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Legal Issues in Real Estate Development

The Grove Hotel

March 4, 2020

Sponsored By:



Title Issues

A Presentation for the Idaho State Bar Real Property Section

March 4, 2020

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Overview

- ▶ Mechanic's Lien / Broken Priority Issues
- ▶ Lack of Probate Affidavits
- ▶ Non-judicial foreclosure of HOA liens
- ▶ Common Commercial Title Policy Endorsement

Mechanic's Lien / Broken Priority Issues

- ▶ Hypothetical:
 - ▶ Borrower receives approval from Lender for a construction loan on a new building.
 - ▶ Construction loan has not yet closed and title insurance has not yet been issued.
 - ▶ However, Borrower takes approval of financing from Lender as green light to begin work on the project. Architects, engineers, excavators, and concrete workers all perform work on the project before the loan closes.

Mechanic's Lien / Broken Priority Issues

- ▶ Idaho's Recording Act
 - ▶ I.C. § 55-812 - “Every conveyance of real property ... is void as against any subsequent purchaser or mortgagee of the same property, or any part thereof, in good faith and for a valuable consideration, whose conveyance is first duly recorded.” (Race-Notice)

Mechanic's Lien / Broken Priority Issues

- ▶ Priority of Purchase Money Mortgage
 - ▶ I.C. § 45-112 - “A mortgage [or deed of trust] given for the price of real property, at the time of its conveyance, has priority over all other liens created against the purchaser, subject to the operation of the recording laws.”

Mechanic's Lien / Broken Priority Issues

- ▶ Who can file a mechanic's lien?
 - ▶ I.C. § 45-501 - every person performing labor upon or furnishing materials to be used in construction project on land, and including professional engineers, licensed surveyors

Mechanic's Lien / Broken Priority Issues

- ▶ Priority of Mechanic's Lien
 - ▶ I.C. § 45-506 - Mechanic's Liens “are preferred to *any* lien, mortgage or other encumbrance, which my have attached subsequent to the time when” construction was commenced (emphasis added).
- ▶ Result: Work commenced prior to the closing of the construction loan may lead to liens recorded after closing on the construction loan that would nevertheless have priority over the deed of trust or mortgage.

Mechanic's Lien / Broken Priority Issues

- ▶ How to protect against mechanic's lien priority issues?
 - ▶ Don't start construction before your construction loan closes.
 - ▶ Obtain an extended coverage title insurance policy (may have additional requirements, i.e. a site inspection and survey)
 - ▶ Coordinate a construction disbursement process with borrower, builder, banker and title company that clearly assigns the responsibility of collecting mechanic's lien waivers with each disbursement of loan funds.
 - ▶ Ensure mechanic's lien waivers have been properly collected from all contractors, subcontractors and suppliers during construction before closing on the permanent financing.

Mechanic's Lien / Broken Priority Issues

- ▶ Other Mechanic's Lien Requirements to be Aware of:
 - ▶ A mechanic's lien must be filed/recorded and properly served "within ninety (90) days after the completion of the labor or services, or furnishing of materials."
 - ▶ "No [mechanic's] lien ... binds any building ... improvement or structure for a longer period than six (6) months after the claim has been filed, unless proceedings be commenced in a proper court within that time to enforce such lien."

Lack of Probate Affidavit

- ▶ Hypothetical:

- ▶ Mr. and Mrs. Smith passed away in 2001 and 2015 respectively. The time for probate has passed. Both had wills that were never probated. One son (out of four) has signed a purchase and sale agreement to sell Mr. and Mrs. Smith's old home, and their names are still in title. How do you close this transaction?

Lack of Probate Affidavit

- ▶ General probate requirement:
 - ▶ I.C. § 15-3-102 - “[T]o be effective to prove the transfer of any property or to nominate an executor, a will must be declared to be valid by an order of informal probate by the registrar, or an adjudication of probate by the court....”
 - ▶ I.C. § 15-3-103 - “[T]o acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person must be appointed by order of the court or registrar, qualify and be issued letters.”
 - ▶ Generally must be initiated within three years of decedent’s death. I.C. § 15-3-301.

Lack of Probate Affidavit

- ▶ Petition for Summary Administration:
 - ▶ I.C. § 15-3-1205 - Where decedent died with or without a will and left a surviving spouse as the sole devisee or beneficiary, surviving spouse may file a verified petition setting forth the marriage and death and that he/she is sole devisee or heir.

Lack of Probate Affidavit

- ▶ Collection of Personal Property by Affidavit:
 - ▶ I.C. § 15-3-1201 - Lack of probate affidavit may be used where:
 - ▶ FMV of entire estate does not exceed \$100,000
 - ▶ Thirty days have elapsed since death
 - ▶ No application or petition for the appointment of a personal representative or for summary administration is pending
 - ▶ Claiming successor is entitled to payment or delivery of the property

Lack of Probate Affidavit

- ▶ Marketable Title - free and clear of any defects or clouds that a reasonable buyer would find objectionable (not perfect, but no “hazard of litigation”).

VS.

- ▶ Insurable Title - may contain some cloud or defect that would otherwise make title unmarketable, but a reputable title insurer has been informed of the defect and agrees to offer title insurance that affirmatively covers the buyer (does not except the defect from title coverage).

Lack of Probate Affidavit

- ▶ Exception (expanded) swallowing the rule?
 - ▶ Counties in Idaho have been accepting the Lack of Probate Affidavit to transfer real property ownership with respect to tax records
 - ▶ Title insurance underwriters, assuming the above, are willing to insure the transfer of real property using a lack of probate affidavit when the affiant is the surviving spouse.
 - ▶ Haven't dealt directly with the situation in which the affidavit is used to transfer property to non-surviving spouse heirs, but have seen Idaho counties accept these affidavits for the above purpose of updating their tax records, which may be enough to get a title insurance underwriter to follow along.

Non-judicial foreclosure of HOA liens

- ▶ Hypothetical:
 - ▶ Homeowner fails to pay annual HOA assessment as well as fines for failing to mow lawn, over a 12-month period (\$700 assessment, \$250 in fines).
 - ▶ HOA files lien as set forth in CCRs and within authority given in HOA's organizing documents.
 - ▶ After efforts to recover the amount of the lien fail, HOA then attempts to non-judicially foreclose on the lien, following the process set forth in I.C. § 45-1506.
 - ▶ No trustee's sale guarantee was obtained as part of the foreclosure process, and buyer at said foreclosure sale pays \$175,000, knowing that there is a first position deed of trust of \$75,000 encumbering the property, but not knowing there is also a \$40,000 HELOC as well (both of record).
 - ▶ Would an Idaho title company insure this transaction?

Non-judicial foreclosure of HOA liens

- ▶ Some state's have statutes that specifically provide for non-judicial foreclosure of HOA liens.
 - ▶ Nevada (N.R.S. § 116.3116):
 - ▶ HOA lien for assessments “is prior to all other liens and encumbrances ... except”
 - ▶ Liens and encumbrances recorded before CCRs;
 - ▶ First security interest on the unit recorded before the date on which the assessment sought to be enforced became delinquent;
 - ▶ Lien for real estate taxes and other governmental assessments
 - ▶ However, the HOA lien is also prior to all first security interests to the extent any of the charges incurred by the association become due during the nine months immediately preceding institution of an action to enforce the lien.
 - ▶ And non-judicial foreclosure is allowed as means to recover on the lien. (N.R.S. § 116.31162)

Non-judicial foreclosure of HOA liens

- ▶ HOA lien rights in Idaho:
 - ▶ I.C. § 45-810:
 - ▶ HOA has a lien upon an individual lot for unpaid assessments accrued in the previous twelve months against a lot for the reasonable costs incurred in the maintenance of the common areas maintained by the association.
 - ▶ Claim must be verified and recorded and then served within five business days after recording
 - ▶ The lien may continue in force for a period of time not to exceed one year from the date of filing, but it may be extended for one additional year by the recording of a written extension signed by the HOA
 - ▶ “An action to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the claim for unpaid assessments.”
 - ▶ Silent with respect to the availability of non-judicial foreclosure.

Non-judicial foreclosure of HOA liens

- ▶ Idaho's non-judicial foreclosure statute:
 - ▶ I.C. § 45-1506: “A *trust deed* may be foreclosed on in the manner provided in this section.” (emphasis added)
- ▶ Answer to the hypo: title departments and underwriters will be checking Trustee's Deeds to ensure that the non-judicial foreclosure was conducted within the purview of the statutory framework; if used to foreclose an HOA lien, it is unlikely that a title company will insure.

Common Commercial Title Policy Endorsements Explained

- ▶ ALTA 3-06 - Zoning - Unimproved Land - 10% of title insurance premium (min. \$100; goes up to 20% for completed structure or land under development)

ALTA 3-06 endorsement is available for both owner's and loan policies. It is intended for use with unimproved residential or commercial property, but may be issued in connection with improved property as well. This endorsement provides coverage regarding 1) the zoning classification of the property and 2) the types of uses allowed under that classification. If the Land is improved, the customer may want to consider the ALTA 3.1-06, which provides additional coverages for existing structures. If the Land is unimproved, but "Improvements" (as defined in the endorsement) are contemplated and "Plans" (as defined in the endorsement) of those improvements are available, the customer may want to consider the ALTA 3.2-06, which provides coverage for Improvements that are constructed in the future according to the Plans. The customer may want to consider the ALTA 3.3-06 instead of the ALTA 3.1-06 when seeking coverage for a legal non-conforming use of the Land and the ALTA 3.4-06 when seeking coverage for Land that has no zoning classification.

Common Commercial Title Policy Endorsements Explained

- ▶ ALTA 5-06 - Planned Unit Development - \$75

ALTA 5-06 endorsement is only available for loan policies. It is intended for use with improved residential property that constitutes a planned unit development or is subject to a homeowners' association or other recorded master agreement, but may also be requested on commercial properties if there is an association or master agreement that provides for assessments. If the property is a condominium unit under a recorded condominium regime, the customer should request the ALTA 4-06 endorsement instead.

This endorsement provides coverage against loss or damage resulting from certain risks related to planned unit developments.

Common Commercial Title Policy Endorsements Explained

- ▶ ALTA 8.2-06 - Environmental Protection Lien - \$25 for commercial

The Company insures against loss or damage sustained by the Insured by reason of an environmental protection lien that, at Date of Policy, is recorded in the Public Records or filed in the records of the clerk of the United States district court for the district in which the Land is located, unless the environmental protection lien is set forth as an exception in Schedule B.

