

*Landmines in Litigation:  
How Real Estate Affects Pending Litigation*

Real Estate

AARON D. DUNHAM



Wolff Hislop Crockett

# Overview

- I. Who is the client?
- II. Proper Parties
- III. Contractor's Lien – Special Considerations
- IV. Title Insurance
- V. Lis Pendens
- VI. Change in Ownership
- VII. Effective Drafting of Judgments



# I. Who is the Client?

- Are you representing the Owner of the real property?

Single or Married  
Sole Owner or Tenants in Common  
Owned by an Entity

- Are you representing a person with a recorded interest in real property?

Lender with Security Interest  
Homeowner's Association  
Easement Holder

- Are you representing a person with an unrecorded interest in real property – but not on title?

Beneficiary of an Estate  
Contractor Lien Claimant  
Personal Representative of an Estate (record title held by the Estate, in the decedent's name)  
Neighbor in a property dispute (e.g., adverse possession)



# I. Who is the Client?

- Reasons to ask the question:

## Identify Conflicts of Interest

Is there another person with an interest in property that you currently or previously represented?

## Make Sure Your Client Has an Interest in the Property

### Example:

Ms. X meets with you and wants to hire you to sue her neighbor for damaging her fence (i.e., trespass). Turns out Ms. X is not on title and is living on property that her mother owns. The claim actually belongs to mother.

## Identify all Interested Parties



# I. Who is the Client?

- **RPC 1.7(a) Conflict of Interest Current Clients**

“[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.”

However, the conflict may be waived, if the client gives informed consent in writing. See RPC 1.7(b).

- **RPC 1.9(a) Conflict of Interest Former Clients**

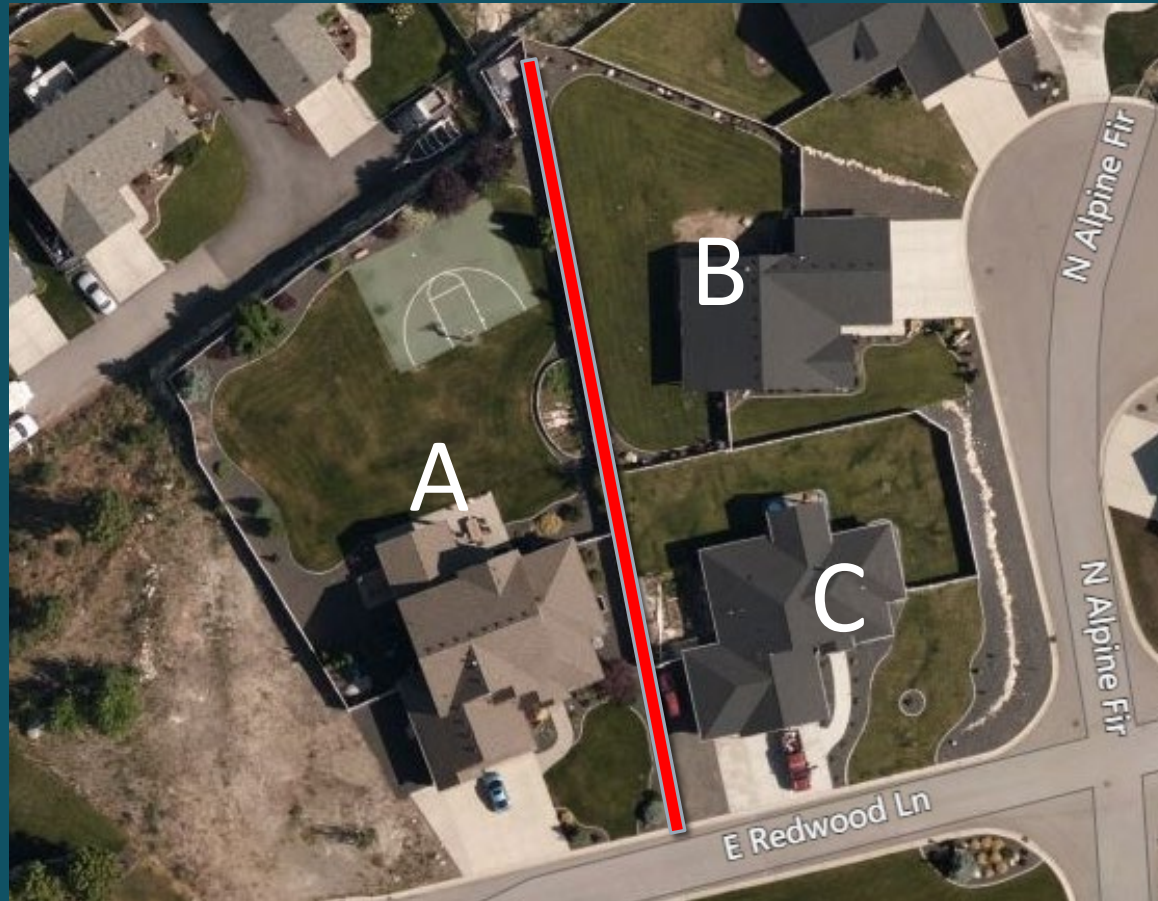
“A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.”



