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What is fiduciary responsibility?

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What is a statement of identity?

Should my client be concerned when asked to fill out a statement of identity?

What should I do if my client is concerned about the statement of identity?

What are the 4 ways to create an easement?

What is homestead property and how does it work?

What is the "realtor review?"

What should I pay special attention to when reviewing the title commitment?

How do you combat mold?

What are CC&R's?

How does a realtor protect their agency when discussing title insurance?

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- Extended coverage has a surcharge of 35 percent.
- The surcharge does not include the price of the survey that is required for Extended Coverage.
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The most complete coverage a client can have is the combination of Homeowner's Expanded and Extended Coverage.

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It is a common misconception that the title unit sees a copy of the purchase and sale agreement. The title unit rarely sees the purchase and sale agreement.

It is the responsibility of escrow to update title with the correct spelling of names, contact information, marital status and type of insurance. However, faxed purchase and sale agreements are often difficult for escrow to

read, and escrow may accidentally update title with misspelled names and information.

One way to expedite the process and make sure that title is updated with correct information, is email or phone the title unit with correct buyer information as soon as you reach mutual agreement on your transactions. Don't forget to continue updating escrow, the lender and cooperating agent with the details of the transaction as well.

To update title:

Following mutual agreement, contact your title unit with updated information:

- Full legal names
- Full mailing address
- Phone number
- Marital status
- Type of insurance (standard, extended or expanded)

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Someone acting as a "Trustee," "Guardian" or "Attorney-In-Fact" has a fiduciary responsibility to the person giving them such power. This power cannot be "given" to someone else by the receiving person to act on his or her behalf for the grantor. Only the granting party can assign the powers to another person to act on their behalf.

### **Key Terms**

- Fiduciary: One acting in a relationship of trust, regarding financial transactions.
- Grantor: One who grants property or property rights.
- Trustee: One who is appointed, or required by law, to execute a trust.
- Attorney-In-Fact: One who is appointed to act (as agent) for another (principal) under a power of attorney. The scope of the agent's authority is limited to that given by the power of attorney, which may be limited to one specific act or may be broader.

- Guardian: One who is court appointed to manage the affairs of a minor or incompetent.
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A short sale occurs when a lender agrees to forgive the debt of the mortgage that is higher than the value of the home, provided that there is a buyer willing to purchase the property. For example, if a homeowner owes \$300,000 to the mortgage lender, but the home is only worth \$290,000 due to the market, the homeowner would request that the lender accept \$10,000 less to payoff the loan.

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### **What is a statement of identity?**

A statement of identity is a confidential form filled out by buyer or seller to help Rainier Title determine if any liens are recorded against either. The statement of identity is very helpful when people with common names are involved in the transaction.

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With over four million people in the state of Washington, there are many that have the same or similar names. In searching title, we often find judgments, divorces, tax liens and bankruptcies against persons with similar names. These matters cloud the title to real property unless they are eliminated by information showing that the parties to the transaction are not involved in these difficulties. For this reason, it is important that Rainier Title collect identifying information about the parties to the transaction so that we can properly ignore matters that do not affect your clients or the property being searched.

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### **What are the 4 ways to create an easement?**

An easement is the right to use property of another. The 4 ways to create an easement can be expressed as the acronym "PINE."

- Prescription: Using part of another's land by adverse possession. Statutory period in Washington is 10 years. True owner must have actual or constructive notice.
- Implied: Grantor conveys part of the land and retains part, and one benefits the other. It must be reasonably necessary for the enjoyment of the dominant parcel and reasonably apparent.
- Necessity: Both parcels were originally in common ownership; use is reasonably necessary for access of utilities.
- Express: Location, size, scope and duration should be stated. Must be in a deed or writing to satisfy the statute of frauds. Recording is a very good idea.

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### **What is homestead property and how does it work?**

Washington state law:

RCW 6.13.060: Conveyance or encumbrance by husband and wife.

The homestead of a married person cannot be conveyed or encumbered unless the instrument by which it is conveyed or encumbered is executed and acknowledged by both husband and wife. However, a husband or wife may make and execute powers of attorney for the conveyance or encumbrance of the homestead.

### **Key Words**

- Conveyance: Transfer of title to land. Includes most instruments by which an interest in real estate is created, mortgaged or assigned.
- Encumbrance: A claim, lien, charge or liability attached to and binding real property. Any right to, or interest in, land which may exist in one other than the owner, but which will not prevent the transfer of fee title.
- Instrument: Any writing having legal form and significance, such as a deed, mortgage, will, lease, etc.
- Power of Attorney: An authority by which one person (principal) enables another (attorney in fact) to act for him.
- Homestead: The dwelling (house and contiguous land) of the head of a family.

### **Title Insurance Requirements**

Same as state law.

