

NO. 67395-5-1

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

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STATE OF WASHINGTON  
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DENNIS BALE and CLARANCE ALLEN BALE,

Respondents,

v.

GARRY L. ALLISON, individually and as the Personal  
Representative of the ESTATE OF ROBERT E. FLETCHER,

Defendants,

JOHN F. FLETCHER, and ROBERT G. FLETCHER,

Appellants.

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**BRIEF OF APPELLANTS**

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## TABLE OF CONTENTS

INTRODUCTION .....	1
ASSIGNMENTS OF ERROR.....	2
STATEMENT OF THE CASE .....	3
A.    After John and Robert's father died, his brother (and their uncle) "took them under his wing," married their mother a few years later, and regularly took John to the cabin property he owned in Winthrop.....	3
B.    Although the marriage did not work out and Uncle Bob later married the Bales' mother, he remained involved in John and Robert's lives, calling them his children.....	3
C.    In 1982, John and Robert gave Uncle Bob their interests in their deceased grandmother's property so that he could give it to his sister. ....	4
D.    After the Bales' mother died in 1999, John again regularly visited the cabin property, and Uncle Bob eventually married Garry Allison. ....	4
E.    In 2003, Uncle Bob executed a Will bequeathing the cabin property to the Bales, who promptly abandoned him. ....	5
F.    In 2008, Uncle Bob gifted the cabin property to John and Robert via a quitclaim deed, which they recorded.....	5
G.    After Uncle Bob died in 2009, John and the personal representative inserted "love and affection" on the deed and rerecorded it. ....	7
H.    Procedural History.....	8
1.    The Bales sued Allison, John, and Robert, for breach of contract, promissory estoppel, undue influence, and tortious interference.....	8
2.    The trial court rejected all of the Bales' claims, but nonetheless awarded them the	

cabin property because the quitclaim deed did not recite consideration for the gift.....	8
ARGUMENT .....	10
A.    The standard of review is <i>de novo</i> . .....	10
B.    The trial court erred in concluding that a deed must recite consideration to effectively gift property. ....	10
1.    The deed met all statutory requirements, which do not include a recital of consideration.....	11
2.    The deed properly recited no consideration because this was a gift. ....	13
3.    In any event, the excise-tax affidavit and supplemental statement adequately prove the gift.....	15
4.    Alternatively, Parol evidence proves that Uncle Bob received adequate consideration for his gift from John and Robert. ....	17
5.    The trial court erroneously relied on RCW 64.04.050, which simply suggests a valid form of quitclaim deed, not a required form. ....	19
C.    The trial court erred in failing to award John and Robert their attorney fees, and this Court should award them fees on appeal.....	20
CONCLUSION.....	22

## TABLE OF AUTHORITIES

	Page(s)
<b>CASES</b>	
<b><i>Berg v. Ting</i></b> , 125 Wn.2d 544, 886 P.2d 564 (1995).....	11
<b><i>Brewer v. Rosenbaum</i></b> , 183 Wash. 218, 48 P.2d 566 (1935).....	14
<b><i>Carr v. Burlington N., Inc.</i></b> 23 Wn. App. 386, 597 P.2d 409 (1979) .....	10
<b><i>Chase v. Carney</i></b> , 199 Wash. 99, 90 P.2d 286 (1939).....	10
<b><i>City of Bellevue v. State</i></b> , 92 Wn.2d 717, 600 P.2d 1268 (1979).....	13
<b><i>Duggar v. Dempsey</i></b> , 13 Wash. 396, 399-401, 43 P. 357 (1896).....	12, 13
<b><i>Holohan v. Melville</i></b> , 41 Wn.2d 380, 249 P.2d 777 (1952).....	13
<b><i>Home Realty Lynnwood, Inc. v. Walsh</i></b> , 146 Wn. App. 231, 189 P.3d 253 (2008) .....	15
<b><i>In re Brickey's Estate</i></b> , 157 Wash. 532, 289 P. 1015 (1930).....	14
<b><i>In re Estate of Button</i></b> , 190 Wash. 333, 336-37, 67 P.2d 876 (1937).....	9
<b><i>In re Guardianship of Matthews</i></b> , 156 Wn. App. 201, 232 P.3d 1140 (2010) .....	21

<b>Kessler v. Kessler,</b> 55 Wn.2d 598, 349 P.2d 224 (1960).....	13, 18
<b>Key Design, Inc. v. Moser,</b> 138 Wn.2d 875, 983 P.2d 653 (1999).....	11
<b>Knight v. Am. Nat'l Bank,</b> 52 Wn. App. 1, 756 P.2d 757 (1988) .....	15
<b>Kwiatkowski v. Drews,</b> 142 Wn. App. 463, 176 P.3d 510 (2008) .....	21
<b>Maier v. Giske,</b> 154 Wn. App. 6, 223 P.3d 1265 (2010) .....	11
<b>Malacky v. Scheppler,</b> 69 Wn.2d 422, 419 P.2d 147 (1966).....	18
<b>Martin v. City of Seattle,</b> 111 Wn.2d 727, 765 P.2d 257 (1988).....	10
<b>Melton v. United Retail Merchs.,</b> 24 Wn.2d 145, 163 P.2d 619 (1945).....	17
<b>Nat'l Elec. Contractors Ass'n, Cascade Ch. v. Riveland,</b> 138 Wn.2d 9, 978 P.2d 481 (1999).....	20
<b>Oman v. Yates,</b> 70 Wn.2d 181, 422 P.2d 489 (1967).....	13
<b>Parr v. Campbell,</b> 109 Wash. 376, 186 P. 858 (1920).....	18
<b>Phinney v. State,</b> 36 Wash. 236, 78 P. 927 (1904).....	14
<b>Roesch v. Gerst,</b> 18 Wn.2d 294, 138 P.2d 846 (1943), <i>overruled on other grounds, Chaplin v. Sanders</i> , 100 Wn.2d 853, 676 P.2d 431 (1984).....	11

<b><i>Snohomish Cnty. v. Hawkins,</i></b> 121 Wn. App. 505, 89 P.3d 713 (2004) .....	10, 17
<b><i>Standing v. Mooney,</i></b> 14 Wn.2d 220, 127 P.2d 401 (1942).....	15, 16
<b><i>State ex rel. Roberts v. Superior Ct. of Snohomish Cnty.,</i></b> 165 Wash. 648, 5 P.2d 1037 (1931).....	14
<b><i>Stringfellow v. Stringfellow,</i></b> 53 Wn.2d 639, 335 P.2d 825 (1959).....	14
<b><i>Walker v. Hargear,</i></b> 36 Wash. 672, 79 P. 472 (1905).....	19
<b><i>Whalen v. Lanier,</i></b> 29 Wn.2d 299, 186 P.2d 919 (1947).....	18
<b><i>Yakima Cnty. (W. Valley) Fire Prot. Dist. v. City of Yakima,</i></b> 122 Wn.2d 371, 858 P.2d 245 (1993).....	20
<b>STATUTES</b>	
RCW 11.96A.150 .....	20, 21
RCW 64.04.010 .....	11
RCW 64.04.020 .....	1, 2, 11
RCW 64.04.050 .....	passim
RCW 82.45.060 .....	16
<b>RULES</b>	
RAP 18.1 .....	21
<b>OTHER AUTHORITIES</b>	
16 Am. Jur. 537, <i>Deeds</i> § 175 .....	15

26A C.J.S. <i>Deeds</i> § 24 (2011) .....	12
Samuel M. Phillips, <i>Treatise on the Law of Evidence</i> (1815) (“Phillips On Evidence”).....	12, 18
WAC 458-61A-100.....	16
WAC 458-61A-201.....	16
WAC 458-61A-201(1) .....	13

## INTRODUCTION

Robert E. Fletcher (“Uncle Bob”) gifted real property to his two nephews (whom he called his “children”) appellants John and Robert G. Fletcher.<sup>1</sup> To make his gift, he used a quitclaim deed that recited no consideration. Although the trial court invalidated the deed due to this lack of a recital, the deed met all statutory requirements: Uncle Bob signed it, had it notarized, and included an accurate legal description. RCW 64.04.020. No recital of consideration is required under the statute or controlling case law. The trial court erred.

