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The Washington Trust and Estate Dispute Resolution Act, a Very Practical Tool for All Washington Attorneys

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The Washington Trust and Estate Dispute Resolution Act (“TEDRA”) has become a very practical tool for all Washington attorneys over its nine-year history in the Revised Code of Washington. Although TEDRA was adopted through the evolution and expansion of the Washington legislature’s continuing efforts to create a manageable process for resolving trust and estate disputes, TEDRA provides more flexibility and direction to practitioners than its prior counterparts.

A. A Brief History of the Trust and Estate Dispute Resolution Act

In 1999, the Washington legislature enacted the Trust and Estate Dispute Resolution Act. TEDRA serves as an expansion of the Washington Trust Act of 1984 (the “1984 Trust Act”), which had the major accomplishment of creating a non-judicial dispute resolution process for trusts and estates. Specifically, RCW 11.96.170 stated that disputes arising from the terms of a trust or estate could be resolved through a non-judicial process, provided all interested parties reached a written agreement as to the appropriate resolution. The 1984 Trust Act further provided that if the parties filed the written agreement with the court, specifically setting forth the key terms of the agreement, it would have the same effect as a final court order with respect to the individual rights of the parties. Another major aspect of the 1984 Trust Act was the doctrine of virtual representation, which allowed the court to appoint a special representative who had the authority to represent the interests of minors and unborn children and make the agreement binding. Although the 1984 Trust Act was an attempt to consolidate the various statutory provisions

that were in existence regarding trust and estate dispute resolution, another special legislative committee was formed to evaluate the efficiency of the 1984 Trust Act and analyze the trust and estate laws of other states.

TEDRA was adopted by the Washington legislature during the 1999 legislative session, and although it was signed into law by Governor Gary Locke on April 20, 1999, the statutes did not become effective until January 1, 2000. The intended purpose of TEDRA was to address the problems that arose with the 1984 Trust Act; to provide more streamlined non-judicial processes for resolving trust and estate disputes through alternative procedures including mediation, arbitration, and agreement; and to allow judicial methods where other methods had proven unsuccessful. However, it is important to note that the TEDRA provisions “shall not supersede, but shall supplement, any otherwise applicable provisions and procedures contained in this title....”¹ Effectively, TEDRA rules are default rules where there are no other rules with respect to the specific circumstance.

For instance, although TEDRA applies to will contests, it does not alter the notice procedures set forth in RCW 11.24. In 2006, the Washington State Supreme Court had the opportunity to evaluate the applicability of this rule in a case where an interested party filed a petition to set a will aside, but failed to issue a citation to the personal representative as required by RCW 11.24.020 until two years after the petition was filed.² The Court found that “both TEDRA and RCW 11.96A.100(2) explicitly disavow any intention to alter the notice procedures in a will

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contest.”³ Specifically, RCW 11.24.020 provides that a party contesting a will must provide notice to all interested parties, including the personal representative,⁴ and thus the Court held that “TEDRA cannot eliminate that requirement without superseding RCW 11.24.020.”⁵

The culmination of statutes which comprise TEDRA are codified at RCW 11.96A. Under the TEDRA statutes, the Court has the authority to administer and settle “[a]ll matters concerning the estates and assets of incapacitated, missing, and deceased persons, including matters involving non-probate assets and powers of attorney” and “[a]ll trust and trust matters.”⁶ Similar to the 1984 Trust Act, the interested parties may establish a binding agreement to resolve any and all matters with regard to settlement of the trust or estate through non-judicial means.⁷ The agreement may be kept confidential from the public and from successor beneficiaries and may be filed without presenting it to a judge. However, when an agreement is filed with the court, it will be deemed approved by the court, and has the same effect as a final court order binding all interested persons. The current TEDRA statutes provide trustors, trustees, trust beneficiaries, and all other interested parties with a very useful tool in managing and amending estates and trusts when the facts of the situation have changed so as to warrant such modifications.

B. Judicial Proceeding

TEDRA applies to a number of issues which may arise during the administration of an estate, and pursuant to the terms of the statutes, a party may file a petition for resolution of an issue at any time during the administration of the estate.⁸ To commence a judicial action under TEDRA, a party must file a petition with the Superior Court in the county where the probate has been filed.⁹ However, if the parties are involved in an existing judicial proceeding with regard to the same trust or estate, then only those parties who are not currently involved in the ongoing proceeding must be served with a summons.¹⁰ The answer must be filed with the court and must be served on the parties or the parties’ virtual representatives at least five (5) days prior to the initial hearing.¹¹ The initial hearing is a hearing on the merits in which the court will decide all factual issues and resolve all issues of law.¹² However, if the initial hearing is not on the merits or does not resolve all factual or legal issues, the court may enter an order to “(a) resolve such issues as it deems proper, (b) determine the scope of discovery, and (c) set a schedule for further proceedings for the prompt resolution of the matter.”¹³

C. Virtual Representation

In order to streamline complicated estate proceedings, and ensure that all interested parties are represented in the judicial hearing or by the non-judicial resolution, the legislature adopted the common law doctrine of virtual representation. The common law process provided that the court would appoint a formal guardian ad litem, who would in turn represent the interests of all

unascertained or future unborn beneficiaries. The 1984 Trust Act codified the common law doctrine of virtual representation and provided that current beneficiaries could represent the interests of the unascertained and unborn beneficiaries provided there were no conflicts of interest. Although the 1984 Trust Act introduced the concept of appointing a special representative to represent the interests of unascertained or unborn beneficiaries as was provided for under the common law, TEDRA broadened the special representative’s authority and clarified the application of the doctrine of virtual representation.

Under TEDRA, a personal representative or trustee can petition the court to appoint a special representative to “represent a person who is interested in the estate or trust and: (i) [w]ho is a minor; (ii) who is incompetent or disabled; (iii) who is yet unborn or unascertained; or (iv) whose identity or address is unknown.”¹⁴ Moreover, pursuant to the Statute, the special representative has the express authority to enter into a binding agreement “on behalf of the person or beneficiary” and may represent the interests of “more than one person or class of persons.”¹⁵ Finally, it is essential to note that under the terms of TEDRA, notice to a special representative constitutes notice to those parties that he or she represents.¹⁶

The appointment of a special representative is an essential element of TEDRA in that it specifically protects the interests of unborn or unascertained beneficiaries by preventing the named beneficiaries from expressly excluding potential interested parties. This statutory provision ensures that an agreement created by present beneficiaries encompasses the interests of future beneficiaries and all interested parties.

D. Attorney Fees

With regard to attorney fees, Washington follows the American rule that a prevailing party is not entitled to attorney fees unless specifically authorized by contract, statute, or as a recognized ground in equity. Although TEDRA expressly repealed the provisions of RCW 11.96, the legislature clarified the award of general attorney fees in Title 11, and provided additional attorney fees in certain specific situations.