Common Commercial Title Policy Endorsements Explained

▶ ALTA 9-06 - Restrictions, Encroachments, Minerals - Loan Policy - \$40

ALTA 9-06 endorsement is only available for loan policies. It is intended for use with improved residential property, but may be issued in connection with unimproved property as well. This endorsement may also be appropriate for some commercial properties. This endorsement provides certain coverages relating to: (1) violations of written covenants, conditions, limitations, or restrictions ("Covenants") that occurred prior to Date of Policy and not excepted in Schedule B, whether or not the Covenants are recorded in the public records, (2) recorded notices of environmental-protection Covenant violations, but only to the extent of the violation referred to in the recorded notice, and only if the violation is not excepted in Schedule B, (3) violations that result in the invalidity, unenforceability, or lack of priority of the Insured Mortgage, or due to Covenant violations that cause a loss of the Title acquired in full or partial satisfaction of the Indebtedness, and (4) existing encroachments across property lines or onto easements (other than as disclosed in Schedule B), violation of building setback lines and damage to existing "Improvements" (as defined in the endorsement) due to the exercise of easement rights or mineral interests excepted in Schedule B or the legal description.

It is important to note that issuance of this endorsement may require extensive research and review of an ALTA-NPS survey of the property prior to agreeing to issue the endorsement.

Common Commercial Title Policy Endorsements Explained

- ▶ ALTA 17-06 - Access and Entry - \$200

ALTA 17-06 endorsement is available for both owner's and loan policies. It is intended for use with improved or unimproved commercial or residential property. This endorsement provides coverage against loss or damage if, as of the Date of Policy (1) the Land does not abut and have actual vehicular and pedestrian access to a public street, (2) the public street is not physically open and publicly maintained or (3) the Insured has no right to use the existing curb cuts or entries along the portion of the street that abuts the Land. If particular parcels of the Land have access to a public street by virtue of an easement insured under the policy then the appropriate endorsement is the ALTA 17.1-06.

Common Commercial Title Policy Endorsements Explained

- ▶ ALTA 19-06 - Contiguity - Multiple Parcels - 5%, min. \$50

ALTA 19-06 endorsement is available for both owner's and loan policies. It is intended for use with improved or unimproved commercial or residential property. This endorsement is typically requested when the insured Land contains multiple parcels comprising one overall project or site. This endorsement provides coverage against loss if any parcels are not contiguous to each other along specified boundary lines because of any gaps, strips or gores separating the parcels.

It is important to note that the issuance of this endorsement may require additional research and review of an ALTA-NPS survey of the property prior to agreeing to issue the endorsement.

Common Commercial Title Policy Endorsements Explained

- ▶ ALTA 22-06 - Location - \$100 extended owners; \$0 if concurrent with policy

ALTA 22-06 endorsement is available for both owner's and loan policies. This intended for use on improved properties only and, without modification, is inapplicable to vacant land. This endorsement may be requested whether the property is commercial or residential. This endorsement provides coverage against loss or damage by reason of the failure of certain described improvements to be located on the Land at Date of Policy. This endorsement also provides coverage against loss or damage by reason of those described improvements failing to have a specified street address (or addresses). If the property is located in an area of the country where it is customary to attach a map of the Land to the policy, then the lender may instead request the ALTA 22.1-06 endorsement, which provides additional coverages pertaining to a map attached to the endorsement and showing the location and dimensions of the Land according to the Public Records. The ALTA 22-06 does not provide this additional coverage.

Common Commercial Title Policy Endorsements Explained

- ▶ ALTA 37-06 - Assignments of Rents or Leases - 10% (\$75 min./\$300 max)

ALTA 37-06 endorsement is only available for loan policies. It is intended for use on improved or unimproved commercial or residential property, and is designed to be issued with a new loan policy issued at closing. This endorsement provides coverage for loss or damage due to defects in the execution of a specified assignment of leases and rents (the "ALR"). It also provides coverage for loss or damage due to any other recorded assignment of rents or other recorded assignment of the lessor's interest in a lease affecting the Title which is not part of instruments that are Schedule B exceptions. Note this endorsement does not provide coverage for the validity, enforceability, or priority of the ALR. This endorsement may be requested by the lender whether the ALR is part of the Insured Mortgage or is a separate recorded ALR document recorded at closing.

Common Commercial Title Policy Endorsements Explained

- ▶ ALTA 41.3-06 - Water - Land under Development - 5% (\$40 min./\$1000 max)

ALTA 41.3-06 endorsement is available for both owner's and loan policies. It is intended for use on commercial or residential property that is either vacant and being developed or improved and having additional improvements constructed. This endorsement provides coverage against enforced removal or alteration of certain existing surface improvements and "Future Improvements" (as defined in the endorsement) due to the exercise by a water rights estate owner to use the surface of the Land to extract water. The issuance of this endorsement will require the Company be provided the detailed building and site improvement plans for the contemplated improvements for review.

The End.

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Officer

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E  **PIRE**
T I T L E & E S C R O W

Environmental Due Diligence

Presented by:

Jonathan Green

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Green Environmental Management

Objectives

- ❖ Recognize reports meeting ASTM E1527-13 and the All Appropriate Inquiries Rule (40 CFR 312)
- ❖ High-risk properties
- ❖ Proposed changes coming in 2020/2021

Phase I ESA Reports

- ❖ Proper due diligence must be conducted in order to qualify for defenses to the Comprehensive Environmental Response Compensation and Liability Act (“CERCLA” or “Superfund”) liability
- ❖ CERCLA creates liability for the cleanup of hazardous substance contamination for owners and operators of real property, without regard to fault
- ❖ Defenses to CERCLA are afforded ONLY by a due diligence process conducted in adherence to the AAI Rule (“All Appropriate Inquiries – 40 CFR 312.20)



What are the Defenses to CERCLA?

- ❖ Innocent Landowner Defense – acquire property without knowledge of contamination;
- ❖ Bona Fide Prospective Purchaser Exemption – acquire property after January 11, 2002 with knowledge of contamination; and
- ❖ Contiguous Landowner Defense – acquire property without knowledge of contamination from neighboring property.

Continued Viability of Phase I ESA

- ❖ An *environmental site assessment* meeting or exceeding the ASTM E1527 standard and completed less than 180 days prior to the date of acquisition of the *property* or (for transactions not involving an acquisition) the date of the intended transaction is presumed to be valid.
- ❖ If within this period the assessment will be used by a *third party* different than the *user* for whom the assessment was originally prepared, the subsequent *user* must also satisfy the User's Responsibilities.

Phase I ESA Reports

- ❖ User & User provided information
- ❖ Owner
- ❖ One entity can be both the User & Owner
- ❖ Questionnaires are part of the process
 - Questionnaires have varying degrees of value depending on the borrower
 - Always insist on questionnaires
 - Questionnaires must be signed and dated

ASTM E1527-13 vs. E1527-05

- ❖ The ASTM E 1527-13: Standard Practice for Phase I Environmental Site Assessments was issued on November 6, 2013
- ❖ Used in most commercial property transactions to identify environmental liabilities, and to obtain protections under the EPA's AAI Rule
- ❖ Revised standard intended to clarify language where there was some inconsistency in practice

ASTM and All Appropriate Inquiry

- ❖ November 6, 2013

ASTM published E 1527-13 standard and -05 became a “historical standard”

- ❖ December 30, 2013

EPA published final rule recognizing -13 as AAI-compliant, announced intent to propose removing E1527-05 reference

- ❖ October 6, 2014

The EPA issued the final rule stating that as of **October 6, 2015**, ASTM method 1527-13 will be the only acceptable method for conducting a Phase I ESA.

ASTM E1527-13: What Changed?

Many of the changes in E1527-13 consisted of simplifications, clarifications, or increased detail or guidance on provisions that were already in E1527-05, which allowed Environmental Professionals (EPs) to better discuss and categorize concerns found during the completion of Phase I ESAs.



ASTM E1527-13: What Changed?

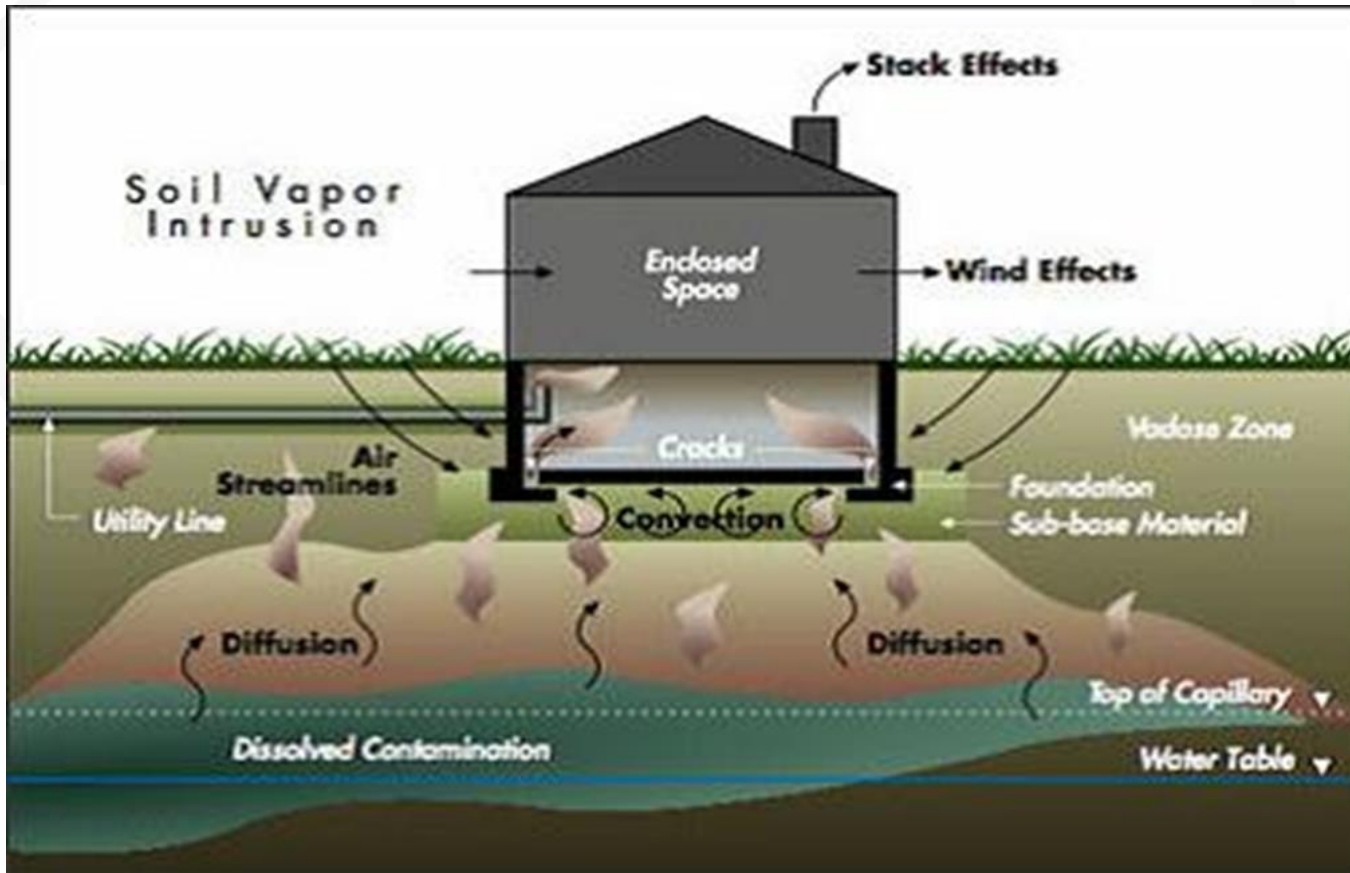
Significant changes included the following:

- 1) The inclusion of vapor intrusion;
- 2) Stronger stance on regulatory file reviews; and
- 3) Added and/or revised key definitions and included other clarifications that will not be addressed in our discussion.

