Washington State Department of Transportation

Publications Transmittal

Transmittal Number	Date
PT 05-023	March 2005
Publication Distribution To: All holders of the Right of Way Manual	
Publication Title Right of Way Manual	Publication Number M 26-01
Originating Organization Environmental & Engineering Programs, Real Estate Services	

Remarks:
This revision is only available electronically.
To access the manual go to: http://www.wsdot.wa.gov/FASC/EngineeringPublications/manuals/ROW.pdf

Summary of Changes:
Please note: The actual revisions should be reviewed in depth and are underlined in the manual.

Instructions:

Chapter	Remove Pages	Insert Pages
Chapter 8	8-1 – 8 - 42	8-1 – 8-41

Distributed By	Phone Number	Signature
Directional Documents and Engineering Publications	(360) 705-7430 FAX: 705-6861	Stephanie Williams

8-1 General 8-1

8-2 Clearance of Encumbrances 8-1
8-2.1 General Technique 8-1
8-2.1.1 Rules 8-1
8-2.1.2 Procedures 8-1
8-2.2 Escrow Technique 8-2
8-2.2.1 Rules 8-2
8-2.2.2 Procedures 8-2

8-3 Lien Encumbrances 8-3
8-3.1 Real Property Taxes 8-3
8-3.1.1 General 8-3
8-3.1.2 Rules 8-3
8-3.1.3 Procedures 8-6
8-3.1.3.1 Payment of Current Year's Tax 8-6
8-3.1.3.2 Payment of Delinquent Taxes 8-6
8-3.1.3.3 Payment by Tax Segregation 8-6
8-3.1.3.4 Clearance by Tax Set Over 8-6
8-3.2 Assessments 8-7
8-3.2.1 General 8-7
8-3.2.2 Rules 8-7
8-3.2.3 Procedures — Irrigation Districts 8-7
8-3.2.4 Procedures — All Other Assessing Districts 8-9
8-3.3 Mortgages and Deeds of Trust 8-13
8-3.3.1 General 8-13
8-3.3.2 Rules 8-13
8-3.3.3 Procedures 8-13
8-3.3.3.1 Total Acquisition 8-13
8-3.3.3.2 Partial Acquisition 8-14
8-3.4 Judgments 8-15
8-3.4.1 General 8-15
8-3.4.2 Rules 8-15
8-3.4.3 Procedures 8-15
8-3.5 Other Monetary Liens 8-16
8-3.5.1 General 8-16
8-3.5.2 Procedures 8-17
8-3.6 Clearing of Deeds of Trust, Mortgages, and Other Monetary Liens 8-18
8-3.6.1 General 8-18
8-3.6.2 Rules 8-18
8-3.6.3 Procedures 8-18

8-4 Property Rights Encumbrances 8-19
8-4.1 Real Estate Contracts 8-19
8-4.1.1 General 8-19
8-4.1.2 Rules 8-19
8-4.1.3 Procedures 8-19
8-4.1.3.1 Parties 8-19
8-4.1.3.2 Unrecorded Real Estate Contracts and Assignments 8-20
8-4.1.3.3 Distribution of Funds 8-20
8-4.1.3.4 Conveyancing 8-20

8-4.2 Leases 8-21
8-4.2.1 General 8-21
8-4.2.2 Rules 8-21
8-4.2.3 Procedures 8-22
8-4.2.3.1 Identification of Lease Interests 8-22
8-4.2.3.2 Clearance of Lease Interests 8-23
8-4.2.3.3 Acquisition Subject to Lease 8-24
8-4.3 Utilities 8-24
8-4.3.1 General 8-24
8-4.3.2 Rules 8-24
8-4.4 Private Easements 8-24
8-4.4.1 General 8-24
8-4.4.2 Rules 8-25
8-4.4.3 Procedures 8-25
8-4.5 Mineral Rights 8-26
8-4.5.1 General 8-26
8-4.5.2 Rules 8-26
8-4.5.3 Procedures 8-27
8-4.6 Water Rights 8-28
8-4.6.1 General 8-28
8-4.6.2 Rules 8-28
8-4.6.3 Procedures 8-28
8-4.6.3.1 Identification of Rights Affected 8-28
8-4.6.3.2 Clearance 8-29
8-4.7 Reservations, Restrictions, and Defects 8-30
8-4.7.1 General 8-30
8-4.7.2 Rules 8-30
8-4.7.3 Procedures 8-30
8-4.8 Vacated Streets and Roads 8-30
8-4.8.1 General 8-30
8-4.8.2 Rules 8-31
8-4.8.3 Procedures 8-31
8-4.9 Prescriptive Streets and Roads 8-31
8-4.9.1 General 8-31
8-4.9.2 Rules 8-32
8-4.9.3 Procedures 8-32
8-4.10 Riparian/Littoral Rights 8-33

8-5 Personal Rights Encumbrances 8-33
8-5.1 Life Estate 8-33
8-5.1.1 General 8-33
8-5.1.2 Rule 8-33
8-5.1.3 Procedures 8-33
8-5.2 Incompetent, Mentally Ill, and Insane Persons 8-34
8-5.2.1 General 8-34
8-5.2.2 Historical Background 8-35
8-5.2.3 1973 Mental Illness Act 8-35
8-5.2.4 Procedures 8-36
8-5.3 Minors 8-37
8-5.3.1 General 8-37
8-5.3.2 Rule 8-37
8-5.3.3 Procedures 8-37

8-5.4 Dissolution of Marriage (Divorce) 8-37
8-5.4.1 General 8-37
8-5.4.2 Rules 8-38
8-5.4.3 Procedures 8-38
8-5.5 Death 8-38
8-5.5.1 Probate 8-39
8-5.5.2 Reserved 8-39
8-5.5.3 Lack of Probate 8-39
8-5.5.4 Community Property Agreement 8-39
8-5.6 Errors in Parties 8-40
8-5.6.1 General 8-40
8-5.6.2 Rules 8-40
8-5.6.3 Procedures 8-40

8-1 General

This chapter is concerned with encumbrances and the procedures for clearing them. Techniques include: escrowing the transaction, withholding a performance bond, or clearing the encumbrance prior to transmitting the parcel to Headquarters. The method used to clear each encumbrance is noted in the Encumbrance Report (Section 8-2.1.2C).

The Director of Real Estate Services (DRES) determines the acceptable title risk in each state acquisition. A title report, consisting of a "Preliminary Commitment for Title Insurance" (PC) plus any "Supplementals" (SPCs), is obtained for each parcel. The title report lists the known encumbrances affecting the title. In addition, the Acquisition Agent may discover other encumbrances (e.g., unrecorded easements).

The following sections discuss techniques for general clearance of encumbrances and procedures for clearance of individual encumbrances.

8-2 Clearance of Encumbrances

8-2.1 General Technique

8-2.1.1 Rules

A. The state clears each encumbrance affecting its acquisitions unless otherwise specified in this manual or unless otherwise authorized on an individual basis by special instructions from the Region Real Estate Services Manager (RESM), approved by the Assistant Director of the Title and Condemnation Program. Any such instructions and approvals are documented in the pertinent transaction.

