

# Real Property, Probate & Trust



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## Application of the Washington State Estate Tax to Interests in Qualified Terminable Interest Property Trusts and Qualified Domestic Trusts Created Prior to Enactment of the Washington State Estate Tax Transfer Act

by Kathryn M. Andersson – Lane Powell, PC, Seattle

In 1981, Washington voters passed Initiative 402, repealing the Washington state inheritance tax and replacing it with an estate tax equal to the amount allowed as a credit against the federal estate tax. In 2001, Congress enacted the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”), amending the Internal Revenue Code of 1986 (the “Code”) to phase out the federal credit for state death taxes by 2005. The Washington Department of Revenue took the position that the Washington state estate tax, equal to the credit against the federal estate tax, was tied to the version of the Code in effect before the enactment of EGTRRA, and therefore the Washington state estate tax was not affected by the phase out. On February 3, 2005, in *Estate of Hemphill v. Department of Revenue*, the Washington Supreme Court held that, because the Washington state estate tax was a “pickup” tax based on the federal credit and not a “stand alone” tax, EGTRRA applied to eliminate the Washington state estate tax by 2005.<sup>1</sup> In response, a new “stand alone” estate tax, the Washington State Estate Tax Transfer Act, was signed into law by Governor Gregoire on May 17, 2005, by Engrossed Senate Bill 6096, as codified in Chapter 83.100 of the Revised Code of Washington (“RCW”).

RCW 83.100.040 provides that the Washington state estate tax is imposed on every “transfer of property located in Washington.” RCW 83.100.020(11) defines “transfer” to mean a “transfer” within the meaning of Section 2001 of the Code. Section 2001 does not define the term “transfer” but states that a tax is imposed on the “transfer” of the federal taxable estate.

Section 2056(a) of the Code provides that a deduction may be taken from the federal estate tax for the transfer of an interest in property to a surviving spouse (the “Marital Deduction”). Section 2056(b)(1) provides that this deduction is ordinarily not allowed where the interest passing to the spouse is a “terminable interest” (i.e., one that will terminate upon the lapse of time or occurrence or non-occurrence of an event or contingency, such as the surviving spouse’s death). Section 2056(b)(7), however, allows an executor to make an election with respect to certain qualified terminable interest property (a “QTIP Election”), to qualify such property for the Marital Deduction. Therefore, a common estate planning technique between spouses is to provide that certain property of the first spouse to die will pass to a trust for the benefit of the surviving spouse during his or her life (a “QTIP Trust”), and that a QTIP Election may be made with respect to such trust so that the transfer qualifies for the Marital Deduction. Sections 2056(d) and 2056A(a)(3) provide for a similar marital deduction election for property passing to a qualified domestic trust (a “QDOT”) for the benefit of a non-citizen surviving spouse (a “QDOT Election”). While the QTIP or QDOT Election will ensure that property transferred by a deceased spouse into a trust for the benefit of the surviving spouse qualifies for the Marital Deduction, Section 2044 of the Code requires that the surviving spouse include in his or her estate for federal estate tax purposes any property received from the deceased spouse for which the QTIP Election was made (“2044

*continued on next page*

### TABLE OF CONTENTS

Application of the Washington State Estate Tax to Interests in Qualified Terminable Interest Property Trusts and Qualified Domestic Trusts Created Prior to Enactment of the Washington State Estate Tax Transfer Act	1	Nominees for RPPT Executive Committee - FY'08-'09	11
Of Course They Can	3	Practice Tip	11
Recent Developments: Probate and Trust	6	Notes from the Chair	12
		Contact Us	12

*continued from previous page*

## **Application of the Washington State Estate Tax...**

Property"). Similarly, Section 2056A(b) provides that the federal estate tax will be imposed upon the value of the property remaining in the QDOT on the date of death of the surviving spouse ("2056A Property"). Therefore, this 2044 Property and 2056A Property will be subject to federal estate tax in the surviving spouse's estate. The question that arises is whether the 2044 Property and 2056A Property will also be subject to Washington state estate tax.

RCW 83.100.047 provides that, if the federal taxable estate is determined on the federal return by making an election under Section 2056 or 2056A of the Code, the Department of Revenue may provide by rule for a separate election, consistent with Sections 2056 and 2056A, for the purpose of determining the Washington state estate tax due.

Section 458-57-115(iii) of the Washington Administrative Code (the "WAC"), enacted and effective as of April 9, 2006, and applicable to deaths occurring on or after May 17, 2005, provides that a Washington QTIP Election that is different from that of the federal QTIP Election may be made on the Washington state estate tax return, and that a surviving spouse who receives property for which a Washington QTIP Election was made must include the value of the remaining property in his or her estate for Washington state estate tax purposes. WAC 458-57-115(2)(c)(iii)(B), however, explicitly states that if the value of property for which a federal QTIP Election was made is different from the value of property for which the Washington QTIP Election was made, only the value of property for which the Washington QTIP Election was made is includable. Furthermore, WAC 458-57-115(2)(d) defines the Washington taxable estate as the federal taxable estate with certain adjustments, including the subtraction of Section 2044 Property.<sup>2</sup>

WAC 458-57-115(2)(c)(iv) provides that a QDOT Election may be made on the Washington state estate tax return (whether or not such an election is made on the federal return), and that the Washington state estate tax will be imposed upon the value of the property remaining in the QDOT on the date of the death of the surviving spouse.

Therefore it would appear that the surviving spouse's 2044 and 2056A Property is only subject to the Washington state estate tax in situations where a Washington QTIP or QDOT Election has been made with respect to such property, and that the Washington state estate tax would not apply in situations where no such Washington QTIP or QDOT Election has been made (e.g., if the surviving spouse received 2044 or 2056A Property from a decedent spouse who died prior to May 17, 2005, no Washington QTIP or QDOT election could have been made with respect to such property, since the transfer by the deceased spouse to the QTIP Trust or QDOT occurred prior to the enactment of the new stand alone Washington state estate tax).

