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Volume 67 | No. 2

February 2024

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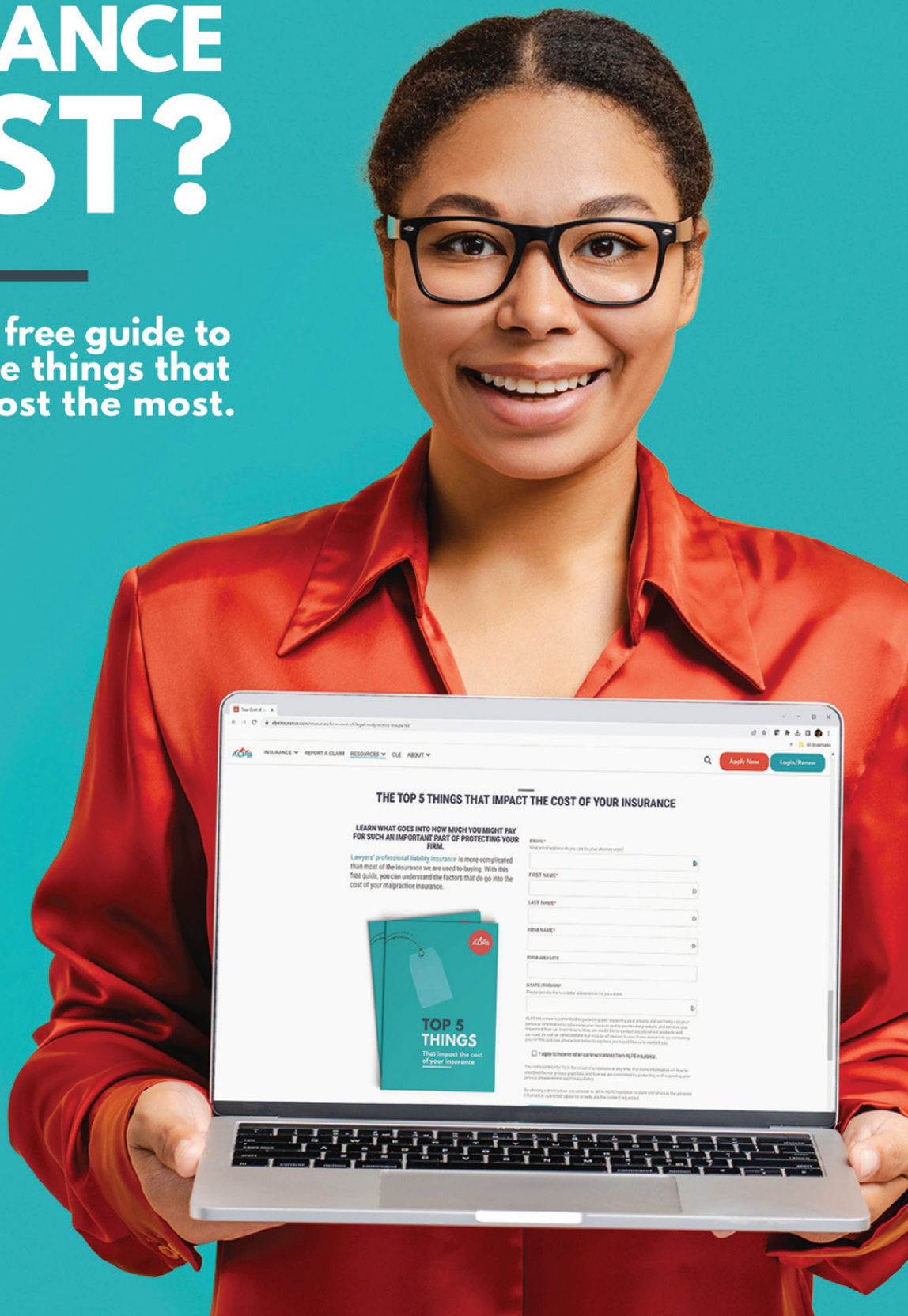

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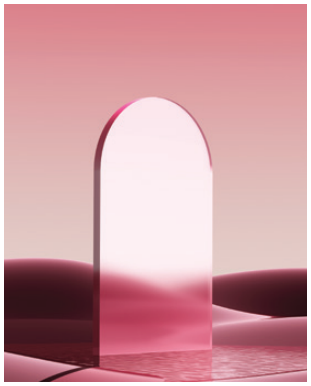
the ADVOCATE

February 2024 Volume 67 | No. 2

On the Cover



This issue's cover photo represents the concept of "transparency," as discussed in the Featured Article on the impacts of the Corporate Transparency Act. Written by Tori Osler and Jacqueline Walton, the article discusses what the Corporate Transparency Act is, who it applies to, how to comply, and what the immediate practical implications may be in law firms. Photo credit: Abstract Surreal Landscape by Михаил Богданов via Adobe Stock.

Featured Article

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Sponsored by the Real Property Law Section

From the Bar

In Every Issue

The Advocate (ISSN 05154987) is published 10 times in the following months: January, February, March, April, May, June, August, September, October, and November by the Idaho State Bar, *The Advocate* P.O. Box 895 Boise, ID 83701. Periodicals postage paid at Boise, ID 83701 and additional mailing offices.

POSTMASTER: Send all address changes to the Idaho State Bar, *The Advocate* P.O. Box 895 Boise, ID 83701.

Subscriptions: Idaho State Bar members receive *The Advocate* as part of their annual dues payment. Nonmember subscriptions are $45 per year.

Current Real Property Buzz

Lindsey M. Welfley

With the holiday season and first month of the year out of the way, we hope you're settling into a good groove! Thank you for picking up the February issue of *The Advocate*. This issue is sponsored by the Real Property Law Section.

To start off the issue, Katelin Bartles discusses Idaho's eviction process and the delicate navigation that is required from attorneys representing landlords. Next, this issue's Featured Article is written by co-authors Tori Osler and Jacqueline Walton – they provide a detailed overview of the Corporate Transparency Act and its various impacts on lawyers and law firms.

Following this, Craig Adams writes about the recent changes in the ALTA standard form title insurance policies. And finally, John Jameson explores the priority dilemma regarding mechanics' liens.

We hope you find this issue helpful in your practice, or at the very least an interesting look into what's buzzing in the real property world right now. Stay warm out there!

Best,

Lindsey M. Welfley
Communications Director
Idaho State Bar & Idaho Law Foundation, Inc.

the ADVOCATE

FEBRUARY 2024

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R. AARON MORRISS (Disbarment)

On January 16, 2024, the Idaho Supreme Court entered a Disciplinary Order disbarring Meridian attorney R. Aaron Morriss from the practice of law.

The Idaho Supreme Court found that Mr. Morriss violated I.R.P.C. 1.7(a)(2) [Conflict of interest based on the lawyer's personal interests] and I.R.P.C. 8.4(d) [Engaging in conduct that is prejudicial to the administration of justice]. The Idaho Supreme Court's Disciplinary Order followed a stipulated resolution of an Idaho State Bar disciplinary proceeding in which Mr. Morriss admitted that he violated those Rules.

The formal charge case related to Mr. Morriss's conduct involving three female clients. During his representation of two of those clients in their custody cases, and while continuing to provide legal guidance to a former client in her custody matter, Mr. Morriss texted unsolicited and explicit pictures of himself to the clients and made sexually suggestive and inappropriate comments.

The Disciplinary Order revoked Mr. Morriss's license to practice law in Idaho. A lawyer disbarred in Idaho is prohibited from reapplying for admission for at least five (5) years from the effective date of the disbarment. If Mr. Morriss does apply for admission after that five-year period, he must comply with all admission requirements, including taking and passing the bar examination, and must overcome the rebuttable presumption of "unfitness to practice law."

Inquiries about this matter may be directed to: Bar Counsel, Idaho State Bar, P.O. Box 895, Boise, Idaho 83701, (208) 334-4500.

PUBLIC REPRIMAND

The Idaho Judicial Council has imposed a Public Reprimand on First District Magistrate Judge Clark Allen Peterson. This reprimand was imposed with consent upon a finding regarding Judge Peterson's judgment in failing to alter or eliminate his practice of changing clothes in his chambers without properly securing them, in violation of the Code of Judicial Conduct.

Letter to the Editor

Dear Editor,

I read the article "Breaking the Chains of Stigma: Safeguarding Substance-Using Parents and their Children in Civil Legal Matters" with more than a little dismay and trepidation.

The article repeatedly refers to "substances," leaving it unclear as to whether marijuana/THC usage is the primary "substance" discussed or even one of them. This is an important distinction at the outset. I believe our judges do an excellent job of examining the problems before them and distinguishing between so-called "hard drug" addiction and recreational marijuana use.

More concerning is the article's focus on the victimhood of addicts, a focus which is mis-directed. The article is about child cases, and a child's needs and safety are paramount. The author claims that drug use is "often misinterpreted and stigmatized by society at large." No evidence, even anecdotal, is provided to suggest our judges are neglecting their duty to rule in the best interest of the children before them by stigmatizing addicts. The emphasis in the criminal justice system on the use of specialty courts, rehabilitation, and recovery also undercuts the premise that drug addicts are being punished/stigmatized in society and/or in child welfare/custody cases.

The article implies that children might not need protection from a custodial parent using hard drugs such as methamphetamine, heroin, or cocaine. It resurrects the lie uttered by many addicts that they are just social or occasional users. In my estimation it is nonsensical and even more harmful to describe protecting children from the scourge of addiction as "unwarranted scrutiny and judgment." This article comes at a time when tens of thousands of people are dying of overdoses, largely due to the Fentanyl epidemic. Our judges and lawyers are well aware of these problems, as they witness the consequences of addiction. Most of the time, our legal professionals are compassionate towards parents and loving/protective towards children.

Sincerely,
Neil Presley Cox
Clarkston, Washington

Dear Ms. Welfley,

I read with interest Judge Robert L. Jackson's article on "Civility in the Profession: Is it Gone Forever" contained in the November/December 2023 edition of *The Advocate*. In his article, he discussed the adoption by the Idaho Bench and Bar of the "Standards of Civility in Professional Conduct." He appeared to have some questions about the adoption of the civility rules. Other members of the Bench and Bar might also wonder about the history of the rules.

I can attest to the history and reasons for the adoption of the professional civility rules. I was admitted to the Idaho Bar in 1982. By the time I became Chair of the Bar's Professionalism and Ethics Section ("PRE") I had grown tired of the lack of civility in the legal profession. I proposed to the PRE Committee, which included Past-Chair Judge J. William Hart and Vice-Chair Dick Fields and other great lawyers on the committee, that we draft civility rules for the bench and bar. With the committee's unanimous support, I researched the civility rules of several states and proposed that we use those of the Western District of Michigan as a template. Dick Fields and I consulted with many judges and lawyers about the rules. We made any revisions we felt were necessary. Interestingly, not one person with whom we consulted said that civility rules were not needed.

In 2001, we submitted the rules to the Bench and Bar for adoption. I have attached my letter to the Bench and Bar stating the reasons why civility rules should be adopted in Idaho and asking for their support. New Chair Dick Fields and I then attended several Bar Commission resolution roadshows concerning the adoption of the rules. There was unanimous support for the rules by the Bench and the Bar. (As an aside, at one of the Commission meetings I did get into an interesting discussion with Judge Ron Wilper concerning the meaning of the phrase, "First, let's kill all the lawyers." (William Shakespeare's *Henry VI*)).

The Civility Standards were adopted in 2001. I have attached the reasons why the rules were adopted. Perhaps it is time, two decades later, to re-examine whether additional attention to these rules is necessary.

Very truly yours,
Thomas B. Dominick
Boise, Idaho

Editor's Note: The attachments mentioned are available online in the Digital Edition of this issue at isb.idaho.gov/AdvocateDigital.

Parsons Behle & Latimer is pleased to welcome attorneys Alexandra Hodson and Jeffrey T. Jorgensen as associates in the firm's Boise office. Learn more about each of their practices at **parsonsbehle.com/people**.

Alexandra Hodson
Intellectual Property | Boise
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Alex is passionate about all forms of intellectual property from trade secrets to patents. She especially enjoys helping her clients, small and large, navigate the intricacies of intellectual property prosecution, portfolio management, enforcement, and litigation. She works closely with foreign counsel across the world to execute portfolio strategies that drive and protect intellectual property value.

Jeffrey T. Jorgensen
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Jeff is a member of Parsons Behle & Latimer's corporate practice team. His practice focuses primarily on the areas of business formation and strategic planning, business transactions, real estate transactions, and corporate governance and compliance. His experience also includes providing legal representation on matters related to mergers and acquisitions, non-profit governance and compliance, real estate and commercial lending, and asset protection.

2024 Idaho State Bar Annual Meeting: Mark Your Calendars!

Kristin Bjorkman

Perhaps there are some of you, like me, who have seen studies that suggest having something to look forward to boosts your mood and lowers your stress (sounds pretty good). What if you were able to double down and combine the happiness brought on by anticipating an event with spending time with others? Given that we are social creatures by nature and tend to function better when we are in a community, spending time with people – just like looking forward to an event – can make us feel good. Sure, virtual communities are increasingly popular, but they are no replacement for face-to-face interactions and the value that bringing people together provides. In-person gatherings create a sense of camaraderie, and such camaraderie is something my fellow commissioners and I hear a lot about as we engage with lawyers throughout the state. Over and over again we hear about the special connection Idaho lawyers have with one another and how these wonderful connections enhance the practice of law in Idaho.

Where am I going with all this? Well, I want to let you know of a fantastic opportunity to not only look forward to an event and spend time with others but also to cultivate and maintain the community and connection Idaho lawyers are so fond of. The opportunity is the Idaho State Bar Annual Meeting. I realize you might be thinking to yourself that any event with the word "meeting" in its title lacks the *je ne sais quoi* of dining with your favorite author or historical figure or a visit to any of the seven wonders of the world, but even so, I encourage you to embrace the excellent offerings of the Idaho State Bar Annual Meeting.

The Idaho State Bar Annual Meeting brings together presenters, colleagues, and vendors whom you will have an opportunity to meet, learn from, and speak with. The conference features a keynote address, an update from the Idaho Supreme Court, continuing education programming, and ideas to motivate you and benefit your practice. Notables who have presented at previous annual meetings include Walter Echo-Hawk, Jeffrey Rosen, James Goodnow, and Randy'L Teton. This year's agenda will provide nearly a dozen continuing education programs to choose from that allow attendees to earn upwards of 10 continuing legal education credits. In addition, more than a dozen exhibitors will be on site to provide details about products and services to enhance your practice.

Now that I have made my case that the Annual Meeting should fall within your "not to miss" category, let me provide the pertinent details. The meeting will be in Boise from July 17-19, 2024. The meeting commences with an evening reception where the achievements of members of our legal community are recognized with the Distinguished Lawyer, Distinguished Jurist, and Outstanding Young Lawyer Awards.

Thursday kicks off a full day of programming including the keynote speaker and an update from the Idaho Supreme Court. The day concludes with the Milestone Celebration Reception, celebrating members of our bar who have been admitted for 25, 40, 50, 60, and 65 plus years. If you have not attended this reception before, make a point of it. You are likely to hear stories that are inspiring and sometimes humorous. And if you fall within one of the recognized years of practice you might just get to connect with law school classmates you have not seen for some time. Friday is the final day of the annual meeting and concludes mid-afternoon leaving you with plenty of time to explore Boise, catch up with friends, or travel home for a full weekend of summer activities.

