

Judiciary Committee Notes – August 2025

***City of Sedro-Woolley v. Murray* 86269-3-I Wash. App. (May 2025)**

This action involves a dispute regarding Eastern Avenue in Sedro-Woolley. A portion of the Avenue runs adjacent to Philip Murray's property. The City of Sedro-Woolley filed suit seeking to quiet title to the disputed portion of property, or in the alternative, find the City has a prescriptive easement. The Skagit County Superior Court granted summary judgment as to the quiet title claim and also ruled in the alternative, that the City had a prescriptive easement.

Murray appealed arguing that the court erred in concluding that an 1890 plat dedicated Eastern Avenue to the City and that the City was entitled to a prescriptive easement. The appellate court held that there was a genuine issue of fact relating to the title owner of the disputed property. Nevertheless, they also held that the City held a prescriptive easement.

The plat map in question contained the following dedication:

The owners do hereby declare the foregoing plat to be a true and correct plat of the town of Woolley and we do hereby dedicate to the use of the Public as public highways all and singular the streets and alleys shown upon said plat.

It also contained a hand written notation reading "P.S. Avenues not dedicated."

In 1911, a plat dedicated to the City "all the land indicated in the said plat as streets, avenues, or alley." Eastern Avenue was depicted as an "avenue."

The court reasoned that because the City based its quiet title claim on the 1890 plat and there is a material issue of fact as to ownership, the court erred in granting summary judgment.

Even so, the appellate court affirmed the trial court's decision that the City held a prescriptive easement. Knowledge of true ownership of a property is not an element in finding a prescriptive easement. Given that the City had been using the Eastern Avenue as a public right of way for 37 years for public traffic and emergency and fire services and had maintained and improved the right of way since 1986, they held that there was no material issue of fact.

While as a practical matter, this holding may have little impact, it's a reminder that the characterization of an interest in real property (fee vs. easement) may not be obvious.

***In the Matter of the Estate of Quach Living Trust* 86535-8-I Wash. App. (June 2025)**

In an unpublished opinion, the appellate court affirmed a trial court's decision as to the element of intent when delivering a deed.

This case was initially brought by Mary Pelentay, the Trustee of the Quach Living Trust, against Bryan Perez and Linda Quach for the recovery of real property, which Pelentay alleged belonged to the Trust. Thi Ut "Betty" Quach² was diagnosed with terminal [cancer](#), and in her final months she made several different plans for the disposition of her assets, including six different deeds purportedly conveying her home to three different parties, which included Perez and the Trust. After Betty died, Perez and his partner, Linda (Betty's sister), moved into the property, claiming that Perez was the lawful owner by deed.

The superior court granted Pelentay's motion for partial summary judgment. The superior court found that Betty lacked the present intent to deliver the July 24, 2021 deed that Perez recorded. The superior court also found that there was no issue of material fact as to Betty's intent to transfer the property to Perez; that Betty, Perez, and Linda had "never reached a meeting of the minds;" and that no valid agreement

was ever formed. The superior court ordered quiet title in favor of Pelentay as trustee, authorized sale of the property, authorized a writ of ejectment, and granted attorney fees and costs to Pelentay.

On appeal, Perez argued that the July 2021 deeds transferred the property from Betty to him, and that, because the deeds are facially valid and unambiguous, any evidence subsequent to July 24, 2021 is irrelevant, hearsay, and in violation of the parol evidence rule or dead man's statute. Perez contended that Betty deeded away any interest she had in the property in July 2021, so none of her subsequent acts, which he characterized as a "change of heart," matter to the determination of ownership of the property. The appellate court disagreed.

First, the court concluded that the parol evidence rule was inapplicable as it applies only to a final, unambiguous agreement. "In making the determination of whether the parties intended the written document to be a final expression of terms, the court, acting as fact finder, must consider all relevant extrinsic evidence. The record shows that the superior court considered the extrinsic evidence to determine whether the parties had reached an agreement at the time of the July 24, 2021 deeds."

