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A. ASSIGNMENTS OF ERROR

1. The Appellant husband, George Greenland, assigns error to the trial court's Findings of Fact and Conclusions of Law entered December 8, 2006, which characterizes the house and underlying mortgage acquired prior to marriage as community, i.e. Findings of Fact 2.8, 2.9, 2.10, and 2.11.

2. The Appellant assigns error to the trial court's Findings of Fact and Conclusions of Law granting the Respondent a lien against the home in the amount of \$51,034.89, and the monthly payment order of \$586.92 to be paid to the Respondent, i.e., Finding of Fact 2.21 and Conclusion of Law 3.8.

3. The Appellant assigns error to the trial court's Findings of Fact and Conclusions of Law which allocates a loan received from his sister Trudy Greenland as his separate liability, i.e. Finding of Fact 2.11(1).

4. The Appellant assigns error to the trial court's failure to characterize as a community liability money that the community received from the Appellant's mother in the approximate amount of \$71,500.00, i.e. Finding of Fact 2.9(3).

5. The trial court erred in entering the Decree of Dissolution of December 8, 2006 insofar as it pertains to the liabilities to be paid by each party.

6. To effectuate its division of property and liabilities, the trial court gave the Respondent a lien against the house in the amount of \$51,

034.89, with interest at the rate of 7% per annum beginning December 1, 2006, and payments at the rate of \$586.92 per month until paid. The trial court's division of property and liabilities was not fair and equitable.

B. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Where a spouse signs a quitclaim deed prepared by a title company during the refinancing of a house, where the quitclaim deed purposed to transfer separate property to the community, and where the deed was not signed with benefit of counsel, and without consideration, should the value of the property should be returned to the grantor? Assignments of Error No. 1.

2. Did the trial court properly and completely consider, characterize and value the property and liabilities of the parties? Assignment of Error No. 3, 4, and 5.

3. The marital community received approximately \$71,500 from his mother during the course of the marriage, of which the Appellant repaid \$12,000. The Appellant testified that the money was a loan. Nevertheless, the trial court failed to characterize the money received by the parties from the appellant's mother as a community liability and failed to include it in the distribution of liabilities. Did the Respondent overcome the presumption that the money received was community debt? Assignments of Error No. 4 and 5.

4. Where the trial court characterized \$1,000.00 received from the Appellant's sister as his separate liability, should the money be characterized as a community liability where the Appellant testified that the money was a loan and was spent on behalf of the community? Assignments of Error No. 3 and 5.

5. Whether the trial court failed to fairly and equitably divide community property and liabilities between the parties when the award effectively gave the Appellant a grossly disproportionate share of community debt? Assignments of Error No. 5 and 6.

6. Is the Appellant entitled to attorney's fees and costs in bringing this appeal?

C. STATEMENT OF THE CASE

1. Procedural history:

Cheryl Greenland filed a summons and petition for dissolution of marriage on November 14, 2005, listing George Greenland as the respondent. Clerk's Papers [CP] at 1-4. The parties had no children together. CP at 122. George answered the petition, and, after discovery, the matter was tried to the Honorable Bryan Chushcoff on October 26 and 30, 2006. Judge Chushcoff made an oral decision on November 1, 2006. 3RP at 4-25. In his oral ruling,

Judge Chushcoff specifically held that the family residence, although acquired by George prior to the marriage, was community property. 3RP at 13. The court gave no offset for a \$25,000 down payment on the house made prior to marriage, money obtained from refinancing the house and spent on behalf of the community, or mortgage payments made by George from the date of acquisition until the date the house was purportedly made community property. The court characterized the house as community property due to a quitclaim deed George executed in July, 1999 when he refinanced the house. The trial court stated that “it was clear that Mr. Greenland knew that he was conveying a half interest” to Cheryl Greenland. 3RP at 5, 13.

A Decree of Dissolution and Findings of Fact and Conclusions of Law, which incorporated this finding, were filed December 8, 2006. CP at 119-127; 128-136. The court entered the following findings and conclusions:

II. FINDINGS OF FACT

Upon the basis of the court records, the court *Finds:*

2.1 RESIDENCY OF PETITIONER

The Petitioner is a residence of the state of Washington.

2.2 NOTICE TO THE RESPONDENT

The respondent appeared, responded or joined in the petition.

2.3 BASIS OF PERSONAL JURISDICTION OVER THE RESPONDENT

The facts below establish person jurisdiction over the Respondent.

The respondent is presently residing in Washington.

The parties lived in Washington during their marriage and the petitioner continues to reside, or be a member of the armed forces stationed, in this state.

2.4 DATE AND PLACE OF MARRIAGE

The parties were married on July 4, 1997 at Clark County, Reno, Nevada.

2.5 STATUS OF THE PARTIES

Husband and wife separated on October 12, 2005.

2.6 STATUS OF THE MARRIAGE

The marriage is irretrievably broken and at least 90 days have elapsed since the date the petition was filed and since the date the summons was served or the respondent joined.

2.7 SEPARATION CONTRACT OR PRENUPTIAL AGREEMENT

There is no written separation contract or prenuptial agreement

2.8 COMMUNITY PROPERTY

The parties have the following real or personal community property:

1. Family home located at 6011 Laguna Lane SE, Lacey, Thurston County, Washington;
2. 1996 BMW Z-3; and
3. Household goods and furnishings.

2.9 SEPARATE PROPERTY

The husband has the following real or personal separate property:

1. 1984 GMAC Pick Up Truck;
2. 1998 Ford Taurus;
3. Husband's 1/8 interest in the estate of Betty Watson, his mother;
4. Any and all property owned prior to marriage, acquired subsequent to the date of separation or received through gift or inheritance; and
5. All property acquired by him subsequent to the date of separation.

The wife has the following real or personal separate property:

1. 2006 Chrysler Sebring;
2. Any and all property owned prior to marriage, acquired subsequent to the date of separation or received through gift or inheritance; and
3. All property acquired by her subsequent to the date of separation.

2.10 COMMUNITY LIABILITIES

The parties have incurred the following community liabilities:

1. Mortgage owing to GMAC Mortgage for family home located 6011 Laguna Lane SE,

- Lacey, Thurston County, Washington;
2. Harborstone Credit Union Credit Card;
3. Target Credit Card;
4. MBNA Credit Card;
5. Twin County Credit Union Credit Card (in husband's name only);
6. Debt owed to Trudy Greenland in the amount of \$7,500.00;
7. Debt owed to Trudy Greenland in the amount of \$1,000.00;
8. Chase Credit Card;
9. Bank of America Credit Card;
10. Wells Fargo Line of Credit, which the wife has paid in full since separation;
11. Meineke debt, which wife has paid in full since separation; and
12. Twin County Credit Union Credit Card (in wife's name only).

2.11 SEPARATE LIABILITIES

The husband as incurred the following separate liabilities:

1. Funds borrowed from Trudy Greenland in the amount of \$1,000.00;
2. 2005 Real Property Taxes associated with the family home located at 6011 Laguna Lane SE, Lacey, Thurston County, Washington;
3. Any and all credit card, revolving, loan, contract, or other accounts in husband's name unknown to wife at the time of separation; and
4. All debts incurred by him subsequent to the date of separation.