Prior to the adoption of TEDRA, the award of attorney fees was governed by RCW 11.96.140. The award of general attorney fees under TEDRA varies from the prior law in three ways: “(1) the standard by which the court exercises its discretion was changed from ‘as justice may require’ to ‘as the court determines equitable’ ...; (2) it clarifies the source from which the court may award fees ...; and (3) it clarifies that the general attorneys’ fees provision applies to guardianships ...”¹⁷ When exercising its discretion, “the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.”¹⁸ Should the court elect to award attorney fees, RCW

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11.96A.150 provides that the court may order costs and attorney fees to any party “(a) [f]rom any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any non-probate asset that is the subject of the proceedings.”¹⁹

E. Using TEDRA to Revoke or Modify Irrevocable Trusts²⁰

Since its inception, TEDRA has become a useful tool in the arena of estate planning, and estate and trust administration. It has provided the ability to easily remedy that which could not have previously been repaired without a court order, if at all. TEDRA has also provided beneficiaries with the tools necessary to modify or revoke irrevocable trusts in the event that a change of circumstance required such a change.

Although the purpose of establishing a trust as irrevocable is to ensure that the benefits of the trust transcend the trustor’s ability to manage and dictate the use of his property, there are some instances in which it makes sense to modify or even revoke the trust. All trusts are created for a specific purpose, whether that purpose is to protect assets from the trustor’s creditors, protect the assets in the event of the trustor’s failing health, or simply to receive specific tax treatment. However, the creation of the trust for planning purposes is made knowing only the facts at the time of its creation; no one knows how the trustor’s and beneficiaries’ lives may change, or what changes may occur in the law. Through the use of TEDRA, Washington law has evolved to allow trustors, beneficiaries, and trustees to improve upon and modify that which was once considered the best approach.

Prior to the adoption of the 1984 Trust Act, the modification of an irrevocable trust was restricted; in fact the Washington Supreme Court went so far as to state that the “rule that a trust is indestructible after the decease of the settlor is a recognition of the power of the donor to reach into the future and control his donees and their methods of enjoyment.”²¹ Under Washington law, only three reasons were generally cited as grounds for judicial termination of an irrevocable trust: (1) the purpose of the trust had been accomplished; (2) accomplishing the purpose of the trust had become impossible; or (3) the purpose of the trust was or had become unlawful or illegal.

As previously discussed, the adoption of TEDRA in 1999 significantly broadened the scope of the 1984 Trust Act. By broadening the original act, the issues which were allowed to be resolved by binding agreement of the parties expanded to include any question or dispute among the parties.²² In addition, the requirement that the modifications be consistent with the purposes of the will or trust was removed.²³ By the adoption of the modifications under TEDRA, Washington enacted an expanded version of the provisions set forth in *Saunders v. Vautier*.²⁴ In *Saunders*, the court held that the termination of a trust was allowed upon the request of the beneficiary if the beneficiary had an absolute indefeasible interest in the legacy, and is of legal age and not otherwise incapacitated. In effect, the court no longer looks to the interest of the trustor when determining whether an irrevocable trust may be revoked. In fact, provided all of the parties agree, TEDRA is frequently used to revoke an irrevocable trust. Under the current TEDRA provisions, all of the interested parties in an irrevocable trust may consent to the modification of distribution, administration, or any other provision of the trust, even its revocation.

The ability of the beneficiaries and trustees to revoke or amend a previously irrevocable trust provides them with a valuable tool in estate and wealth management planning. For example, a beneficiary of a highly funded trust may desire to remove his or her rights to the trust benefits as a planning tool for Medicaid eligibility, estate tax planning or even providing lifetime benefits to the beneficiary’s children during the beneficiary’s life. TEDRA also allows the beneficiaries to agree upon a new trustee in the event that the trustee is no longer able to serve, or following the death of the current trustee, the successor is no longer a desirable candidate. In effect, TEDRA provides beneficiaries of a trust with

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the ability to deal with issues that arise which may not have been foreseeable when the trust was formed.

Notwithstanding the ability of an irrevocable trust to be modified using TEDRA, some trustors may desire to draft a trust in a manner to avoid irrevocability. For instance, the trustor may have established a trust for the benefit of his children, with the intent that the corpus be managed for their benefit, due to their inability to manage the funds. Subsequently, the adult children could agree with the trustee, through a non-judicial agreement, to revoke the trust and distribute the funds directly to the children. This would fly in the face of the intent of the trustor; however, pursuant to the statutory scheme of TEDRA such an action would be entirely legal, and the spendthrifts would have access to the funds which were to be protected for their benefit. In regard to this type of situation, it has been suggested that adding the following language: "I direct my trustee not to participate in, or consent to, any attempt to terminate or otherwise change the beneficial interests in the trust pursuant to the Trust and Estate Dispute Resolution Act, Chapter 11.96A, RCW, or any similar law." It is possible that such a provision may serve as a statement of the intent of the trustor and eliminate changes to the trust by agreement or court action.

F. Practice Tips

When using TEDRA in practice there are several pitfalls that may snare the unwary practitioner in drafting the non-judicial dispute resolution, or preparing the necessary documents for a judicial hearing. It is specifically important that the practitioner be aware of the operation of the statute²⁵ as it applies to the particular situation.

One major pitfall can occur when the practitioner fails to identify all of the parties necessary for a binding agreement or for notice of a judicial hearing. Under TEDRA, the definition of "parties" provides a detailed and exhaustive list, which includes: the trustor, trustee, personal representative, heirs, beneficiaries, surviving spouse with an interest in the decedent's property, guardian ad litem, creditor, in some cases the state attorney general, any appointed special representative, and any other person who may have an interest in the subject matter or the proceeding.²⁶ The failure to identify and bind all of the parties necessary may result in an unwinding of the agreement or judicial proceedings in the future. It is important to review the estate or the trust document to confirm that all of the necessary and affected parties have been properly identified and are represented. Furthermore, where a conflict of interest may exist, counsel should confirm that any necessary special representatives, when dealing with a non-judicial binding agreement, or guardian ad litem, when dealing with judicial proceedings, have been properly appointed.

In a situation where the trustor has named a charity as a current, future or potential beneficiary, the Washington State Attorney General may need to be notified and approve of the

agreement.²⁷ In the event that the Washington Attorney General is a necessary party to the agreement, the practitioner should contact the Attorney General's office as early as possible in order to identify the appropriate contact party, and to set forth the timeframe necessary for the Attorney General's office to process and return the agreement.

Furthermore, the practitioner should also be aware of RCW 11.96A.220 which sets forth the requirements necessary for creating a binding agreement under TEDRA.²⁸ Specifically, the agreement must clearly identify the subject matter of the dispute and name all of the parties.²⁹ In addition, although not required, the agreement should also include provisions addressing jurisdiction, governing law, waiver of notice of filing, and the discharge of any special representative who has acted with respect to the agreement. These additional required inclusions are especially important if the agreement is to be filed with the court pursuant to RCW 11.96A.240.

