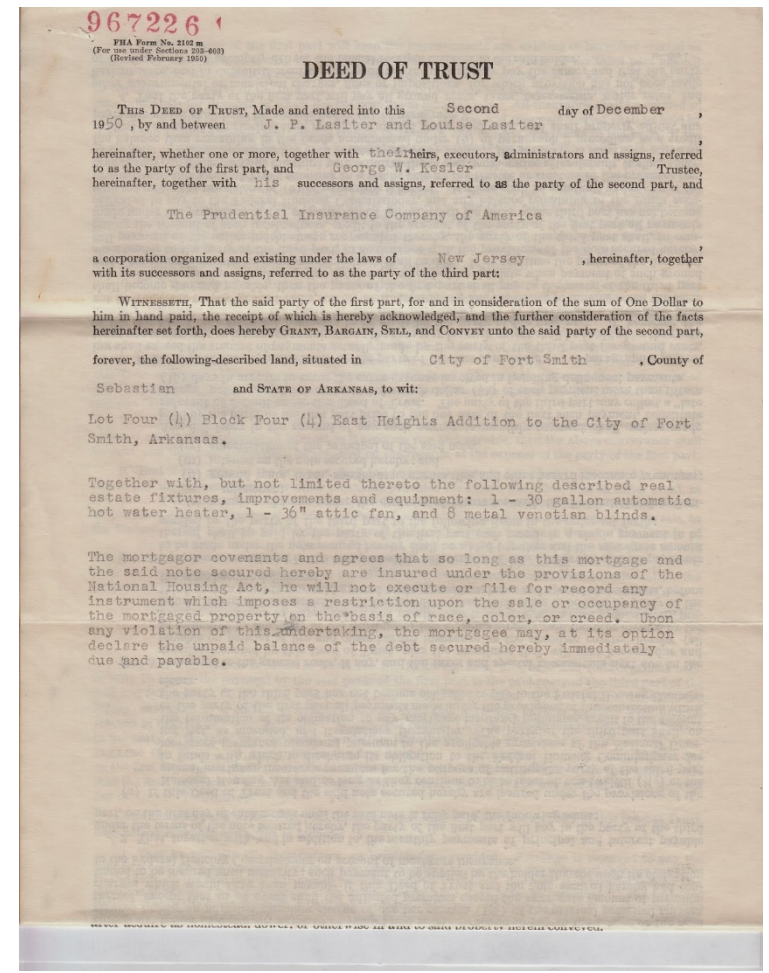
Facts: In 1983, Carol bought her home from Effie; to purchase the home Carol executed a note and deed of trust to Effie in the amount of \$26,000. In 2017, Carol decided to sell her home, and Carol's title commitment showed the old deed of trust. Carol was sure she had paid the note in full, but Carol had no record of that. Because the closer couldn't locate Effie to obtain a payoff, the title company agreed to do a \$50,000 holdback to allow the seller to clear title after closing.





Scenario E – Old Deed of Trust Can't be Cleared Before Closing

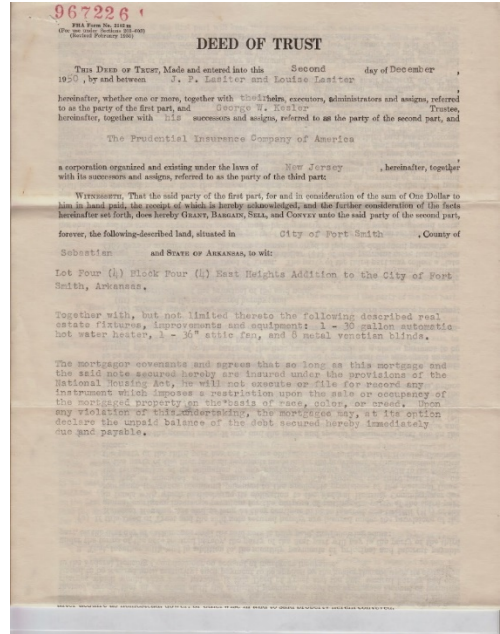
9. Should the exception in the commitment for the old \$26,000 deed of trust be retained or cleared in the title commitment? Why?





