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Court of Appeals  
Division III  
State of Washington  
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No. 36122-5-III

WASHINGTON STATE COURT OF APPEALS, DIVISION III

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Lori Van De Graaf,

*Respondent,*

v.

Rod D. Van De Graaf,

*Appellant*

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ON APPEAL FROM YAKIMA COUNTY SUPERIOR COURT  
Yakima County Superior Court No. 11-3-00982-6  
(Change to legal description in the decree) (CR 60 May)

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**OPENING BRIEF RE CR 60-ELLENSBURG PROPERTY  
ADDITION**

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## I. INTRODUCTION

This appeal challenges the trial court's May 4, 2018 order allowing amendment of the February 17, 2017 divorce decree ("Decree") per CR 60(a), and the orders based on it: the August 24, 2018 entry of the "Amended Decree", adding a parcel of realty whose legal description was not used in trial; and the December 12, 2018 order requiring Appellant Rod Van de Graaf or the court clerk to sign a quit claim deed and a real estate excise tax affidavit. Reversal is required because the trial court did not obtain this Court's permission to enter the Amended Decree as required by both RAP 7.2(e) and CR 60(a), even for correcting a "clerical mistake."

The addition of property was pitched as a "correction" to the legal description in the papers for and at the hearings of May 4, August 24, and December 12. But in the excise tax affidavit Lori's counsel served before the December 12 hearing, which the commissioner ordered that Rod sign and refused to vacate, Lori swears that the six-plus acres is valued at \$654,000. *See* Appendix hereto, p. A-11. The larger parcel actually awarded at trial, 333 acres, was valued at \$690,000, both in the Decree and the Amended

Decree; the new parcel was not valued. *See* App. pp. 4-8. Rod submits this changed the property division and thus was an abuse of discretion, since it was not a mere correction of a “clerical mistake.”

The Amended Decree was entered despite the specific requirements in both CR 60(a) and RAP 7.2(e) that the appellate court reviewing the Decree give its approval *before* the order at issue is entered, which changes the order currently under review. This alone requires vacation of the Amended Decree and the December 12 Order as void since the trial court’s authority in such circumstances is only as permitted by the appellate court, and that permission had not been sought, much less obtained, whatever was the validity or error in the underlying May 4 order.

## **II. ASSIGNMENTS OF ERROR AND ISSUES ON APPEAL**

### **A. Assignments of Error.**

1. The trial court erred by entering its May 4, 2018, order granting Lori’s motion to allow amendment of the February, 2017 Decree to change the legal description to add six acres to the “Ellensburg” property awarded at trial on the basis it was a “clerical error” under CR 60(a), because a parcel number was omitted from the Decree.
2. The trial court erred by entering the “Amended Final Divorce Order” on August 24, 2018.

3. The trial court erred by failing to get permission from the appellate court reviewing the Decree before entering the Amended Decree pursuant to CR 60(a), despite the fact CR 60(a) expressly requires such permission.
4. The trial court erred on December 12, 2018, by entering an order based on the August 24 Order requiring Appellant to sign a quit claim deed and real estate excise tax affidavit to transfer the new parcel of real estate in Kittitas County, and provided for the Court Clerk to sign if Appellant did not.
5. The trial court erred on January 10, 2019, by refusing to vacate its December 12, 2018.

**B. Issues on Appeal.**

1. Where Rod timely appealed the 2017 Decree containing the legal description of the Ellensburg property, did the trial court err by failing to obtain permission from the appellate court before entering an order amending the Decree under review to add six-acres to the property awarded to Lori in 2017?
2. Must the August 24 Amended Decree and all subsequent orders based upon be vacated as void for lack of trial court authority because the August 24 Amended Decree was entered without first obtaining permission of the appellate court reviewing the Decree, which is expressly required by both RAP 7.2(e) and CR 60(a)?
4. Did the trial court abuse its discretion in amending the Decree by adding six acres to the “Ellensburg” realty awarded to Respondent where: 1) the parcel’s legal description was not before the court at trial; 2) the history of that parcel’s acquisition was that it was acquired *after* the 1977 real estate contract for the 333-acre parcel was paid off as a gift to Rod and Rick as separate property, a materially different acquisition history than for the larger 333-acre parcel such that the analysis for deeming the large parcel community property (the erroneous determination that the real estate

contract was largely paid by community funds) could not apply to the six-acre parcel and support a characterization of it as community property?

5. Did the trial court err by failing to dismiss Respondent's motion with leave to file a separate action to address the non-distributed asset, which was not disclosed at trial?
6. Are motions brought in Yakima County Superior Court exempt from the particularity requirement of CR 7(b)(1)?

### **III. STATEMENT OF THE CASE**

#### **A. Overview.**

In this divorce action begun by Respondent Lori Van de Graaf,<sup>1</sup> the trial court divided the property from the 26-year marriage after the September and October, 2016 trial by a letter decision in November 2016, which was corrected and incorporated into the final orders filed February, 17, 2017. *See* CP 114-119. The letter opinion shows that Lori received half what the trial court characterized as community property and all her separate property. *Id.* The letter's summary award of property to Lori was \$1,615,400, including \$914,000 in the UBS and other accounts, and correcting for the math error in the total. *See* CP 117.<sup>2</sup> The letter awarded Lori an

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<sup>1</sup> The parties are referred to by their first names for clarity.

<sup>2</sup> Judge McCarthy incorrectly added the figures in his award to Lori, leaving the total \$621,000 less than the stated figures.

unspecified judgment and lifetime maintenance of \$6,000/month based on the salary plus distributions that Rod had received in 2012, whether or not she remarries. CP 118-119. Significant to this appeal, the trial court awarded Lori all the interest in a parcel of land owned by Rod and his brother Rick known as the Ellensburg property, which value was placed at \$690,000. CP 115-116.

Rod appealed the decision following entry of final orders in February, 2017. Rod's appeal challenges the property division, including the award of the Ellensburg parcel to Lori, and also the maintenance award and other post-trial issues. That appeal is pending under No. 35133-5-III ("Merits Appeal") and its arguments will not be repeated.<sup>3</sup> Lori cross-appealed, but dropped her cross-appeal on June 19, 2018, when she first filed her response brief, a month before her suit money motion herein was heard. *See* Docket in No. 35133-5-III; RP 4-13.

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<sup>3</sup> There is overlap between the Merits Appeal and this appeal of the trial court's August 24, 2018, order vacating and amending the February, 2017 decree to add an additional six acres related to the Ellensburg parcel which was entered some 18 months after entry of the final orders. Appellant refers to the briefing in the Merits Appeal when that background may be helpful, since those briefs are available to the Court internally and on line once posted.

Lori Van de Graaf filed for divorce in July, 2011. However, the case did not proceed to trial until September, 2016 after many delays, including Lori's requested continuance in spring 2016. *See* She received every delay requested. She thus had every opportunity over the course of the five years and two months before trial to conduct discovery to ascertain the bounds of potential community and separate property, particularly given the marriage of 26 years and that both Lori and Appellant Rod Van de Graaf were raised in Sunnyside, where they still live.

As described in the merits brief for the underlying divorce, Rod was in business with his brother Rick and sister Karen, operating Midvale Cattle Company. Merits Appeal Opening Brief ("OB"), pp 12-13. Nevertheless, Rick took Lori's side in the divorce, testifying on her behalf at trial and providing supportive declarations after trial. Given his assistance, it stands to reason that he would have been asked about or volunteered to Lori and her lawyers any property he co-owned with his brother Rod, particularly if it were material. *See* CP 15-16 (Rod's objection to the CR 60 Motion, discussing Rick's involvement as Lori's business partner).

One parcel of property that Rick and Rod co-owned was important to operation of Midvale Cattle Company because it provided summer grazing for their parents' cattle operated in Van de Graaf Ranches, Inc. ("VDGR"). Merits Appeal OB, pp. 18. They were paid for use of that land by their parents' cattle, which paid taxes and any other nominal costs associated with owning the property. *Id.* The large parcel of property, informally known the "Ellensburg" property because it overlooks that city, was bought by the brothers on a contract from their parents over seven years before Rod married Lori. *See* App. p. A-9-10, statutory warranty fulfillment deed dated April 23, 2004, Ex. 11 at trial. The trial court's mischaracterization of the Ellensburg property as community property that was awarded entirely to Lori is a significant issue in the merits appeal. Merits Appeal OB, 41-46.

**B. Lori's Belated CR 60(b) Motion To Vacate The 2017 Decree To Get Rod To "Sign Over" An Additional Parcel Of Realty In Kittitas County.**

In mid-April, 2018, Fourteen months after entry of the 2017 Decree, Lori Van de Graaf moved under CR 60(b)(1), (5), and (11) "for an Order vacating the Findings of Fact and Conclusions of Law and Decree of Dissolution entered in the above captioned matter."

CP 1. The motion states that “the specific reasons in fact and law are as follows:” which then set out verbatim all eleven subsections of CR 60(b). *See* CP 1-2. The motion then sets out as a twelfth item, “See sworn Statement of Lori Van de Graaf and Rick Van de Graaf filed with the court on March 21, 2018.” CP 2. The motion nowhere states why it wants to have the trial court vacate the 2017 findings and Decree, nor any reasons why that or any other action should be taken. *See* CP 1-2. Neither Lori’s nor Rick’s declarations indicate why the 2017 Decree and findings should be vacated, much less that one or both should be amended and, if amended, how.

Lori’s declaration at pp. 1-2 refers to Rick’s declaration and that it says there was a trade in properties resulting in the “issuance of the new parcel numbers” and that the “total property is now referred to by the two parcel numbers,” but complains Rod never mentioned this fact to her, and she needs Rod’s cooperation to get the smaller parcel placed in her name. CP 196-197.

Rick’s declaration is cryptic and raises a host of questions. It asserts that he and Rod were involved in a trade of parcels with the neighboring landowner Kerry Klockner, but does not provide the details of the land swap and attaches a number of documents that

raised red flags, as Rod noted in his response (CP 9-22, esp. pp. 11-13, CP 19-21), at the May 4 hearing (RP 13), and in his declaration on reconsideration. CP 221-227. Among other issues, the were altered by writing over their father's name and putting in Rick's and Rod's.<sup>4</sup> *Id.* As Rod's argued, if there was a trade in properties, where did Rick and Rod acquire the property they traded with Mr. Klockner, since the parcel traded was not contiguous with their 333 acres? *See* CP 19:1-17 (response); CP 23 (map of the parcels), reproduced in the Appendix hereto at A-1. *See* RP 13, 16-17, Rather, the most likely

Rod's response marched through each of the asserted provisions of CR 60(b) that were referenced in Lori's motion, subsections (1), (5), and (11), showing why relief could not be provided under any of those provisions. *See* CP 15-20. In the course of that response Rod also made the substantive argument that the property "was not before the court at trial nor included in the Court's final property division in the Final Decree" and that Lori's

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<sup>4</sup> One quit claim deed proffered by Rick has the oddity of being signed by the notary but *not* by the person the notary says signed the document, Mr. Klockner. How the copy got made and kept is not explained.

relief was to begin an action for a partition, the normal manner of addressing property not distributed in a dissolution that may have been subject to division. CP 13, 22.