Finally, where TEDRA is to be used in the context of court proceedings, it is especially important that the practitioner be aware of the intertwining between the RCW's and the specific provisions of 11.96A. As discussed, TEDRA merely supplements other statutes, and as such, the provisions of RCW 11.96A may stray from the actual applicable statute in many situations. It is also particularly important to understand how TEDRA affects the application of many other provisions of the Revised Code of Washington where the subject involves a trust or estate.

G. Conclusion

As discussed, TEDRA may be used to resolve trust and estate disputes, modify trusts and estates to account for changes which could not have been anticipated by the trustor in establishing the trust, and account for a variety of other issues involving trusts and estates. Under TEDRA, a binding non-judicial agreement can be used to terminate or modify an irrevocable trust, modify or clarify the distribution of a decedent's estate, or modify the dispositive plan or appointment of a trustee as set forth in a trust agreement. TEDRA also sets forth a guide for dealing with trust and estate disputes which involve judicial proceedings, and addresses the intertwining of RCW 11.96A with several other provisions of the Revised Code of Washington. Provided that the practitioner is aware of and understands the provisions of TEDRA as set forth in RCW 11.96A *et al*, TEDRA provides a very flexible and powerful tool in managing and resolving many issues which may arise with respect to estates and trusts.

1 RCW 11.96A.080(2).

2 See *In re Estate of Kordon*, 157 Wn.2d 206, 137 P.3d 16 (2006).

3 *Id.* at 212.

4 RCW 11.24.020.

5 *Estate of Kordon*, *supra* note 4, at 212.

6 RCW 11.96A.020.

7 RCW 11.96A.220.

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Supreme Court Accepts Review of Two Decisions Related to Limited Liability Company Dissolution Liability

by William A. Linton – *Inslee Best Doezie & Ryder P.S., Bellevue*

In *Ballard Square*,¹ our Supreme Court acknowledged the common law rule providing that lawsuits cannot be maintained by or against dissolved corporations. However, it tempered application of the rule by holding that RCW 23B allowed claims against dissolved corporations at the time the plaintiffs filed their case. It then held that the 2006 legislative revisions to RCW 23B.14.340 applied retroactively to bar the condominium association's lawsuit against the dissolved corporate developer effectively giving relief with one hand and taking with the other.

At first glance the *Ballard Square* decision addresses only claims against dissolved corporations, but subsequent decisions by the Court of Appeals have applied *Ballard Square* to claims against dissolved limited liability companies. Now the Supreme Court has accepted review of two of those decisions, *Chadwick Farms*,² and *Emily Lane*.³

Prior to the 2006 amendments to RCW 23B.14.340 and the *Ballard Square* decision, it was widely thought that if a corporation dissolved and was not sued within two years, any suit by claimants would be barred by RCW 23B.14.340. There was some (but not

definitive) authority for this view based upon the question of whether the two year limitation would apply to claims that mature or arise after dissolution.⁴ The open question was whether the statute could be applied to claims or liabilities that related to events that occurred prior to dissolution but matured after dissolution. The Court of Appeals settled the matter by holding that the Ballard Square Condominium Association's claims for construction defects related to pre-dissolution events, but arose after dissolution and were not subject to the two-year limitation of RCW 23B.14.340. This holding was upheld by the Supreme Court.

The developer in *Ballard Square* countered that because the old RCW 23B.14.340 applies only to claims that arise prior to dissolution, the common law rule that a dissolved corporation could not be sued because it was a non-existent entity should apply. The Court of Appeals agreed. The Supreme Court disagreed, holding that the pre amendment version of RCW 23B.14.050(2)(e) provided a statutory right to file a lawsuit against a dissolved corporation.⁵

However, in 2006 the legislature amended RCW 23B.14.340 to require that any lawsuit against a corporation dissolved prior to June 7, 2006, be filed within two years of dissolution. The Supreme Court held that this amendment was clearly intended to apply retroactively. Thus, the Supreme Court concluded that while the pre-amendment statutes would have allowed the association's breach of contract claims, the new statute precluded them.

The holding of *Ballard Square* has not been restricted to corporations. At the same time the legislature revised RCW 23B.14.340, it similarly revised RCW 25.15 in an attempt to ameliorate the effect of the common law rule precluding suits against dissolved entities.

The revised RCW 25.15.303 provides that a limited liability company can be sued by claimants for three years after dissolution. In a three-part decision in *Chadwick Farms*, the Court of Appeals applied the 2006 amendment to RCW 25.15.303 retroactively based in part upon the Supreme Court's holding in *Ballard Square*. In the first part of the decision, the Court of Appeals upheld a condominium association's right to sue for three years after dissolution. A key point to this holding was the court's interpretation of the term "dissolution." The developer LLC argued that the three-year period allowed by RCW 25.15.303 was irrelevant to a "cancelled" LLC because other parts of the statute allowed various winding up procedures. The court noted the difference between a dissolved corporation and a dissolved limited liability company. But it held that similar to *Ballard Square*, the winding-up period between dissolution and cancellation does not affect the remedial nature of the three-year limitation period. Thus, the claimant against a dissolved LLC has

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8 RCW 11.96A.100(1).

9 RCW 11.96A.090.

10 RCW 11.96A.100(1), (2).

11 RCW 11.96A.100(5).

12 RCW 11.96A.100(8).

13 RCW 11.96A.100(10).

14 RCW 11.96A.250(1)(a).

15 RCW 11.96A.250(c).

16 RCW 11.96A.120.

17 Scott A. W. Johnson, *Attorneys' Fees in Trust and Estate Disputes Before and After TEDRA*, in REAL PROPERTY, PROBATE & TRUST SECTION OF THE WASHINGTON BAR ASSOCIATION, Summer 1999, at Page 7.

18 RCW 11.96A.150(2). For instance, in several cases, the court has awarded attorney fees to the prevailing party. See e.g. *Endicott v. Saul*, 142 Wn. App. 899, 176 P.3d 560 (Div. 1 2008) (court awarded attorney fees to prevailing party); *Bartlett v. Betlach*, 136 Wn. App. 8, 146 P.3d 1235 (Div. 3 2006) (court awarded attorney fees on basis that party prevailed, the litigation benefited the trust and all beneficiaries were involved in the proceedings); *Barovic v. Pemberton*, 128 Wn. App. 196, 114 P.3d 1230 (Div 2 2005) (court denied award of attorney fees stating that because the party did not prevail he was not entitled to fees under RAP 18.1(a)).

19 RCW 11.96A.150(1).

20 Portions of this section include excerpts from the written materials prepared for the 52nd Annual Estate Planning Seminar by Kenneth Schubert; these excerpts are reprinted herein with permission from the author and from WSBA-CLE.

21 *Fowler v. Everett Trust & Savings Bank*, 193 Wash. 308, 318 (1938) citing 4 Bogert on Trusts & Trustees 2936, 1002.