Next, the court evaluated whether the deed had been delivered. The court concluded that while Perez's possession of the deeds raised the presumption that Betty intended to convey, the trial court heard undisputed evidence that Betty did not have intention to deliver because conveyance was conditional and she was in an ongoing process of deciding how to dispose of the property.

Appellant Bryan Perez intends to petition for review by the Supreme Court and approached the Judiciary Committee requesting an amicus brief. The Committee ultimately declined the request.

Outside of the PNW -

***Thomas v. Corbyn Restaurant Development Corp* 111 Cal. App. 5th**

Plaintiff Thomas sued defendant Corbyn Restaurant Development and employees for personal injuries sustained in an altercation. After parties settled the lawsuit for \$475,000, a third party purporting to be plaintiff's counsel sent fraudulent wiring instructions for the settlement proceeds using a spoofed email. Defendant's counsel wired the proceeds to the fraudulent account and third party absconded with the funds. Once fraud was discovered, defendants refused to pay, and plaintiff applied to the trial court to enforce the settlement agreement. Trial court concluded that defendants were in the best position to prevent the fraud, that plaintiff bore no comparative fault, and entered a \$475,000 judgment in favor of plaintiff.

Defendants appealed. They agreed that correct federal law was applied – a version of the "imposter rule" which provides that a "person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinary care contributed to the loss." They however maintained that trial court took an overly simplistic approach that presumed the payor is in the best position to avoid fraud.

Appellate court affirmed the judgment reasoning that the trial court assessed each party's role in preventing the fraud and that substantial evidence supported findings that several red flags should have alerted the defendants to the fraud while none should have alerted plaintiff.

The red flags and errors noted by the court include the following: change in payee; request for wire transfer when parties previously agreed that payment would be made by check; an inoperable phone number for customer's attorney, which was different from the number in previous email communications; an email address that differed in spelling of attorney's name and domain name; two identical sets of wiring instructions being sent within minutes.

Northmarq Finance, LLC v. Fidelity National Title Insurance Company 22-cv-2389-WJM-TPO D.Colo (2025)

A recent order out of the district court in Colorado potentially offers a cautionary tale about using outdated endorsement forms. The Court notes that “it appears to be the first in any jurisdiction to have the unenviable task of interpreting the ALTA 32.1.”

In 2017, Northmarq agreed to lend \$25 million to Ken Caryl Senior Living to construct a senior living community in Littleton, Colorado. The loan was secured by a deed of trust, and Northmarq purchased a title insurance policy to insure lien priority. The policy issued was a 2006 ALTA Loan Policy with standard exceptions and exclusions. Among other endorsements, an “ALTA 32.1-06 Construction Loan – Loss of Priority – Direct Payment Endorsement (2-3-11)” was attached to the policy.

Eventually, borrower defaulted on the loan and numerous mechanic’s liens were filed against the property. Numerous claimants, including Petra (general contractor) filed lawsuits to foreclose on their liens, all alleging priority over the insured mortgage, and Northmarq tendered a claim to Fidelity. Fidelity denied NorthMarq’s claim, explaining in its corresponding letter that coverage was not available under the ALTA 32.1 Endorsement because “[t]he Company’s investigation has concluded that direct payments were made directly to Petra at the request of the Insured and no payments were made directly to any other lien claimant.”

Northmarq then brought an action asserting claims for (1) breach of contract – duty to defend, (2) breach of contract – indemnification, and (3) breach of the duty of good faith and fair dealing arising from Fidelity’s denial of coverage under the policy.

The Court concluded that Fidelity had a duty to defend Northmarq pursuant to the plain language in Section 3(c) of the ALTA 32.1 endorsement.

The endorsement language the Court based its conclusions on is found in the 2011 version of the ALTA 32.1. Notably, the 2011 version lacks the phrase, underlined below, that was included in the 2013 ALTA 32.1.

