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Washington's New 150-Year Rule Against Perpetuities

by Michael D. Carrico, Riddell Williams, P.S.

Introduction

Effective January 1, 2002, Washington's statutory Rule Against Perpetuities was substantially amended to eliminate the "wait and see" approach statute which had been in effect since 1959 and replace it with a flat 150-year "period in gross" statute. This article will review the reasons for the reform of Washington's rule, will suggest a new form of "savings clause," and will comment on use of the new Washington rule, given generation-skipping transfer tax factors.

In 1959 the Washington Legislature reformed Washington's Rule Against Perpetuities statute to take the "wait and see" approach, and thereby to invalidate a trust or similar arrangement which lasted longer than the lifetime of a beneficiary (or other relevant person) plus 21 years only after that point in time was reached. *See, e.g., Betchard v. Iverson*, 35 Wn.2d 344 (1949) (applying the common law rule); *Robroy Land Co. v. Prather*, 95 Wn.2d 66 (1980) (commenting on the wait and see approach). This reform was widely viewed as a beneficial modernization of the Washington Rule Against Perpetuities statute, given the fact that the common law rule had invalidated such a trust as of the date of its establishment.

In recent years, there has been a trend towards simplification, or even elimination, of the Rule Against Perpetuities. The 1990 Uniform Statutory Rule Against Perpetuities extended the maximum permissible term to 90 years, if that period would be longer than the otherwise permissible term (that is, "lives in being plus 21 years"). Several states, including Alaska and Idaho, have repealed the Rule Against Perpetuities entirely. For a discussion of this trend, *see J. Price, Price on Contemporary Estate Planning* §10.48 at 1182 (2d ed. 2000).

Real Property, Probate and Trust Section Reform Proposals

Readers of this article might recall discussions within the Real Property, Probate and Trust Section over the past five years about whether to abolish or to substantially reform Washington's Rule Against Perpetuities. Many section members favored elimination of Washington's Rule Against Perpetuities for simplicity and for most effective use of the "GST exemption" under Section 2631 of the Internal Revenue Code of 1986. Other section members favored adoption of the Uniform Statutory Rule Against Perpetuities for greater uniformity among the states. Still other section members favored doing nothing because the wait and see approach has worked reasonably well over the years (as witnessed by the lack of appellate court precedent under RCW 11.98.130 *et seq.*; compare *Girard v. Myers*, 39 Wn. App. 577 (1985), and *Matter of Booker*, 37 Wn. App. 708 (1984), apparently the only cases addressing related issues).

In the end, the Section's Executive Committee did none of the above, proposing legislation which simply allows an irrevocable trust to last 150 years, no more, no less. Below is the critical provision, RCW 11.98.130, which was closely patterned on the prior statute:

No provision of an instrument creating a trust, including the provisions of any further trust created, and no other disposition of property made pursuant to exercise of a power of appointment granted in or created through authority under such instrument is invalid under the rule against perpetuities, or any similar statute or common law, during the one hundred fifty years following the effective date of the instrument.

continued on page 2

TABLE OF CONTENTS

Washington's New 150-Year Rule Against Perpetuities	1	Recent Developments/Probate & Trust	12
Alert — Washington Estate and Generation-skipping Transfer Taxes	4	Probate and Trust Council Report	13
The Merger Doctrine and Real Property Purchase and Sales Agreements	6	Real Property Council Report	14
Recent Developments/Real Property	10	Notes from the Chair	15
		How to Reach Us	16

continued from previous page

Washington's New 150-Year Rule ...

Thereafter, unless the trust assets have previously become distributable or vested, the provision or other disposition of property is deemed to have been rendered invalid under the rule against perpetuities.

Generally, this new rule applies to any irrevocable trust with an effective date on or after January 1, 2002. Under RCW 11.98.160, this "effective date" for "an irrevocable inter vivos trust is the date on which it is executed by the trustor" (this apparently is not the date on which trust corpus is first received by the trustee, the traditional equity rule); the "effective date" of a trust established under the typical revocable living trust or of a testamentary trust "is the date of the trustor's or testator's death."

Why 150 years? If a trust for the lifetime benefit of a grandchild and his descendants were established under a will, the grandchild were one year old at the death of the testator, the grandchild were to live to age 90 and the trust were to last as long as permissible under the old "wait and see" Washington Rule Against Perpetuities, that trust could last 89 years plus 21 years, or a total of 110 years. The Executive Committee was concerned that medical science rapidly has pushed the actuarial boundaries for life expectancy out well past age 100. As centenarians become more common, the age 90 approach taken by the Uniform Statutory Rule Against Perpetuities will become obsolete. By selecting a flat period such as 150 years, the Executive Committee hoped to provide Washington with a simpler, more pragmatic rule than exists in the states that have adopted the Uniform Act.

Savings Clauses

Many dispositive instruments include "savings clauses" which cause a trust to terminate, and distributions to be made, when the Rule Against Perpetuities period is exceeded. The vast majority of savings clauses currently in effect refer to the traditional "lives in being plus 21 years" measuring period. Note that the 2001 statute's effective date causes a longer savings clause period

under those clauses which contemplated future Rule Against Perpetuities reform: the new statute does not apply to irrevocable trusts with effective dates prior to January 1, 2002 "unless the trust instrument otherwise provides."

In states having wait and see statutes, the primary function of the savings clause has been to direct distributions of trust assets at trust termination. Professor Price suggested the following form for use in states having a common law or wait and see statute:

This trust shall terminate not later than 21 years after the death of the survivor of my issue living on my death and the trust property shall be distributed outright to my issue then living, by representation [or, in equal shares to the beneficiaries then entitled to receive current distributions from the trust].

J. Price, *Price on Contemporary Estate Planning* §10.48 at 1149 (2000).

During 2001, after enactment of Washington's new 150-year statute, savings clauses similar to the following were used for maximum flexibility prior to the statute's effective date:

Notwithstanding any other provision of this Will, each trust hereby created, if not previously terminated under other provisions of this Will, shall in any event terminate upon the later to occur of (1) the expiration of twenty-one (21) years following the death of the survivor of all my descendants living on the date of my death or (2) any longer period then provided by the Washington Rule Against Perpetuities (RCW 11.98.130 *et seq.*). Upon such termination, all the assets thereof shall be distributed to the person or persons then entitled to receive the

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continued on next page

continued from previous page

Washington's New 150-Year Rule ...

income thereof and in the shares provided for the distribution of income as if the Trustee exercised all discretionary provisions for the distribution of income upon the principle of representation.