The Washington Department of Revenue (the "Department of Revenue") has informally taken the position that 2044 Property and 2056A Property will be subject to Washington state estate

tax in the estate of the surviving spouse. In a draft excise tax advisory, the Department of Revenue has stated that, although WAC 458-57-115(2)(d)(vi) provides that 2044 Property is to be subtracted from the Washington taxable estate, this subtraction is only appropriate when the 2044 Property was received from a decedent spouse who died on or after the May 17, 2005, enactment of the Washington state estate tax. The Department of Revenue reasons that, when property for which the Washington QTIP Election has been made is included in the surviving spouse's Washington taxable estate, 2044 Property resulting from the federal QTIP Election must be subtracted to substitute the Washington QTIP deduction and inclusion for federal QTIP deduction and inclusion. In other words, 2044 Property may be subtracted from the Washington taxable estate only when assets for which a separate Washington QTIP Election have been made are instead included in the Washington taxable estate. Where 2044 Property is attributable to a federal QTIP Election made prior to May 17, 2005, there could be no corresponding Washington QTIP Election, and consequently no Washington 2044 Property to substitute for the federal 2044 Property to be subtracted. Therefore, the Department of Revenue has informally taken the position that subtraction of the 2044 Property is not appropriate, and will not be allowed under these circumstances. Although not addressed in the draft excise tax advisory, a similar argument may apply with respect to the inclusion of 2056A Property in the Washington taxable estate.

Application of the Washington state estate tax in a manner consistent with the Department of Revenue's informal position could arguably result in an impermissible retroactive application of the estate tax, both from a constitutional perspective and for purposes of statutory construction. For a detailed discussion of issues of statutory construction and of a constitutional nature that are raised by the Department of Revenue's position, please see articles<sup>3</sup> by Dean V. Butler, of Carney Badley Spellman, P.S., and Michael D. Carrico, of Riddell Williams, P.S.<sup>4</sup>

Due to the Department of Revenue's position, practitioners should be aware that the application of the Washington state estate tax with respect to interests in QTIP and QDOT trusts that were created prior to the May 17, 2005, enactment of the Washington state estate tax remains uncertain. Although the Department of Revenue has yet to make a formal announcement regarding its position in these circumstances, practitioners should advise taxpayers that the Department of Revenue is likely to conclude that the 2044 Property or 2056A property of a surviving spouse must be included in the Washington taxable estate, regardless of when such property was received from the deceased spouse. As mentioned above and discussed in depth in Mr. Butler and Mr. Carrico's referenced articles, while taxpayers may have grounds for challenging this position, the outcome of any such challenge remains uncertain. Therefore, practitioners should advise taxpayers of the issues involved, and discuss with them

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## Of Course They Can

### Beal Bank v. Sarich Resolves the Question of Non-Foreclosing Junior Lienor's Right to Collect on Promissory Notes

by Elizabeth A. Mosey – Winston & Cashatt, Lawyers, Spokane  
Contributing: C. Matthew Andersen, and Brian T. McGinn – Winston & Cashatt, Lawyers, Spokane

The Supreme Court of Washington resolved, on September 13, 2007, the menacing question of whether a junior lienholder can sue independently on promissory notes once the collateral has been disposed of at a nonjudicial foreclosure sale.<sup>1</sup> The answer is, simply put, of course they can.

At first blush, this answer seems an unnecessary acknowledgment of the long-standing public policy that a person is obligated to repay his or her debts. However, there has in fact been considerable confusion surrounding this issue since the decision of *Washington Mutual Savings Bank v. The United States of America*.<sup>2</sup>

#### 1. The Confusion

In 1990, the United States Court of Appeals for the Ninth Circuit certified to the Supreme Court the question:

In Washington, may a non-foreclosing junior lienor who purchases property at a non-judicial foreclosure sale sue for deficiency under Washington law, and if so, what is the manner of computing the deficiency?<sup>3</sup>

The Court flatly concluded “that there is no authority in Washington law for allowing any lienholder to sue for a deficiency following a non-judicial foreclosure sale.”<sup>4</sup>

In *Washington Mutual*, there were three relevant liens on the debtor's property. Yakima Federal Savings and Loan Association (“Yakima Federal”) held the first position deed of trust in the amount of \$41,000.<sup>5</sup> The second Deed of Trust was held by Washington Mutual Savings Bank (“Washington Mutual”) in the amount of \$29,800.<sup>6</sup> The third relevant lien was a \$150,000 tax lien held by the Internal Revenue Service (“IRS”).<sup>7</sup> Following the debtor's default Yakima Federal elected to non-judicially foreclose its Deed of Trust and “in order to protect its Second Deed of Trust Washington Mutual purchased the property for \$42,020.63,” the amount owed on Yakima Federal's loan.<sup>8</sup>

After Washington Mutual purchased the property, the IRS gave notice of its intent to redeem the property for the purchase price.<sup>9</sup> The Internal Revenue Code permits the IRS

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### Application of the Washington State Estate Tax...

whether or not the 2044 Property or 2056A property should be included in the Washington Taxable Estate for purposes of filing federal and Washington state estate tax returns.

1 *Estate of Hemphill v. Dept. of Revenue*, 153 Wash.2d 544, 551 (2005).

2 WAC 458-57-115(2)(d)(vi).

3 “*Planning for Estates of Taxable Size in Washington*,” Dean V. Butler and Michael D. Carrico, 52nd Annual Estate Planning Seminar, September 1, 2007; “*Memorandum to the Estate & Gift Tax Committee of the Tax Section of the Washington State Bar Association Re: New Washington Estate Tax and QTIP Property*.”

4 Mr. Butler and Mr. Carrico have suggested that the Department of Revenue's position also raises implications for: (1) QTIP and QDOT Trusts that did not own property subject to the Washington state estate tax prior to May 17, 2005, but subsequently acquire real estate or tangible personal property located in Washington; and (2) QTIP and QDOT trusts that have as a surviving spouse beneficiary someone who was not domiciled in Washington at the time the trust was created, but who at death is domiciled in Washington (i.e., moves to Washington). Please see the referenced articles for further discussion of these issues.

continued from previous page

## Of Course They Can

to “redeem from the purchaser at a nonjudicial foreclosure sale real property subject to federal tax liens.”<sup>10</sup> Washington Mutual disputed that the purchase price was the proper redemption price, and initiated an action in the District Court.<sup>11</sup> The District Court determined that the proper redemption price was the fair market value of the property, which was \$64,000.<sup>12</sup> The IRS continued to dispute the redemption amount and appealed to the Ninth Circuit Court of Appeals. The IRS moved to certify the question of the proper redemption price to the Supreme Court of Washington as the “extent to which a deficiency judgment may be obtained is solely a matter of state law.”<sup>13</sup>

The Court, after consideration of the redemption price as identified in the Internal Revenue Code,<sup>14</sup> determined that “Washington law provides that no deficiency judgment may be obtained when a Deed of Trust is foreclosed.”<sup>15</sup> The Court explained:

The results of our refusal to allow a non-foreclosing junior lienholder to pursue a deficiency judgment following a non-judicial foreclosure sale is that the IRS will have to pay the full amount of Washington Mutual’s lien in order to redeem the property.