Scenario E – Old Deed of Trust Can't be Cleared Before Closing

After closing, Carolyn died, and Carolyn's son Sonny contacted the underwriter to discuss his options. Sonny had been going through Carolyn's records and found the original note and deed of trust, marked paid in full. The contract collection company had returned the documents in 1986 and advised Carolyn to contact the trustee and request a reconveyance. **OOPS! That never happened!!**





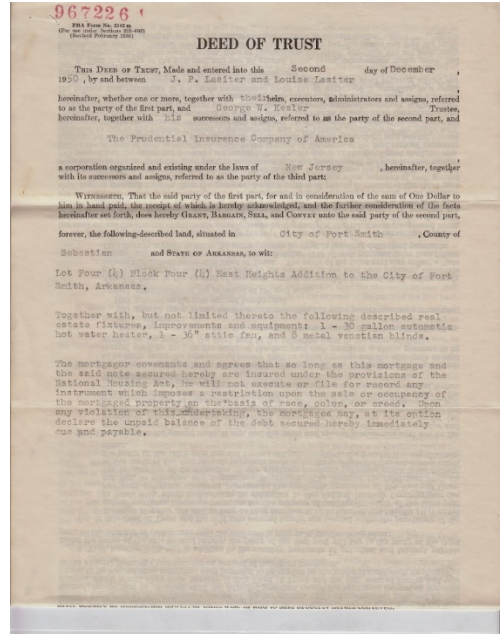
Scenario E – Old Deed of Trust Can't be Cleared Before Closing

The underwriter agreed to accept two documents signed by Sonny:

- An Appointment of Successor Trustee; and
- A Request for Reconveyance.

Thereafter, the new Trustee executed and recorded a Reconveyance with Satisfaction.

10. Was this the right way to clear title of the \$26,000 Deed of Trust? Why or why not?

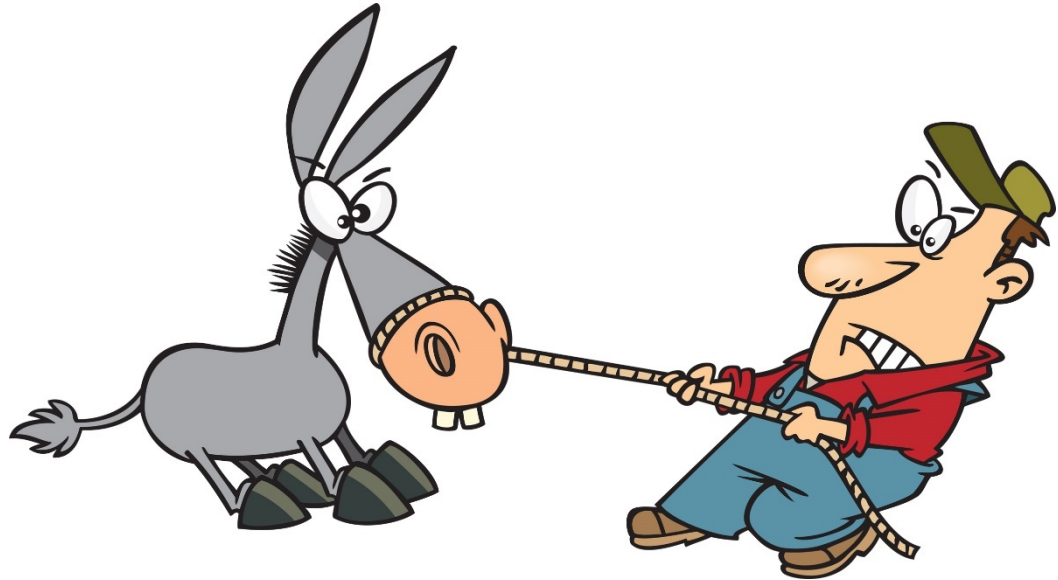




Scenario F – Banks Can Be Stubborn!

Rule: The trustee of record shall reconvey...the property encumbered by the deed of trust to the person entitled thereto (the grantor/borrower) on written request of the beneficiary (the lender)...[.]