Now that we have passed the January 1, 2002 effective date of the 150-year statute, this provision presumably can be shortened to read as follows:

Notwithstanding any other provision of this Will, each trust hereby created, if not previously terminated under other provisions of this Will, shall in any event terminate 150 years after the date of my death. Upon such termination, all the assets thereof shall be distributed to the person or persons then entitled to receive the income thereof and in the shares provided for the distribution of income as if the Trustee exercised all discretionary provisions for the distribution of income upon the principle of representation.

At least one commentator has recommended granting an independent trustee the power to reform trust distribution provisions so as to conform with future changes to the Washington Rule Against Perpetuities; for example, its outright abolition. (*See Leach & Logan, Perpetuities: A Standard Saving Clause to Avoid Violations of the Rule*, 74 Harv. L. Rev. 1141 (1961), discussed in J. Price, *Price on Contemporary Estate Planning* §10.48 at (2000).) A more modern approach would be to grant the reformation power to a trust “protector” or a “special trustee.”

Generation-skipping Transfer Tax Issues

Since 1985 many estate planners have drafted irrevocable trusts to last as long as possible under the Rule Against Perpetuities, so as to make optimal use of their clients’ “GST exemption” under Internal Revenue Code Section 2631 (the original statutory amount was \$1,000,000; in 1997 it was indexed for inflation, and now has reached \$1,090,000). Under the Economic Growth and Tax Relief Reconciliation Act of 2001, Section 2631(c) has been added (and subsection (a) has been amended) so that after 2003 the GST exemption amount will simply be the “applicable exclusion amount” under Code Section 2010(c); for example, \$1,500,000 by 2004 and \$2 million by 2006. Of course, under new Code Section 2664 the generation-skipping transfer tax might not apply at all to “transfers after December 31, 2009.” Nevertheless, for clients who are concerned about dying prior to that time, or who think that the generation-skipping transfer tax (circa 2001) will “snap back” into effect on January 1, 2011 (under Section 901 of the 2001 Act, its “sunset provision”) planning to use the GST exemption still is of importance.

If enough GST exemption is allocated to a new Washington irrevocable trust so that its “inclusion ratio” under Code Section

2642 is zero, can the trust escape generation-skipping transfer taxation for a full 150 years? Apparently, yes — based on the lack of any authoritative Treasury Department or Internal Revenue Service statements to the contrary and on the lack of any contrary provision in any of the generation-skipping transfer tax regulations. *See generally* C. Harrington and F. Acker, 850 T.M., at A-5, A-27 (1996) *Generation-Skipping Tax*.

A troublesome question is raised by Treas. Reg. §26.2601-1(b)(1)(v), however, which generally addresses how grandfathering of an irrevocable trust established before September 25, 1985 can be lost through “constructive additions” of property to the trust. It states as follows regarding constructive additions caused by exercise of a power of appointment:

(B) *Special Rule for Certain Powers of Appointment.* The release, exercise, or lapse (other than a general power of appointment as defined in § 2041(b)) is not treated as an addition to a trust if —

- (1) Such power of appointment was created in an irrevocable trust that is not subject to chapter 13 under paragraph (b)(1) of this section; and
- (2) in the case of an exercise, the power of appointment is not exercised in a manner that may postpone or suspend the vesting, absolute ownership or power of alienation of an interest in property for a period, measured from the date of the creation of the trust, extending beyond any life in being at the date of creation of the trust plus a period of 21 years plus, if necessary, a reasonable period of gestation (the perpetuities period). For purposes of this paragraph . . . , the exercise of a power of appointment that validly postpones or suspends the vesting, absolute ownership or power of alienation of an interest in property for a term of years that will not exceed 90 years (measured from the date of creation of the trust) will not be considered an exercise that postpones or suspends vesting, absolute ownership or the power of alienation beyond the perpetuities period.

Thus, the regulation’s exception focuses primarily on exercise of powers of appointment that postpone or suspend vesting or ownership of trust assets for a period not longer than the common law “lives in being plus 21 years” period — or the new 90-year Uniform Act period. The regulation says nothing about longer “periods in gross” like Washington’s 150-year period, nor does it say anything about states which have enacted even longer periods in gross, or have abolished the Rule entirely.

continued on next page

Alert

Washington Estate and Generation-skipping Transfer Taxes

by Dean V. Butler, Stokes Lawrence, P. S. and Michael D. Carrico, Riddell Williams, P. S.

Effective January 1, 2002, the "Economic Growth and Tax Relief Reconciliation Act of 2001," P.L. 107-16 (EGTRRA) made substantial changes to the federal estate tax, gift tax and generation-skipping transfer tax (GSTT). Under RCW 83.100.020(15), however, the Washington state estate tax and GSTT tax are computed based on the Internal Revenue Code of 1986 as in effect on January 1, 2001. Even as the federal estate, gift and GSTT exemptions increase and the Internal Revenue Code Section 2011 credit for state death taxes is eliminated, Washington transfer tax calculations will continue to be governed by pre-EGTRRA law.

Several bills were introduced in the 2002 Session of the Washington Legislature that would have either wholly or partially conformed Washington law with these EGTRRA changes; however, none of the bills passed prior to adjournment on March 14. The result is that, for decedents dying in 2002, the federal estate tax exemption is \$1 million and the Washington estate tax exemption is only \$700,000 (because under pre-EGTRRA law the federal exemption was to increase from \$675,000 to \$700,000 on January 1, 2002).

EGTRRA reduces the Section 2011 state death tax credit by 25 percent each year, commencing on January 1, 2002, until it is completely phased out after 2004; in 2005, the credit is replaced by a deduction under Section 2053(d). If no further action is taken by Congress, however, federal estate tax, gift tax and GSTT law as of 2001 will return on January 1, 2011. EGTRRA § 901.

The result is that for Washington decedents dying in 2002, federal estate taxes generally will only apply to taxable estates in excess of \$1 million (note that adjusted taxable gifts also have to be taken into account). The Washington estate tax will, however, generally be imposed on taxable estates in excess of \$700,000. (The Washington GSTT tax generally will apply to generation-skipping transfers in excess of \$1,090,000, the 2002 figure, as indexed for inflation under pre-EGTRRA law.) Thus, if the taxable estate of a Washington decedent dying in 2002 is \$1

million (and there are no adjusted taxable gifts), the federal estate tax is zero but the Washington estate tax is \$33,200.

This inconsistency will cause a host of problems. Depending on how the will or revocable living trust is drafted, if a decedent leaves a surviving spouse and there is a "credit shelter/bypass trust" established under the will or revocable living trust (Credit Trust), the Credit Trust will either be funded to a maximum amount of (1) \$1 million if the formula is phrased in terms of the maximum federal exemption/unified credit, thereby creating a Washington estate tax liability of \$33,200 (a new "Widow's Tax"?); or (2) \$700,000, if the formula gift is limited to the federal exemption/unified credit (under common formula gift language, perhaps taking into account the state death tax credit but only to the extent that the Section 2011 state death tax credit does not increase state death taxes.) (Of course, the latter limitation would mean that \$300,000 of the federal exemption would be wasted.) As the federal exemption increases, the state death tax credit is phased out, and federal estate tax rates decrease, the incongruity and "gap" between the federal and state taxes will become more pronounced and more troublesome.