Although this result appears fair, as the IRS was obligated to pay off Washington Mutual entirely, in order to redeem the property, the Court’s holding appeared to severely restrict a junior lien holder’s right to recover its debts following a nonjudicial foreclosure. Accordingly, following publication of its original opinion, the Court found it necessary to clarify its opinion by including:

We do not herein address the matter of a junior deed of trust holder’s continued right to sue the debtor on the promissory note because it is not before us.<sup>16</sup>

Furthermore, Justice Guy’s concurring opinion provides “where a junior deed of trust holder does not foreclose, that junior deed of trust holder is not precluded from suing under the note.”<sup>17</sup> Nevertheless, the clarification and concurring opinion were ineffective to resolve the confusion the case created with regard to junior lien holder’s rights. The commentary following the issuance of this opinion highlighted the confusion the Court’s holding created.<sup>18</sup>

## 2. The Arguments

Finally, seventeen years later the Court was given an opportunity to resolve the confusion created by its holding in *Washington Mutual*. The case, *Beal Bank v. Sarich*<sup>19</sup>, arose from Beal Bank’s cause of action to collect on two promissory notes that were previously secured by deeds of trust on Steve and Kay Sarich’s Seattle condominium, an investment property. The Sarichs had pledged their condominium as security for three deeds of trust.<sup>20</sup> The first lienholder, Washington Mutual Bank,

elected to non-judicially foreclose its deed of trust following the Sarichs’ default. Beal Bank was the junior lienholder, holding both the second and third place liens on the property.<sup>21</sup>

Prior to Washington Mutual giving notice of its intent to non-judicially foreclose, Beal Bank had filed a Complaint for Default on the promissory notes and to judicially foreclose its deeds of trust.<sup>22</sup> Beal Bank did not bid or purchase at the trustee’s sale. Instead, Washington Mutual purchased the property in the amount then owed under its deed of trust.<sup>23</sup>

Given the holding of *Washington Mutual*, a junior lienholder that purchases at a nonjudicial foreclosure sale has no right to pursue collection of a deficiency. Thus, if Beal Bank had purchased, it would have squarely faced the ruling in *Washington Mutual*.

Following Washington Mutual’s foreclosure sale on the condominium, Beal Bank amended its Complaint to collect as an unsecured party on its promissory notes.<sup>24</sup> The trial court heard the parties’ cross motions for summary judgment concerning the collectability of the debts owed under Beal Bank’s promissory notes. The trial court denied Beal Bank’s motion and granted the Sarichs’ and Cashmans’ motions, dismissing all of Beal Bank’s claims.<sup>25</sup> This conclusion precluded Beal Bank from collecting the debt due under the promissory notes through disposition of the other collateral securing the notes, or through the personal assets of the Sarichs. The trial court’s conclusion erased nearly \$800,000 of the Sarichs’ debt.<sup>26</sup>

Beal Bank appealed the trial court’s decision on October 6, 2006.<sup>27</sup> Thereafter, Beal Bank made a motion for transfer to the Supreme Court, which was granted.<sup>28</sup>

Beal Bank argued the Deed of Trust Act, RCW 61.24 *et. seq.*, does not operate to preclude it from collecting on its promissory notes. Beal Bank contended the fair reading of the Deed of Trust Act demonstrates a trustee’s sale affects only the interest of the foreclosing beneficiary, namely Washington Mutual in this case. In fact, no reading of RCW 61.24 *et. seq.* leads to the conclusion that non-foreclosing creditors of the debtor, such as Beal Bank, are prevented from suing on the underlying promissory notes.<sup>29</sup> RCW 61.24.040 sets forth the procedure for foreclosure of a deed of trust. RCW 61.24.040(b) gives to the trustee the election to foreclose “its lien or interest” or to preserve a right to deficiency, which is done by specific notice of election made by the trustee. The statute does not purport to address the interest of third parties when the property is sold. Rather, “. . . the trustee sells only the title he or she receives.”<sup>30</sup> Furthermore, RCW 61.24.100(1) provides:

Except to the extent permitted in this section for deed of trust securing commercial loans, a deficiency judgment shall not be obtained on the obligations secured **by a deed of trust** against any borrower, grantor, or guarantor **after a trustee’s sale under that deed of trust.**” (emphasis added)

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## Of Course They Can

The statute does not preclude on its face any action to collect on a debt owed except those who had an obligation to the beneficiary in the specific deed of trust that resulted in the sale. Rather, RCW 61.24.110(10) provides:

A trustee's sale under a deed of trust securing a commercial loan does not preclude an action to collect or enforce any obligation of a borrower or guarantor if that obligation, or the substantial equivalent of that obligation **was not secured by the deed of trust.** (emphasis added)

The language of the statute draws a distinction between the rights of one who has foreclosed on a particular deed of trust and those who have not foreclosed on a deed of trust, particularly as it relates to commercial loans. Consequently, the language of the Act, taken together with the clarification of *Washington Mutual*, lent significant support to Beal Bank's claim on its promissory notes.

Nevertheless, the Sarichs argued that the holding in *Washington Mutual* "stands for the proposition that a nonjudicial foreclosure eliminates the ability of any lienholder, including non-foreclosing junior lien holders, to sue the debtor for a deficiency."<sup>31</sup> Although the trial court found credence in the argument, the Supreme Court was not persuaded.

### 3. The Rule

The Court reviewed *de novo* the issues of the statutory interpretation of the Deed of Trust Act, and the trial court's decision on summary judgment.<sup>32</sup> The Court first cited to RCW 61.24.100(1) and concluded that it did not at all implicate the rights of a non-foreclosing junior lienholder.<sup>33</sup> The Court reasoned that although foreclosure of a senior lien eliminates the junior lienholder's security, "the debts and obligations owed to that non-foreclosing junior lienholder are not affected by foreclosure under the statutes."<sup>34</sup>

The Court reviewed and distinguished *Washington Mutual* from the facts of *Beal Bank*. Following this analysis, *Washington Mutual* has no bearing on the question of whether or not a non-foreclosing junior lienholder may bring an action as an unsecured creditor on a promissory note.<sup>35</sup> The Court noted that Beal Bank was not the purchaser at the foreclosure sale, nor did its status as a junior lienholder prevent it from pursuing collection on its promissory notes even though its rights in the collateral were extinguished by the trustee's sale.<sup>36</sup>

Accordingly, the Court unanimously held "the non-judicial foreclosure of a senior lienholder's deed of trust under RCW 61.24.100(1) of the Deed of Trust Act does not preclude an action by a non-foreclosing holder of a junior deed of trust to recover on a debt secured by a junior deed of trust on the same property."<sup>37</sup>