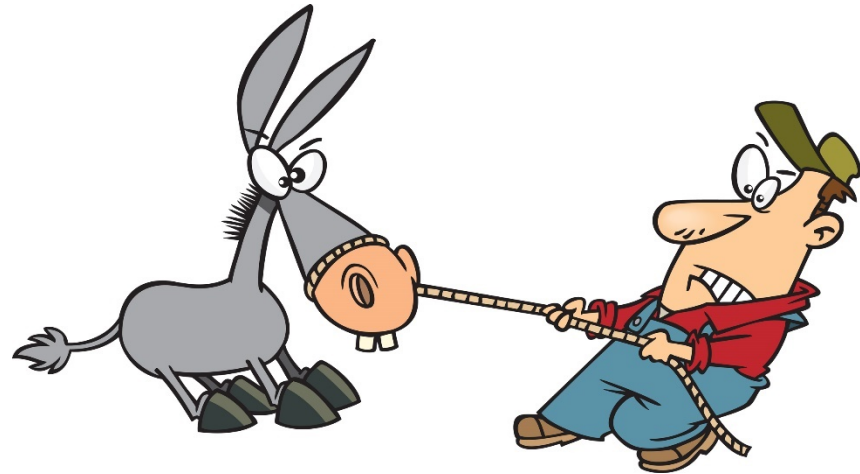
RCW 61.24.110.





Scenario F – Banks Can Be Stubborn!

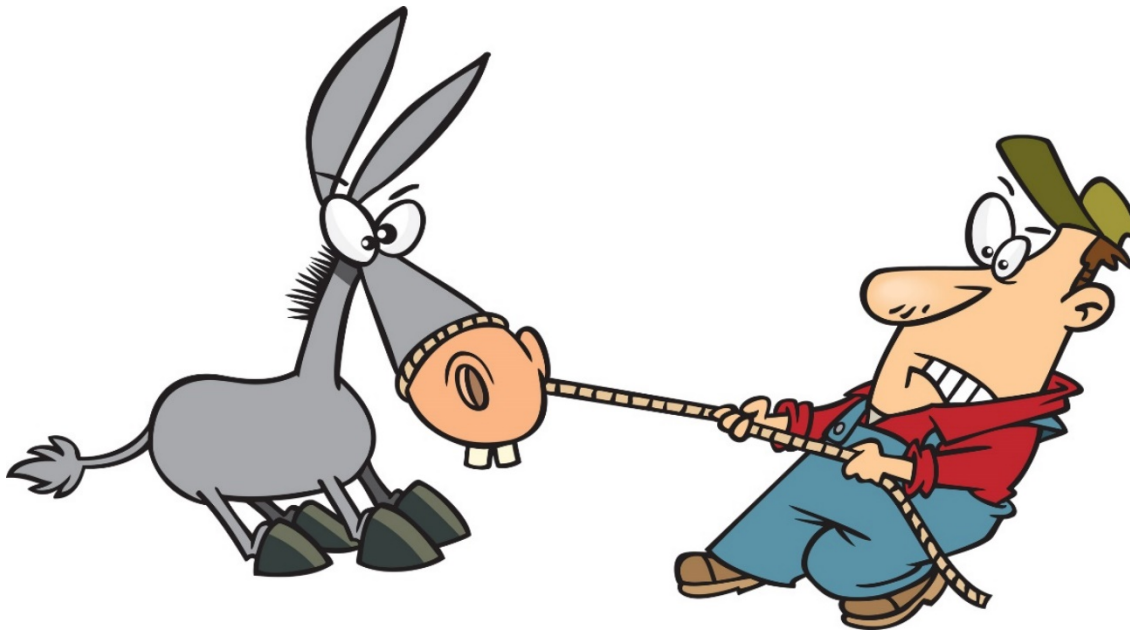
Facts 1: Sam the seller's title commitment shows a 23-year old, \$90,000 deed of trust from Seller to Bankers Trust Company, as Trustee. Closer attempts to obtain a payoff, but lender states it will take them 4 to 6 weeks to research and process. To close the transaction, underwriter agrees to accept a secured indemnity with a holdback of \$145,000.





Scenario F – Banks Can Be Stubborn!