The wife has incurred the following separate liabilities:

1. Drive Financial loan for 2006 Chrysler Sebring;
2. Any and all credit card, revolving, loan, contract, or other accounts in wife's name unknown to husband at the time of separation; and
3. All debts incurred by her subsequent to the date of separation.

2.12 MAINTENANCE

Maintenance was not requested.

2.13 CONTINUING RESTRAINING ORDER

A continuing restraining order against the husband is necessary because:

The husband has a history of domestic violence and the parties have agreed to continuing restraints.

2.14 PROTECTION ORDER

Does not apply.

2.15 FEES AND COSTS

The wife has previously been awarded \$2,250.00 in fees and costs in pre-trial motions. The husband has not paid these fees to date. The fees and costs (which have not already been reduced to judgment) should be reduced to judgment and should incur interest in the amount of 12% per annum pursuant to previous court orders. There should be no additional award of fees and costs.

2.16 PREGNANCY

The wife is not pregnant.

2.17 DEPENDANT CHILDREN

The parties have no dependent children of this marriage.

2.18 JURISDICTION OVER THE CHILDREN

Does not apply because there are no dependent children.

2.19 PARENTING PLAN

Does not apply.

2.20 CHILD SUPPORT

Does not apply.

2.21 OTHER. LIEN AGAINST FAMILY HOME

The wife should receive a lien against the family home in the amount of \$51,034.89 representing an equalization of the division of assets and debts. This sum should be accrue interest in the amount of 7% per annum and should be secured by a Deed of Trust. The husband should be responsible for any reasonable attorneys fees and costs of enforcement of said Deed should be default in making the monthly payments as set forth herein. The wife should select the appropriate trustee for said Deed.

The lien should be secured by the family home and paid by the husband in monthly increments beginning December 1, 2006 and ending November 30, 2016. The husband's monthly payments should be \$586.92 until paid. The lien should be due and payable upon refinance or sale of the Laguna Lane property, or ten years from due date, specifically, December 1, 2016.

2.22 OTHER FUNDS OWED BY HUSBAND UNDER PREVIOUS COURT ORDERS

The husband has previously been ordered to pay the wife the sum of \$2,250.00 representing attorney's fees pursuant to the court's rulings on November 29, 2005, February 13, 2006, and June 5, 2006. Of this sum, \$1,500.00 was reduced to judgment bearing interest as 12% per annum on February 12, 2006, and the remaining \$750.00 is reduced to judgment herein.

In addition, the husband was ordered on February 13, 2006 to repay the wife the sum of \$1,831.86. This sum represents community debt that the husband was ordered to pay and failed to do. The total sum was reduced to judgment on February 13, 2006 bearing interest at 12% per annum. To date, the husband has paid \$1,220.90 directly to the wife, and \$610.96 plus interest remains outstanding.

III. CONCLUSIONS OF LAW

The Court makes the following conclusions of law from the foregoing findings of fact:

3.1 JURISDICTION

The court has jurisdiction to enter a decree in this matter.

3.2 GRANTING A DECREE

The parties should be granted a decree.

3.3 PREGNANCY

Does not apply.

3.4 DISPOSITION

The court should determine the marital status of the parties, make provision for a parenting plan for any minor children of the marriage, make provision for the support of any minor child of the marriage entitled to support, consider or approve provision for maintenance of either spouse, make provision for the disposition of property and liabilities of the parties, make provision for the allocation of the children as federal tax exemptions, make provision for any necessary continuing restraining orders, and make provision for the change of name of any party. The distribution of property and liabilities as set forth in the decree is fair and equitable.

3.5 CONTINUING RESTRAINING ORDER

A continuing restraining order should be entered.

3.6 PROTECTION ORDER

Does not apply.

3.7 ATTORNEY FEES AND COSTS

Attorney fees, other professional fees and costs should be paid.

3.8 OTHER. LIEN AGAIN FAMILY HOME

The wife should receive a lien against the family home in the amount of \$51,034.89 representing an equalization of the division of assets and debts. This sum should be accrue interest in the amount of 7% per annum and should be secured by a Deed of Trust. The husband should be responsible for any reasonable attorneys fees and costs of enforcement of said Deed should be default in making the monthly payments as

set forth herein. The wife should select the appropriate trustee for said Deed.

The lien should be secured by the family home and paid by the husband in monthly increments beginning December 1, 2006 and ending November 30, 2016. The husband's monthly payments should be \$586.92 until paid. The lien should be due and payable upon refinance or sale of the Laguna Lane property, or ten years from first payment due date, specifically, December 1, 2016.

3.9 OTHER. FUNDS OWNED BY HUSBAND UNDER PREVIOUS COURT ORDERS

The husband has previously been ordered to pay the wife the sum of \$2,250.00 representing attorney's fees pursuant to the court's rulings on November 29, 2005, February 13, 2006, and June 5, 2006. Of this sum, \$1,500.00 was reduced to judgment bearing interest at 12% per annum on February 12, 2006, and the remaining \$750.00 is reduced to judgment herein.

In addition, the husband was ordered on February 13, 2006 to repay the wife the sum of \$1,831.86. This sum represents community debt that the husband was ordered to pay and failed to do. The total sum was reduced to judgment on February 13, 2006 bearing interest at 12% per annum. To date, the husband has paid \$1,220.90 directly to the wife, and \$610.96 plus interest remains outstanding.

CP at 119-127. Appendix A-1 through A-9.

From the Decree and Findings of Fact and Conclusions of Law, George timely filed his Notice of Appeal on December 26, 2006. CP at 138-139.

2. **Substantive facts:**

a. **George's acquisition of the house prior to marriage in 1994.**

George Greenland bought a house located at 6100 Laguna Lane SE Lacey, Washington in 1994 for \$96,500. 3RP of Proceedings [RP] at 20, 28.¹ George and his mother, Betty Watson, initially owned the house as joint tenants. 1RP at 45; 2RP at 139. George's mother later quitclaimed the house to George. 3RP at 140. George's mother paid a down payment of \$25,000.00. 3RP at 138.

George and Cheryl lived together for approximately thirteen months, starting in June, 1996. 3RP at 27. They were married on July 4, 1997, and separated on or about October 12, 2005. 3RP at 27. The marriage lasted approximately eight years, with an eight month separation in 2003. 1RP at 45. No children were born as a result of the marriage. 1RP at 22.

George obtained a second mortgage on the house in 1996 and received \$7,500. 3RP at 31. He used \$4,000 of the money to pay off a loan on his pickup truck; the balance was for a "premarriage honeymoon" to

¹ The Verbatim Report of Proceedings consists of four volumes of transcripts [RP], which are referred to in this Brief as follows:
1RP October 26, 2006, Trial, Morning Session
2RP October 30, 2006, Trial, Afternoon Session
3RP October 30, 2006, Trial
4RP November 1, 2006, Oral Ruling

Mexico. 3RP at 31-32.