22 RCW 11.96A.030(1).

23 See RCW 11.96.070(4) and RCW 11.96A.070(1)(d).

24 *Saunders v. Vautier*, 4 Beav. 115, 49 E.R. 282 (1841).

25 RCW 11.96A *et al.*

26 RCW 11.96A.030(4).

27 RCW 11.96A.030(4)(j) and RCW 11.110.120.

28 RCW 11.96A.220.

29 RCW 11.96A.220.

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three years from the date of dissolution (administrative or otherwise) to sue the LLC.

The second part of the court's decision in *Chadwick Farms* held that despite the three-year period for claimants to file claims against the LLC, the LLC lacked standing to file claims against third parties once the company's certificate of formation had been cancelled. Thus the developer was barred from asserting claims against its subcontractors and suppliers because its certificate of formation was cancelled before it filed suit.

The third and final part of the *Chadwick Farms* decision construes the statutory duties of members and managers to make adequate provision for payment of creditors and other claimants. The homeowners' association moved to amend its pleadings in order to add a member and manager as defendants based upon their failure to properly wind up the LLC. The Court of Appeals reversed the trial court and remanded to allow addition of the member and manager as parties. In doing so, the court commented that it agreed it is possible under RCW 25.15.300 that "any person winding up an LLC's affairs who has not complied with RCW 25.15.300 is personally liable to the claimants."⁶ This wording will almost certainly be employed in any litigation by disappointed claimants against an insolvent dissolved LLC.

Emily Lane was a companion case to *Chadwick Farms*. In *Emily Lane*, the Court of Appeals applied the 2006 three-year limitation statute retroactively to allow post-dissolution claims by a homeowners' association against an LLC that had filed a Certificate of Cancellation.⁷ The Court held that the cancellation of the LLC was not a shield to personal liability of members and managers who may have improperly dissolved the LLC. Similar to *Chadwick*, the Court in *Emily Lane* noted that the LLC statute has specific provisions that provide for individual liability if the LLC is not "properly" wound up.⁸ The Court commented that when the Limited Liability Company Act ("LLCA") was enacted, the Washington State Trial Lawyers Association "was instrumental in requiring that the LLCA provide a statutory vehicle for piercing the LLC veil."⁹ Thus, the individual members and managers can be held liable if the LLC does not make adequate provision to pay its creditors and certain possible creditors. In the case of *Emily Lane*, the creditors were condominium owners with unresolved warranty claims.

The practice of quickly dissolving LLC's in order to escape potential liability appears to have met with a fatal end. These cases and the revised statutes create several traps for the unwary; particularly where claims for breach of contract or statutory condominium warranties outrun the ability of claimants to file suit against the original contractor or developer entities. This is precisely what happened in the *Maple Court* case.

In *Maple Court*,¹⁰ a condominium homeowners' association sued the defendant developer/contractor two years after the developer LLC was dissolved and nine months before the certificate of formation of the developer was cancelled. The developer sued its construction manager and its subcontractors five months before it was cancelled. Then six months after it was cancelled, the developer and the construction manager voluntarily settled with the homeowners' association and sought indemnity against the subcontractors.

The trial court dismissed all claims against the subcontractors, and the Court of Appeals upheld the trial court. The Court of Appeals held that the LLCA requires a dissolved LLC to wind up its affairs within two years. Failure to do so and failure to reinstate within that time renders the LLC a non-entity and it may not maintain a legal action: "The language is sufficiently clear that the statute prohibits Roosevelt from maintaining a cause of action against others once it is no longer a legal entity."¹¹ Thus, the developer had no standing to sue its subcontractors.

The effect on the construction manager who settled with the developer and the owners was dramatic. Because the construction manager was not sued directly by the owners, the construction manager's settlement was deemed by the Court as voluntary and therefore gratuitous. Thus the construction manager's indemnity claims failed.

Now, both *Emily Lane* and *Chadwick* have been accepted for review by our Supreme Court. It will be interesting to see how the Supreme Court deals with the effect of its *Ballard Square* decision upon limited liability companies. At least for now, practitioners should be aware that these cases carry significant potential for litigation and liability to claimants for dissolved or dissolving limited liability companies, their members, and managers.

- 1 *Ballard Square Condo. Assn. v. Dynasty Construction Co.*, 158 Wn.2d 603, 146 P.3d 914 (2006).
- 2 *Chadwick Farms Owners Ass'n v. FHC, LLC*, 139 Wn. App. 300, 160 P.3d 1061, review granted 163 Wn.2d 1021 (April 30, 2008).
- 3 *Emily Lane Homeowner Ass'n v. Colonial Dev., LLC*, 139 Wn. App. 315 160 P.3d 1073, review granted 163 Wn.2d 1022 (April 30, 2008).
- 4 *Louisiana Pacific Corp. v. ASARCO, Inc.*, 5 F.3d 431 (9th Cir. 1993).
- 5 *Ballard Square*, 158 Wn.2d at 615.
- 6 *Chadwick*, 139 Wn. App. at 314.
- 7 *Emily Lane*, 139 Wn. App. at 315. This is in contrast to the LLC in *Chadwick* that was administratively dissolved.
- 8 RCW 25.15.300.
- 9 *Emily Lane*, 139 Wn. App. at 318.
- 10 *Maple Court Seattle Condo. Assn. v. Roosevelt, LLC*, 139 Wn. App. 257, 160 P.3d 1068 (2007).
- 11 *Maple Court*, 139 Wn. App. at 263.

Effective Management of a Solo/Small Estate Planning Practice: Tips and Recommendations

by Stacey L. Romberg – Attorney, Seattle & Lori K. Rath – Rath Law & Mediation PLLC, Seattle

Lawyers do not go to law school to learn to run a business. Yet, if you own and manage a solo or small law practice – as we do – that is exactly what you are doing. In fact, approximately 60 percent of attorneys in Washington practice at solo or small firms. As solo and small firm attorneys, we wear many different hats and juggle a variety of responsibilities: We manage our offices, market and develop our work, choose and purchase equipment and supplies, supervise independent contractors and part-time employees, handle our firm’s finances and bills, and maintain client records and files – just to name a few. This article shares some of the resources and strategies that we have found helpful in developing and maintaining successful, small estate planning practices. If you are a solo or small firm estate planning attorney, or thinking of becoming one, we hope this information is beneficial.

A. Marketing and Business Development

There are many marketing and business tools to aid you as you market and develop your practice.

Networking. “Networking” is a fairly loaded term and carries negative connotations for some people. What we mean by “networking” is developing and maintaining successful professional relationships, which can be very enjoyable. In addition, networking is likely the most useful source of new estate planning clients. The key question is: who should you meet? First, financial planners can be an excellent source of potential clients, because many financial planners encourage their clients to establish and maintain estate plans. Second, accountants can be a good referral resource, and can work with clients in accomplishing their estate planning goals. Third, other attorneys can be an excellent source of estate planning work. In particular, family law attorneys often refer clients to estate planning attorneys, as updating estate planning documents is a recommended step for anyone who has recently gone through a divorce. Surprisingly, even other estate planning attorneys can be a great referral resource, especially in situations where there is a conflict of interest, a particular expertise is required, or a client emergency exists that an attorney cannot accommodate in his or her schedule. In addition, some estate planning attorneys focus on taxable and/or complicated estates, while others do not; cross-referrals between those two camps are common.