B. Clearance of encumbrances is normally accomplished by the Region Office in noncourt action acquisitions.

C. Under conditions specified in Section 8-2.2 et seq., the state may obtain clearance of encumbrances involving the payment of money through the escrow services of the title company issuing the PC on the respective parcel.

D. If any interest cannot be acquired by negotiations, the entire acquisition is achieved through eminent domain proceedings.

E. Each transaction package includes documentation on the clearance of all encumbrances against the property being acquired.

8-2.1.2 Procedures

A. The Region RESM:

1. Investigates each encumbrance listed on the PC (and SPC, if applicable) and all other questions of title which appear during the acquisition process.

2. Resolves all title questions in accordance with Section 8-2.1.1 and 8-3 et seq., or obtains execution of an appropriate *Escrow Agreement* (Form RES-337) in accordance with Section 8-2.2.

B. The Acquisition Agent:

1. Includes an *Encumbrance Report* in the appropriate location on the *Right of Way Acquisition Transmittal* (DOT Form 262-048), explaining the effect of each encumbrance on the state's acquisition and the method employed to clear each encumbrance.
2. If unable to negotiate a settlement of any interest, reports the facts to the Region RESM and makes the appropriate note in the *Diary of Right of Way Activities* (Form RES-301) in accordance with Chapter 6.

8-2.2 Escrow Technique

8-2.2.1 Rules

A. Transactions are closed in escrow when:

1. The Region RESM feels an escrow is required to protect the state's or the property owners' interests (e.g., the happening of a future event that does not require a judgment by the escrow agent as to its happening).
2. A multiplicity of signatures is required on a single warrant and contact between endorsers may be complicated (e.g., additional mailing of warrant necessary between endorsers).
3. Total acquisition involving out of area lenders.
4. The owners insist upon it.

B. Transactions are not normally closed in escrow when:

1. The amount necessary to clear an encumbrance is subject to negotiation.
2. A condition precedent to final closing involves the escrow agent in a determination of a performance other than the payment of money (e.g., removal of improvements).

C. Reasons for closing an acquisition in escrow are documented in the *Diary of Right of Way Activities* (Form RES-301).

8-2.2.2 Procedures

When in compliance with Section 8-2.2.1 it is necessary to close a transaction in escrow, the Acquisition Agent:

A. Clears all encumbrances of nonmonetary nature (easements, etc.) and documents the clearance of these encumbrances on the *Encumbrance Report*.

B. Provides, for the benefit of the escrow agent, names, addresses, and telephone numbers of parties in interest, including institutions collecting contract or mortgage payments, judgment creditors, etc.

C. Completes all appropriate instruments involving conveyance to the state and obtains execution thereof.

D. Completes the *Escrow Agreement* (Form RES-337) in accordance with Figure 8-2.2.2.

E. Uses an *Addendum to the Escrow Agreement* (see Figure 8-2.2.2) when there is need for more detailed instructions to the escrow agent than the space available in the standard *Escrow Agreement* (Form RES-337) permits.

F. In situations that call for an *Addendum to the Escrow Agreement*, confers with the Region RESM. The Region RESM may request the assistance of the Assistant Director of the Title and Condemnation Program.

G. Leaves an executed copy of the completed *Escrow Agreement* with the grantors, retains a copy for the region file, and transmits the executed original to Headquarters with the *Right of Way Acquisition Transmittal*.

H. Prepares the *Real Property Voucher* (DOT Form 262-039) as specified in Chapter 10. The voucher is to be signed by the grantor's (claimants) and is to direct that the warrant be made payable to the escrow agency.

8-3 Lien Encumbrances

8-3.1 Real Property Taxes

8-3.1.1 General

Real property taxes are payable on or after February 15th of each year. The entire year's taxes become delinquent if the first half taxes are not paid on or before April 30th. The second half taxes become delinquent unless they are paid on or before October 31st.

8-3.1.2 Rules

A. Any real property tax lien (current year and prior years) is an encumbrance which is cleared on acquisitions of fee title and on most acquisitions of less than fee title (see Chapter 6).

B. The effect of the current year's real property tax lien depends upon the date that the transaction is approved in Headquarters. If the Headquarters approval date is between:

1. January 1st through February 14th: The current year's real property tax lien may be ignored.
2. February 1st through June 29th: At least the first half real property tax must be cleared.
3. After June 29th: The lien of the entire year's tax must be cleared.

C. Persons who have paid the real property tax for the current year may be entitled to a tax refund. Such refund, if any, is based upon that portion of the taxes paid that relate to the property acquired by the state, but only on a pro rata basis for that portion of the year following the state's acquisition. This is not an encumbrance and reimbursement is obtained directly from the County Treasurer.

ESCROW AGREEMENT

TO:	**OUR REFERENCE: (SR/Title)** **Parcel No.** **FA No.** **Your Reference:**

DATE:

The Washington State Department of Transportation, and the undersigned, mutually agree and direct you to close this escrow in accordance with the following instructions:

1. The undersigned grantors hereby authorize the issuance of a State warrant payable solely to the above Escrow Agent, for our benefit.
2. Receive herewith_____from the undersigned as grantor to the State of Washington as grantee, conveying the lands described in your above-referenced Preliminary Commitment.
3. Receive the sum of $_____ in form of State warrant, which you are instructed to distribute as follows:
   (a) Pay and eliminate of record all encumbrances on said premises shown in your Preliminary Commitment dated _____ and supplements dated _____, together with any other encumbrances appearing of record against said premises, on statement of holder's representative prior to closing except those noted in paragraphs _____.
   (b) Pay the following charges: Escrow Fee $_____ plus sales tax; Recording fees, if any, chargeable to _____.
4. _____.,
5. When ready to vest title in the State of Washington, record instrument shown in Instruction 2 above (no recording fee or excise tax is to be charged) and prepare CLOSING DETAIL STATEMENT as explained on page 2 hereof.
6. Remit the balance by check to me/us at _____ with your CLOSING DETAIL STATEMENT.
7. Issue standard form Owner's policy of title insurance in the sum of $ insuring the STATE OF WASHINGTON as owner of the estate conveyed.
8. Upon closing, mail recorded instruments, title policy, and copy of CLOSING DETAIL STATEMENT to WASHINGTON STATE DEPARTMENT OF TRANSPORTATION, Transportation Building, P. O. Box 47338, Olympia Washington 98504-7338, Attn.: Real Estate Services Division, Assistant Director for Title and Condemnation Program.

WASHINGTON STATE
Department of Transportation

By: _____
Right of Way Agent

_____

_____

_____

_____

RES-337
Revised 1/2001

Page 1 of 2 Pages

Parcel:

Escrow Agreement (Example) (page 1 of 2)
Figure 8-2.2.2

CLOSING DETAIL STATEMENT

As indicated on the Escrow Instructions, the Escrow Agent shall furnish upon completion of the closing of the escrow transaction, a CLOSING DETAIL STATEMENT which shall show thereon:

(a) The date of receipt and total amount of escrowed funds.