What does all of this mean for pre-mortem and post-mortem planning? This article is being written in late March, 2002, and planning strategies and tactics are only beginning to come clear. For now, however, here are several points to consider:

1. Again, if a decedent leaving a will or revocable living trust containing such a formula gift died on January 1, 2002 or thereafter, the effect of the formula gift might be to cause more than \$700,000 to pass into the Credit Trust. If the surviving spouse does not want to pay Washington estate tax in that first estate, there are a few strategies which should be considered: (a) having remainder beneficiaries of the Credit Trust disclaim their interests within nine months (that is, in accordance with the requirements of Chapter 11.86 RCW and Internal

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continued from previous page

Washington's New 150-Year Rule ...

What exactly does the regulation mean? Literally, it might raise a problem with respect to a grandfathered trust if a limited power of appointment were exercised in such a way as to use the new Washington 150-year period. Nothing in the regulation's language suggests that it has any impact on whether allocation of the GST exemption to a new Washington 150-year trust will cause generation-skipping transfer tax problems, however.

Conclusion

It is hoped that Washington's new 150-year period will be of significant help to estate planning clients who own farmland and other family real estate which they intend to preserve for future generations, and that it will make Washington trust documents far easier for clients to read and understand. •

continued from previous page

Alert ...

Revenue Code Section 2518), so that the excess over \$700,000 in Credit Trust assets can “drop” to the surviving spouse in a manner qualifying for the Section 2056 marital deduction, effective as of the date of death (but watch out for minor remainder beneficiaries; presumably, a guardian will have to be appointed for an effective disclaimer of such a minor beneficiary’s remainder interests, RCW 11.86.021(3)); (b) construction or reformation of the formula gift provision, to clarify that a maximum of \$700,000 passes into the Credit Trust (watch out for limits on admissible evidence — and consider whether the Department of Revenue must be provided notice under RCW 11.96A.030(4)(i), 11.96A.110); and (c) making a partial qualified terminable interest property election for the portion of the Credit Trust which exceeds \$700,000 in value, if the interests passing to the surviving spouse under the Credit Trust otherwise would qualify for the election under Internal Revenue Code Section 2056(b)(7) and its regulations.

2. Far easier, and less complicated and expensive, would be simply to amend such formula gift provisions as soon as possible. Notifying estate planning clients of this issue would be of benefit (and might be a good business development tactic); failure to do so presumably would not constitute malpractice under *Stangland vs. Brock*, 109 Wn.2d 675, 685 (1987) because of the lack of a duty to monitor a client’s estate planning documents.
3. In 2002, if a decedent’s gross estate (or gross estate plus adjusted taxable gifts) has a value of less than \$1 million, no federal return is required (I.R.C. § 6018(a); presumably, none can be filed). Given RCW 83.100.050(1) and its requirement to file a copy of the “federal return” with the Washington estate tax return, what will a Washington personal representative or revocable living trust trustee file with the Department of Revenue for an estate which is over \$700,000 in value? And is there even a requirement to file a Washington return? (Consider the Chapter 83.100 RCW definition of “federal return,” RCW 83.100.020(4), which in turn refers to a return required by Chapter 11 or 13 of the Internal Revenue Code, which is defined in RCW 83.100.020(15) as the Code in effect on January 1, 2001.) If there is no obligation to file a Washington return, is there any time at which the Washington tax is due under RCW 83.100.060?

(Editor’s Note: The Department of Revenue has advised that in 2002 a state estate tax return must be filed for

estates in excess of \$700,000 but less than \$1,000,000 and that revised Washington Estate Tax returns (similar to Form 706) will be available shortly on their website, WAEstateTaxForm@dor.wa.gov. Any estate tax questions can be directed to the Estate Tax Section at (360) 753-5547 or (360) 753-7518.)

4. The authors understand that many Washington legislators wanted to conform Washington’s estate tax with EGTRRA, so that it would phase out with the Section 2011 state death tax credit by the end of 2004. The authors further understand that these legislators plan to try again in the 2003 session. Will they make such conforming legislation effective retroactively for decedents dying on or after January 1, 2002? If they do, there might be no tax owing for estates having a value between \$700,000 and \$1 million left by decedents dying in 2002. In light of this possibility, is it better practice to extend the time for filing such returns and paying tax for such estates into 2003? The first “post-EGTRRA” returns and tax payments will be due on or after October 1, 2002. Extending would cause them to be due on or after April 1, 2003, by which time it might be clear that no Washington tax will be due on such \$700,000 to \$1 million estates.

But how would the time for filing those returns and paying the tax be extended? Under RCW 83.100.050(2) and 83.100.060(2), extension of the time to file and pay requires acceptance by the Internal Revenue Service of a federal extension form. If no federal return is due, can the Internal Revenue Service grant an extension of time to file and pay? Will the prudent personal representative or trustee who suspects that the estate will fall into that \$700,000 to \$1 million range do nothing to determine the value of assets prior to applying for federal extension, so as to be able to file a good faith application for a federal extension?

Perhaps the Department of Revenue will wish to enact its own, new extension procedure for the \$700,000 to \$1,000,000 estates. Given RCW 83.100.050(2) and 83.100.060(2), would such extension procedures be valid?

5. Note that Washington now has a net death tax for the first time since Initiative No. 402. Taken together with the continuing federal estate tax, the combined tax burden for some estates will be greater than before enactment of EGTRRA. Washington has no gift tax,

continued on next page

The Merger Doctrine and Real Property Purchase and Sales Agreements

by Jeffrey A. Coop and Christopher Osborne, Short Cressman & Burgess PLLC

In *Brown v. Johnson*, 109 Wn.App. 56, 34 P.3d 1233 (2001), Division I of the Court of Appeals decided that the attorneys' fees provision in a real estate purchase and sale agreement applies to claims of misrepresentations in a real property disclosure statement. The court confirmed that the merger doctrine extinguishes only those provisions contained in the purchase and sale agreement that relate to the title conveyancing functions of the deed and that the attorneys' fees provision is a "collateral" provision" which survives closing. The following summary of facts is taken, in part, from the unpublished portion of the opinion.

Johnson, the seller, advertised her home for sale as a completely remodeled, 3 bedroom, 2 1/2 bathroom home. Brown, the buyer, viewed the property for approximately 45 minutes, and, during the course of her visit, received a copy of the real property disclosure statement ("Form 17").