After his marriage to Cheryl in July, 1997, George began a series of three refinances. George refinanced the house in 1999 in order to achieve a lower interest rate. 3RP at 33. During the first refinance, George signed a quitclaim deed on July 14, 1999, purporting to transfer the house from his separate property to community property. 1RP at 45, 3RP at 40. Exhibit 12. The deed was generated by First American Title Insurance Company. 1RP at 46.

At trial George's counsel asked him the circumstances of the quitclaim deed. He stated:

The title company prepared these documents that we went in and signed. You get a large stack of documents with little tabs saying "sign here," and you go through and sign them.

3RP at 40.

George testified that he did not have an intent to transfer his separate property to community property. 3RP at 40. George was not represented by counsel at the time of the first refinance in 1999 and no consideration was exchanged. 3RP at 40, 41.

George refinanced the house again in 2001 at a lower interest rate. As a result of the refinance, he obtained money used to pay off \$14,000 in credit card debt incurred during the marriage. 3RP at 36. George refinanced the

house in 2003, again to obtain a lower interest rate. 3RP at 38, 39.

The house was appraised by a real estate appraiser/real estate broker at \$207,000. 3RP at 8. Exhibit 74. A second real estate appraiser/broker stated that the house could be listed \$199,900 and that it would sell for approximately \$195,000. 3RP at 100. \$86,000 was owed on the house at the time of trial. 1RP at 55.

During the marriage George received money from his mother, Betty Watson, every four to six weeks, in amounts that varied between \$1,000 and \$5,000. 3RP at 62. This money was used to pay household bills and expenses. 3RP at 62, 64. George stated the money received from his mother was intended as loans to help him and Cheryl financially survive. 3RP at 64. He received a total of approximately \$71,500 from his mother during the marriage. 3RP at 69-70. George paid back \$12,000 of the money received from his mother. 3RP at 64, 70. George's mother died in November, 2004. 1RP at 55.

During the marriage they also received \$8,500 from George's sister, Trudy Greenland, secured by a promissory note. 3RP at 71. Cheryl wrote a promissory note to Trudy Greenland in the amount of \$1,000, dated August 12, 2005. 1RP at 59.

The parties stipulated to community consumer debt in the

approximate amount of \$17,734.00. 2RP at 7-8. Cheryl asked the court to divide the community liability evenly between the parties. 2RP at 11.

b. **George's proposed distribution of assets and liabilities.**

George's counsel argued that the house is his separate property and that the characterization of the house did not change following the refinance. 3RP at 161. George argued that he should be awarded the house, subject to the underlying mortgage, and that the community debt should be divided equally. 3RP at 164. He proposed that Cheryl be awarded \$18,000 in community debt. 3RP at 171. George argued that money received from his sister and mother during the marriage created a community liability since it was spent on behalf of the community and will have to be repaid. 3RP at 74.

c. **Cheryl's proposed distribution of assets and liabilities.**

Cheryl's counsel argued that the money received from George's mother was a gift and that George be given the debt for money received from his mother. 3RP at 155. Cheryl's counsel argued that the quitclaim deed converted the house to community property. 3RP at 156. Counsel argued that the court ordered the sale of the house, and that the net proceeds be divided equally. 3RP at 156.

d. **The Court's characterization and division of assets and liabilities.**

The court valued the house at \$207,000 and found that \$86,000 was owed on the house pursuant to the GMAC mortgage. CP at 103-118. The court characterized the house as community property and granted a lien in the amount of \$51,034 in favor of Cheryl, secured by a deed of trust. 4RP at 1-16. AP at 103-118.

D. **ARGUMENT**

1. **THE TRIAL COURT ERRED BY CHARACTERIZING THE HOUSE AS COMMUNITY PROPERTY.**

a. **Standard of review for property characterization.**

A trial court's characterization of property as either separate or community is a question of law subject to de novo review. *In re Marriage of Griswold*, 112 Wn. App. 333, 339, 48 P.3d 1018 (2002); *In re Marriage of Chumbley*, 150 Wn.2d 1, 5, 74 P.3d 129 (2003); *In re Marriage of Skarbek*, 100 Wn. App. 444, 447, 997 P.2d 447 (2000).

This appeal first challenges the trial court's characterization of the house located at 6100 Laguna Lane SE as community property.

b. **The interspousal deed executed in this case was ineffective to alter the characterization of the house.**

When exercising its broad discretion, a trial court characterizes each asset as separate or community property. RCW 26.09.080. The asset is separate property if acquired before marriage; acquired during marriage by gift or inheritance²; acquired during marriage with the traceable proceeds of separate property³; or, in the case of earnings or accumulations, acquired during permanent separation.⁴ The asset is community property if it is not separate property,⁵ which generally means that an asset is community property if acquired onerously during marriage. *In re Marriage of Brown*, 100 Wn.2d 728, 737, 675 P.2d 1207 (1974); *Connell v. Francisco*, 74 Wn. App. 306, 317, 872 P.2d 1150 (1994), overruled on other grounds, 127 Wn.2d 339, 898 P.2d 831 (1995); HARRY M. CROSS, *The Community Property Law*, WASH. L. REV.13, 27-28 (1985) ("[A]n asset onerously acquired during marriage is presumptively community property whereas one lucratively acquired ordinarily is not.").

An asset is characterized as of the date of its acquisition,⁶ and its character does not generally change thereafter,⁷ regardless of whether the

² RCW 26.16.010-.020

³ *In re Marriage of Hadley*, 88 Wn.2d 649, 662, 565 P.2d 790 (1977).

⁴ RCW 26.16.140

⁵ RCW 26.16.030

⁶ *In re Marriage of Zahm*, 138 Wn.2d 213, 223, 978 P.2d 498 (1999).

⁷ *Skarbek*, 100 Wn. App. at 447, 997 P.2d 447.

asset is improved, or its value enhanced, by property of a different character,⁸ absent a written agreement between spouses.⁹

In making a property division in a dissolution under RCW 26.09.080, the court is to consider the nature and extent of community and separate property, the duration of the marriage and each spouse's economic circumstances. *In re Marriage of Tower*, 55 Wn. App. 697, 699, 780 P.2d 863 (1989). The first step of this process, emphasized above, is composed of three parts. First, the court must consider or recognize all of the assets and liabilities of the parties. Second, the court must characterize or establish the nature of the property, whether it is separate or community. Third, the court must value or establish the extent of community and separate property.

Here, the trial court incorrectly characterized the house as community property. As was made clear in *In re Marriage of DeHollander*, 53 Wn. App. 695, 700, 770 P.2d 638 (1989)

[t]he court, in a divorce action, must have in mind the correct character and status of the property as community or separate before any theory of division is ordered.

DeHollander, 53 Wn. App. at 700, citing, *Baker v. Baker*, 80 Wn.2d 736,

⁸ *Baker*, 80 Wn.2d at 745, 498 P.2d 315.