The venue for the annual meeting is Jack's Urban Meeting Place, fondly known as JUMP, located where Front Street and 10th Street meet in Boise. If you have not been to JUMP before, I am certain you will find it to be one of Idaho's most unique meeting venues. JUMP describes itself as "*a place for everyone to discover new possibilities and explore their potential. JUMP is an invitation to look at things in new ways, including ourselves, and to try things for the first time.*"

JUMP's central Boise location is only a short distance from the airport and a brief drive off the Interstate. Numerous hotel and restaurant options are available within walking distance. Also nearby is the Boise Greenbelt, a lovely, shaded walk and bikeway on the banks of the Boise River.

Please mark your calendar now and keep an eye out for forthcoming announcements from the Idaho State Bar. Registration will open in early May. Don't worry if your schedule does not permit attendance at all the offered events. The continuing education programming and the meals can be purchased a la carte. Additionally, you can bundle the continuing education programs. And if you would like to contribute to the planning by proffering a CLE topic, sharing a suggestion for a speaker, or participating as a sponsor, do not hesitate! Your ideas and sponsorship are welcome and encouraged.

If this event is beginning to sound like a big expense, do not fret. Scholarships are available allowing you to focus on the substance of the meeting and not the cost. Scholarships assist with the cost of registration, event sponsored meals, and include up to $100 per day. Please reach out to the Idaho State Bar to learn more about scholarship opportunities.

The annual meeting allows you to develop, rekindle, and maintain relationships with peers throughout the state. Do not miss out. Take advantage of the opportunity to network with attendees, exchange information, and build connections.

Kristin Bjorkman *is a principal with the Boise law firm Bjorkman Dempsey Foster PLLC. Her practice is focused on transactional matters including real estate, business formation, contracts, and financing. Kristin has lived in rural and urban parts of the State in the following counties: 1L, 2L, 4C, K, and 1A. She is always grateful for a recommendation to a good book or a new camping spot.*

Communications Department Report

Lindsey M. Welfley

I am happy to report that our communications initiatives had a successful year in 2023 and we are heading into 2024 with this same consistency in mind. There are two main projects this year that we would like to call your attention to: the Desk Book Phase Out and Communications Survey.

Desk Book Phase Out

At their February 2023 meeting, the Idaho State Bar Board of Commissioners approved a four-stage phase-out plan for the Desk Book Directory. Phase One began in Spring 2023 by introducing a new "Rules-Only" book for new admittees. Phase Two will be this Spring and will consist of a switch to affirmative opt-in only to receive the hard copy of the Directory.

All members who received a hard copy of the Directory in 2023 will be sent an email this month with the option to opt-in. ***If you wish to receive a hard copy of the 2024-2025 Desk Book Directory, you must affirmatively opt-in.***

The Rule Book, which is a truncated version of the Directory including only the relevant sets of rules, will be offered as an alternative if you do not respond to the opt-in email. If you have any questions about this process, I would be happy to answer your call at 208-334-4500.

Communications Survey

In 2010, we sent a Communications Survey to the membership with the intention of gaining insight into how our members obtain their information from us. We have not sent an updated version of this survey since and plan to do so this year.

We are currently developing the survey questions in conjunction with the Board of Commissioners and plan to disseminate this survey to the full membership in 2024. It is imperative that we receive a representative response to this survey for us to adequately assess the quality of our communications – ***please watch for that email and be sure to respond!*** It will only take a few minutes of your time and will be incredibly helpful to us. We look forward to hearing from you and learning how we can improve our methods of communication.

2024 Award Nominations

It is time again to gather up nominations for the various awards presented by the Idaho State Bar Board of Commissioners. Each year, the Board of Commissioners presents awards to members of the Bar who demonstrate exemplary leadership, professionalism, and commitment to the legal profession and to the public. Nominations can be submitted at any time throughout the year, but the current deadline for the 2024 awards is **Friday, March 29th**.

The Distinguished Jurist, Distinguished Lawyer, Outstanding Young Lawyer, Service, and Section of the Year Awards are presented at the Idaho State Bar Annual Meeting each July. The Professionalism and Denise O'Donnell Day Pro Bono Awards are presented at the Resolution Meetings in each recipient's judicial district in the fall.

If someone comes to mind who you would like to nominate for an award this year, please fill out the submission form online at isb.idaho.gov/Awards. All of the award descriptions are listed on this webpage as well.

Aside from the previously mentioned Communications Survey, we are continually open to receiving feedback on how we communicate with you. Your input is always welcome.

Lindsey M. Welfley *is the Communications Director of the Idaho State Bar, overseeing all communications-related initiatives of both the Bar and Foundation. She graduated from Grand Canyon University with her undergraduate degree in history in 2015 and has worked for the Bar ever since. Lindsey currently serves on the National Association of Bar Executives' Communications Section Council. She lives in Boise with her husband, their almost-three-year-old daughter, and two pets.*


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Navigating the Idaho Eviction Process: A Guide for Attorneys Representing Landlords

Katelin E. Bartles

The Idaho eviction process is a unique and often confusing segment of landlord-tenant law. Attorneys who specialize in this field understand that Idaho's eviction statutes are poorly written and terribly disorganized, often making it difficult to navigate the process correctly. This article provides the framework for attorneys representing landlords and outlines the different types of eviction proceedings in Idaho. With the help of this guide, your law office should be well-equipped to represent landlord clients effectively.

Idaho's eviction code comprises several distinct categories, each with its own set of unique rules and procedures. The main types of evictions include those for non-payment of rent, failure to vacate following non-renewal of a lease term, lease violations, drug-related evictions, removal of manufactured homes from leased property, and forcible detainer cases.

Eviction for Non-Payment of Rent

The most common form of eviction is failure to pay rent. Non-payment evictions arise when a tenant fails to meet their financial obligations as stipulated in their lease agreement. These evictions can also be pursued if the non-payment violates an oral agreement, albeit such scenarios are much more difficult to prove in court. Idaho Code § 6-303(2) defines and discusses when eviction for non-payment is appropriate.

To initiate the eviction process, landlords must first serve the tenant with a three-day notice to pay or vacate. As one might assume, the notice states that the tenant has three days from the date of the notice delivery to either pay the rent owed or vacate the premises. Often judges may refer to said notice as a "three-day notice to quit," a synonymous term that is popular with some practitioners. Proper delivery of the notice is crucial.

Idaho Code § 6-304, the first example of a horrendously written statute, provides guidance on how to effectuate service. Ideally, the notice should be personally delivered to the tenant and can be delivered by any adult, including the landlord. If personal delivery is not possible, the landlord may choose to post the notice on the property and provide an additional copy via standard mail. In my experience, it is best practice to advise your landlord client to also send a copy of the notice via text, as this is often the most common form of communication between landlords and tenants.

The three-day notice must include information about the consequences of a judgment being entered against the tenant. Three-day notices must include language stating that tenants will have 72 hours

to remove their belongings following a judgment of eviction.[1] Commercial tenants and tenants with more than five acres of property are entitled to longer removal times post-judgment.[2] Failure to include this language requires re-service to the tenant with proper notice, and as such restarts the three-day period to comply. This occurs even if an eviction action has already been filed.

If the tenant fails to vacate or make the required lease payment within the three-day period, as the landlord's attorney you will need to file a complaint for an expedited eviction and corresponding summons. The complaint filed should include all necessary information as required by Idaho Code § 6-310. The summons issued is not a standard summons, as landlords are entitled to a hearing within twelve days of filing the complaint. As such, the format of the summons may vary depending on the judicial district and courthouse. In Ada County, for instance, the filing attorney should leave a blank space for the expedited hearing's date and time, with the Court later filling in this information before returning the conformed copy. In accordance with Idaho Code § 6-310(2), the complaint and summons must be served at least five days before the hearing date.

Generally, the expedited hearing will focus solely on whether payment was made, or if the tenant vacated within the required three-day period. According to Idaho Code § 6-310(2), the scheduled hearing is the trial the landlord is entitled to. However, in practice judges will often reset the trial for a later but imminent date. In my experience, the hearing is best utilized as an opportunity to negotiate payment or a move out date between the parties. Some courts require the parties to attend mandatory mediation during the expedited hearing, a process that is highly beneficial to both parties involved.

Eviction for Failure to Vacate Following Non-Renewal of a Lease Term

Non-renewal evictions occur when a tenant remains in possession of a property after receiving proper notice that their lease term has ended. Idaho Code § 6-303(1) defines this type of eviction and discusses when eviction for non-renewal is appropriate.

The notice period for non-renewal is generally contingent upon the terms outlined in the written lease agreement. Each lease agreement is different and may specify different notice periods for non-renewal. However, to comply with Idaho Code § 55-307(3)(a), the notice period must occur at least 30 days before the lease term ends. Otherwise stated, notice of non-renewal must be delivered to a tenant at least 30 days before the lease term ends, but individual leases may contract for a notice period greater than 30 days. Delivery of the notice should be in writing and in accordance with the lease terms.[3] In situations without a written lease agreement, a tenancy at will, Idaho Code § 55-208(1) necessitates at least one month's notice of non-renewal. Abysmally written Idaho Code strikes again when it comes to delivery of the notice for a tenancy at will. Idaho Code § 55-208(1) states that service must be made, "in the manner prescribed by the code of civil procedure."

You may be shocked to hear that the I.R.C.P. doesn't specifically state how to deliver such notices, and that there are multiple rules governing service of papers. In practice, judges in Ada, Canyon, Owyhee, Gem, and Elmore Counties have generally ruled that service is proper if done in accordance with I.R.C.P. 5(b), which allows for personal delivery and mailing among other things. In my practice, I typically advise clients to serve in the same manner that a three-day notice to pay or vacate is served.

If the tenant refuses to vacate the property after the term expires and proper notice has been served, the landlord will need to initiate the standard eviction process, which follows the typical lawsuit procedure. After serving the complaint and standard summons, tenants have 21 days to file an answer. If the tenant fails to respond, you'll need to file for default and default judgment on behalf of your client. In cases where the tenant does respond, you'll want to move for summary judgment. This approach is often effective if the tenant does not have an ownership interest in the property they are leasing.[4]

Eviction for Lease Violations

When a tenant violates a provision of their lease agreement, landlords can pursue a lease violation eviction. Idaho Code § 6-303(3) defines this type of eviction and discusses when eviction for a lease violation is appropriate. In such cases, landlords must serve the tenant with a three-day notice as specified in Idaho Code 6-303(3), which requires the same type of service

Each lease agreement is different and may specify different notice periods for non-renewal.

called for in notices for failure to pay rent as previously discussed. If the tenant fails to rectify the violation within the stipulated three-day period, and your client would like to proceed with eviction for the violation, you'll need to follow the standard eviction process as is detailed in the non-renewal section of this article. Keep in mind that the lease agreement may specify a different process or remedy for lease violations. As such it is important to compare Idaho Code § 6-303(3) and the lease agreement to ensure the proper process is being followed. I encourage landlords to work with tenants on lease violation issues rather than jump to an eviction. Open communication is more cost effective for landlords and keeps Idaho families housed.

Eviction for Drug-Related Offenses

A less common eviction available to landlords occurs when their tenants commit drug-related offenses on the leased property. Idaho Code § 6-303(5) defines this type of eviction and discusses when eviction for a drug-related offense is appropriate. The expedited eviction process, as described in the non-payment section, is available for landlords whose tenants are engaged in the unlawful delivery, production, or use of a controlled substance on the leased property.[5] The delivery, production, or use must occur on the leased property, not elsewhere. Unfortunately, Idaho law does not provide judges a standard of proof on which to determine if a drug-related violation occurred. As such, the standard may vary depending on the courtroom and evidence provided by the landlord.

Eviction of a Manufactured Home from a Leased Lot

Evicting a tenant who owns a manufactured home located on rented lot involves adhering to the Idaho Manufactured Home Residency Act, found in Idaho Code § 55-2001 et seq. Although, when a tenant rents *both* the manufactured home and the lot it occupies, the eviction process aligns with non-payment, non-renewal, lease violation, or drug violation procedures, as applicable.

The eviction/removal of a manufactured home requires a 90-day notice, served in accordance with Idaho Code § 55-2020. Such code section mandates personal delivery or certified mailing with a return receipt. It's essential to note that the Idaho Manufactured Home Residency Act isn't applicable to recreational vehicles or travel trailers, so before initiating the eviction process, you'll need to carefully research whether the act applies.[6]

Successfully navigating the Idaho eviction process requires not only legal expertise, but a strategic and compassionate approach.

Forcible Detainer Evictions

Forcible detainer, sometimes referred to as "squatting," occurs when an individual unlawfully enters a property and refuses to vacate in violation of Idaho Code § 6-302. In other words, the person never had permission to occupy the property in the first place. In such situations, landlords should immediately file a forcible detainer complaint and summons against the unauthorized occupant. A hearing will then be scheduled within 72 hours of filing (excluding weekends and holidays), in accordance with Idaho Code 6-310(4).

What Happens if a Tenant Fails to Vacate Following an Eviction Judgment?

Following a judgment of eviction, tenants have 72 hours to vacate the property.[7] If a tenant chooses not to leave after judgment is entered, you'll need to file for and obtain a signed writ of restitution. As the attorney, you'll need to deliver the signed writ to the county sheriff, who may execute it no earlier than three days after judgment was entered.[8] Though not required by statute, most sheriff's departments will provide tenants with 24-hour notice before removal. Remember, if the tenant is a commercial tenant or renting a property greater than five acres, they are entitled to extended time to vacate post judgment.[9]

Can Landlords Collect Unpaid Rent and Court Costs via an Eviction Judgment?

The short answer is no, not on the eviction judgment alone. The standard eviction judgment for non-payment should list the amount of money owed to the landlord because of failure to pay rent and associated court costs. As such, non-payment eviction judgments do legally require the tenant make a payment to the landlord. However, the judgment itself lacks the authority to garnish wages, access a bank account, or employ other debt collection methods. To secure an enforceable money judgment, the landlord must initiate a separate legal proceeding.

Best Practices for Attorneys Handling Evictions for Landlords

Successfully navigating the Idaho eviction process requires not only legal

expertise, but a strategic and compassionate approach. In this regard, attorneys should prioritize a few key practices for optimal results. First and foremost, effective communication with tenants is crucial. This can often lead to resolutions that benefit both parties. Mediation can play a significant role, serving as a valuable tool for dispute resolution.

Additionally, it's important to consider the time frame for move-outs. Encouraging landlords to provide tenants with sufficient time to vacate the property, ideally *at least* two weeks, can be a pragmatic approach. This not only reduces legal costs, but minimizes costs related to property clean-up and clearing. As attorneys we need to be reasonable, moving out of one's house doesn't happen in a day. It's important to recognize, and communicate as such to landlord clients, that tenants need time to get their moving and future housing situated.

Lastly, collaboration with local housing organizations can be an essential part of the eviction process. Attorneys should strongly consider working with local housing groups, such as Jesse Tree[10] in the Treasure Valley, who offer temporary rental assistance in cases of non-payment evictions. Such collaborations can aid in achieving favorable outcomes for both landlords and tenants, ensuring a more cost effective, balanced, and fair eviction process.

Conclusion

Navigating the Idaho eviction process is a multifaceted task that demands a thorough understanding of the specific type of eviction being pursued. Attorneys practicing in this area of law should be well-versed in Idaho's statutes and procedures to effectively represent their clients. By following the guidelines and best practices outlined in this article, attorneys for landlords can more confidently navigate the eviction process and help their clients achieve their desired outcomes.