Additionally, Justice Sanders took the opportunity to write a concurring opinion, which concluded that *Washington Mutual* should be overruled.<sup>38</sup> The concurring opinion explores whether

a junior lienholder purchasing at a non-judicial foreclosure sale, is in fact barred from seeking a deficiency judgment under RCW 61.24.100(1). Justice Sanders reasons that only a foreclosing lienholder is precluded from pursuing a deficiency.<sup>39</sup> Justice Sanders stated:

*Washington Mutual* places junior lienors in the untenable position of losing their security as well as their underlying obligation. This potentially prevents a junior lienor from fully recovering its debt, increases the lender's risk, and therefore can have a chilling effect on lender financing. Nothing in the Deed of Trust Act compels such an unsatisfactory result, nor should we create such a result by judicial fiat. Therefore, I would look critically at *Washington Mutual* until we have an opportunity to explicitly overrule it.<sup>40</sup>

The holding in *Beal Bank* restored a junior lienor's confidence in its ability to collect a debt following nonjudicial foreclosure.<sup>41</sup>

### 4. Conclusion

The Deed of Trust Act operates only to preclude pursuit of a deficiency judgment by a foreclosing lienholder that has elected to nonjudicially foreclose a lien. The Act does not impair the rights of non-foreclosing junior lienholders to collect their debts. The Court's decision in *Beal Bank* allows junior lienholders in Washington to rest easier, knowing that the foreclosure of a senior lien will not extinguish their ability to collect the debts owed to them.

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| 1 Appellant's Opening Brief, p. 1.   | 20 Id. at 546.   |
| 2 <i>Washington Mutual Savings Bank v. The United States of America</i> , 115 Wn.2d 52, 793 P.2d 969; clarified in 800 P.2d 1124 (1990). | 21 Id.   |
| 3 <i>Washington Mutual</i> , 115 Wn.2d at 55.  | 22 Id.   |
| 4 Id.  | 23 Id.   |
| 5 Id. at 54.   | 24 Id.   |
| 6 Id.  | 25 Id. at 547.   |
| 7 Id.  | 26 Id. at 546-547.   |
| 8 Id.  | 27 Id.   |
| 9 Id.  | 28 Id.   |
| 10 Id. at 55; citing 26 U.S.C. § 7425(d)(1)(1986).   | 29 Appellant's Opening Brief, p. 9.  |
| 11 <i>Washington Mutual</i> , 115 Wn.2d at 55.   | 30 <i>Mann v. Household Fin. Corp.</i> , 109 Wn.App. 387, 392, 35 P.3d 1186 (Div. III, 2001).  |
| 12 Id.   | 31 <i>Beal Bank</i> , 161 Wn.2d at 548; emphasis in original.  |
| 13 Id.   | 32 Id. at 547.   |
| 14 28 USC §2410(d) (1986).   | 33 Id. at 548.   |
| 15 <i>Washington Mutual</i> , 115 Wn.2d at 58, citing RCW 61.24.100.   | 34 Id.   |
| 16 Id. at 59.  | 35 Id. at 550.   |
| 17 Id. at 60, citing <i>Adams v. Fed Alaska Fed. Credit Union</i> , 757 P.2d 1040 (Alaska 1988).   | 36 Id.   |
| 18 John D. Sullivan, <i>Rights of Washington junior Lienors in Nonjudicial Foreclosure</i> , 67 Wash. L. Rev. 235 (January 1992).        | 37 Id.   |
| 19 <i>Beal Bank v. Sarich</i> , 161 Wn.2d 544, 167 P.3d 555 (2007).  | 38 Id. at 554.   |
|  | 39 Id. at 552.   |
|  | 40 Id. at 554.   |
|  | 41 The Court still has not addressed if a junior lienholder's bidding at a trustee's sale may impact the junior's right to collect on its debts. |

## Recent Developments

### Probate and Trust

by Ryan D. Rein – Riddell Williams, Seattle

**Endicott v. Saul**, \_\_ Wn. App. \_\_, 176 P.3d 560  
(Div. 1, Feb. 4, 2008).

#### Summary

A sale of real property for less than its fair market value to buyers, who stood in a confidential relationship to the seller, constituted a “gift” that could be rescinded based on undue influence.

#### Facts

Two sons filed a petition to establish guardianship over their eighty-year-old mother and her estate due to incapacity, and to rescind a real estate transaction in which their mother conveyed property to the buyers for less than its fair market value. The trial court determined that their mother was incapacitated and a vulnerable adult who had been subjected to undue influence. The trial court further ruled that the sale was a “gift” and could be rescinded. The Court of Appeals upheld the trial court’s findings.

#### Discussion

As a general rule, the party seeking to set aside an *inter vivos* gift has the burden of showing the gift is invalid. But if the recipient has a confidential or fiduciary relationship with the donor, the burden shifts to the donee to prove “a gift was intended and not the product of undue influence.” Evidence to sustain the gift between such persons must show that the gift was made freely, voluntarily, and with a full understanding of the facts. If the judicial mind is left in doubt or is uncertain as to exactly what the status of the transaction was, the donee must be deemed to have failed in the discharge of his burden and the claim of the gift must be rejected. The donee’s burden of proof is clear, cogent, and convincing evidence.

The Court of Appeals found that substantial evidence supported the trial court’s findings that the buyers had a confidential or fiduciary relationship with the seller and exerted undue influence over her. The Court of Appeals also found that the buyers had an obligation to advise the seller about the fair market value of the property before the purchase. Because the trial court correctly concluded that the buyers had a confidential relationship with the seller, as a matter of law they had the burden to prove a gift was not a result of undue influence.

In a number of cases, Washington courts have held that below-market sales are gifts. *In the Matter of the Estate of McLeod*, 105 Wn. 2d 809, 814, 719 P.2d 88 (1986); *Glorfield v. Glorfield*, 27 Wn. App. 358, 359, 617 P.2d 1051 (1980). The Court of Appeals held that the trial court did not err in concluding that the sale for well below market value was a gift and in shifting the burden to the sellers to prove there was no undue influence.

**Olver v. Fowler**, 161 Wn.2d 655 (Sept. 20, 2007)

#### Summary

The law of “committed intimate relationships” (formerly, “meretricious relationships”) can be applied to divide assets between committed partners upon the death of a partner. The death of one or both partners in a committed intimate relationship does not extinguish a partner’s right to an undivided interest in the couple’s jointly acquired property. By analogy to community property law, an individual in a committed intimate relationship had an undivided interest in the couple’s jointly acquired property, even though it was titled in the other partner’s name.