Johnson indicated in Form 17 that there were no defects in the operation of the septic system but that she did not know if the system was properly permitted or for how many bedrooms it was approved. She also stated that a permit had been obtained for a remodel.

Brown sought clarification from Johnson's real estate agent about the addition to the property and was told that the structural addition was limited to an entry way, half-bath, and laundry room

and that all of the remaining remodeling was merely cosmetic. Based on the representations in Form 17 and the answers to her inquiries, Brown purchased the property.

The purchase and sale agreement contained a standard attorneys' fees provision. The agreement provided:

If Buyer, Seller, Listing Agent or Selling Licensee institutes suit concerning this Agreement, including, but not limited to claims brought pursuant to the Washington Consumer Protection Act, the prevailing party is entitled to court costs and a reasonable attorney's fee. In the event of trial, the amount of the attorney's fee shall be fixed by the court.

Shortly after closing, Brown discovered slug bait and rat poison in the basement and discovered signs of mice. Later, she found slugs and heard frogs croaking in the basement. After the first rain, the basement flooded.

Brown hired another home inspector who found evidence of extensive structural damage due to dry rot and powder post beetles, some of which had been shoddily repaired. He also concluded the roof was inadequately supported, the mortar in the exterior brickwork was insufficient, and the exterior siding was improperly installed.

continued on next page

continued from previous page

Alert ...

however. Any Washington citizen who has high-basis assets and expects to die within a short period of time should consider making substantial pre-death gifts, even gifts which would result in federal gift tax (under Internal Revenue Code Section 2035(b), federal gift tax payable on gifts within three years of death is brought back into the gross estate, but gift assets are not), to reduce potential federal and Washington estate taxes. If a gift is not added back into the decedent's gross estate for estate tax purposes, the property does not receive a "step-up" in basis to fair market value as of the date of death (or the alternate valuation date). This loss of basis step-up must be factored into the equation.

6. Finally, when it becomes clear which other states have conformed with EGTRRA, high net worth Washington citizens will want to consider formally changing their

domicile to avoid the new net Washington estate tax. Discussion of planning steps to accomplish such a change of domicile is far beyond the scope of this Alert, but worth considering.

While many legislators wanted to conform Washington law with the June 2001 federal tax law changes, others made public their intentions to retain the Washington estate tax in its 2001 form through 2010, or beyond, notwithstanding the policies of Initiative No. 402 and the net increase in economic burdens for Washington families who have lost a loved one. Both Washington and federal tax law will cause estate planners to review their clients' estate plans and, because of the Washington Legislature's inaction this spring, to consider use of the full range of estate planning strategies for the balance of the decade, even if many clients will be reluctant to expend the time and resources on implementing them. •

continued from previous page

The Merger Doctrine ...

The evidence of attempted repairs and Brown's investigation of Johnson's dissolution file revealed that Johnson knew about the extensive problems with the property before she listed it for sale. She also learned from Johnson's ex-husband that the septic tank was merely a wooden box lined with black plastic; the basement flooding was chronic; the previous owners joked about the frogs in the basement; the upstairs bedrooms and bathrooms were added without permits; and the home was structurally unsound.

Johnson refused to pay for any repairs. The county building inspector stayed prosecution of the code violations only on the condition that Brown pursue her claims against Johnson. Brown was forced to leave the house, which her lender eventually sold at a short sale for approximately one-half of the purchase price.

Brown sued Johnson for misrepresentation and was awarded \$100,000 by the jury but the court awarded only a small portion of her attorneys' fees. The parties appealed, focusing on the trial court's award of attorneys' fees.

Brown argued that she was entitled to attorneys' fees because of the attorneys' fees provision in the purchase and sale agreement. Johnson argued that the fees provision was not applicable because Brown's claims arose out of Form 17, which RCW 64.06.020(2) provides is not a part of the purchase and sale agreement. Johnson also argued that the attorneys' fees provision merged into the deed on closing and was no longer enforceable.

The Court of Appeals affirmed the verdict against Johnson but reversed the limited award of Brown's attorneys' fees. The Court held that (1) Brown's tort claims for misrepresentations and fraud arose out of the purchase and sale agreement and (2) the attorneys' fee provision in the purchase and sale agreement did not merge into the deed.

Statutory Disclosure Statement

Form 17 is prescribed by RCW 64.06.020. Though its use is not mandatory, a seller failing to provide Form 17 in a non-exempt transaction is subject to the buyer's absolute, unilateral, right to terminate the transaction for any reason until closing has occurred. RCW 64.06.020(2) makes clear that Form 17 is not a part of the contract:

The real property transfer disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential real property.

Johnson relied on this language to support her argument that Brown was not entitled to attorneys' fees. She argued that Brown's claims for misrepresentation and fraud arose out of the disclosures Johnson made in Form 17 and were, therefore, statutory, not contractual. She argued that the attorneys' fee provision in the purchase and sale agreement could not, therefore, serve as the basis for an award of attorneys' fees.

The Court did not agree that Brown's tort claims arose solely out of Form 17. Instead, the Court viewed the disclosures contained in Form 17 as evidence of Johnson's misrepresentations. Johnson's contention that Brown's claim arose solely out of the disclosure statement is not

accurate. In fact, the action is a common law action for misrepresentation of which Johnson's failure to disclose on the disclosure statement was but one act among several acts and omissions by Johnson culminating in the jury's verdict for Brown.

Id., 109 Wn.App. at 58, 34 P.3d at 1235 n. 5.

After determining that Brown's claims sounded in tort under a common law theory of misrepresentation, the Court also held that Brown's tort claims arose out of the parties' purchase and sale transaction and that the attorneys' fees provision applied. The Court reasoned that Brown's action was "on the contract" because (a) it arose out of the purchase and sale agreement and (b) the purchase and sale agreement was central to the parties' dispute. *Id.* at 57, 34 P.3d at 1234. Citing *Edmonds v. John L. Scott Real Estate, Inc.*, 87 Wn.App. 834, 942 P.2d 1072 (1997), the Court concluded that if a tort action is based on an agreement that contains an attorneys' fees provision, the prevailing party on the tort claim is entitled to recover attorneys' fees.

The court's decision in *Brown* is significant because it is the first published decision that recognizes that a claim for misrepresentations under Form 17 and a common law action for misrepresentation are coextensive. A common law action for misrepresentation may be established with a disclosure in Form 17 and where the purchase and sale agreement contains an attorneys' fees provision, the prevailing party on the tort claim is entitled to attorneys' fees. Therefore, in almost all "bad house" cases, the parties will be subject to a claim for attorneys' fees where the purchase and sale agreement contains an attorneys' fee provision.

continued on next page

continued from previous page

The Merger Doctrine ...