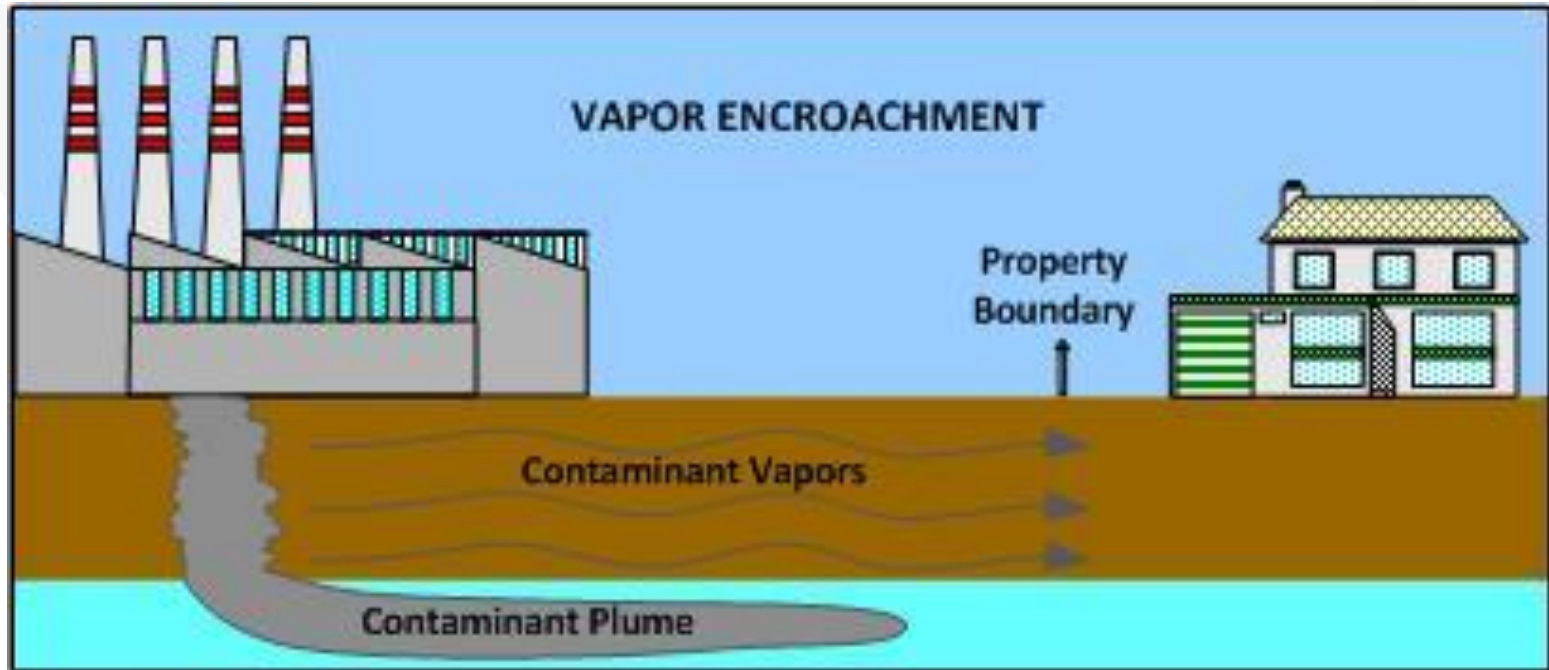
ASTM E1527-13: Vapor Pathway

- ❖ Vapor impacts must be considered, similar to the way we have always treated soil and groundwater impact.
- ❖ Potential vapor concerns were often dealt with as an indoor air quality issue in the past.
- ❖ Some consultants included the vapor pathway within Phase I ESAs well before the standard was issued, but many did not.
- ❖ Previous Phase II investigations may not have adequately assessed the vapor pathway. Therefore, additional investigation could be necessary.

Vapor Intrusion



Vapor Intrusion



Components of a Phase I ESA

- ❖ Site Inspection & Interviews with owners, operators, tenants
- ❖ Regulatory Database Review
- ❖ Agency Research
 - Building Department
 - Fire Department
 - Planning Department
 - Assessor's Office
 - State EPA
 - Environmental Health Department
 - Regional Water Quality Control Board
 - Department of Toxic Substances Control
- ❖ Historical Research



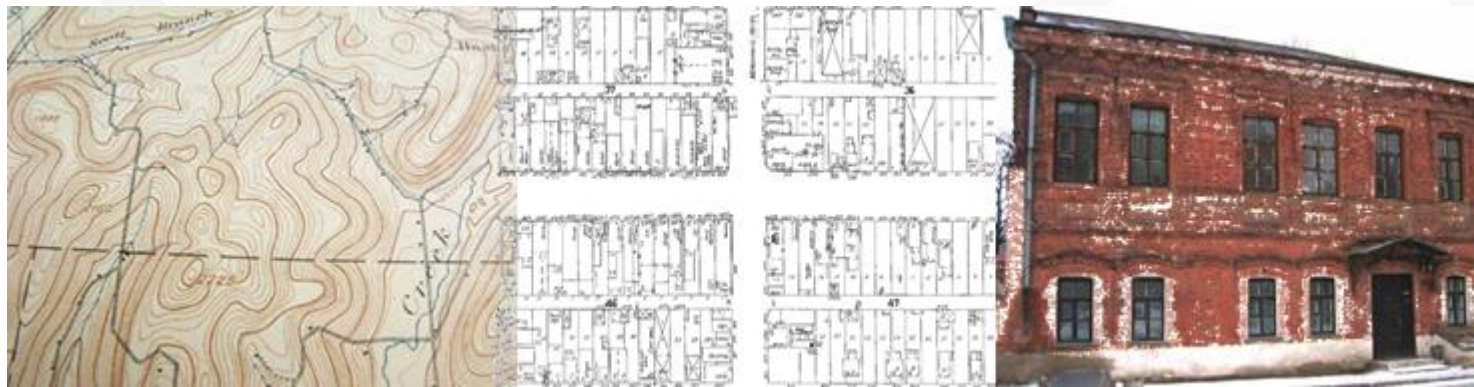
Components of a Phase I ESA

- ❖ Site Visit
- ❖ Must access all areas (otherwise Data Gap)
- ❖ Does not include any sampling (Phase II)
- ❖ Photographic documentation
- ❖ Must meet ASTM E1527-13 Standard (pages 17-19) and includes interior and exterior locations



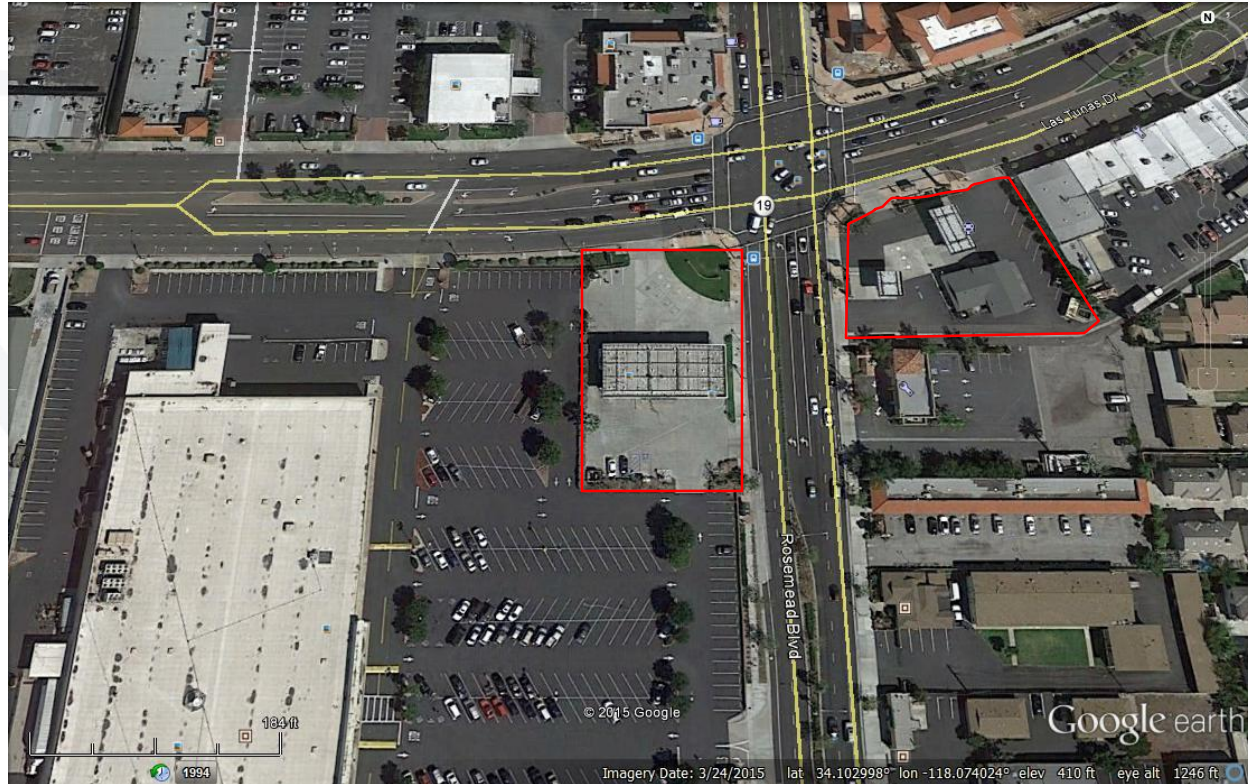
Components of a Phase I ESA

Historical Research – Purports to document the history of the property back to when property first contained structures or was used for agricultural, residential, governmental, industrial, or commercial purposes. Per ASTM guidelines, we attempt to obtain information at five-year intervals. Aerial photographs and/or historical topographic maps are commonly used to aid in this determination.