(b) The fee for escrow services and a statement that the entire escrow fee has been paid solely by the State;'

(c) The date on which the State's grantor is notified that the Escrow Agent is ready to disburse funds to the State's grantor;

(d) Date of closing of the escrow;

(e) Detail of a deed of trust or mortgage payoff which includes:
Principal unpaid balance and date
Accrued interest and dates for which interest is paid
Prepayment penalty assessed, if any
Offset of reserves held by beneficiary or mortgagee
Net amount paid to beneficiary or mortgagee and date

(f) Sums, if any, withheld from distribution to State's grantors at time of closing, and for what reason;

(g) Endorsements to the effect that
1. The statement has been read by the State's Grantor, is approved, and acknowledgment of receipt of the funds indicated as the net balance due from the Escrow Agent.
2. The closing officer certifies that the statement is true and correct.

In case the Escrow Agent has withheld funds from distribution to the State's grantors for any reason, the Escrow Agent shall furnish to the State copies of correspondence transmitting such withheld funds at the time of their final disposition.

RES-337
Revised 1/2001

Page 2 of 2 Pages

Parcel:

Escrow Agreement (Example) (page 2 of 2)
Figure 8-2.2.2

8-3.1.3 Procedures

8-3.1.3.1 Payment of Current Year's Tax

Note: Refer to Section 8-3.1.2B.

A. For either a total or a partial acquisition, the Acquisition Agent, or the owner's election:

1. Allows the owner to pay the tax lien. The Acquisition Agent includes proof of the payment with the *Right of Way Acquisition Transmittal*.
2. Pays the tax lien by a separate *Real Property Voucher* (DOT Form 262-039) made payable to and signed by the appropriate County Treasurer. The amount of this voucher is shown as a deduction on the "principal" *Real Property Voucher*.
3. If the mortgagee is holding reserves to pay the real property taxes, obtains a "Tax Payoff" letter from the mortgagee. The Acquisition Agent requests that this letter be prepared and signed by the appropriate official of the mortgage company guaranteeing payment of the real property taxes. He includes this letter in the data package transmitted with the *Right of Way Acquisition Transmittal*.

B. If the transaction is to be closed in escrow, includes instructions to pay the real property tax in the escrow agreement.

8-3.1.3.2 Payment of Delinquent Taxes

The Acquisition Agent clears the lien of delinquent taxes by using the procedures of Section 8-3.1.3.1. If a separate voucher is written for the payment, the Acquisition Agent has the County Treasurer compute the interest to be charged allowing sufficient lead time (approximately 60 days) to enable payment to be received by the County Treasurer. If desired, a statement may accompany the voucher.

8-3.1.3.3 Payment by Tax Segregation

On a partial acquisition, the Acquisition Agent or the owner may request that the County Assessor segregate both the assessed valuation and the real property taxes between the property acquired by the state and the remainder. Then the taxes are paid on at least the portion acquired by the state (RCW 84.60.070) using the procedures in Sections 8-3.1.3.2 and 8-3.1.3.3.

8-3.1.3.4 Clearance by Tax Set Over

On a partial acquisition, if the assessed valuation of the remainder exceeds the total amount of all current and delinquent taxes, the amount of the real property tax applicable to the state's acquisition may be "set over" to the remainder thus avoiding the necessity of making a tax payment prior to closing. The Tax Set Over Letter (Figure 8-3.1.3.4) may be prepared by the Acquisition Agent, is signed by the owners and is approved by the County Assessor and the County Treasurer. The Acquisition Agent includes the *Tax Set Over Letter* in the data package transmitted with the *Right of Way Acquisition Transmittal*.

Also, on a partial acquisition, the taxes may be set over to the remainder by inserting in the Warranty Deed the following paragraph:

"Also, the Grantor(s) request the Assessor and Treasurer of said County to set over to the remainder of the hereinafter described Parcel "A", the lien of all unpaid taxes, if any, affecting the real estate herein conveyed, as provided for by RCW 84.60.070."

Note: This process cannot be used for a total acquisition.

8-3.2 Assessments

8-3.2.1 General

A. An assessment is an amount levied against real property by an assessing district (e.g.,Local Improvement district (LID)) to accomplish a public improvement (e.g., water, sewers, etc.). Most assessments are lump sum levies (which usually are payable over a number of years); however, when the operation is continuous (e.g., a drainage or diking district), an assessment may be levied annually and thereby become a recurring lien in the same sense as real estate taxes on private property. An assessment may be pending when the preliminary assessment roll is filed; however, the assessment becomes a lien only when the final assessment roll is turned over to the County or City Treasurer for collection.

B. Procedures covering payment of periodic assessments levied against state-owned properties are given in Chapter 11.

C. Procedures for determining that the state's firm offer accurately reflects the effect of an assessed public improvement are given in Chapter 6.

8-3.2.2 Rules

A. If the state's transaction is completed (i.e., approved by the Director of Real Estate Services or his designee) before an assessment is collectable, the pending assessment is ignored.

B. The lien of current and delinquent assessment is cleared or adjusted:

1. On all acquisitions of fee title.
2. On those acquisitions of less than fee title for projects which would restrict the operation, maintenance, or other functional interest of the assessing district.

8-3.2.3 Procedures — Irrigation Districts

A. If the Region Administrator determines the department-controlled lands or highways will remain in irrigable status, the annual assessments are handled by the Property Management Program Branch as specified in Chapter 11.

B. If the Region Administrator determines that the department-controlled lands or highways should be removed from an irrigable status, the Region RESM determines a lump sum payment for lands that are to be removed from irrigable status (see Figure 8-3.2.3B) in coordination with the irrigation district as follows:

1. A sum sufficient to pay the pro rata share of the irrigation district's bonded indebtedness; and
2. A sum sufficient to pay the deferred installments of any LID against such lands, if any; and
3. A sum sufficient, if invested at an annual rate of interest equivalent to that set forth in the current tables issued by the State Insurance Commissioner, to produce a sum of money equal to the annual increase in the operation and maintenance costs against the remaining lands in the irrigation district resulting from the severance from the irrigation district of the lands acquired by WSDOT.

Owner's Mailing Address
Date

County Assessor
County Treasurer
Address

SR

FA
Right of Way
Tax Acct. No.

CS
Parcel No.

Gentlemen:

You are hereby requested to transfer to the remainder of our property the lien of any unpaid taxes for the years _____ assessed against the portion of our property required for right of way within the above referenced state highway project.