Merger

Johnson also argued on appeal that the attorneys' fees provision in the purchase and sale agreement merged into the deed at closing, thereby extinguishing Brown's claims to attorneys' fees. The merger doctrine stands generally for the proposition that "the provisions of a contract for the sale of real estate, and all prior negotiations and agreements, are considered merged in a deed made in full execution of the contract of sale." *Black v. Evergreen Land Developers, Inc.*, 75 Wn.2d 241, 248, 450 P.2d 470, 474 (1969). However, even the first reported case in Washington on the merger doctrine recognized its limits:

Like most all rules, the one quoted has its exceptions, and ... we find the following: A deed is not, however, always a merger of the articles of agreement, nor are a vendor's or a purchaser's covenants necessarily merged or discharged, and a parol agreement may be suspended by the subsequently executed instrument. The question of merger has also been declared to be one of construction to be gathered from a consideration of the entire contents of the instruments.

Davis v. Lee, 52 Wash. 330, 335, 100 P. 752, 754 (1909). Nevertheless, Johnson supported her argument with two recent Court of Appeals decisions that hold that attorneys' fees provisions in purchase and sale agreements do merge into the deed on closing. *Barber v. Peringer*, 75 Wn.App. 248, 877 P.2d 223 (1994); *Barnhart v. Gold Run, Inc.*, 68 Wn.App. 417, 843 P.2d 545 (1993). Both cases were distinguishable from the facts in *Brown*.

In *Barber*, after closing and the delivery of a statutory warranty deed, the buyers discovered that part of their driveway encroached onto their neighbors' property. After successfully prosecuting a quiet title action against the neighbors, the buyers sued the seller for the attorneys' fees and costs they incurred in the quiet title action, alleging that the seller breached the purchase and sale agreement by failing to convey clear and marketable title. They prevailed at the trial court level, but the Court of Appeals reversed. *Barber*, 68 Wn.App. at 250-51, 877 P.2d at 225.

The Court of Appeals held:

In general, the provisions of a real estate purchase and sales agreement merge into the deed, although there may be exceptions to this rule when there are collateral contract requirements that are not contained in or performed by the execution and delivery of the deed, are

not inconsistent with the deed, and are independent of the obligation to convey.

Id. At 251-52, 877 P.2d at 225. Despite recognized exceptions, however, the Court of Appeals held that the provisions in the purchase and sale agreement requiring delivery of title free of encumbrances and defects merged into the deed. Because the driveway encroachment impacted title, the buyer's action was an action for breach of the covenants contained in the deed, not those contained in the purchase and sale agreement. The Court held that the attorneys' fees provision in the purchase and sale agreement also merged into the deed, and reversed the award of attorneys' fees. *Id.* At 254, 877 P.2d at 226.

In *Barnhart*, the buyers purchased a lot in a plat. The plat map showed a 30-foot right of way for a private road running along the northern boundary of the tract, including the buyers' property. After disputes arose with their neighbors over the use of the private road right of way, the buyers brought suit against the company that sold them the property, alleging that it had "the responsibility to provide [them] with the roadway easement as bargained for in the sale of the property." The buyers lost at trial. The seller as the prevailing party sought its attorneys' fees under the original purchase and sale agreement, which the trial court denied. *Barnhart*, 68 Wn.App. 417, 423, 843 P.2d 545, 548 (1993).

The Court of Appeals affirmed the trial court's denial of fees. Like the Court in *Barber*, it recognized that the merger doctrine has exceptions, but only for "stipulations in the contract which are not contained in, not performed by, and not inconsistent with the deed and which are held to be collateral to or independent of the obligation to convey." *Id.* at 423-24, 843 P.2d at 548. The Court held that the basis of the *Barnharts'* action, an easement affecting title to their property, was central, not collateral, to the agreement to convey. *Id.* at 424, 843 P.2d at 548. It held, therefore, that the attorneys' fees provision merged into the deed.

In *Brown*, the Court of Appeals did not agree that *Barber* and *Barnhart* were controlling on the issue of fees. The Court held that, unlike the facts in *Barber* and *Barnhart*, "Brown's action for misrepresentation does not relate to title or any other terms contained in the deed and therefore falls within the [merger] doctrine's exceptions." *Brown*, 109 Wn.App. at 58, 34 P.3d at 1235. Therefore, execution and delivery of the deed did not extinguish the attorneys' fees provision contained in the purchase and sale agreement, and the Court directed the trial court to award reasonable attorneys' fees to Brown.

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The Merger Doctrine ...

The Court's analysis of the merger doctrine is consistent with its prior decisions. *Brown* clarifies, however, that misrepresentations about the physical condition of the property do not relate to the title conveyance functions of the deed and are collateral and independent of the obligation to convey contained in the deed. As a result, the prevailing party may be entitled to attorneys' fees where the purchase and sale agreement contains such a provision.

Conclusion

Using Form 17 as a disclosure vehicle does not insulate a seller from a misrepresentation claim and an award of attorneys' fees. The Court of Appeals' decision in *Brown* recognizes that misrepresentations of a seller about the physical condition of the property, whether or not in Form 17, arise out of the underlying purchase and sale agreement and do not merge into the deed on closing.

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Recent Developments

Real Property

by Scott B. Osborne, Graham & Dunn PC, Seattle

WASHINGTON COURT OF APPEALS

There were several recent decisions involving the liability of landowners for accidents occurring on their property. The fact patterns of the cases were somewhat different, but all of the cases involved an analysis of whether the injury to the tenant, invitee or user of the property was reasonably foreseeable to the owner, and, if so, did the landowner breach its duty in failing to take steps to avoid the injury. The three decisions discussed below were all decided on a summary basis: two on summary judgment and the third on a dismissal at the end of the plaintiffs' case. The procedural status means that the evidence presented by the plaintiffs was viewed in a light most favorable to the plaintiffs, and the cases do not contain an extended analysis of what a "reasonable" landowner might do to minimize the risk of harm to invitees.

These cases do, however, point out the continuing need for owners and operators to maintain premises liability insurance to protect against personal injury claims, which, as discussed below, can arise from causes ranging from accumulated snow and ice to pieces of lettuce.