Rod's counsel pointed out that the only legal description before the trial court was for the large parcel, that the evidence from the Kittitas County Auditor's office did not support a "trade" of properties as the excise tax affidavit reflects a sale occurred (RP 18:18-22), and that this new parcel was not a part of the 1977 real estate contract, nor the 2004 fulfillment deed, and thus was not subject to the same rationale that the judge had used at trial to characterize the large parcel as community property rather than separate – that the majority of payments were made during the marriage. Rather, as Rod's response indicated, there was not a trade but two sales and Rick and Rod had received the parcel Rick asserts that they "traded" as a gift from their parents in 2004. *See* CP 19:7-16 (discussing that the alteration of documents to write over their father Dick's name helped show that the "trade" was made possible by a gift of the land from their parents.

Rod's response also raised procedural issues, the most important that the motion was defective for failing to give "proper

notice of the substantive facts and issues, legal authority and errors of law upon which petitioner relies in bringing her motion to vacate, so that respondent can adequately respond to the facts and errors,” an argument grounded in the particularity requirement of CR 7(b)(1) as well as the provisions of CR 60, both founded in fundamental fairness. CP 12-13.<sup>5</sup>

Rod’s declaration pointed out that the documents proffered by Rick were altered on their face (replacing their father’s name with their names), were dated in November and December 2004, had been in Rick’s possession and not Rod’s, that none of them were presented to the judge in the dissolution trial, and that neither Rick nor Lori explained why they were not. *See* CP 222 ¶¶ 2-4. He also explains how Rick’s explanation is contradicted by the Kittitas County Assessor’s online records. *See* CP 222-223, ¶¶ 5-9 and the referenced exhibits 1-4. In sum, the parcel which Lori wanted to have signed over to her, given parcel No. 20588, “was an overlooked

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<sup>5</sup> This allowed Lori’s counsel to raise in his oral reply argument, for the first time, that the purpose of the motion was “to correct a clerical error,” RP 18:3-4, the ground ultimately used by the trial court.

and undistributed asset; it was not included in the Court's division of property; it should remain entitled in my name." CP 223, ¶ 12.

Rod's objection pointed out that "This real property in Kittitas County, identified as Assessor's Parcel No. 20588, was not before the Court at trial, nor included in the Court's final property division in the Final Decree. . . . If Lori believes the parcel was community in nature, then she should commence an independent action for partition," CP 13, citing *Molvik v. Molvik*, 31 Wn.App. 133, 639 P.2d 238 (1982). Rod's objection reviewed the rulings leading to the 2017 Decree and pointed out that there was never reference to a second parcel so that it was not and could not have been included in the 2017 Decree such that it should be addressed in a partition, and that since it was co-owned by Rod's brother Rick who had become business partners with Lori and testified on her behalf at the divorce trial, he knew as much about that parcel as did Rod. CP 15-16.

Rod also objected to the proposal to vacate and amend the 2017 Decree to add more acres to the Ellensburg property on procedural bases. CP 5-8 (motion to strike); CP 9-26 (response to CR 60 motion). The primary concern was that Lori's supporting

declaration was deficient for failing to provide “a concise statement of the facts or errors upon which the motion is based” as required by CR 60(e). *See* CP 9-10, 12-13. Rod’s objection notes that the failure to provide the “concise statement of the facts or errors on which the motion is based” in either the motion or declaration meant “the respondent and the Court are left to speculate about how each of the grounds are related to or are supported by the statements in the petitioner’s declarations,” particularly since the motion itself “offers no reference to case law or other legal authority for the Court to consider, rely upon, and rule.” *See* CP 12-13 (recitation of the grounds for relief under the rule, with nothing more, is inadequate to support a motion or the trial court’s ruling).

Judge McCarthy ruled at the May 5 hearing that he would allow the amendment to the Decree as a “clerical error” under CR 60(a) rather than CR 60(b) “because a parcel number was omitted in the decree and this is an attempt to correct that omission,” and Lori’s counsel said he would note for presentation an amended decree. RP 20. *See* CP 27 (written order). Rod moved for reconsideration, which included additional documents from Rod and his declaration, (CP 28-35 (motion), CP \_\_ - \_\_ (declaration)). The motion addressed

the law that allows for relief under CR 60(a) which could not have been addressed at the hearing since that basis for relief was not raised until the oral reply argument. *See* CP 31-35. Reconsideration was denied. CP 36.

**C. Objection To Entry Of The Amended Decree Based On The Requirement Of Prior Appellate Court Approval And Entry of The Amended Decree.**

When the presentation was finally set for August 24, Rod filed his objection to entry of the Amended Decree because, among other reasons, approval was required before entry from the appellate court reviewing the order to be affected under both CR 60(a) and RAP 7.2(e). CP 120-140. Lori's counsel characterized the exercise as "merely correcting a legal description" of the property which he asserted "does not change a decision as contemplated by RAP 7.2(e) (CP 142:17), conveniently ignoring the fact that the clerical mistake provision of CR 60(a) expressly requires appellate court approval where the underlying order is on review. At the hearing the trial court ruled that he believed he was correcting "a scrivener's error" that did not, in his view, "implicate any issue that is before the Court of Appeals," that it did not think it "changes anything" so that RAP 7.2(e) did not apply, and entered the order. RP 43-44.

**D. Lori’s “Notice Of Presentation” in December 2018 To Have A Quit Claim Deed And Excise Tax Affidavit Signed Which Stated The Additional Six-Acre Parcel Is Worth \$654,000.**

Over three months after entry of the Amended Decree Lori filed and served a one-page “notice of presentation” for December 12, 2018, CP 143, only the service copy of which included a proposed quit claim deed and excise tax affidavit for the new six-acre parcel that she wanted Rod to sign. *See* CP 145-153, Rod’s motion to strike the hearing and objection since counsel was unavailable and the noted date was short, untimely notice under the applicable rules, and there was no apparent need for expedited action – certainly none was claimed in the notice of presentation. CP 145-153, and his later motion to vacate the order entered on the 12<sup>th</sup>, at CP 170-185 (memorandum), CP 156-169 (declaration of counsel) and CP 186-191 (supplemental declaration of counsel).

As with the CR 60 motion heard in May, Rod objected in part because the moving papers were so vague and did not meet any of the normal requirements of the rules, (CP 147-148, ¶¶ 7-11), and reinforced in the later motion to vacate that it violated the

particularity requirements of the rules, including CR 7(b)(1). CP 171-174.

The motion to vacate was heard on January 10, 2019 and denied, based in part on oral representations by Lori's counsel as to the forms of the excise tax affidavits for the large and new parcels, none of which were part of moving or response papers, nor provided in court, and which Rod's trial counsel determined after returning to her office were materially incorrect. *See* Supp CP \_\_ - \_\_; App. A12-26 (motion to reconsider denial of motion to vacate and declaration of counsel filed 1/15/19).

#### **IV. ARGUMENT**

##### **A. Standard of Review.**

Review of decisions under CR 60 are for an abuse of discretion. *Haley v. Highland*, 142 Wn.2d 135, 156, 12 P.3d 119 (2000); *Persinger v. Persinger*, 188 Wn. App. 606, 608-609, 355 P.3d 291 (2015). "A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons," which include failing to apply the correct legal standard or entering an order where the facts do not meet the legal standard. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362

(1997) (reversing trial court). A trial court necessarily abuses its discretion when it uses an incorrect legal standard. *Physicians Ins. Exc. v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993) (reversing trial court). *Accord, In re Marriage of Chandola*, 180 Wn.2d 632, 642, 653-56, 327 P.3d 644 (2014) (trial court's discretion is "cabined" by applicable statutory provisions, reversing trial court). "Appellate review of a CR 60(b) decision is limited to the trial court's decision, not the underlying order the party seeks to vacate." *Persinger, supra*.

**B. Whatever The Validity Of The May 4 Order, The August 24 Amended Decree And Subsequent Orders Based On It Must Be Vacated As Void Because The Trial Court Had No Authority To Enter The Amended Decree Without Appellate Permission.**

Whether the trial court abused its discretion in granting Lori's motion on May 4 to amend the Decree with a changed and an additional legal description, it lacked the legal authority to actually enter the final Amended Decree without this Court's approval because the Decree was then pending on review. RAP 7.2(e) is clear on this point. Moreover, that requirement is repeated in the text of CR 60(a) to make it expressly applicable where an apparent "clerical mistake" is being corrected to an order on review. Lori's counsel

did not cite or rely on that provision but the trial court did by name. The last sentence of the rule states that “Such [clerical mistakes] may be so corrected before review is accepted by an appellate court, **and thereafter may be corrected pursuant to RAP 7.2(e).**” CR 60(a) (emphasis added). RAP 7.2(e) commands appellate permission when “the trial court determination will change a decision then being reviewed by the appellate court, . . .”

The appellate rule is simple and straightforward. It is readily apparent that the determination changed the decision being reviewed, as seen by a comparison of the “Summary of Real Property Judgment” for the 2017 Decree and the 2018 Amended Decree, which are inserted here for easy comparison.

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**Legal Description of Property Awarded  
2/2017, Ex. B (CP 35133-5 000772-773)**

(12) Ellensburg Property - NKA Hungry Junction Road - Parcel No. 18-18-14010-0002; Legal Described as follows: The East 1/2 of the Northwest 1/4 and the Southwest 1/4 of Section 14, Township 18 North, Range 18 E.W.M.; EXCEPT a tract of land situated in the Southeast 1/4 of the Southwest 1/4 of said Section, described as follows:

Beginning at a point on the north right-of-way line of the County Road which is 30 feet north of a point 557 feet west of the quarter section corner on the south boundary of Section 14; thence west on said north line 660 feet; thence north parallel with the quarter section line 660 feet; thence east parallel with the south

boundary of said Section, 660 feet; thence south 660 feet to the point of beginning.

AND EXCEPT right-of-way for county roads along the west and south boundary lines thereof.

AND the West 1/2 of the Northeast 1/4 and the Northwest 1/4 of the Southeast 1/4 of Section 14, Township 18 north, Range 18 E.W.M., records of said county. - Value \$690,000.00; (the community interest in this property which is 50% of the total value);

**Legal Description of Property Awarded,  
8/2018, Ex. B (CP 36122-5 re: CR 60  
Motion 00088-89)**

(12) Ellensburg Property - NKA Hungry Junction Road - Parcel No. 20588; Legally Described as follows: That portion of the East 1/2 of the Northwest 1/4 lying westerly of the Kittitas Reclamation District Lateral N.B. 15.2 - 1.9 - 2.1 in Section 14, Township 18 North, Range 18 East, W.M., in the County of Kittitas, State of Washington.

(13) Ellensburg Property - NKA Hungry Junction Road - Parcel No. 835436; Legally Described as follows: The East 1/2 of the Northwest 1/4 and the Southwest 1/4 of Section 14, Township 18 North, Range 18, E.W.M.; Except a tract of land situated in the Southeast 1/4 of the Southwest 1/4 of said Section, described as

follows: Beginning at a point on the north right-of-way line of the County Road which is 30 feet north of a point 557 feet west of the quarter section corner on the south boundary of Section 14; thence west on said north line 660 feet; thence north parallel with the quarter section line 660 feet; thence east parallel with the south boundary of said Section 660 feet; thence south 660 feet to the point of beginning. AND EXCEPT right-of-way for county roads the west and south boundary lines thereof AND the West V2 of the Northeast 1/4 of the Northwest 1/4 of the Southeast 1/4 of Scctign; 4, Towns 8 North, Ranger 8, F. 13 ;tle records of said county. (Value \$690,000 the community interest in this property which is 50% of the total value)

The trial court erred when determining that the obvious change to the Decree under review did not invoke the requirement of prior appellate approval. This is a decision the appellate court should make in the first instance, particularly given the issues of characterization and valuation of the additional parcel.