Katelin E. Bartles *is a solo practitioner based in the Treasure Valley. A graduate of the University of Idaho College of Law, Katelin has been handling evictions since 2020. In addition to practicing law, Katelin enjoys skiing, golfing, and brunching.*

Endnotes

1. Idaho Code § 6-303(2).
2. *Id.*
3. I.C. § 55-307(3).
4. Tenants do not have an ownership interest in the property there are leasing under a standard lease. However, if the lease includes additional terms, such as rent to own language, it's possible the tenant may have an ownership interest in the property.
5. I.C. § 6-303(5).
6. I.C. § 55-2004.
7. I.C. § 6-316(2).
8. *Id.*
9. I.C. § 6-316(2).
10. https://www.jessetreeidaho.org.

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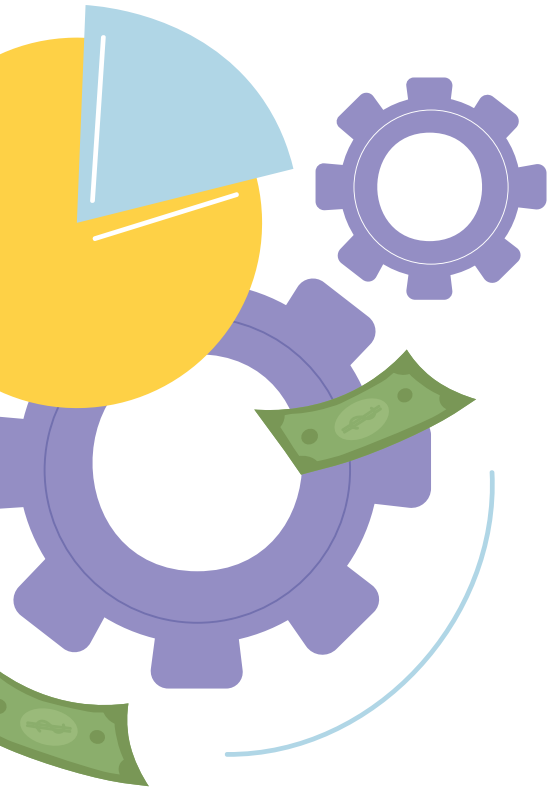
The Corporate Transparency Act: An Overview and Its Impact on Lawyers and Law Firms

Tori J. Osler
Jacqueline N. Walton

It's here… The Corporate Transparency Act ("the CTA") is now in effect and its implementation will impact law firms, attorneys, and their personnel who are filing and registering entities on behalf of clients in the United States. Starting January 1, 2024, the CTA will require many companies formed or registered to do business in the U.S. to report the identities of their beneficial owners and company applicants to the U.S. Department of Treasury's Financial Crimes and Enforcement Network ("FinCEN"). In this article, we will examine what the CTA is, who it applies to, how you can help your clients comply with the same, and some of the immediate practical implications attorneys and law firms should be aware of.



The CTA: What Is It and How Did We Get Here?[1]

The CTA is intended to combat a lack of transparency that may facilitate money laundering, corruption, fraud, terrorism financing, tax fraud, trafficking, and other illicit activities.[2] The goal of the CTA is to prevent bad actors from utilizing complex corporate structures and shell companies to hide their identities and move money through the U.S. financial system.[3]

Although the CTA and its requirements will likely surprise a number of our clients, it has been a long time in the making. In 1990, the U.S. joined other countries in forming the Financial Action Task Force ("FATF"), which addresses money laundering and terrorist financing by creating international standards of practice.[4] Although the U.S. has been an active member of FATF since its inception, we have not kept pace with other countries in implementing the FATF's recommendations.[5]

The enactment of the CTA and its related regulations – 31 CFR § 1010.100, et seq. ("Regulations") – are the culmination of a multi-year effort to bring the U.S. into compliance with the FATF recommendations and into alignment with other major Western powers.[6] The CTA was enacted as a part of the National Defense Authorization Act for Fiscal Year 2021 ("NDAA").[7] While President Trump initially vetoed the NDAA, Congress overrode the veto on January 1, 2021.[8]

The U.S. Department of Treasury ("Treasury") issued the final Regulations on reporting requirements under the CTA on September 30, 2022.[9] Thereafter, on December 16, 2022, Treasury issued a notice of proposed rulemaking regarding access to and disclosure of beneficial ownership information.[10]

The Details: Who It Applies to and How to Comply

While the principles and concepts behind the CTA are relatively straight forward, the implementation can be complex.

Under the CTA, only those companies which meet the criteria for a "reporting company" must disclose the identity of their "beneficial owners."[11] A "reporting company" under the CTA is any corporation, limited liability company, or "other similar entity" which is formed through filing with a secretary of state (or similar) for domestic entities or through filing in accordance with applicable foreign law and then registering to do business in the U.S. through filing as a foreign entity in accordance with state law.[12]

While no definition of "other similar entities" currently exists under the CTA or Regulations, FinCEN has indicated that the requirement of "filing" with a secretary of state or foreign government is determinative – indicating that the phrase is intended to be interpreted broadly.

Accordingly, limited, limited liability, and limited liability limited partnerships will probably qualify as "reporting companies;" whereas sole proprietorships, general partnerships, and some common law trusts may not qualify where no filing requirement for these entity types exists.[13] Additionally, there are several types of entities that are exempted from the definition, the more critical of which include:

- Publicly traded companies,
- Political organizations,
- Banks and bank-type entities,
- Certain tax-exempt entities,
- Registered investment entities,
- Certain public accounting firms, ***but not law firms,*** and
- "Large operating companies."

While the "large operating company" exception will not apply when such an entity is first formed, it may apply once the entity meets all three of the following requirements: (i) more than 20 employees in the U.S.;[14] (ii) physical operating presence in the U.S.; and (iii) previous year's federal tax filing showing at least $5 million in gross receipts or sales *from U.S. sources*. This requirement can be met by receipts from subsidiaries or other entities through which the company operates.[15]

Once a determination is made that an entity is in fact a non-exempt "reporting company," then the determination must be made as to which owners constitute "beneficial owners" for whom filings with FinCEN are required. Under the CTA, a "beneficial owner" of a reporting company is defined as an individual who – directly or indirectly – through any contract, arrangement, understanding, relationship, or otherwise either:

- Exercises **"substantial control"** over the entity; or
- Owns or controls **not less than 25% of the "ownership interests"** of the entity.

"Substantial control" is defined under the Regulations as an individual who: (i) serves as a senior officer, (ii) has the

authority over the appointment or removal of any senior officer or a majority of the board of directors; (iii) directs, determines, or has substantial influence over important decisions made by the reporting company, or (iv) has any "other form of substantial control" over the reporting company.[16]

With the catchall of "any other form of substantial control," direct or indirect control, no matter how labeled, will constitute "substantial control" for purposes of the filing requirements.[17] Senior officers will likely always be deemed to have substantial control and include positions such as president, chief financial officer, general counsel,[18] chief executive officer, chief operations officer, and any other "officer" who perform similar functions.[19]

Owning not less than 25% of the "ownership interests" in the company is the other standard for being considered a "beneficial owner." As one can imagine, the definition of "ownership interests" is complex, but is generally defined under 31 C.F.R. §1010.380(d)(2) as including any equity, stock, or similar instrument, interest in a joint venture, any capital or profit interest in an entity, any instrument convertible (with or without consideration into any share) or any warrant or right to purchase, sell or subscribe to a share or interest in a joint venture or an entity, a put, call, straddle, or other option or privilege, or any other instrument, contract, arrangement, understanding, relationship, or mechanism used to establish ownership.

Notwithstanding all of the foregoing, the CTA and the Regulations both recognize certain exceptions to the definition of "beneficial owner" which include: a minor child, an individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual, an employee of a reporting company (provided such person is not a senior officer), an individual whose only interest is a future interest through a right of inheritance, and a creditor of a reporting company.[20]

Company Applicants. Every reporting company created after January 1, 2024 is required to have a "Company Applicant," which is defined as any individual who: (a) with respect to a domestic reporting company, directly files the document that creates the domestic reporting company; (b) with respect to a foreign reporting company, directly files a document that first registers the foreign reporting company; and (c) whether for a domestic or a foreign reporting company, the individual who is primarily responsible for directing or controlling such filing if more than one individual is involved in the filing of the document.[21] Therefore, under the forgoing description, a legal assistant and the attorney who directs such legal assistant to file or register an Idaho limited liability company qualifies as a Company Applicant.

Reporting to FinCEN. All non-exempt entities filed on or after January 1, 2024, will need to register within 90 days of formation with FinCEN.[22] All entities filed before January 1, 2024, must file within FinCEN before January 1, 2025.[23] Reporting is technically the responsibility of the reporting company, but clients will likely rely on their counsel for help with compliance.[24] The first report to FinCEN for an entity must identify each beneficial owner and each Company Applicant by full legal name, birth date, residential or business address, and an identifier number from an "acceptable identification document" (or a FinCEN Identifier Number).[25]

Penalties. Penalties for non-compliance are both civil and criminal. Willful violations, providing false information, or failure to file complete and accurate reports, can result in imprisonment up to two years and/or a $500 per day fine, up to $10,000. Unauthorized disclosure or unauthorized use of sensitive beneficial owner information can result in $500 per day penalties up to $250,000 and/or five years' imprisonment – and if part of a larger pattern, penalties up to $500,000 – and 10-years' imprisonment are included.[26]

The Immediate Practical Implications on Law Firms

The CTA represents one of the most significant changes to the laws regulating small businesses in recent times. The new law will impact millions of companies across the U.S. As of the time of drafting this article (before January 1, 2024), the full spectrum of practical implications and impacts of the CTA on lawyers remains largely unknown.[27] However, lawyers from solo practitioners to the largest international firms will be expected by clients to create entities, bring existing entities into compliance, and advise and assist clients with their CTA filings and updating requirements. These implications will impact lawyers beyond the corporate practice. As such, lawyers and law firms in all practices will need to know and consider the requirements of the CTA and its implications.

From a practical standpoint: lawyers should be thinking about meeting these ongoing compliance obligations; including whether requirements should be placed on clients and underlying beneficial owners to provide all required information to the firm registering entities on a client's behalf and what to do when individual owners refuse to comply. Other items for consideration include client intake questions, ethics and conflict searches, and modifying standard engagement letters to delineate the scope of attorney's duties with respect to advising on the CTA, forming entities, assisting with FinCEN filings, evaluating issues with existing entities, and assessing whether updates to filings will be required due to income levels of the entity, number of employees, or change in ownership percentages and control.

Lawyers should also consider including clauses in operating agreements, shareholder agreements, joint venture agreements, and other corporate governance documents to ensure compliance with the CTA and to include remedies for non-compliance of the same. Finally, consideration should be paid to whether leases, loan documents, trust documents, estate planning documents, and other agreements should also include certain provisions to ensure compliance with CTA. Likewise, law firms should also consider limiting the number of personnel and staff filing formation documents with state agencies so that the number of Company Applicants within the law firm are limited and experienced.

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Endnotes

1. The authors wish to recognize and thank: Marcus Painter and Jordan J. Bunch of Holland & Hart LLP for their July 2023 Colorado Real Estate Symposium Paper and Presentation entitled: "Tick, Tick, Tick, Boom! the Corporate Transparency Act is Upon Us," which paper was relied upon in preparing this article.

2. *See* 31 U.S.C. § 5311(1)-(5).

3. *See* 31 U.S.C. § 5311(1)-(5).

4. https://home.treasury.gov/policy-issues/terrorism-and-illicit-finance/financial-action-task-force; https://www.fatf-gafi.org/en/countries/detail/United-States.html.

5. https://www.fatf-gafi.org/en/countries/detail/United-States.html.

6. At least 30 other countries have adopted some form of register for beneficial ownership information. *See* 87 Fed. Reg. 59500 (https://www.federalregister.gov/documents/2022/09/30/2022-21020/beneficialownership-information-reporting-requirements).

7. *See* 134 Stat. 3388, Public Law 116-283- Jan. 1, 2021.

8. https://www.reuters.com/business/aerospace-defense/trump-vetoes-major-defense-bill-despite-strong-backing-congress-2020-12-23/.

9. *See* 87 Fed. Reg. 59498-59596 (https://www.federalregister.gov/documents/2022/09/30/2022-21020/beneficial-ownership-information-reporting-requirements).

10. *See* 86 Fed. Reg. 77404-7745 (https://www.federalregister.gov/documents/2022/12/16/2022-27031/beneficial-ownership-information-access-and-safeguards-and-use-of-fincen-identifiers-for-entities).

11. *See* 31 CFR§1010.380(c)(1) and §1010.380(d).

12. *See* 31 CFR §1010.380(c)(1).

13. https://www.federalregister.gov/documents/2022/09/30/2022-21020/beneficial-ownership-information-reporting-requirements.

14. FinCEN refers to IRS regulations for determination of whether an employee is "full time"–generally considered 30 hours per week or 130 hours per month. FinCEN's guidance on when this number is evaluated (snapshot or average or other) is of little use. 87 Fed. Reg. 59543 (https://www.federalregister.gov/documents/2022/09/30/2022-21020/beneficial-ownership-information-reporting-requirements).

15. A newly formed entity will not be able to qualify for this exception in its first tax year simply because it will not have $5 million in gross receipts on a prior year's tax return.

16. See 31 CFR §1010.380(d)(1).

17. The Regulations spell this out in more detail with examples of what constitutes exercising control, such as having board representation, rights related to financing, control over controlling entities, and more. *See* 31 CFR §1010.380(d)(ii).

18. "FinCEN considers the role of general counsel to be ordinarily more substantial [than a treasurer or secretary role], and has therefore retained this role as part of the definition of 'senior officer.'" 87 Fed. Reg. 59526 (https://www.federalregister.gov/documents/2022/09/30/2022-21020/beneficial-ownership-information-reporting-requirements).

19. *See* 31 CFR §1010.380(f)(8).

20. *See* 31 CFR §1010.380(e).

21. Id.

22. *See* 31 CFR §1010.380(a)(1)(i) (A)–(B); (ii)(A)–(B).