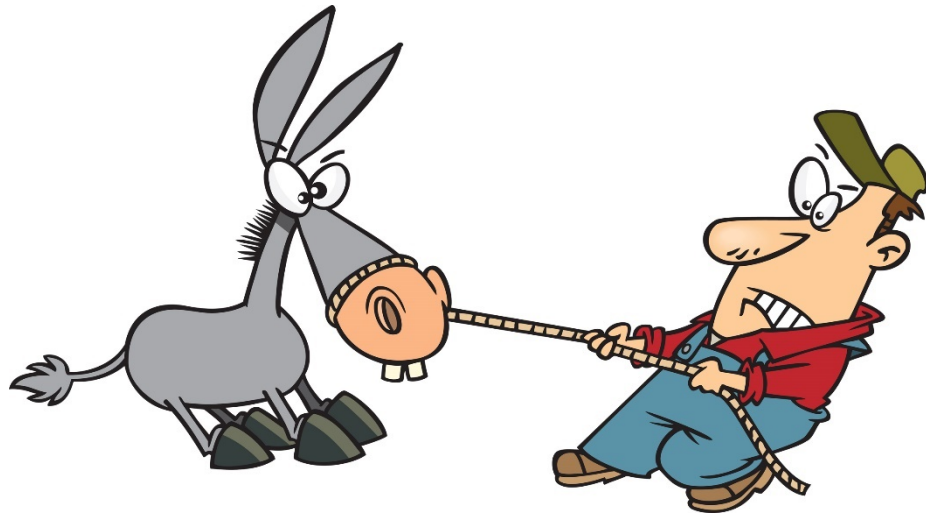
Facts 2: At closing Sam the Seller and Betty the Buyer agree to cooperate in filing a QTA at Seller's expense, if needed. After closing Sam hires an attorney to help him obtain the reconveyance of the 1995 deed of trust or do a QTA.





Scenario F – Banks Can Be Stubborn!

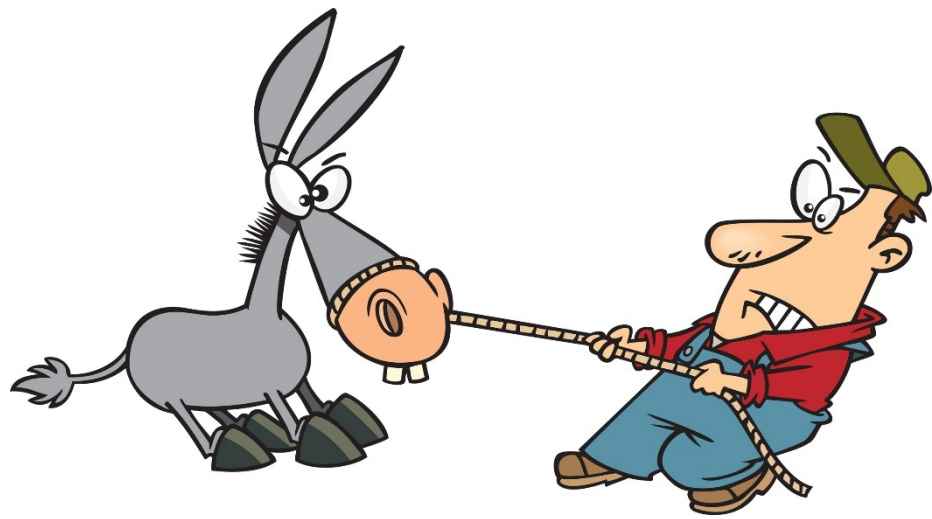
Sam's attorney Alex discovers that Banker's Trust recently sold a portion of its assets to Deutsche Bank, and this deed of trust was among them. Alex confirmed with Banker's Trust *and* with Deutsch Bank that no balance was due under the note and deed of trust, but *neither* Bank was willing to sign a Request for Reconveyance.





Scenario F – Banks Can Be Stubborn!

Underwriter offered to accept an Appointment of Successor Trustee and a Request for Reconveyance *without Satisfaction* – both signed by Deutsch Bank.