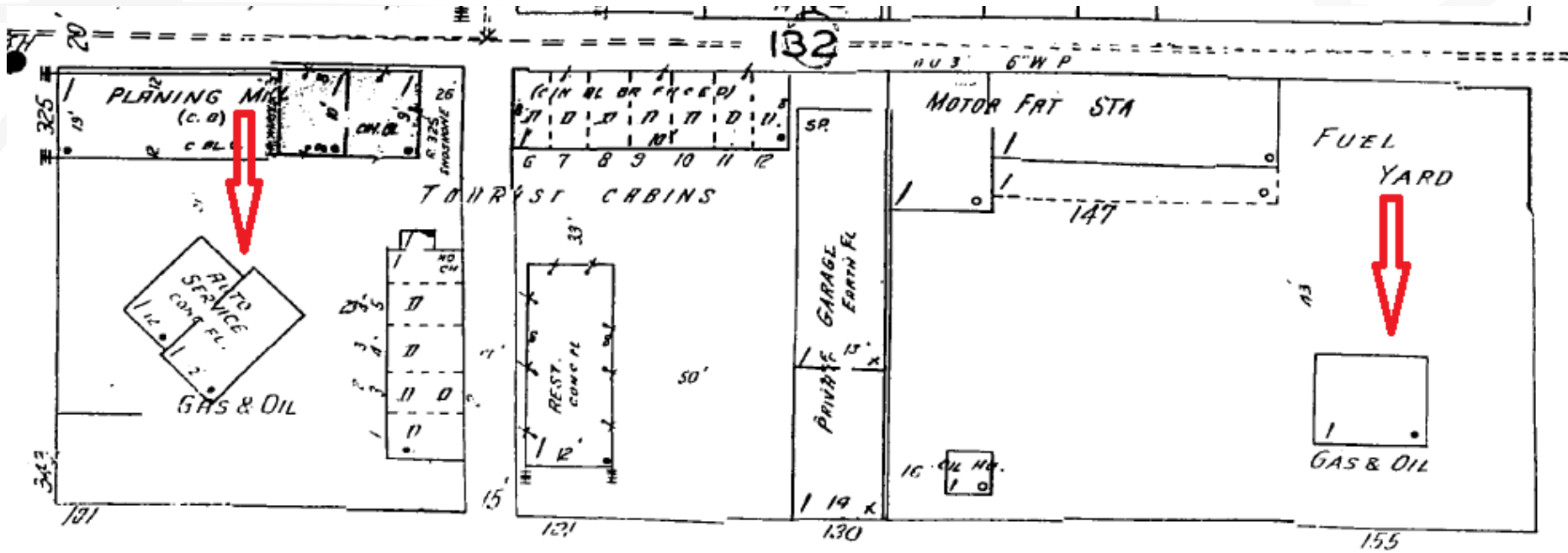
Components of a Phase I ESA

Aerial photographs may document former gas stations, etc.



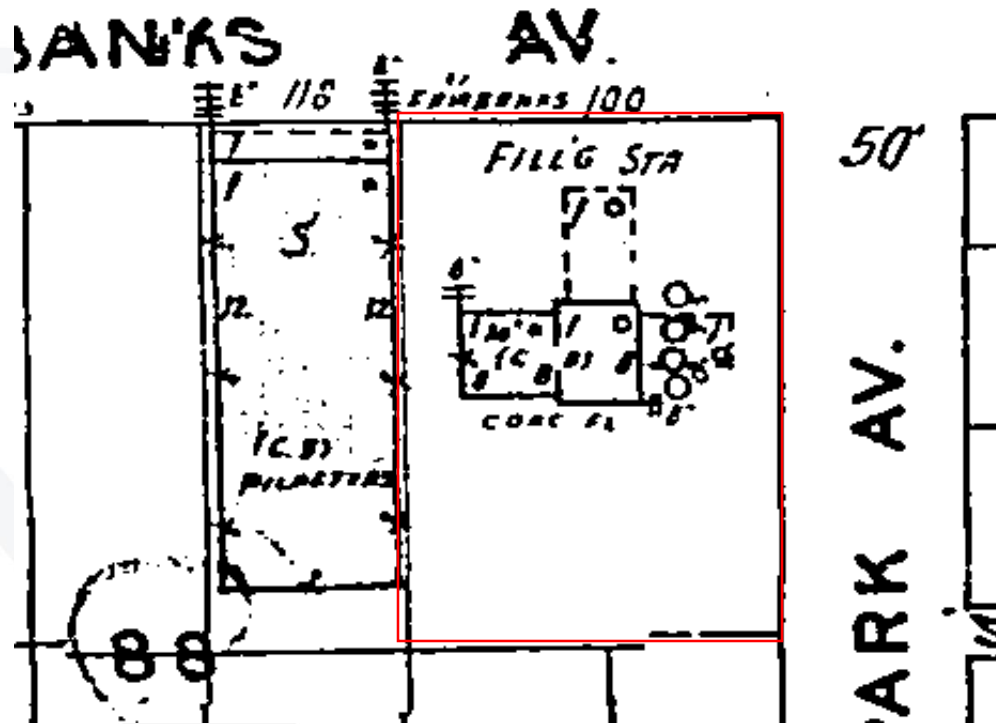
Components of a Phase I ESA

Sanborn fire insurance maps



Components of a Phase I ESA

Sanborn fire insurance maps



No Pre-Loan Due Diligence



No Pre-Loan Due Diligence



No Pre-Loan Due Diligence



ASTM E1527-13: Regulatory File Reviews

- ❖ ASTM E1527-13 strongly encourages pertinent regulatory files to be reviewed, but it is not necessarily required.
- ❖ The Standard does require, however, that if the EP chooses not to review files, they must give justification as to why they were not reviewed.
- ❖ This requirement DOES apply to file reviews for contiguous properties, not just the subject property.

Why Regulatory File Reviews Are Necessary

- Environmental database records rarely tell the whole story.
- A thorough File Review can identify conditions which can be missed through normal means.
- File Reviews also offer the best opportunity to identify mitigating information in cases where limited information is available for a contaminated property.

Significance of File Reviews



These tanks were decommissioned in-place with all documentation, inspections, testing, and closure by Oregon DEQ. Subsequent discovery has revealed years of groundwater leakage into the rusted tanks which has led to large volumes of hazardous waste.

Proposed Changes: ASTM E1527-21

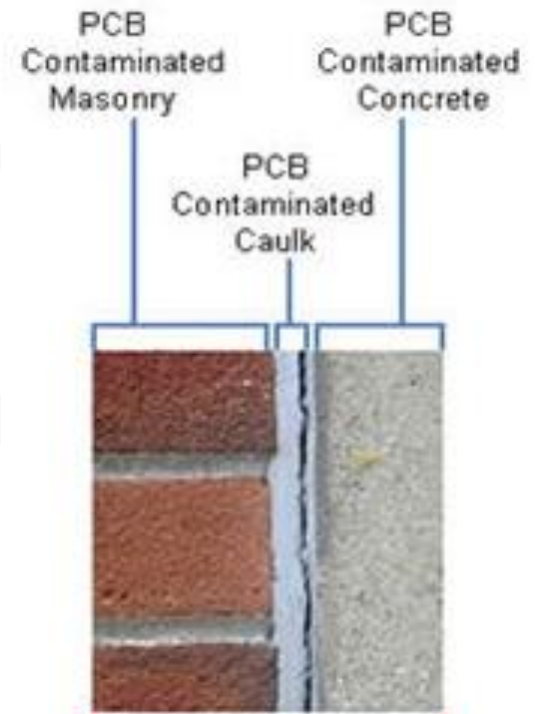
- ❖ Expanding the scope of historical research on properties.
 - Mandated historical research on adjacent sites and surrounding sites, in addition to subject property.
 - “Surrounding sites” definition still being developed.
- ❖ Clarifying the scope of site visits.
 - Who is qualified to conduct the site assessment?
 - Reports must include justification language if/when EPs-in-training are sent on site visits.

Proposed Changes: ASTM E1527-21

- ❖ Controlled Recognized Environmental Condition (CREC) examples and classification system.
 - Provide more examples of CRECs (sites do not pose a risk to human health)
 - Clarify CREC classification language to reduce liability issues for CRE owners/developers

Proposed Changes: ASTM E1527-21

- ❖ Smaller “housekeeping” changes:
 - Review of State and Federal Databases
 - Identification criteria for physical setting
 - Polychlorinated biphenyl compounds (PCBs) in building materials
 - Clarifications and additions to definitions



Phase I ESA Reviews

- ❖ Key items to look for in a Phase I
 - Completed questionnaires
 - Chain of Title and AULs/Liens
 - NFAs – use with caution!
 - Regulatory agency files
 - Vapor Intrusion Assessment/Screen

No Further Action Letters

- ❖ No Further Action letters are narrowly written
- ❖ No Further Action letters can be reversed
 - Changes in regulations/scientific knowledge re: chemical's risk factors
 - Conditions linked to NFA are not implemented or maintained

High Risk Properties

- ❖ Farms, commercial and private properties, auto repair facilities, dry cleaners, industrial sites.
- ❖ ALL properties can be high-risk, including residential (don't be lulled into a fall sense of security).



Residential - Tank Not Registered



Surprise! No Records of a UST

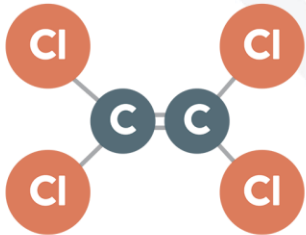


High Risk Properties

Dry Cleaners / Metal Plating / Commercial Print Shops

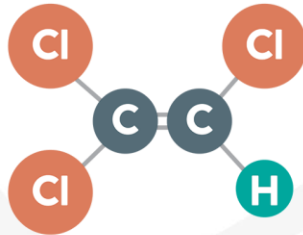
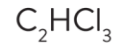
PCE

Tetrachloroethene



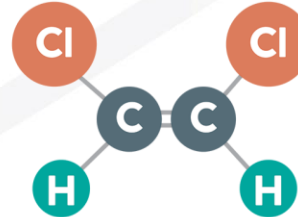
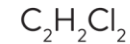
TCE

Trichloroethene



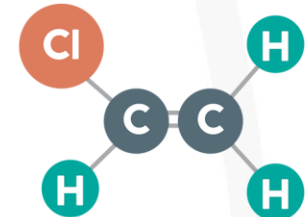
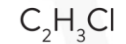
cis-DCE

Dichloroethene



VC

Vinyl Chloride



High Risk Properties

Can you trust your records searches?