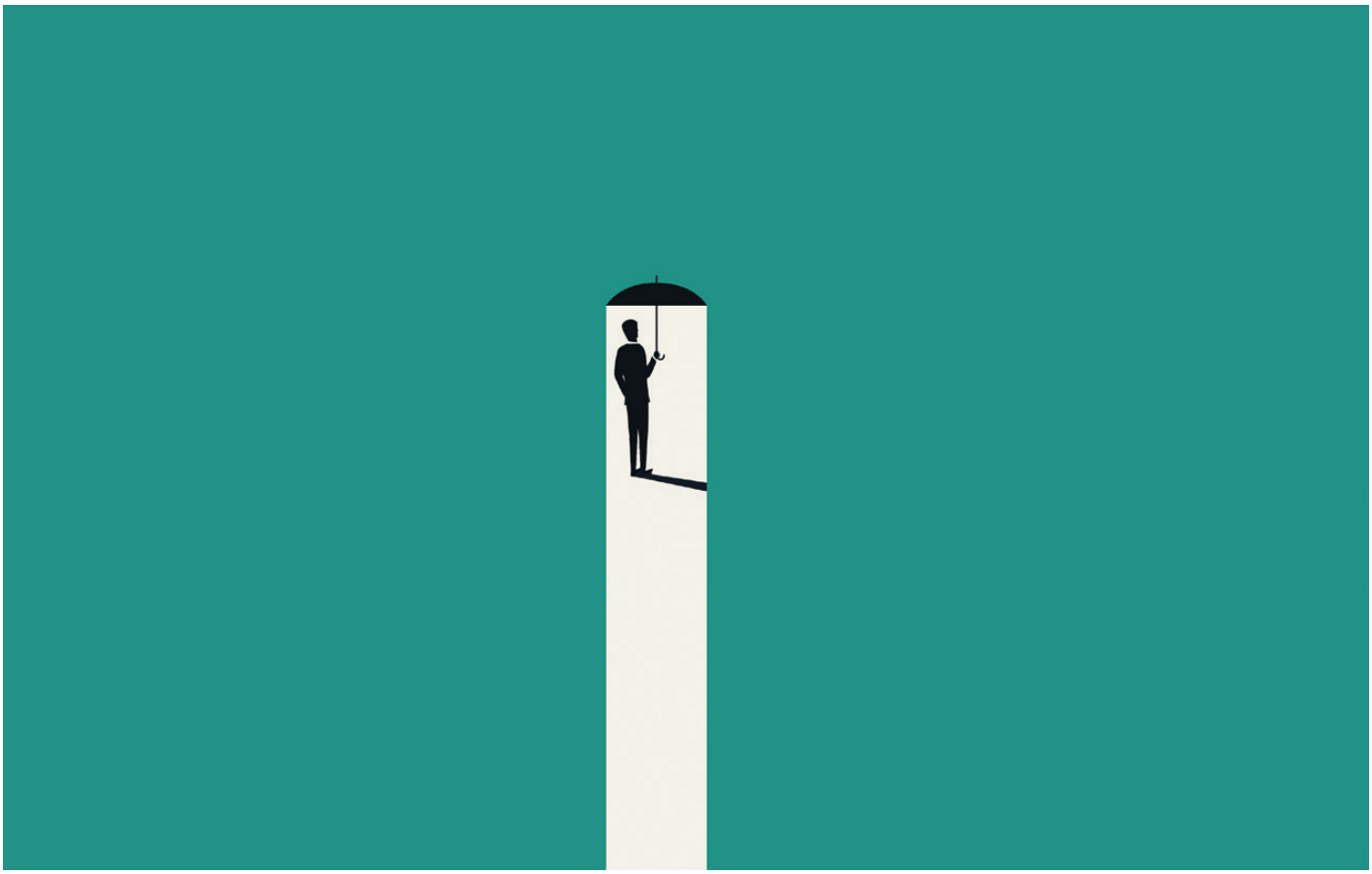
23. *See* 31 CFR §1010.380(a)(1)(iii).

24. The forthcoming forms and protocols for filing the required information with FinCEN will further inform whether filings on behalf of reporting companies can be done by law firms, or law firms will merely assist the client with filing with FinCEN.

25. 87 Fed. Reg. 59546 and 59507. See also: https://www.federalregister.gov/documents/2022/09/30/2022-21020/beneficial-ownership-information-reporting-requirements.

26. *See* 31 CFR §1010.380(g).

27. Given how new the CTA is, regulations and rules may change between the date our article was drafted and printing of the same.



Changes In The 2021 ALTA Standard Form Title Insurance Policies

S. Craig Adams

On July 1, 2021, the American Land Title Association ("ALTA") formally adopted substantial changes to its standard title insurance policy forms.[1] On July 1, 2021, it published these new forms for official use.[2] ALTA is the national trade association representing the title insurance industry.[3] One of its core functions is to develop and publish through its Title Insurance Forms Committee standard title insurance forms that title insurers and settlement providers across the United States can use.[4]

Foremost of its standard forms are its uniform policies of title insurance.[5] First published in 1970, ALTA's policies of title insurance protect the ownership of real property in an Owner's Policy and the money lent to acquire or improve such real property in a Loan Policy.[6] ALTA periodically revises its forms to "reflect changes in the marketplace brought about by evolving business practices, expectations of insureds, laws, regulations and legal decisions."[7] Since their first publication, ALTA has formally revised its standard title insurance policies only a handful of times. Before the 2021 revisions, ALTA's most recent changes were completed in 2006 when it rewrote entirely all its standard forms.[8]

The main drivers of ALTA's 2021 revisions to its standard Owner's and Loan title policies were the creation of the Consumer Finance Protection Bureau under the Dodd-Frank Wall Street Reform and Consumer Protection Act[9]; the adoption in a significant number of jurisdictions of remote online notarization practices[10]; the legislative focus in a growing number of states addressing publicly recorded historical documents containing illegal discriminatory restrictive covenants[11]; and the United States Supreme Court's decision in *McGirt v. Oklahoma*[12], in which the Court confirmed that the boundaries of the reservation of the Muscogee (Creek) Nation had never been disestablished by the United States Congress and remains in existence. The *McGirt* decision is significant because it raises broad questions about tribal reservation disestablishment jurisprudence nationwide and about governmental and regulatory jurisdiction of historic tribal lands.

ALTA's 2021 Title Policies

Modernizing Coverage by Clarifying Certain Covered Risks and Adding Entirely New Covered Risks to the Policies

ALTA changed every section of its Loan[13] and Owner's[14] title insurance policies with its 2021 revisions. Throughout, ALTA prioritized making changes that clarify what they are intended to cover, by adding new definitions and modifying others,

and what they are not intended to cover by modifying or adding to the Covered Risks, the Exclusions, the Conditions, and Schedules A and B of the policies.

Both the new Owner's Policy and Loan Policy begin with a new introductory clause to acknowledge the use of electronic documents and electrically obtained and acknowledged signatures, and to clarify that the insurance company will not deny liability solely because they were issued or obtained electronically.[15] [16]

Covered Risk 2: Owner's and Loan Policies

The 2021 ALTA Policies Add New Language Dealing with Remote Online Notarizations

Covered Risk 2 in both the Loan Policies[17] and Owner's[18] is modernized by express mention of remote online notarization and repudiation of an electronic signature as examples of title defects that can cause a covered loss under the policy. Additionally, survey coverage under Covered Risk 2 has been enhanced by expressly including that any boundary line overlaps that appear on a survey and which are not otherwise excepted are title defects that can trigger a covered loss under the policy.[19]

Covered Risks 5, 6, 7 and 8: Owner's and Loan Policies

The ALTA 2021 Policies Add New Defined Terms "Enforcement Notice" and "PACA-PSA Trust" and Revise Defined Term "Public Records"

Both the Owner's and Loan Policies include a new defined term "PACA-PSA Trust", and a corresponding new Covered Risk 8 that insures against loss arising from the enforcement of a PACA-PSA Trust to the extent of the enforcement described in an "Enforcement Notice" and recorded in the "Public Records".[20] [21]

The Perishable Agricultural Commodities Act[22] ("PACA"), and the Packers and Stockyards Act[23] ("PSA") (together, the "Acts") each create a floating, non-segregated trust for the benefit of the unpaid producers, suppliers, and sellers of the products defined in the Acts (*e.g.*, fresh and frozen fruits and vegetables, in the case of PACA; poultry products, livestock, dairy, and meat products, in the case of PSA) against the assets of buyers or dealers, including assets acquired with proceeds derived from the sale of covered products. These trusts can exist as an inchoate (*i.e.*, unrecorded) claim against the business operations of a buyer or dealer that can create a defect in the title to real property.

> *Since their first publication, ALTA has formally revised its standard title insurance policies only a handful of times.*

The Owner's and Loan Policies include a new defined term "Enforcement Notice" and revise the defined term "Public Records." These are important new terms for Covered Risks 5, 6, 7, and 8 in both.

"Enforcement Notice" is defined as a "document recorded in the Public Records that describes any part of the Land and . . . is issued by a governmental agency that identifies a violation or enforcement of a law, ordinance, permit, or governmental regulation; is issued by a holder of the power of eminent domain or a governmental agency that identifies the exercise of a governmental power; or asserts a right to enforce a PACA-PSA Trust."[24] [25]

The revised definition of "Public Records" distinguishes between those public records that are intended to be used for limited purpose in title insurance policies and other governmental records that are not intended as such, and which are construed generally as being outside of the policy's intended scope.[26] [27] The newly defined "Enforcement Notice", together with the revised "Public Records" definition, represent a much-needed clarification as to what form of notice causes a covered loss, and where such notice must be recorded to trigger coverage unless excepted from coverage in Schedule B.

Covered Risk 10: Loan Policy

The 2021 ALTA Loan Policy Clarifies Those Components of a Loan That a Title Policy Covers

Covered Risk 10 in the new Loan Policy was overhauled to clarify the specific components of Indebtedness that benefit from priority coverage for the Insured Mortgage.[28]

The 2006 Loan Policy addressed the lack of priority of the Insured Mortgage lien against other liens on the Title but, as with all of the Covered Risks, its language was subject to Exclusion 3(d) for "[d]efects, liens, encumbrances, adverse claims, or other matters . . . (d) attaching or created subsequent to Date of Policy . . . ."[29] This left open the question of whether principal disbursed subsequent to Date of Policy (other than construction loan advances

addressed by Covered Risk 11(a)) were actually included as part of the priority coverage under Covered Risk 10. The ALTA Forms Committee wanted lender customers to understand this question and seek an endorsement, such as the ALTA 14 (Future Advance – Priority) or ALTA 14.1 (Future Advance – Knowledge), whichever is most appropriate in light of the terms of the subject loan and applicable state law, to be confident in the scope of the priority coverage provided by Covered Risk 10.[30] The Forms Committee reworded the 2021 Loan Policy to resolve the uncertainty by driving lender Insureds to seek an appropriate endorsement whenever a loan that is not a construction loan contemplates future advances of principal.[31]

Covered Risk 13: Loan Policy / Covered Risk 9: Owner's Policy

The 2021 ALTA Policies Improve Coverage for Issues Related to Creditors' Rights Against Real Property

Covered Risk 13 in the Loan Policy, and Covered Risk 9 in the Owner's Policy, sometimes referred to as "back-chain creditors' rights coverage," affords protection to the Insured against the risk that a transaction prior to the one for which the Loan Policy or Owner's Policy is being issued is challenged on the basis that it constituted a fraudulent conveyance, fraudulent transfer, or a preferential transfer, under federal bankruptcy, state insolvency, or similar state or federal creditors' rights laws.[32]

Section 550(a) of the Bankruptcy Code authorizes an alternative remedy in allowing the bankruptcy trustee to "recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property . . . ."[33] The new Covered Risk improves back-chain creditors' rights coverage by expressly stating that protection against loss resulting from "the effect of a court order providing an alternative remedy" now applies to both subsections of this Covered Risk.[34] [35]

Additionally, the back-chain creditors' rights coverage has been updated to expressly address the risk of a challenge to a prior transaction based on it being voidable under the Uniform Voidable Transactions Act. The National Conference of Commissioners changed the Uniform Fraudulent Transfer Act to the Uniform Voidable Transactions Act ("UVTA") in 2014[36] and numerous states have enacted the UVTA as part of applicable state creditors' rights law.[37] The 2021 revision modernizes coverage by expressly referencing the UVTA within this Covered Risk.[38]

New Exclusions and Clarity on Certain Others from Coverage

Two new Exclusions have been added with the 2021 Owner's and Loan Policy revisions. The remainder of the revisions to this section are intended to keep the Exclusions internally consistent with modifications made to the corresponding Covered Risks and Conditions sections of the policies.

First is the governmental police power exclusion ("Exclusion 1.b"). The 2021 revision adds the words "forfeiture," "regulatory," and "national security" power to the list to clarify that these are intended to be excluded from coverage and are within the scope of Exclusion 1.b.[39] Note, however, that a concluding sentence in Exclusion 1 of the 2021 policies makes clear that the Exclusion "does not modify or limit the coverage provided under Covered Risk 5 or 6".[40] So, as was the case with Exclusion 1 of the 2006 policies, the 2021 policies do insure against loss or damage arising from the enforcement of a governmental forfeiture, police, regulatory, or national security power to the extent of the enforcement described in an "Enforcement Notice" that, as defined, is recorded in the "Public Records," and is not excepted to in Schedule B.[41]

Second is the 'failure to pay value' exclusion (Exclusion 3.e.). It has been modified to make clear that "value," for purposes of this exclusion, means "consideration sufficient to qualify the Insured named in Schedule A as a bona fide purchaser or encumbrancer"—the word 'encumbrancer' being unique to the Loan Policy—to be entitled to the protection of state recording statutes.[42] The clarification should bring comfort to those who might have confused "value" in this Exclusion 3.e. context for "fair value," "reasonably equivalent value," or "fair market value".[43]

Exclusion 4 of the Owner's Policy and Exclusion 6 of the Loan Policy are the creditors' rights exclusion. As the counterpart to Covered Risk 9 of the Owner's Policy and Covered Risk 13 of the Loan Policy, each policy now expressly excludes from coverage, in addition to fraudulent conveyances and fraudulent transfers, loss that arises out of a voidable transfer claim under the UVTA as well as voidable preference claims to the extent the instrument of transfer vesting the Title as shown in Schedule A. In the Loan Policy context, this phrase reads "to the extent the Insured Mortgage is not a transfer made as a contemporaneous exchange for new value . . . ."[44] These additions modernize and add clarity to each policy.[45]

Exclusion 7 of the Loan Policy and Exclusion 5 of the Owner's Policy contain a new exclusion for liability by reason of any claim arising from a PACA-PSA Trust. Note, however, that the exclusion expressly states that it does not "modify or limit the coverage provided under the new Covered Risk 8"[46], which insures against loss for "an enforcement of a PACA-PSA Trust, but only to the extent of the enforcement described in an Enforcement Notice" that has been recorded in the "Public Records".[47]

Exclusion 9 of the Loan Policy and Exclusion 7 of the Owner's Policy contain a new exclusion for loss arising from "[a]ny discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land."[48] Although the title insurance policy has never been intended to provide coverage for these issues, this exclusion was added to eliminate the need to add a special exception to Schedule B of the policy whenever the record legal description of the Land includes references to the subject parcel's quantity of area, square footage, or acreage and the Insured prefers that the legal description in Schedule A of the policy exactly match the record legal description. This new exclusion eliminates the confusion.[49]

Modernize Language Relating to the Policies' Schedule B Exceptions from Coverage

Each policy's 'Schedule B - Exceptions from Coverage' now begins with a preamble that addresses globally any exceptions to restrictive covenants shown in the policy that may contain unenforceable discriminatory provisions. The added language is intended to make clear that when the policy includes an exception for a restrictive covenant, it does not perpetuate or republish any illegal provisions found therein, but still preserves the exception to coverage for those portions of the covenant that are legal and enforceable.[50]

Likewise, the policies now contain a model exception immediately preceding the list of Schedule B exceptions that clarifies that the policy does not cover loss due to the terms and conditions of any lease or easement that is identified as an insured interest in Schedule A of the title policy.[51] Like the Preamble discussion above, this model exception eliminates the need for a specific numbered exception in Schedule B as to the terms and conditions of an easement or lease that is shown as part of the interest being insured in Schedule A of the title policy.[52]