The trial court relied on RCW 64.04.050 – a suggested form of quitclaim deed – to require consideration. But that statute is permissive, not mandatory. Again, the trial court erred.

In any event, John and Robert gave their Uncle Bob ample consideration: they gave him their interests in their grandmother’s property, performed work improving his property, and shared much love and affection with him. Their past consideration is more than sufficient to support his gift of property. This Court should reverse, remand for reconsideration of fees, and award fees here.

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<sup>1</sup>Because there are two Robert Fetters, this brief refers to Robert E. Fletcher as “Uncle Bob.” See RP 586. For clarity, this brief refers to the other various Fetters by their first names.

## **ASSIGNMENTS OF ERROR**

1. The trial court erred in concluding that the quitclaim deed failed to transfer his property because it did not recite consideration. CP 200-01 (C/L 1).

2. The trial court erred in concluding that RCW 64.04.050 requires a recital of consideration. CP 201 (C/L 2).

3. The trial court erred in concluding that the property should be distributed to the Bales under the 2003 will. CP 201 (C/L 4 & 5); RP 635-36.

4. The trial court erred in ordering appellants to transfer their property to the Bales. CP 202 (C/L 13).

5. The trial court erred in refusing to find that the grantor saw the excise tax affidavit he signed. RP 638.

6. The trial court erred in entering its judgment dated July 8, 2011. CP 191-92.

7. The trial court erred in refusing to award appellants their attorney fees. RP 638; CP 202 (C/L 17).

## **ISSUE PERTAINING TO ASSIGNMENTS OF ERROR**

Is a quitclaim deed valid, where it complies with RCW 64.04.020 and recites no consideration, where the grantor gifted his property to the grantees?

## STATEMENT OF THE CASE

- A. After John and Robert's father died, his brother (and their uncle) "took them under his wing," married their mother a few years later, and regularly took John to the cabin property he owned in Winthrop.**

John and Robert's Uncle Bob owned real property with a small cabin in Winthrop. RP 103-04, 379-80, 586. Beginning in 1960, he took John to the cabin two or three times a year. RP 381. When John and Robert's father died in 1964, Uncle Bob "took [them] under his wing." RP 507-08. He lived with them for two years before marrying their mother in 1968. RP 508. They divorced after two years, but Uncle Bob continued taking John to the cabin once or twice a year. RP 269, 381, 508-09.

- B. Although the marriage did not work out and Uncle Bob later married the Bales' mother, he remained involved in John and Robert's lives, calling them his children.**

Uncle Bob married Edna Fletcher in 1971. RP 103, 508-09. Edna did not "appreciate" John and Robert, so they stopped going to the cabin during the marriage. RP 381-82, 509. But Uncle Bob remained involved in John and Robert's lives. RP 508. Indeed, a neighbor testified that Uncle Bob identified John and Robert as his "children" – "my boys." RP 472-73, 475. Uncle Bob acted as a father to the boys. RP 479.

Edna had two adult sons, Dennis and Allen Bale. RP 93, 196, 298. The Bales regularly stayed at the cabin. RP 193-94, 322, 325. Much of their trial testimony explained that, often with Uncle Bob's direction and financing, they remodeled the cabin and landscaped the nearby area. RP 104-36, 141-95, 304-33.

**C. In 1982, John and Robert gave Uncle Bob their interests in their deceased grandmother's property so that he could give it to his sister.**

In 1982, John and Robert's grandmother (Uncle Bob's mother) died, and they received a one-third interest in her real property in Boise, Idaho. RP 567-68, 571-72. Uncle Bob asked John and Robert to transfer their interests to him so that he could give the property to his sister, who had cared for their grandmother for many years. RP 567-68, 590. They agreed, and Uncle Bob told John that he would "make it up to" him. RP 568.

**D. After the Bales' mother died in 1999, John again regularly visited the cabin property, and Uncle Bob eventually married Garry Allison.**

Edna died in 1999, and Uncle Bob again invited John to use the cabin regularly. RP 153-54, 381; CP 5. Since then, John has visited the cabin a couple times a year. RP 381. He installed new carpeting in the bedroom, painted walls, and did various yard work, including mowing, weed-eating, watering, and fertilizing. RP 385.

About a year-and-a-half after Edna's death, Uncle Bob began dating Garry Allison. RP 65. They had dated briefly many years ago, kept in occasional contact over the years, and reconnected in 2002, marrying sometime thereafter. RP 65-66, 480-81; Ex 58 at 69.

**E. In 2003, Uncle Bob executed a Will bequeathing the cabin property to the Bales, who promptly abandoned him.**

Uncle Bob executed a Will in 2003, naming Allison as his personal representative. Ex 1. He bequeathed the cabin property to the Bales, requiring that John and Robert be allowed to use it at the Bales' discretion. *Id.* But Uncle Bob's relationship with the Bales changed after he married Allison. RP 322, 399-400. The Bales "backed away" from Uncle Bob, leaving him feeling abandoned. RP 399-400.

**F. In 2008, Uncle Bob gifted the cabin property to John and Robert via a quitclaim deed, which they recorded.**

In contrast, John and Robert maintained regular contact with Uncle Bob. RP 553, 587. They loved Uncle Bob, and he loved them. RP 582, 591, 594. Around the fall of 2008, John and Robert took Uncle Bob to the doctor and discovered that he had lung

cancer. RP 556. After this diagnosis, John and Robert continued to visit him regularly. RP 555, 557-58, 587.

Uncle Bob later told John and Robert that he wanted to gift them the cabin. RP 559-60, 587. John and Robert understood that he did so out of love and affection and because they had given him their interests in their grandmother's property. RP 576-77, 582, 590-91. At his request, and after talking to an escrow officer, John printed a quitclaim-deed form and filled it out. RP 560-61. They all went to Uncle Bob's bank to notarize the deed. RP 562, 588-89. Uncle Bob told the notary – whom he knew – that he wanted to gift his cabin property to John and Robert because they had all spent a lot of fun time there. RP 463-64, 589. Uncle Bob signed the quitclaim deed and the notary acknowledged his signature. RP 464; Ex 2 (attached).

Consistent with Uncle Bob's wishes, the quitclaim deed lists him as grantor and John and Robert as grantees. Ex 2. The deed "conveys and quitclaims" his property to John and Robert. *Id.* Consistent with his gift, the space after "in consideration of" is left blank. *Id.* There is a proper legal description of the property. *Id.*

In his real estate excise tax affidavit and supplemental statement, Uncle Bob stated that the transfer was exempt from

excise taxes as a gift with no consideration. Ex 4. The affidavit lists Uncle Bob as grantor and John and Robert as grantees. *Id.* Uncle Bob delivered the deed to John and Robert, who recorded it in Okanogan County. RP 563; Exs 2, 4. The assessor stamped it "NOT SUBJECT TO EXCISE TAX." *Id.*

**G. After Uncle Bob died in 2009, John and the personal representative inserted "love and affection" on the deed and rerecorded it.**

In February 2009, John met with an attorney regarding a tax issue, where he learned that the deed recited no consideration. RP 389-90, 564-65. John contacted the escrow officer, who stated that people often correct deeds and rerecord them. RP 564.

Uncle Bob died in April 2009. CP 8, 17. Under the 2003 Will, Allison became his personal representative. CP 2, 13; Ex 1. John inserted "love and affection" after "in consideration of" on the deed. RP 390, 392; Ex 3. He also inserted the "grantees listed above" into the conveyance language. *Id.* John, Robert, and PR Allison, each signed a new real estate excise tax affidavit stating that the deed transferred real and personal property. Ex. 5. They recorded the new deed in June 2009. Exs 3, 5. John and Robert first learned that Uncle Bob had bequeathed his property to the

Bales when they received a copy of his Will in July 2009. RP 567, 593.

#### H. Procedural History

**1. The Bales sued Allison, John, and Robert, for breach of contract, promissory estoppel, undue influence, and tortious interference.**

The Bales sued Allison, John, and Robert, in King County Superior Court, seeking title and damages. CP 1-11. The Bales claimed that Uncle Bob breached an oral or implied contract to give them the property or that they should receive it through promissory estoppel. CP 8-9. The Bales also claimed that Allison exerted undue influence over Uncle Bob and that Allison, John, and Robert, tortiously interfered with the Bales' expectation to receive the property when Uncle Bob died. CP 9-10.