⁹ See *Hurd*, 69 Wn. App. at 51, 848 P.2d 185; *In re Marriage of Shannon*, 55 Wn. App. 137, 140, 777 P.2d 8 (1989).

745, 498 P.2d 315 (1972). In some situations, such as the case at bar, the mischaracterization is very clear, such as bonds, bank accounts and real property where the parties held title as joint tenants. In other cases, involving the acquisition and transformation of assets, the analysis is more difficult but the conclusion no less compelling.

The character of property as community or separate can be changed, so long as the parties' intent to do so is evidenced in writing. *In re Marriage of Shannon*, 55 Wn. App. 137, 777 P.2d 8 (1989). The home was acquired by George in June, 1996, prior to his marriage to Cheryl in July, 1997, and was therefore his separate property.

In this instance, the trial court found that George transferred his separate interest in the house to community property by quitclaim deed. The character of property as either separate or community is determined as of the date of its acquisition. See *In re Marriage of Hurd*, 69 Wn. App. 38, 50, 848 P.2d 185, *review denied*, 122 Wn.2d 1020, 863 P.2d 1353 (1993). Generally, property is presumed to retain its characterization throughout a marriage. See *Hurd*, 69 Wn. App. at 50. However, "a spouse's use of his or her separate funds to purchase property in the name of the other spouse, absent any other explanation, permits a presumption that the transaction was intended as a gift [to the titled spouse]." *Hurd*, 69 Wn. App. at 51 (citing *Scott v. Currie*, 7

Wn.2d 301, 308-09, 109 P.2d 526 (1941)); *In re Marriage of Olivares*, 69 Wn. App. 324, 336, 848 P.2d 1281, *review denied*, 122 Wn.2d 1009, 863 P.2d 72 (1993).

The trial court appears to have ruled that because of this presumption, the house should be characterized as George's separate property. However, the court misunderstands the presumption by finding that the quitclaim deed shows George's intent to transform the home into community property. Instead, the presumption was rebutted by George's testimony that he did so at the behest of his mother, when her health was failing, and because the title company apparently "required" the transfer at the time of the first refinance. 3RP at 40-42, 113.

c. **The transfer was made without consideration and without counsel, in violation of *Yeager*.**

The transfer was done based upon a document prepared by the American Title when George refinanced the house in 1999. In *Yeager v. Yeager*, 82 Wash. 271, 272-73, 144 P. 22 (1914), the Supreme Court held that interspousal transfers for "wholly inadequate consideration" were cancelable conveyances. This principle applied to transfers where even the majority of property transferred was separate in character, and only partially community. *Id.* Further, any such transaction occurring where a party is

unrepresented, without legal advice, and at the offices of the receiving spouse's attorney, raises questions about the justice and fairness of such transactions. *Id.* at 273-74.

Here, the quit claim deed form purporting to transfer George's interest in the house to the community was prepared by a lender. The transfer was done without consideration to George for the loss of his separate property. Moreover, the record is uncontroverted that George was not represented by counsel at time. The trial court could not conclude that George had knowledge of the character and implication of what he was transferring.

The value obtained by Cheryl at the expense of George's separate assets was \$207,000 gross dollars of property value, and was obtained wholly without consideration to George's separate assets. Thus, the burden is on Cheryl to show that the transfer was made freely, and the transaction was just and fair. *Yeager*, 82 Wash. at 274. That cannot be done here. George is entitled to avoidance of the deed on behalf of the community as per *Yeager*. The trial court's failure to address this issue is based upon its error of characterization as community. That determination should be reversed, and the court directed that the deed in this instance constitutes a cancelable conveyance. See, *In re Marriage of Marzetta*, 129 Wn. App. 607, 120 P.3d 75 (2005), *rev. denied*, 157 Wn.2d 1009; 139 P.3d 349 (2005), where a wife

did not understand that she was conveying a community property interest when she executed the quitclaim deeds, and noted that she that received no consideration for the transfer of her interest in the property and she was not represented by counsel when the quitclaim deeds were executed. Division Three found that the husband had the burden of showing that the wife's transfer of her interest in the property for inadequate consideration was made freely and that the transaction was fair and just. *Marzetta*, 129 Wn. App. at 620, citing *Yeager v. Yeager*, 82 Wash. 271, 274, 144 P. 22 (1914).

Reversal of the trial court's treatment of the house as a community asset is also warranted in light of the trial court's distribution of almost 50% of the equity in the house to Cheryl through the lien, leaving George with a remaining mortgage of \$86,000. In light of George's separate property interest in the house, manifested by the \$25,000 down payment and 38 months of mortgage payments made prior to the quit claim deed dated July, 1999, it cannot be fairly asserted that had the trial court properly characterized the house, the court would have distributed the remaining assets and liabilities in the same manner as it did. *Shannon*, 55 Wn. App. at 142; *Hurd*, 69 Wn. App. at 55-56.

- d. **The trial court improperly imposed a separate lien on the community property**

without specific and traceable contributions from separate property.

The court's "crediting" of a separate lien in the house to as an award to Cheryl was made without adequate factual basis. A spouse who makes separate contributions to community property may be awarded a separate lien against the community property. CROSS, *The Community Property Law in Washington*, 61 WASH. L. REV. 13, 71 (1986). However the separate lien is awarded only if the contributing spouse can trace the source of separate funds and did not receive reciprocal benefit. *Id.* at 69. Here, there are no separate funds or sources to trace; Cheryl's sole basis for the court to award the separate lien was the court's determination that the house was community property.

Equitable liens are generally asserted when community labor or funds of one character have enhanced property of another character. 1 WASHINGTON ST. BAR ASS'N, *Family Law Deskbook* § 38.6 (1989). Direct, often documentary, evidence of a specific contribution to the property must support such a lien. *See e.g., Jones v. Davis*, 15 Wn.2d 567, 131 P.2d 433 (1942); *Guye v. Guye*, 63 Wash. 340, 352-53, 115 Pac 732 (1911); *In re Marriage of Johnson*, 28 Wn. App. 574, 625 P.2d 720 (1981). Even where a spouse can show such a contribution, an equitable lien will not be enforced if

the community has benefited or been compensated for the contribution. CROSS, *The Community Property Law in Washington*, 61 WASH. L. REV. 13, 69 (1986). An equitable lien on a separate residence, for instance, will not be imposed when the community occupied the house. *In re Marriage of Miracle*, 101 Wn.2d 137 675 P.2d 1229 (1984); *In re Estate of Hart*, 149 Wash. 600, 271 Pac. 886 (1928).