# I. Who is the Client?

## Scenario:

- Owner of Parcel A rips out fence shared with Parcels B & C without permission.
- Owner of Parcel A also damages Parcel C's home in the process



- Owners of Parcels B & C want you to jointly represent them.
- Can you, do it?



## II. Proper Parties

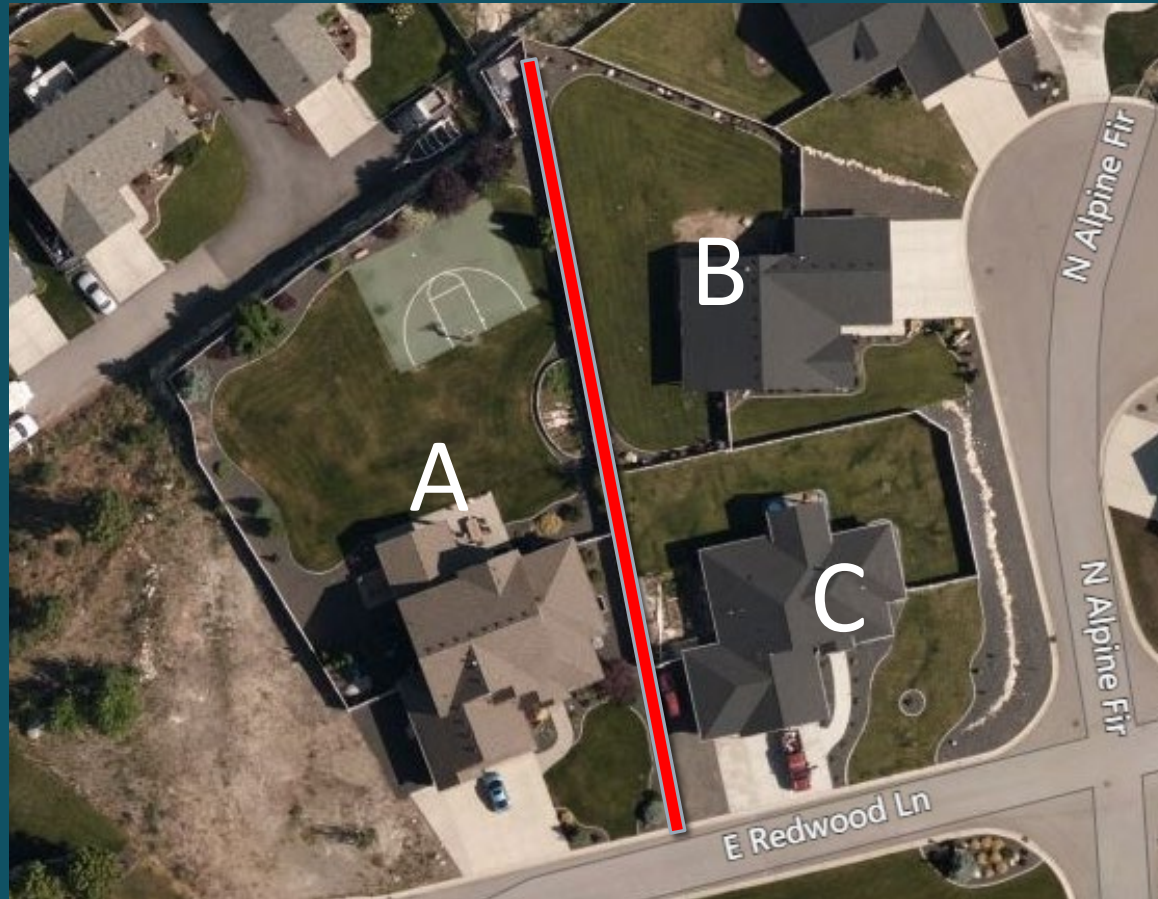
- The Real Party In Interest (CR 17(a)):  
“Every action shall be prosecuted in the name of the real party in interest.”
- Compulsory Joinder (CR 19 (underline added)):  
“A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if  
(1) in the person’s absence complete relief cannot be accorded among those already parties, or  
(2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person’s absence may  
(A) as a practical matter impair or impede the person’s ability to protect that interest or  
(B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the person’s claimed interest”



## II. Proper Parties

### Scenario:

- Owner of Parcel A rips out fence shared with Parcels B & C without permission.
- Owner of Parcel A also damages Parcel C's home in the process



- You represent Parcel C.
- Title to Parcel A is held by the John Doe Family Trust
- John personally removed the fence and damaged the house.
- Who do you sue?