**2. The trial court rejected all of the Bales' claims, but nonetheless awarded them the cabin property because the quitclaim deed did not recite consideration for the gift.**

Allison obtained summary judgment, dismissing the Bales' promissory estoppel, undue influence, and tortious interference claims against her. CP 119. Following a three-day bench trial in which the Bales presented testimony from 16 witnesses, the court rejected their oral and implied contract claims. RP 632, 634; CP

201-02. The court also rejected their undue influence and tortious interference claims. RP 637; CP 202.

Despite rejecting all of the Bales' claims, the trial court awarded them the property. RP 635-36; CP 200-01. The court acknowledged that "consideration is not required" to effect a gift. RP 635. The court also ruled that "love and affection" is not consideration.<sup>2</sup> RP 636. But the court nonetheless ruled that the quitclaim deed did not transfer the property, where it failed to recite consideration. RP 635-36; CP 200-01. The court refused to find that Uncle Bob saw the excise tax affidavit that he signed. RP 638. Since Uncle Bob ineffectively transferred the property, it remained part of his estate. RP 635-36; CP 201. His Will devised the property to the Bales, so the court ordered John and Robert to transfer the property to the Bales. RP 635-36; CP 191-92, 201-02. John and Robert timely appealed. CP 193.

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<sup>2</sup>The trial court likely meant that "love and affection" is not "valuable": consideration. See *In re Estate of Button*, 190 Wash. 333, 336-37, 67 P.2d 876 (1937) (gift was in contemplation of death and subject to tax, where there was not adequate consideration when it recited love and affection as consideration). As discussed *infra*, love and affection is "good" consideration.

## ARGUMENT

### A. The standard of review is *de novo*.

Construction of a deed is a question of law, reviewed *de novo*. ***Martin v. City of Seattle***, 111 Wn.2d 727, 732, 765 P.2d 257 (1988). Courts “give effect to the intentions of the parties, paying particular attention to the intent of the grantor and giving meaning to the entire language of the deed.” ***Carr v. Burlington N., Inc.*** 23 Wn. App. 386, 390-91, 597 P.2d 409 (1979). The party challenging a deed bears the burden to prove its invalidity. ***Chase v. Carney***, 199 Wash. 99, 102, 90 P.2d 286 (1939); ***Snohomish Cnty. v. Hawkins***, 121 Wn. App. 505, 510, 89 P.3d 713 (2004). Any ambiguities are resolved against the grantor and in favor of the grantee. ***Carr***, 23 Wn. App. at 391.

### B. The trial court erred in concluding that a deed must recite consideration to effectively gift property.

The trial court erroneously ruled that the deed failed because it did not recite consideration. But the deed satisfied all statutory requirements. And even if the deed did not explain the gift, Uncle Bob’s signed excise tax affidavit and supplemental statement did. This Court should reverse.

1. **The deed met all statutory requirements, which do not include a recital of consideration.**

The trial court essentially ruled that the deed was invalid for failing to recite consideration. RP 635-36; CP 200-01. Real property must be conveyed by deed to satisfy the statute of frauds. RCW 64.04.010; see **Key Design, Inc. v. Moser**, 138 Wn.2d 875, 881, 983 P.2d 653 (1999). Gifts of real property are no exception. **Roesch v. Gerst**, 18 Wn.2d 294, 305, 138 P.2d 846 (1943) (a parol gift of land is barred by the statute of frauds), *overruled on other grounds*, **Chaplin v. Sanders**, 100 Wn.2d 853, 861, 676 P.2d 431 (1984). The purpose of the statute of frauds is to prevent fraud arising from inherently uncertain oral agreements. **Maier v. Giske**, 154 Wn. App. 6, 15, 223 P.3d 1265 (2010).

Thus, deeds must be in writing, signed by the grantor, and acknowledged by a notary. RCW 64.04.020; **Berg v. Ting**, 125 Wn.2d 544, 551, 886 P.2d 564 (1995); **Maier**, 154 Wn. App. at 15. Deeds also require a complete legal description. **Berg**, 125 Wn.2d at 544; **Maier**, 154 Wn. App. at 15. But no recital of consideration is required under RCW 64.04.020:

Every deed shall be in writing, signed by the party bound thereby, and acknowledged by the party before some person authorized by this act to take acknowledgements of deeds.

Uncle Bob signed the quitclaim deed and the notary acknowledged his signature. Ex 2. The legal description is complete. *Id.* Uncle Bob delivered the deed to John and Robert, who recorded it. Ex 2, 4. No other legal requirements exist. The trial court erred in ruling otherwise.<sup>3</sup>

This case is controlled by *Duggar v. Dempsey*, in which the grantor executed a deed reciting no consideration. 13 Wash. 396, 399-401, 43 P. 357 (1896). The Court held, “that fact alone would not, in our opinion, under the circumstances, make the deed void.” *Id.* at 401. This holding was consistent with English common law, which provided that a party could prove consideration if the deed recited none. Samuel M. Phillips, TREATISE ON THE LAW OF EVIDENCE, 425-26 (1815) (“Phillips ON EVIDENCE”).

*Corpus Juris Secundum* supports this holding, explaining that to invalidate a deed, there should be “some other compelling circumstance besides a mere lack of consideration.” 26A C.J.S. *Deeds* § 24 (2011). Thus, a “deed is good without consideration, in the absence of some wrongful act on the part of the grantee,” including undue influence. *Id.*

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<sup>3</sup> As discussed *infra*, Argument § B.5, the trial court erroneously relied on RCW 64.04.050, which merely suggests a sufficient deed form.

Here, like in *Duggar*, the deed recited no consideration. Ex 2. It is undisputed that Uncle Bob delivered the deed as a gift. Exs 2, 4; RP 563. And the trial court rejected all of the Bales' arguments that his gift resulted from undue influence. RP 637; CP 202. Following *Duggar*, his failure to recite consideration does not invalidate the deed. This Court should reverse.

**2. The deed properly recited no consideration because this was a gift.**

The deed properly recited no consideration because this was a gift. Grantors may gift real property. *Kessler v. Kessler*, 55 Wn.2d 598, 349 P.2d 224 (1960). A gift is the "voluntary transfer of property without consideration." *City of Bellevue v. State*, 92 Wn.2d 717, 720, 600 P.2d 1268 (1979); *see also* WAC 458-61A-201(1) ("A gift of real property is a transfer for which there is no consideration given in return for granting an interest in the property"). That is what happened here. The trial court erred.

The requirements for a real-property gift are present donative intent and delivery of the deed. *Oman v. Yates*, 70 Wn.2d 181, 185-86, 422 P.2d 489 (1967) (gifts in general); *Holohan v. Melville*, 41 Wn.2d 380, 385, 249 P.2d 777 (1952) (gifts of real property). The trial court rejected the Bales' arguments

that Uncle Bob lacked donative intent when it rejected their undue influence claims. RP 637; CP 202. It is undisputed that Uncle Bob delivered the deed to John and Robert and that they recorded it, constituting at least presumptive delivery. Exs 2, 4; RP 563; see **Brewer v. Rosenbaum**, 183 Wash. 218, 48 P.2d 566 (1935) (presumptive delivery); **In re Brickey's Estate**, 157 Wash. 532, 289 P. 1015 (1930) (same). Uncle Bob's gift is valid.

Washington courts have consistently approved gifts absent consideration. See, e.g., **Stringfellow v. Stringfellow**, 53 Wn.2d 639, 335 P.2d 825 (1959) (father gifted stocks by writing his son's name on the certificate; no consideration recital); **State ex rel. Roberts v. Superior Ct. of Snohomish Cnty.**, 165 Wash. 648, 650, 5 P.2d 1037 (1931) (parents could have deeded their home to their daughter "without any consideration at all," but never made that argument); **Phinney v. State**, 36 Wash. 236, 78 P. 927 (1904) (\$4,000 check to friend with no consideration was a valid gift). There is no material difference between those cases and this one. This Court should reverse.