There is good reason for the rule. If there is going to be a moving target for what is on review, the appellate court wants to retain control over the issues and orders then under its jurisdiction – if anything on review is going to be changed, the rule says the appellate court has to approve before that order can be entered.

Here the Amended Decree dramatically changed the orders on review. First, as noted by Rod below, it added a piece of property with a different acquisition history than the large parcel currently on review. Even assuming that the trial court was correct in ruling the large parcel was community property because, even though it was acquired eight years before the marriage the majority of payments were made after the marriage, that analysis cannot apply to this new parcel. If, as it appears, the property was gifted to Rick and Rod by their parents in late 2004 to effectuate an exchange with Mr. Klockner, it is presumptively separate property. And since it was

not being bought on contract, there is no payment history to provide a similar analysis in terms of its character.

Second, based on the text of the Amended Decree and Lori's sworn statement in the proffered excise tax affidavit she said Rod had to sign, and which the superior court commissioner ordered him to sign, the addition of this parcel materially changes the property division because it adds a large value to the assets awarded Lori without taking that into account.

When the Amended Decree was presented for entry, neither parcel was given a value. The new parcel was item 12 of "Exhibit 'B'" with its legal description, and the large parcel's legal description was in item 13. When it was signed to be entered, however, while Judge McCarthy did not specify a value for item 12, he wrote in the same value for item 13 as in the original Decree -- \$690,000. *See* CP 88-89, Appendix. A-7. The language of the 2017 property description and valuation is set out side-by-side with the 2018 Amended Decree's property description in the Appendix to aid comparison, App. p. A-4.

The result in 2018 that is plain from review of the two decrees is the addition of a significant asset listed as awarded to Lori

that is not valued at all – an error in itself because the trial court in a dissolution has an obligation to value all the property of the parties, particularly the large, material pieces of real property.

But in December, Rod was served with Lori's sworn statement in the proposed real estate excise tax affidavit that the six acres she wanted him to sign over to her was valued at \$654,000. App A-11, CP 191. This materially changes the rulings on review. It changes the financial award to Lori, and the relative awards between her and Rod. If, as may be the case, she seeks to take the land out of agriculture and develop it, back taxes will have to be paid for the years of tax breaks that accrued because the land was kept agricultural. *See* the Motion to Vacate papers, CP 156-169; 170-176. Some of that would redound to Rod as the prior owner. *Id.* If that penalty is to be visited on him as part of the divorce, it too must be taken into account for the property division to be fair just and equitable. So it changes that assessment as well.

Finally, no characterization was made of the property as separate or community. As noted *supra*, Rod's counsel raised the issue to the trial court and that the prior analysis for the large parcel cannot apply because the new, smaller parcel was not acquired by a

real estate contract as was the large parcel; the rationale for designating the large parcel as community simply would not and could not apply. Particularly if it is a gift from their parents, as seems most likely given the evidence in the record to date, it would be separate property and, again, change the calculus of the overall property division, where the trial court is to have in mind the correct character of the property at issue, as the trial court awarded each party their separate property in making its overall division.

Finally, there is the public policy issue at play. Trial courts should take a deferential view to requiring the parties get appellate approval when considering entering orders that may possibly affect or change an order then under review, and refrain from entry unless and until permission is granted from the appellate court. That is not a difficult procedure, nor is it typically time-consuming. It is respectful to let the appellate court make that call. Otherwise, the result is a separate appeal of the order and its entry. Though RAP 7.2(e) anticipates such an appeal will be consolidated or otherwise linked with the pending appeal as it was here, in this case it also generated additional trial court proceedings for no apparent urgent

reason given the pending appeal which was expedited to join the dissolution appeal – and none was stated.

**C. The Trial Court Abused Its Discretion By Amending The Decree Under CR 60(a) To Add Six Acres To The Ellensburg Parcel Testified To At Trial, Where The Realty Was Acquired 27 Years After The Large Parcel In A Different Manner Such That The Trial Court’s Basis For Characterizing The Large Parcel As Community Property Could Not Apply.**

**1. It is an abuse of discretion to amend orders under CR 60(a) to change a property description where, as here, the error is judicial in nature.**

It is error to amend a judgment under CR 60(a) to correct a legal description of the land where the correct legal description never was before the trial court. *See Foster v. Knutson*, 10 Wn. App. 175, 176-177, 516 P.2d 7786 (1973). In *Foster* this Court concluded that “an issue of substance rather than a mere mechanical mistake” cannot constitute a “clerical mistake.” *Id.*, at 177.

*Foster* was a foreclosure action in which the legal descriptions the party wanted to be changed as a clerical mistake were the real property legal descriptions stated in the complaint, an exhibit, and a stipulation that it was the properties in that exhibit that were being foreclosed. *Id.* In short, the properties the party wanted to add to the judgment had not been before the trial court, nor

brought to its attention by the parties. But because they had not been brought to the trial court's attention, their omission was no mere "mechanical mistake" that could be corrected under CR 60(a). *See id.* This makes sense because trial courts can only intend to address properties brought to its attention and, particularly, through the legal description so there is no mistake about what is being acted upon. It is not the court's role to search out legal descriptions.

As pointed out in the facts and prior section, the same is true here as in *Foster* – the legal description of the second parcel was never brought to the court's attention, nor was the notion of two parcels. Thus, the issue of adding the six-acre parcel can only be one of substance and not mere form. *Foster*. This is particularly true given the valuation issues noted above.

Normally an omitted property is subject to a separate action for partition or division in the normal course and addressed after first determining whether it is separate or community in character<sup>6</sup> –

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<sup>6</sup> *See e.g., Stokes v. Polley*, 145 Wn.2d 341, 349, 37 P.2d 1211 (2001), *Ambrose v. Moore*, 46 Wash. 463, 90 Pac. 588 (1907), both standing for the proposition that when separate property of a party is not disposed of in a decree, it remains the separate property of that spouse after the decree. Where the property is community property, the ex-spouses are treated as tenants in common and a separate action is required to partition or oust one spouse. *In re Kelly and Moesslang*, 170 Wn. App. 722, 736, 287 P.3d 12 (2012), relying on *Ambrose*.

unless this court vacates the property division for the reasons given in Rod's merits briefs and remands back for new proceedings that can then address both parcels in the new property division, once the new parcel is characterized and valued.

**2. Changing or adding to a legal description, particularly adding new acreage to the 2017 property division that Lori declares is valued at \$640,000 is not correcting a "clerical mistake." Lori's motion failed to meet any of the criteria under Rule 60.**

The Ellensburg realty awarded in the 2017 Decree was bought by Rod and his brother Rick in 1977, before Rod's and Lori's 1985 marriage. Rod argued the trial court mis-characterized it as community property given its separate character when acquired. *See* Merits Appeal OB 41-46; Merits Appeal RPY 21-22. Further, the pleadings on the CR 60 motion indicate the "new" parcel was obtained either by a swap of acreage in 2004 or by a gift – the trail is decidedly unclear. *See* CP 15; 19-20; 222-223; Supp. CP \_\_\_ - \_\_\_, App A-12-26. This is particularly important because the nature the property – whether community or separate – governs its status when it comes to light and may affect whether the realty is partitioned (as often can occur with community real property) or

retained by the owner as his separate property.

The court's letter ruling and the affidavit are the best evidence of this disconnect:

In summary, the Court has made the following division of property:

To Petitioner		To Respondent	
Midvale	0	House	\$1420000
Eburg	\$690000	Midvale	\$2000000
UBS	\$816000	Eburg	0
Other Accts	\$98000	Beneficial	\$116000
Zebra	\$1000	Other Accts	\$36000
Remington	\$400	Mounts	\$36000
HFG	\$10000	Guns	\$8800
Total	\$994400	HFG	\$33000
		Total	\$3649800

**35133-5 000786**

Department of Revenue  
Washington State

**REAL ESTATE EXCISE TAX AFFIDAVIT**

CHAPTER 32.05 RCW - CHAPTER 43B-61A WAC

This form is your receipt when stamped by cashier.

PLEASE TYPE OR PRINT  
THIS AFFIDAVIT WILL NOT BE ACCEPTED UNLESS ALL AREAS ON ALL PAGES ARE FULLY COMPLETED  
(See back of this page for instructions)

Check box if marital rate applies % Fair percentage if owner(s) is/are not to be taxed.

<p><b>1</b> Name: <u>Rod Van de Graaf</u></p> <p>SELLER (S)</p> <p>Mailing Address: <u>5652 Gao Road</u></p> <p>City/State/Zip: <u>Outlook, WA 98938</u></p> <p>Phone No. (including area code): _____</p> <p>Send all property tax correspondence to: <input checked="" type="checkbox"/> Same as Buyer/Owner</p> <p>Name: _____</p> <p>Mailing Address: _____</p> <p>City/State/Zip: _____</p> <p>Phone No. (including area code): _____</p>	<p><b>2</b> Name: <u>Lod Van de Graaf</u></p> <p>BUYER (S)</p> <p>Mailing Address: <u>623 Yakima Valley Highway PMS 140</u></p> <p>City/State/Zip: <u>Sunnyside, WA 98944</u></p> <p>Phone No. (including area code): <u>509-840-1508</u></p> <p>List all real and personal property tax parcel accounts where - check box if personal property</p> <table border="1" style="width: 100%;"> <tr> <td>Parcel Account No.</td> <td>Assessed Value</td> </tr> <tr> <td><u>02598</u></td> <td><u>\$651,000.00</u></td> </tr> <tr> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> </tr> </table>	Parcel Account No.	Assessed Value	<u>02598</u>	<u>\$651,000.00</u>				
Parcel Account No.	Assessed Value								
<u>02598</u>	<u>\$651,000.00</u>								

**3** Street address of property: NSA Hunter Junction Road

This property is located in Killbuck County

Check box if any of the listed parcels are being segregated from another parcel, no part of a boundary line adjustment or parcel being merged.

Legal description of property if more space is needed, you may attach a separate sheet to each page of this affidavit.  
That portion of the Southwest Quarter of the Northwest Quarter lying Southwesterly of the North Branch Canal of Killbuck Reclamation District in Section 14, Township 18, North Range 18 East T18M, in the County of Kootenai, State of Washington.

According to Lori's sworn affidavit, if the CR 60 ruling stands and Rod signs the quit claim deed, Lori will receive the two parcels of property overlooking Ellensburg worth a total of

\$1,344,000. This materially changes the property division first made by Judge McCarthy in November, 2016, confirmed in his final orders of February 17, 2017, and re-affirmed by him verbally in May and August, 2018. The change was issue of substance. *Foster*, *Supra*.

The May 4, 2018 order allowing amendment to add the new parcel was an abuse of discretion and must be vacated (along with the overall property division for the reasons stated in the Merits Appeal) and the matter remanded for a new trial.