Only 4 USTs registered to the property; but a total of 5 USTs removed with associated contamination

High Risk Properties

- ❖ Underground storage tanks that have been decommissioned in-place may still present environmental hazards.
- ❖ Seeing that a tank has been “decommissioned” does not mean an environmental condition does not exist.
- ❖ Use an experienced Environmental Professional to assess site and records

Limiting Your Risk

- ❖ Engage a reputable database research company
- ❖ Reduce Data Gaps, Limitations, and Exclusions
- ❖ Use ASTM as a guideline; not the bare minimum
- ❖ Use an experienced EP to look past the research to anticipate real-life property usage
- ❖ Utilize a decision matrix to determine risk vs. loan value

Disclaimer

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Questions?

Contact Jonathan Green if questions are unanswered during this presentation:

- jgreen@green-em.com
- 855-277-5307, extension 101

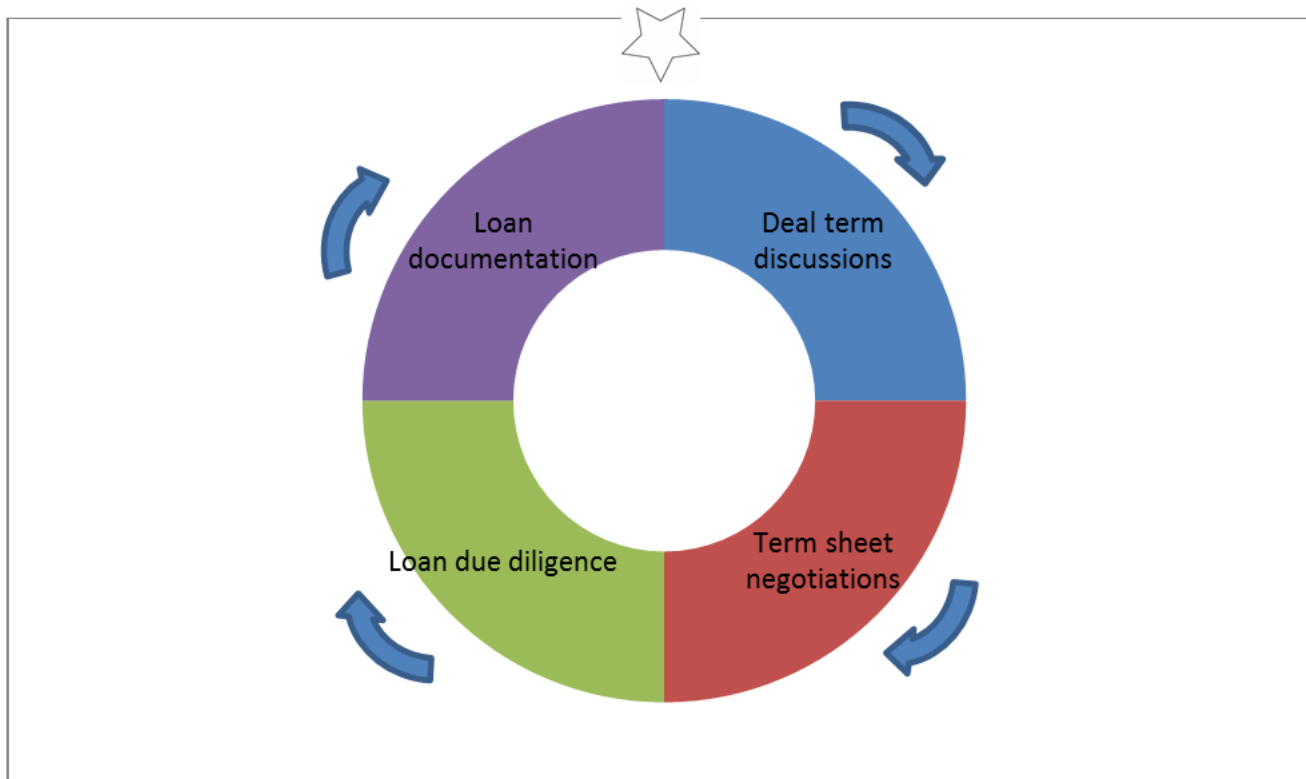


COMMERCIAL REAL ESTATE FINANCING: DUE DILIGENCE & LOAN DOCUMENTATION

Sarah Reed

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CRE LOAN PROCESS



DUE DILIGENCE: UNDERWRITING

- Lender's Underwriting Guidelines
 - Determines scope of due diligence, CRE requirements, and loan document terms
- Financial Statements
 - Needed at application for underwriting
 - Signed by Borrower with reliance language for Lender
- Terms: DSCR, LTV, NOI

DUE DILIGENCE: LEASES

- Leasing supports LTV and loan proceeds
- Rent roll should match leases
- Lender will review leases for major issues
 - Tenancy
 - Options to extend
 - Early termination rights
 - Condemnation / casualty repair obligations
 - Ground lease concerns
- Estoppel Certificates usually required
- SNDAs may also be required

DUE DILIGENCE: ENTITY STRUCTURE

Review of legal structure for Borrower, entity Guarantors, other entities in chain of authority:

- Organizational chart
- Existence documents (formation filing with state, local registration if foreign, certificate of good standing/existence)
- Governance and authority documents reviewed for
 - Persons with authority to bind Borrower
 - Purpose restrictions/SPE
 - Bankruptcy remote provisions
 - Capital calls
- Loan Resolutions/Secretary's Certificate

DUE DILIGENCE: ENTITY STRUCTURE

Other issues in entity structure review:

- Guarantor consideration confirmed
- Trusts who are a party or in the organizational chart
 - Does the Trustee have the power to guaranty?
- Tenancy-in-common agreements
 - Certain waivers may be required by Lender

DUE DILIGENCE: OFAC CONCERNS

- OFAC (Office of Foreign Assets Control of the U.S. Department of Treasury) administers the federal laws that impose economic sanctions against Specially Designated Nationals (SDNs)
- Lenders must screen Borrowers, Guarantors, and Interest Holders
- Institutional Lenders must also search other exclusionary lists

DUE DILIGENCE: LIEN SEARCHES

Parties searched:

- Borrower, Guarantor, parties with 20%+ beneficial ownership interests, parties in chain of authority
- Seller, other entities in chain of title of property in past 5 years

Public record searches include:

- PACER – bankruptcy and litigation search
- SmartLinx (LexisNexis) – comprehensive search
- Secretary of State / state lien filing offices – search for UCCs, liens and judgments

DUE DILIGENCE: INSURANCE

- General Requirements
 - Commercial Property Insurance – replacement value, including loss of rents and business interruption
 - Commercial General Liability – \$1MM/\$5MM limits
- Considerations:
 - Borrower and Lender’s legal name; coverage end date
 - ACORD Certificates (current forms, no reliance)
 - Notice of Cancellation to Lender endorsement
 - Lender’s Loss Payable endorsement
 - ACORD 75 Binder evidences insurance for purchases

DUE DILIGENCE: TITLE

- ALTA Extended Coverage Lender's Policy
 - Title Commitment (showing condition of title)
 - Schedule A = Transaction
 - Schedule B1 = Requirements
 - Schedule B2 = Exceptions
 - Pro Forma Policy
 - Affirmative language
 - Endorsements
- Zoning Report (PZR)

DUE DILIGENCE: POLICY ENDORSEMENTS

- Transaction specific
- Use survey and title exceptions to make determination
- Commonly include:
 - Commercial Environmental Liens 8.2-06
 - Restrictions, Encroachments, Mineral Reservations 9-06
 - Access and Entry 17-06
 - Tax Parcel 18-06
 - Contiguity 19-06
 - Same as Survey 25-06
 - Subdivision 26-06
 - Easement/Building Encroachments 28.1-06

DUE DILIGENCE: SURVEY

- A new ALTA/ACSM Survey May be required by Title Company to obtain extended coverage
 - What is NOT an ALTA survey
- Considerations:
 - Check that legal description matches title commitment and closes
 - Review for encroachments
 - Review for other issues, e.g. sufficient parking, zoning notes

DUE DILIGENCE: LIEN WAIVERS

- Title companies may require lien waivers if there has been recent work on the property
- Lien waivers will need to be in a form acceptable to specific title company
 - Unconditional, final
- Work-arounds
 - Escrow holdback
 - Indemnity in favor of title company

DUE DILIGENCE: CLOSING PROTECTION AND INDEMNITIES

- Title insurance companies may require owner/borrower to indemnify it in the event of certain types of claims filed under the title policy.
 - Lenders do not like indemnity requirements because could jeopardize borrower's ability to make loan payments.
- National offices/Closing protection letters

DUE DILIGENCE: OTHER ISSUES

Other issues which may arise and require expertise:

- Construction lending
- Water rights
- Environmental problems

LOAN DOCUMENTS: TYPICAL SET

- Promissory note
- Loan agreement
- Deed of trust (or Mortgage), Assignment of leases and rents, Security agreement, and Fixture filing
- UCC-1s
- Guaranty
- Environmental Indemnity Agreement
- SNDAs
- Opinion letter from Borrower's counsel

LOAN DOCUMENTS: SNDA

- When does Lender want/need an SNDA?
 - When the lease requires an SNDA for effectiveness of the lease
 - To prevent the lease from terminating upon foreclosure sale
 - Lender wants “additional provisions” (i.e., confirmation of no option to purchase or Tenant’s termination rights)

LOAN DOCUMENTS: SNDA

- Lender liability for acts of the Borrower
- Lender liability to return Tenant's security deposit
- Offsets/claims against Landlord
- Prepaid rent
- Future amendments, assignments, subleases
- Unpaid TIAs
- Early termination by Tenant

LOAN DOCUMENTS: OPINION LETTERS

- These may be required in addition to or in lieu of legal structure documents
- Typically cover
 - Existence
 - Authority
 - Enforceability of the loan documents
- Other considerations
 - Where is the opinion giver licensed? What state law is referenced?
 - Trusts

LOAN DOCUMENTS: GUARANTY

- Full personal guaranty – preferred by Lender
- Other options:
 - Conditional/springing guaranty
 - Terminating guaranty
 - Limited guaranty
 - Multiple, several guarantees
 - Amount of guaranty limited to loss
 - Performance/completion guaranty

LOAN DOCUMENTS: SECURITY INSTRUMENTS

- Deed of Trust (Mortgage)
- Assignment of Leases and Rents
- Security Agreement
- Fixture Filing
- UCC-1 (recorded in real property records and filed in the state)

LOAN DOCUMENTS: LOAN AGREEMENT

- Contain the deal terms between the parties
- May contain portions of what is typically found in the promissory note or security instruments
- Portfolio issues
 - Partial release provisions
- Pay-down provisions
 - Make whole premiums
- Escrows

LOAN DOCUMENTS: ENVIRONMENTAL INDEMNITY

- Highly dependent upon the actual environmental status of the Property
- Due diligence analysis reveals problems?
 - May need environmental insurance, as well
- Due diligence analysis reveals property is clean?
 - Consider sunset clause
 - Consider reference to the Phase I ESA

Questions?