**3. In any event, the excise-tax affidavit and supplemental statement adequately prove the gift.**

Assuming *arguendo* – and contrary to law – that a deed must recite consideration, Uncle Bob's signed real-estate-excise-tax affidavit satisfied the statute of frauds. “[C]ompliance with the statute of frauds is not limited to a single, signed piece of paper, but may be evidenced by several documents clearly related.” **Home Realty Lynnwood, Inc. v. Walsh**, 146 Wn. App. 231, 238, 189 P.3d 253 (2008) (quoting **Knight v. Am. Nat’l Bank**, 52 Wn. App. 1, 5, 756 P.2d 757 (1988)). This rule applies to deeds:

“It is a general rule of construction, well settled by the authorities, that in order to ascertain the intention of the parties, separate deeds or instruments, executed at the same time and in relation to the same subject matter, between the same parties, or, in other words, made as parts of substantially one transaction, may be taken together and construed as one instrument.”

**Standring v. Mooney**, 14 Wn.2d 220, 226-27, 127 P.2d 401 (1942) (quoting 16 AM. JUR. 537, *Deeds* § 175). The **Standring** Court held that the trial court should have read a contract and deed together to determine the parties’ relationship and the transaction’s purpose. *Id.* at 227. While the deed did not mention the contract, the contract was clearly related to the deed and explained that the grantors retained an interest in the property. *Id.* at 227-29.

Here, the signed real estate excise tax affidavit and supplemental statement clearly relate to the deed, explaining that it effected a gift. Ex 4. All real property sales are subject to excise tax (RCW 82.45.060; WAC 458-61A-100), but gifts are not. WAC 458-61A-201. When a grantor gifts real property, he must submit a real estate excise tax affidavit and supplemental statement explaining whether any consideration passed to the seller. *Id.*

The affidavit and supplemental statement should be construed together with the deed. Uncle Bob signed the affidavit and supplemental statement to document his gift. Ex 4. The affidavit and supplemental statement reference and relate to the quitclaim deed. Ex 4. Uncle Bob signed both documents on the same day. Exs 2, 4. They both reference the same tax-parcel numbers. Exs 2, 4. They should be read together. ***Standing***, 14 Wn.2d at 226-27.

They also unambiguously explain that the transfer was a gift. Ex 4. The affidavit states that the deed effected a "gift." Ex 4. The supplemental statement confirms that Uncle Bob received no consideration. Exs 2, 4. Since they both describe the gift and relate to the deed, the statute of frauds is satisfied. The trial court erred in thinking otherwise.

During argument on this issue, the trial court erroneously placed the burden on John and Robert to prove the validity of the affidavit and supplemental statement, refusing to “find that [Uncle Bob] saw the” affidavit. RP 612-15, 638. Just as the party challenging a deed’s validity bears the burden of proof, so does the party alleging that a signature was the result of fraud, trick, or device. **Melton v. United Retail Merchs.**, 24 Wn.2d 145, 164-65, 163 P.2d 619 (1945); **Hawkins**, 121 Wn. App. at 510.

The Bales failed to meet their burden. The Bales introduced the affidavit and supplemental statement as evidence. Ex 4; CP 184; RP 613-14. But as the trial court acknowledged, no testimony discusses the documents. RP 613. The Bales presented no evidence proving that Uncle Bob’s signed affidavit and supplemental statement resulted from fraud, trickery, or device. See **Melton**, 24 Wn.2d at 164-66. His gift was adequately documented. The Court should reverse.

**4. Alternatively, Parol evidence proves that Uncle Bob received adequate consideration for his gift from John and Robert.**

Even assuming *arguendo* that consideration is required, parol evidence proves that Uncle Bob received consideration from John and Robert. When a deed recites no consideration, parol

evidence may prove consideration. Phillips ON EVIDENCE, 425-26. In fact, parol evidence may prove “real consideration, or lack of it,” even when such evidence contradicts the deed. **Malacky v. Scheppler**, 69 Wn.2d 422, 425, 419 P.2d 147 (1966).

John and Robert gave Uncle Bob considerable past consideration: (1) their share of their grandmother’s property; (2) their labor on Uncle Bob’s property; and (3) their love and affection. Past consideration is sufficient to support a conveyance of real property. **Whalen v. Lanier**, 29 Wn.2d 299, 308, 186 P.2d 919 (1947); see **Kessler**, 55 Wn.2d 598. Here, John and Robert’s 1982 transfer of their grandmother’s inheritance to Uncle Bob is sufficient past consideration for the gift. Uncle Bob gave them his property to “make it up” to them for giving up their interests in their grandmother’s property. RP 576-77, 582, 585, 591. Uncle Bob was “trying to settle his accounts.” RP 582.

John and Robert also made improvements to the property, including installing carpeting, painting walls, and doing various yardwork. RP 385. The trial court found that John and Robert improved the property. CP 200. This too is sufficient consideration.

John and Robert’s love and affection is also sufficient consideration. **Kessler**, 55 Wn.2d 598; **Parr v. Campbell**, 109

Wash. 376, 380, 186 P. 858 (1920) (mother's love and affection for daughter was sufficient consideration to sustain the deed); **Walker v. Hargear**, 36 Wash. 672, 79 P. 472 (1905) (affirming gifts from uncles to nieces for consideration of love and affection). Uncle Bob gave his gift out of "love and affection" for John and Robert. RP 590, 594. When Uncle Bob signed the deed, he told the notary that he was gifting his property because they had spent a lot of fun time there. RP 464, 467. They stayed with him to the end. RP 591, 594. There was sufficient consideration for his gift.

**5. The trial court erroneously relied on RCW 64.04.050, which simply suggests a valid form of quitclaim deed, not a required form.**

To conclude that consideration is required, the trial court also erroneously relied on RCW 64.04.050, which merely suggests a valid form of quitclaim deed. CP 201. The statute does not require a recital of consideration (RCW 64.04.050):

Quitclaim deeds may be in substance in the following form:

The grantor (here insert the name or names and place of residence), for and in consideration of (here insert consideration) conveys and quitclaims to (here insert grantee's name or names) all interest in the following described real estate (here insert description), situated in the county of . . . . ., state of Washington. Dated this . . . . day of . . . . ., 19. . .

This language is permissive: Courts have consistently held that “may” is permissive and does not impose any duty. **Nat’l Elec. Contractors Ass’n, Cascade Ch. v. Riveland**, 138 Wn.2d 9, 28, 978 P.2d 481 (1999) (citing **Yakima Cnty. (W. Valley) Fire Prot. Dist. v. City of Yakima**, 122 Wn.2d 371, 381, 858 P.2d 245 (1993)). By saying that a deed “may” follow this form “in substance,” the Legislature did not impose an obligation on grantors to use the form’s precise language.<sup>4</sup>

The trial court erred in reading the quitclaim-deed statute to require a recital of consideration. This Court should reverse.

**C. The trial court erred in failing to award John and Robert their attorney fees, and this Court should award them fees on appeal.**

The trial court erred in failing to award John and Robert their fees. A court has discretion to award attorney fees to any party in a TEDRA action. RCW 11.96A.150(1). The court may award fees as it deems equitable, considering any factors it deems relevant and appropriate. *Id.* This Court reviews the trial court’s attorney fee

---

<sup>4</sup> The statute’s second paragraph merely confirms that this form is sufficient, but not necessary, to convey title (RCW 64.04.050):

Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a good and sufficient conveyance, release and quitclaim to the grantee, his heirs and assigns in fee of all the then existing legal and equitable rights of the grantor in the premises therein described[.]

decision for an abuse of discretion. *In re Guardianship of Matthews*, 156 Wn. App. 201, 212, 232 P.3d 1140 (2010).

Here, the trial court rejected all of the Bales' claims. CP 1-11, 200-02. It nonetheless awarded them the property, relying on an incorrect theory, which should be reversed. See Argument § B. Thus, they had no basis to claim an interest in the property. The trial court should have awarded John and Robert their fees. This Court should remand for the trial to consider such an award in light of the required reversal.

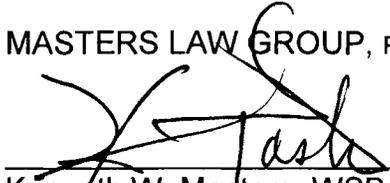
The Court should also award John and Robert their appellate attorney fees under RCW 11.96A.150 and RAP 18.1. This Court has discretion to award attorney fees on appeal. RCW 11.96A.150(1); *Kwiatkowski v. Drews*, 142 Wn. App. 463, 500-01, 176 P.3d 510 (2008). The Court should reverse the trial court's rulings, remand for an award of fees, and award the Fletchers fees on appeal.