**D. The Orders based On Motions Brought In Violation Of CR 7(b)(1) Should All Be Vacated To Reinforce That The Normal Civil Rules And Procedure Do Apply In Yakima County Superior Court, Including The Particularity Requirement For Motions.**

As was argued in the related appeal over the suit money award, No. 36282-5-III, there is a minimum basis of pleading required by the civil rules which applies in all superior courts, but as set out in the facts *supra*, those rules were ignored. *See* No. 36282-5-III OB at pp 15-20. This needs to be addressed because it has become the normal mode of proceeding in Yakima County Superior Court, at least in the context of this case. *See* 1/10/19 order denying relief because “only procedural objections” were raised, Supp. CP

\_\_\_\_. But it is not in accord with the accepted law and procedure of our State.

Every motion made to the trial court “must specify the grounds for the relief sought ‘with particularity’, and courts may not consider grounds not stated in the motion.” *Orsi v. Aetna Ins. Co.*, 41 Wn.App. 233, 247, 703 P.2d 1053 (1985) (citations omitted). Specifically, “CR 7(b)(1) requires that a motion ‘shall state with particularity the grounds therefor, and shall set forth the relief or order sought.’” *Pamelin Indus., Inc. v. Sheen–U.S.A., Inc.*, 95 Wn.2d 398, 402, 622 P.2d 1270 (1981). As the Court noted in *Pamelin Industries*, both parts of the express requirements of CR 7(b)(1) must be met – stating the relief sought *and* stating “**with particularity** the grounds therefore.” *Id.*, quoting the rule (emphasis added). The Court noted that the motion in that case “stated ‘with particularity the grounds therefor’ ” by means of the affidavit attached to the motion, which provided very specific evidence of facts supporting the motion. *Id.*<sup>7</sup>

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<sup>7</sup> The Supreme Court concluded at 95 Wn.2d at 402 (emphasis added):

It is precisely that sort of specific affidavit providing the factual basis for the relief requested that was missing in Lori's CR 60 motion heard on May 4 and also on the so-called "presentation" heard on December 12. As indicated in *Pamelin Industries*, without that statement of grounds with particularity in the motion and accompanying affidavits, the trial court was without jurisdiction to grant the relief requested. And more to the point, it violates fundamental fairness to not give reasons for the motion until at the end of the reply oral argument – that gives the opposing party little if any chance to do a proper response and for the normal adversarial process to have genuine meaning. It also ultimately does not help the trial courts since they get incomplete information, and then only piecemeal. It is difficult at best to make a correct decision if not given a full deck to play with.

Unfortunately, this played out both in Lori's motions – less than bare bones, one-page pleadings saying nothing – and in the

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It is not necessary for a moving party to analyze CR 37 in order to get relief under its provisions. **It is enough to state the relief sought and the grounds justifying the relief.** CR 7(b)(1). Where the facts fit the criteria of CR 37(d), a party is entitled to CR 37(b)(2)(C) relief. **Plaintiffs' motion and supporting affidavit did just that,** and the relief granted by the court did not exceed the scope of the motion. The trial court thus had jurisdiction to strike the pleadings and enter its default judgment. CR 37(d).

motion to vacate heard on January 10, where the basis given orally at the hearing and apparently relied on by the trial court turned out to not be correct. *See* App A-12-26. Here both Rod and the trial courts were given partial, incomplete information. It is neither fair nor right, nor consonant with the law.

## V. CONCLUSION

Appellant Rod Van de Graaf respectfully asks the Court to vacate the May 4, 2018 order and the August 24, 2018 and December 12, 2018 orders, and remand with the merits appeal for a new property division, for the reasons given above. To the extent the Court determines there was any impropriety in bringing the underlying motions in the trial court, Appellant requests an award of fees for this proceeding here and below.

Respectfully submitted this 18<sup>th</sup> day of January, 2019.

**CARNEY BADLEY SPELLMAN, P.S.**

By   
Gregory M. Miller, WSBA No. 14459  
Jason W. Anderson, WSBA No. 30512

*Attorneys for Rod D. Van De Graaf*

## CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

David Hazel Hazel & Hazel 1420 Summitview Yakima, WA 98902 P: (509) 453-9181 F: (509) 457-3756 E: <a href="mailto:daveh@davidhazel.com">daveh@davidhazel.com</a>	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Messenger <input type="checkbox"/> email <input checked="" type="checkbox"/> Other – via Portal
Catherine W. Smith Valerie A. Villacin Smith Goodfriend, PS 1619 8 <sup>th</sup> Avenue North Seattle, WA 98109 P: (206) 624-0974 F: (206) 624-0809 E: <a href="mailto:cate@washingtonappeals.com">cate@washingtonappeals.com</a> <a href="mailto:valerie@washingtonappeals.com">valerie@washingtonappeals.com</a>	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Messenger <input type="checkbox"/> email <input checked="" type="checkbox"/> Other – via Portal
Joanne Rick Halstead & Comins Rick PS PO Box 511 ** 1221 Meade Ave Prosser, WA 99350 P: 509-786-2200; 786-2211 F: 509-786-1128 E: <a href="mailto:jgcrick@gmail.com">jgcrick@gmail.com</a>	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Messenger <input type="checkbox"/> email <input checked="" type="checkbox"/> Other – via Portal
Margie Jackson Reed Jackson Watkins 1402 Third Ave., Ste. 210 Seattle, WA 98101 P: 206-624-3005 E: <a href="mailto:info@rjwtranscripts.com">info@rjwtranscripts.com</a>	<input checked="" type="checkbox"/> email <input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Other – via Portal

DATED this 18<sup>th</sup> day of January, 2019.

  
 Elizabeth C. Fuhrmann, PLS, Legal  
 Assistant/Paralegal to Greg Miller

## APPENDIX

### Page(s)

Kittitas County Map of Parcels at Issue, No. 835436, No. 20587, No. 20588: CP 23 (appended to May 3, 2018 objection to CR 60 motion); also at CP 224 (Ex. 1 to 5/14/18 Declaration of Rod Van de Graaf).....	A-1
Summary of Real Property Judgment in 2017 Decree (CP 35133-5 000764), .....	A-2
Summary of Real Property in 2018 Amended Decree (CP 36122-5 re: CR 60 Motion 000080) .....	A3
Side by Side Legal Descriptions of Ellensburg Property and New Property from Decree and Amended Decree.....	A-4
Legal Description of Ellensburg Property in Decree Awarded 2/2017, Ex. B (CP 35133-5 000772-773), .....	A-5-6
Legal Description of Ellensburg Property in Decree Awarded 2/2017, Ex. B (CP 35133-5 000772-773) .....	A-5-6
Legal Description of Two Ellensburg Properties Awarded in Amended Decree, 8/2018, Ex. B (CP 36122-5 re: CR 60 Motion 00088-89).....	A-7-8
Statutory Warranty Fulfillment Deed for original large parcel dated 4/23/2004, Exhibit 11 at trial, .....	A-9-10

Real Estate Excise Tax Affidavit signed  
11/9/18 by L. Van de Graaf valuing 6-acre  
parcel at \$656,000, Exhibit C to  
Supplemental Declaration of Respondent's  
Counsel in Support of .....Respondent's Motion to Vacate  
12/12/18 Order Re Kittitas Deed, CP 191,  
filed 12/27/18,..... A-11

Motion to Reconsider and Vacate Court's  
1-10-19 Order Denying Respondent's  
Motion to Vacate 12/12/2018 Order;  
Declaration of Respondent's Counsel, CP  
\_\_ to \_\_, filed 1/15/19,..... A-12-26

# Kittitas County COMPAS Map

#086033 VANDEGRAFF RANCHES 157a

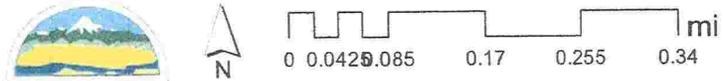
VANDEGRAFF RANCHES #636033 636a.



Date: 3/21/2018

1 inch = 752 feet  
Relative Scale 1:9,028

**Disclaimer:**  
Kittitas County makes every effort to produce and publish the most current and accurate information possible. No warranties, expressed or implied, are provided for the data, its use, or its interpretation. Kittitas County does not guarantee the accuracy of the material contained herein and is not responsible for any use, misuse or representations by others regarding this information or its derivatives.



Lawyer: Joanne Comins Rick represents: Rod Van de Graaf

**2. Summary of Real Property Judgment**

Summarize any real property judgment from section 7 in the table below.

Grantor's name <i>(person giving property)</i>	Grantee's name <i>(person getting property)</i>	Real Property	
		Assessor's property tax parcel or account number.	Legal description of property awarded (lot/block/plat/section, township, range, county, state)
Lori Van De Graaf	Rod Van de Graaf	221033-12006	See attached
Rod Van de Graaf	Lori Van De Graaf	18-18-14010-0002	See attached
Lawyer: David Hazel		represents: Lori Van De Graaf	
Lawyer: Joanne Comins Rick		represents: Rod Van de Graaf	

The court has made Findings and Conclusions in this case and now Orders:

**3. Marriage**

This marriage is dissolved. The Petitioner and Respondent are divorced.

**4. Name Changes**

Neither spouse asked to change his/her name.

**5. Separation Contract**

There is no enforceable separation contract.

**6. Money Judgment (summarized in section 1 above)**

The Respondent must pay the other party \$1,183,578.62. The court grants a judgment for this amount.

The interest rate is 12% unless <sup>otherwise</sup> another amount is listed below.

**7. Real Property (summarized in section 2 above)**

The real property is divided as listed in Exhibit A & B. This Exhibit is attached and made part of this Order.

*ammoncy 8/17/17*  
*Petitioner to vacate home by 8/17/17*

Lawyer: Joanne Comins Rick represents: Rod Van de Graaf

2. **Summary of Real Property Judgment**

Summarize any real property judgment from section 7 in the table below.

Grantor's name (person giving property)	Grantee's name (person getting property)	Real Property	
		Assessor's property tax parcel or account number:	Legal description of property awarded (lot/block/plat/section, township, range, county, state)
Lori Van De Graaf	Rod Van de Graaf	221033-12006	See attached
Rod Van de Graaf	Lori Van de Graaf	20588 36	That portion of the Southwest Quarter of the Northwest Quarter lying Southeasterly on the North Branch canal of Kittitas Reclamation District in Section 14, Township 18 North, Range 18 East, W.M., in the County of Kittitas, State of Washington.
Rod Van de Graaf	Lori Van de Graaf	835436	See attached legal description

Lawyer: David Hazel represents: Lori Van De Graaf

Lawyer: Joann Comins Rick represents: Rod D. Van de Graaf }

The court has made Findings and Conclusions in this case and now Orders:

3. **Marriage**

This marriage is dissolved. The Petitioner and Respondent are divorced.