THANK YOU!

Sarah Reed

sreed@hawleytroxell.com



GIVENS PURSLEY_{LLP}

CONSTRUCTION CONTRACTS

Franklin G. Lee

Givens Pursley LLP

601 West Bannock Street

Boise, Idaho 83702

208-388-1200

FrankLee@GivensPursley.com

OVERVIEW

Published Contract Forms

Current Design Contract Issues

Current Construction Contract
Issues

SELECTION

- **Selection is the most important step!**
- Usually best to select designers and contractors early (often at the same time).
- Do your due diligence on counterparty
- Recognize your negotiating position

DUE DILIGENCE

Know your client / vendor

- Check financial condition
- Check industry references
- Check payment history
- Check litigation history
- Know the staff to be on your project

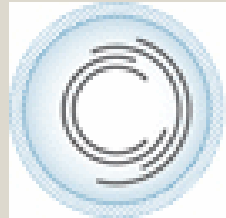
COMMON INDUSTRY FORMS



American Institute of Architects
(AIA) Contract Documents

EJCDC

(Engineer's Joint Contract Documents Committee)



ConsensusDocsTM
BUILDING A BETTER WAY

FORM CONTRACTS

- Stay in the same form family!
- Don't be shy about modifying forms
 - Recognize and eliminate form bias (will discuss later)
 - Modify to address your needs
 - Never assume “standard” terms are appropriate for your deal

American Institute of Architects (AIA) Contract Documents



- Still market leader for buildings and for architect designed/managed projects (although this is changing)
- Wide variety of forms available
- Terms are cultural to industry
- Terms often assumed, not read
- Often changed by unread “Supplementary Conditions”

American Institute of Architects (AIA)



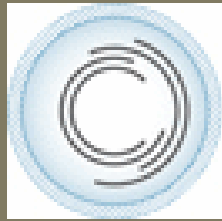
Contract Documents

- Slanted toward interests of its authors (i.e., architects).
- Architect is center of everything
- Viewed by owners and contractors as favoring the other in risk allocation
- All but eliminates architect from risk allocation

EJCDC

(Engineer's Joint Contract Documents Committee)

- Favored for infrastructure projects designed or managed by engineers
- Like AIA forms – but more detailed
- Decidedly slanted toward interests of its authors (i.e., engineers)
- Viewed by owners as a fair “starting point”; contractors view them less favorably.



ConsensusDocs™
BUILDING A BETTER WAY

- Authored by a fairly broad, but contractor heavy, industry coalition
- Not liked by design professionals
 - Immensely diminished role of designers
 - Inserts designers into risk allocation
- Probably the most even “starting point” of any published industry form.

Design Contract Issues

OWNERSHIP OF DESIGN

- Default Rule – The designer owns the design and drawings.
- Industry forms have “licenses” that are very limited.
- Copyright infringement claims easy to make; penalties are severe
- Recent increase in litigation
(Three filed in Idaho in last 6 months)

Design Contract Issues

LIMITS OF LIABILITY (LOLs)

- Insurers require designers to request (but not get) LOLs.
- LOLs largely enforceable in Idaho.
- Exceptions:
 - When cause indemnity for own negligence.
 - When violate public policy (FHA/ADA)
- Liability caps may be OK in certain circumstances and specialties

Design Contract Issues

FAIR HOUSING / ADA

Increasing source of claims against owners, architects and contractors

- Shocking level of carelessness by designers, contractors
- Civil rights, not building code
- Each party has direct liability
(No indemnity or contribution)
- Limits on liability ineffective

Design Contract Issues

FAIR HOUSING / ADA

- Learn the accessibility basics
- Accessibility be part of selection
- For risk projects (multi-family):
 - Expert post-design / pre-construction check
 - Expert post-construction / pre-occupancy check

Construction Contract Issues

- Scope of Work
- Payments
- Consequential Damages
- Insurance
- Financial Security
- Dispute Resolution
- Attorneys' Fees

Construction Contract Issues

SCOPE OF WORK

A good scope of work is more important than a good contract!

- Poor scope of work documents are often the root cause of construction disputes
- Contractor confirmation of adequacy

If contractor won't give it - investigate.

Construction Contract Issues

PAYMENTS

- Owners
 - Get Lien releases – **always!**
 - Use proper lien release forms!
- Emerging Trend - “Integrity” warranties for payment requests.

Construction Contract Issues

CONSEQUENTIAL DAMAGES

- Consequential damages waivers are in every industry form.
- Often not mutual – *Beware!*
- May eviscerate deadlines – Critical issue on time sensitive projects.
- No standard solution – Must balance risks and incentives.

Construction Contract Issues

BUILDER'S RISK INSURANCE

- **Always** have your insurance provider review and confirm adequacy of coverage.
- Industry forms often require insurance that people don't have.
- Understand coverage, and requirements for coverage.
- Watch deductibles.

Construction Contract Issues

FINANCIAL ASSURANCES

- Shell entity? Closely held entity?
Consider parent or personal guaranty
- Bankruptcy of an owner or vendor can really complicate a project.

If you are not comfortable – get security or move on! (Maybe move on anyway)

Construction Contract Issues DISPUTE RESOLUTION

- Mandatory mediation is good idea
(Court will make you mediate anyway)
- Mandatory arbitration? Maybe
 - “Ambush by Arbitration”
 - Limits on discovery and parties
 - Often no less expensive
- New Trend - Limited Arbitrations
 - Pre-selected expert arbitrators
 - Fast; limited discovery; limited scope

Construction Contract Issues ATTORNEYS' FEES

- Law very favorable to vendors
 - One-way street against owners
 - Award of attorneys' fees in lien claims is mandatory
 - *Electric Wholesale Supply* case
 - \$51k claimed, but \$1k recovered, all attorneys' fees awarded (\$9k)
- Owners - Add contract recovery limitation to avoid reverse leverage



THANK YOU

Questions?



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Tenant Realty Advisors

Market Report

March 4, 2020

Prepared for: Idaho State Bar

Contact: Greg Gaddis (208) 333-7052 | Bill Beck (208) 333-7050

OFFICE MARKET | Boise MSA | 1st Quarter 2020

NOTABLE ACTIVITY



TANDEM DIABETES
95,000 SF @ 1500 SHORELINE DR

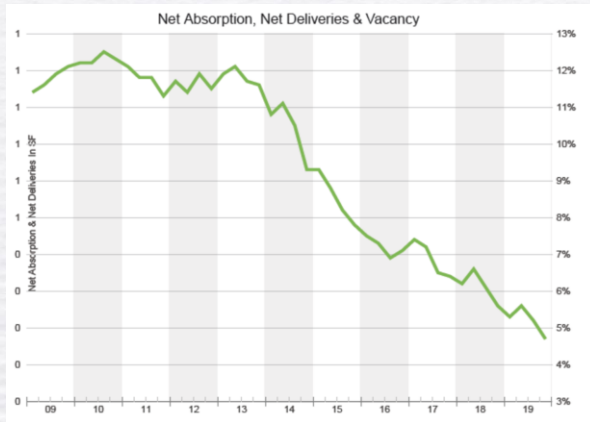
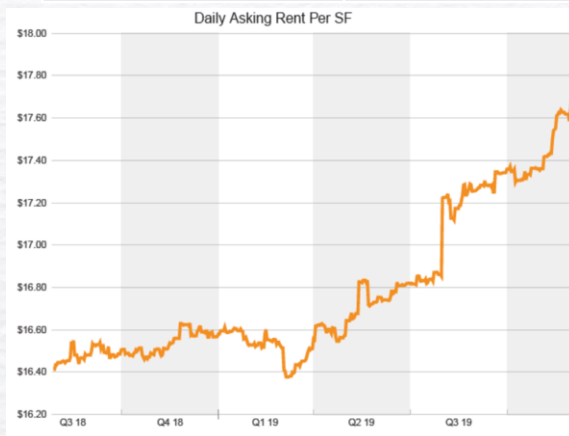


AMERICOR
49,000 SF @ OVERLAND & EAGLE



PROSPECTUS
65,000 SF @ 10 MILE & I-84

LEASE RATES		VACANCY RATES		TOTAL MARKET SF	CLASS A CORE SF
Year ▲	Quarter ▶	Year ▼	Quarter ▼	31,000,00	1,900,000



OFFICE VACANCY AND RATE TRENDS

- ▶ LEASE RATES CONTINUE TO RISE THROUGHOUT THE MARKET.
- ▶ VACANCY IS AT ITS LOWEST POINT IN HISTORY (SUB 6%) DOWNTOWN CLASS A REMAINS STABLE AT 7%

OFFICE CONSTRUCTION/SUPPLY TRENDS

- ▶ NEARLY 2,000,000 SF PLANNED/UNDERWAY IN MERIDIAN, EAGLE AND DOWNTOWN BOISE
- ▶ NEW CLASS A CONSTRUCTION LEASE RATES START AT \$25/SF FLSV

INDUSTRIAL MARKET | Boise MSA | 1st Quarter

NOTABLE ACTIVITY



VERDE FULLFILLMENT
168,000 SF BUILD TO SUIT

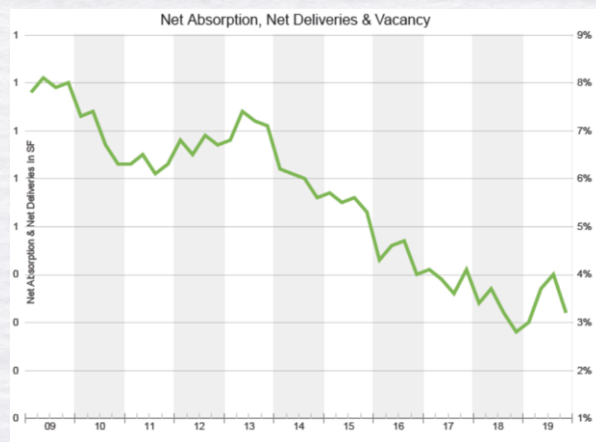
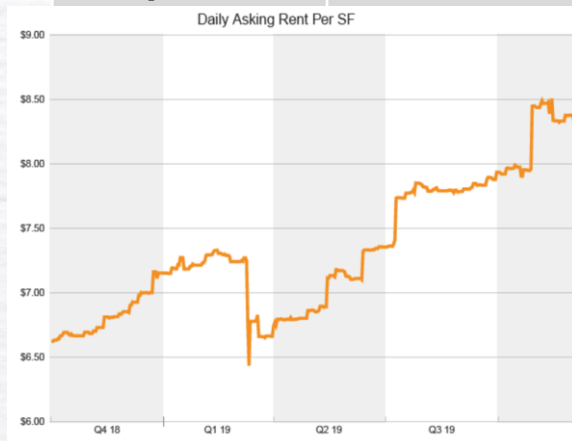