The lands owned under the above-referenced tax account number have an area of _____ and are described as follows:

The portion sold to the state of Washington has an area of _____ and is described as follows:

Accepted and approved:

_____, 19_____

_____ County Assessor

By: _____
Deputy County Assessor

_____ County Treasurer

By: _____
Deputy County Treasurer

Cordially,

(Taxpayer)

_____

_____

Tax Set Over Letter (Sample)
Figure 8-3.1.3.4

C. The Region RESM:

1. Prepares a resolution (see Figure 8-3.2.3C1) for action by the Board of Directors of the irrigation district.
2. Prepares a *Real Property Voucher* (DOT Form 262-039) as specified in Chapter 10.
3. Transmits the voucher and resolution through channels to the irrigation district for approval and execution.
4. Upon receipt of the executed resolution and voucher from the irrigation district:
   a. Inputs pertinent data into REIS.
   b. Transmits the resolution and *Real Property Voucher* together with the determination of the sum due (see Figure 8-3.2.3B) to the DRES as a separate acquisition using the procedures set forth in Chapter 6 for approval.

8-3.2.4 Procedures — All Other Assessing Districts

A. The Region RESM:

1. Identifies from the title reports, and any other appropriate source, all:
   a. Lump sum levies by special districts for capital improvements.
   b. Recurring assessment liens by junior assessing districts for performed services (e.g., fire patrol, diking).
   c. Assessing officials (or bodies) affected by the highway project.
2. Assures that the DV (Form RES-214) reflects the market value, if any, added by the improvement for which the assessment was levied.
3. On acquisitions of less than fee title: coordinates with the Assistant Director of the Title and Condemnation Program to determine the required actions.
4. Instructs the Acquisition Agent on the appropriate steps to be taken to clear, adjust or ignore assessments, and any amounts to be deducted from the "principal" *Real Property Voucher* (DOT Form 262-039) because of any separate clearance of assessment liens.

B. The Acquisition Agent:

1. Clears or adjusts assessment liens as instructed by the Region RESM by adapting the procedures given in Section 8-3.13, except that:
   a. It is not possible to arrange payment of an assessment from the reserves held by the mortgagee.
   b. The request for an assessment segregation is directed to the proper assessing district officials. (**Note:** Set overs of assessments are not authorized by law but may be arranged at the discretion of the assessing district involved.)
   c. The amount of all assessments to be paid are shown as "Deductions" on the principal *Real Property Voucher* (DOT Form 262-039).
2. Shows the method for clearance, adjustment, or reason for ignoring the assessment on the Encumbrance Report.

Name
Irrigation District
Podunk, Washington
June 23, 2000

To: Department of Transportation

Attention: , Director of Real Estate Services

Olympia, Washington

For amounts due the Irrigation District under RCW 87.03.810 for irrigable acreages taken for highway right of way as follows:

SD 0000 Right of Way 0000 SR 12
Sulphur Creek to Stover Road

Notes:

(1) payment under ID's W/U.S.A.	Contract indebtedness to United States (Drainage Contract No. 14-06-100-1474, dated May 15, 1958) 3 payments — 1991 to 1998 incl., at $0.16322 = on 77.19 acres (general obligation on all lands in the district)	$ 88.19

(3) Operation and Maintenance obligation:

Increased O&M costs to remainder use average assessment against lands to be leased

Year Acquired	Acres	Average Annual Assessment
1998	43.36	$267.86
1999	22.67	129.47
2000	11.16	48.27
	77.19	$445.60

Lump sum payment to earn $445.60 at 3.5 percent	$12,731.43
Total due on 77.29 acres	$12,819.62

Past due assessments — not paid on 77.19 acres after they were acquired by state:

1999	—	215.70	
2000	—	434.17	
Interest at 6 percent from due dates to July 31, 2000		32.44	
to clear past due assessments			682.31
		Total	$13,501.93

I do hereby certify that the district realized no savings in its operation and/or maintenance costs by the nonuse of water by the 77.19 acres above referred to.

_____
Secretary

Determination of Lump Sum Payment for Irrigation District (Example)
Figure 8-3.2.3B

Resolution

WHEREAS, Chapter 303, Laws of Washington of 1959 (RCW 87.03.810) sets out that whenever lands situated in an irrigation district are acquired by the Washington State Department of Transportation, and such lands, at the time of their acquisition, were irrigable and were being served or were capable of being served by facilities of the district to the same extent and in the same manner as lands of like character held under private ownership were served, the State Department of Transportation, as part of the cost and expense of the acquisition of right of way and with funds available for such acquisition, shall make a lump sum payment to the irrigation district in an amount:

(1) Sufficient to pay the pro-rata share of the district's contract indebtedness to the United States;

(2) Sufficient to produce, if invested at an annual rate of interest equivalent to that set forth in current tables issued by the State Insurance Commissioner, a sum of money equal to the annual increase in operation and maintenance costs against remaining lands in the district resulting from the severance from the district of the lands thus acquired by the Washington State Department of Transportation.

WHEREAS, the Washington State Department of Transportation has made a lump sum payment to the _____ Irrigation District for lands within the highway project entitled SR 12, Sulphur Creek to Stover Road in the amount of $13,501.93 approved _____, and aggregating 77.19 acres, for reasons as set forth in RCW 87.03.810, and WHEREAS, RCW 87.03.810 sets forth that upon the making by the WSDOT the lump sum payment to the district, the district shall make and enter an order releasing such lands from further district assessments for the delivery of water to said lands,

NOW THEREFORE, IT IS BY THE BOARD OF DIRECTORS OF THE _____ IRRIGATION DISTRICT, RESOLVED AND ORDERED that the lands in the district acquired by the state of Washington through its Department of Transportation on the accompanying list marked Exhibit "A" which by reference is made a part of this Resolution, be relieved from further district assessments for the delivery of water, in accordance with the Laws of Washington RCW 87.03.810.

Board of Directors of

_____

Irrigation District

_____

_____

_____

Date:

(SEAL)

Attest:

_____

Secretary

Irrigation District Resolution (Example) (page 1 of 2)

Figure 8-3.2.3C1

Exhibit "A"

In the matter of SR 12, Sulphur Creek to Stover Road

Parcel 0-1800 (formerly Isaacs)

0.18 acres, as conveyed to the state of Washington by deed recorded under the Auditors File No. _____ in Volume _____, page _____, records of _____ County, Washington.

Parcel 0-1801 (formerly O'Rourk)

0.03 acres, as conveyed to the state of Washington by deed recorded under Auditor's File No. _____ in Volume _____, page _____, records of _____ County, Washington.

(Continue with each acquisition to be related from the Irrigation District, the total of the individual acreages equalling the acreage in the lump sum computation and the resolution.)

The lands embraced by this Exhibit A contain a total of 77.19 acres.

Irrigation District Resolution (Example) (page 2 of 2)
Figure 8-3.2.3C1

8-3.3 Mortgages and Deeds of Trust

8-3.3.1 General

Mortgages and Deeds of Trust are discussed together. For the purpose of this section, both are encumbrances that are cleared by the payment of money in exchange for the proper document of release. In the following discussion, the language appropriate to a mortgage is shown first, with the language appropriate to a Deed of Trust shown in parentheses. The term "trustee" is appropriate only to Deed of Trust and is used only in that context.