#### Facts

Cung Ho (“Cung”) and Thuy Nguyen Ho (“Thuy”) lived in a committed intimate relationship for at least 14 years, and they had two children together, Harry and Rebecca Ho. Thuy and Cung began living together in 1988 or 1989, they had a religious wedding ceremony in 1990, and they presented themselves to the community as husband and wife, though they were never legally married. Their children were born in 1991 and 1992. Cung and Thuy both worked full time developing and running the family business. They pooled their money and purchased assets, which they titled in Cung’s name according to custom in their culture. They were jointly listed on their automobile insurance policy. In Cung’s will, he referred to Thuy as his wife.

In July 2003, while on vacation in Idaho, the Ho family died in an auto accident. Cung left a will leaving his entire estate to Thuy. Thuy’s will was not in the record, but documents in the record state that she left all of her estate to Cung. Neither provided for an alternate beneficiary. Accordingly, intestacy controlled the distribution of their assets.

The personal representative of Thuy’s estate filed an inventory that conflicted with the inventory in Cung’s estate, arguing that Cung and Thuy were partners in a committed intimate relationship when they died and Thuy’s estate was entitled to an equitable interest in all property acquired during that relationship. The personal representative of Thuy’s estate asked that at least one-half of the inventoried property in Cung’s estate be transferred to Thuy’s estate.

The trial judge ordered that one half of the property inventoried in Cung’s estate be disbursed to Thuy’s estate. On appeal, the Court of Appeals held that “where unmarried, committed intimate partners are separated by death, as when they separate during life, any property acquired during the relationship that would have been community property [had the parties been married] is jointly owned and subject to a just and equitable division” between their estates. *Olver v. Fowler*, 131 Wn. App. 135, 146, 126 P.3d 69 (2006). Once their jointly acquired property is

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## **Recent Developments: Probate and Trust**

equitably divided, then the relevant wills or statutes operate on each estate.

The decision was appealed. The petitioner argued that Washington's law of committed intimate relationships should not apply where the relationship has ended because of the death of either partner, and that the intestacy statutes alone should govern distribution of the property titled in each partner's name.

### **Discussion**

Although the equitable law governing the property of committed intimate partners has evolved over the past 90 years, no prior Washington case has addressed the division of property between the estates of two deceased committed intimate partners. However, several cases have considered property distribution where one partner has died, the deceased partner was titleholder to property, and the living partner asserted an equitable interest in that property. The Court noted that when dealing with property distribution between partners in a committed intimate relationship, Washington's common law has evolved to look beyond how property is titled, requiring equitable distribution of property that would have been community property had the partners been married. But equity is limited; only jointly acquired property, but not separate property, can be equitably distributed. Also, as the law of committed intimate relationships has developed, the Court has not objected to its application even where the relationship at issue terminated with the death of one partner, rather than the dissolution of the relationship.

The Court held that when a committed intimate relationship is terminated by the death of both parties, the couple's jointly acquired property can be equitably divided between the partners' estates.

### ***Eisenbach v. Schneider*, 140 Wn. App. 641 (Div. 1, Sept. 10, 2007)**

#### **Summary**

Federal law controls the determination of the obligation to pay, and the total amount of, federal estate tax. However, state law generally retains its traditional role of determining testamentary intent respecting the impact of the estate tax on beneficiaries and distribution of the estate. In *Eisenbach*, the court determined that settlors of a trust agreement clearly intended that the burden of estate taxes should be allocated pro rata between two funds described in the trust agreement. The statutory right of recovery provision under the Internal Revenue Code did not require setting aside their clear expression of testamentary intent.

#### **Facts**

Marvin and Martha Eisenbach executed a restated trust agreement in 1995. On December 5, 1997, Marvin Eisenbach predeceased Martha Eisenbach. Pursuant to the terms of the trust agreement, the trust estate was divided into two parts, known as

Fund A and Fund B. As the trust agreement specified, Marvin Eisenbach's one-half interest in the marital community property (Fund B) was divided into two subshares: (1) the trustee allocated approximately \$600,000 to a "Credit Shelter Trust" and (2) approximately \$1.6 million to a "Qualified Terminable Interest Property ('QTIP') trust." Pursuant to applicable law, the trustee deferred payment of estate taxes that otherwise would have been due upon Marvin Eisenbach's death. Martha Eisenbach's one-half interest in the marital community property became Fund A under the terms of the trust agreement upon her husband's death.

Martha Eisenbach died on November 26, 2002. Following her death, the successor trustees (who were also beneficiaries) liquidated the Credit Shelter Trust without conflict. A dispute between the trustees arose concerning the allocation of the estate tax burden between Martha Eisenbach's estate (Fund A) and the taxable portion of Marvin Eisenbach's estate (the QTIP Trust). The trust provided as follows:

"The Trustee shall pay out of principal, to the extent that this trust shall be included in the gross estate of either Settlor for the purposes of determining federal estate taxes or Washington estate taxes, *a ratable share of such taxes determined by the proportion which the taxable portion of the trust estate bears to the net taxable estate of the Settlor (after exemptions and deductions are taken) as determined for estate tax purposes by the authority assessing the tax.*"

Notwithstanding the directive in the trust agreement that purportedly allocates the estate taxes pro rata between the QTIP Trust and Martha Eisenbach's estate (Fund A), a trustee elected to allocate the paid estate taxes between the trusts in a different manner. Specifically, he elected to apply I.R.C. § 2207A, which permits a right of recovery to a decedent's estate in certain circumstances. The trustee argued that Martha Eisenbach's estate has a right of recovery against the QTIP Trust, the taxable portion of Marvin's estate, to the extent of the amount of estate taxes her estate paid based on the value of the QTIP Trust included in her estate.

The question before the Court of Appeals was whether the testamentary intent of Marvin and Martha Eisenbach required that the estate tax burden be shared pro rata between the QTIP Trust and Fund A, despite I.R.C. § 2207A.

### **Discussion**

The QTIP election under I.R.C. § 2056(b)(7) allows the surviving spouse, by means of a marital deduction upon the death of the first spouse, to defer payment of the federal estate taxes until the surviving spouse's death. Upon the surviving spouse's death, the QTIP trust is included in the survivor's estate for estate tax purposes. The survivor's estate, however, is entitled to recover from the remainder beneficiaries of the QTIP trust the

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## Recent Developments: Probate and Trust

federal estate taxes attributable to the QTIP trust, *unless the decedent directs otherwise*. Thus, this right of recovery under I.R.C. § 2207A can be waived. A 1997 Congressional committee report provides that “the right of recovery with respect to QTIP is waived only to the extent that language in the decedent’s will or revocable trust specifically so indicates (e.g., by a specific reference to QTIP, the QTIP trust, section 2044, or section 2207A).” The report also states that a general provision specifying that all taxes be paid by the estate is no longer sufficient to waive the right of recovery.