Over the years, Washington courts have had a somewhat inconsistent view of the duty of landowners to remove snow and ice. *Iwai v. State*, 129 Wn.2d 84, 915 P.2d 1089 (1996) was the last case considered by the State Supreme Court on the issue. A visitor to a State unemployment office sued for injuries sustained when she fell in a snow-covered parking lot next to the office. The Court in *Iwai*, *supra*, applied the standard of Restatement (Second) of Torts, §343 (1965) to the snow and ice conditions to conclude that a landowner might be liable to invitees for failing to remove snow and ice, even though the hazard was obvious to the invitee. Expanding on this ruling, the Court in *Mucsi v. Graoch Assocs. Ltd. P'ship*, 144 Wn.2d 847 (2001), has held in effect that if the landowner had the opportunity to remove the snow and ice, but failed to do so, a question of fact will always exist for the jury to determine whether the landowner has failed to fulfill its duty of care to its invitees.

Mucsi was a tenant in an apartment complex owned by Graoch Associates. Mucsi, his wife and some friends went to the clubhouse facility in the complex. It had been snowing for a couple of days, and the main sidewalk to the clubhouse had been cleared. When Mucsi left the clubhouse, he used a side exit. The walkway from the side exit had not been cleared of snow. "Mucsi slipped and fell, hitting his head on a wall and landing on his arm. Mucsi sustained injury to his neck and arm; he is an artist and claims serious injuries." *Id.*, p. 853.

Mucsi sued the landlord. At the close of the plaintiff's case, the trial court dismissed the action because there was no indication that the landlord "should have known that somebody was using" the side exit. *Id.* p. 854. The Court of Appeals, in an unpublished opinion, affirmed the dismissal.

The Supreme Court, in a 7-2 opinion, reversed the dismissal and remanded the case for trial. The opinion, authored by Justice Chambers, reviewed the prior Washington decisions on the duty of landowners to remove snow and ice. The opinion also reviewed the competing Massachusetts Rule (no duty to protect against natural accumulations of snow and ice) and Connecticut Rule (landowner must exercise reasonable care to prevent injury from snow and ice). Finally, the Court applied the analysis of Restatement (Second) of Torts, §343 (1965) to the facts established by the plaintiff:

... a landowner is subject to liability for harm caused to his tenants by a condition on the land, if the landowner (a) knows or by the exercise of reasonable care would discover the condition, and should realize that it involves an unreasonable risk of harm to tenants; (b) should expect that they will not discover or realize the danger, or will fail to protect themselves against it; and (c) fails to exercise reasonable care to protect the tenant against danger. *Id.* pp. 855-856.

The Court then concluded that, viewing the evidence most favorably to the plaintiff, there was enough evidence for a jury to conclude that the landlord breached its duty to the tenant:

Although in dispute, there is evidence Graoch had two or three days after the snow stopped to take corrective action. Graoch did not, nor does it appear that it intended to, clear the walkways leading from the side exits of the clubhouse. The evidence suggests the maintenance crew at Keeler's Corner had available snow and ice melting granules that went unused on the side exits. *Id.* p. 862.

A portion of the majority opinion emphasizes that the landowner was not a guarantor of Mucsi's safety, but only required to exercise reasonable care. Since this discussion was not necessary for the Court's conclusion, it was presumably

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Recent Developments: Real Property

aimed at the dissent by Justice Madsen, which argued that the majority opinion expanded the *Iwai*, *supra* standard and in effect made the landlord liable for any injury resulting from a failure to remove snow and ice.

The decision represents a continued trend to expand the liability of landowners for injuries that occur on their property. The only policy justification for this position is that the landowner is in the best position to insure against this risk, and thus spread the cost of the risk among all those who use or occupy the property. The opinion itself lacks a critical element based on its own standard. The evidence cited in the opinion merely evidenced the landowner's knowledge that there was snow and ice on the ground; the fact that the landlord could have removed the snow and ice; and the fact that the landlord did not remove the snow and ice. There was no evidence cited by the Court that went to the second prong of the three prong test imposed by §343: whether the landlord should expect that Mucsi would either not discover the risk or that the landlord should expect Mucsi to fail to protect himself from the danger. Absent evidence on this point, the Court has in effect held that the landowner has the obligation to remove snow and ice if it has the opportunity to do so, which has never been the law in Washington, or any other jurisdiction.

O'Donnell v. Zupan Enters., Inc., 107 Wn.App. 854 (2001), involved a slip and fall case in a grocery market. O'Donnell slipped on a piece of lettuce at the checkout stand at Zupan's Food Pavilion. She sued Zupan for damages. The trial court dismissed the claim on a motion for summary judgment because O'Donnell failed to present any evidence that Zupan had knowledge of any hazardous condition within the premises.

The Court of Appeals reversed. Zupan had a duty to exercise reasonable care toward its business invitees (O'Donnell) to prevent harm. Normally, to invoke this duty, the landowner must have notice of the unsafe condition. Under Washington law, there is a "self-service" exemption to this requirement — if the premises owner/operator utilized a self-service mode of operation, and the operation was of a type that inherently created unsafe conditions, it was not necessary to demonstrate that the owner/operator of the premises knew of the specific injury-causing condition in order to establish liability.

O'Donnell pointed out that she was required to load her groceries onto a conveyor belt at the checkout stand. Handling the food created the possibility of spills that could not be observed by the cashier. The store did not regularly inspect the floors in the checkout areas, despite the possibility of spills. Viewing this evidence in a light most favorable to the plaintiff, the Court concluded that an issue of fact had been presented that required a trial.

In *Davis v. State*, 144, Wn.2d 612 (2001), the Court reviewed another premises liability claim, but in the context of the Washington recreational use immunity statutes. Contrary to the *Mucsi* opinion, the Court resisted the temptation to expand liability for owners (at least governmental owners) of recreational property used by the public.

Davis was riding a motorcycle in the Beverly Dunes Recreational Area operated by the State. He followed some tire tracks across a flat area. The tracks suddenly fell away, and he plunged 20 to 30 feet over a drop-off. Davis suffered severe spinal injuries, causing paralysis and blindness.

Davis sued the State. He claimed that the tire tracks altered the natural contours of the dunes into an artificial condition that caused his injury. The trial court rejected the claim on summary judgment and the Court of Appeals [See *Davis v. State*, 102 Wn.App. 177, 6 P.3d 1191 (2000)] affirmed the dismissal.

The Supreme Court affirmed the lower court rulings. The recreational use immunity statutes, RCW 4.24.200 and .210, conferred tort immunity to landowners making their property available for recreational use. Liability is imposed, however, if (1) the landowner charged a fee for use; (2) the landowner intentionally inflicted the harm; or (3) the injury was sustained as the result of a known dangerous artificial latent condition for which no warning signs were posted. The Court differentiated the admittedly artificial tire tracks from the latent condition in *Ravenscroft v. Wash. Water Power Co.*, 136 Wn.2d 911, 969 P.2d 75 (1998), which involved a sawed-off stump in a lake. The owner of the lake not only created the tree stump, but also artificially manipulated the level of the lake to create the hazard.