Eight New Defined Terms and Certain Others Revised

There are eight new Defined Terms in Condition 1. These are *Affiliate*, *Consumer Protection Law, Discriminatory Covenant*, *Enforcement Notice*, *Government Mortgage Agency or Instrumentality, Obligor, PACA-PSA Trust,* and *State*.[53] Of note, *Affiliate, is* as an Entity "that is wholly owned by the Insured; that wholly owns the Insured; or if that Entity and the Insured are both wholly owned by the same person or entity."[54] *State* is "[t]he state or commonwealth of the United States within whose exterior boundaries the Land is located. The term "State" also includes the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and Guam."[55]

There are also revised Defined Terms in Condition 1. Of note, *Indebtedness* expressly includes "advances made for insurance premiums" [Condition 1.i.i.(g)]; "real estate taxes and assessments imposed by a governmental taxing authority" [Condition 1.i.i.(h)(1)]; and "regular, periodic assessments by a property owners' association" [Condition 1.i.i.(h)(2)].[56]

The term *Insured* in the Owner's Policy, clarifies with added language that a conveyance from the named Insured to any one of the following qualifies the grantee as an Insured under the policy, including an Affiliate: "A trustee or beneficiary of a trust" [Condition 1.g.i.(e)(2)]; "a spouse who receives title [in] a dissolution of marriage" [Condition 1.g.i.(e)(3)]; "a transferee by a transfer effective on the death of an Insured as authorized by law" [Condition 1.g.i.(e)(4)]; or "another Insured named in Item 1 of Schedule A" [Condition 1.g.i.(e)(5)].[57]

The term *"Insured"* in the Loan Policy clarifies with added language that the *Insured* is a person, "other than an Obligor, . . . [who] owns the Indebtedness, the Title, or an estate or interest in the Land . . . but only to the extent [the person] either . . . owns the Indebtedness for its own account or as a trustee or other fiduciary or . . . owns the Title after acquiring the Indebtedness."[58] The definition further clarifies that a conveyance from the named Insured to any one of the below qualifies the grantee as an Insured under the policy.[59]

Note that both the revised Owner's Policy and Loan policy have removed the requirement that the deed or conveyance from the Insured to an Affiliate be "delivered without payment of actual valuable consideration" to qualify the grantee Affiliate within the policy's definition of "Insured".[60]

The term "Public Records" in the Owner's Policy and Loan Policy has been modified to specifically enumerate the filing systems that are intended to be considered Public Records for the purpose of title insurance and to distinguish other governmental records that are not intended to qualify as Public Records within the scope of the title insurance contract. These mean "[t]the recording or filing system established under State statutes . . . under which a document must be recorded . . . to impart constructive notice [to a purchaser for value without knowledge] of matters relating to the Title . . . ."[61] Expressly, *Public Records* do not include "any other recording or filing system, including any pertaining to environmental remediation or protection, planning, permitting, zoning, licensing, building, health, public safety, or national security matters."[62]

Condition 8 in each policy now contains a revised preamble emphasizing that the title policy is a "contract of indemnity against actual monetary loss or damage" by reason of matters insured against and "is not an abstract of the Title, report on the condition of the Title, legal opinion, opinion of the Title, or other representation of the status of the Title."[63]

An added term in Condition 8.a. ii. states that a "**fair market** value of the Title" [bolding added] standard will be used to calculate compensable loss or damage based upon diminution in value, as compared to the open-ended term "value of the Title", on which the 2006 title policies relied.[64] A new Condition 8.b., addressing the date as of which loss or damage will be calculated, states that "the fair market value of the Title in Condition 8.a. ii. is calculated using the date the Insured discovers the defect, lien, encumbrance, adverse claim, or other matter insured against by this policy."[65]

However, as provided by new Condition 8.c., "[i]f, at the Date of Policy, the Title to all of the Land is void by reason of a matter insured against by th[e] policy, then the Insured Claimant may . . . elect to use the Date of Policy as the date for calculating the fair market value of the Title . . . ."[66] As provided by Condition 8.d.(i), if the Insurer exercises its Condition 5.b. right to cure the claimed defect but is unsuccessful, then the Amount of Insurance increases by 15% (as compared to 10% in the 2006 Owner's Policy).[67] Also, Condition 8.d.ii. provides the Insured two additional alternative dates from which to choose as the "as of" date for calculating the amount of loss or damage when the insurer has attempted and been unsuccessful in curing the claimed defect. These are: (1) the date the settlement, action, proceeding, or other act described in Condition 5.b.

is concluded; or (2) the date the insurer received the Insured's notice of claim.[68]

Condition 8 of the Loan Policy includes the same "**fair market** value of the Title" [bolding added] standard as the revised Owner's Policy, to add clarity to what is meant by "value of the Title" in Condition 8.a.iii., for purposes of calculating compensable loss or damage based upon diminution in value.[69] New Condition 8.b. addresses the date as of which loss or damage will be calculated for an Insured lender and states that the "[f]air market value of the Title in Condition 8.a.iii. is calculated using either "the date [title is acquired] as a result of a foreclosure or deed in lieu of foreclosure" or "the date the lien of the Insured Mortgage . . . is extinguished or rendered unenforceable by reason of a matter insured against by this policy."[70]

As with the revised Owner's Policy, the 2021 Loan Policy, in Condition 8.c., also provides the Insured lender with two added benefits if the insurer exercises its right to cure the claimed defect but is unsuccessful. They are that the Amount of Insurance will be increased by 15% (as compared to 10% in the 2006 Loan Policy).[71] And also, that the Insured may elect, as an alternative to the dates set forth in Condition 8.b. [for calculating the fair market value of the Title in Condition 8.a.iii.], to use either the "date the settlement, action, proceeding, or other [curative] act . . . is concluded, or the date the notice of claim required by Condition 3 is received [by the Insurer] . . . ."[72]

Additionally, there are several miscellaneous conditions added. First, Condition 10 of the Loan policy has been retitled as "Reduction or Termination of Insurance". A new Condition 10.b provides that, when the Insured acquires the Title through foreclosure or a deed in lieu of foreclosure, the Amount of Insurance is not reduced by the amount that is credited against the Indebtedness.[73]

Revised Condition 15 in the Loan Policy and Condition 16 in the Owner's Policy provide that the "State law of the State where the Land is located, or to the extent it controls, federal law, will determine the validity of claims against the Title and the interpretation and enforcement of the terms of the policy, without regard to conflicts of law principles to determine the applicable law."[74]

Next, Condition 17 of the Loan Policy and Condition 18 of the Owner's Policy prohibit class action proceedings pertaining to "[a]ll claims and disputes arising out of or relating to this policy, including any service or other matter in connection with issuing this policy, any breach of a policy provision, or any other claim or dispute arising out of or relating to the transaction giving rise to this policy. . . ."[75]

Lastly, Condition 18 of the Loan Policy and Condition 19 of the Owner's Policy includes a revised Arbitration provision as the last numbered Condition that is bracketed to signify that each title insurer has the option to include or delete it.[76] Deleting the bracketed provision from the title insurer's typeset form obviates the need for an endorsement to accomplish the same result in transaction-specific contexts.

Copies of redlined comparisons of the 2006 ALTA Policies against the 2021 ALTA Policies, and a clean blackline version of each, as well as comprehensive comparison charts of both policies, can be found at https://www.alta.org/policies-and-standards/policy-forms/.

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Endnotes

1. ALTA Board Approves 2021 Policy Forms, June 1, 2021, available at https://www.alta.org/news-and-publications/news/20210601-ALTA-Board-Approves-2021-Policy-Forms) (last checked 12-7-23).

2. *Id.*

3. *See generally*, About the American Land Title Association, available at https://www.alta.org/about/ (last checked 12-7-23).

4. Policy Forms, available at https://www.alta.org/policies-and-standards/policy-forms/ (last checked 12-7-23.)

5. TITLE INSURANCE, A COMPREHENSIVE OVERVIEW, American Land Title Association, page 4, available at https://www.alta.org/press/titleinsuranceoverview.pdf. (last checked 12-7-23).

6. TITLE NEWS, 2021 ALTA Policies and Commitment Open for Public Comment (October 2020), available at https://alta.org/news-and-publications/titlenews-magazine/2020/october_2020.pdf (last checked 12-7-23).

7. *Id.*

8. *Id.*

9. 12 U.S.C. §§ 5481-5603

10. *See* Remote Online Notarization State Survey, Mortgage Bankers Association, available at https://www.mba.org/advocacy-and-policy/residential-policy-issues/remote-online-notarization (last checked 12-7-23).

11. *See* e.g., Idaho Code §55-616; Utah Code Ann. § 57-21-6.1; CRS § 24-34-501; Cal Gov. Code §12956.2; Fla. Stat. Ann. §712.065; Tex. Prop. Code §202.004.

12. *McGirt v. Oklahoma*, 140 S. Ct. 2452; 591 U.S. _ (Jul. 9, 2020).

13. *See* ALTA Loan Policy 2021 v.01.00, effective 07-01-2021, available at https://www.alta.org/policies-and-standards/policy-forms/download.cfm?formID=602&type=word (last checked 12-7-23).

14. *See* ALTA Owner's Policy 2021 v. 01.00, effective 07-01-2021, available at https://www.alta.org/policies-and-standards/policy-forms/download.cfm?formID=603&type=word (last checked 12-7-23).

15. *See* Comparison Chart – Loan Policy 2021 against 2006, available at https://www.alta.org/policies-and-standards/policy-forms/downloadSub.cfm?formSubID=2156&type=pdf. (last checked 12-7-23).

16. *See* Comparison Chart – Owner's Policy 2021 against 2006, available at https://www.alta.org/policies-and-standards/policy-forms/downloadSub.cfm?formSubID=2157&type=pdf (last checked 12-7-23).

17. *See* Endnote xiii.

18. *See* Endnote xiv.

19. *Id.*

20. *See* Endnote xiii.

21. *See* Endnote xiv.

22. *See generally* 7 U.S.C. §§ 499a, et seq.

23. *See generally* 7 U.S.C. §§ 181, et seq.

24. *See* Endnote xiii.

25. *See* Endnote xiv.

26. *See* Endnote xv.

27. *Id.*

28. *Id.*

29. *See* ALTA Loan Policy 2006, decertified 12-31-22, available at https://www.alta.org/policies-and-standards/policy-forms/download.cfm?formID=156&type=word (last checked 01-03-24).

30. *See* Endnote xv.

31. *Id.*

32. *Id.*

33. 11 U.S.C. § 550 (a).

34. *See* Endnote xv.

35. *See* Endnote xvi.

36. See Act Summary, Voidable Transactions Act, Uniform Law Commission ("[T]he tile of the Act is now the 'Uniform Voidable Transactions Act' (UVTA)."), available at https://www.uniformlaws.org/committees/community-home?communitykey=64ee1ccc-a3ae-4a5e-a18f-a5ba8206bf49 (last checked 12-7-23).

37. *Id.*

38. *See e.g.*, Endnote xv.

39. *See e.g.*, Endnote xiii.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *See* Endnote xiii.

47. *Id.*

48. *See* e.g., Endnote xiii.

49. *Id.*

50. *See e.g.*, Endnote xv.

51. *See e.g.*, Endnote xiv.

52. See e.g., Endnote xvi.

53. *Id.*

54. *See e.g.*, Endnote xiv.

55. *See e.g.*, Endnote xiii.

56. *Id.*

57. *See* Endnote xiv.

58. *See* Endnote xiii.

59. *Id.*

60. *See Id.* Comments on Condition 1.j.1.(e).

61. *See e.g.*, Endnote xiii.

62. *Id.*

63. *See e.g.*, Endnote xvi.

64. *Id.*

65. *Id.*

66. *See* Endnote xvi.

67. *Id.*

68. *See* Endnote xiv.

69. *See* Endnote xiii.

70. *Id.*

71. *Id.*

72. *Id.*

73. *See* Endnote xiii.

74. *See e.g.*, Endnote xiv.

75. *Id.*

76. *Id.*

Mechanics' Liens and the Priority Dilemma

John R. Jameson

Idaho mechanics' lien statutes reflect the public policy favoring protection of construction contractors, materialmen, and providers of certain professional services to receive renumeration for improvements made to real property. In essence, a right to a mechanics' lien evens the playing field between property owners and persons improving the real property. Without the mechanics' lien statutorily created security interests, builders, materialmen, and other contractors would only have judicial remedies of a breach of contract, or other operable cause of action, to obtain an enforceable right to collect monies owed. In the meantime, property owners would be able to profit from the property improvements without any consideration to the contractor performing the property improvements. The mechanics' lien statutes change this dynamic by providing an immediate lien to secure payment for the work and services performed.

Application of Idaho's mechanics' liens statutes requires a thorough analysis of the law and the facts giving rise to a mechanics' lien. Attorneys should be aware of several factors when dealing with mechanics' liens. The actual work performed and the location thereof is important information when considering the property, or interest therein, subject to a potential mechanics' lien. Furthermore, determining the priority of a mechanics' lien is a dilemma that should be resolved to protect clients' lien rights. Failure to address the issues of ownership of the property and the priority of a mechanics' lien may result in substantial negative impacts on the interests of many of the parties involved in real estate transactions. This article will identify some of the considerations that attorneys should discuss with their clients, as well as offer practical steps that can be taken to perfect and protect the priority of a mechanic's lien.

A Mechanics' Lien is an Inchoate Lien

Mechanics' liens "are preferred to any lien, mortgage, or other encumbrance, which may have attached subsequent to the time when the building, improvement or structure was commenced, work done, equipment, materials or fixtures were rented or leased, or materials or professional services were commenced to be furnished [...]."[1]

Mechanics' liens have priority over any lien, mortgage, or other encumbrance that attached subsequent to, or was unrecorded, or of which the lienholder had no notice as of (as applicable) the commencement of physical work; the date that materials were delivered, leased, or rented; or the date that "materials or professional services were commenced to be furnished."[2] The Idaho Supreme Court has consistently construed this statute to mean that each contractor, subcontractor or supplier has independent priority based upon when their specific work, services,

or materials were supplied to the property or project.[3]

For most persons with lien rights under this statute, the lienholder's priority will relate back to the date that the contractor, subcontractor, or materialman physically commenced work or supplied materials to the property.[4] A lien may encompass the entirety of the work performed under a single contract.[5] Therefore, pauses in work, waivers of lien claims, or even acceptance of partial payments for work performed may not affect the priority date for that lien claimant for work performed under a single contract. If work is performed or services are rendered under separate contracts, whether by the same or unrelated contractors, subcontractors or materialmen, the priority date for each contract and work conducted thereunder is determined independently of one another.[6] The priority date for a resulting mechanics' lien will be set by the commencement of work by each individual contractor, subcontractor, or materialman and not the execution of each provider's contract for work to be performed.

Furthermore, the Idaho Supreme Court recently held that the priority of an engineer's lien under I.C. § 45-501 relates back to the date "when the engineer commenced to furnish 'any authorized, professional services' under the contract regardless of where the services were rendered" and not to the date that physical work was commenced on the property at issue.[7] By extension, this would also include work performed by a licensed surveyor in relation to the property.[8] Therefore, certain mechanics' lien rights may have priority over subsequent encumbrances, even if there has been no physical work commenced on the property. Thus an inchoate lien may have priority regardless of whether an actual claim of lien has been recorded in the county real property records.

Perfection of Lien

A person claiming a mechanics' lien must file a claim of lien with the county recorder within ninety days after that claimant's substantial completion of the labor or services or furnishing of materials.[9] The Idaho Supreme Court has interpreted "completion" in this statute to mean "substantial completion" of the claimant's work, and "trivial work done or materials furnished after the contract has been substantially completed will not extend the time in which a lien can be filed."[10] Failure to properly record a claim of lien within this window may result in a total loss of lien rights against the property, though the claimant likely retains a personal action for collection of the debt.