## CONCLUSION

For the reasons stated above, the trial court incorrectly ruled that Uncle Bob's deed was invalid because it failed to recite consideration. This Court should reverse and remand for consideration of an award of trial court fees, and should award the Fletchers fees on appeal.

RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of January, 2012.

MASTERS LAW GROUP, P.L.L.C.



Kenneth W. Masters, WSBA 22278  
Shelby R. Frost Lemmel, WSBA 33099  
Paul M. Crisalli, WSBA 40681  
241 Madison Avenue North  
Bainbridge Is, WA 98110  
(206) 780-5033

**CERTIFICATE OF SERVICE BY MAIL**

I certify that I caused to be mailed, a copy of the foregoing **BRIEF OF APPELLANTS** postage prepaid, via U.S. mail on the 30<sup>th</sup> day of January 2012, to the following counsel of record at the following addresses:

Co-counsel for Appellants

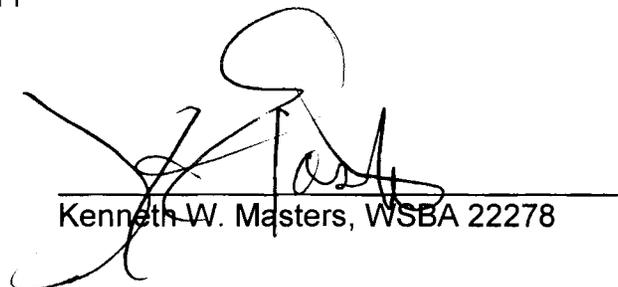
Saphronia R. Young  
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222 E Main Street, Suite M  
Auburn, WA 98002-5440

Counsel for Defendants

David L. Tuttle  
Regeimbal McDonald PLLC  
612 S. 227<sup>th</sup> Street  
Des Moines, WA 98198-6826

Counsel for Respondents

Karen R. Bertram  
Kutscher Hereford Bertram  
Burkart, PLLC  
705 Second Avenue, Suite 800  
Seattle, WA 98104-1711



Kenneth W. Masters, WSBA 22278



RETURN ADDRESS

JOHN FLETCHER  
5860 PINE RD NE  
BREMERTON, WA. 98311

COVER PAGE

Document Title(s)

PLEASE RECORD!

PLEASE FORWARD TO TREASURER

QUIT CLAIM DEED

REAL ESTATE EXCISE TAX AFFIDAVIT

SUPPLEMENTAL

LEGAL DESCRIPTIONS  
Grantor(s) (Last, First and Middle Initial)

FLETCHER ROBERT E.

Additional Reference #s on page

Grantee(s) (Last, First and Middle Initial)

FLETCHER JOHN F.

FLETCHER ROBERT G.

Additional grantors on page

Trustee(s) (Last, First and Middle Initial)

Additional grantees on page

Legal Description (abbreviated form: i.e. lot, block, plat or section, township, range,

quarter/quarter)

TAX 46 PT NW NW

MH 8477

NOT VALUE PERMITTED

EXHIBIT A

Additional legal is on page

Assessor's Property Tax Parcel/Account Number

PARCEL #1

3422170046

PARCEL #2

3422170012

Additional parcel #s on page

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Signature of Requesting Party

AFTER RECORDING MAIL TO:

JOHN FLETCHER  
5360 PINE RD. NE  
BREMELTON, WA. 98311



Filed for Record at Request of

Escrow Number:  
Title Order Number:

QUIT CLAIM DEED

Grantor: ROBERT ERNEST FLETCHER, A MARRIED MAN, AS HIS SOLE AND SEPARATE ESTATE  
Grantee: ROBERT GARY FLETCHER, AN UNMARRIED MAN, AS HIS SOLE AND SEPARATE ESTATE  
~~AND JOHN FRANKLIN FLETCHER, A MARRIED MAN, AS HIS SOLE AND SEPARATE ESTATE~~  
SEPARATE ESTATE (BOTH GRANTEES HOLD 50% UNDIVIDED INTEREST)  
ABBREVIATED LEGAL: TAX 46 PT NW NW ----- MH 9477 - NOT VALUE PERMITTED  
Assessor's Tax Parcel Number(s): 34221 70046 | 34221 70012

THE GRANTOR, ROBERT ERNEST FLETCHER, ET AL. (A MARRIED MAN, AS HIS SOLE & SEPARATE ESTATE) for and in consideration of conveys and quit claims to, OKANOGAN the following described real estate, situated in the County of WASHINGTON, together with all after acquired title of the Grantors therein:

AS SET FORTH IN EXHIBIT "A" ATTACHED WHICH BY THIS REFERENCE IS MADE A PART HEREOF.

Dated:

12-8-08

Robert E. Fletcher

STATE OF Washington  
COUNTY OF King SS:

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

Dated: 12-8-08

Susie Miller  
Notary Public in and for the State of Washington  
Residing at: Des Moines  
My appointment expires: 6-21-12

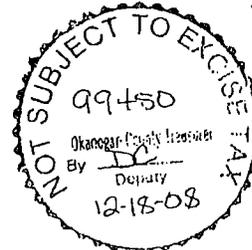
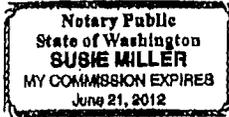




EXHIBIT A

14 That part of the Northwest quarter of the Northwest quarter  
15 of Section 17, Township 34 North, Range 22 E.W.M., Okanogan  
16 County, Washington, described as follows:  
17 **Parcel 1: TAX # 3422170046**  
18 Beginning at a point which is South 41°55' East 1103.61 feet  
19 from the Northwest corner of the Northwest quarter of the  
20 Northwest quarter;  
21 Thence South 64°45' West 100 feet;  
22 Thence South 41°55' East 100 feet to the meander line of  
23 Bear Creek;  
24 Thence following Bear Creek 100 feet in a Northeasterly  
25 direction to the TRUE POINT OF BEGINNING;  
26 Thence continuing along the meander line of Bear Creek  
27 Northeasterly 109 feet;  
28 Thence Northwest 41°55' 109 feet;  
29 Thence Southwest 64°45' 209 feet;  
30 Thence South 41°55' East 109 feet;  
31 Thence North 64°45' East 100 feet;  
32 Thence South 41°55' East 100 feet to the TRUE POINT OF  
33 BEGINNING.  
34 **Parcel 2: TAX # 3422170012**  
35 Beginning at a point which is South 41°55' East 1103.61 feet  
36 from the Northwest corner of the Northwest quarter of the  
37 Northwest quarter;  
1 Thence South 64°45' West 100 feet;  
2 Thence South 41°55' East 100 feet to the meander line of  
3 Bear Creek;  
4 Thence following Bear Creek 100 feet in a Northeasterly  
5 direction;  
6 Thence North 41°55' West 100 feet to the Point of Beginning.  
7  
8 TOGETHER WITH an easement 15 feet wide for a roadway for  
9 access to the subject property, and maintenance thereof, as  
10 more fully described in that deed recorded in Volume 143,  
11 page 223, records of the Auditor of Okanogan County,  
12 Washington.

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

This form is your receipt  
when stamped by cashier.



PLEASE TYPE OR PRINT

**THIS AFFIDAVIT WILL NOT BE ACCEPTED UNLESS ALL AREAS ARE FULLY COMPLETED**  
(See back page for instructions)

<input type="checkbox"/> Check box if partial sale of property		If multiple owners, list percentage of ownership next to name	
<b>SELLER GRANTOR</b>	Name <u>ROBERT ERNEST FLETCHER</u>	<b>BUYER GRANTEE</b>	<u>JOHN F. FLETCHER 50%</u>
	Mailing Address <u>22 315 6TH AVES. #A-402</u>		<u>ROBERT S. FLETCHER 50%</u>
	City/State/Zip <u>DES MOINES WA. 98198</u>		
	Phone No. (including area code) <u>360-651-6957</u>		
Send all property tax correspondence to: <input type="checkbox"/> Same as Buyer/Grantee		List all real and personal tax parcel account numbers - check box if personal property	
Name <u>JOAN FLETCHER</u>		Listed assessed value(s)	
Mailing Address <u>5760 PINE RD. NE</u>		Assessed Value?	
City/State/Zip <u>BREMERTON WA. 98311</u>		<u>10,000.00</u>	
Phone No. (with area code) <u>360-434-5790</u>			

4. Street address of property: 31 DAVIS LAKE RD. WINTHROP P. WA. 98802

This Property is located in  unincorporated OLANOGAN County OR within  city of \_\_\_\_\_

Check box if any of the listed parcels are being segregated from a larger parcel.