**Deutsch Bank said, “No.”
The attorney shared that the only thing Deutsch Bank was willing to sign was a Release of Lien with Satisfaction.**

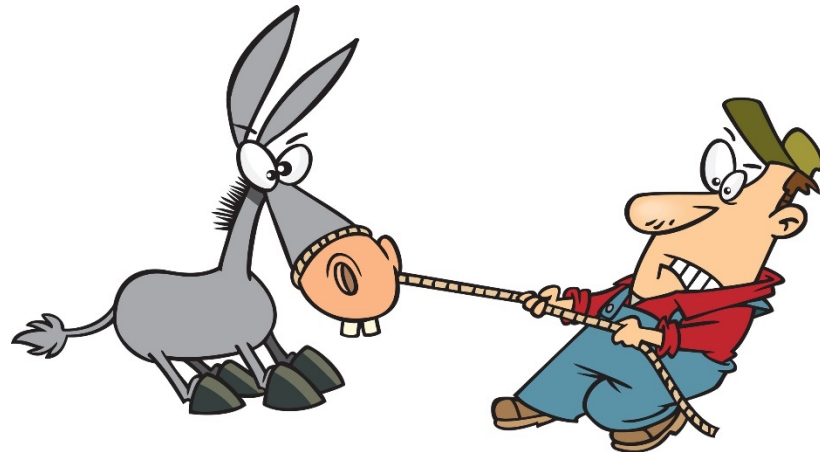
NO!



Scenario F – Banks Can Be Stubborn!

A Release of Lien with Satisfaction was signed by Deutsch Bank and recorded. The Cover Page of the Release of Lien referenced the Deed of Trust being “released”.

11. Was the Release of Lien with Satisfaction the correct document to clear the lien of the Deed of Trust? Why or why not?

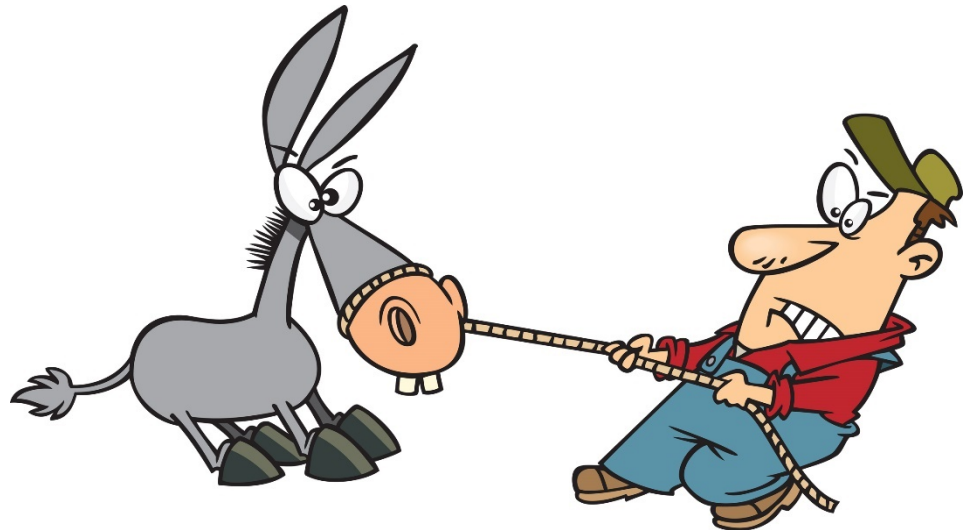




Scenario F – Banks Can Be Stubborn!

Later, I received a call from Betty, the Buyer, who said that she didn't think a Release of Lien with Satisfaction cleared the deed of trust from her title.

I agreed, but said that if it ever becomes an issue she could bring a transaction to Title Resources and we'd insure over the old deed of trust.





Scenario G – Wrong WAC Code

Rule: Generally, a gift of real property is not subject to the REET. A gift is a transfer for which there is no consideration. If consideration is given, the transfer is subject to the extent of consideration received. WAC 458-61A-201(1).





Scenario G – Wrong WAC Code

Facts 1: January 4, 2000, Grace purchased a home subject to a Deed of Trust. Five years later, Grace quit claimed the home to Ruby for love and affection. The REET filed with the QCD stated that Ruby had been making payments on the Deed of Trust and that the transaction was exempt from REET under WAC-61-550, the nominee code.





Scenario G – Wrong WAC Code

Facts 2: The REET Affidavit was approved and a nominal excise amount was paid.

Ten days later on January 13, 2005 Ruby refinanced the home for slightly more than its value.