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<b>Legal Description of Property Awarded 2/2017, Ex. B (CP 35133-5 000772-773)</b>	<b>Legal Description of Property Awarded, 8/2018, Ex. B (CP 36122-5 re: CR 60 Motion 00088-89)</b>
<p>(12) Ellensburg Property - NKA Hungry Junction Road - Parcel No. 18-18-14010-0002; Legal Described as follows: The East 1/2 of the Northwest 1/4 and the Southwest 1/4 of Section 14, Township 18 North, Range 18 E.W.M.; EXCEPT a tract of land situated in the Southeast 1/4 of the Southwest 1/4 of said Section, described as follows:</p> <p>Beginning at a point on the north right-of-way line of the County Road which is 30 feet north of a point 557 feet west of the quarter section corner on the south boundary of Section 14; thence west on said north line 660 feet; thence north parallel with the quarter section line 660 feet; thence east parallel with the south boundary of said Section, 660 feet; thence south 660 feet to the point of beginning.</p> <p>AND EXCEPT right-of-way for county roads along the west and south boundary lines thereof.</p> <p>AND the West 1/2 of the Northeast 1/4 and the Northwest 1/4 of the Southeast 1/4 of Section 14, Township 18 north, Range 18 E.W.M., records of said county. - Value \$690,000.00; (the community interest in this property which is 50% of the total value);</p>	<p>(12) Ellensburg Property - NKA Hungry Junction Road - Parcel No. 20588; Legally Described as follows: That portion of the East 1/2 of the Northwest 1/4 lying westerly of the Kittitas Reclamation District Lateral N.B. 15.2 - 1.9 - 2.1 in Section 14, Township 18 North, Range 18 East, W.M., in the County of Kittitas, State of Washington.</p> <p>(13) Ellensburg Property - NKA Hungry Junction Road - Parcel No. 835436; Legally Described as follows: The East 1/2 of the Northwest 1/4 and the Southwest 1/4 of Section 14, Township 18 North, Range 18, E.W.M.; Except a tract of land situated in the Southeast 1/4 of the Southwest 1/4 of said Section, described as follows: Beginning at a point on the north right-of-way line of the County Road which is 30 feet north of a point 557 feet west of the quarter section corner on the south boundary of Section 14; thence west on said north line 660 feet; thence north parallel with the quarter section line 660 feet; thence east parallel with the south boundary of said Section 660 feet; thence south 660 feet to the point of beginning. AND EXCEPT right-of-way for county roads the west and south boundary lines thereof AND the West V2 of the Northeast 1/4 of the Northwest 1/4 of the Southeast 1/4 of Sectign; 4, Towns 8 North, Ranger 8, F. 13 ;tle records of said county. (Value \$650,000 the community interest in this property which is 50% of the total value</p>

**EXHIBIT "B"**

- B. Wife shall be awarded as her sole and separate property, free and clear of any claim or interest by Husband, the following items of property:
- (1) Any and all household goods and furnishings now in her possession unless otherwise specifically awarded to husband in Exhibit "A";
  - (2) Her personal effects and clothing;
  - (3) Any and all bank accounts in her name;
  - (4) Any and all life insurance in her name;
  - (5) Her Social Security, pension, retirement and work-related benefits incurred by reason of her employment;
  - (6) Any and all other property not specifically listed but currently in her possession or held in her name.
  - (7) Wife's Chase IRA - Account #:95257906;
  - (8) Wife's Principal Funds- Account #: 19521;
  - (9) Wife's JP Morgan Account ;
  - (10) Wife's Yakima Federal Account;
  - (11) Wife is awarded the UBS Resource Management Account - Account #WI 61413KD, in the amount of \$816,000.00. Husband shall make up any present shortfall needed to restore this account to that balance within 30 days; As of December 21, 2016 the account balance was \$809,621.38 leaving a shortfall of \$6,378.62. Wife is awarded a judgment in this amount;
  - { (12) Ellensburg Property - NKA Hungry Junction Road - Parcel No. 18-18-14010-0002; Legal Described as follows: The East ½ of the Northwest ¼ and the Southwest ¼ of Section 14, Township 18 North, Range 18 E.W.M.; EXCEPT a tract of land situated in the Southeast ¼ of the Southwest ¼ of said Section, described as follows:  
Beginning at a point on the north right-of-way line of the County Road which is 30 feet north of a point 557 feet west of the quarter section corner on the south boundary of Section 14; thence west on said north line 660 feet; thence north parallel with the quarter section line 660 feet; thence east parallel with the south

boundary of said Section, 660 feet; thence south 660 feet to the point of beginning.

AND EXCEPT right-of-way for county roads along the west and south boundary lines thereof.

AND the West ½ of the Northeast 1/4 and the Northwest 1/4 of the Southeast 1/4 of Section 14, Township 18 north, Range 18 E.W.M., records of said county.

- Value \$690,000.00; (the community interest in this property which is 50% of the total value); }

(13) Zebra Rug - Value \$1,000.00;

(14) Remington 243 - Value \$400.00;

(15) Wife's jewelry (separate property);

(16) Household Furnishings - Value \$10,000.00 (see attached list).

(17) Judgment lien in the amount of \$1,173,578.62 which shall be paid within 30 days. If not paid by that time the judgment shall bear interest at the rate of 12% per annum.

**EXHIBIT "B"**

- B. Wife shall be awarded as her sole and separate property, free and clear of any claim or interest by Husband, the following items of property:
- (1) Any and all household goods and furnishings now in her possession unless otherwise specifically awarded to husband in Exhibit "A";
  - (2) Her personal effects and clothing;
  - (3) Any and all bank accounts in her name;
  - (4) Any and all life insurance in her name;
  - (5) Her Social Security, pension, retirement and work-related benefits incurred by reason of her employment;
  - (6) Any and all other property not specifically listed but currently in her possession or held in her name.
  - (7) Wife's Chase IRA - Account #:95257906;
  - (8) Wife's Principal Funds- Account #: 19521;
  - (9) Wife's JP Morgan Account ;
  - (10) Wife's Yakima Federal Account;
  - (11) Wife is awarded the UBS Resource Management Account - Account #WI 61413KD, in the amount of \$816,000.00. Husband shall make up any present shortfall needed to restore this account to that balance within 30 days; As of December 21, 2016 the account balance was \$809,621.38 leaving a shortfall of \$6,378.62. Wife is awarded a judgment in this amount;
  - (12) Ellensburg Property - NKA Hungry Junction Road - Parcel No. 20588; Legally Described as follows: That portion of the East ½ of the Northwest 1/4 lying westerly of the Kittitas Reclamation District Lateral N.B. 15.2 - 1.9 - 2.1 in Section 14, Township 18 North, Range 18 East, W.M., in the County of Kittitas, State of Washington.
  - (13) Ellensburg Property - NKA Hungry Junction Road - Parcel No. 835436; Legally Described as follows: The East ½ of the Northwest 1/4 and the Southwest 1/4 of Section 14, Township 18 North, Range 18, E. W.M.; Except a tract of land situated in the Southeast 1/4 of the Southwest 1/4 of said Section, described as

follows: Beginning at a point on the north right-of-way line of the County Road which is 30 feet north of a point 557 feet west of the quarter section corner on the south boundary of Section 14; thence west on said north line 660 feet; thence north parallel with the quarter section line 660 feet; thence east parallel with the south boundary of said Section 660 feet; thence south 660 feet to the point of beginning. AND EXCEPT right-of-way for county roads the west and south boundary lines thereof. AND the West ½ of the Northeast ¼ of the Northwest ¼ of the Southeast ¼ of Section 14, Township 18 North, Range 18, E.W.M. records of said county.

*(Value \$650,000.00 for the remaining interest in this property which is 50% of the total value)*

- (13) Zebra Rug - Value \$1,000.00;
- (14) Remington 243 - Value \$400.00;
- (15) Wife's jewelry (separate property);
- (16) Household Furnishings - Value \$10,000.00 (see attached list).
- (17) Judgment lien in the amount of \$1,173,578.62 which shall be paid within 30 days. If not paid by that time the judgment shall bear interest at the rate of 12% per annum.

Return Address:  
Lawrence E. Martin  
Halverson & Applegate, P.S.  
P.O. Box 22730  
Yakima, WA 98907-2715

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Page: 1 of 2  
05/05/2004 04:43P  
WFDED 20.00  
Kittitas Co Auditor HALVERSON ETAL

RE EXCISE TAX PAID  
Amount \$ 1200.00  
Date 06/09/77  
Affidavit No. 3103  
KITTTAS COUNTY, TREASURER  
By K. L. L. 05-05-04

STATUTORY WARRANTY FULFILLMENT DEED

Grantor: Dick Van De Graaf, Jr. and G. Maxine Van De Graaf  
Grantee: Rick Randel Van De Graaf and Rod Dale Van De Graaf  
Legal Description (abbreviated): NW ¼ S ½ S14, T18N, R18 EWM  
Additional legals on page 1.  
Assessor's Tax Parcel ID#: 18-18-14010-0002  
Reference Nos. of Documents Released: 413305

The Grantors, DICK VAN DE GRAAF, JR. and G. MAXINE VAN DE GRAAF husband and wife, for and in good and valuable consideration, in hand paid, convey and warrant to RICK RANDEL VAN DE GRAAF, as his separate estate, and ROD DALE VAN DE GRAAF, as his separate estate, as Grantees, the following described real estate, situate in the County of Kittitas, State of Washington, to-wit:

The East ½ of the Northwest ¼ and the Southwest ¼ of Section 14, Township 18 North, Range 18 E.W.M.;  
EXCEPT a tract of land situated in the Southeast ¼ of the Southwest ¼ of said Section, described as follows:

Beginning at a point on the north right-of-way line of the County Road which is 30 feet north of a point 557 feet west of the quarter section corner on the south boundary of Section 14; thence west on said north line 660 feet; thence north parallel with the quarter section line 660 feet; thence east parallel with the south boundary of said Section, 660 feet; thence south 660 feet to the point of beginning.

AND EXCEPT right-of-way for county roads along the west and south boundary lines thereof.

AND the West ½ of the Northeast ¼ and the Northwest ¼ of the Southeast ¼ of Section 14, Township 18 North, Range 18 E.W.M., records of said county.

TOGETHER WITH appurtenances thereunto belonging.

SUBJECT TO rights reserved in federal patents, state or railroad deeds, building or use restrictions general to the district; zoning regulations; utility easements of record and rights of way, easements, restrictions, reservations, other servitudes and conditions appearing of record or existing in fact over or upon said property as shown on the plat or visible by inspection and subject to any pending or future adjudication of surface water rights by an appropriate federal and/or state proceeding.

THIS DEED IS GIVEN AND ACCEPTED in full satisfaction of that certain Real Estate Contract dated April 29, 1977, and recorded May 25, 1977, in Volume 83, Page 685, under Auditor's File No. 418305, wherein Grantors herein were Sellers, and Grantees herein were Purchasers. The warranties of Sellers after said date are limited to their affirmative acts.

EXCISE TAX was paid on June 9, 1977, under Receipt No. 3103.

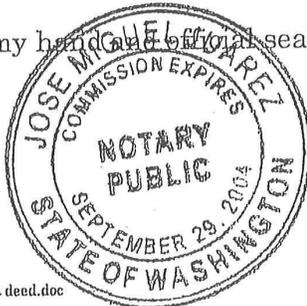
DATED this <sup>April, 2004</sup> ~~13~~ day of ~~March~~, 2004.

*Dick Van De Graaf*  
Dick Van De Graaf, Jr.  
*G. Maxine Van De Graaf*  
G. Maxine Van De Graaf

STATE OF WASHINGTON )  
 )ss.  
County of Yakima )

On this day personally appeared before me DICK VAN DE GRAAF, JR. and G. MAXINE VAN DE GRAAF, husband and wife, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this <sup>23rd</sup> ~~13th~~ day of ~~March~~ <sup>April</sup>, 2004.



*Jose M. Gonzalez*  
NOTARY PUBLIC in and for the State  
of Washington, residing at *Maple Lane*  
My Commission Expires: *Sept 29, 04*



REAL ESTATE EXCISE TAX AFFIDAVIT
CHAPTER 82.45 RCW - CHAPTER 458-61A WAC

This form is your receipt when stamped by cashier.