The claim of lien is effective for six months after the claim of lien is filed, unless court proceedings are commenced to enforce the lien within that six-month period.[11] If payment is made on the account or the lienholder extends credit with a set expiration date, the lien may be extended for an additional six months after the date of such payment or expiration of extension of credit *so long as* the payment or extension of credit is endorsed on the recorded claim of lien.[12] The lien of a final judgment from a lien foreclosure action will be enforceable for ten years from the date of the judgment.[13]

Property Rights Subject to a Mechanics' Lien

Idaho Code § 45-501 outlines a party's right to lien real property for which labor, materials and/or services have been performed. The code section states in part, "[The contractor] has a lien upon the same for the work or labor done or professional services or materials furnished, whether done or furnished at the instance of the owner of the building or other improvement or his agent."[14] Idaho Code § 45-505 defines the real property, including the "ownership" of the property less than fee simple, that is potentially subject to mechanics' liens within the State of Idaho. The property interest subject to the lien only extends to the interest the person requesting the services, work, or materials has in the land.[15] For example, if the person requesting such services, work, or materials only holds a leasehold interest, the lien will only attach to the leasehold interest.[16]

There are instances where a less-than-fee interest holder could potentially be considered an agent of the owner and bind the fee interest to mechanics' liens. In such instances, the property owner must in some manner indicate that the agent is to act for him, and the agent must act or agree to act on his behalf and subject to his control.[17] However, merely acting in concert with one another, without a right of control, does not give rise to an agency relationship.[18] In most matters concerning the creation of an agency relationship, whether such relationship exists is a question of fact to be judicially determined.[19]

The claimant has the right to lien all the "land upon which or in connection with which" the services were rendered, or the building, improvement, or structure is constructed, plus a "convenient space about the same" if the person that caused the services to be rendered or work to be performed also owns the adjacent land.[20] "What area of land is subject to the lien in a given case largely depends upon the character of the improvement."[21] "The question is not so much as to the amount of land required for the area to be occupied by the [improvement], but rather as to the amount of land to be improved and benefitted by the creation and use of the [improvement]."[22] "[T]he amount of land necessary for the convenient use and occupation of the property to be sold under the terms and conditions of the lien and judgment" must be determined by the court decreeing foreclosure.[23]

Tenancy in Relation to Mechanics' Liens

Real property rights in Idaho consist of the proverbial "bundle of sticks" taught during the first year of law school. One of the lesser explored or considered "sticks" is the property rights belonging to a tenant or lessee of real property. As a general rule, lessees hold a property interest less than that of property owner's fee interest. This leasehold interest, as it is commonly referred, is limited in scope and duration. It also generally prohibits lessees from transferring or affecting the

freehold estate possessed by the property's vested owner.

One area where this general rule does not automatically apply is when tenant causes certain improvements to be made to the real property. The common law rule is that contractors "cannot recover for improvements made to a landlord's property absent an agreement to reimburse …."[24] However, when the improvements and/or repairs are made "beyond what mere tenants typically make to a real property," such as electrical improvements and tree removal, a fee owner cannot generally avail themselves of such improvements without some type of restitution to the tenant upon the termination of the tenancy.[25] Such an instance begs the question of whether a contractor, material supplier, and/or a professional service provider can encumber a landlord's interest in the property should a tenant fail to pay for the improvements.

The facts of *Tri-Circle v. Brugger Corp* are instructive in determining an agency relationship in an owner-tenant context. That case concerned a farmer landlord tenant arrangement, in which the tenant was granted express authority to purchase irrigation materials and retain workers to perform certain repairs to the irrigation system. Subsequent to the authorized repairs being completed, which were paid for by the landlord, the tenant proceeded to charge additional expenses to the landlord's account for further irrigation upkeep. At trial, there was no evidence presented that demonstrated the third-party vendor should have understood the charges incurred by the tenant were for irrigation start-up costs only, and the tenant was therefore cloaked under express, implied, and apparent authority to continue to charge the account for irrigation system materials and repairs.[26]

Although *Tri-Circle* did not involve an issue of mechanics' liens being charged against the owner's real property, Idaho Courts have directly defined which acts or implications would give rise to a tenant being treated as an agent for purposes of mechanics' lien attachments.

A tenant or lessee is not generally considered the agent of the lessor within the interpretation of the mechanics' lien law merely by virtue of the relationship of landlord and tenant, and a tenant or lessee cannot subject the interest of his landlord to a mechanics' lien by reason of the tenant's contract with a materialman or laborer, unless the owner does some act in ratification of, or consent to the work done and the furnishing of the material or labor.[27]

Subsequent Idaho case law clarifies that "consent for certain repairs specified in the lease to be made by the lessee was not sufficient to extend that materialman's lien to the lessor's interest."[28] "The estate or property of a lessor is not subject to a mechanics' lien for improvements contracted for by his lessee unless the lessor has made him his agent or otherwise conferred the requisite authority on him, or ratified his acts, or is estopped to deny the validity of the lien."[29]

In *Idaho Lumber*, a property lessee contracted with Idaho Lumber to remodel a building and construct a parking lot on the property. During construction on the property, the lessee made unilateral changes to the construction plans. Although the property owner visited the site during the construction, the facts showed that the lessee had complete control over the work performed on the property. Lessee subsequently defaulted on both the construction contract and the property lease. The contractor filed a mechanics' lien against the property and sued the property owner to foreclose on the lien, amongst other claims. The court ultimately held that the "authorization" given by the property owner for the property alterations really amounted only to consent to have the lessee expend money on the property remodeling efforts and was therefore deemed insufficient to support a lien on the fee interest.[30]

If the landlord maintains control over property improvements requested by a tenant, Idaho Courts have deemed the tenant to be the agent of the landlord. In such a limited instance, the owner's fee interest in the property may be subject to the lien.[31] However, merely consenting to a tenant conducting the property improvements is generally not considered sufficient control to subject the fee interest to such a mechanics' lien.[32] As an example, many commercial leases will contain terms allowing for tenant improvements to the property, but only after obtaining landlord approval of the plans. This hypothetical is contrary to the facts of *Idaho Lumber* in that the landlord still holds oversight and approval rights as opposed to merely authorizing the tenant to construct the improvements.

Such an instance begs the question of whether a contractor, material supplier, and/or a professional service provider can encumber a landlord's interest in the property should a tenant fail to pay for the improvements.

Whether a tenant's property improvements subject the property to a lien against the owner's fee interest is a highly fact-specific analysis. The facts must be analyzed in every instance whether tenant improvements are being, or are contemplated to be, performed on the property. Items to consider during the analysis include, but are not limited to, the lease agreement, indications of actual control by the landlord, and/or tenant reimbursement terms.

Lender Protections Against Inchoate Mechanic's Liens

Idaho does not have any statutory protections for the benefit of mortgagees or bona fide purchasers against valid, prior mechanic's liens other than notice of the lien through a title search. However, there are still a few methods to mitigate mechanic's lien risk in Idaho.

Lien Waivers and Subordinations

Express waivers of mechanics' lien rights are valid and enforceable in Idaho so long as they are supported by adequate consideration.[33] "[W]here a lien waiver is not incorporated as part of a more comprehensive agreement, the lien waiver must be supported by independent valuable consideration."[34] For example, when there is work performed outside the scope of the construction contract by a sub-contractor, there will likely need to be additional consideration to support a waiver from the subcontractor.[35]

Idaho does not have statutory forms of or requirements for mechanics' lien waivers, and waivers are customarily drafted and provided by contractors. While there is no required language, the intent to waive must be clear: "In order to establish a waiver, the intention to waive lien rights must clearly appear, and a waiver of the lien will not be presumed or implied, contrary to the intention of the party whose rights would be injuriously affected thereby."[36] Lien waiver and subordination agreements must be so unambiguous to evidence the parties' intent to waive, alter and/or subordinate the effective priority date of the subordination.[37]

Express subordinations of mechanic's and materialmen's lien rights to later-recorded security instruments are also enforceable in Idaho.[38] The subordination agreement will only establish priority as between the parties to the agreement and does not waive the subordinating party's right to lien the property. Regardless, these agreements can be a useful tool to insure the relative priority of a security instrument in Idaho.

Posting a Bond

If a mechanic's or materialman's claim of lien is recorded against real property, I.C. § 45-518 provides an expedited procedure for release of the lien by posting a bond with a court of competent jurisdiction. While a party responsible for payment may occasionally be reluctant to use this process for fear of admitting responsibility for payment, Idaho law is well established on this point: "the lien release bond is merely meant to act as substitute security for the real property and does not otherwise affect the rights of the interested parties."[39]

Title Insurance

The ability to ascertain the relative lien priority is an important component for a title insurance company in underwriting the issuance of a title policy for a construction loan. Both the ALTA 2006 and 2021 loan policies may provide coverage for mechanics' lien risks due to lack of priority of the insured lender's mortgage or deed of trust. Coverage of mechanics' lien risks may also be provided through particular endorsements to the title policy. Due to the potential liability of insuring a lender's priority, even in known situations where it may not exist, title insurance companies will generally take great care in underwriting mechanics' lien risks.

The facts must be analyzed in every instance whether tenant improvements are being, or are contemplated to be, performed on the property.

Conclusion

In the context of mechanic's liens, legal representation of property owners, contractors or lenders mandates a highly factual, specific analysis in determining whether any work performed on the property gives rise to mechanic's liens. Unlike many property encumbrances, mechanics' liens are inchoate liens, which dictates a duty to analyze when and if a lien attaches. Further, attorneys should consider whether non-owner parties have caused any improvements to the property, which can potentially encumber the fee owner's interest. As for preparing mechanic's lien filings on behalf of contractor clients, strict compliance is required. Practitioners should be well versed in the nuances of I.C. § 45-501, et seq. before commencing representation concerning the perfection, court foreclosure actions, and lien priority rights.

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Endnotes

1. Idaho Code § 45-506.
2. *Id.*
3. *See Ultrawall, Inc. v. Washington Mutual Bank*, FSB, 135 Idaho 832, 25 P.3d 855 (2001) (Emphasis added); *Pacific States Sav. & Loan & Bldg. Co. v. Dubois*, 11 Idaho 319, 83 P. 513 (1905).
4. *See Credit Suisse AG v. Teufel Nursery, Inc.*, 156 Idaho 189, 199, 321 P.3d 739, 749 (2014), citing *Terra-West, Inc. v. Idaho Mut. Trust, LLC* 150 Idaho 393, 400, 247 P.3d 620, 627 (2010).
5. *Terra-West, Inc.* 150 Idaho at 400, 247 P.3d at 627.
6. *Credit Suisse*, 156 Idaho at 197, 321 P.3d at 747.
7. *Hap Taylor & Sons, Inc. v. Summerwind Partners, LLC*, 157 Idaho 600, 607, 338 P.3d 1204, 1211 (2014).
8. *See* I.C. § 45-501.
9. I.C. § 45-507.
10. *Baker v. Boren*, 129 Idaho 885, 895, 934 P.2d 951, 961 (1997).
11. I.C. § 45-510(1).
12. *Id.*
13. *Id*; *See also* I.C. § 10-1111.
14. I.C. § 45-501 (Emphasis added).
15. I.C. § 45-505.
16. *Nelson Bennett Co. v. Twin Falls Land & Water Co.*, 14 Idaho 5, 17-18, 93 P. 789, 792 (1908).
17. *Herbst v. Bothof Dairies*, 110 Idaho 971, 973, 719 P.2d 1231,1233 (1986).
18. *Id.* at 736, 366 P.3d at 1096.
19. *John Scowcroft & Sons Co. v. Roselle*, 77 Idaho 142, 146, 289 P.2d 621, 623 (1955).
20. *Id.*
21. *Durfee v. Parker*, 90 Idaho 118, 123, 410 P.2d 962, 964 (1965).
22. *Id.*
23. *Robertson v. Moore*, 10 Idaho 115, 77 P. 218 (1904), overruled on other grounds by *Dover Lumber Co. v. Case, 31 Idaho 276, 170 P. 108 (1918).*
24. *Asher v. McMillan*, 169 Idaho 701, 706, 503 P.3d 172, 177 (2021).
25. *Id.* at 708, 503 P.3d at 179.
26. *Tri-Circle*, 121 Idaho at 954, 829 P.2d at 544.
27. *Bunt v. Roberts*, 76 Idaho at 161, 279 P.2d at 630 (Emphasis added).
28. *Idaho Lumber*, 109 Idaho at 742, 710 P.2d at 652.
29. *Id.* at 743, 710 P.2d at 653.
30. *Id.*
31. *Bunt v. Roberts*, 76 Idaho 158, 161, 279 P.2d 629, 630 (1955).
32. *Idaho Lumber v. Buck*, 109 Idaho 737, 742, 710 P.2d 647, 652 (1985).
33. *Pierson v. Sewell*, 97 Idaho 38, 42-43, 539 P.2d 590, 594-95 (1975).
34. *SI Constr., LLC v. Ridge at Black Rock Bay, Inc.*, 2011 Ida. Dist. LEXIS 19, *23.
35. *See e.g. G.R. SPonaugle &Sons, Inc. v. McKnight Construction Co.* 304 A.2d 339, 345 (Del. Sup. Ct. 1973).
36. *Smith v. Faris-Kesl Const. Co.*, 27 Idaho 407, 150 P. 25, 32 (1915).
37. *See e.g. In Re Tamarack Resort foreclosure and Related Proceedings*, Valley County Case No. CV-08-114C, pp. 12 (ID 4th Dist., 2009).
38. *See, e.g., Am. Bank v. Wadsworth Golf Constr. Co. of the Southwest*, 155 Idaho 186, 307 P.3d 1212 (2013).
39. *Wadsworth Golf*, 155 Idaho at 192, 307 P.3d at 1218.