8-3.3.2 Rules

A. A satisfaction of mortgage (reconveyance) is required to clear a mortgage (Deed of Trust) in the case of any total acquisition.

B. In the case of partial acquisitions, a partial release of mortgage (partial reconveyance) is required.

For exceptions to this, see Section 8-3.6 and Figure 8-3.3.4.

C. In accordance with Chapter 6, certain "incidental expenses" incurred in transferring property to the state are payable by the department.

8-3.3.3 Procedures

The Acquisition Agent determines the identity of the "servicing agent" by asking the grantor where he makes the mortgage (Deed of Trust) payments. The servicing agent is the initial point of contact for dealing with the mortgagee (beneficiary).

8-3.3.3.1 Total Acquisition

A. Instruments Obtained: If the mortgagee (beneficiary) is willing to deliver a satisfaction of mortgage (Reconveyance of Deed of Trust) without funds in hand, the Acquisition Agent:

1. Obtains the signatures of both the grantor (trustor) and the mortgagee (beneficiary) on the *Real Property Voucher* (DOT Form 262-039) using the mailing address of the mortgagee (beneficiary) as the address of the "claimant."

   Note: As an alternate the amount to be paid to the mortgagee (beneficiary) may be paid by a separate *Real Property Voucher* (DOT Form 262-039) made payable to the mortgagee (beneficiary) and deducted from the principal *Real Property Voucher* if both parties are agreeable to the amount.

2. On the strength of the state's promise to pay the voucher, requests that the mortgagee (beneficiary) take all necessary steps to file a satisfaction of mortgage (reconveyance) with the County Auditor where the property is located.

3. Obtains the recording data and auditor's file number of the satisfaction of mortgage (reconveyance) and recites same in his Encumbrance Report (in DOT Form 262-048, *Right of Way Acquisition Transmittal*) as reference for the clearance of the encumbrance.

B. Instruments Guaranteed: If the mortgagee is unwilling to deliver a satisfaction of mortgage without funds in hand (beneficiary cannot deliver a reconveyance), the Acquisition Agent:

1. If the mortgagee (beneficiary) is an established lending firm such as a bank, mortgage banker, or savings and loan, an "Instrument Guarantee" letter is requested in lieu of the satisfaction of mortgage (full reconveyance). This is a letter signed by an appropriate officer of the mortgagee (beneficiary) that says that they will satisfy their mortgage (arrange for full reconveyance of the property) upon receipt of the funds for same.

2. If the mortgagee (beneficiary) is an individual or organization not directly connected with real estate finance, and cannot be satisfied in accordance with Section 8-3.3.3.1A, the transaction is handled in escrow as described in Section 8-2.2.

8-3.3.3.2 Partial Acquisition

A Instrument Not Required: Where, in accordance with Section 8-3.3.2B, a partial release of mortgage (partial reconveyance) is not required, the mortgage (Deed of Trust) may be ignored.

B. Instrument Required: Where a partial release of mortgage (partial reconveyance) is required in accordance with Section 8-3.3.2B, the Acquisition Agent determines, by coordinating with the mortgagee (beneficiary) and the grantor, any necessity to make payment of money to the mortgagee (beneficiary). This is decided by the parties and is normally based on the value of the remaining real property in relation to the balance owed on the mortgage (Deed of Trust).

1. Some payment of money to the mortgagee (beneficiary) required by the parties: There is a divergence of procedures between mortgages and Deeds of Trust in this instance; therefore, each is discussed separately.

   a. *Partial Release of Mortgage* (PRM): Acquisition Agent obtains execution of a *Real Property Voucher* as in Section 8-3.3.3.1A and submits for mortgagee's signature a *Partial Release of Mortgage* (Forms RES-308 and RES-309).

   b. Partial Reconveyance: Acquisition Agent obtains execution of a *Real Property Voucher* as in Section 8-3.3.3.1A and prepares *Request for Partial Reconveyance* (Form RES-310) and *Partial Reconveyance* (Form RES-311). The *Request for Partial Reconveyance* is signed by the grantor (trustor) and beneficiary, requesting the trustee to execute the partial reconveyance. The Acquisition Agent, using the "Request" as his authority, obtains execution of the *Partial Reconveyance* from the trustee.

2. No payment of money to the mortgagee (beneficiary) required by the parties: the Acquisition Agent proceeds as in Section 8-3.3.3.1A except in this instance the grantor (trustor) is the payee and the mortgagee (beneficiary) does not join in execution of the *Real Property Voucher*.

   The Acquisition Agent:

   a. Includes in the PRM the appropriate clause (see Section 9-10.032) authorizing full payment to the grantor, or

   b. Includes in the request for partial reconveyance the appropriate clause (see Chapter 9) authorizing full payment to the grantor.

8-3.4 Judgments

8-3.4.1 General

A. A money judgment is a lien on all the real and personal property of the debtor and is similar to the lien of a mortgage. If no action is taken to collect or to renew the lien of a judgment within ten years of the date of its entry, the judgment is outlawed. It is often advantageous to the grantor, if he is the judgment debtor and the time for levy by the creditor has almost expired, to ignore the judgment.

1. Judgments for child support extinguish ten years after the youngest child reaches the age of 18.

B. A judgment is an effective lien on the following:

1. All properties owned by the debtor in the county in which the judgment is entered at the time of entry of the judgment.
2. All properties to which the debtor acquires ownership or a contract interest during the life of the judgment.
3. All properties owned by the debtor in all other counties in Washington provided an Abstract of Judgment has been recorded in the county in question.

8-3.4.2 Rules

A. Judgments are cleared by payment, partial payment, and/or release of the property being acquired.

B. Without documentation to the contrary, it is assumed that the party named or cited in the title report is, in fact, the judgment debtor and that the judgment has been neither satisfied nor outlawed.

8-3.4.3 Procedures

A. Identity of Debtor:

The Acquisition Agent determines whether the judgment debtor and the state's grantor are the same person.

B. Verification of status of judgment against state's grantor:

1. Outlawed: If the Title Report and/or the Acquisition Agent's investigation indicate that no action has been taken to collect or renew the lien within the past 10 years, the Acquisition Agent requests that the District RESM obtain a SPC showing that the judgment is eliminated.
2. Paid: If such judgment has been paid, the Acquisition Agent requests the creditor's attorney to satisfy the judgment of record.
3. Assigned: If the judgment creditor has assigned his interest in the judgment and the Acquisition Agent is uncertain of the validity of the assignment, the assignor and the assignee are requested to join in execution of a satisfaction of judgment or partial release of judgment (see Section 8-3.4.3.C2a).

   Note: An Assignment of Judgment must include an acknowledged execution by the judgment creditor.

C. Clearance:

1. If the conditions stated in Section 8-3.43B1 appear to pertain, but a new SPC does not show that the judgment is outlawed, the Acquisition Agent submits a complete explanation of the evidence to the District RESM requesting that specific guidance be obtained from the Assistant Director of the Title and Condemnation Program.