The trustee in *Eisenbach* relied on these reports to argue that because the settlors did not specifically refer to I.R.C. § 2207A or the QTIP trust in the trust agreement, they did not effectively waive I.R.C. § 2207A.

The Court of Appeals disagreed. It found that the language of the trust plainly and unambiguously expresses the joint intent of the settlors, Marvin and Martha Eisenbach, that estate taxes must be paid “ratably” among the taxable portions of the trust, despite that there was no reference to I.R.C. § 2207A. While the trust agreement was amended in other ways before and after the death of Marvin Eisenbach, the estate tax allocation provision for the pro rata payment of taxes remained unchanged. The Court of Appeals noted that absent congressional enactments to the contrary, state law governs the allocation of the burden of estate taxes. *Riggs v. Del Drago*, 317 U.S. 95, 63 S.Ct. 109, 87 L.Ed. 106 (1942). In Washington, testamentary intent controls the construction of a will or trust. *In re Estate of Griffen*, 86 Wn.2d 223, 226, 543 P.2d 245 (1975).

### ***Estate of Hitchcock*, 140 Wn. App. 526 (Div. 3, Sept. 6, 2007)**

#### **Summary**

A will cannot waive a beneficiary’s right to petition the court for an accounting under RCW 11.106.040. While RCW 11.97.010 allows any trustor to include provisions in a trust that relieve the trustee from compliance with RCW 11.106.020 (trustees annual statement), RCW 11.97.010 does not list any *other* provisions of the trustees’ accounting act (Chapter 11.106 RCW). Thus, at any time after the later of one year from the inception of a trust or one year after the day on which a report was last filed, any beneficiary of a trust may file a petition under RCW 11.96A.080 asking the court to direct the trustee or trustees to file an account pursuant to RCW 11.106.040.

#### **Facts**

Maurice Hitchcock died in 1984 and was survived by his wife, Kathleen, and their five children. Maurice’s will contained a testamentary trust for the benefit of Kathleen and Maurice’s surviving descendants. The will provided that, at Kathleen’s death, the remainder of the trust was to be divided into equal funds, one fund for each surviving child and one fund for the surviving descendents of any deceased child.

One beneficiary (a surviving descendant of a deceased child) maintained that he did not receive any disbursements since Kathleen’s death in 1999. In 2003, the beneficiary filed a petition for statement of account seeking an accounting of the trust pursuant to RCW 11.106.040. He also filed a petition to remove his uncles as personal representatives.

The personal representatives argued that the will waived the obligation to give an accounting. In particular, the will provided that:

“The trustees shall render annual statements of account to the adult beneficiary or beneficiaries hereof (or to the legal guardian of the estate of each beneficiary hereof under legal disability) then currently receiving payments hereunder. The trustees, to the extent permitted by law, shall be relieved from compliance with the obligation of any and all trustees’ accounting statutes now or hereafter in effect in the State of Washington or in any other jurisdiction wherein this trust operates, provided, however, that the trustees, at their option, may invoke such statute or statutes at any time.”

The trial court denied both petitions and granted summary judgment in favor of the Estate.

#### **Discussion**

Because the waiver language in the will did not relieve the personal representatives and trustees from the application of RCW 11.106.040, the Court of Appeals reversed the trial court’s decision denying the beneficiary’s petition for statement of account. Under RCW 11.97.010, any trustor may include provisions in the trust that relieve the trustee from any or all the duties imposed by RCW 11.106.020, and from provisions of the probate statutes and the principal and income act. While RCW 11.97.010 allows any trustor to include provisions in the trust that relieve the trustee from compliance with RCW 11.106.020, RCW 11.97.010 does not list any other provisions of the trustees’ accounting act (Chapter 11.106 RCW), including RCW 11.106.040. Significantly, RCW 11.106.040 states:

“At any time after the later of one year from the inception of the trust or one year after the day on which a report was last filed, any settlor or beneficiary of a trust may file a petition under RCW 11.96A.080 with the superior court in the county where the trustee or one of the trustees resides asking the court to direct the trustee or trustees to file in the court an account. At the hearing on such petition the court may order the trustee to file an account for good cause shown.”

Thus, the Court of Appeals held that the beneficiary may proceed under RCW 11.106.040 when seeking a statement of accounts from the Personal Representatives and Trustees. The waiver provisions in the will do not affect the application of RCW

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## **Recent Developments: Probate and Trust**

11.106.040 because this provision is not included in the list contained in RCW 11.97.010.

The Court of Appeals also held that because the beneficiary lacks standing to file a petition to remove the personal representatives, it affirmed the trial court's decision denying the beneficiary's petition. Under RCW 11.68.070, only heirs, devisees, legatees, or creditors of an estate have the right to file a petition to remove or restrict a personal representative's nonintervention powers. A "devisee" is defined as "[a] recipient of property by will." A "legatee" is "[o]ne who is named in a will to take personal property; one who has received a legacy or bequest." The beneficiary did not receive real or personal property under the will. Also, he is not a devisee, a legatee, or a creditor for purposes of RCW 11.68.070. An heir is any person who is entitled by law to receive the decedent's real or personal property if the decedent died intestate. RCW 11.02.005(6). Under RCW 11.04.015, the persons entitled to receive portions of the Hitchcock Estate if Maurice died intestate were his wife and his five children.

The Court of Appeals found that the beneficiary was not an "heir" under the statutory definition. At the time of Maurice's death, all five of his children were alive, including Gregory's father, Samuel. Consequently, Maurice's heirs were his wife and his five children. Gregory is not an heir, but he is a beneficiary of the trust.

Thus, the trial court did not err by dismissing Gregory's petition to remove the personal representatives and trustees; the beneficiary lacked standing to file a petition to remove the personal representatives and trustees.

### ***Atchison v. Great Western Malting Company*, 161 Wn.2d 372 (Aug. 30, 2007)**

#### **Summary**

Only a personal representative may maintain a wrongful death action. The 3-year wrongful death statute of limitations does not toll during a child-beneficiary's minority, despite the fact that the child was not qualified to serve as personal representative. A claim brought by the child upon attaining age 18 was time-barred because it was outside the 3-year limitation period.