Legal description of property (if more space is needed, you may attach a separate sheet to each page of the affidavit)

SUBJECT TO AS SET FORTH IN EXHIBIT "A" ATTACHED, WHICH BY THIS REFERENCE IS MADE A PART HEREOF.

<p>5. Enter Abstract Use Categories (Please see list on back page of this form) If exempt from property tax per chapter 84.36 RCW (nonprofit organization), include: Seller's Exempt Reg. No.:</p>	<p>7. List all personal property (tangible and intangible) included in selling price. <u>ALL PROPERTY ON SITE</u></p>
--	---

<p>6. Is this property designated as forest land chapter 84.33 RCW? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>Is this property classified as current use (open space, farm and agricultural, or timber) land per chapter 84.34? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>Is this property receiving special valuation as historical property per chapter 84.26 RCW? YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></p> <p>If any answers are yes, complete as instructed below.</p>	<p>If claiming an exemption, list WAC number reason for exemption: WAC No. (Section/Subsection) <u>458-61A-201(B1)</u> Reason for exemption <u>gift, w/ no debt</u> Type of Document <u>GCD</u> Date of Document <u>12-8-08</u></p>
---	---

(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 84.34.108). Prior to signing (3) below, you may contact your local county assessor for more information.

This land  does  does not qualify for continuance N\*

R. Watkins 12-18-08  
DEPUTY ASSESSOR DATE

(2) NOTICE OF COMPLIANCE (HISTORIC PROPERTY)  
NEW OWNER(S): To continue special valuation as historic property, sign (3) below. If the new owner(s) do 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

Gross Selling Price	\$ _____
*Personal Property (deduct)	\$ _____
Exemption Claimed (deduct)	\$ _____
Taxable Selling Price	\$ _____
Excise Tax: State	\$ _____
Local	\$ _____
*Delinquent Interest: State	\$ _____
Local	\$ _____
*Delinquent Penalty	\$ _____
*County Technology Fee	\$ _____
*State Technology Fee	\$ <u>5.00</u>
*Affidavit Processing Fee	\$ <u>5.00</u>
Total Due	\$ <u>10.00</u>

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

I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT

Signature of Grantor or Grantor's Agent <u>Robert E. Fletcher</u>	Signature of Grantee or Grantee's Agent <u>John F. Fletcher</u>
Name (print) <u>ROBERT E. FLETCHER</u>	Name (print) <u>JOHN FLETCHER</u>
Date & city of signing: <u>12/8/08 DES MOINES, WA. 98198</u>	Date & city of signing: <u>12/8/08 DES MOINES, WA. 98198</u>

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 (06/21/05) THIS SPACE - TREASURER'S USE ONLY COUNTY TREASURER

John Fletcher - MO 1145504032 - \$10.00 (sc)

NOT SUBJECT TO EXCISE TAX

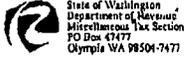
Okanogan County Treasurer

By DC Deputy

12-18-08

EX 4

099450



**REAL ESTATE EXCISE TAX  
SUPPLEMENTAL STATEMENT**  
(WAC 458-61A-304)

This form must be submitted with the Real Estate Excise Tax Affidavit (FORM REV 84 0001A) for claims of tax exemption as provided below. Completion of this form is required for the types of real property transfers listed in numbers 1-3 below. Only the first page of this form needs original signatures.

**AUDIT:** Information you provide on this form is subject to audit by the Department of Revenue. In the event of an audit, it is the taxpayers' responsibility to provide documentation to support the selling price or any exemption claimed. This documentation must be maintained for a minimum of four years from date of sale. (RCW 82.45.100) Failure to provide supporting documentation when requested may result in the assessment of tax, penalties, and interest. Any filing that is determined to be fraudulent will carry a 50% evasion penalty in addition to any other accrued penalties or interest when the tax is assessed.

**PERJURY:** Perjury is a class C felony which is punishable by imprisonment in a 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)).

The persons signing below do hereby declare under penalty of perjury that the following is true (check appropriate statement):

1.  **DATE OF SALE:** (WAC 458-61A-306(2))

I, (print name) \_\_\_\_\_, certify that the \_\_\_\_\_  
(type of instrument), dated \_\_\_\_\_, was delivered to me in escrow by \_\_\_\_\_  
(seller's name). **NOTE:** Agent named here must sign below and indicate name of firm. The payment of the tax is considered current if it is not more than 90 days beyond the date shown on the instrument. If it is past 90 days, interest and penalties apply to the date of the instrument.  
Reasons held in escrow: \_\_\_\_\_

\_\_\_\_\_  
Signature Firm Name

2. **GIFTS:** (WAC 458-61A-201) The gift of equity is non-taxable; however, any consideration received is not a gift and is taxable. The value exchanged or paid for equity plus the amount of debt equals the taxable amount. One of the boxes below must be checked. Both Grantor (seller) and Grantee (buyer) must sign below.

Grantor (seller) gifts equity valued at \$ 10,000.00 to grantee (buyer).  
**NOTE:** Examples of different transfer types are provided on the back. This is to assist you with correctly completing this form and paying your tax.  
"Consideration" means money or anything of value, either tangible (boats, motor homes, etc) or intangible, paid or delivered, or contracted to be paid or delivered, including performance of services, in return for the transfer of real property. The term includes the amount of any lien, mortgage, contract indebtedness, or other encumbrance, given to secure the purchase price, or any part thereof, or remaining unpaid on the property at the time of sale. "Consideration" includes the assumption of an underlying debt on the property by the buyer at the time of transfer.

- A: Gifts with consideration**
- 1.  Grantor (seller) has made and will continue to make all payments after this transfer on the total debt of \$ \_\_\_\_\_ and has received from the grantee (buyer) \$ \_\_\_\_\_ (include in this figure the value of any items received in exchange for property). Any consideration received by grantor is taxable.
  - 2.  Grantee (buyer) will make payments on \_\_\_\_\_% of total debt of \$ \_\_\_\_\_ for which grantor (seller) is liable and pay grantor (seller) \$ \_\_\_\_\_ (include in this figure the value of any items received in exchange for property). Any consideration received by grantor is taxable.

- B: Gifts without consideration**
- 1.  There is no debt on the property; Grantor (seller) has not received any consideration towards equity. No tax is due.
  - 2.  Grantor (seller) has made and will continue to make 100% of the payments on total debt of \$ \_\_\_\_\_ and has not received any consideration towards equity. No tax is due.
  - 3.  Grantee (buyer) has made and will continue to make 100% of the payments on total debt of \$ \_\_\_\_\_ and has not paid grantor (seller) any consideration towards equity. No tax is due.
  - 4.  Grantor (seller) and grantee (buyer) have made and will continue to make payments from joint account on total debt before and after the transfer. Grantee (buyer) has not paid grantor (seller) any consideration towards equity. No tax is due.

Has there been or will there be a refinance of the debt?  YES  NO  
If grantor (seller) was on title as co-signor only, please see WAC 458-61A-215 for exemption requirements.  
The undersigned acknowledges this transaction may be subject to audit and have read the above information regarding record-keeping requirements and evasion penalties.

\_\_\_\_\_  
Grantor's Signature

\_\_\_\_\_  
Grantee's Signature

3.  **IRS "TAX DEFERRED" EXCHANGE** (WAC 458-61A-213)

I, (print name) \_\_\_\_\_, certify that I am acting as an Exchange Facilitator in transferring real property to \_\_\_\_\_ pursuant to IRC Section 1031, and in accordance with WAC 458-61A-213.  
**NOTE:** Exchange Facilitator must sign below.