When Washington courts have imposed a separate lien on community property, they uniformly require specific and identifiable contributions of separate assets or income to the property during the period it was characterized as community. In *In re Marriage of DeHollander*, 53 Wn. App. 695, 701, 770 P.2d 638 (1989), the Court of appeals reversed an equitable lien in favor of the wife for her separate property contributions to community property. The court required the contributing spouse to calculate to the penny the amount of separate funds used to benefit the community property, and disallowed the amount awarded over and above what was actually paid or traceable to the separate contribution. 53 Wn. App. at 700-01; see *Farrow v. Ostrom*, 16 Wn.2d 547, 555-56, 133 P.2d 974 (1963) (wife reimbursed for \$359.86 in separate funds paid on a mortgage and real estate contract for community property); see also *Pekola v. Strand*, 25 Wn.2d 98, 102, 168 P.2d 407 (1946) (community may claim lien for contributions to

separate property “to the extent only that community funds are invested”); *In re Marriage of Marshman*, 18 Wn. App. 116, 123, 567 P.2d 667 (1977) (community entitled to reimbursement to the extent community funds discharged the principal on separate property). No authority supports the trial court’s award to Cheryl of a lien on community property without a showing of specific separate property contributions to then-existing community property.

Even if a lien were proper, Cheryl presented no evidence at trial of the value of that lien. There was no testimony concerning the value of the house when it purportedly became community property. Nor was there credit given for the value of the pre-community payments to principal, including mortgage payments between its acquisition in 1996 and July, 1997, or the \$25,000 down payment. Without proof of the amount invested, this court should reject the lien. *See Pekola*, 25 Wn.2d at 102 (court rejected community’s claim for lien when party seeking lien failed to establish the amount invested by the community).

Further, Cheryl's reimbursement, once offset by the benefits Cheryl enjoyed at community expense, should be far less than \$51,034.89. *See In re Marriage of Miracle*, 101 Wn.2d 137, 139, 675 P.2d 1229 (1984) (equitable lien for community contributions to separate residence not imposed when the

community occupied the house). Cheryl lived at the house between June, 1996 and October, 2005. Testimony concerning the fair rental value of was far in excess of \$51,034 the court awarded to Cheryl. 3RP at 97-98. Cheryl enjoyed residence at the house during that period, during which time she benefited from avoiding approximately 107 months of rental or mortgage payments that she ordinarily would have had to make. She avoided 38 months of payments between June 1996 and July, 1999, when the house was conclusively George's separate property. During that time period between June 1996 and May 1997, rentals in the area ranged between \$850 and \$975 per month. 3RP at 97. Between June 1997 and May, 1998, rents ranged between \$750 and \$850. Between June, 1998 and May 1999 rents were between \$750 and \$850. 3RP at 97. Using a \$850 as the amount of rent she would ordinarily have paid, Cheryl avoided approximately \$32,300 in rental expenses during that period. The court failed to consider the benefit that she received in its distribution of liabilities.

Finally, Cheryl was more than adequately compensated for any pre-community contribution by the court's award of the liability incurring by the loan from George's mother, which benefited the community. The additional award to Cheryl of \$51,034 in equity fits none of the criteria for a proper equitable lien, and thus should be disallowed.

Moreover, as indicated in § 1(b) and (c), *supra*, the trial court erred in characterizing the house as community property. Therefore, by awarding Cheryl a lien on the property, the trial court, in effect, awarded George's separate property to her. In this regard, "it is only in exceptional circumstances that the court is warranted in awarding to one spouse all or part of the separate property of the other spouse." *Merkel v. Merkel*, 39 Wn.2d 102, 114-15, 234 P.2d 857 (1951).

The trial court's findings of fact in this regard fail to identify any exceptional circumstance that would justify distribution of a substantial separate property asset such the house to Cheryl.

In light of the foregoing, George requests the Court to reverse Finding of Fact 2.8, 2.9, 2.10, and 2.21 and remand the case for further proceedings consistent with the court's decision.

2. **THE TRIAL COURT MISCHARACTERIZED THE MONEY RECEIVED FROM GEORGE'S MOTHER AND SISTER RESPECTIVELY AS GEORGE'S SEPARATE PROPERTY AND SEPARATE LIABILITY.**

a. **The \$71,500 loan from George's mother, and the \$8500 loan from his sister, constitutes a community liability.**

George and Cheryl received money together from George's mother. The money was used to benefit the community. 3RP at 64-65. However, the

trial court did not give credit for \$71,500 of the loan proceeds was that was spent on behalf of the community. In concluding that the entire loan should be the separate debt of George, the court incorrectly applied the law to the facts.

George submits that the trial court was wrong and the fact that the money was received in increments and not secured by a written instrument, except for the \$1000.00 received from his sister secured by a promissory note, does make it his separate debt. In *In re Marriage of Hurd*, 69 Wn. App. 38, 54, 848 P.2d 185 (1993), the court stated:

Money borrowed by either spouse during marriage is presumed to be community in nature, regardless of the character of the property pledged as security. *Finley v. Finley*, 47 Wn.2d 307, 312-13, 287 P.2d 475 (1955). That is so because the loan is “presumptively for the benefit of the marital community, and presumptively is a community obligation.” *National Bank of Commerce v. Green*, 1 Wash.App. 713, 717, 463 P.2d 187 (1969). These presumptions, however, have no bearing on the character of property pledged as security, which retains its character as either separate or community property. *Glase v. Pullman State Bank*, 91 Wash. 187, 191, 157 P.488 (1916).

The trial court mischaracterized at least \$79,000 of debt.¹⁰ It is clear that the parties received the money together and it is uncontroverted that it was spent on behalf of ht community. The fact that the source of the money

¹⁰ \$71,500 received from his mother and \$8,500 received from his sister.

was George's mother and sister is irrelevant and does not convert a community debt into a separate debt.

The trial court ignores this, and stated:

We don't really know if he is going to lose anything. The executrix has a power to restrict him. She may not do so. Even assuming that she does so, this is not a whole lot different from the case, as I asked you actually about yesterday, which is, what if mom had died before they had broken up, that he had gotten \$71,000, or whatever the number is, before they had split up and spent the money, just commingle it, put it in a joint account, and they spent it on whatever they spent it on? Another year after all of the money is gone, they wind up splitting, and he says, "Why shouldn't I get my \$71,000.00 back?" Wouldn't you more ordinarily say something like, "Well, no. That's how you chose to spend your money"?

4RP at 13-14.

In characterizing the debt as George's separate liability, the court engaged in pure speculation. It is similar to a ruling that a consumer debt owed to a retail store may not be collectible because the store may choose not to enforce the debt. It is always possible the store will not consider the debt to be outstanding, but the far more likely scenario is that the debt will be collected. Moreover, the court's ruling utterly ignores the basic bedrock presumption that the debt is community in nature.

3. THE TRIAL COURT MUST MAKE A JUST AND EQUITABLE DISTRIBUTION OF PROPERTY AND LIABILITIES.

The court must have in mind the proper character of property in

dividing the parties' assets. RCW 26.09.080 requires the court to distribute all property – both community and separate – “as shall appear just and equitable” after considering:

- (1) The nature and extent of the community property;
- (2) The nature and extent of the separate property;
- (3) The duration of the marriage; and
- (4) The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse with whom the children reside the majority of the time.

RCW 26.09.080.

