

OLTA Legislative and Case Law Update

Tabitha Palmer-DuPrau

Underwriting Counsel
Fidelity National Title Group

HB 4020 - Chp 27

Notary Education

- ▶ Effective Date: January 1, 2025

Active notaries will be required to complete an education course before they can renew their commission.

HB 4056A - Property Tax Foreclosure Surplus

- ▶ Effective Date: June 6, 2024; suspended until December 31, 2025
- ▶ Requires Oregon Department of Revenue and the Counties to create a process to:
 - ▶ Determine any surplus from the proceeds from the sale of property the county received in a property tax foreclosure
 - ▶ Provide adequate notice of the surplus to all interested parties
 - ▶ Determine right to the surplus
 - ▶ Surplus shall be deposited in an interest-bearing account and the above determinations have been made
- ▶ Ensure County Tax Foreclosures comply with the US Supreme Court's holding in *Tyler v. Hennepin County, Minnesota*, 598 U.S. 631 (2023)

Tyler v. Hennepin County, 598 U.S. 631 (2023)

Hennepin County foreclosed Geraldine Tyler's condo based \$15,000 in unpaid real estate taxes. Hennepin County sold it for \$40,000 and kept the proceeds.

Issue: Is the surplus value the County acquires in a county property tax foreclosure a taking that is protected under the Fifth Amendment?

US Constitution Fifth Amendment states that "private property [shall not] be taken for public use, without just compensation."

Holding:

Court: Yes, it is a taking.

The county has the power to sell property to recover unpaid property taxes.

“But it could not use the toehold of the tax debt to confiscate more property than was due.”

The taxpayer is entitled to the surplus in excess of the debt owed.

The ruling applies regardless of whether the county keeps the property or sells it.

HB 4058A - Real Estate Activities

Effective Date: January 1, 2025

Wholesaler Licensing Requirements

Buyer Listing Agreements

Right to List Agreement Limits

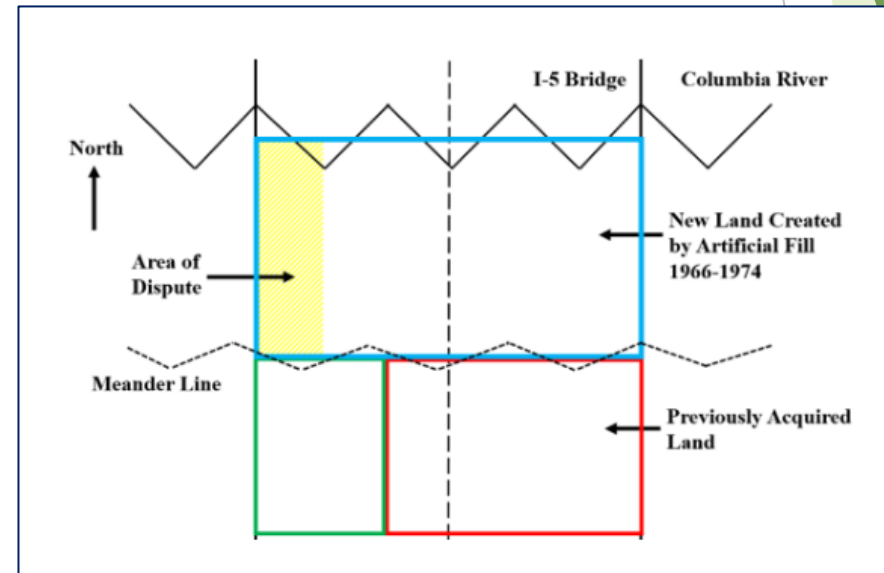
State of Oregon, by and Through its Oregon Department of Transportation v Dietrich, 330 Or.App.449 (2024)