\_\_\_\_\_  
Exchange Facilitator's Signature

For tax assistance, contact your local County Treasurer/Recorder or visit <http://dor.wa.gov> or call (360) 570-3265. To inquire about the availability of this document in an alternate format for the visually impaired, please call (360) 705-8715. Teletype (TTY) users please call 1-800-451-7983.  
REV 84 0002c (e) (12/27/06)

COUNTY TREASURER

## **RCW 11.96A.150**

### **Costs — Attorneys' fees.**

(1) Either the superior court or any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.

(2) This section applies to all proceedings governed by this title, including but not limited to proceedings involving trusts, decedent's estates and properties, and guardianship matters. This section shall not be construed as being limited by any other specific statutory provision providing for the payment of costs, including RCW 11.68.070 and 11.24.050, unless such statute specifically provides otherwise. This section shall apply to matters involving guardians and guardians ad litem and shall not be limited or controlled by the provisions of RCW 11.88.090(10).

[2007 c 475 § 5; 1999 c 42 § 308.]

## **RCW 64.04.010**

### **Conveyances and encumbrances to be by deed.**

Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed: PROVIDED, That when real estate, or any interest therein, is held in trust, the terms and conditions of which trust are of record, and the instrument creating such trust authorizes the issuance of certificates or written evidence of any interest in said real estate under said trust, and authorizes the transfer of such certificates or evidence of interest by assignment by the holder thereof by a simple writing or by endorsement on the back of such certificate or evidence of interest or delivery thereof to the vendee, such transfer shall be valid, and all such assignments or transfers hereby authorized and heretofore made in accordance with the provisions of this section are hereby declared to be legal and valid.

[1929 c 33 § 1; RRS § 10550. Prior: 1888 p 50 § 1; 1886 p 177 § 1; Code 1881 § 2311; 1877 p 312 § 1; 1873 p 465 § 1; 1863 p 430 § 1; 1860 p 299 § 1; 1854 p 402 § 1.]

## **RCW 64.04.020**

### **Requisites of a deed.**

Every deed shall be in writing, signed by the party bound thereby, and acknowledged by the party before some person authorized by \*this act to take acknowledgments of deeds.

[1929 c 33 § 2; RRS § 10551. Prior: 1915 c 172 § 1; 1888 p 50 § 2; 1886 p 177 § 2; Code 1881 § 2312; 1854 p 402 § 2.]

**Notes:**

**\*Reviser's note:** The language "this act" appears in 1929 c 33, which is codified in RCW 64.04.010-64.04.050, 64.08.010-64.08.070, 64.12.020, and 65.08.030.

## **RCW 64.04.050**

### **Quitclaim deed — Form and effect.**

Quitclaim deeds may be in substance in the following form:

The grantor (here insert the name or names and place of residence), for and in consideration of (here insert consideration) conveys and quitclaims to (here insert grantee's name or names) all interest in the following described real estate (here insert description), situated in the county of . . . . ., state of Washington. Dated this . . . . day of . . . . ., 19. . .

Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a good and sufficient conveyance, release and quitclaim to the grantee, his heirs and assigns in fee of all the then existing legal and equitable rights of the grantor in the premises therein described, but shall not extend to the after acquired title unless words are added expressing such intention.

[1929 c 33 § 11; RRS § 10554. Prior: 1886 p 178 § 5.]

## **RCW 82.45.060**

### **Tax on sale of property.**

There is imposed an excise tax upon each sale of real property at the rate of one and twenty-eight one-hundredths percent of the selling price. An amount equal to six and one-tenth percent of the proceeds of this tax to the state treasurer must be deposited in the public works assistance account created in RCW 43.155.050: PROVIDED, That during the fiscal year 2011, six and one-tenth percent of the proceeds of this tax must be deposited in the general fund for general purpose expenditures. Except as otherwise provided in this section, an amount equal to one and six-tenths percent of the proceeds of this tax to the state treasurer must be deposited in the city-county assistance account created in RCW 43.08.290. During the 2011-2013 fiscal biennium, 1.546 percent of the proceeds of this tax to the state treasurer must be deposited in the city-county assistance account.

[2011 1st sp.s. c 50 § 975; 2011 1st sp.s. c 48 § 7035; 2005 c 450 § 1; 2000 c 103 § 15; 1987 c 472 § 14; 1983 2nd ex.s. c 3 § 20; 1982 1st ex.s. c 35 § 14; 1980 c 154 § 2; 1969 ex.s. c 223 § 28A.45.060. Prior: 1951 1st ex.s. c 11 § 5. Formerly RCW 28A.45.060, 28.45.060.]

# **WAC 458-61A-100**

## **Real estate excise tax — Overview.**

(1) **Introduction.** Chapter 82.45 RCW imposes an excise tax on every sale of real estate in the state of Washington. All sales of real property in this state are subject to the real estate excise tax unless specifically exempted by chapter 82.45 RCW and these rules. The general provisions for the administration of the state's excise taxes contained in chapter 82.32 RCW apply to the real estate excise tax, except as provided in RCW 82.45.150. This chapter provides applicable definitions, describes procedures for payment, collection, and reporting of the tax, explains when penalties and interest are imposed on late payment, describes those transactions exempted from imposition of the tax, and explains the procedures for refunds and appeals.

**Legislation adopted in 2010.** Effective May 1, 2010, chapter 23, Laws of 2010 sp. sess. established new requirements regarding:

(a) Sales of real estate that result from the transfer of a controlling interest in an entity that owns real property. See WAC 458-61A-101.

(b) Enforcement of tax liability. See WAC 458-61A-301.

### **(2) Imposition of tax.**

(a) The taxes imposed are due at the time the sale occurs, are the obligation of the seller, and, in most instances, are collected by the county upon presentation of the documents of sale for recording in the public records.

(b) If there is a sale of the controlling interest in an entity that owns real property in this state, the tax is paid to the department at the time the interest is transferred. See WAC 458-61A-101.

(3) **Rate of tax.** The rate of the tax is set forth in RCW 82.45.060. Counties, cities, and towns may impose additional taxes on sales of real property on the same incidences, collection, and reporting methods authorized under chapter 82.45 RCW. See chapter 82.46 RCW.

(4) **Nonprofit organizations.** Transfers to or from an organization exempt from ad valorem property taxes under chapter 84.36 RCW, or from federal income tax, because of the organization's nonprofit or charitable status are nevertheless subject to the real estate excise tax unless specifically exempt under chapter 82.45 RCW or these rules.

(5) **Sales in Indian country.** A sale of real property located in Indian country by an enrolled tribe or tribal member is not subject to real estate excise tax. See WAC 458-20-192 for complete information regarding the taxability of transactions involving Indians and Indian country.

[Statutory Authority: RCW 82.45.150, 82.32.300, and 82.01.060. 11-16-106, § 458-61A-100, filed 8/3/11, effective 9/3/11. Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. 05-23-093, § 458-61A-100, filed 11/16/05, effective 12/17/05.]

# **WAC 458-61A-201**

## **Gifts.**

(1) **Introduction.** Generally, a gift of real property is not a sale, and is not subject to the real estate excise tax. A gift of real property is a transfer for which there is no consideration given in return for granting an interest in the property. If consideration is given in return for the interest granted, then the transfer is not a gift, but a sale, and it is subject to the real estate excise tax to the extent of the consideration received.

(2) **Consideration.** See WAC [458-61A-102](#) for the definition of "consideration." Consideration may also include:

(a) Monetary payments from the grantee to the grantor; or

(b) Monetary payments from the grantee toward underlying debt (such as a mortgage) on the property that was transferred, whether the payments are made toward existing or refinanced debt.

(3) **Assumption of debt.** If the grantee agrees to assume payment of the grantor's debt on the property in return for the transfer, there is consideration, and the transfer is not exempt from tax. Real estate excise tax is due on the amount of debt assumed, in addition to any other form of payment made by the grantee to the grantor in return for the transfer. However, equity in the property can be gifted.

(4) **Rebuttable presumption regarding refinancing transactions.**

(a) There is a rebuttable presumption that the transfer is a sale and not a gift if the grantee is involved in a refinance of debt on the property within six months of the time of the transfer.

(b) There is a rebuttable presumption that the transfer is a gift and not a sale if the grantee is involved in a refinance of debt on the property more than six months from the time of the transfer.