*c. The lack of priority of the lien of the Insured Mortgage as security for each Construction Loan Advance made on or before the Date of Coverage over any Mechanic’s Lien if notice of the Mechanic’s Lien is not filed or recorded in the Public Records, but only to the extent that direct payment to the Mechanic’s Lien claimant **for the charges for the services, labor, materials or equipment for which the Mechanic’s Lien is claimed** has been made by the Company or by the Insured with the Company’s written approval.*

The matter of whether Northmarq is entitled to full mechanic’s lien coverage, notwithstanding Court’s finding as to the endorsement’s plain language, is to be resolved at the jury trial, set for November.

Centerpoint Mechanic Lien Cls, LLC v. Commonwealth Land Title Ins. Co 255 Ariz. 261 (2025)

The Supreme Court of Arizona recently reaffirmed a critical difference between loan policies and owner’s policies: under Exclusion 3(c) and Conditions B(a)(iii) and 10(b) of the ALTA loan policy, there is no liability if the insured loan is paid in full.

The underlying dispute dates back to 2007 when two commercial lenders loaned over \$165 million to the developer of a large, condominium project. The lenders secured the loans with deeds of trust and purchased lender’s title insurance policies to insure lien priority of their deeds of trust. In April 2008, various contractors and subcontractors began recording mechanics’ liens against the property, leading to a consolidation of claims in which claimants sought the determination of lien priority and foreclosure on

the property. The lenders tendered the defense of the lien priority suit to their title insurer, and the title insurer defended under a reservation of rights.

The property was eventually sold, and the lenders' loans were fully repaid. The lenders and the mechanic lien claimants, however, entered into an agreement pursuant to *USAA v Morris*, 154 Ariz. 113, 741 P.2d. 246 (1987), wherein they stipulated among other things that (1) the lenders' DOTs were inferior to the mechanic's liens, and (2) the insured lenders were damaged in the amount of \$10 million because of the inferiority of their DOTs even though they were fully repaid. The title insurer intervened in the lien priority suit to challenge the reasonableness of the settlement, and argued that the \$10 million settlement amount was unreasonable because the insured lenders suffered no loss. The trial court, however, found the settlement was reasonable.

The title insurers then filed a declaratory judgment action seeking a determination that there was no coverage for the lenders' claims; and the lenders counterclaimed for breach of contract and bad faith. The court granted summary judgment to the title insurers on the breach of contract claims, finding that the title insurers didn't breach the policies because under lenders' policies, coverage is limited to the unpaid balance of the loan. But the lenders' bad faith claim proceeded to trial, and the jury found that the title insurers acted in bad faith and awarded the lenders \$5 million. On appeal, the Court of Appeals held that the Morris agreement between the lenders and lien holders precluded the insurers from contesting whether the lenders suffered a "loss," characterizing the dispute as "liability issue" rather than a coverage issue. When an insurer defends under a reservation of rights and the insured enters into a Morris agreement to protect itself from liability to a third party, the insurer can contest only facts of coverage, not liability. Because the lenders had no "liability" to a third party, the insurers sought review, which the Supreme Court granted.

Among the issues the Supreme Court considered were (1) whether the court of appeals erred in characterizing the issue of whether the insureds suffered a "loss" as one of liability instead of coverage, (2) whether the insurer, having acknowledged at the reasonableness hearing that the mechanics' liens were valid and had priority over the lenders' DOTs pursuant to the Morris agreement, was barred from arguing that it had no liability to its insureds because they suffered no loss, and (3) whether the insured lenders could have suffered a "loss" within the meaning of the policy due to a purported "diminution in the value" of a DOT caused by the presence of superior liens, even though the lenders were fully repaid.

As to the second issue, the Supreme Court held that because the only issue actually resolved at the reasonableness hearing was the priority of the lenders' liens vis a vis the mechanics' liens—and not whether the lenders suffered a "loss"—the insurer was not precluded from arguing, in the subsequent coverage case, that there was no coverage because there was no loss.

As to the first and third issues, the Court held that where an insured lender is fully repaid, it does not suffer a covered loss even if, as a result of the DOT being other than as insured, the DOT is rendered worthless. As such, the insurer correctly denied coverage.