- ▶ Construing Legal Descriptions
 - ▶ Tie over Distance
 - ▶ Water Boundaries



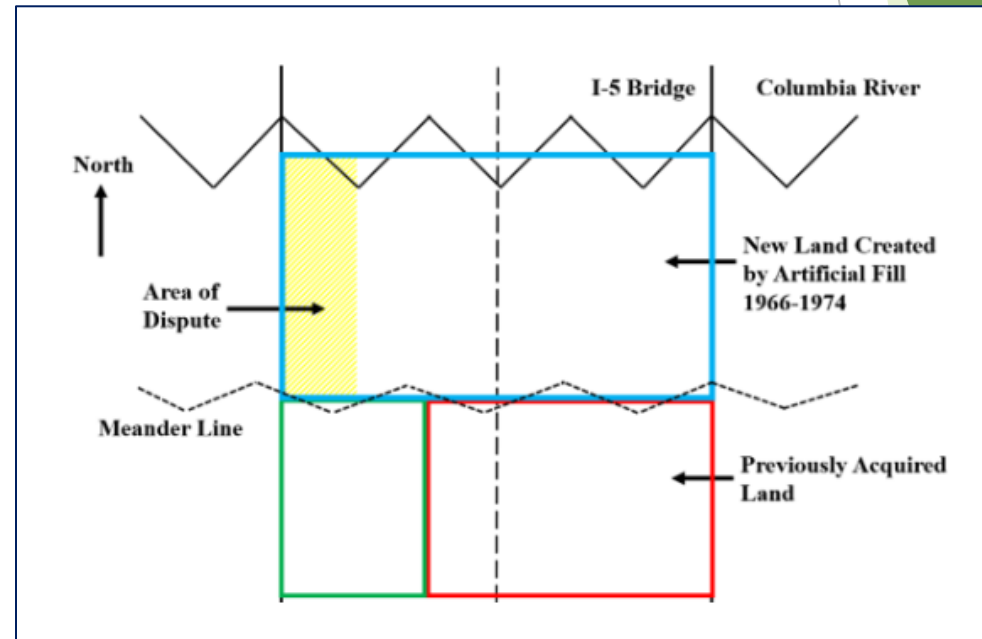
Where is boundary between the properties?

- ▶ State acquired area in red pre-1960
- ▶ State acquired area in green in 1960
- ▶ Area in blue is fill land
- ▶ State conveyed property west of I-5 in 1975 to Thunderbird's predecessor in interest