(5) **Documentation.**

(a) A completed real estate excise tax affidavit is required for transfers by gift. A supplemental statement approved by the department must be completed and attached to the affidavit. The supplemental statement will attest to the existence or absence of underlying debt on the property, whether the grantee has or will in the future make any payments on the debt, and whether a refinance of debt has occurred or is planned to occur. The statement must be signed by both the grantor and the grantee.

(b) The grantor must retain financial records providing proof that grantor is entitled to this exemption in case of audit by the department. Failure to provide records upon

request will result in subsequent denial of the exemption.

**(6) Examples.**

**(a) Overview.** The following examples, while not exhaustive, illustrate some of the circumstances in which a grant of an interest in real property may qualify for this exemption. These examples should be used only as a general guide. The taxability of each transaction must be determined after a review of all the facts and circumstances.

**(b) Examples -- No debt.**

(i) John conveys his residence valued at \$200,000 to Sara. John comes off of the title. There is no underlying debt on the property, and Sara gives John no consideration for the transfer. The conveyance from John to Sara qualifies for the gift exemption from real estate excise tax.

(ii) Keith and Jean, as joint owners, convey their residence valued at \$200,000 to Jean as her sole property. There is no underlying debt on the property. In exchange for Keith's one-half interest in the property, Jean gives Keith \$10,000. Keith has made a gift of \$90,000 in equity, and received consideration of \$10,000. Real estate excise tax is due on the \$10,000.

**(c) Examples -- Existing debt.**

(i) Josh conveys his residence valued at \$200,000 to Samantha. Josh has \$25,000 in equity and an underlying debt of \$175,000. Josh continues to make the mortgage payments out of his own funds, and Samantha does not contribute any payments toward the debt. Since Josh continues to make the payments, there is no consideration from Samantha to Josh, and the transfer qualifies for exemption as a gift.

(ii) Josh conveys the residence to Samantha, and after the transfer, Samantha begins to make payments on the debt. Josh does not contribute to the payments on the debt after the title is transferred. Josh has made a gift of his \$25,000 equity, but real estate excise tax is due on the \$175,000 debt that Samantha is now paying.

(iii) Dan conveys his residence valued at \$200,000 to himself and Jill as tenants in common. Dan has \$25,000 in equity and an underlying debt of \$175,000. Dan and Jill open a new joint bank account, to which they both contribute funds equally. Mortgage payments are made from their joint account. There is a rebuttable presumption that real estate excise tax is due on the conveyance because Jill appears to be contributing toward payments on the debt. In that case, real estate excise tax is due on the consideration given by Jill, (50% of the underlying debt) based upon her contributions to the joint account. The tax will be calculated on a one-half interest in the existing debt (\$87,500).

(iv) Dan conveys the residence to himself and Jill. Dan has \$25,000 in equity, and a

mortgage of \$175,000. Dan and Jill open a new joint bank account, which is used to make the mortgage payments, but Dan contributes 100% of the funds to the account. The conveyance is exempt from real estate excise tax, because Jill has not given any consideration in exchange for the transfer.

(v) Bob conveys his residence valued at \$200,000 to himself and Jane as tenants in common. Bob has \$25,000 equity, and an underlying debt of \$175,000. Bob and Jane have contributed varying amounts to an existing joint bank account for many years prior to the conveyance. Mortgage payments have been made from the joint account both before and after the transfer. The conveyance is exempt from real estate excise tax, because Jane's contributions toward the joint account from which the payments are made is not deemed consideration in exchange for the transfer from Bob (because she made contributions for many years before the transfer as well as after the transfer, there is no evidence that her payments were consideration for the transfer).

(vi) Bill and Melanie, as joint owners, convey their residence valued at \$200,000 to Melanie, as her sole property. There is an underlying debt of \$170,000. Prior to the transfer, both Bill and Melanie had contributed to the monthly payments on the debt. After the transfer, Melanie begins to make 100% of the payments, with Bill contributing nothing toward the debt. Bill's equity (\$15,000) is a gift, but Melanie's taking over the payments on the mortgage is consideration received by Bill. Real estate excise tax is due on \$85,000 (Bill's fractional interest in the property multiplied by the outstanding debt at the time of transfer:  $50\% \times \$170,000$ ).

(vii) Casey and Erin, as joint owners, convey their residence to Erin. There is an underlying debt of \$170,000 in both their names. For the three years prior to the transfer, Erin made 100% of the payments on the debt. After the transfer, Erin continues to make 100% of the payments. The transfer is exempt from the real estate excise tax because Erin made all the payments on the property before the transfer as well as after the transfer; there is no evidence that her payments were consideration for the transfer.

**(d) Examples -- Refinanced debt.**

(i) Bob conveys his residence to himself and Jane. Within one month of the transfer, Bob and Jane refinance the underlying debt of \$175,000 in both their names, but Bob continues to make the payments on the debt. Jane does not contribute any funds toward the payments. The conveyance qualifies for the gift exemption because Jane gave no consideration for the transfer.

(ii) Casey and Erin, as joint owners, convey their residence valued at \$200,000 to Erin as sole owner. There is an underlying mortgage on the property of \$170,000. Prior to the transfer, Casey and Erin had both contributed to the monthly mortgage payments. Within one month of the transfer, Erin refinances the mortgage in her name only and begins to make payments from her separate account. In this case, there is a rebuttable presumption that this is a disguised sale, since Erin, through her refinance, has assumed sole responsibility for the underlying debt. Real estate excise tax is due on

\$85,000 (Casey's fractional interest in the property multiplied by the total debt on the property: 50% x \$170,000).

(iii) Kyle conveys his residence valued at \$200,000 to himself and Amy as tenants in common. Kyle has \$25,000 in equity, and an underlying debt of \$175,000. Within one month of the transfer, Kyle and Amy refinance the mortgage in both their names, and open a joint bank account to which they contribute funds equally. Payments on the new mortgage are made from the joint account. There is a rebuttable presumption that Amy's contributions to the joint account are consideration for the transfer, since Amy appears to have agreed to pay half of the monthly debt payment, and real estate excise tax may be due. The measure of the tax is one-half of the underlying debt to which Amy is contributing (\$87,500).

(iv) Kyle conveys his residence to himself and Amy. Kyle continues to make the payments on the underlying debt of \$175,000. Nine months after the transfer, Kyle and Amy refinance the property in both of their names. After the refinance, Kyle and Amy contribute equally to a new joint bank account from which the mortgage payments are now made. Amy's contribution to the mortgage nine months after the transfer is not deemed consideration in exchange for the transfer from Kyle to the two of them as tenants in common. The conveyance will qualify for the gift exemption.

(e) **Example -- Refinanced debt -- "Cosigner."** Charlie and Sadie, a married couple, own a residence valued at \$200,000 with an underlying mortgage of \$170,000. Sadie receives the property when they divorce. After a few months, Sadie tries to refinance, but her credit is insufficient to obtain a loan in her name only. Aunt Grace offers to assist her by becoming a "co-borrower" on the loan. As a result, the bank requires that Aunt Grace be added to the title. Following the refinance, Sadie makes 100% of the payments on the new debt, and Aunt Grace gives no consideration for being added to the title. The conveyance adding Aunt Grace to the title is exempt from real estate excise tax. Although the quitclaim deed from Sadie to Aunt Grace may be phrased as a gift, the transfer is exempt as Aunt Grace's presence on the title acts as an exempt security interest to protect Aunt Grace in the event Sadie defaults on her mortgage. See WAC 458-61A-215 for this exemption.

(f) **Example -- Rental or commercial property.** Sue owns a rental property valued at \$200,000, with an underlying mortgage of \$175,000. Sue conveys the property to herself and Zack as tenants in common. Prior to the transfer, the rental income went to a bank account in Sue's name only, and she made the mortgage payments from that account. After the transfer, Zack's name is added to the bank account. The rental income is now deposited in the joint account, and the mortgage payments are made from that account. There is a rebuttable presumption that this is a taxable transaction, because this appears to be a business arrangement. As a business venture, one-half of the rental income now belongs to Zack, and is being contributed toward payment of the mortgage. The real estate excise tax will be due on the one-half interest of the debt contributed by Zack (\$87,500).

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150 . 05-23-093, § 458-61A-201, filed 11/16/05, effective 12/17/05.]