#### **Facts**

William Atchison died in June 2000 as a result of lymphoma. His most immediate next of kin was his only child, Kaela, who was then 15 years old. In 2003 Kaela turned 18, and in 2005 Kaela became personal representative of William's estate. In 2006, more than 3 years after her father's death, she filed a wrongful death action against Great Western Malting Co., claiming the company negligently caused her father's disease. Great Western moved to dismiss under Civil Rule (CR) 12(b)(6), in part arguing that Kaela's claim was barred by the statute of limitations. The

trial court granted the motion to dismiss on the ground that the complaint was filed after the 3-year statute of limitations had expired. Kaela appealed, arguing that her minority should have tolled the statute of limitations.

#### **Discussion**

In Washington, wrongful death actions are strictly creatures of statute. *Huntington v. Samaritan Hosp.*, 101 Wn.2d 466, 470, 680 P.2d 58 (1984). When the death of a person is caused by the wrongful act, neglect or default of another, his *personal representative* may maintain an action for damages against the person causing the death. RCW 4.20.010. Washington courts have consistently read this statute to mean that only a personal representative may bring an action for wrongful death.

Where a person has died intestate, state statute determines who is eligible to be appointed personal representative. RCW 11.28.120 prioritizes the order in which intestate heirs can be appointed: the surviving spouse (or the person of the spouse's choice), the decedent's child or children, the decedent's father or mother, the decedent's siblings, the decedent's grandchildren, and the decedent's nephews or nieces. Beneficiaries of the decedent's assets and the decedent's principal creditors are eligible to be appointed personal representative if none of the above family members is available. The statute provides that if no person entitled to be appointed personal representative presents a petition within 40 days, or if there appears to be no eligible next of kin, or if all eligible candidates waive their right, "then the court may appoint any suitable person to administer such estate." RCW 11.28.120(7). But regardless of their relationship to the deceased, minors are disqualified from becoming personal representative. RCW 11.36.010.

The statutory scheme grants only the personal representative the right to sue for wrongful death; a minor child cannot be a personal representative, and thus, Kaela could not have been a person entitled to bring the wrongful death action when the action accrued. Thus, the statute of limitations did not toll during her minority.

### ***Riddell Testamentary Trust*, 138 Wn. App. 485 (Div. 2, May 8, 2007)**

#### **Summary**

A trust may be modified to create a "special needs" trust for a beneficiary suffering from schizophrenia affective disorder and bipolar disorder. Under the two-prong approach of "equitable deviation" used to determine if modification of trust is appropriate, the court may modify any administrative or distributive provision of a trust, or direct or permit the trustee to deviate from an administrative or distributive provision, if (1) because of circumstances not anticipated by the settlor, (2) the modification or deviation will further the purposes of the trust.

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## **Recent Developments: Probate and Trust**

### **Facts**

Nancy, a remainder beneficiary of a testamentary trust, suffered from schizophrenia affective disorder and bipolar disorder. She was not expected to live independently for the remainder of her life. Under the trust instrument, upon the death of her parents, Nancy stood to receive nearly \$700,000 outright. The trustee filed a petition in superior court, asking the trial court to modify the trust to create a "special needs" trust on Nancy's behalf, instead of distributing the trust principal to her. The trustee explained that, under the current trust, when Nancy's parents die, Nancy's portion of the principal will be distributed to her and the trust will terminate. He argued that a special needs trust is necessary because, upon distribution, Nancy's trust funds would either be seized by the State of Washington to pay her extraordinary medical bills or Nancy would manage the funds poorly due to her mental illness and lack of judgment. He argued that the modification would preserve and properly manage Nancy's funds for her benefit.

The trial court denied the motion to modify. It stated that it did not have the power to modify the trust unless unanticipated events existed that were unknown to the trust creator that would result in defeating the trust's purpose. The trial court found that the trust's purpose was "to provide for the education, support, maintenance, and medical care of the beneficiaries" and that a modification would only "permit[] the family to immunize itself financially from reimbursing the State for costs of [Nancy's medical] care." Relying on the Restatement (Second) of Trusts, it stated that it would not allow a modification "merely because a change would be more advantageous to the beneficiaries."

The trustee moved for reconsideration, arguing that the Trust and Dispute Resolution Act, Chapter 11.96A RCW (TEDRA) and the Restatement (Third) gave the trial court plenary power to handle all trusts and trust matters and the authority to modify the consolidated trust into a special needs trust. He argued that, because the grandparents directed the trust proceeds to be distributed to their grandchildren when they reach the age of 35, the settlors intended that their grandchildren attain a level of responsibility, stability, and maturity to handle the funds before receiving the distribution. He also argued that due to Nancy's mental illness, allowing a distribution to her would defeat the settlors' intent and the trust's purpose.

The trial court denied the motion for reconsideration.

### **Discussion**

Under the two-prong approach of "equitable deviation" used to determine if modification of trust is appropriate, the court may modify an administrative or distributive provision of a trust, or direct or permit the trustee to deviate from an administrative or distributive provision, if (1) because of circumstances not anticipated by the settlor, (2) the modification or deviation will further the purposes of the trust. Restatement (Third) of Trusts § 66(1).

The Court of Appeals found that changed circumstances existed to modify testamentary trusts. The grandparents intended that Nancy would have trust corpus to use as she saw fit after her parents died and after she reached age 35. Nancy, however, who was then more than 35 years old, suffered from schizophrenia affective disorder and bipolar disorder, and she was unable to manage funds. The court also found that the modification would further the purposes of the trust because the law invited, rather than discouraged, the creation of special needs trusts on behalf of persons with disabilities, to supplement a disabled person's public benefits without increasing countable assets and resources so as to disqualify the person from public benefits.

### **Nelson v. Schnautz, 141 Wn. App. 466 (Div. 1, Oct. 29, 2007).**

#### **Summary**

The failure to file a personal injury claim against a tortfeasor's estate within the 24 month limitation under RCW 11.40.051 does not bar a recovery from other defendants who are jointly and severally liable.

#### **Facts**

A plaintiff who was injured in an automobile collision brought a legal malpractice action against an attorney for failure to file a creditor's claim against a tortfeasor's estate within 24 months. The King County Superior Court ruled that the attorney's failure to file a claim within 24 months prevented the plaintiff from recovering the estate's share of the damages from the other jointly and severally liable tortfeasors. The Court of Appeals reversed the trial court and held that the other joint tortfeasors remained liable for the combined percentage of fault for all the defendants against whom judgment was entered.

#### **Discussion**

Personal injury claims are subject to a 3-year statute of limitations under RCW 4.16.080(2). According to RCW 4.16.200, actions against a decedent are governed by the probate statutes (Chapter 11.40 RCW). Because the plaintiff had a personal injury claim against an estate, he had to comply with the applicable procedures and timelines in the probate statutes. The intent of the probate code is to limit claims against the decedent's estate, expedite closing the estate, and facilitate distribution of the decedent's property.