PLEASE TYPE OR PRINT

THIS AFFIDAVIT WILL NOT BE ACCEPTED UNLESS ALL AREAS ON ALL PAGES ARE FULLY COMPLETED

(See back of last page for instructions)

Check box if partial sale, indicate % sold. List percentage of ownership acquired next to each name.

Form sections 1 and 2: Seller/Grantor (Rod Van de Graaf) and Buyer/Grantee (Lori Van de Graaf) information including names, addresses, and phone numbers.

Section 3: Send all property tax correspondence to: [X] Same as Buyer/Grantee

Table with 2 columns: List all real and personal property tax parcel account numbers - check box if personal property, and List assessed value(s). Includes entry for parcel 20588 with value \$654,000.00.

Section 4: Street address of property: NKA Hungry Junction Road. This property is located in Kittitas County.

Check box if any of the listed parcels are being segregated from another parcel, are part of a boundary line adjustment or parcels being merged. Legal description of property (if more space is needed, you may attach a separate sheet to each page of the affidavit) That portion of the Southwest Quarter of the Northwest Quarter lying Southeasterly of the North Branch Canal of Kittitas Reclamation District in Section 14, Township 18, North Range 18 East W.M. in the County of Kittitas, State of Washington

Section 5: Select Land Use Code(s): 82 - Agriculture related activities. Was the seller receiving a property tax exemption or deferral under chapters 84.36, 84.37, or 84.38 RCW (nonprofit organization, senior citizen, or disabled person, homeowner with limited income)?

Section 6: Is this property designated as forest land per chapter 84.33 RCW? Is this property classified as current use (open space, farm and agricultural, or timber) land per chapter 84.34 RCW? Is this property receiving special valuation as historical property per chapter 84.26 RCW?

If any answers are yes, complete as instructed below. (1) NOTICE OF CONTINUANCE (FOREST LAND OR CURRENT USE) NEW OWNER(S): To continue the current designation as forest land or classification as current use (open space, farm and agriculture, or timber) land, you must sign on (3) below. The county assessor must then determine if the land transferred continues to qualify and will indicate by signing below. If the land no longer qualifies or you do not wish to continue the designation or classification, it will be removed and the compensating or additional taxes will be due and payable by the seller or transferor at the time of sale. (RCW 84.33, 140 or RCW 84.34, 105). Prior to signing (3) below, you may contact your local county assessor for more information. This land [ ] does [X] does not qualify for continuance.

(2) NOTICE OF COMPLIANCE (HISTORIC PROPERTY) NEW OWNER(S): To continue special valuation as historic property, sign (3) below. If the new owner(s) does not wish to continue, all additional tax calculated pursuant to chapter 84.26 RCW, shall be due and payable by the seller or transferor at the time of sale. (3) OWNER(S) SIGNATURE PRINT NAME

Section 7: List all personal property (tangible and intangible) included in selling price.

If claiming an exemption, list WAC number and reason for exemption: WAC No. (Section/Subsection) 458-61A203(2) Reason for exemption Award by Divorce Decree - Yakima County Cause No. 11-3-00982-6

Table with 2 columns: Type of Document (Quit Claim Deed), Date of Document, and Financial Summary (Gross Selling Price, Exemption Claimed, Taxable Selling Price, Excise Tax, Delinquent Interest, Delinquent Penalty, Subtotal, State Technology Fee, Affidavit Processing Fee, Total Due).

A MINIMUM OF \$10.00 IS DUE IN FEE(S) AND/OR TAX \*SEE INSTRUCTIONS

Section 8: I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. Signature of Grantor or Grantor's Agent (Rod Van de Graaf) and Signature of Grantee or Grantee's Agent (Lori Van de Graaf) with dates and cities.

Perjury: Perjury is a class C felony which is punishable by imprisonment in the state correctional institution for a maximum term of not more than five years, or by a fine in an amount fixed by the court of not more than five thousand dollars (\$5,000.00), or by both imprisonment and fine (RCW 9A.20.020 (1C)).

REV 84 0001a (09/06/17) THIS SPACE - TREASURER'S USE ONLY COUNTY TREASURER

EXC

FILED  
TRACEY M. SLAGLE, CLERK

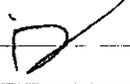
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**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury of the laws of the state of Washington, that on the 14 day of JAN, 2019, I caused a true and correct copy of the foregoing pleading to be served in the manner indicated below.

ATTORNEY FOR PETITIONER      U.S. Mail first class postage prepaid at Prosser WA  
 DAVID HAZEL                               Hand Delivery  
 1420 SUMMITVIEW                       Email attachment per Court order June 9, 2016  
 YAKIMA WA 98902

EXECUTED on this 14 day of JAN, 2019 at Prosser, Washington 

'19 JAN 15 AM 11:35

SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF YAKIMA

In re the Marriage of:

LORI VAN DE GRAAF

*Petitioner,*

and

ROD D. VAN DE GRAAF,

*Respondent.*

)  
 ) NO. 11-3-00982-6  
 )  
 ) MOTION TO RECONSIDER AND VACATE  
 ) COURT'S 1/10/2019 ORDER DENYING  
 ) RESPONDENT'S MOTION TO VACATE  
 ) 12/12/2018 ORDER; DECLARATION OF  
 ) RESPONDENT'S COUNSEL  
 ) **FOR COMMISSIONER TUTSCH**

**MOTION TO RECONSIDER**

COMES NOW THE RESPONDENT, ROD VAN DE GRAAF, by and through his attorney undersigned, and moves this Court to Reconsider its decision and to VACATE the 01/10/2019 Order Denying the Respondent's motion to vacate the 12/12/2018 Order Re Kittitas Deed.

The respondent brings this Motion before the Court pursuant to CR 59 which provides:

(a) Grounds for ... Reconsideration. On the motion of the party aggrieved... any other decision or order may be vacated and reconsideration granted. Such motion may be granted for any one of the following causes materially affecting the substantial rights of such parties:

(1) Irregularity in the proceedings of the ... adverse party ... by which such party was prevented from having a fair trial.

(2) Misconduct of prevailing party...

(3) Accident or surprise which ordinary prudence could not have guarded against;

(4) Newly discovered evidence, material for the party making the application, which the party could not with reasonable diligence have discovered and produced at the trial;

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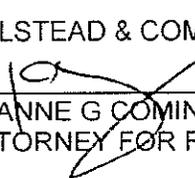
(8) Error in law occurring at the trial and objected to at the time by the party making the application; or

(9) That substantial justice has not been done.

This motion is based upon the records and files of the Clerk, upon the previously filed Respondent's Motion to Strike the Petitioner's 12/12/2018 Hearing and the subjoined Declaration of Counsel; the Respondent's Motion to Vacate the 12/12/2018 Order re Kittitas Deed, Memorandum of Authorities and Declaration of Respondent's Attorney; the Supplemental Declaration of Respondent's Counsel; and the Declaration of Respondent's Attorney subjoined herein below.

DATED: 14 JAN 2019

HALSTEAD & COMINS RICK PS

  
JOANNE G COMINS RICK #11589  
ATTORNEY FOR RESPONDENT

**DECLARATION OF RESPONDENT'S ATTORNEY**

I, JOANNE G COMINS RICK, DECLARE under penalty of perjury of the laws of the state of Washington that the following is true and correct:

1. I am the trial attorney of record for the respondent, Rod Van de Graaf.
2. I am making this Declaration in support this Respondent's Motion for Reconsideration and for Order Vacating the 01/10/2019 Order Denying Respondent's Motion to Vacate the 12/12/2018 Order re Kittitas Deed.
3. The 12/12/2018 Order re Kittitas Deed does not attach a copy of the documents which the Order by its terms directs Mr. Van de Graaf, and if not, directs the Yakima County Clerk to execute and sign. Nor did Mr. Hazel file a copy of any Quit Claim Deed re Parcel No 20588 nor a copy of any Real Estate Excise Tax Affidavit re Parcel No 20588 that his Notice of Presentation stated would be "presented by the undersigned attorney", to wit: Mr. Hazel.
4. It is axiomatic that where the record before the Court is devoid of the document or a copy of the document identifying what the Court's written ORDER mandates to be signed and executed by others, the Court is deprived of its authority to enforce the explicit provisions of its

1 Order; and equally, those who are commanded by the Order "to sign" have no recourse and  
2 no redress against the Court's powers of contempt or to resist against the Court's power to  
3 compel, for their refusing to sign what document Mr. Hazel put before them "to sign"; as not  
4 being one and the same document that the Court had ordered by its Order to be "signed."

- 5 5. Recognizing the gaping hole in the record, left in the wake of Mr. Hazel's actions, I filed a  
6 Supplemental Declaration and attached as Exhibits B and C a duplicate copy of the Quit Claim  
7 Deed [QCD] and a duplicate copy of the Real Estate Excise Tax Affidavit [REETA] that were  
8 what documents Mr. Hazel had sent to me on Dec 4<sup>th</sup>. In doing so, the record of the Court  
9 would have some point of reference as to the nature and scope of the documents that the  
10 Court's ORDER had authorized Mr. Hazel to present and demand Rod or the Clerk of the  
11 Court "to sign." Courtesy copies are attached hereto as **EXHIBIT 1** and **EXHIBIT 2**.
- 12 6. Mr. Hazel did not file any responsive pleading; he did not confirm nor deny that the copies of  
13 the QCD re Parcel No 20588 and REETA re Parcel No 20588 that were attached as exhibits to  
14 my pleading were "true and correct" duplicate copies of what documents he had been granted  
15 by the Court's ORDER for others "to sign"; or not.
- 16 7. During my oral argument at the January 10<sup>th</sup> hearing on respondent's motion to vacate, I  
17 called the Court's attention to the copy of the REETA re Parcel No 20588; indicated that the  
18 readily observable inconsistencies and inaccuracies on the face of the document raised  
19 serious concerns about the effect of the Court's 12/12/2018 Order; and allowed that, for the  
20 Court to Order the Yakima County Clerk to sign this document as written, and without the  
21 Court first assuring itself that the facts and information as stated therein are accurate  
22 presented the Clerk with nothing more than a Hobson's choice.
- 23 8. I stated that as legal counsel for the respondent, I could not in good conscience advise Rod  
24 Van de Graaf to sign the REETA that had been prepared by Mr. Hazel, because there were  
25 errors and misrepresentations readily apparent within the "four corners" of the REETA;  
26 therefore, Rod's signature under penalty of perjury would be a false certification. For example:
- 27 a. Section 5 incorrectly states the "Land Use Code" is "82 - Agriculture related activities";
  - 28 b. Section 6 asks "Is this property classified as current use..." and Mr. Hazel erroneously  
29 checked the box [x] NO.

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c. Under Section 6, subsection (1) Notice of Continuance [...Current Use] New Owners:  
To continue the current ...classification as current use [open space...], **you must sign on (3) below.** Lori Van de Graaf's signature is not affixed under (3) Owner's Signature.

d. Also erroneous under Section 6 subsection (1) is the statement that: "This land **[x]** does not qualify for continuance. With the Deputy Assessor's signature line following.