Staying Connected to Prior Clients. Undoubtedly, when you meet with clients to execute their estate planning documents and send a closing letter, you encourage them to have their documents periodically reviewed and updated. In practice, however, clients are often reluctant to incur the time and expense in doing so. We recommend that you keep in touch with your prior estate planning clients on an ongoing basis, and remind them of the types of situations that may trigger the need to update their estate plan. Moreover, clients often lose track of how long it has been since their estate planning documents were executed;

an occasional individually crafted letter reminding them that a review of their estate planning documents is in order can be a welcome reminder. It is also important and effective to keep in touch with clients in general, and request that they keep you in mind as a resource for friends and family. Maintaining client contact can be done in a variety of ways, including newsletters (e-mail makes this method particularly easy and cost-effective), holiday greeting cards, and other mailings, such as sharing a news article of interest. Ongoing contact keeps you and your practice at the forefront of clients’ minds. A satisfied client is an excellent referral source.

Website. A website can be an incredibly useful tool in obtaining new estate planning clients. Unlike other methods of advertising, the website, once established, is very inexpensive to maintain. As you build the content of your website, it provides valuable information to potential clients so that attorney time is not required to answer preliminary questions already covered by the website. Also, clients who shop for legal counsel via the web tend to be more sophisticated than clients who shop via the yellow pages. Often, clients who contact you through your website have visited the websites of numerous other attorneys, and are highly interested in your practice. Once contact has been established and a few questions addressed, these potential clients are often ready to sign up with your office. Further, estate planning forms can be provided online, so that potential clients can download the forms, complete them, and e-mail them to you with a request for an initial consultation.

Print Advertising. Print advertising can be an effective way to obtain new clients, although we have found that the level of advertising success may depend greatly on the publication. One of us obtained a strong response from placing a very affordable ad in a small-circulation neighborhood newsletter, while at the same time getting almost no response from an expensive, color advertisement placed in a popular Seattle family magazine. The best approach here is probably “trial and error.” Think about the readership you want to reach, and choose one or more publications accordingly. It can also be helpful to work with a professional marketing consultant to increase the effectiveness of your ad. If an ad fails to generate a level of response that makes the expense of the ad worth it, in your estimation, then do not continue the ad. In order to truly gauge an ad’s effectiveness, we recommend that you “run” your ad in the same publication consistently – probably for at least six months – before you can determine whether it is a worthwhile expense. Be sure to ask all the potential clients who contact your office how they found you, so you can accurately determine the results of the ad. And a final comment about ads: the yellow pages – a relatively expensive advertising choice – seem to be a less effective advertising tool due to widespread Internet use. We recommend advertising with the Yellow Pages

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Effective Management of a Solo/Small Estate Planning Practice: Tips and Recommendations

only if you have an assistant who screens your calls, as calls from these ads are often less likely than others to lead to a client relationship. In our experience, potential clients from the yellow pages are often looking for the cheapest attorney, or seeking free advice to use as they try to create their own estate planning documents.

Speaking Engagements and Publishing Articles. As consumers, clients like to know that you are highly experienced and considered an authority in your area of law. Public speaking and publishing articles both within and outside of the legal community can be effective tools for establishing yourself in this way. Within the legal community, you might write an article for a publication such as your local bar association newsletter, or speak at a CLE or other professional gathering. In the public realm, you might write a column for a local newspaper or a neighborhood newsletter, or give an estate planning presentation to community groups, such as parent-teacher associations, church groups, or neighborhood associations. In addition, financial professionals often like to pair up with estate planning attorneys to host educational events for their current or potential clients.

B. Time Management and Tracking

Time management consistently proves to be a challenging hurdle for attorneys in all areas of practice. Estate planning attorneys, although not forced to meet demanding litigation deadlines, are not immune from time management challenges. The goal of proper time management is to use all time you have available for your practice in the most effective and efficient way possible. In managing a solo or small estate planning practice, an attorney's time is divided between the needs of running his or her business, pursuing business development opportunities, and performing legal services. The challenge is to figure out how to spend your time, when all three areas will undoubtedly require a lot of your attention on a regular basis. Initially, in making time management choices, an obvious question must be addressed: how are you spending your time? By tracking all time spent during the workday, including billable time for clients, time spent on flat fee work, administrative time by various categories (for example, marketing, financial management, managing employees, professional reading, etc.), and also tracking your personal time, you are able to answer that question in a detailed, factual way. Once you have tracked your time for a month or so, you should have a clear picture, in data, of how your day is spent.

Then, you should use that data to your advantage. For example, you might realize that you spent 5 hours on Mr. Smith's Will, for which you charged a flat fee of \$800. That means that you earned a billable rate of \$160 per hour, far less than your standard billable rate of \$200 per hour. If you see similar information on other flat fee files, that data leads you to the obvious conclusion: your flat fees need to be increased. Or, for

another example, suppose your data tells you that you spent 10 hours last month, all of which were non-billable, dealing with employee-related issues regarding your paralegal. That data tells you that you lost \$2,000 in time, so perhaps you need to hire someone new. Or, suppose you note that you spent only 1.5 hours on business development during the prior month, and only one new estate planning client signed up for your services. That data tells you that you need to spend more time on business development. The usefulness of the data is endless. By tracking and analyzing your time on a monthly basis, this data will enable you to make effective time management choices.

C. Billing Practices: Hourly or Flat Fee?

Estate planning practices can include flat fees, hourly billing, or a combination of both. Each billing method has advantages and disadvantages, and each individual attorney should select a billing structure based on the unique aspects of his or her practice.

Charging flat fees for estate planning work has its advantages. A flat fee allows the attorney to forecast income for a particular matter, and the client to know up front how much the work will cost. In addition, fee disputes, collection problems, and billing administration work are all minimized with a flat fee structure. For example, payment transactions can be handled simply by requiring clients to make the payment at an initial in-person meeting. Finally, flat fees may encourage more open communication from clients because the client is not anxious about "getting billed by the second." In contrast to these advantages, flat fees have some downsides. Some cases may end up taking an extraordinary amount of time for reasons not apparent at the outset. Also, clients may take advantage of their "open access" to you and try to monopolize your time with lengthy and sometimes unnecessary phone calls, meetings or e-mails.

Hourly billing has its own distinct advantages. Billing by the hour ensures that the attorney's compensation is commensurate with the time the matter actually requires, and provides flexibility in dealing with case complexities that often cannot be identified early on. For example, a "simple" Will for a single person with relatively few assets may become unexpectedly complicated when the attorney determines that a special needs trust is advisable for one beneficiary, or learns that the client wants to give a life estate in his home to a family member who is dealing with a drug addiction. Hourly charges allow the attorney to avoid the "drain" of working on a matter in which the billable value of the time required far exceeds the flat fee charged. The main disadvantages of hourly billing correspond to the advantages of flat fee billing: unpredictable income; more fee disputes, collection issues and billing administration; and increased client frustration and skepticism about the charges.