KEYSTONE BUILDING
NEW 60,000 SPEC IN CALDWELL



350,000 SF
SHOPKO DISTRUBUTION CENTER
SOLD/LEASED TO SOLITICO

LEASE RATES	VACANCY RATES	CONSTRUCTION	TOTAL MARKET SF
▲ Year Quarter	Year ▼ Quarter ▼	Year ▲ Quarter ▲	46,100,00



INDUSTRIAL VACANCY AND RATE TRENDS

- ▶ LEASE RATES CONTINUE TO RISE REACHING INTO THE .70/SF+ RANGE FOR NEW PRODUCT
- ▶ TOTAL VACANCY IS AT ITS LOWEST POINT ON RECORD – 2.9%

INDUSTRIAL CONSTRUCTION/SUPPLY TRENDS

- ▶ NEW CONSTRUCTION NOT KEEPING UP WITH DEMAND.
- ▶ OVER 1,600,000 SF DELIVERED IN 2019 UP FROM 1,200,000 SF IN 2018



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Market Report

March 4, 2020

2019 FACTS:

- **Office and Industrial lowest vacancies and highest rents on record**
- **Office - over 750,000 SF positive net absorption**
- **Industrial – nearly 1,700,000 SF positive net absorption**
- **28 office buildings over 20,000 SF sold (12% of inventory)**

Contact: Greg Gaddis (208) 333-7052 | Bill Beck (208) 333-2050

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Market Report

March 4, 2020

CONSTRUCTION EVERYWHERE!



Contact: Greg Gaddis (208) 333-7052 | Bill Beck (208) 333-2050



TR A

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Market Report

March 4, 2020

SIGNIFICANT OFFICE AND INDUSTRIAL CONSTRUCTION IN THE VALLEY:

- **BALL VENTURES ALQUIST:**
 - **OFFICE: 1.5 MILLION TO DATE, 1.2 MILLION CURRENT, 2.5 MILLION PLANNED**
- **THE SUNDANCE COMPANY:**
 - **OFFICE: 20,000 SF IN 2019 – 200,000 SF TO DELIVER IN 2020/21**
- **ADLER INDUSTRIAL**
 - **INDUSTRIAL: 130,000 IN 2019 – 550,000 SF TO DELIVER 2020**
- **STRIDER GROUP**
 - **INDUSTRIAL: 150,000 IN 2019 – 100,000 SF TO**

DELIVER 2020
Contact: Greg Gaddis (208) 333-7052 | Bill Beck (208) 333-2050

• RAFAELLI NAHAS



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Market Report

March 4, 2020

2019 TRENDS WILL CONTINUE :

- **Out of area investors purchasing large Boise properties**
- **Off-market deals...not just investor sales**
- **Out of area companies moving to Boise....it's happening and not just what you hear from the Chamber!**



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Market Report
March 4, 2020

WHAT ARE THE REASONS OUT OF AREA COMPANIES ARE EXPANDING AND RELOCATING TO THE BOISE MSA

- **STATE OF IDAHO INCENTIVES**
- **CHEAP UTILITIES**
- **OUR POPULATION GROWTH**
- **QUALITY OF LIFE**
- **IDAHO'S MINIMAL BUSINESS REGULATIONS (OR THE ONEROUS REGULATIONS IN THEIR CURRENT STATE)**
- **TAX POLICY**

BUT THE #1 REASON COMPANIES CHOOSE TO

Contact Greg Gardner (208) 353-7152 | Bill Bell (208) 333-2050

The logo for Tenant Realty Advisors (TRA) features the letters 'TRA' in a large, black, serif font. Below the letters are two horizontal red lines. The background of the logo is a semi-transparent image of a cityscape with various buildings and trees.

TRA

Tenant Realty Advisors

The title 'Market Report' and the date 'March 4, 2020' are displayed in a white, sans-serif font. The background is a semi-transparent image of a cityscape, similar to the one in the logo, showing a mix of modern and older buildings under a clear sky.

Market Report
March 4, 2020

**THE ABILITY TO HIRE AND RETAIN LOYAL
EMPLOYEES**

**ONCE HIRED AND TRAINED, THERE IS
LITTLE RISK OF LOSING THEM TO
AMAZON, MICROSOFT, UBER AND
OTHER 1,000 POUND GORILLAS!**

Contact: Greg Gaddis (208) 333-7052 | Bill Beck (208) 333-2050

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Market Report

March 4, 2020

WHAY TYPE OF COMPANIES ARE MO

Smithfield
Good food. Responsibly.®

TANDEM
DIABETES CARE

Unitek
LEARNING

armanino

amazon

RAVENSWOOD
SOLUTIONS™
Subsidiary of SRI International

guidant
FINANCIAL

AMERICOR

United
SITE SERVICES

IDI
DISTRIBUTORS
America's Insulation Source®

Contact: Greg Gaddis (208) 333-7052 | Bill Beck (208) 333-2050



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Market Report

March 4, 2020

2020 Market Issues and Consequences:

- **Lack of options for Tenants and User buyers**
 - **Read your renewal option!**
- **Construction not keeping up with demand**
 - **Rates will continue to rise**
- **Construction and Tenant Improvement costs**
 - **This can but not always kill deals**
- **Parking (surprise!)**
 - **Get on a waiting list!**



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Tenant Realty Advisors

Thank You!

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(208) 333-7050

beck@tenantrealtyadvisors.com

GREG GADDIS
(208) 333-7052

gg@tenantrealtyadvisors.com

TenantRealtyAdvisors.com | 950 W. Bannock St, Ste 410 Boise, ID 83702

The RON 411 IDAHO

Rick Triola
February 2020



Agenda

- Introduction
- What is an eSignature, Really?
- What is Electronic Notary?
- What is RON?
- Where is RON?
- Why RON?
- Considerations for Starting

Introduction

About me:

- Rick Triola
- Founder and CEO of NotaryCam (first transactions in 2012, company founded 2014)
- Notaries primarily in Virginia; also Montana, Texas, Nevada, Tennessee.
- >250k transactions
- >145 countries

What is an eSignature, Really?

“an electronic sound, symbol or process that is attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.”



Various samples of “Original” Signatures!

eSignature Adoption and Terms

Confirm your name and choose signature style. * Are required fields.

Full Name * Initials *

View Additional Styles

Default <i>Sam Signer</i> SS	Style 2 <i>Sam Signer</i> SS
Style 3 <i>Sam Signer</i> SS	Style 4 <i>Sam Signer</i> SS

By clicking agree, you agree to use and accept electronic signatures for this document.
View the Electronic Record and Signature Disclosure

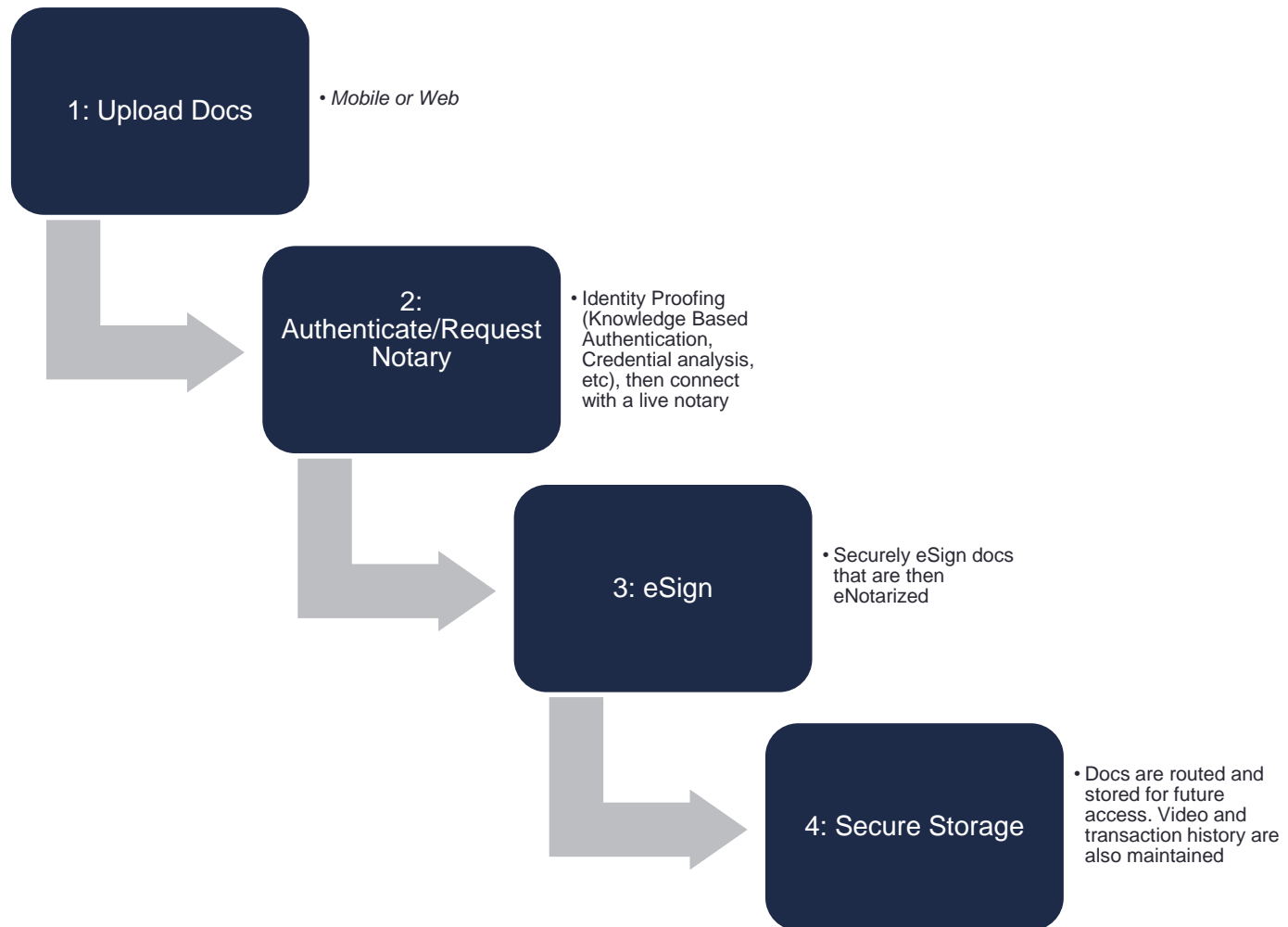
[Agree and Start Signing](#)