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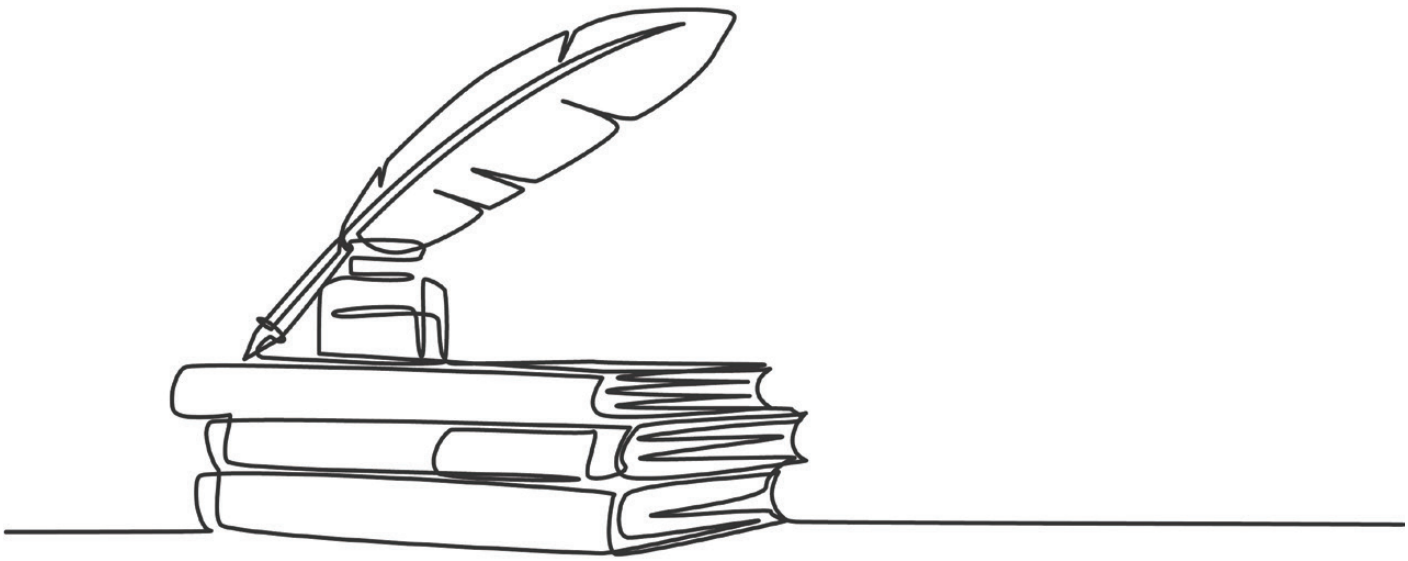

The Basics and Beyond: Nuances and Types of Nouns

Tenielle Fordyce-Ruff

Nouns are one of the basic building blocks of speech and writing. In fact, we learn nouns so early in our development that we don't really think much about them. Think about interacting with a baby just learning to speak. You point to objects and name them – you teach nouns.

While we learn nouns, they aren't all simple. Some have irregular plurals. Others take different modifiers depending on whether you can count them. Some are abstract and you have to be careful to match number for those. And while you might just know some of these rules, this month I'll give you more detail so that you can ensure you're using nouns correctly.

As a little refresher, nouns are names. They name people, places, and things. They also have cases, nominative, objective, and possessive. Fortunately, in English only possessive nouns change spellings. Nouns also have properties of number (singular/plural), gender (masculine/feminine/neutral), and person (first, second, third). The spelling of a noun usually changes for number, rarely changes for gender, and never changes for person. And not to stray too far from nouns, but they need to agree with the verbs in the sentence.

So, with that brief refresher out of the way, let's look at types of nouns and some nuances.

Common and Proper Nouns

As the name implies, these are the most common nouns. They are generic in a sense. They name nonspecific people, places, or things: judge, county, religion.

Common nouns have one nuance to remember: plurals. While most English nouns add -s or -es to form the plural, some common nouns have irregular plurals:

Foot → Feet
Mouse → Mice
Man → Men
Woman → Women
Life → Lives
Child → Children

Chances are that if you're a native English speaker, you don't even think about these types of irregular plurals. But some plurals are the same as the singular, and you need to pay attention to the verb to make sure you let the reader know if you're writing about one or more.

Deer → Deer
Fish → Fish

And more specific to the law, make sure you create the correct plurals for some common nouns that have a postpositive adjective. These phrases come from French and have a noun followed by an adjective, unlike most adjectives in English that come before the noun.

Notary public → Notaries public
Attorney general → Attorneys general

Proper nouns, on the other hand, name specific people, places, or things: Justice Roberts, Boundary County, Christianity.

Just like common nouns, these nouns add -s or -es to form the plural, and the regular rules for possessives apply. So, if a proper noun needs to become plural, don't use an apostrophe:

> *We are going to visit the* ***Reeds.*** (not *We are going to visit the Reed's.*)

Likewise, add an 's to a singular proper noun to form a possessive.

> *Justice Bevan's opinion was released yesterday.*

Concrete and Abstract Nouns

Concrete nouns name something you can perceive with your five senses: dog, flower, sky. Abstract nouns name things you cannot perceive with your five senses: love, the public good, happiness.

When concrete nouns in a sentence relate to each other, they must agree in number.

> *Both* ***attorneys*** *waited until the last minute to file the* ***complaints****.*

> *Each* ***attorney*** *filed the* ***complaint*** *early.*

This rule can change, however, with abstract nouns. Some idiomatic expressions use a singular abstract noun with a plural concrete noun.

> *Three* ***witnesses*** *promised to appear, and they all kept their* ***word****.*

Countable and Uncountable Nouns

The names here probably make this very obvious. You can count countable nouns, but not uncountable nouns. For instance, try to count books. Now try to count milk.

While this might seem silly, knowing whether a noun is countable helps you correctly express some ideas. When you need to indicate quantity or relative quantity.

When you want to indicate a generic quantity of something, you use *amount* with uncountable nouns and *number* with countable nouns.

> *The* ***amount*** *of spilled milk was incredible.*
> *The* ***number*** *of books I read is astonishing.*

And when you need to indicate the opposite of more of something, you use less with uncountable nouns and fewer with countable nouns.

> *I need to drink* ***less*** *coffee.*
> *She reads* ***fewer*** *books than I do.*

Compound and Collective Nouns

(Confession: I put these together because they both begin with "C" and I wanted the list to be in parallel. That really is the only similarity.) Compound nouns are formed from two smaller words: sunflower, snowball, textbook. Collective nouns indicate a group of things as a whole: board, bunch, court.

Collective nouns can be tricky in writing when we need to replace them with a pronoun. In many instances, when speaking we use a plural pronoun. But in writing, collective nouns always take a singular pronoun.

> *The court has hearings today.* ***It*** *will be very busy.*

This makes sense, as we don't use plural verbs with collective nouns.

> *The court* ***goes*** *to Moscow next month.*

Of course, this isn't a problem for compound nouns. We would never replace a plural compound noun like sunflowers with a singular pronoun.

Appositive Nouns

Well, so much for parallelism in my list! An appositive is a noun or noun phrase that identifies or describes another noun or noun phrase. For instance:

> *I sit on the Editorial Advisory Board for* The Advocate*,* ***an official publication of the Idaho State Bar.***

There, the phrase in bold describes *The Advocate*.

Appositives have a few nuances. First, they must agree in number, gender, case, and person with the noun they refine.

> *John C. Calhoun, vice president under both John Quincy Adam's and his archrival Andrew Jackson, had a career unique in American history.*[1]

Here, both Calhoun and vice president are in the nominative case. It would be incorrect to write:

> *John C. Calhoun's career, vice president under both John Quincy Adam's and his archrival Andrew Jackson, was unique in American history.*[2]

There, Calhoun's is possessive, but vice president isn't.

Next, appositives can be restrictive or non-restrictive, and that affects punctuation. A restrictive appositive exclusively identifies the noun it refers to; a non-restrictive one explains the noun more. So, if an appositive is non-restrictive, set it off with commas, parentheses, or em-dashes.

Conclusion

Although nouns aren't a part of speech we tend to worry much about when writing, understanding a few nuances can ensure your writing is clear and correct.

Tenielle Fordyce-Ruff *is a member of the Idaho State Bar and an Associate Clinical Professor of Law at Sandra Day O'Connor College of Law Arizona State University.*

Endnotes

1. Bryan A. Garner, *The Redbook: A Manual on Legal Style* 146 (2d ed 2006).

2. *Id.*

OFFICIAL NOTICE
SUPREME COURT OF IDAHO

Chief Justice
G. Richard Bevan

Justices
Robyn M. Brody
Gregory W. Moeller
Colleen D. Zahn
Cynthia K.C. Meyer

Regular Spring Term for 2024
2nd Amended

Boise	January 10, 12, and 19
Boise	February 5, 7 and 12
U of I, Boise	February 14
Boise	April 5, 17, and 19
Moscow U of I, Lewiston	April 10 and 11
Boise	May 6, 10, 13 and 15
College of Idaho	May 8
Boise	June 3, 10 and 12
Idaho Falls	June 5
Pocatello	June 6

By Order of the Court
Melanie Gagnepain, Clerk

NOTE: The above is the official notice of the 2024 Spring Term for the Supreme Court of the State of Idaho, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

OFFICIAL NOTICE
COURT OF APPEALS OF IDAHO

Chief Justice
David W. Gratton

Judges
Molly J. Huskey
Jessica M. Lorello

Regular Spring Term for 2024
1st Amended (01/12/24)

Boise	January 9, 11, 16, and 18
Boise	February 6, 8, 13, and 15
Boise	April 9, 11, 16, and 18
Boise	May 7, 9, 14, and 16
Boise	June 4, 6, and 11

By Order of the Court
Melanie Gagnepain, Clerk

NOTE: The above is the official notice of the 2024 Spring Term for Court of Appeals of the State of Idaho, and should be preserved. A formal notice of the setting of oral argument in each case will be sent to counsel prior to each term.

Idaho Supreme Court
Oral Arguments for February 2024

(All times are local - subject to change due to COVID-19)

01/16/24

Monday, February 5, 2024 - Boise

8:50 a.m. *Creech v. State*	#50336
10:00 a.m. *Creech v. State*	#51229
11:10 a.m.	OPEN

Wednesday, February 7, 2024 - Boise

8:50 a.m. *Safaris v. Jones / Jones v. Sligar*	#50096/50097

Monday, February 12, 2024 - Boise

8:50 a.m. *Lands v. Sunset Manor*	#49916
10:00 a.m. *Marsalis v. State*	#49786
11:10 a.m. *State v. Hawking*	#50927

Wednesday, February 14, 2024 - University of Idaho - Boise

8:50 a.m. *Hill v. Blaine County*	#50088
10:00 a.m. *Hastings v. IDWR*	#50273
11:10 a.m. *State v. Ish*	#49412

Idaho Court of Appeals
Oral Arguments for February 2024

(All times are local - subject to change due to COVID-19)

01/16/24

February 8, 2024

10:30 a.m. *ISP v. Huynh*	#50465
1:30 p.m. *Erlebach v. Erlebach*	#51236

February 13, 2024

10:30 a.m. *State v. Best*	#50051
1:30 p.m. *Harris v. Dumont*	#50610

February 15, 2024

10:30 a.m. *State v. Fueller*	#50052
1:30 p.m. *Doe v. Doe (2023-42)*	#51270

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CIVIL APPEALS

Justiciability
Whether the expiration of the civil protection order rendered Appellant's challenges to that order and the statute pursuant to which it was entered moot.

Mitchell v. Ramlow
Docket No. 50287
Supreme Court

Legal Malpractice
Whether the district court erred by applying an incorrect legal standard in a legal malpractice action where Plaintiffs' attorney was alleged to have missed the statute of limitations for pursuing Plaintiffs' medical malpractice suit.

Dodd v. Jones
Docket No. 50748
Supreme Court

Privileges
Whether the district court erred by ruling that an absolute litigation privilege applied to defamatory statements Defendants were alleged to have made before, during, and after the proceedings on Plaintiff's application for a conditional use permit.

Boren v. Gadwa
Docket No. 50604
Supreme Court

Real Property
Whether the trial court abused its discretion by finding a transmutation of the parties' ownership interests in the real property based upon conduct that occurred after the parties' agreement.

Duncan v. Fackrell
Docket No. 50735
Court of Appeals

Whether the district court erred by granting summary judgment in Defendants' favor and refusing to consider parol evidence to determine Plaintiff's intent in executing a deed that transferred real property to her daughter.

Mace v. Luther
Docket No. 50834
Supreme Court

Statute Of Limitations
Whether the district court erred by rejecting Defendant's statute of limitations defense and granting Plaintiffs an easement by necessity over Defendant's property.

Easterling v. Hal Pacific Properties, LP
Docket No. 50939
Supreme Court

Statutory Interpretation
Whether Plaintiff's claims for unjust enrichment, conversion, and foreclosure of a mechanic's lien were barred under the Idaho Contractor Registration Act because Plaintiff was not registered as a contractor for the entirety of the construction contract.

Genho v. Riverdale Hot Springs, LLC
Docket No. 50294
Supreme Court

Wills And Trusts
Whether the stipulated facts were sufficient to satisfy the legal requirements for reformation of a Trust.

In the Matter of the Terteling Trust No. 6
Docket No. 50736
Supreme Court

CRIMINAL APPEALS

Evidence
Whether the district court violated Defendant's constitutional right to present a defense by excluding expert testimony that, due to her mental state, Defendant's use of force or violence upon the minor victim was not willful.

State v. Radue
Docket No. 49945
Supreme Court

Whether the trial court erred by preventing Defendant from cross-examining a state's witness regarding the credibility of an informant's out-of-court statement.

State v. Rupp
Docket No. 49775
Court of Appeals

Whether evidence of Defendant's admissions to prior drug and alcohol use were inadmissible under I.R.E. 404(b) because the fact of the prior drug and alcohol use was not relevant for any non-propensity purpose in Defendant's trial for possession of a controlled substance and possession of drug paraphernalia.

State v. Greco
Docket No. 50780
Court of Appeals

Jurisdiction
Whether the district court lacked jurisdiction over Defendant's intermediate appeal where Defendant filed his notice of appeal after a jury found him guilty but before judgment was pronounced or entered.

State v. Russell
Docket No. 50605
Court of Appeals

Juror Misconduct
Whether the district court abused its discretion by denying Defendant's motion for permission to interview jurors after jurors reported having external contact with the prosecuting attorney during deliberations.

State v. Chavez
Docket No. 49953
Supreme Court

Mistrial
Whether the district court erred by denying Defendant's motion for a mistrial made after the arresting officer improperly commented on Defendant's exercise of his Fifth Amendment rights.

State v. Avila-Mendoza
Docket No. 50079
Court of Appeals

Motion To Suppress
Whether the officer unlawfully extended the traffic stop by running Defendant's vehicle registration information through dispatch, despite having already done so prior to the stop.

State v. Tranmer
Docket No. 50077
Court of Appeals

Whether the State failed to carry its burden of showing Defendant's confession was voluntary and not the product of coercive police activity.

State v. Edwards
Docket No. 50081
Court of Appeals

Post-Conviction
Whether the allegations in Petitioner's post-conviction petition and supporting affidavit were sufficient to raise a question of material fact as to whether his guilty plea was involuntarily entered.

Collett v. State
Docket No. 50362
Court of Appeals

Sentence Review
Whether the district court abused its discretion by interpreting I.C. § 18-915(3) as requiring Defendant's sentence for battery on a jail deputy to run consecutively to his prior sentence because Defendant was in custody on alleged probation violations in the prior case at the time he committed the battery.

State v. Nugent
Docket No. 50694
Court of Appeals

Whether the district court abused its discretion by imposing a unified sentence of 50 years, with 20 years fixed, upon Defendant's convictions for two counts of sexual abuse of a minor.

State v. Hartwell
Docket No. 50599
Court of Appeals

Statutory Interpretation
Whether the district court abused its discretion by dismissing the Information and concluding that Defendant had to have personally damaged property to be guilty of riot.

State v. Rodriguez
Docket No. 50513
Supreme Court

Sufficiency of evidence
Whether the evidence was insufficient to support the jury verdicts finding Defendant guilty of battery on a law enforcement officer and resisting or obstructing an officer because the state failed to present any evidence that the officers were performing an official duty at the time Defendant was alleged to have battered or resisted them.

State v. McGuire
Docket No. 50330
Court of Appeals

Whether the evidence was insufficient to support the jury verdict finding Defendant guilty of sexual abuse of a vulnerable adult because the state failed to present any evidence that the victim was incapable of consenting to the sexual contact.