Reversal is required where, as here, the trial court's division of property is based on a mischaracterization of the property. *Shannon*, 55 Wn. App. at 142. Not only did the court mischaracterize the house, it improperly valued and awarded to Cheryl as an asset an “offset” of \$51,034 in the equity.

Under the trial court's division of property and liabilities, Cheryl received the following community property:

TRIAL COURT'S DISTRIBUTION
Corrected for Mischaracterization of
House and Loans)

	Cheryl	George
Residence		\$207,000

		(86,000)
Cadillac	\$ 2,000	
Household good in husband's possession	\$ 1,400	
BMW		\$ 7,000
Lien	\$51,034	(\$51,034)
Liability to Estate of Betty Watson		(\$71,500)
Liability to Trudy Greenland		(\$ 1,000)
Liability to Trudy Greenland		(\$ 7,500)
Chase credit card	(\$1,287)	
Bank of America credit card	(\$2,130)	
Wells Fargo	(\$ 200)	
Meineke	(\$ 300)	
TCCU	(\$2,500)	
Trudy Greenland	(\$1,000)	
Total asset and liability to each party	\$47,017	(\$ 3,034)

The court's primary consideration in the division of property must be the economic circumstances in which each spouse is left. *In re Marriage of Crosetto*, 82 Wn. App. 545, 557, 918 P.2d 954 (1996). The court ordered a payment of \$586.92 to Cheryl, in addition to his mortgage to maintain the house. The trial court's disproportionate award was not fair and equitable and set George on a path in which inability to meet his financial obligations to his lender and to Cheryl is likely. George was also stuck with paying back the \$71,000 that the parties borrowed and spent during their marriage.

There is no justification in this case to make such a disproportionate

division.

For a marriage of approximately eight years, considering what each party brought into the marriage and the contributions that each party made during the marriage, and the financial circumstances of each party at the time of this dissolution, George believes that Judge Chushcoff abused his discretion in this case and failed to make a just and equitable distribution of property and liabilities.

In a dissolution action, the court must make a "just and equitable" distribution of the marital property. RCW 26.09.080. A property division made during the dissolution of a marriage will be reversed on appeal only if there is a manifest abuse of discretion. *In re Marriage of Kraft*, 119 Wn.2d 438, 450, 832 P.2d 871 (1992). "A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons." *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997).

Here, the house's origin as George's separate property should be considered by the court in making its distribution.

Assuming *arguendo* that the house has been changed to community property and that George is not entitled to avoidance of the quit claim deed, the house should still be awarded to George free of a lien in order to achieve

a fair and equitable division of the assets of the parties.

A paramount concern is the economic condition in which the decree will leave the parties. *Tower*, 55 Wn. App. at 700. When this Court considers the distribution of the separate and community properties of the parties in the instant case, it is clear that that the court was extravagantly generous with Cheryl.

A more complete explanation of RCW 26.09.080 is contained in *In re Marriage of Konzen*, 103 Wn.2d 470, 477-78, 693 P.2d 97 (1985). After reciting the statute the court continues:

This court will not single out a particular factor, such as the character of the property, and require as a matter of law that it be given greater weight than other relevant factors. The statute directs the trial court to weigh all the factors, within the context of the particular circumstances of the parties, to come to a fair, just and equitable division of the property. The character of the property is a relevant factor which must be considered, but is not controlling.

The *Konzen* court then continues to iterate the standard of review when it says: “The decision of the trial court will not be disturbed on appeal absent a manifest abuse of discretion.” *Konzen*, at 478. However, in *Shannon*, at 142, it is stated:

Remand is required where (1) the trial court’s reasoning indicates that its division was significantly influenced by its characterization of the property, and (2) it is not clear that had the court properly characterized the property it would have

divided it in the same way. In such a case, remand enables the trial court to exercise its discretion in making a fair, just and equitable division on tenable grounds, that is, with the correct character of the property in mind.

In the instant case, the court has mischaracterized the house as community property and awarded a lien to Cheryl on that on that basis. The court failed to recognize the \$25,000 down payment made prior to marriage, and mortgage payments made between 1996 and 1997. With these significant errors, it would be impossible to accurately assess and appreciate the economic circumstances in which the parties will be left. This combination of errors and omissions constitutes a manifest abuse of discretion, manifestly unreasonable or exercised on untenable grounds, that no reasonable person would have made, which therefore requires reversal. *Tower*, 55 Wn. App. at 700

4. **REQUEST FOR ATTORNEY'S FEES AND COSTS ON APPEAL.**

Pursuant to RCW 26.09.140 and RAP 18.1(b), the Appellant requests this Court to award his attorney's fee and statutory costs on appeal.

RCW 26.09.140 permits the court to "order a party to pay a reasonable amount for the costs to the other party of maintaining or defending any proceeding under this chapter."

RCW 26.09.140 provides:

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorney's fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney's fees in addition to statutory costs.

The court may order that the attorney's fees be paid directly to the attorney who may enforce the order in his name.

In determining attorney fees on appeal, the Court must consider the merit of the issues and the financial resources of both parties. *In re Marriage King*, 66 Wn. App. 134, 139, 831 P.2d 1094 (1992); *In re Custody of Smith*, 137 Wn.2d 1, 969 P.2d 21 (1998). See also *In re Custody of Nunn*, 103 Wn. App. 871, 14 P.3d 175 (2000).

Even if the opponent has limited resources, based upon the totality of the circumstances it may not be inappropriate for an award of attorney's fees. See, *In re Custody of Anderson*, 77 Wn. App. 261, 890 P.2d 525 (1995).

Appropriate determination of attorney's fees and costs on appeal

should be made. This portion of the brief is submitted to comply with the requirements of RAP 18.1(b). The Appellant will comply with RAP 18.1(c).

E. CONCLUSION

It is clear that numerous significant errors were made by the trial court. This Court should reverse the division of property and liabilities, particularly the house and loans from George's mother and his sister, and remand for recognition and valuation of assets, a redistribution of property and liabilities, and an award of attorney fees and costs to George. The remand should include directions and guidelines to the trial court to assist it in its redetermination. Attorney fees and costs on appeal should be awarded to George based upon the respective need and ability to pay of the parties.

DATED: October 1, 2007.

Respectfully submitted,

THE TILLER LAW FIRM



PETER B. TILLER-WSBA 20835
Of Attorneys for George Greenland

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8 **SUPERIOR COURT OF WASHINGTON**
9 **COUNTY OF PIERCE**

10 In re the Marriage of:

11 CHERYL ANN GREENLAND,
12 Petitioner,
13 and
14 GEORGE TRUMAN GREENLAND,
15 Respondent.

NO. 05-3-03835-6

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW
(FNFCL)**

16 **I. BASIS FOR FINDINGS**

17 The findings are based on trial, which was attended by the Petitioner, the Petitioner's Lawyer, the
18 Respondent, and the Respondent's Lawyer.