2. If the judgment remains of record against the state's grantor and is to be cleared, the Acquisition Agent:

   a. Contacts the judgment creditor's attorney or assignee (if any) and obtains a written statement of the amount necessary to obtain a satisfaction or a partial release of the judgment.

   b. Arranges with the debtor and his attorney to pay the required amount, usually by a separate *Real Property Voucher* (DOT Form 262-039).

   c. Arranges with the creditor and/or his attorney to have a Satisfaction of Judgment or a Partial Release of Judgment properly entered in court.

   d. If the judgment was filed in a county other than the one in which the subject property is located, has the satisfaction or partial release recorded in the appropriate county.

3. If nearly ten years have passed since the entry of the judgment, the Acquisition Agent proceeds as described in Section 8-3.4.3D2.

D. Escrow:

Judgments are cleared in escrow when either:

1. The amount needed to obtain a release (or partial release) is known (see Section 8-3.4.3C2) and other details of the transaction call for it to be closed in escrow in accordance with Section 8-2.2.

2. It is nearly ten years since entry of the judgment and no action has been taken by the creditor. In this case, the escrow instruction tells the escrow agent to withhold sufficient funds to pay the judgment until such time as the judgment is outlawed.

8-3.5 Other Monetary Liens

8-3.5.1 General

Any monetary debt may be reduced to judgment (see Section 8-3.4) and become a lien against real estate. Monetary indebtedness (although not reduced to judgment) may become a lien capable of being specifically reported in a title report when the creditor or his attorney files the appropriate papers with the County Clerk or records the papers with the County Auditor. The condition of a grantor's title may also be questionable due to other types of monetary debts.

A. The following become a lien against real estate upon recording with the County Auditor in the county where the lands lie and are reported accordingly as an encumbrance on the title report:

1. Labor, Mechanics, and Materialman's Liens: May be foreclosed by court action or, subject to further specific conditions (per RCW 60.04.100), may become outlawed after eight (8) months.

2. Federal Tax Lien: Delinquent federal taxes are a lien when properly filed with the pertinent County Auditor. The Federal Internal Revenue Service office closest to the property handles matters related thereto. May be considered outlawed after 10 years from date of filing.

B. At time of death, debts of the decedent become a lien against his estate without necessity for filing or recording and are generally only questioned in the PC. Such debts may include:

1. State Inheritance Tax and Federal Estate Tax.
2. Funeral expenses.
3. Bills and expenses of final illness.

C. There are additional types of indebtedness which may require clearance (e.g., Tax Warrants, Financing Statements, etc.).

8-3.5.2 Procedures

A. Labor, Mechanics, and Materialman's Liens:

1. Verification of Status of Lien: If eight (8) months have lapsed since the date of filing of the lien, the Acquisition Agent obtains an SPC (by request through the Region RESM). If the SPC advises that the lien may be disregarded, the Acquisition Agent cites the SPC in his Encumbrance Report (see *Right of Way Acquisition Transmittal*, DOT Form 262-048).
2. Clearance: Procedures outlined for clearing of "Judgments" (see Section 8-3.4) are adjusted and adapted for clearing of labor, mechanics, and materialman's liens with the following exceptions:
   a. The attachment period is eight (8) months instead of six (6) years.
   b. The lien is released by the creditor instead of his attorney.
   c. The documents of release are "Release of Lien" and "Partial Release of Lien."
   d. The documents of release are drafted for each specific case under the supervision of the Region RESM in coordination with the Assistant Director of the Title and Condemnation Program.
   e. The documents of release are recorded with the County Auditor instead of filing with the County Clerk.

B. Federal Tax Lien: The Acquisition Agent clears the Federal Tax Lien by adapting the procedures for clearing of "Judgments" in Section 8-3.4 under the following conditions:

1. Deals with the Internal Revenue Service (IRS) office closest to the property.
2. Requests that the IRS file a release where the debtor indicates the debt has been paid.
3. Includes a copy of the debtor's receipt identifying his payment of the debt or a copy of the release with the *Right of Way Acquisition Transmittal*.
4. Explains the method of clearance on the Encumbrance Report.

C. Lien on Estate of Deceased: Refer to Section 8-5.5.

D. Miscellaneous Monetary Encumbrances: When the Title Report or any information obtained by the Acquisition Agent discloses or raises questions concerning possible existence of other types of indebtedness on the part of the state's grantor, the Acquisition Agent refers the information to the Region RESM and requests specific guidance.

8-3.6 Clearing of Deeds of Trust, Mortgages, and Other Monetary Liens

8-3.6.1 General

Most mortgages and deeds of trust contain a condemnation/eminent domain or an acceleration clause calling for all proceeds to be applied to the unpaid balance; if proceeds are not applied to the unpaid balance, the lender can call all amounts immediately due and payable.

8-3.6.2 Rules

Partial Reconveyances or Releases are not required on partial acquisitions when the dollar amount of compensation does not exceed $10,000 (including damages, but exclusive of cost to cure/cost to move damages and compensation paid to replace or move a well or septic system) and there are no appreciable improvements (building, garage/sheds, outbuildings, etc.) in the area being acquired.

If the compensation is between $10,001 and $25,000 (including damages, but exclusive of cost to cure/cost to move damages and compensation paid to replace or move a well or septic system) and there are no appreciable improvements (building, garages/sheds, outbuildings, etc.) in the area being acquired, the risk of assuming this additional liability must be made by the RESM.

Over $25,000 is reviewed on a case by case basis and requires approval by the RESM and the Regional Administrator (or delegate).

8-3.6.3 Procedures

Under $10,000, the Acquisition Agent informs the property owner of any condemnation, due on sale, or acceleration clauses, and the risk associated therein and so notes in the activities diary. The response of the owner should also be clearly noted. The Acquisition Agent also notes in the encumbrance report on the Right of Way Parcel Transmittal Sheet that the property is being acquired subject to the lien.

Between $10,001 and $25,000 the following procedures apply:

A. The Acquisition Agent completes the Request to Accept Encumbrance (Form RES-333) and submits it prior to transmittal to the RESM for consideration.

B. The RESM evaluates the request based on the following criteria:

1. Age of lien and current status of payment
2. Amount of lien and risk of being called due
3. Equity (market value of remaining lands less balance of lien)
4. Evaluation of all liens, including taxes and assessments, as noted on the title report.
5. Evaluation of any other unrecorded interests

C. If approved by the RESM, the Acquisition Agent obtains written permission from the property owner that they have been informed of any condemnation, due on sale, or acceleration clauses and the risk associated therein.

D. The owners signed statement and Request to Accept Encumbrance form are included with the transmittal package.

E. If RESM's review determines unacceptable risk, the RESM rejects the waiver, and Acquisition Agent clears the encumbrance, per normal procedure.

Over $25,000, the procedure outlined above for $10,001 to $25,000 applies. However, the Request to Accept Encumbrance form must be approved by the Regional Administrator (or delegate) prior to submittal of transmittal.