State v. Spencer
Docket No. 49966
Court of Appeals

Summarized by:
Lori Fleming
Supreme Court Staff Attorney
(208) 334-2246

M. Michael Sasser
1948 – 2023

Milton Michael Sasser ("Mike"), 75, of Eagle passed away unexpectedly at his home from an undetected health condition on December 20, 2023.

Mike was born on January 2, 1948, in Blackfoot, Idaho to Milton Michaelis Sasser and Vera Virginia Grimaud. Mike was the fourth of five children. As a child, Mike learned the lessons of hard work assisting his parents on their farm in Pingree, Idaho. He participated in 4-H for several years, was student body president at Snake River High School, and was an Idaho Boys State Delegate. Mike also attended a pre-college term for the academic disciplines of English and Debate at Northwestern University in Illinois the summer before his senior year. Mike also enjoyed playing basketball, earning himself a basketball scholarship to Weber State College in Ogden, Utah.

After his first year of college, Mike hung up his Converse Chuck Taylors and married his high school sweetheart, Deanna McPherson, embarking on an adventure as young newlyweds which found them moving from Pingree, Idaho to the East Coast in July of 1967. While living in Washington, D.C., they worked for the FBI. Mike also earned a Bachelor of Arts degree from the University of Maryland. After graduation, Mike and Deanna returned to Idaho for Mike to attend the University of Idaho College of Law. While in law school, Mike was chosen for the Idaho Law Review. Mike was admitted to the Idaho State Bar in 1974.

After law school Mike and Deanna moved to Boise where Mike's legal career began at the Ada County Prosecutor's Office with Dave Leroy as his first boss. Transitioning from the government realm to private practice, Mike worked with Jerry Quane and Fred Kennedy, partnered with Bob Hamlin, and then again with Pat Inglis. As a trial attorney, Mike paid meticulous attention to detail, had a command of the law he was presenting, and the ability to artfully argue his client's position, all while interacting professionally and in a kind manner with court staff. People within the legal community would regularly comment to Mike's family that he was one of the best trial attorneys they had worked with and that he was the consummate professional.

All of Mike's children were employed in some capacity at his firm, either as janitors or runners. Spending time with their dad at his office gave them the opportunity to share the ups and downs of their day and allowed them to see him as counselor, friend, and advisor to his clients. It also gave them a better understanding of the hard work he put in to provide them with a very fulfilling life. While the bulk of Mike's work was aligned with defending clients, one of his greatest legal moments was working alongside two of his children who are also attorneys, attaining justice for a very deserving plaintiff they represented. This collaboration was a cherished legal and personal experience for Mike. In addition, Mike's pro bono work for those who had been in accidents, or suffered from harrowing medical diagnoses and needed his brilliant legal mind and stellar work ethic, counted as some of his finest legal hours. Although he never touted his help, those Mike represented never forgot his care.

Mike is preceded in death by his parents and his sister, Linda. He is survived by his wife, Deanna; his siblings, Adrian (Peggy), Ava (Roy), and David (Kathy); his six children, Tony (Mindy), Angela (Clark), Audra (Jeff), Ashley (Brent), Adrianne (Will), and Michael (Brooke); his 19 grandchildren and three great-grandchildren; as well as several extended family members and friends.

Dale G. Higer
1941 – 2023

Dale G. Higer of Boise died Tuesday, December 19, 2023. He was a graduate of Harvard Law School and was admitted into the Idaho State Bar in 1966.

Kathryn K. Durrant
1959 – 2024

Kathryn Kay Durrant, beloved mother, daughter, sister, and friend passed away on New Year's Day at her home surrounded by her children and loved ones following a sudden and tragic illness. Kathryn was born on March 31, 1959, to George and Marilyn Durrant. She was the second oldest of eight children and the acknowledged family favorite.

Following her divorce and a 20-year hiatus from academics, Kathryn bravely returned to school where she received her associate and bachelor's degrees from Utah Valley University, graduating with her daughter, Katie. She went on to receive a Juris Doctorate from Brigham Young University. For over a decade, she worked as an attorney for the United States Social Security Administration in the Salt Lake City, Albuquerque, and Boise offices. Kathryn was admitted to the Idaho State Bar in 2020. As so perfectly represents who she was, Kathryn left that successful career to join the non-profit DisAbility Rights Idaho where she sought to help and represent the most vulnerable among us.

Kathryn is preceded in death by her mother, Marilyn. She is survived by her father; her siblings and their spouses; her children, Katie (Tim), Gary (Amber), Kevin, Emma (Justin); her 12 grandchildren; and two great-grandchildren.

Tevis W. Hull
1960 – 2024

Tevis Wayne Hull, loving husband, father of 13, and father figure to many more, passed away at age 63 on Wednesday, January 3, 2024. Born to Dan and Yvonne Hull, he lived on both coasts as a youth, moving with his father's assignments in the Navy.

Tevis graduated from Sandpoint High School in 1978, wrestled at North Idaho College, then graduated from University of Idaho with a B.S. in

communications. In that time, he married Carrie Belle Larson.

He received his J.D. from the University of Idaho College of Law in 1989. He was admitted to the Idaho State Bar in 1990. Career distinctions include helping establish the first victim/witness support program in Bonner County, as well as being the youngest elected prosecutor in the state of Idaho.

Whether helping someone get firewood, hunting, walking into the courthouse, or carrying multiple children into church services, he was most always wearing jeans and flannel. He would truly give you the shirt off his back, provided red buffalo check is your style. Tevis is also readily remembered wearing a wide smile, frequently displayed while plowing snow on his tractor or giving one of his 13 grandchildren a ride.

Tevis is survived by his wife, Carrie; his parents, Dan and Yvonne; his sisters, Diane, Joan, and Danielle; and many other family members.

Idaho Supreme Court Annual Memorial Service

STATEWIDE – The Idaho Supreme Court will hold its annual Memorial Service at 10 a.m. on Wednesday, March 6, 2024, in the Supreme Court courtroom.

The Memorial Service honors judges and members of the Idaho State Bar who passed away during the previous year. Remarks will be delivered in memory of those honored and several memorial resolutions will be read.

The Memorial Service will be streamed on Idaho in Session at the following link: https://www.idahoptv.org/shows/idahoinsession/judiciary.

2024 IOLTA Grant Recipients

STATEWIDE – Since 1985, the Idaho Law Foundation, Inc., through the Interest on Lawyers Trust Accounts ("IOLTA") grant program, has been distributing funding to programs that serve the public interest and fill critical community needs. For 2024, IOLTA distributed $300,000 in grants. The funds were distributed to programs that provide legal services to the poor, law related education for the public, and scholarships for law students. Please see the chart below for the 2024 fund distributions.

Judge Gratton Named Chief of Idaho Court of Appeals

STATEWIDE – Idaho Court of Appeals Judge David Gratton will become that court's next chief judge, effective Jan. 1, 2024. The Court of Appeals consists of four judges who, in panels of three, hear appellate cases from Idaho's trial courts as assigned by the Idaho Supreme Court. The chief judge presides over the Court of Appeals and oversees its administration.

Court rule and state law provide for the chief justice of the Idaho Supreme Court to appoint a chief judge for the Court of Appeals every two years. Chief Justice G. Richard Bevan appointed Judge Gratton to his new term in an order signed Dec. 1. Judge Gratton is the longest serving of the current judges on the Court of Appeals, having first taken his seat in 2009. This is his fourth time presiding as chief judge.

A native of Emmett, Judge Gratton spent more than 20 years as an attorney with a Boise law firm before Gov. C.L. "Butch" Otter appointed him to the appeals court. He was the first to take the court's fourth seat, which the Legislature had just created the year before. Judge Gratton succeeds Chief Judge Jessica Lorello, who remains on the court.

Attorney Tricia K. Soper Joins Mark D. Perison as New Shareholder

BOISE – Mark D. Perison, P.A. is happy to announce that Tricia K. Soper has become a shareholder of the firm, which will now be known as Perison & Soper. Tricia is a 1997 *Magna Cum Laude* graduate of the University Idaho College of Law and has been an associate at Mark D. Perison, P.A. since 2009. The firm will continue its real estate, business and estate planning practice with Tricia also handling guardianship and conservatorship cases.

Organization	2024 IOLTA Grants Summary	Award
ILF Law Related Education Program	For support of democracy education for young people. Program components include a statewide mock trial competition for high school students, teacher training, resource materials, Lawyers in the Classroom and Citizens' Law Academy.	$75,000.00
University of Idaho College of Law	To award Public Interest Fellowships to encourage students to and reward them for taking unpaid summer positions that serve the public interest.	$12,000.00
Idaho Legal Aid Services, Inc.	For civil legal assistance to low-income survivors of domestic violence, sexual assault, and stalking. Funds will be allocated among ILAS offices for client representation, including protection orders, divorce, custody, modifications, wrongful evictions, and other legal actions.	$126,000
ILF Idaho Volunteer Lawyers Program	For general support of Idaho Volunteer Lawyers Program which provides legal services to Idaho's poor through referral of appropriate civil cases to volunteer attorneys statewide.	$84,000
Treasure Valley YMCA Youth in Government program	For scholarship funds for youth who otherwise would not be able to attend the annual statewide model legislative and judicial session for high school students. - YMCA Youth in Government.	$1,500.00
Idaho 4-H Know Your Government Conference	For general support of the Idaho State 4-H Know Your Government Conference which provides 8th and 9th grade Idaho 4-H members an opportunity to participate in a mock legislative session and learn about the Idaho judicial system.	$1,500.00

Hawley Troxell Names Attorney Christopher Cook as Equity Partner

BOISE – Hawley Troxell is pleased to announce attorney, Christopher Cook has been elected by the board of directors and partners as equity partner in the Firm, effective January 1, 2024.

Christopher Cook is a member of the firm's Corporate & Business Transactions group and focuses his practice on the representation of private companies in mergers and acquisitions (asset/equity purchases and sales), and other corporate transactions. His practice includes counseling on general corporate matters, including formation, ongoing corporate compliance, and general business contracts. Christopher also practices with the firm's Real Estate Transactions group with a focus on commercial and residential purchase and sale transactions, lease transactions, and landlord/tenant rights.

Christopher earned his J.D. *cum laude* in 2010 from DePaul University College of Law in Chicago. He received his B.S.B.A. in finance, with an emphasis on international business, in 2007 from the University of Colorado, Boulder.

Christopher is admitted to practice law in Idaho and Colorado and is a member of both the Idaho and Colorado Bar Associations. He is professionally conversant in Italian and Spanish and holds dual citizenship in the United States and Italy. Christopher grew up in Sun Valley and is a graduate of Sun Valley Community School.

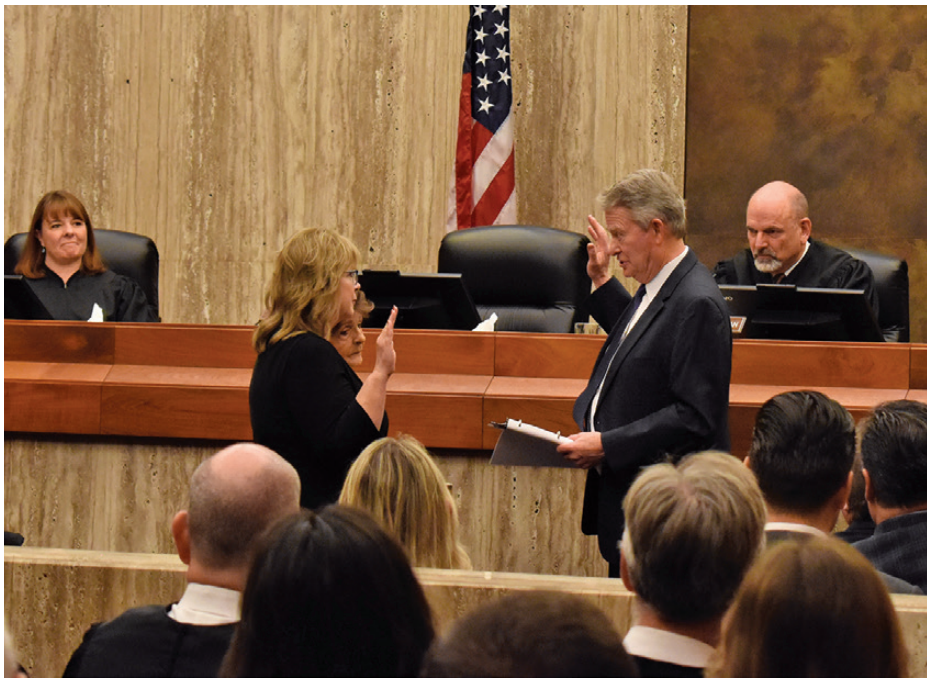
2024 Ninth Circuit Civics Contest: Deadline March 8th

STATEWIDE – The 2024 Ninth Circuit Civics Contest is open for entries! The deadline to submit is March 8, 2024. Individual students can express their thoughts and ideas in an essay of between 500 and 1,000 words. Individuals or teams of up to three students can produce a 3–5-minute video on the theme. A student may submit both an essay and a video, but only one of each.

The 2024 District of Idaho Civics Contest is open to high school students in 9th through 12th grade residing in the State of Idaho. Students from public, private, parochial and charter schools, as well as homeschooled students of equivalent grade status, may enter. More information on how to enter can be found here: https://id.uscourts.gov/clerks/2024_Civics_Contest.cfm.

Justice Cynthia Meyer Takes the Bench

BOISE – Justice Cynthia Meyer was publicly sworn in Friday morning as a member of the Idaho Supreme Court in a ceremony in Boise. Gov. Brad Little administered the oath of office.



Justice Meyer, the 60th justice to sit on the Court, has roots across the state of Idaho, having been born in Mountain Home, graduated from Pocatello High School and spent much of her career in Coeur d'Alene.

With her appointment, a majority of justices on the Idaho Supreme Court are now women. A packed courtroom heard Susan Weeks, Justice Meyer's former law partner, and Judge Destry Randles, her first staff attorney, laud the new justice's humility, humanity, wit and writing. Justice Meyer wore a star garnet – Idaho's state gem. She thanked the many people both professionally and personally who have played a role in her career, from family and friends to clerks and court security.

Justice Meyer addresses the courtroom after taking her oath. *Photo courtesy of Nate Poppino, Idaho Supreme Court Communications Manager.*

Above: Gov. Brad Little, right, swears in Justice Cynthia Meyer. *Photo courtesy of Nate Poppino, Idaho Supreme Court Communications Manager.*

Holland & Hart Announces New Firm Leadership in 2024

BOISE – Boise partner Dean Bennett was appointed leader of the Employment and Labor Practice Group. Dean represents clients to resolve complex business and competition disputes. He also helps employers resolve claims of wrongful discharge and complex wage and hour matters. He succeeds Mark Wiletsky, who has served as the group's leader since 2020.

Continuing Legal Education

February

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8 *2024 Ethics Update Part 2*
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27 *Smartphones, Tablets, and Other Devices in the Workplace*
Live Audio Stream
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29 *Environment and Natural Resources Law Section Annual CLE*
Hyatt Place Boise/Downtown &
Live Webcast

March

1 *Governance for Nonprofit and Exempt Organizations*

5 *Professionalism and Ethics Section Annual CLE*

7 *Fourth District Bar Spring Case Review*

11-15 *Batter Up: Balancing Ethics & Expertise in the Law*

13 *2024 Americans with Disabilities Act Update*

22 *Lawyer Ethics When Storing Files in the Cloud*

For more information and to register, visit www.isb.idaho.gov/CLE.

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