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The choice of whether to bill hourly or charge flat fees is yours, and will depend largely on your clientele, the uniqueness of your practice, and your personal preferences. If you charge or are considering charging flat fees, be sure to educate yourself about and stay updated on the pending changes to the Rules of Professional Conduct. The proposed new rules specify the circumstances under which an attorney can charge a flat fee and deposit the fee into the firm's regular operating account (instead of the trust account) before the work has been completed. The proposed changes are currently under consideration by the Washington State Supreme Court, and a decision is likely to come this Summer.¹

D. Treatment of Original Documents

As with many management decisions, the decision to retain original client documents varies among estate planning attorneys. It is evident to us, however, that the trend among solo and small-firm practitioners is toward giving original documents to the clients. We recommend this approach. The financial cost and physical storage space required to retain original documents can be prohibitive for solo practitioners. In addition, ethical questions exist about whether an attorney's retention of original documents may constitute an improper marketing practice. Clients sometimes feel compelled to return to the attorney who prepared their existing documents because that attorney has the originals, even if the quality of the work was questionable, or the client was displeased about the overall cost. Finally, the WSBA generally recommends against keeping originals. The WSBA has faced many situations in which a solo attorney dies or becomes ill, and leaves an office filled with original Wills and other estate planning documents. The WSBA has neither the obligation nor the resources to track down all of the "testators," and often the attorney's family will not or cannot do that job either. This situation should be avoided.

While we do not recommend that attorneys keep original client documents, you might decide to retain originals on an individual basis. For example, one of us had an elderly client who demanded that we store the original for him, and we agreed. One of us also faced a situation in which clients were preparing to travel the world for an extended time, and we agreed to keep the clients' original documents until they returned to the U.S. Both of us have worked with clients who had abusive spouses and feared physical harm if the spouse found out about their Will; we agreed to keep the Will in those circumstances as well. If you do keep any original documents, make sure you have a good system in place for tracking the originals.² You might also consider advising the client to deposit his or her Will in your county's Will repository, if any.³

Finally, we recommend giving clients clear and specific recommendations, in writing, about how and where to store their original documents. For example, you might recommend that a

client store the original Will in a safe-deposit box or a safe, and keep a copy in a secure but accessible place at home and indicate in writing on the copy where the original is held. If the client does keep the Will in a safe-deposit box or a safe, it is imperative that the client arrange ahead of time for someone else to be able to access the box or safe. Long delays and significant expense are common when the only person able to gain access to the original Will after a death is the decedent. We recommend that your retention policy regarding original documents be clearly set forth in your engagement agreement.

E. Software and Equipment

In managing an estate planning practice, one of the biggest expenses in your budget will likely be software and equipment. Although these items can be expensive, if you make wise choices these resources may play a significant role in increasing the success of your practice. The initial decisions you make, particularly regarding your software, are paramount. You should spend as much time as it takes to make careful selections, and do your best to budget adequate funds so you will be able to purchase the software most closely matched to your practice goals and style. Remember, learning and implementing a new software program can be time consuming. If you end up with software that is not a good fit for your practice, the consequences are: (1) additional expense incurred in a new software purchase; (2) additional time expended in implementing the new software program; and (3) potentially countless hours expended in the painstaking task of transferring data from one software program to another. To avoid those consequences, get it right the first time. Be sure to check out available resources. Ask other attorneys what they use, and why. Also, be sure to contact the Law Office Management Assistance Program (LOMAP) through the WSBA. LOMAP has several computers loaded with the most popular legal software applications, and lawyers can come in and "take a test drive" of this software at no charge.

You will likely want to consider purchasing several categories of software. First, case-management software can be immensely helpful in organizing your files, minimizing paper, and keeping client data in one central location. Some of the most popular versions of case-management software are Time Matters,⁴ Amicus Attorney,⁵ and PCLaw.⁶ Second, document-automation software enables you to produce estate planning documents with increased speed and accuracy, which in turn will likely increase your profitability. One popular version of document-automation software is Hot Docs.⁷ Active Docs is another example.⁸ Third, billing and accounting software allows you to generate bills quickly and accurately, and also to maintain all financial information pertinent to your law firm. Examples of these software programs include Billing Matters⁹ and QuickBooks.¹⁰

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Finally, most law firms need basic equipment similar to the requirements of any professional office – desktop computer, fax machine, copying machine, scanner, etc. If your budget is limited, skimp on equipment rather than software. Equipment can be easily replaced and upgraded as needed by the demands of your practice. Further, mobility items, such as a laptop, cell phone, BlackBerry, etc., can dramatically add to your practice's productivity and profitability. These items allow for flexibility and increase your billable hours.

F. Working with Independent Contractors

Good independent contractors, such as a contract paralegal, can be indispensable assets to a successful solo estate planning practice. Working with independent contractors does, however, raise some special challenges, particularly because they often work at another location (from their home, for example), and may work sporadically or at non-traditional work times. Good communication is essential. Be sure to provide all pertinent details about the client and the case to your independent contractor at the outset. More client information leads to higher quality work on the case and improved client communications. Remember to let your contractor know if there are unique characteristics of the client or case. For example, does the client prefer phone calls to e-mail, is the client preoccupied with costs, or does the client have dementia? This kind of information will assist the contractor in working effectively with your clients and maintaining strong client relations. Also, for efficiency's sake, answer the contractor's questions promptly so that the contractor may continue work without being delayed. Finally, set forth clear priorities for the contractor in terms of what work you need completed sooner rather than later, and what work is not particularly time-sensitive.

Keep in mind that in order to be treated and paid as an "independent contractor," your firm's relationship with the worker must meet the IRS standard for an independent contractor. The basic IRS guidelines for distinguishing between an independent contractor and an employee relationship are set forth in IRS Publication 1779. In addition, a great deal of case law exists on this topic. The IRS guidelines are not necessarily intuitive. If you are unsure about whether the worker is an independent contractor

or an employee, it is advisable to consult an employment or tax attorney. The proper classification of a worker as an employee or independent contractor is an important determination. Among other things, the determination affects whether you or the worker pay the worker's income tax and the employee's share of Medicare and Social Security taxes, and also affects whether the worker can deduct business expenses. If there is an independent contractor relationship, we recommend that you have a written agreement with your contractor that includes a job description, rate of pay, payment schedule, and a termination clause. The agreement's language should be consistent with the IRS's guidelines for independent contractor status.

G. Closing

We hope these ideas and information are useful to those of you building a small estate planning practice. We welcome your questions and comments. Our contact information is available on our websites: www.staceyromberg.com and www.rathlawmediation.com. On a final note, we would like to thank business consultant Ann Guinn and professional coach Irene Leonard for all that they have taught us about successfully managing our practices.