The tire tracks did not cause Davis' injury. "Unlike the condition in *Ravenscroft*, the external circumstance (the tire tracks) did not transform the natural state of the specific object causing Davis' injuries (the drop-off)." *Davis, supra.* at p. 618. In other words, the tire tracks did not transform the drop-off into an artificial condition. •

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Recent Developments

Probate and Trust

by Alice B. McCarty, Graham & Dunn, P.C., Seattle

WASHINGTON COURT OF APPEALS

Hatch v. Tacoma Police Dept., 107 Wn. App. 586, (Div. II 2001)

Summary: A spouse, in her individual capacity, may sue for loss of consortium prior to the death of her spouse, while the personal representative of the decedent's estate can only bring an action for wrongful death to recover post-death loss of consortium damages.

Facts: On March 4, 1999, the City of Tacoma Police Department allegedly injured Gerald Hatch, who later died. Patricia Hatch "Hatch," Gerald's wife, later sued the City of Tacoma, claiming loss of society, companionship, consortium, support and income of her husband, resulting from alleged negligence of City employees. Hatch did not allege whether her loss had occurred before or after her husband's death. Nor did Hatch allege that she was acting in any capacity other than her individual one.

The trial court granted the City of Tacoma's motion for dismissal under CR 12(b)(6), and Hatch appealed. The Court of Appeals reversed in part and affirmed in part.

Discussion: Under common law, a spouse, in his or her individual capacity, may not recover damages for post-death loss of consortium. Under RCW 4.20.10 and 4.20.20, only the personal representative, acting on behalf of the decedent's estate, may bring an action for post-death loss of consortium. However, it must be part of a wrongful death action, because loss of consortium is only an element of damages and not an independent cause of action. Therefore, the Court of Appeals affirms the trial court's dismissal of Hatch's complaint for post-death loss of consortium because Hatch did not state that she was acting as her husband's personal representative.

Next, the Court of Appeals reviewed Hatch's pre-death loss of consortium claim, which is governed by case law rather than statute. In her individual capacity, Hatch, as the deprived spouse, has the ability to claim loss of consortium for damages she suffered prior to her husband's death. The Court did not reach a decision as to whether Hatch could prove such a claim, but rather reversed the trial court with regard to Hatch's pre-death loss of consortium claim and remanded for further proceedings.

Marriage of White, 105 Wn. App. 545, (Div. II 2001)

Summary: In a dissolution matter, a court has broad discretion in dividing assets between the parties to determine what is just and equitable, considering all relevant factors. The court can only look at those assets that are before the court at the time of trial.

Facts: Carol and Frank White were married in 1973, separated in 1997 and divorced in 1998. During their marriage, Carol and Frank acquired a house, subject to a mortgage, and a car, subject to a security interest. Both parties agree that these assets were community property when acquired.

In 1993, Carol received an inheritance from her father and she used \$4,000 to pay off the car and \$26,511 to pay off the mortgage on the house, for a total of \$30,511. During the dissolution proceedings, Carol petitioned to be awarded \$30,511 as her separate property because she acquired it through inheritance and asserted that those proceeds were still her separate property. She also claimed that Frank had the burden of proving that she intended to make a gift of her separate property to the community. Frank, on the other hand, claimed that the \$30,511 became community property when Carol applied it to community assets (absent express intent to the contrary), and that all community assets should be divided equally.

The trial court agreed with Carol and found that the \$30,511 was Carol's separate property and that it remained her separate property even after applying it toward the community assets of the house and car. After awarding Carol the first \$26,511 in value of the house and \$4,000 in value of the car, the court divided the assets and liabilities in approximately equal proportions. Frank appealed.

Discussion: In a dissolution, the trial court has broad discretion in dividing assets and need not award community property equally, nor does it need to award separate property to its owner. The court need only divide property and liabilities to make an equitable distribution, considering all relevant factors. RCW 26.09.080. However, the court must only look at assets that are truly before the court at the time of trial. The court cannot divide assets that one party has previously distributed. Therefore, the house and the car, rather than the \$30,511, were the assets before the court at the time of trial, because the \$30,511 no longer existed. Of course, given the court's broad discretion, the \$30,511 that Carol received as an inheritance could be used as a relevant factor in distributing the assets.

In addition, the character of an asset is determined as of its date of acquisition and its character does not change (absent written consent), regardless of whether the asset is improved or its value enhanced by property of a different character. Again, of course, the courts recognize that each party's responsibility for creating or dissipating marital assets is relevant to the just and

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PROBATE AND TRUST COUNCIL REPORT

by Thomas M. Culbertson, Lukins & Annis, PS, Spokane
Director – Probate and Trust Council

On the legislative front, there is both good news and bad news concerning matters of particular interest to the section.

First the good news. Section sponsored or supported legislation to enact a new principal and income act, to authorize fiduciaries to grant conservation easements, and to bring RCW 11.07.010 into conformity with the *Egelhoff* decision were all enacted by the Legislature. In addition, legislation to authorize the signing of mental health care directives, which the section had some serious problems with, did not make it out of the legislature. A multiple disciplinary task force, including members of our section and the Elder Law Section, will continue to try to craft a bill which meets the well-intentioned goals of the proponents without having the unintended, detrimental side-effects the section has been concerned about.

For practitioners, the most important legislation is the revised principal and income act. Those drafting inter vivos and testamentary trusts will have to consider whether a unitrust will better serve the intentions of the trustor than would the traditional income-only trust. Trustees and beneficiaries will similarly have the opportunity to determine whether a unitrust would be more consistent with their needs. There are some excellent materials from last fall's Seattle Estate Planning Council seminar on the subject of unitrusts, and most of the major journals have had articles on the subject in recent months. Craig Aird's article in the winter issue of this newsletter also has some very helpful information, with this new legislation resolving the problems he cites with regard to Washington law. We would do a disservice to our clients if we were to ignore this new tool simply because we are more comfortable with what we have always done in the past.

The bad news concerns the state estate tax. Legislation designed to conform state law to EGTRRA was derailed shortly

before midnight on the last night of the session. What this means is that the state tax is set at the amount of the federal death tax credit as it existed on January 1, 2001, prior to enactment of EGTRRA. *Thus estates between \$700,000 and \$1 million, which have no federal filing requirement and owe no tax, apparently will be required to file a state tax return and will owe state estate tax.* The amount of the tax owed by a \$1 million estate is approximately \$33,000. In addition, since EGTRRA lowers the amount of the death tax credit beginning this year, the aggregate tax due the DOR and the IRS will be more than the amount of the federal tax before taking the credit into account. This is discussed in more detail in the article by Dean Butler and Michael Carrico in this issue. Initiative 402, enacted in 1981 by the vote of the people, repealed Washington's inheritance tax and replaced it with the so-called "pick-up" tax we are all familiar with. Now that the state tax is more than just a pick-up tax, is it in violation of Initiative 402? The legislature can override an initiative if more than two years have passed since its enactment, but query as to whether the Legislature's *failure* to act is sufficient. Representatives of this section and the Estate and Gift Tax Committee will be meeting with DOR representatives in an effort to get some definitive answers to these questions.