What is RON

- Remote, not in person
- New ID proofing tools and methods
- Video
- eSignatures (typed or holographic, includes Audit Trail)
- Tamper Seal (Digital Certificate)
- PDF

How RON Works



Demo

Learn to code | Code | Writing better emails | Our Classes - The Ne | NotaryCam | Armarkat Pet Steps | GoPetClub 48-in Cat | Lark Manor Rivau Sol | Alcott Hill Callanan S | Astoria Grand Gedim | Other bookmarks

NotaryCam® Emily Reed

WD - Demo Add Document

Pick Signature Font Size Text Date Initials Checkmark

Tags Active Signer: 0 of 1 Total Signed: 0 of 1 Go To Next Tag

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

WARRANTY DEED

Date: January 11, 2019

Grantor: **EMILY REED ROBBINS**

Grantor's Mailing Address (including county):
123 Main Street, Broadway Texas, 12345, Harris County

Grantee: **BOB ROBBINS**

Grantee's Mailing Address (including county):
123 Wishful Thinking Lane, Broadway Texas, 12345, Harris County

Consideration: **TEN AND NO/100 (\$10.00) DOLLARS** and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

Property (including any improvements):
All that certain lot, tract or parcel of land, situated in the ** Survey, Abstract No. **, ** County, Texas, and being more particularly described by metes and bounds on Exhibit "A" attached hereto and incorporated herein by reference for all purposes.

Reservations from Conveyance: NONE

ccf@flowersdavis.com (387)

henry.smith@notarycam.com (1995)

emilydawnreed@gmail.com (8586)

Archiving on

Toggle My Video

Must sign up

ACTIONS
 Save Changes

SIGNING MEMBERS

- Henry Smith info@notarycam.com
- Emily Reed Robbins emilydawnreed@gmail.com
- Cella Flowers ccf@flowersdavis.com
- Le-Lannie Wooden lwooden@textble.com

Invite Signing Members

CHAT
 Type your message here
 Send Message

ID Proofing: Is This Person Who They Say They Are?

- General Guidelines:
 - Use third party tools
 - Knowledge Based Authentication (KBA)
 - Credential Analysis
 - Human Knowledge (Notary Role)

Knowledge Based Authentication (KBA)

- Dynamic (not Static)
- Minimum of 5 questions
- Minimum of 5 possible answers
- 80% passing score
- 2 minute time limit per attempt
- 2 attempts permitted in any 48 hour period
 - Retakes require at least 40% of questions (2) are replaced.

Credential Analysis

- AKA “ID Scan”
- Image of Gov’t Issued photo ID is captured (webcam, phone)
- Verification Services uses tools such as:
 - Optical Character Recognition (OCR)
 - Barcode analysis
 - Machine-Readable Zone (MRZ) codes
 - Checksums
 - Microprint
 - Fonts, size and location of text and other features
 - Watermarks
 - Holograms
 - Expert Human Review

Other Possible Tools

- Other methods, such as those noted below, are contemplated but the specifics of other methods are not fleshed out yet.
- Biometrics
 - Facial
 - Voice
 - Fingerprints
- Trusted Third Party

Notary's Role in ID Proofing

- Review results in journal
- See ID on camera, compare to submitted ID, and signer
- Other ID Methods:
 - Credible Witness
 - Personal Knowledge
- Experience, Wisdom, Caution!

Other requirements

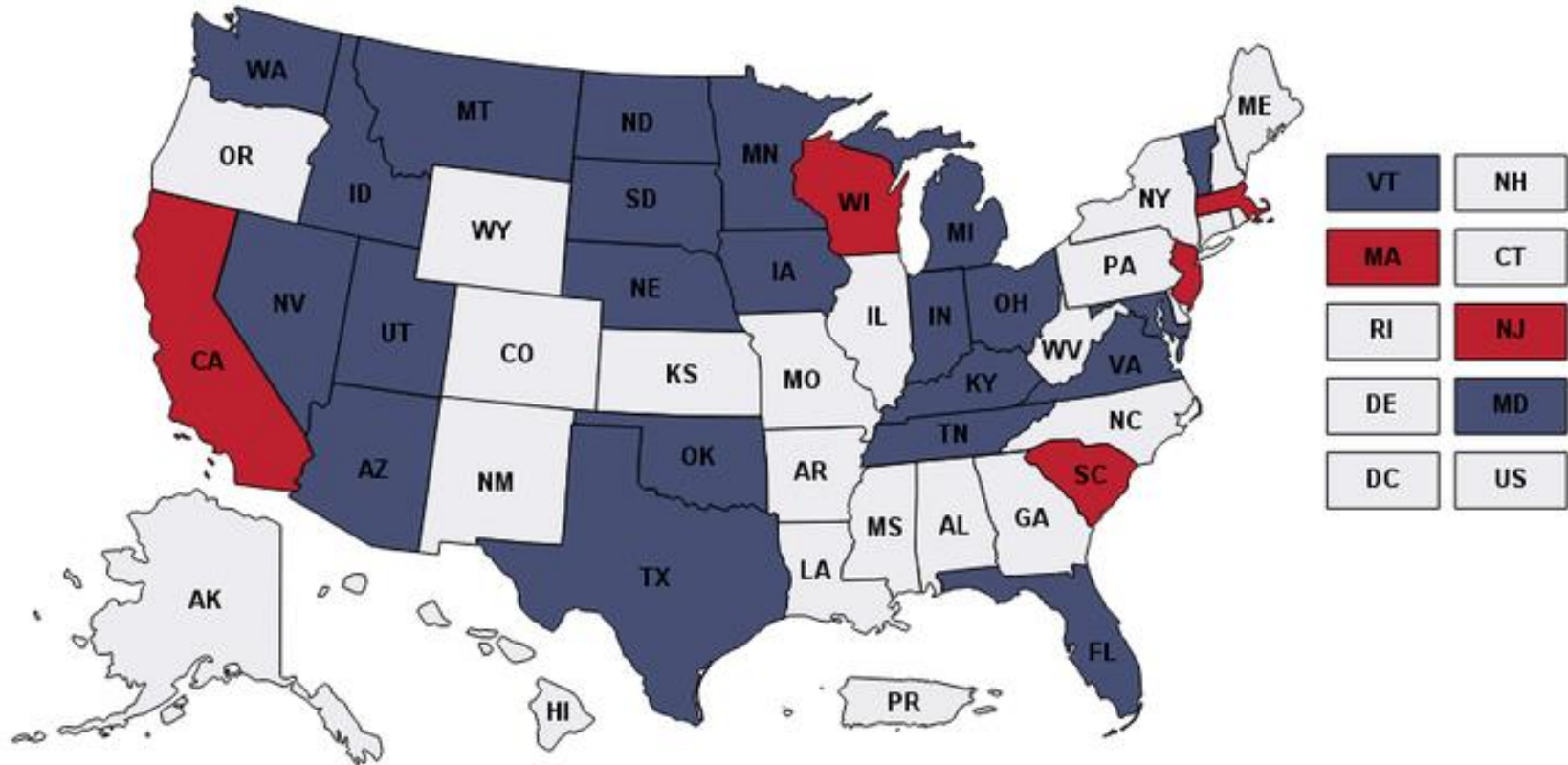
- Tamper seal → Digital Signature
- Audit trail
- Notary journal
- A/V recording (stored 10 years minimum for ID Notaries)

Where is RON? Everywhere.*

*In theory

- Interstate recognition--state and federal law; Full Faith and Credit Clause of US Constitution
- eNotary is explicitly recognized by Federal law (ESIGN Act) and almost every state's laws—UETA adopted by 47 states, others have similar.
- ID's RON laws effective January 1, 2020
 - eNotary
 - RON
 - “Papering out”

Current Legal Landscape



■ Enacted RON Law ■ Active RON bill

Effective Dates

Arizona (7-1-20)

Florida (1-1-20)

Idaho (1-1-20)

Indiana (7-1-19)

Iowa (7-1-20)

Kentucky (1-1-20)

Maryland (10-1-20)

Michigan (3-30-19)

Minnesota (1-1-19)

Montana[‡] (10-1-19)

Nebraska (7-1-20)

Nevada (7-1-18)

North Dakota (8-1-19)

Ohio (9-19-19)

Oklahoma (1-1-20)

South Dakota (7-1-19)

Tennessee (7-1-19)

Texas (7-1-18)

Utah (11-1-19)

Vermont (7-1-19)

Virginia (3-26-11)

Washington (10-1-20)

- **Note: most states authorize/require Secretary of State to promulgate corresponding regulations**

* Awaiting governor's signature. † Hybrid. ‡ Originally effective 2015. Revised in 2018.

Why is RON a big deal?

- Convenience
- Cost
- Possibility for improved workflows and faster turn times
- Makes in person eNotary (more) relevant
- Security and auditability

Online Notary Solving Real Life Problems

"I will bet that you didn't know that you provide accessibility for people with mobility limitations! **I am quadriplegic due to a neuromuscular disorder and find that dealing with normal procedures for getting notarized signatures to be on the verge of impossible for me.** You have opened a window for me! Thank you!" Lisa M. Sapp

"**Selling our house from overseas** greatly simplified being able to use Notary Cam. Recommended by our Title Attorney. Henry responded to our questions and concerns about available methods for Identity Validation. And Toni served as our Notary, establishing the video meeting session, guiding us through the documents, then providing payment and encrypted final sealed documents to us and the Title company. Both Henry and Toni created positive impressions through experience with us. NotaryCam staff are all Accessible, Available, Professional, Courteous, Competent, and Friendly. Well Done and Thank You. **One less hassle or roadblock removed from the process of selling / closing from different time zone.**" JB Lyman

"NotaryCam truly saved the day. We had to **coordinate getting 5 people to sign with a notary and we only had one day to do it** otherwise our home sale was going to fall apart. If we didn't have NotaryCam as an option there is no way we could have gotten everyone to take time out of their busy day to meet with a notary on their own. They made it incredibly simple and effortless for everyone involved. Now I know exactly who to come to next time I need a notary." Katy Fetsch

"Fantastic service. **We were out of the country for the closing of our house sale** and NotaryCam came to the rescue in helping us easily, legally and securely sign our closing documents. Thanks so much!" Wes Hall

Improve success rates

- Make sure clients know what to expect
- Understand and communicate ID requirements
- Start with seller side
- Talk to lender partners early
- When in doubt, get approval from recipient

Q&A

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