19 **II. FINDINGS OF FACT**

20 Upon the basis of the court records, the court *Finds:*

21
22 **2.1 RESIDENCY OF PETITIONER**

23 The Petitioner is a residence of the state of Washington.

24
25 **2.2 NOTICE TO THE RESPONDENT**

26 The respondent appeared, responded or joined in the petition.

27
28 **2.3 BASIS OF PERSONAL JURISDICTION OVER THE RESPONDENT**

The facts below establish personal jurisdiction over the respondent.

OPPOSING COUNSEL

Law Office of
Heather Z. Bliss
535 East Dock Street, Suite 100
Tacoma, Washington 98402
Tac (253) 383-5346 Sea (253) 838-9088
Fax (253) 572-6662

1 The respondent is presently residing in Washington.

2 The parties lived in Washington during their marriage and the petitioner continues
3 to reside, or be a member of the armed forces stationed, in this state.

4 **2.4 DATE AND PLACE OF MARRIAGE**

5 The parties were married on July 4, 1997 at Clark County, Reno, Nevada.

6
7 **2.5 STATUS OF THE PARTIES**

8 Husband and wife separated on October 12, 2005.

9 **2.6 STATUS OF MARRIAGE**

10 The marriage is irretrievably broken and at least 90 days have elapsed since the date the
11 petition was filed and since the date the summons was served or the respondent joined.

12 **2.7 SEPARATION CONTRACT OR PRENUPTIAL AGREEMENT**

13 There is no written separation contract or prenuptial agreement.

14
15 **2.8 COMMUNITY PROPERTY**

16 The parties have the following real or personal community property:

- 17
18 1. Family home located at 6011 Laguna Lane SE, Lacey, Thurston County,
19 Washington;
20 2. 1996 BMW Z-3; and
21 3. Household goods and furnishings.

22 **2.9 SEPARATE PROPERTY**

23 The husband has the following real or personal separate property:

- 24 1. 1984 GMAC Pick Up Truck;
25 2. 1998 Ford Taurus;
26 3. Husband's 1/8 interest in the estate of Betty Watson, his mother;
27 4. Any and all property owned prior to marriage, acquired subsequent to the date of
28 separation or received through gift or inheritance; and
5. All property acquired by him subsequent to the date of separation.

1 The wife has the following real or personal separate property:

- 2 1. 2006 Chrysler Sebring;
- 3 2. Any and all property owned prior to marriage, acquired subsequent to the date of
- 4 separation or received through gift or inheritance; and
- 5 3. All property acquired by her subsequent to the date of separation.

6 **2.10 COMMUNITY LIABILITIES**

7 The parties have incurred the following community liabilities:

- 8 1. Mortgage owing to GMAC Mortgage for family home located 6011 Laguna Lane
- 9 SE, Lacey, Thurston County, Washington;
- 10 2. Harborstone Credit Union Credit Card;
- 11 3. Target Credit Card;
- 12 4. MBNA Credit Card;
- 13 5. Twin County Credit Union Credit Card (in husband's name only);
- 14 6. Debt owed to Trudy Greenland in the amount of \$7,500.00;
- 15 7. Debt owed to Trudy Greenland in the amount of \$1,000.00;
- 16 8. Chase Credit Card;
- 17 9. Bank of America Credit Card;
- 18 10. Wells Fargo Line of Credit, which the wife has paid in full since separation;
- 19 11. Meineke debt, which wife has paid in full since separation; and
- 20 12. Twin County Credit Union Credit Card (in wife's name only).

21 **2.11 SEPARATE LIABILITIES**

22 The husband has incurred the following separate liabilities:

- 23 1. Funds borrowed from Trudy Greenland in the amount of \$1,000.00;
- 24 2. 2005 Real Property Taxes associated with family home located at 6011 Laguna
- 25 Lane SE, Lacey, Thurston County, Washington;
- 26 3. Any and all credit card, revolving, loan, contract, or other accounts in husband's
- 27 name unknown to wife at the time of separation; and
- 28 4. All debts incurred by him subsequent to the date of separation.

The wife has incurred the following separate liabilities:

1. Drive Financial loan for 2006 Chrysler Sebring;
2. Any and all credit card, revolving, loan, contract, or other accounts in wife's name
3. All debts incurred by her subsequent to the date of separation.

1 **2.12 MAINTENANCE**

2 Maintenance was not requested.

3
4 **2.13 CONTINUING RESTRAINING ORDER**

5 A continuing restraining order against the husband is necessary because:

6 The husband has a history of domestic violence and the parties have agreed to continuing
7 restraints.

8 **2.14 PROTECTION ORDER**

9 Does not apply.

10
11 **2.15 FEES AND COSTS**

12 The wife has previously been awarded \$2,250.00 in fees and costs in pre-trial motions.
13 The husband has not paid these fees to date. The fees and costs (which have not already
14 been reduced to judgment) should be reduced to judgment and should incur interest in the
15 amount of 12% per annum pursuant to previous court orders. There should be no
16 additional award of fees and costs.

17
18 **2.16 PREGNANCY**

19 The wife is not pregnant.

20
21 **2.17 DEPENDANT CHILDREN**

22 The parties have no dependent children of this marriage.

23
24 **2.18 JURISDICTION OVER THE CHILDREN**

25 Does not apply because there are no dependent children.

26
27 **2.19 PARENTING PLAN**

28 Does not apply.

2.20 CHILD SUPPORT

Does not apply.

1 **2.21 OTHER. LIEN AGAINST FAMILY HOME**

2 The wife should receive a lien against the family home in the amount of \$51,034.89
3 representing an equalization of the division of assets and debts. This sum should be accrue
4 interest in the amount of 7% per annum and should be secured by a Deed of Trust. The
5 husband should be responsible for any reasonable attorneys fees and costs of enforcement
6 of said Deed should be default in making the monthly payments as set forth herein. The
7 wife should select the appropriate trustee for said Deed.

8 The lien should be secured by the family home and paid by the husband in monthly
9 increments beginning December 1, 2006 and ending November 30, 2016. The husband's
10 monthly payments should be \$586.92 until paid. The lien should be due and payable upon
11 refinance or sale of the Laguna Lane property, or ten years from first payment due date,
12 specifically, December 1, 2016.

13 **2.22 OTHER. FUNDS OWED BY HUSBAND UNDER PREVIOUS COURT ORDERS**

14 The husband has previously been ordered to pay the wife the sum of \$2,250.00
15 representing attorney's fees pursuant to the court's rulings on November 29, 2005,
16 February 13, 2006, and June 5, 2006. Of this sum, \$1,500.00 was reduced to judgment
17 bearing interest at 12% per annum on February 12, 2006, and the remaining \$750.00 is
18 reduced to judgment herein.

19 In addition, the husband was ordered on February 13, 2006 to repay the wife the sum of
20 \$1,831.86. This sum represents community debt that the husband was ordered to pay and
21 failed to do. The total sum was reduced to judgment on February 13, 2006 bearing interest
22 at 12% per annum. To date, the husband has paid \$1,220.90 directly to the wife, and
23 \$610.96 plus interest remains outstanding.

