JUDICIAL COMMITTEE REPORT – November 18, 2024

1. Washington court system subject of cyberattack. As of last week, work continues to progress to restore the Washington Courts Network. Because the system is interconnected, all systems will be restored simultaneously. Meanwhile, check www.wsba.org/courts where emergency orders have supposedly been filed.

2. *High Definition Homes, LLC v. Stewart Title Guaranty Co.*, Court of Appeals, Div. 2, 2024 WL 3672059 (unpublished opinion with no citation yet).

Stewart Title Guaranty Company ("STGC") issued a title policy to High Definition Homes, LLC ("HDH") that insured a Tract A and a Tract B. The policy was dated May 21, 2021. The policy's Schedule B listed 5 special exceptions, one of which stated "Matters disclosed by record of survey, Recorded October 30, 2020, Auditor's No. 3535886." This survey consolidated Tract A and Tract B into "Parcel A of Centralia BLA/Lot Consolidation No. 2020-0181, Records of Lewis County, Washington."

After purchasing "Tract A and Tract B" as insured in the Policy, HDH applied for permits to develop the two lots. The City informed HDH that the two lots had been merged into one. HDH then discovered that the sellers had consolidated Tract A and Tract B in 2020, via the survey recorded October 30, 2020, at Lewis County Auditor's No. 3535886 (one of the documents excepted in Schedule B of the Policy).

HDH tendered a claim for losses incurred subdividing the consolidated lot. STGC denied the claim based on the exception and HDH brought suit. The Lewis County superior court granted STGC's motion for summary judgment on the pleadings in favor of STGC. HDH appealed. HDH argued that the exception should not be applied to bar coverage because it referred to "Matters disclosed by record of survey" instead the Centralia Boundary Line Adjustment/Lot Consolidation. In other words, a record of survey is not a BLA/Lot Consolidation.

The appellate court disagreed. Under the Washington Survey Recording Act (RCW 58.09), a "record of survey" is not a specific document; it could be any number of documents, so long as the document complies with the Survey Recording Act. A boundary line adjustment "locates points and lines which define the exterior boundary or boundaries common to two or more ownerships or which reestablish or restore general land office corners." RCW 58.09.020(3). A BLA is therefore a "record of survey" document. Also, "record of survey" was not capitalized in the special exception suggesting is did not refer to a specific document, but rather a survey – whether a map, plat, or BLA, that has been recorded.

This case underscores the importance of paying attention to how policy exceptions are worded, i.e., even whether or not to capitalize "record of survey."

3. *U.S. Bank, National Association v. Estate of Bradley Hrutfjord, et al.*, 31 Wash.App. 1069 (Div. 1) (unpublished opinion).

In 2001, Thomas owned a 1.43 acre piece of land. Thomas obtained by quit claim deed an additional 3.99 acres from his neighbor. The deed specified that neither piece of land would be sold separately unless such a subdivision was exempt or approved. In 2006, Hrutfjord purchased the combined single lot (1.43 acres and the 3.99 acres) from Thomas. The legal description specified the two pieces, each with its own tax parcel number. Hrutfjord obtained a loan secured with a deed of trust on the 1.43 acre piece only.

The lenders title insurance policy contains a legal description that describes only the 1.43 acre piece of land and specifically excludes coverage for the 3.99 acre piece that was added by quit claim deed in 2001.

Hrutfjord defaulted in 2013 and passed away in 2014. The lender's successor in interest, U.S. Bank, sued Hrutfjord's estate to foreclose on the property "covered" by the deed of trust. The Estate and U.S. Bank ended up in litigation with cross motions for summary judgment. The superior court granted the Estate's motion to dismiss U.S. Bank's foreclosure complaint because "the foreclosure sale of a portion of the legal lot of record would constitute an illegal subdivision, which this court has no authority to approve." U.S. Bank appealed.

The appellate court affirmed the dismissal of U.S. Bank's foreclosure lawsuit stating that the tax parcel exception to the statute of frauds did not apply. The deed of trust (and the note) only described the 1.43 piece of land, which was not a legal piece of property, even according to the lender's own title insurance policy. Because neither the note nor the deed of trust provided a description of the single lot of record comprised of the 1.43 acre piece and the 3.99 acre piece, it did not satisfy the statute of frauds and the lender's lawsuit to foreclose was dismissed.

The exception in the lender's title policy regarding the legal lot status may have avoided coverage for U.S. Bank's claim under the title insurance policy.