Note: **This procedure does not apply to DSHS liens and other child support judgments.**

8-4 Property Rights Encumbrances

8-4.1 Real Estate Contracts

8-4.1.1 General

A. A real estate contract is similar to an installment plan transaction between vendor (seller) and vendee (purchaser) and establishes rights and duties between the two parties. Either party may sell or assign his respective interest in the contract. The contract seller's interest is transferred by either a Warranty Deed, a Quit Claim Deed, or by a Seller's Assignment of Contract and Deed. The purchaser's interest may be transferred by either a Quit Claim Deed, or a Purchaser's Assignment of Contract and Deed.

B. An assignment of interest by a contract seller or a contract purchaser may be given as an actual (absolute) conveyance or may be given merely as a security document for a loan or for the performance of some act. A security document might, on its face, appear to be an absolute conveyance and be reported as such in the Title Report. The facts and relationships expressed by the assignor and assignee determine the intent of the parties.

C. Subject to the terms and conditions of the respective contracts, the most recent contract purchaser generally has the right to receive a deed upon fulfillment of the contract and, in the meantime, has the right of full use, control and enjoyment of the property. Any contract seller has the right to receive the contract payments, the duty to deliver a deed upon fulfillment of the contract, and forfeiture rights to the contract if the purchaser does not fulfill his contractual obligations.

8-4.1.2 Rules

A. The most recent contract purchaser who is in physical possession and/or control of the real property is the "equitable owner" and is the principal party with whom the state deals.

B. Recorded and unrecorded contracts and assignments are cleared as to the property being acquired.

8-4.1.3 Procedures

The following procedures are used to clear the encumbrance of real estate contracts and assignments in either total or partial acquisitions.

8-4.1.3.1 Parties

A. The Acquisition Agent determines the correct names and mailing addresses of contract sellers, purchasers, and assignees; and, where appropriate, verifies the intent of the respective parties as to absolute conveyance or security document (see Section 8-4.1.1B).

B. The Region RESM determines the identity of all necessary parties in interest and the "equitable owner." In complex cases, he coordinates with the Assistant Director of the Title and Condemnation Program.

8-4.1.3.2 Unrecorded Real Estate Contracts and Assignments

The Acquisition Agent:

A. Requests any party in interest holding an unrecorded real estate contract or assignment to record the particular instrument with the appropriate County Auditor. Obtains the auditor's file number and date of any such recording.

B. If the party refuses to record the instrument, obtains a copy of such instrument.

C. If the party refuses to record the instrument and also refuses to make a copy available: obtains the date of the instrument, the exact names of the parties as shown thereon, and the real estate excise sales tax receipt number.

D. Submits all data on unrecorded instruments to the District RESM and requests that an SPC be obtained. The SPC names the parties in interest and reveals the existence of any encumbrances against each such party.

8-4.1.3.3 Distribution of Funds

After obtaining agreement of the "equitable owner" to the state's offer to purchase, the Acquisition Agent contacts all necessary parties in interest to establish a mutually-agreeable disbursal of funds. If the parties cannot agree on the distribution, the Acquisition Agent turns in the parcel for possible condemnation.

8-4.1.3.4 Conveyancing

A. Joint Conveyance — Two alternatives are available:

1. Joint Conveyance, Single Voucher, Single Payee: If there is no distribution of funds required, or if the parties wish to arrange their own private distribution of funds, the Acquisition Agent has the contract purchaser and the contract seller join on an appropriate instrument. This instrument includes the appropriate clause authorizing payment by the state to only one of the parties. The *Real Property Voucher* is then executed and made payable to the party designated on the instrument of conveyance.

2. Joint Conveyance, Separate Vouchers: If there is to be a distribution of funds, the Acquisition Agent has the contract purchaser (owner) and the contract seller join on an appropriate instrument. The "principal" *Real Property Voucher* is executed by and made payable to the contract purchaser and indicates (1) the full amount of the state's transaction, and (2) a deduction of the amount to be paid separately to the contract seller. A second *Real Property Voucher* is executed by and made payable to the contract seller for the amount deducted from the "principal" voucher.

B. Separate Conveyances: The Acquisition Agent has the contract purchaser execute an appropriate instrument and also has the contract seller execute a deed to the state. Vouchering may be accomplished by any methods described in A, above.

C. Security Assignees: The Acquisition Agent clears the interest (as to the state's acquisition) of any security document assignee following the procedures for clearing of a mortgage as described in Section 8-3.3.3.1 or 8-3.3.3.2B, except that a Quit Claim Deed is used instead of a Satisfaction of Mortgage or a *Partial Release of Mortgage*. (See Section 8-3.6 for exceptions.)

D. Escrow: If the transaction meets the requirements for closing in escrow (see Section 8-2.2), the Acquisition Agent:

1. Has the contract purchaser execute an appropriate instrument and a *Real Property Voucher* which is made payable to the escrow agent.
2. Drafts an appropriate *Escrow Agreement* (Form RES-337), and has both contract purchaser and seller execute same if a partial acquisition is involved. If a total acquisition is involved, the contract seller's signature is not required.

8-4.2 Leases

8-4.2.1 General

A. Lease Rights: A lease is a conveyance of possessory rights in realty for a specified period of time, the consideration for which is termed "rent." To be fully binding, a lease must be in writing, just as any other conveyance involving real estate. The person conveying the possessory right is the lessor and the person to whom conveyed is termed the lessee.

Any portion of the bundle of rights that make up full ownership may be the subject of a lease, e.g., lease of the surface of the land only, lease of the improvements (or a portion thereof) only, some combination of land and improvements, lease of airspace over the property, or lease of subsurface rights such as oil or minerals.

A sublease is a lease between the original lessee and a third party (sublessee) in which sublease the original lessee becomes the (sub)lessor and may convey rights up to the limits of those which he himself holds.

A lease may contain an option to renew, which, if exercised, would extend the term of the lease.

B. Self-terminating Leases: A self-terminating lease contains a clause which automatically terminates the agreement upon the happening of a certain event, such as, Eminent Domain acquisition of all or a portion of the premises. The parties in interest (and not the condemnor) decide whether their agreement is terminated by an Eminent Domain acquisition.

8-4.2.2 Rules

A. A leasehold interest is recognized by the state when it is evidenced by either:

1. A written (recorded or unrecorded) document.
2. An existing use and possession of the property in exchange for a consideration (rent), but only if accompanied by evidence of the duration of the contracted period of time.

B. Nonself-terminating lease and sublease interest in effect on the date of delivery of the initial Firm Offer Letter are cleared or adjusted by the state when they conflict with acquisitions of fee title, easements, or permits.

1. A *Partial Release of Lease* (Form RES-312) is obtained in partial acquisitions and acquisitions of easements and permits where the rights of the lessee (in the remainder) are not being obviated by the state's partial acquisition.
2. A *Release of Lease* (modeled from Form RES-312) is obtained in all total acquisitions, and in those partial acquisitions and acquisitions of easements or permits where the rights of the lessee are being obviated by the state's take.