24 **III. CONCLUSIONS OF LAW**

25 The court makes the following conclusions of law from the foregoing findings of fact:

26 **3.1 JURISDICTION**

27 The court has jurisdiction to enter a decree in this matter.

28 **3.2 GRANTING A DECREE**

The parties should be granted a decree.

3.3 PREGNANCY

Does not apply.

1
2 **3.4 DISPOSITION**

3 The court should determine the marital status of the parties, make provision for a parenting
4 plan for any minor children of the marriage, make provision for the support of any minor
5 child of the marriage entitled to support, consider or approve provision for maintenance of
6 either spouse, make provision for the disposition of property and liabilities of the parties,
7 make provision for the allocation of the children as federal tax exemptions, make provision
8 for any necessary continuing restraining orders, and make provision for the change of name
9 of any party. The distribution of property and liabilities as set forth in the decree is fair and
10 equitable.

11 **3.5 CONTINUING RESTRAINING ORDER**

12 A continuing restraining order should be entered.

13 **3.6 PROTECTION ORDER**

14 Does not apply.

15 **3.7 ATTORNEY FEES AND COSTS**

16 Attorney fees, other professional fees and costs should be paid.

17 **3.8 OTHER. LIEN AGAINST FAMILY HOME**

18 The wife should receive a lien against the family home in the amount of \$51,034.89
19 representing an equalization of the division of assets and debts. This sum should be accrue
20 interest in the amount of 7% per annum and should be secured by a Deed of Trust. The
21 husband should be responsible for any reasonable attorneys fees and costs of enforcement
22 of said Deed should be default in making the monthly payments as set forth herein. The
23 wife should select the appropriate trustee for said Deed.

24 The lien should be secured by the family home and paid by the husband in monthly
25 increments beginning December 1, 2006 and ending November 30, 2016. The husband's
26 monthly payments should be \$586.92 until paid. The lien should be due and payable upon
27 refinance or sale of the Laguna Lane property, or ten years from first payment due date,
28 specifically, December 1, 2016.

3.9 OTHER. FUNDS OWED BY HUSBAND UNDER PREVIOUS COURT ORDERS

The husband has previously been ordered to pay the wife the sum of \$2,250.00
representing attorney's fees pursuant to the court's rulings on November 29, 2005,
February 13, 2006, and June 5, 2006. Of this sum, \$1,500.00 was reduced to judgment

1 bearing interest at 12% per annum on February 12, 2006, and the remaining \$750.00 is
2 reduced to judgment herein.

3 In addition, the husband was ordered on February 13, 2006 to repay the wife the sum of
4 \$1,831.86. This sum represents community debt that the husband was ordered to pay and
5 failed to do. The total sum was reduced to judgment on February 13, 2006 bearing interest
6 at 12% per annum. To date, the husband has paid \$1,220.90 directly to the wife, and
7 \$610.96 plus interest remains outstanding.

BRYAN CHUSHCOFF

8
9 Dated: _____

10 **Judge/Commissioner**

11
12 Presented by:

Approved for entry:

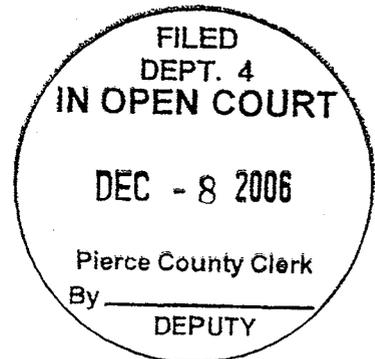
Notice of presentation waived:

13
14 *Heather Z. Bliss*
15 Heather Z. Bliss, WSBA #30482
16 Attorney for Petitioner

17 *See attached signature pg.*
18 Forrest Wagner, WSBA #16580
19 Attorney for Respondent

20
21 *Cheryl A. Greenland*
22 Cheryl A. Greenland, Petitioner

23
24 _____
25 George T. Greenland, Respondent



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bearing interest at 12% per annum on February 12, 2006, and the remaining \$750.00 is reduced to judgment herein.

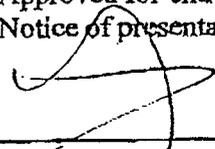
In addition, the husband was ordered on February 13, 2006 to repay the wife the sum of \$1,831.86. This sum represents community debt that the husband was ordered to pay and failed to do. The total sum was reduced to judgment on February 13, 2006 bearing interest at 12% per annum. To date, the husband has paid \$1,220.90 directly to the wife, and \$610.96 plus interest remains outstanding.

Dated: _____

Judge/Commissioner

Presented by: _____

Approved for entry:
Notice of presentation waived:



Heather Z. Bliss, WSBA #30482
Attorney for Petitioner

Forrest Wagner, WSBA #16580
Attorney for Respondent

Cheryl A. Greenland, Petitioner

George T. Greenland, Respondent

COURT OF APPEALS
DIVISION II
07 OCT -1 PM 1:07
STATE OF WASHINGTON
BY [Signature]
DEPUTY

IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION II

In re the Marriage of:

CHERYL ANN GREENLAND,

Respondent,

and

GEORGE TRUMAN GREENLAND,

Appellant.

COURT OF APPEALS NO.
35734-8-II

CERTIFICATE OF MAILING /
HAND DELIVERY

The undersigned attorney for the Appellant hereby certifies that one original and one copy of Appellant's Opening Brief were hand delivered to Court of Appeals, Division 2; copies were mailed to George T. Greenland, Appellant, and Cheryl A. Greenland, Respondent, *Pro Se*, by first class mail, postage pre-paid on October 1, 2007, at the Centralia, Washington post office addressed as follows:

CERTIFICATE OF
MAILING /
HAND DELIVERY

1

THE TILLER LAW FIRM
ATTORNEYS AT LAW
ROCK & PINE - P.O. BOX 58
CENTRALIA, WASHINGTON 98531
TELEPHONE (360) 736-9301
FACSIMILE (360) 736-5828

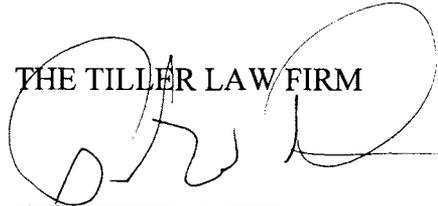
Ms. Cheryl A. Greenland
4011 246th Street Ct. E.
Spanaway, WA 98387

Mr. David Ponzoha
Clerk of the Court
WA State Court of Appeals
950 Broadway, Ste. 300
Tacoma, WA 98402-4454

Mr. George T. Greenland
6100 Laguna Lane SE
Lacey, WA 98503

Dated: October 1, 2007.

THE TILLER LAW FIRM



PETER B. TILLER – WSBA #20835
Of Attorneys for Appellant

CERTIFICATE OF
MAILING /
HAND DELIVERY

2

THE TILLER LAW FIRM
ATTORNEYS AT LAW
ROCK & PINE – P.O. BOX 58
CENTRALIA, WASHINGTON 98531
TELEPHONE (360) 736-9301
FACSIMILE (360) 736-5828