12. Should the QCD be approved and title vested in Ruby? Why or why not?

13. Should the title company ask that the REET Affidavit be corrected? Why or why not?



Scenario G – Wrong WAC Code

**Under the nominee code
WAC 458-61-550 no REET
was due.**



**Under WAC 458-61A-201(1) &
(6)(c)(vii) no REET *would* be
due.**

**Wrong WAC code, same
result!**



Scenario H – Purchase Money Mortgages

Rule 1: A purchase money mortgage or a purchase money deed of trust takes priority over a judgment against the purchaser, even though the judgment is prior in time. Bisbee v. Carey, 17 Wash. 224 (1897).

Rule 2: Purchase money mortgages take priority over federal tax liens. See Revenue Ruling 68-57.





Scenario H – Purchase Money Mortgages

Rule 3: A purchase money mortgage takes priority only to the extent the funds disbursed to the purchaser are used to purchase the real property.





Scenario H – Purchase Money Mortgages

Facts X: The title commitment shows a judgment against Burt the Buyer in the amount of \$40,000. Burt plans to buy for \$250,000 and borrow \$225,00 to finance the purchase.

- 14. Should the judgment be retained or cleared from Burt's owner policy of title insurance? Why or why not?**
- 15. Should the judgment be retained or cleared from Burt's loan policy of title insurance? Why or why not?**





Scenario H – Purchase Money Mortgages

Facts Y: The title commitment shows a judgment against Burt the Buyer in the amount of \$40,000. The purchase price is \$250,000, and Burt is taking out two loans: a first for \$200,000 and a second for \$100,000.

16. Should the judgment be retained or cleared from Burt's loan policy of title insurance? Why or why not?





Tips & Tricks for Clearing Title – Heir Searches

International Genealogical Search, Inc.

Canada

2985 Virtual Way, 4th Floor

Vancouver, BC

V5M4X7

604-654-6700

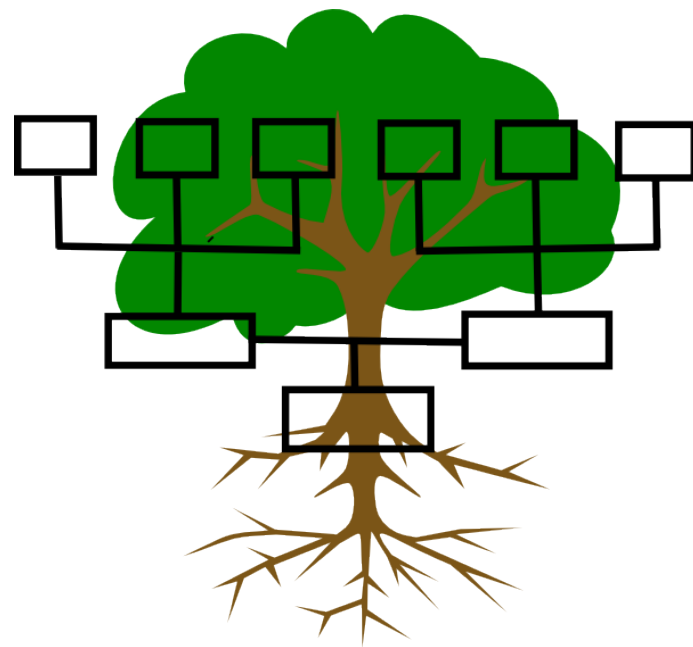
US

PO Box 34000

Seattle, WA 98124-1000

206-292-9697

800-663-2255 (Dec. 2014)





Tips & Tricks for Clearing Title – FDIC Failed Bank List

FDIC Failed Bank List

<https://www.fdic.gov/bank/individual/failed/banklist.html>





Tips & Tricks for Clearing Title – Secured Indemnity Agreements

Secured Indemnity Agreements must:

- **Authorize title company in its sole discretion to pay the debt, hire counsel, or interplead funds into court**
- **If indemnitor an LLC, be signed and acknowledged by members in their corporate capacity and by members and their spouses individually; include the individuals phone numbers and home addresses**
- **If individuals, be signed by husband and wife, include phone number and home address, and be acknowledged**





Title Clearing – Questions?