Under RCW 11.40.010, a claim against an estate may not be brought "unless a personal representative has been appointed and the claimant has presented the claim as set forth in this chapter." RCW 11.40.051(1)(c) required the plaintiff to file the claim against the estate within "twenty-four months after the decedent's date of death" and failure to do so bars any claim or action against the decedent. "[A] person having a claim against the decedent is forever barred from making a claim or commencing an action

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## Slate of Nominees for WSBA RPPT Executive Committee 2008/09 Fiscal Year

### Probate and Trust Council

Probate and Trust Council Director:

N. Elizabeth McCaw (Stokes Lawrence, Seattle)

Council Members (2-year terms):

Luke E. Thomas (K&L Gates, Seattle)

Carrie C. Simchuk (Perkins Coie, Seattle)

### Real Property Council

Council Members (2-year terms):

Aleana W. Harris (Alston Courtnege & Bassetti, Seattle)

Richard A. Moore (Gordon Derr, Seattle)

Assistant Newsletter Editor:

Brian T. McGinn (Winston & Cashatt, Spokane)

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### ***Recent Developments: Probate and Trust***

against the decedent....” RCW 11.40.051. However, under RCW 11.40.060, the time limits do not apply to claims filed against an estate that seek to recover “applicable insurance coverage or proceeds.” Claims against the decedent or the decedent’s marital community that can be fully satisfied by applicable insurance coverage or proceeds need not be presented within the time limitation of RCW 11.40.051, but the amount of recovery cannot exceed the amount of the insurance.

While RCW 11.40.060 limits the amount of recovery against the estate to available insurance proceeds, the statute does not limit the amount of a jury verdict against the estate or entry of a judgment against the estate for the amount of the insurance proceeds. The purpose of the nonclaim probate statute is to facilitate timely probate of a decedent’s assets, not to absolve the other joint tortfeasors of liability.

Thus, when a fault-free plaintiff does not file a claim against the estate of a joint tortfeasor within 24 months, the amount of recovery against the estate is limited to available insurance proceeds. However, the other joint tortfeasors remain liable for the combined percentage of fault for all the defendants against whom judgment is entered.

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## Practice Tip

*by Michael Harman – Helsell Fetterman, Seattle*

If your client decided to purchase vacation property in Coeur d’Alene would you be willing to handle the transaction? How about updating estate planning documents for long time clients who recently retired and moved to Bend? Many attorneys licensed to practice in Washington, but not in Idaho or Oregon, are hesitant to assist clients with matters that cross into those neighboring states, believing that doing so would constitute an unauthorized practice of law in those jurisdictions. However, in recent years both Idaho and Oregon have amended their Rules of Professional Conduct to permit attorneys licensed in other states to assist clients in certain limited circumstances.

In 2002, the American Bar Association adopted significant changes to Rule 5.5 of the Model Rules of Professional Conduct regarding the unauthorized practice of law and multijurisdictional practice. Amended Model Rule 5.5(c)(4) now provides that “A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that...arise out of or are reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted to practice.” Since the Amended Model Rules were adopted, Washington’s Rules of Professional Conduct Rule 5.5(c)(4) has been amended to match the Amended Model Rule 5.5(c)(4).

What some Washington attorneys may not know, however, is that Idaho has also adopted a substantially similar rule of professional conduct which provides that “A lawyer admitted to practice in another jurisdiction, but not in this jurisdiction, does not engage in the unauthorized practice of law in this jurisdiction when...the lawyer acts with respect to a matter that arises out of or is otherwise reasonably related to the lawyer’s representation of a client in a jurisdiction in which the lawyer is admitted.” The following year the Oregon Supreme Court also adopted the identical substantive provisions of ABA Model Rule 5.5. Of course, as is the case when a non-Washington lawyer temporarily practices law in this jurisdiction, a Washington lawyer also subjects himself or herself to the disciplinary authority of Idaho or Oregon by taking advantage of these amended rules and temporarily practices law in those jurisdictions.

While the amended rules are not an open invitation to hang your shingle in Portland or Boise, they do provide attorneys licensed in Washington some measure of comfort to assist clients crossing into neighboring states on specific transactions. Of course, if you plan to have continued contact with either state, the safest route is to take advantage of Washington’s reciprocity agreement with such state and become a licensed member of that state’s bar. Information about reciprocity admission to Oregon is available at <http://www.osbar.org/admissions>, and Idaho reciprocity information can be found at [http://www2.state.id.us/isb/adm/reciprocal\\_admission.htm](http://www2.state.id.us/isb/adm/reciprocal_admission.htm).

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## Notes from the Chair

*by Alfred M. Falk – Harlowe & Falk LLP, Tacoma – Chair, Real Property, Probate & Trust Section*

I am writing this for the Fall 2007 issue of the RPPT Newsletter. Our last couple of issues have been very late, and so is this one. As you probably know, the Newsletter is an entirely volunteer effort. Sometimes our volunteer authors get behind. That has happened before, but usually we have enough articles in the pipeline that we can cover the shortfall. Unfortunately, our probate and trust authors have all run into time demands in their practices that have prevented them from keeping to their timelines.

We do hope to get back on schedule this year, however. We will publish the issues as the articles come in. With any luck, you will receive the Winter 2008 and Spring 2008 issues between now and the end of July. Then the Summer 2008 issue should go to press before Autumn starts in late September.

We are always looking for new ideas and authors for the Newsletter. If you have an idea for an article, or you would be willing to write one on a topic selected by our editors, please contact one of the editors and explore how you can share your

expertise with all the members of the Section. Or, if you know someone who could put together an article for us, please encourage him or her to do just that. From the activity on our listserves, I know that there are issues of concern out there, and people with answers and the talent to get it down on paper.

Our 2008 Midyear Meeting will be held on June 6-8 in Vancouver. Vancouver, Washington, that is. It will convene at the nearly brand new Vancouver Hilton Hotel. Meeting Chair Tim Osborn and his two Program Co-Chairs, Heidi Orr and Joe McCarthy, have a great program lined up for you. You probably will have received the program bulletin from the CLE office by the time this Newsletter reaches you. Don't overlook this opportunity to pick up CLE credits for highly informative seminar sessions that are well worth attending. The Midyear Meeting is also a very good time to create or renew friendships with fellow practitioners from around the state. And you can visit Portland, just across the river, to enjoy part of their annual Rose Festival.