9. Mr. Hazel challenged my argument and rejected my contentions. In his oral argument, Mr. Hazel represented to the Court that he had completed the information on the REETA re Parcel No 20588 **exactly** as he had completed the information on the REETA re Parcel No 835436 [which the Court had awarded to Lori Van de Graaf in the original Decree]. Mr. Hazel did not have a copy of the REETA for Parcel No 835436 with him; nor did he previously file a copy as a record with the Court.
10. Mr. Hazel assured the Court, on his say-so, that the REETA for Parcel No 835436 had "*sailed through the Treasurer and Assessor's offices without a hitch*"; and that there was no reason that the REETA re Parcel No 20588 would equally be processed and accepted by Kittitas County without a hitch.
11. Mr. Hazel concluded, firmly convinced by the strength of his own statements and representations, that there was no reason why the Clerk shouldn't sign the REETA and QCD for Parcel No 20588; and that Respondent's motion to vacate was nothing but a delaying tactic that should be denied.
12. The Court was persuaded by Mr. Hazel's arguments and entered a written order that Respondent's Motion to Vacate.
13. Upon returning to my office, I performed due diligence. Attached hereto as **EXHIBIT 3** and by this reference incorporated herein, is a true and correct copy of the REETA for Parcel No 835436 that was provided by the Kittitas County Treasurer's Office, stamped "2017-2139".
14. It is immediately obvious that the REETA for Parcel No 835436 is **EXACTLY NOT** the same as on the REETA for Parcel No 20588; Mr. Hazel adamantly told the Court that he had prepared both REETA documents "**exactly the same**"; when, in fact, **he had not**.

- 1 15. Mr. Hazel gave oral assurances and made representations to the Court that he knew or should  
2 have known were false, deceptive, misleading and an intentional misrepresentation of facts;  
3 he persuaded the court to rule in his favor. The misconduct is grounds for the Court to  
4 reconsider its ruling and vacate the prior Orders.
- 5 16. Attached hereto as **EXHIBIT 4** and by this reference incorporated herein, is a true and correct  
6 copy of the REETA for Parcel #20588 that was received from the Kittitas County Treasurer's  
7 office, presented, processed and filed in 2005 when the property was transferred from  
8 Klockner to Rick and Rod Van de Graaf, including a copy of the QCD.
- 9 17. The prior REETA is heavily marked up with cross-outs and handwritten changes. The  
10 reasoning for these changes has not been presented or explained by Mr. Hazel's pleadings to  
11 the satisfaction of the Court or opposing counsel.
- 12 18. A comparison of the information stated on the REETA for Parcel No 835436 filed with the  
13 Treasurer with the information stated on the REETA for Parcel No 20588 as prepared by Mr.  
14 Hazel, gives credibility to the irregularities identified by the Respondent, as itemized above in  
15 Paragraph 8. Furthermore, the information on the REETA for Parcel #20588 filed in 2005 with  
16 the Treasurer states information about land use classifications and exemptions which is  
17 contradicted by information state by Mr. Hazel for the same parcel of land.
- 18 19. Mr. Hazel's undue haste, his disregard for court rules, and his intentional misrepresentation of  
19 facts in his oral argument to the Court has precluded a proper investigation into the  
20 substantive issues of these real estate matters. Mr. Hazel's confabulation is positive proof  
21 that the petitioner has violated the provisions of CR 59, and substantial justice has not been  
22 done.
- 23 20. The Court should reconsider its ruling and enter an order to vacate its 01/10/2019 Order and  
24 grant respondent's motion, entering an Order Vacating the 12/12/2018 Order re Kittitas Deed.

25 DATED ON: 14 JAN 2019 ; SIGNED AT: PROSSER WA

26   
27 JOANNE G. COMINS RICK  
28 WSBA NO 11589  
29 ATTORNEY FOR RESPONDENT, ROD VAN DE GRAAF

Filed at the Request of  
and Return to:

David Hazel  
Attorney at Law  
1420 Summitview  
Yakima, WA 98902

### QUIT CLAIM DEED

THE GRANTOR, ROD D. VAN DE GRAAF, for and in consideration of property settlement only, pursuant to terms of Decree of Dissolution of Marriage, Yakima County Superior Court Cause No. 11-3-00982-6, conveys and quit-claims to LORI VAN DE GRAAF, all interest he now has or may hereafter acquire, in the following described real estate situated in Kittitas County, State of Washington:

Parcel No. 20588; Legally Described as follows: That portion of the Southwest Quarter of the Northwest Quarter lying Southeasterly of the North Branch Canal of Kittitas Reclamation District in Section 14, Township 18, North Range 18 East W.M. in the County of Kittitas, State of Washington.

DATED this \_\_\_\_\_ day of November, 2018.

\_\_\_\_\_  
ROD VAN DE GRAAF

STATE OF WASHINGTON        )  
  ) ss.  
County of Yakima            )

I the undersigned Notary Public in and for the State of Washington, do hereby certify that ROD VAN DE GRAAF, Grantor, personally appeared before me on the date stated below, and acknowledge that he/she signed the same as his/her free and voluntary act and deed for the uses and

Ex 1.

purposes herein mentioned.

GIVEN UNDER MY HAND AND SEAL this \_\_\_\_\_ day of November, 2018.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State  
of Washington, residing at \_\_\_\_\_  
My commission expires: \_\_\_\_\_



REAL ESTATE EXCISE TAX AFFIDAVIT

This form is your receipt when stamped by cashier.

PLEASE TYPE OR PRINT

CHAPTER 82.45 RCW - CHAPTER 458-61A WAC

THIS AFFIDAVIT WILL NOT BE ACCEPTED UNLESS ALL AREAS ON ALL PAGES ARE FULLY COMPLETED

(See back of last page for instructions)

Check box if partial sale. Indicate % sold.

List percentage of ownership acquired next to each name.

SELLER INFORMATION: Name: Rod Van de Graaf, Mailing Address: 5652 Gap Road, Outlook WA 98938. BUYER INFORMATION: Name: Lori Van de Graaf, Mailing Address: 623 Yakima Valley highway PMB 140, Sunnyside WA 98944. Tax correspondence to: Same as Buyer/Grantee. Assessed value: \$654,000.00.

Property address: NKA Hungry Junction Road, Kittitas County. Legal description: That portion of the Southwest Quarter of the Northwest Quarter lying Southeasterly of the North Branch Canal of Kittitas Redamation District in Section 14, Township 18, North Range 18 East W.M. in the County of Kittitas, State of Washington.

Select Land Use Code(s): 02 - Agriculture related activities. Was the seller receiving a property tax exemption or deferral under chapters 84.36, 84.37, or 84.38 RCW? YES NO

Is this property designated as forest land per chapter 84.33 RCW? YES NO. Is this property classified as current use (open space, farm and agricultural, or timber) land per chapter 84.34 RCW? YES NO. Is this property receiving special valuation as historical property per chapter 84.26 RCW? YES NO.

(1) NOTICE OF CONTINUANCE (FOREST LAND OR CURRENT USE) NEW OWNER(S): To continue the current designation as forest land or classification as current use (open space, farm and agriculture, or timber) land, you must sign on (3) below. This land does not qualify for continuance.

(2) NOTICE OF COMPLIANCE (HISTORIC PROPERTY) NEW OWNER(S): To continue special valuation as historic property, sign (3) below. If the new owner(s) does not wish to continue, all additional tax calculated pursuant to chapter 84.26 RCW, shall be due and payable by the seller or transferor at the time of sale.

(3) OWNER(S) SIGNATURE. DEPUTY ASSESSOR DATE. PRINT NAME.

List all personal property (tangible and intangible) included in selling price. If claiming an exemption, list WAC number and reason for exemption: WAC No. (Section/Subsection) 458-61A203(2). Reason for exemption: Award by Divorce Decree - Yakima County Cause No. 11-3-00882-6. Type of Document: Quit Claim Deed. Date of Document: Gross Selling Price \$ 0.00. Total Due \$ 10.00.

I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. Signature of Grantor or Grantor's Agent: Rod Van de Graaf. Date & city of signing: [blank]

Signature of Grantee or Grantee's Agent: Lori Van de Graaf. Date & city of signing: 11-9-18 Yakima

Perjury: Perjury is a class C felony which is punishable by imprisonment in the state correctional institution for a maximum term of not more than five years, or by a fine in an amount fixed by the court of not more than five thousand dollars (\$5,000.00), or by both imprisonment and fine (RCW 9A.20.020(1C)).

REV 841003a (09/09/17) THIS SPACE - TREASURER'S USE ONLY COUNTY TREASURER

ex 2



REAL ESTATE EXCISE TAX AFFIDAVIT
CHAPTER 84.56 RCW - CHAPTER 155.01 WAC

This form is your receipt when stamped by cashier

PLEASE TYPE OR PRINT

THIS AFFIDAVIT WILL NOT BE ACCEPTED UNLESS ALL AREAS ON ALL PAGES ARE FULLY COMPLETED

(See back of last page for instructions)

Check box if partial sale, indicate % sold. List percentage of ownership acquired next to each name.

1 Name: Rod D. Van de Graaf; 2 Name: Lori Van de Graaf; Mailing Address: 320 Bishop Road, Sunnyside, WA 98944; Mailing Address: 5652 Gap Road, Outlook, WA 98938

3 Send all property tax correspondence to: Same as Buyer/Grantor; List all real and personal property tax parcel account numbers; List assessed value: \$784,740.00 MV (\$136,200)

4 Street address of property: Ellensburg Property - NKA Hungry Junction Road; This property is located in: Palouse County; Check box if any of the listed parcels are being segregated from another parcel.

5 Select Land Use Codes; enter any additional codes; Was the seller receiving a property tax exemption or deferral under chapters 84.56, 84.57, or 84.58 RCW?

6 Is this property designated as forest land per chapter 84.57 RCW? Is this property classified as current use (open space, farm and agricultural, or timber) land per chapter 84.54 RCW? Is this property receiving special valuation as historic property per chapter 84.56 RCW?

(1) NOTICE OF CONTINUANCE (FOREST LAND OR CURRENT USE) NEW OWNER(S); (2) NOTICE OF COMPLIANCE (HISTORIC PROPERTY) NEW OWNER(S); Signature of Grantor or Grantee's Agent: Lori Van de Graaf

7 List all personal property (tangible and intangible) included in selling price; If claiming an exemption, list WAC number and reason for exemption; WAC No.: Section Subsection: 458-51A203(2); Reason for exemption: Award by Divorce Decree - Yakima County - Case No. 11-3-00982-6; Type of Document: Quit Claim Deed; Date of Document: 9/15/17; Gross Selling Price \$; Total Due \$ 10.00

8 I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. Signature of Grantor or Grantee's Agent: See attached CRT order; Name (print): Rod D. Van de Graaf; Date & city of signing: 9/28/2017

Perjury: Perjury is a class C felony which is punishable by imprisonment in the state correctional institution for a maximum term of not more than five years, or by a fine in an amount fixed by the court of not more than five thousand dollars (\$5,000) or by both imprisonment and fine (RCW 9A.02.020).

REV 84 0201 104/01/17 THIS SPACE - TREASURER'S USE ONLY

Hazel and Hazel

9/20/17 cca Rahme

2017-2139

EX 3

Parcel No. 18-18-14010-0002; Legal Described as follows: The East ½ of the Northwest 1/4 and the Southwest 1/4 of Section 14, Township 18 North, Range 18 E.W.M.; EXCEPT a tract of land situated in the Southeast 1/4 of the Southwest 1/4 of said Section, described as follows:

Beginning at a point on the north right-of-way line of the County Road which is 30 feet north of a point 557 feet west of the quarter section corner on the south boundary of Section 14; thence west on said north line 660 feet; thence north parallel with the quarter section line 660 feet; thence east parallel with the south boundary of said Section, 660 feet; thence south 660 feet to the point of beginning.