- There is no lien on community or homestead property unless both spouses join in the instrument. Therefore, it is not possible for the lender to foreclose against the homestead or community property unless both spouses have signed the deed of trust. Title insurance does not require the spouse to execute the note or guarantee payment of the obligation.
- Property inherited, acquired thru divorce or as a single individual is the separate estate of the individual. Community property may be converted by deed to separate property.
- The vesting and grantor clause on the deed of trust may remain as "John Doe as his separate estate." However, if it is homestead property, both husband and wife must execute the deed of trust.

### **Lender Requirements**

Lenders may have different requirements.

- Lenders may require the property to be vested in both parties as a marital community to make the loan.
- Lenders may have a form of "spousal consent" wherein the spouse joins in the execution of the deed of trust but signs a "spousal consent form" waiving all homestead or spousal rights in the property.
- Lenders may recite on the face of the deed of trust a statement such as "I John Doe am executing this deed of trust for the purpose of subjecting the property herein described to the lien of this instrument. I acknowledge that the property is the separate property of Jane Doe. I hereby release, waive and subject to the lien of this instrument all rights in the property, if any, I have, by virtue of the homestead laws or any other laws of this state. I am undertaking no personal liability for payment of any indebtedness secured by or arising from this instrument." Lender requirements may be that the spouse does not have to acknowledge the deed of trust. However, Washington state law and title insurance both require husband and wife to acknowledge the deed of trust if it is a homestead property.

### **What is the "realtor review?"**

At Rainier Title we attach a "realtor review" sheet to our title reports. The realtor review is Intended to save you time in reviewing the title report for vesting, legal description and exceptions.

- Vesting: This section will describe how the title is vested. Is the vested owner who you expected it to be?

The vesting section identifies the individual(s) who can legally convey title to the property.

- Legal Description: Does the legal description listed on title describe the subject property accurately? If the realtor review says "as submitted" the title company is relying on past documentation. The full legal description is always listed as "exhibit A."
- Exceptions: The exceptions section identifies issues that are not covered by title insurance. Every Rainier Title report has a "Schedule B1 General Exceptions" that are standard exceptions that apply to every title report and a "Schedule B2 Special Exceptions" that are specific to the subject property. The Realtor Review will show the exceptions requiring additional attention. Covenants, conditions and restrictions "CC&R's," liens, judgments, and easements are examples of some of the items that may be listed as special exceptions.

If the Realtor Review does not fully address your questions, reference the body of the title report for more detailed information or contact one of Rainier's experienced Title Officers.

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### **What should I pay special attention to when reviewing the title commitment?**

- Legal Description: The legal description is the most important part of the commitment to review. Is all the property to be conveyed listed on the purchase and sale agreement? Closings may be delayed if the title company produces a commitment based on the street address alone which many times does not adequately describe all property subject to sale.
  - Vesting: Generally, whoever signed the purchase and sale agreement should be listed as being in title to the property. If not, look for a real estate contract as an exception. If one of the parties is deceased, contact your title and escrow officer to see what documentation is needed.
  - Identity Matters: Judgments and liens maybe eliminated with an Identity Affidavit if they do not affect the party in question. When dealing with clients that have common names, it is a good idea to get the affidavit completed and submitted to the title company in advance.
  - Buyer Names/Vesting: If you are the selling agent, make sure that your buyer's names are spelled correctly. Also, how are they taking title (husband/wife, single, joint tenants, etc.)? If a married buyer wants to take title as his/her separate estate, the lender and escrow company will need this information, and a Quit Claim Deed signed by the non-participating spouse will be required.
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The house did not pass inspection? They found mold? What is the next step? Follow these steps to investigate and remedy the situation. Mold doesn't have to kill the transaction but your buyers will most likely want to know how to address mold issues before moving to close!

1. Order "The Brief Guide to Mold & Moisture and Your Home" from the EPA. This guide is the starting point for understanding mold. You may download the PDF version at <http://www.epa.gov/iaq/molds/> or order the color brochure by contacting:

Indoor Air Quality Information  
P.O. Box 37133, Washington, DC 20013-7133  
1-800-438-4318/703-356-4020  
(fax) 703-356-5386  
[iaqinfo@aol.com](mailto:iaqinfo@aol.com)

2. Destroy the mold. If the moldy area is small you may be able to address the issue without hiring a contractor. If the moldy area is large, collect bids from contractors that specialize in mold removal. Check references and ask your contractor to follow EPA recommendations for mold removal as outlined on the EPA website.

Concerned about Homeowner's Insurance? Mold is a material defect so title insurance does not cover mold issues. You may want to price homeowner's insurance before you move to close if mold has been an issue in the past. To access the five-year history of insurance claims on a specific property refer to the CLUE database. The CLUE database is a resource that many insurers use to estimate the risk in insuring a specific property. The \$12.95 report will pull a five-year history of insurance claims on the property and may provide insight on how insurance companies are bidding your potential Homeowner's Insurance policy. Reference <http://www.choicepoint.com/> to learn more about the CLUE report.

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### **What are CC&R's?**

A term used to describe the restrictive limitations that may be placed on a property.