By the time you read this, you will have been invited to join the section's list serve, one dealing with probate and trust issues and the other dealing with real property issues. Those who participate in ABA-PTL know what a valuable resource a list serve can be and will recognize the value of one more focused on Washington-specific issues. Please give serious consideration to joining and participating, as the value of a list serve is directly related to the level of participation of its members. •

continued from previous page

Recent Developments: Probate and Trust

equitable distribution of the property. Carol's separate property contributions to the house and the car were indeed significant and could be a factor in determining the division of assets. These separate property contributions did not, however, alter the community property character of the house or car.

Therefore, the Court of Appeals found that trial court applied the wrong reasoning in coming to its decision, even though it had the discretion to divide the property as it did. The Court remanded the case for reconsideration. •

REAL PROPERTY COUNCIL REPORT

by William H. Reetz, LandAmerica Financial Group, Seattle
Director – Real Property Council

Daffodils, tulips, cherry blossoms, spring training, the end of ski season, spring break. These and other signs of spring mark the end of winter and the return to daylight. Another feature of the season is the end of the legislative session which, depending on your view of government influence on our lives, was either highly successful in that not much happened or was a bust for much the same reason.

There was little activity in the real property area during this legislative session. Two topics that did receive attention were sellers' disclosure statements, which are provided in residential real property transactions pursuant to RCW 64.06, and predatory lending practices. Several bills were introduced which would impose liability under the Consumer Protection Act upon a sales person or broker who, with actual knowledge of an erroneous or false statement in a seller's disclosure statement, fails to disclose the erroneous information to the buyer or the buyer's agent. These proposals appear to have been prompted by the decision in *Svendsen v. Stock*, 143 Wn. 2d 546 (2001) in which the Supreme Court upheld the exemption of brokers, salespersons and sellers under RCW 64.06.060 from CPA liability where the alleged fraudulent concealment was based solely upon the seller's disclosure statement. Interestingly, the Court also held that CPA liability was not barred where the alleged fraudulent concealment occurs independently of the seller's disclosure statement. Another

bill proposed to change, rather dramatically, the nature of the statement from one of the seller's knowledge to more of an affirmative representation.

In the area of predatory lending, bills were introduced which would, among other things, establish special review and approval procedures by the Department of Financial Institutions as a prerequisite to foreclosure and impose the requirement of judicial foreclosure for loans meeting the statute's criteria.

All of these bills died without much fanfare. But they give you some idea of the types of legislation the RPP&T Executive Committee reviews for their effects upon real property law. It often seems that proposed legislation, however well intentioned, can have far reaching effects that are not readily apparent. This is an interesting process to be a part of and it is particularly helpful to have varied representation on the executive committee. Different practices offer the opportunity for different perspectives and lively discussion.

This coming May, the Real Property Probate & Trust Section midyear meeting will again be held at Skamania Lodge. The program is excellent. Warren Koons, who will become the section chair at the meeting, and Lora L. Brown and Zachary H. Stoumbos have done an outstanding job putting together an exciting program. I hope to see you there. •

Join Today!

The officers of the Real Property, Probate & Trust Section urge you to become an active member of this important section. All members of the Washington State Bar Association are eligible. Simply fill out the form below and mail with a check for \$15 to: **Real Property, Probate & Trust Section, Attn: Section Liaison, Washington State Bar Association, 2101 Fourth Avenue, Suite 400, Seattle, WA 98121-2330**

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Notes from the Chair

by Barbara C. Sherland

The RPPT executive committee has had a busy year so far and we all breathed a sigh of relief when the legislative session finally closed. Look for a summary of the session in Tom Culbertson's and Bill Reetz's respective council reports. To update you on a few other matters:

Survey

Thank you for your strong response to our "Two Minute" Member Survey. We far exceeded the statistical predictions for this type of survey. We will be compiling the data and summarizing the results at the Midyear meeting. If you have not completed the survey yet, please take a minute and do so (copy is enclosed). The survey results are key to helping us direct the focus of the Section over the next few years.

Website

We are almost up and operating on our new and vastly improved Website. As a "non-techie," I can attest that it is very easy to use. There are even pictures! You can get the latest information on seminars and pending legislation and access copies of newsletter articles and resources links. You can also find everything that you wanted to know about the section. And that's not all! If we have your e-mail address, you should have received notification of our new list serve. All executive committee members are on the list serve and we are looking forward to some lively discussions among our members on issues in our practice areas. Come post a question or join in a discussion. This all comes to you thanks to the inspiration and hours of time invested by Doug Lawrence and Danette Capello (you can complain to Doug if you don't like the pictures).

Midyear Meeting

If you do not join us in Skamania on May 31 – June 2 you will miss:

- learning about the new reciprocity rules,
- hearing a side-by-side comparison of Washington, Oregon and Idaho law regarding property ownership and interests and powers of attorney,
- having a Supreme Court Justice give you his impressions of recent probate and trust and real estate law cases,
- getting the latest updates on probate and trust and real estate law,
- viewing the new section Website and
- enjoying a weekend in beautiful Skamania.

Make your reservations now and please join us!

Have any questions or concerns about the section? Please call me or any of the executive committee members (our contact numbers are in this newsletter). We welcome your input and encourage you to get involved. •

Law Week 2002 A Lawyer or Judge in Every School Week of May 1

Law Week 2002 is an exciting opportunity for lawyers and judges to bring public legal education into the classroom. Each year, Law Week provides an enriching experience to youth through positive interactions with lawyers and judges.

Last May, nearly 20,000 Washington students, 66 judges and more than 500 lawyers participated in Law Week. Lawyers and judges in 30 Washington counties met with students to discuss current legal issues and specific areas of the law. Some presentations also included mock trials in which students played all the courtroom roles.

Law Week is one of the many Washington State Bar Association programs designed to increase citizen understanding of the important role that the law plays in their lives. Washington's Law Week coincides with the American Bar Association's Law Day, celebrated on May 1st across the country. Law Day was established in 1958 by President Dwight D. Eisenhower to strengthen the United States' heritage of liberty, justice and equality under the law.

For information on how to participate in Law Week 2002, visit www.lawweek.org or contact Lisa KauzLoric at 206-733-5944 or lisak@wsba.org.

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