## II. Proper Parties

- Tips for Determining the Proper Party

Initial Investigation:

Ask the client

Check the County Assessor's Website

(CAUTION: while a good tool SCOUT is not gospel)

Get Title Insurance Before Filing Suit



# III. Title Insurance

- Owner's Standard Title Insurance Policy
  - Title Insurance generally obtained at time of purchasing the land
  - If client just bought property - could be useful in correctly identifying how your client holds title and what encumbrances are on the property
- Subdivision Guarantee
  - Title Insurance obtained to plat or subdivide property
  - Not really insurance
  - Not the best policy to obtain for litigation
- Litigation Guarantee
  - Title Insurance for a Lawsuit



## III. Title Insurance

- Litigation Guarantee Provides Safety & Answers:
  1. Who is on title to the property
  2. What type of interest do they hold
  3. Legal description of the property
  4. List of documents potentially affecting title.
  5. Assumption of liability by title company up to \$X.



# III. Title Insurance

- Is Title Insurance Enough?
- When to get a survey?
  - Any boundary dispute should involve a survey
  - Trespass Claims near boundary lines
  - Premises Liability Claims near boundary lines



## IV. Contractor's Lien

### Special Considerations

- Who can claim under RCW 60.04.021 – Used by “any person furnishing labor, professional services, materials, or equipment for the improvement of real property shall have a lien upon the improvement for the contract price of labor, professional services, materials, or equipment furnished at the instance of the owner, or the agent or construction agent of the owner”
- Lien Claim must follow the form in RCW 60.04.091.
  - Include the name of the “owner or reputed owner of the property”
  - Record within 90 days of last performance against the property.



## IV. Contractor's Lien

### Special Considerations

- Lien Foreclosure Must be Brought within 8 months of recording (RCW 60.04.141)
- Proper Parties in Suit to Foreclose Lien (RCW 60.04.181)

The Owner

Any other recorded interests you wish to foreclose (i.e., junior lienholders)

- Practical Considerations:

No need to get title insurance just for filing the lien – can list the “reputed owner” on the lien claim

Get title insurance (litigation guarantee) before filing the suit



# POP QUIZ ON JURISDICTION / VENUE

- Which Washington Court has original jurisdiction to hear cases involving questions of title to real property?
- ANSWER: Superior Courts (RCW 2.08.010)
- Which Courts are the proper venue for cases involving questions about title to real property?
- ANSWER: County where the property is situated (RCW 4.12.010)
- District Courts can still hear claims involving damages to real property – except when issues of title or possession are raised.



# V. Lis Pendens



- It effectively “freezes” the status of title.
- RCW 4.28.320 - Serves as ***constructive notice*** of the pendency of an action regarding the property.
- Does not prevent the transfer of the property, but subsequent conveyances are ***subject to*** the action described in the lis pendens.





## V. Lis Pendens

- Must be recorded with the auditor of each county the property is situated in.
- Must contain the names of the parties, object of the action, and description of the real property
- First publication of summons or personal service must occur within 60 days of filing the lis pendens.



# V. Lis Pendens

## Sample Form:

- Pleading Format
- Filed in the Court Proceeding
- Certified Copy Recorded with the Auditor Behind a Coversheet

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SPOKANE

Plaintiff  
v.  
Defendant

Case No.:  
LIS PENDENS

**NOTICE IS HEREBY GIVEN**, in accordance with RCW 4.28.320 and related statutes, that an action has been commenced and is now pending in the Superior Court of the State of Washington for Spokane County under the above case number and caption by the above-named Plaintiff against the above-named Defendant.

The purpose of said action is to quiet title in Plaintiff and eject Defendant from Parcel No. [REDACTED] and to establish Plaintiff's easement rights across and eject Defendant from Plaintiff's easement on Parcel No. [REDACTED]. Both parcels of real property are located in Spokane County, State of Washington.

LIS PENDENS  
Page 1 of 2

**WOLFF, HISLOP & CROCKETT, PLLC**  
12209 E. MISSION AVE., SUITE 5  
SPOKANE VALLEY, WA 99206  
TELEPHONE (509) 927-9700  
FAX (509) 777-1800

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The real property affected by said action is legally described as follows:

**Spokane County Assessor's No.** [REDACTED]  
[REDACTED]  
SITUATE IN THE COUNTY OF SPOKANE, STATE OF WASHINGTON.

**Spokane County Assessor's No.** [REDACTED]  
[REDACTED]  
RECORDS OF SPOKANE COUNTY,  
SITUATE IN THE COUNTY OF SPOKANE, STATE OF WASHINGTON.