**Covenants:** Generally, almost any written agreement. Most commonly in real estate, assurances set forth (expressed) in a deed by the grantor or implied by law. Example: Covenant against encumbrances, covenant of right to convey, etc.

**Conditions:** In real property law, some limiting restriction to a grant or conveyance of property, stating that upon the happening or not happening of a stated event, the estate shall be changed in some manner.

**Restrictions:** Most commonly used to describe a use or uses prohibited to the owner of land. Restrictions are set forth by former owners in deeds or in the case of a subdivision, a declaration of restrictions is recorded by the developer. A limitation on use of the property by law (zoning ordinances) may also be termed a restriction.

### **Who establishes the CC&R's for a property?**

The owner of real property can establish CC&R's at the time of ownership so long as they do not circumvent any existing CC&R's. Typically the builder or association who platted the property will record the original CC&R's with the county.

### **Can the title unit make changes to the CC&R's?**

The title unit does not have the authority to make changes to the CC&R's because the title unit does not have ownership rights. If the CC&R's affect an entire plat, in most cases they can only be changed by a majority vote of the property owners.

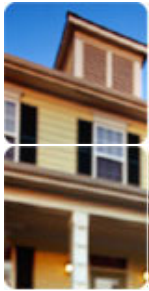
### **How do you obtain a copy of CC&R's?**

If you would like to obtain a copy of the CC&R's for a particular property, contact Rainier Title. Our customer service department will be happy to obtain a copy of the CC&R's for you. If you have opened title on the property, the title unit will have a copy of the CC&R's in the file.

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### **How does a realtor protect their agency when discussing title insurance?**

1. Protect yourself and your agency as a selling agent by making sure that it is clear that the legal description was obtained and reviewed by the seller. The agent should not warrant the accuracy of the description.
2. Protect yourself and your agency by making sure that your client receives the preliminary title commitment and any supplements within the time frame specified in the purchase and sale agreement.
3. Protect yourself and your agency by advising that the client review closing documents and verify that they are consistent with the terms of the purchase and sale agreement.
4. Protect yourself and your agency by advising your client to verify the legal description at closing.
5. Protect yourself and your agency by advising your client to call a senior title officer if they have any questions about title insurance and the coverage it provides.


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Concerned about Homeowner's Insurance? Mold is a material defect so title insurance does not cover mold issues. You may want to price homeowner's insurance before you move to close if mold has been an issue in the past. To access the five-year history of insurance claims on a specific property refer to the CLUE database. The CLUE database is a resource that many insurers use to estimate the risk in insuring a specific property. The \$12.95 report will pull a five-year history of insurance claims on the property and may provide insight on how insurance companies are bidding your potential Homeowner's Insurance policy. Reference <http://www.choicepoint.com/> to learn more about the CLUE report.

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### **What are CC&R's?**

A term used to describe the restrictive limitations that may be placed on a property.

**Covenants:** Generally, almost any written agreement. Most commonly in real estate, assurances set forth (expressed) in a deed by the grantor or implied by law. Example: Covenant against encumbrances, covenant of right to convey, etc.

**Conditions:** In real property law, some limiting restriction to a grant or conveyance of property, stating that upon the happening or not happening of a stated event, the estate shall be changed in some manner.

**Restrictions:** Most commonly used to describe a use or uses prohibited to the owner of land. Restrictions are set forth by former owners in deeds or in the case of a subdivision, a declaration of restrictions is recorded by the developer. A limitation on use of the property by law (zoning ordinances) may also be termed a restriction.

### **Who establishes the CC&R's for a property?**

The owner of real property can establish CC&R's at the time of ownership so long as they do not circumvent any existing CC&R's. Typically the builder or association who platted the property will record the original CC&R's with the county.

### **Can the title unit make changes to the CC&R's?**

The title unit does not have the authority to make changes to the CC&R's because the title unit does not have ownership rights. If the CC&R's affect an entire plat, in most cases they can only be changed by a majority vote of the property owners.

### **How do you obtain a copy of CC&R's?**

If you would like to obtain a copy of the CC&R's for a particular property, contact Rainier Title. Our customer service department will be happy to obtain a copy of the CC&R's for you. If you have opened title on the property, the title unit will have a copy of the CC&R's in the file.

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### **How does a realtor protect their agency when discussing title insurance?**

1. Protect yourself and your agency as a selling agent by making sure that it is clear that the legal description was obtained and reviewed by the seller. The agent should not warrant the accuracy of the description.
2. Protect yourself and your agency by making sure that your client receives the preliminary title commitment and any supplements within the time frame specified in the purchase and sale agreement.
3. Protect yourself and your agency by advising that the client review closing documents and verify that they are consistent with the terms of the purchase and sale agreement.
4. Protect yourself and your agency by advising your client to verify the legal description at closing.
5. Protect yourself and your agency by advising your client to call a senior title officer if they have any questions about title insurance and the coverage it provides.