- 1 For a summary of the history and content of the proposed changes, see Lori Rath and Stacey Romberg, *New RPCs Would Affect Flat Fees* <www.kcba.org/scriptcontent/KCBA/barbulletin/archive/2007/07-12/article2.cfm>, and *Proposed Changes to Rules 1.5 and 1.15A*, King County Bar Bulletin (December 2007) www.kcba.org/scriptcontent/KCBA/barbulletin/archive/2007/07-12/article3.cfm.
- 2 Thankfully, RPC 1.15A was amended to require sending an annual accounting to clients only if you are holding client "funds," not the general "property" included in the previous Rule.
- 3 King County recently started a Will repository system, but we generally do not recommend that our clients use that resource at this time. Depositing the Will with the County may be problematic because of the practical challenges and expense of ensuring that a new or amended Will replaces the previously filed version every time a change to the Will is made.
- 4 See www.timematters.com.
- 5 See www.amicusattorney.com.
- 6 See www.pclaw.com.
- 7 See www.hotdocs.com.
- 8 See www.activedocs.com.
- 9 See www.timematters.com/products/billingmatters.
- 10 See www.QuickBooks.com.

Recent Developments

Real Property

by Scott Osborne, Kirkpatrick & Lockhart Preston Gates Ellis LLP, Seattle

The 2008 Regular Session of the State Legislature was the bi-annual "short session" – 60 days in length. This description, however, belies the legislative output affecting Washington real estate transactions. Much of the legislation relates to the current turmoil in the mortgage and residential real estate markets, and grew out of a task force appointed by the Governor to review issues relating to homeowner financial security, but there were also a variety of measures dealing with regulation of real estate brokers, under-capitalized condominium associations, residential landlord-tenant issues, regulation of title insurance companies and legislation intended to facilitate the electronic recording of real estate documents.

Below is a brief summary of the legislation that may potentially affect real estate transactions passed during the session. Unless otherwise noted, all measures are effective June 12, 2008. The entire bill should be consulted to determine the exact effect of the legislation. The history of the legislation as well as the legislative summary of these measures can be found at <http://apps.leg.wa.gov/billinfo>.

HB 1149, Chpt. 17, Laws of 2008: Various statutes were amended to delete the requirement that all real estate taxes had to be paid prior to the filing of a binding site plan, as opposed to a plat.

HB 1493, Chpt. 42, Laws of 2008: The definition of development activity that may be subject to local impact fees was amended to exclude the construction of structures related to regional transportation authorities. Apparently, the legislature found some logic in exempting tax-funded regional transportation facilities from paying transportation impact fees.

ESHB 1621, Chpt. 116, Laws of 2008: Chpt. 59.20 RCW, the Mobile Home Landlord Tenant Act, was amended to require owners of mobile home parks to provide notices to tenants when the facility was to be sold and to enter into good faith negotiations to sell the park to a qualified tenant organization representing the tenants of the park. This legislation is in partial response to *Manufactured Housing v. State*, 142 Wn.2d 347 (2000), which invalidated the provisions of the MHLTA that purported to grant tenants a right of first refusal to purchase the mobile home park.

ESHB 1623, Chpt. 55, Laws of 2008: Chpt. 79.110 RCW was amended to alter the conditions upon which DNR will grant utility easements across aquatic lands.

ESHB 1865, Chpt. 43, Laws of 2008: The Residential Landlord Tenant Act, Chpt. 59.18 RCW, was amended to clarify the obligations of landlords with respect to the storage of property

left in premises by departing tenants. The emergency provision of the bill, which would have given immediate effect to the change, was vetoed by the Governor as unnecessary. This legislation is in direct response to *Parker v. Taylor*, 136 Wn.App. 524 (2006), which imposed liability on a landlord for failing to protect personal property arguably abandoned by a residential tenant.

SHB 2014, Chpt. 113, Laws of 2008: The Condominium Act and related statutes were modified to allow cities and counties to impose greater financial incentives to tenants upon a condominium conversion. The period for relocation was extended to 120 days, and enhanced payments were allowed for the elderly and disabled forced to relocate. As a testimony to the problems of timing, this legislation will go into effect just as the condominium market, and conversions in particular, begin to cool.

SHB 2279, Chpt. 118, Laws of 2008: Municipalities were prohibited from placing building and land use requirements on affordable housing projects differing from those imposed on other housing developments.

EHB 2459, Chpt. 57, Laws of 2008: This measure is the Uniform Real Property Electronic Recording Act (URPERA), and is intended to provide a comprehensive framework to facilitate the electronic recording of deeds, mortgages and other real estate documents with electronic signatures.

SHB 2770, Chpt. 108, Laws of 2008: The Governor's Homeowners' Security Task Force's recommendations concerning certain mortgage industry practices were enacted. DFI was required to prepare new mortgage disclosure forms and certain activities constituting mortgage fraud were made Class B felonies.

SHB 2778, Chpt. 23, Laws of 2008: Real estate license procedures were substantially modified to reflect current practices in the brokerage industry. Different categories of brokers are established and trust account provisions were changed. Lawyers remain exempt from licensing requirements, but only to the extent engaged in the practice of law.

HB 2791, Chpt. 278, Laws of 2008: Prohibitions against equity skimming in real estate transactions found in Chpt. 61.34 RCW were amended to include distressed home consultants and distressed home conveyances. Rules governing the sale of distressed homes were adopted and sellers were provided certain

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Recent Developments: Real Property

rescission rights. This particular measure may have somewhat unintended consequences of discouraging the real estate brokerage community from dealing with property threatened with foreclosure since licensed brokers are not exempt from the bills regulatory framework.

SHB 3071, Chpt. 114, Laws of 2008: Certain provisions of various statutes were amended to harmonize the provisions dealing with the termination of condominiums. Condominiums established prior to July 1, 1990 (when the revised Condominium Act was effective) have different alternatives in connection with a termination of condominium status.

SSB 5378, Chpt. 153, Laws of 2008: The Deed of Trust Act (Chpt. 61.24 RCW) was amended to eliminate any fiduciary duty owed by the trustee, although the trustee is required to be "impartial" – just as every dog supposedly gets one bite, this may mean that every distressed grantor may receive one continuance. The trustee must disclose the amount required to cure any default within 10 days after a request for such amount, and the trustee must maintain a physical presence and telephone service within Washington state.

SSB 5524, Chpt. 117, Laws of 2008: Municipalities were restricted from restricting the location of mobile homes within existing mobile home communities based solely on the age or dimensions of the home.

SSB 6060, Chpt. 75, Laws of 2008: Procedures for obtaining a writ of restitution under the unlawful detainer statute were amended. The landlord must serve a notice to the tenant specifying the rent due, and the tenant must either pay the rent demanded into the registry of the court or submit a statement as to why the rent is not due, which may include legal or equitable defenses. The date for the tenant's response shall not be before the deadline for the response to the summons and complaint. The notice form was revised and stated in the statute.