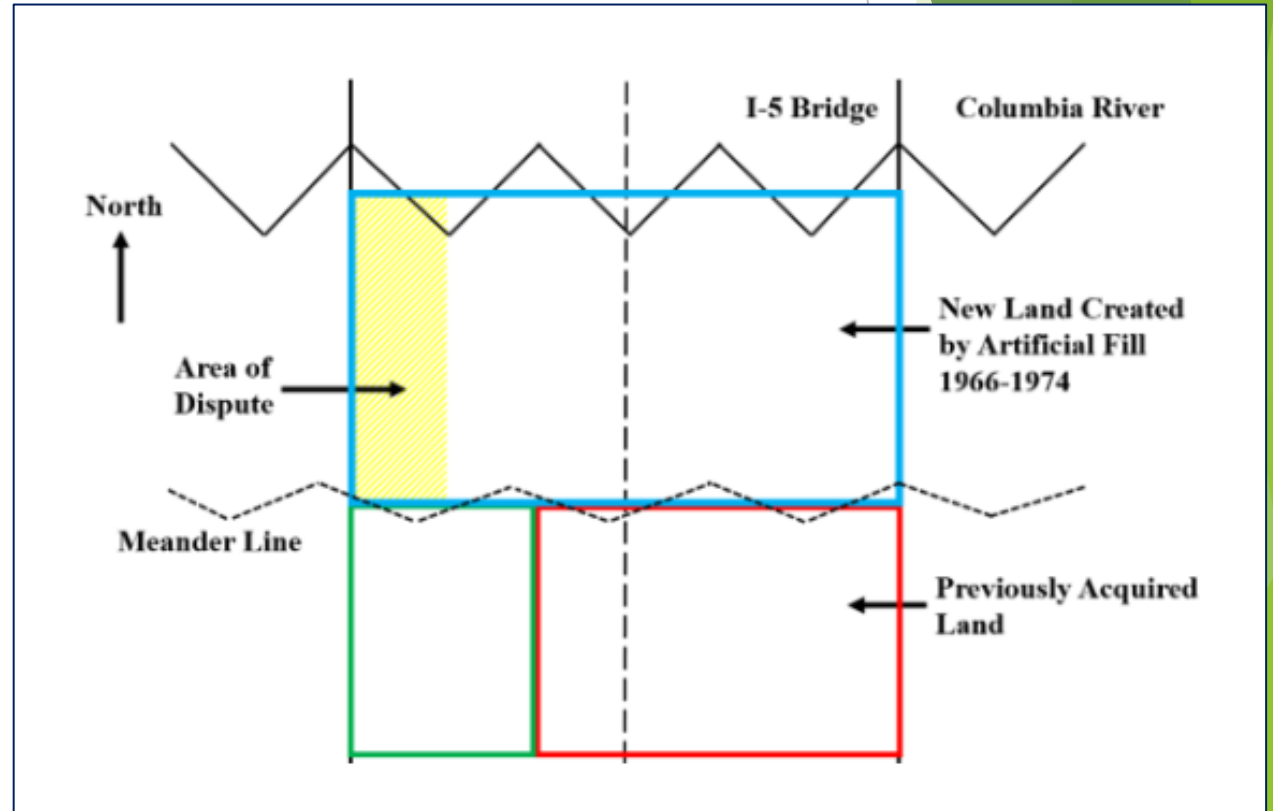
1975 ODOT Deed

Beginning at the intersection of the ordinary highwater line on the South Bank of the Columbia River with the westerly right of way line of Interstate Highway No 5 ... then North $22^{\circ}46'30''$ E 560.0 feet along the Westerly right of way line of Interstate 5 to the point of beginning.



2004 Deed

Thence South $63^{\circ}06'$ East 55.91 feet, more or less, to the intersection with the Westerly right of way of the Interstate 5 highway; thence North $22^{\circ}48'10''$ East along said right of way 575 feet, more or less, to the high water line of the North Bank of Hayden Island



Tie Over Distance is the Rule

- ▶ “If the intent is unclear ... references to definite and permanent boundaries and monuments in a conveyance will prevail over an inconsistent course and distance description.”
- ▶ I-5 is a “definite and objectively identifiable boundary.”
- ▶ “More or Less” establishes the distance is approximate and not fixed: it “indicates the measurement may be approximate or inaccurate.”
- ▶ ORS 93.310 is the statutory version of the rule.

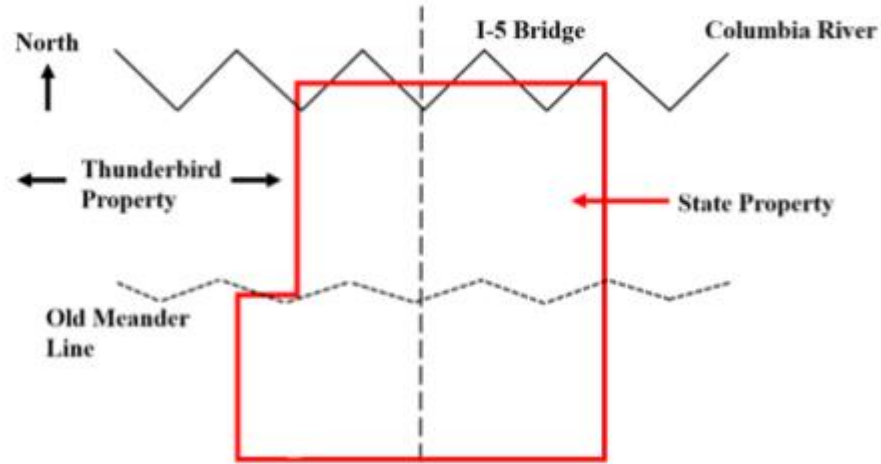
Water Boundary Rules

- ▶ State holds title to high water mark of navigable rivers.
- ▶ Meander lines are a survey line to indicate the high water line
 - ▶ “[A] grant to the meander line is a grant to the ordinary high water line.”
- ▶ The water line will change over time.
 - ▶ Accretion is the gradual and imperceptible movement over time
 - ▶ Avulsion is a sudden and perceptible change
 - ▶ Fill is an avulse movement
- ▶ The property boundary changes with Accretion.
- ▶ It does not change with Avulsion.

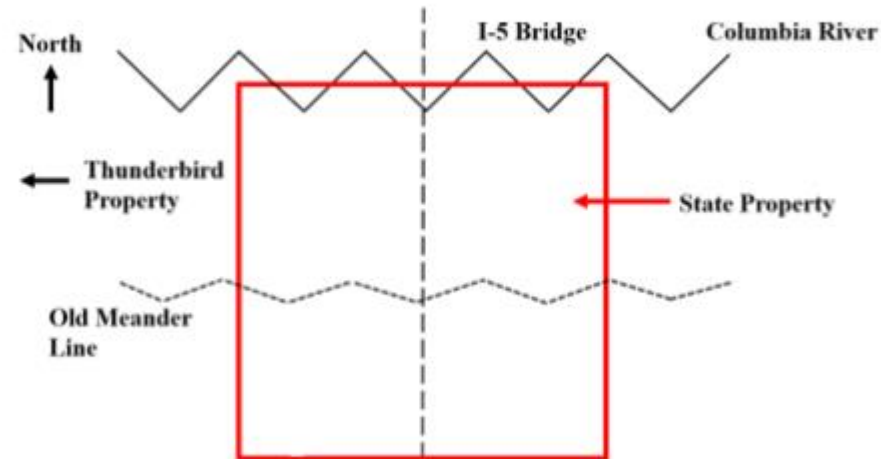
Holding:

- ▶ The State still owned the submerged and submersible property up to the pre-fill high water line and owned to the westerly boundary of I-5

Thunderbird's Construction:



The State's Construction:



1959 Warranty Deed

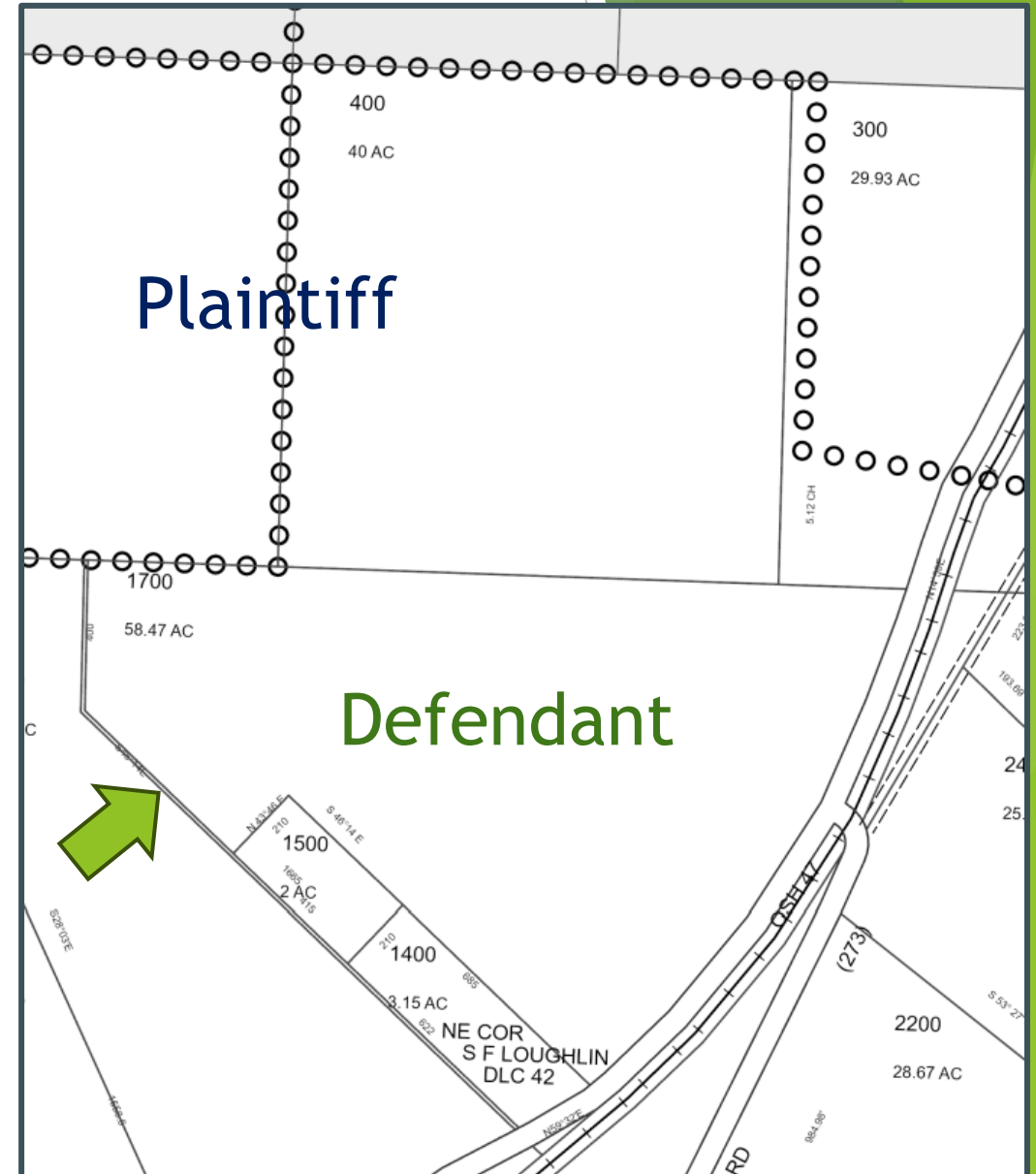
Grant:

A sixteen foot Right of Way running from the Northeast Quarter of the Northwest Quarter of Section 23, Township 2 South, Range 4 West in a Southeasterly line of the Tualatin Valley Highway over and across the following described property:

[Legal Description of the Defendants' Property]

Defendant's Position:

- ▶ Warranty Deed conveys a fee interest, so the right of way is a fee and not an easement
- ▶ The legal description following the grant describes the 16 foot strip to the west of their property, which is tax lot 1600



Court's Holding

- ▶ Warranty Deed can create an Easement.
- ▶ Court relied on three factors to determine the intent of the grantor:
 - ▶ Deed said right of way runs from one unspecific location to an undefined point on the highway. This is common for easement grants but not fee grants.
 - ▶ “Over and Across” Language: This language is almost always used for easement grants.
 - ▶ Legal Description of the burdened property described Defendant's property and not tax lot 1600.

Additional Defense Arguments:

- ▶ Defendant's Assumption that tax lot 1600 is the right of way:
 - ▶ No evidence as to why the county created tax lot 1600 including whether it was based on the 1959 deed.
 - ▶ Counties do not typically create separate tax lots for easements.
 - ▶ The 1959 deed does not describe it.
- The Realtor said so:
 - Yeah, no: A “lay person’s understanding of the property interests at stake, made almost 60 years after [the easement grant],” cannot trump what the terms of the 1959 deed unambiguously said.

Blakeley v Quality Loan Service Corp., 327 Or.App. 373 (2023)

Issues:

What is the priority between concurrently recorded Trust Deeds?

Does the anti-deficiency judgment statute prohibit a different lender foreclosing its trust deed on a previously foreclosed property?

Background

- ▶ “Citibank” Trust Deed for \$81,900 recorded April 13, 2001, at 3:47:09 pm in Book 419, Page 913, as Document Number 624769.
- ▶ “Nationwide” Trust Deed for \$8,190, recorded April 13, 2001, at 3:47:09 pm in Book 419, Page 933, as Document Number 624770.
- ▶ Nationwide foreclosed the property in 2016-2017.
 - ▶ It did not name Citibank in the foreclosure proceedings.
- ▶ Plaintiffs purchased the property at the sheriff’s auction in 2017 for \$21,680.83.
- ▶ In 2020, plaintiffs filed suit to prevent Citibank from foreclosing and declaring Citibank’s trust deed is not a lien on the property.

Priority Issue:

Plaintiff: The date and time of recording establish the documents have the same priority regardless of the recording numbers.

The Court: No, that is not the correct approach.

“The priority of real property interests is based in the recording statutes, which include the bona fide purchaser rule.”

Priority between Plaintiff and Citibank was based on notice.

Priority between Citibank and Nationwide was based on intent.

Bona Fide Purchaser for Value Rule

An interest in real property is void [not enforceable] against any subsequent interest obtained in “good faith and valuable consideration” that is recorded first.

To be a bona fide purchaser, the subsequent purchaser must acquire the property in good faith and *without notice* of the outstanding interest.

ORS 93.640

Notice

- ▶ Notice can be actual or constructive
- ▶ **Constructive Notice:** a document recorded with the county clerk or otherwise of record in a manner allowed by the statutes. ORS 93.643.
- ▶ **Actual or Inquiry Notice:** arises when there are facts that would cause a reasonable person to make an inquiry.
- ▶ The plaintiff was charged with inquiry notice of Citibank's interest based on the recording and its omission from Nationwide's foreclosure.
- ▶ An inquiry would have disclosed that Citibank had priority over Nationwide based on the two lenders' intent.

ORS 86.797: Anti-Deficiency Statute

- ▶ A deficiency judgment is different than a foreclosure
- ▶ ORS 86.797 or other anti-deficiency rules do not prevent or affect a different lender from enforcing its trust deed that was not extinguished by the foreclosure against the property.

OLTA -

info@oregonlandtitle.com

tabitha.palmerduprau@fnf.com