AND EXCEPT right-of-way for county roads along the west and south boundary lines thereof.

AND the West ½ of the Northeast 1/4 and the Northwest 1/4 of the Southeast 1/4 of Section 14, Township 18 north, Range 18 E.W.M., records of said county.

Real Estate Excise Tax  
Exempt  
Kittitas County Treasurer

09/20/2017 04:50:25 PM 201709200030  
\$75.00  
Quit Claim Deed HAZEL Page: 1 of 2  
Kittitas County Auditor

By Ceci Rahme  
Affidavit No. 2017-2139  
Date: 9/20/17

Filed at the Request of  
and Return to:

David Hazel  
Attorney at Law  
1420 Summitview  
Yakima, WA 98902

#### QUIT CLAIM DEED

**THE GRANTOR, ROD D. VAN DE GRAAF**, for and in consideration of property settlement only, pursuant to terms of Decree of Dissolution of Marriage, Yakima County Superior Court Cause No. 11-3-00982-6, conveys and quit-claims to **LORI VAN DE GRAAF**, all interest he now has or may hereafter acquire, in the following described real estate situated in Kittitas County, State of Washington:

Parcel No. 18-18-14010-0002. Legal Described as follows: The East ½ of the Northwest 1/4 and the Southwest 1/4 of Section 14, Township 18 North, Range 18 E.W.M.; EXCEPT a tract of land situated in the Southeast 1/4 of the Southwest 1/4 of said Section, described as follows:

Beginning at a point on the north right-of-way line of the County Road which is 30 feet north of a point 557 feet west of the quarter section corner on the south boundary of Section 14; thence west on said north line 660 feet; thence north parallel with the quarter section line 660 feet; thence east parallel with the south boundary of said Section, 660 feet; thence south 660 feet to the point of beginning.

AND EXCEPT right-of-way for county roads along the west and south boundary lines thereof.



SELLER GRANTOR	Name <u>KERRY KLOCKNER</u>	BUYER GRANTEE	Name <u>Richard Van De Graaf</u> <u>Rod Van De Graaf</u>
	Street <u>16512 107 PL NE</u>		Street <u>1691 Midvale Rd</u>
	City/State/Zip <u>Bethell WA 98011</u>		City/State/Zip <u>Sunnyside WA 98944</u>
3 ADDRESS TO SEND ALL PROPERTY TAX RELATED CORRESPONDENCE		ALL TAX PARCEL NUMBERS	
Name <u>Kerry Klockner</u>		<u>18-18-14020-0002</u>	
Street <u>16512-107<sup>th</sup> Pl NE</u>			
City/State/Zip <u>Bethell, WA 98011</u>		COUNTY TREASURER PLACE ASSESSED VALUE IF TAX EXEMPT <u>108,560.</u>	

4 LEGAL DESCRIPTION OF PROPERTY SITUATED IN  UNINCORPORATED Kittitas COUNTY  OR IN CITY OF \_\_\_\_\_  
 Street Address (if property is improved): \_\_\_\_\_

That portion of the Southwest Quarter of the NORTHWEST Quarter Lying Southeasterly of the NORTH Branch canal of KITTITAS Reclamation District in Section 14, Township 18 NORTH, Range 18 East, W.M., IN THE COUNTY OF Kittitas, state of Washington

⊕ see attach'd doc.

5 Is this property currently:

YES	NO
Classified or designated as forest land? Chapter 84.33 RCW <input type="checkbox"/>	<input checked="" type="checkbox"/>
Classified as current use land (open space, farm and agricultural, or timber)? Chapter 84.34 RCW <input checked="" type="checkbox"/>	<input type="checkbox"/>
Exempt from property tax as a nonprofit organization? Chapter 84.36 RCW Seller's Exempt Reg. No. _____ <input type="checkbox"/>	<input checked="" type="checkbox"/>
Receiving special valuation as historic property? Chapter 84.26 RCW <input type="checkbox"/>	<input checked="" type="checkbox"/>

Property Type:  land only  land with new building  
 land with previously used building  land with mobile home  
 timber only  building only

Principal Use:  Apr. (4+ unit)  residential  
 timber  agricultural  commercial/industrial  
 other \_\_\_\_\_

6 Description of personal property included in gross selling price, both tangible (eg; furniture, equipment, etc.) or intangible (eg; goodwill, agreement not to compete, etc.)

If exemption claimed, list WAC number and explanation.  
 WAC No. (Sec/Sub) \_\_\_\_\_  
 Explanation trade

Type of Document Quit claim Deed  
 Date of Document 11/4/04 (11-06-2004)  
 Gross Selling Price \$ 2,094.61  
 Personal Property (deduct) \$ \_\_\_\_\_  
 Taxable Selling Price \$ \_\_\_\_\_  
 Excise Tax: State \$ 32.05 26.81  
 Local \$ 5.24  
 Delinquent Interest: State \$ .27  
 Local \$ .05  
 Delinquent Penalty \$ 3.21  
 Total Due \$ 35.58

A MINIMUM OF \$2.00 IS DUE AS A PROCESSING FEE AND TAX.

3 (1) NOTICE OF CONTINUANCE (RCW 84.33 OR RCW 84.34)  
 If the new owner(s) of land that is classified or designated as current use or forest land wish to continue the classification or designation of such land, the new owner(s) must sign below. If the new owner(s) do not desire to continue such classification or designation, all compensating or additional tax calculated pursuant to RCW 84.33.120 and 140 or RCW 84.34.108 shall be due and payable by the seller or transferor at the time of sale. The county assessor must determine if the land transferred qualifies to continue classification or designation and must so indicate below. Signatures do not necessarily mean the land will remain in classification or designation. If it no longer qualifies, it will be removed and the compensating taxes will be applied. All new owners must sign.

This land  does  does not qualify for continuance.  
 Date 1-24-05 Justin Jansen  
 DEPUTY ASSESSOR

(2) NOTICE OF COMPLIANCE (Chapter 84.26 RCW)  
 If the new owner(s) of property with special valuation as historic property wish to continue this special valuation the new owner(s) must sign below. If the new owner(s) do not desire to continue such special valuation, all additional tax calculated pursuant to Chapter 84.26 RCW, shall be due and payable by the seller or transferor at the time of sale.

Rod Van de Graaf 11/11/05  
 (3) OWNER(S) SIGNATURE  
Kerry Klockner 12/15/04  
Rod Van de Graaf 11/11/05

7 AFFIDAVIT  
 I Certify Under Penalty of Perjury Under The Laws of The State of Washington That The Foregoing Is True And Correct. (See back page of this form).

Signature of Grantor/Agent Kerry Klockner  
 Name (print) Kerry Klockner  
 Date and Place of Signing: 12/15/04

Signature of Grantee/Agent Rod Van de Graaf  
 Name (print) Rod Van de Graaf  
 Date and Place of Signing: 12-15-04 Sunnyside

EX 4

Name BERRY KLOCKNER

Address 16512-107<sup>th</sup> PINE

City, State, Zip Bothell, WA 98011

Filed for Record at Request of:

**QUIT CLAIM DEED**

THE GRANTOR(S) Kerry Klockner

for and in consideration of  
conveys and quit claims to ~~Richard~~ Van De Graaf & Rod VanDeGraaf  
the following described real estate, situated in the County of Kittitas, state of Washington,  
together with all after acquired title of the grantor(s) therein:

Klockner to Van De Graf

That portion of the Southwest Quarter of the Northwest Quarter lying Southeasterly of the North Branch canal of Kittitas Reclamation District in Section 14, Township 18 North, Range 18 East, W.M., in the county of Kittitas, state of Washington.

Assessor's Property Tax Parcel/Account Number: 18-18-14020-0002

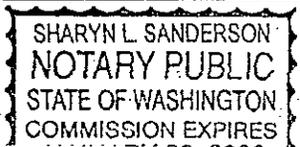
Dated: Nov 6 2004

X Kerry Klockner  
X \_\_\_\_\_

STATE OF Washington  
COUNTY OF Snohomish

I certify that I know or have satisfactory evidence that Kerry Klockner  
(is/are) the person(s) who appeared before me, and said person(s) acknowledged that (he/she/they) signed this instrument and acknowledged it to be (his/hcr/their) free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: \_\_\_\_\_  
Notary Public in and for the state of Washington  
My appointment expires: 1-29-06



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**Superior Court, State of Washington, County of YAKIMA**

IN RE THE MARRIAGE OF:

LORI VAN DE GRAAF,

Petitioner,

vs

ROD D. VAN DE GRAAF,

Respondent.

No. 11-3-00982-6

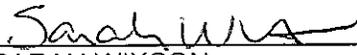
GR 17 AFFIDAVIT

RE: EMAILED MATERIALS

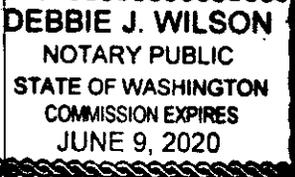
STATE OF WASHINGTON )  
 )ss.  
COUNTY OF YAKIMA )

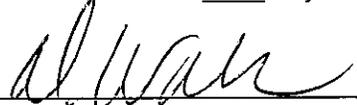
I, SARAH WIXSON, am the person who received the attached emailed pages 2 of 5 and 5 of 5 of the MOTION TO RECONSIDER AND VACATE COURT'S 1/10/2019 ORDER DENYING RESPONDENT'S MOTION TO VACATE 12/12/2018 ORDER; DECLARATION OF RESPONDENT'S COUNSEL [FOR COMMISSIONER TUTSCH], signed by JOANNE G COMINS RICK, Attorney for Respondent, via email. I have examined this document and its attached exhibits, which is complete and legible and consists of fifteen (15) page(s), including this affidavit page.

DATED this 15 day of JANUARY 2019

  
SARAH WIXSON

SUBSCRIBED and SWORN to before me this \_\_\_ day of JANUARY 2019



  
Notary Public in and for the  
State of Washington; Residing at  
Prosser; My comm. exp. 6-9-20

# CARNEY BADLEY SPELLMAN

January 18, 2019 - 5:34 PM

## Transmittal Information

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 36122-5  
**Appellate Court Case Title:** In re the Marriage of Lori Van de Graaf and Rod D. Van de Graaf  
**Superior Court Case Number:** 11-3-00982-6

### The following documents have been uploaded:

- 361225\_Briefs\_20190118173146D3879457\_1544.pdf  
This File Contains:  
Briefs - Appellants - Modifier: Amended  
*The Original File Name was Opening Brief COA No. 36122-5 CR 60.pdf*

### A copy of the uploaded files will be sent to:

- anderson@carneylaw.com
- andrienne@washingtonappeals.com
- cate@washingtonappeals.com
- daveh@davidhazel.com
- fuhrmann@carneylaw.com
- jgcrick@gmail.com
- valerie@washingtonappeals.com

### Comments:

The only change from the previously filed version is that this version now includes the signed signature pages.

---

Sender Name: Elizabeth Fuhrmann - Email: fuhrmann@carneylaw.com

**Filing on Behalf of:** Gregory Mann Miller - Email: miller@carneylaw.com (Alternate Email: )

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Seattle, WA, 98104

Phone: (206) 622-8020 EXT 149

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