SB 6215, Chpt. 115, Laws of 2008: The Condominium Act was amended to encourage associations to establish adequate reserves for the replacement of common elements and required to perform reserve studies annually.

SB 6272, Chpt. 3, Laws of 2008: The Department of Financial Institutions was instructed to establish and implement programs to promote financial literacy, as recommended by the Governor's subprime task force.

SB 6381, Chpt. 109, Laws of 2008: A new section was added to Chpt. 19.146 RCW, the Mortgage Brokers Practices Act, establishing that the mortgage broker has a fiduciary duty to the borrower and must act in the borrower's best interest.

SB 6471, Chpt. 78, Laws of 2008: Mortgage lenders that are exempt from registration under the Mortgage Broker Practices Act because they offer mortgages qualifying for purchase by Fannie Mae or Freddie Mac must now register under the Consumer Loan Act and are now subject to some degree of state supervision.

SB 6504, Chpt. 37, Laws of 2008: Construction projects affecting less than five acres and which require a DOE construction stormwater discharge permit were exempted from SEPA.

ESSB 6580, Chpt. 289, Laws of 2008: Measures intended to help mitigate global warming were incorporated into the Growth Management Act. The Dept. of Community, Trade and Economic Development was instructed to assist counties and cities in the preparation of measures to reduce emissions and other measures to reduce global warming. The governor vetoed those portions of the bill that called for emergency implementation, since there was no funding for the program in the 2008 budget. Full funding for these programs will have to be made in the 2009 budget.

ESSB 6606, Chpt. 119, Laws of 2008: New provisions were added to the business licensing statutes requiring home inspectors to be licensed by DOL commencing July 1, 2010, and specifying certain duties to be performed by a residential inspector.

SSB 6711, Chpt. 322, Laws of 2008: The recommendations of the Governor's Homeowners' Security task force to assist low- and moderate-income households facing foreclosure were enacted, including a measure directing the Housing Commission to make grants and loans to assist delinquent mortgagors in refinancing their home loans.

SSB 6761, Chpt. 80, Laws of 2008: RCW 90.84.030 and 040 were amended to change the criteria for determining the appropriate area in which a wetland mitigation bank may be established.

SSB 6847, Chpt. 110, Laws of 2008: The recommendations of a task force convened by the Insurance Commissioner concerning various aspects of the title insurance industry were enacted, including prohibitions on gifts to induce referrals, changing the method of filing rate changes (including schedules for escrow fees) and a requirement to file annual reports.

SSB 6851, Chpt. 269, Laws of 2008: A new section was added to Chpt. 82.45 RCW that clarifies the filing procedure that must be followed by a surviving spouse or domestic partner to receive an exemption from the real estate excise tax for a transfer of property from the estate of the deceased spouse or partner.

Notes from the Chair

by Alfred M. Falk, Harlowe & Falk LLP, Tacoma

This is my last opportunity to address you in the Newsletter. As of our Midyear Meeting in Vancouver on June 6th, the gavel has passed to the new Chair of the Section, Tim Osborn. It has been a privilege to serve as Section Chair this past year. This has been a wonderful opportunity to meet and work with real property and trust and estates attorneys from around the state.

The Section continues its strong work in many areas. The Section's vibrant website serves as a model for other sections. If you haven't visited it lately, you should. It includes a wealth of practice aids, and is the place to look for timely information about the Section and its activities. Our list serves have been very active, particularly on the probate and trust side, providing forums for us to share practice information with each other.

We also have a most informative newsletter which, with this issue, is back on schedule after some delays getting articles in. While it may technically be summer before you receive this in the mail, it's going to the printers during the spring.

We have continued to submit legislative proposals to advance the interests of people with problems or issues that touch our practice areas. We also have in place a mechanism to respond to legislative proposals submitted by others during the Legislative session. As usual, this year's session provided ample opportunity to use it.

The Section continues to sponsor continuing legal education programs that are well-attended and well-received. This past year those included the annual Fall Real Estate Conference and

programs on "Advising the Non-Professional Trustee" on the probate and trust side, and on "View Covenants, Easements, Liens, and Encumbering Title" on the real property side.

The Midyear Meeting convened in Vancouver on the weekend of June 6-8. As usual, the seminar programs were excellent, and the hosted reception on Friday evening was another enjoyable opportunity to meet with friends from around the State. I will leave it for Tim Osborn, who chaired that meeting, to fill you in on the goings on, including the Section's annual business meeting. His first column will be included in the Summer issue, due out sometime in August.

Much of what the Section accomplishes is the result of many hours of volunteer effort. We are constantly in need of help with the Section's projects. And I believe that our volunteer members grow in the process of providing that help. If you would like to grow in your practice, and lend a hand to the Section in the bargain, please contact anyone on the Executive Committee, listed on page 16 in this issue of the Newsletter. We would be more than happy to provide you with a list of opportunities to get involved. It's a great way to meet fellow practitioners from around the State, sharpen the tools of our trade, and serve the Bar and citizens of Washington.

Thank you all so much for the opportunity to lead this great Section of the Washington State Bar Association. I leave with great confidence in the Section leadership who will carry its efforts forward from here.

Article Ideas?

Please contact Aleana Harris if you are interested in writing an article for the newsletter or if you have ideas for article topics. Aleana's phone number is 206-623-7600 and her email is aharris@alcourt.com.

CLE Credits for *Pro Bono* Work?

Yes, it's possible!

Regulation 103(g) of the Washington State Board of Continuing Legal Education allows WSBA members to earn up to six (6) hours of credit annually for providing *pro bono* direct representation under the auspices of a qualified legal services provider.

For further information contact Sharlene Steele, WSBA Access to Justice Liaison, at 206-727-8262 or sharlene@wsba.org.

Speak Out!

Wanted: Lawyers to volunteer to speak to schools and community groups on a variety of topics. For more information about the WSBA Speakers Bureau, contact Charu Verma at 206-239-2125 or charuv@wsba.org.





INFORMATION FOR YOUR CLIENTS

Did you know that easy-to-understand pamphlets on a wide variety of legal topics are available from the WSBA? For a very low cost, you can provide your clients with helpful information. Pamphlets cover a wide range of topics:

Alternatives to Court	Legal Fees
Bankruptcy	Marriage
Communicating with Your Lawyer	The Parenting Act
Consulting a Lawyer	Probate
Criminal Law	Real Estate
Dissolution of Marriage (Divorce)	Revocable Living Trust
Elder Law	Signing Documents
Landlord/Tenant	Trusts
Lawyers' Fund for Client Protection	Wills

Each topic is sold separately. Pamphlets are \$9 for 25, \$15 for 50, \$20 for 75, and \$25 for 100. Pricing for larger quantities is available on request.

To place your order or for more information, please contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA. Sales tax is applicable to all in-state orders.

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