Dated this 9<sup>th</sup> day of September 2021.

**WOLFF, HISLOP & CROCKETT, PLLC**  
*Aaron D. Dunham*  
AARON D. DUNHAM, WSBA #46405  
ADAM R. KITZ, WSBA #55599  
Attorneys for Petitioner

STATE OF WASHINGTON )  
  ) ss.  
County of Spokane        )

I certify that I know or have satisfactory evidence that AARON D. DUNHAM is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

Dated this 9 day of September 2021.

**JESSE S FAYANT**  
**NOTARY PUBLIC**  
STATE OF WASHINGTON  
COMMISSION NUMBER 21016827  
COMMISSION EXPIRES APRIL 23, 2025

*Jesse S. Fayant*  
NOTARY PUBLIC for the State of  
Washington residing at Spokane  
My commission expires 4/23/2025.

LIS PENDENS  
Page 2 of 2

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## V. Lis Pendens

- RCW 4.28.328(2) - If the action ***does not concern title*** to real property → claimant is liable for actual damages caused and reasonable attorneys' fees in cancelling the lis pendens.
- RCW 4.28.328(3) - If ***no substantial justification*** for filing → claimant is liable for actual damages caused and the court has discretion to award attorneys' fees and costs in defending the action.



RCW 4.28.328



## VI. Change in Ownership

- You are representing a property owner in a quiet title action against their neighbor. Everything is going well, and you just scheduled the first deposition... click, your client calls to say they are selling their property.
- Are you required to withdraw?
- Can you represent the new owner of the property?
- Do you need to withdraw?



## VI. Change in Ownership

- You are representing a landowner suing their neighbor for an ongoing trespass (e.g., the neighbor dug a channel that funnels water from their property to your client's foundation). After filing the lawsuit, the neighbor deeds the property to their son.
- Can you continue a lawsuit against the neighbor?
- Can the son be added as a party-defendant to the lawsuit?



## VII. Effective Drafting of Judgments

- RCW 4.56.190 - 200 – Real estate of judgment debtor shall be bound to satisfy any judgment.

Landmines:

1. Names
2. Is it a superior Court Judgment (RCW 4.56.200 – lien when filed with the County Clerk)?
3. State District Court Judgment → certified transcript of judgment
4. Judgment in US district court? → if in the County, upon entry otherwise an Abstract of Judgment
5. Judgment in different county than property? → Abstract of Judgment
6. Judgment Summary
7. Legal Description of Property (if relevant)



# VIII. Effective Drafting of Judgments

## Judgment Summary

- Required Format (see RCW 4.64.030)
- If a monetary judgment, it is a lien, without describing real property – just name the defendant/debtor
- If it affects real property, list the full legal description or reference page of judgment where full legal can be found

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8	IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON		
9	IN AND FOR THE COUNTY OF SPOKANE		
10	JOHN DOE, an individual,		
11		Plaintiff,	
12			Case No.:
13	vs.		DEFAULT JUDGMENT
14	JANE DOE, an individual,		
15		Defendants.	
16	<b>I. <u>JUDGMENT SUMMARY</u></b>		
17			
18	JUDGMENT CREDITOR:		<u>JOHN DOE, an individual</u>
19	ATTORNEY(S) FOR JUDGMENT CREDITORS:		<u>Aaron D. Dunham</u>
20			
21	JUDGMENT DEBTORS:		<u>JANE DOE, an individual</u>
22	ATTORNEY FOR JUDGMENT DEBTOR:		<u>n/a (pro se)</u>
23			
24	PRINCIPAL AMOUNT OF JUDGMENT:		<u>\$60,000.00</u>
25	INTEREST TO DATE OF JUDGMENT:		<u>\$ 5,123.56</u>
26			
27	ATTORNEY FEES & COSTS:		<u>\$550.00</u>
28	TOTAL JUDGMENT AMOUNT:		<u>\$65,673.56</u>
29	JUDGMENT SHALL BEAR INTEREST AT:		<u>Twelve percent (12%) per annum</u>
30			
31	REAL PROPERTY AFFECTED BY JUDGMENT:		<u>n/a</u>
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# IX. Effective Drafting of Judgments

- Quiet Title Considerations:  
RCW 7.28.010 – the Superior Court has authority to quiet title and remove a cloud from title.



Generally, this Judgment quieting title may be recorded against the property it affects – and effectively transfers / quiets title.

Practical Tip: Get language in your Judgment requiring the other party to sign a deed clearing title and authorizing the Court to Appoint a “Trustee” under RCW 7.28.010 in the event a deed is not signed.

- All Superior Court Monetary Judgments may also be Recorded in the County in Which they are rendered.





# QUESTIONS?