C. Any effect on a lease due to an acquisition by the state of access rights only is a matter of adjustment between the lessor and lessee. Such leases are cleared when the loss of access would eliminate the effectiveness of the lease.

D. The state normally does not acquire property subject to an outstanding lease, i.e., assuming the position of the lessor, but may do so subject to the specific approval of the DRES when:

1. The leasehold lies entirely within the take from a single ownership.
2. The lease expires (including any renewal option) before the time the leased rights would conflict with the state's project schedule.
3. Any improvements within the leasehold are owned by the property owner (lessor).
4. The owner (lessor) is furnishing no services to the lessee.
5. The owner has agreed to the state's offer for the acquisition, but the lessee refuses to execute a Release of Lease.
6. The lease can be managed by the state.
7. Such action would not increase the cost of the state's project.

8-4.2.3 Procedures

8-4.2.3.1 Identification of Lease Interests

A. The Acquisition Agent:

1. Investigates each lease interest currently in force, verifying between the parties any necessary clarifications of specific lease conditions, rights and responsibilities of the respective parties.
2. Prepares a "Lease Memo" to the Region RESM; Subject: "(Project Title, Parcel Number), Currently Effective Leases" in which he reports the following information prior to any involvement by the state:
   a. Exact names of lessor and lessee.
   b. Current rental terminology and payments.
   c. Termination of lease information:
      (1) Termination date, if specified, or duration of lease.
      (2) Renewal option rights.
      (3) Any self-terminating language or conditions of the lease.
   d. Real property rights leased, (e.g., total property use, specific partial use, land use only, specific type of use, lessee's right to erect structures, etc.).
   e. Exact names of vendor and vendee and conditions of ownership under any conditional sale contract or chattel mortgage covering fixtures or trade fixtures attached to the real property, if not covered by the Title Report.
   f. Lessee's rights to retain and/or ownership of tangible improvements and/or fixtures.
   g. Lessor's and lessee's respective lease responsibilities concerning services such as heating, maintenance, water, electrical, etc.
3. Obtains a copy of each available unrecorded lease identified in Section 8-4.2.3.1A1 and attaches same to the Lease Memo or makes notation on the Lease Memo as to reasons for its nonavailability.

B. By making suitable margin notations on the Lease Memo, the Region RESM, in accordance with Section 8-4.2.2, identifies:

1. Any leasehold interest which is to be cleared by *Release of Lease* or *Partial Release of Lease*.
2. Any leasehold interest which meets all of the conditions of Section 8-4.2.2D (less item 5) for possible assumption by the state as lessor (i.e., acquisition subject to the lease).

8-4.2.3.2 Clearance of Lease Interests

A. Release: The Acquisition Agent:

1. Obtains the signature of the lessee on a *Partial Release of Lease* (Form RES-312) or *Release of Lease* (modeled on Form RES-312) as indicated on the Lease Memo (see Section 8-4.2.3.1B1).
2. If the lessee has or claims a leasehold value, advises the owner (lessor) and obtains the signature of the lessee on the principal *Real Property Voucher* along with the signature of the owner (lessor) without breaking down the amount payable to each.

   Note: **The approved compensation includes the value of all interests.**

B. Lessee's Property: If the lessee owns improvements or is purchasing trade fixtures (under recorded or unrecorded conditional sales contract or chattel mortgage) and which fixtures are attached to the real property that is affected by the state's acquisition (as covered by Section 8-4.2.3.1A2e and f), the Acquisition Agent, (in addition to the procedures in Section 8-4.2.3.1A):

1. If not covered by the Reviewing Appraiser's DV, requests that the Region RESM provide a listing of all such lessee-owned property and its value as included in the approved compensation.
2. Advises the owner (lessor), deducts the value of said lessee's property from the principal *Real Property Voucher*, and obtains the lessee's signature on a second voucher covering only the property of the lessee being purchased by the state.
3. Obtains the lessee's signature on a *Fixtures and Improvements Agreement* (Form RES-335) covering only the lessee's property.
4. If the lessee is purchasing his property under a conditional sale contract or a chattel mortgage:
   a. Obtains the signature of the seller or mortgagee on the "secondary" *Real Property Voucher* (see Section 8-4.2.3.2B2) without breaking down the amount payable to each signatory.
   b. Obtains the signature of the seller or mortgagee on the *Fixtures and Improvements Agreement* (Form RES-335).
5. If the fixtures are being purchased by the lessee on a conditional sale contract where the fixtures vendor retains title until the contract is paid in full, requests that the fixtures vendor execute, for the lessee, his standard satisfaction of the conditional sale contract and obtains a copy of same to be included in the transaction package.
6. If the fixtures are being purchased by the lessee subject to a chattel mortgage, requests that the mortgagee execute, for the lessee, his standard satisfaction of the chattel mortgage.
   a. If the chattel mortgage is not recorded, the acquisition agent obtains a copy of such satisfaction for inclusion in the transaction package.

b. If the chattel mortgage was recorded, the acquisition agent requests that the satisfaction be appropriately recorded, obtains the recording date and auditor's file number of the satisfaction and recites same in his *Encumbrance Report* (see Section 8-2.1.2C).

7. If access rights are acquired in the instrument from the owner, they must also be acquired in the Release from the lessee.

8-4.2.3.3 Acquisition Subject to Lease

A. When the Acquisition Agent has reached agreement with the owner of land to be acquired, but finds that it is subject to a lease which the lessee refuses to release, and *all* the conditions of Section 8-4.2.2D are present (see also Section 8-4.2.3.1B2), he requests the Region RESM to obtain the approval of the DRES for acquisition subject to the lease.

B. The Region RESM, by memorandum setting forth all the facts called for by Section 8-4.2.2D, requests approval of the DRES for acquisition subject to the lease. If such approval is obtained, directs the Acquisition Agent to acquire subject to the lease; if approval is not forthcoming, directs the Acquisition Agent to turn the parcel in for condemnation.

C. If the Acquisition Agent is directed to acquire subject to the lease, he obtains execution of the appropriate instrument from the owner (lessor), including therein the following clause:

Note: "Also the grantors herein release and assign unto the state of Washington all of said grantor's rights and responsibilities as lessor in and to that certain lease by and between the grantor (as lessor) and (name of lessee) (as lessee) dated _____ and recorded _____."

8-4.3 Utilities

8-4.3.1 General

Public and private utility companies may hold easements and/or fee interests in nonoperating properties and in operating properties (rights of way) for construction and operation of their services. Utilities may be underground, at grade, above grade or combinations thereof. The state is obligated to make reasonable accommodation of utilities, avoiding disruption of operating systems in the public interest.

8-4.3.2 Rules

The relocation and reestablishment of public services furnished by railroad and other utility companies to accommodate the state's transportation projects are the responsibility of the Region Utility Engineer and the Headquarters Design Engineer (as to railroads) or the Project Development Engineer (as to other utilities). Since such relocations and/or reestablishments often involve clearance and/or readjustments of real property interests close liaison with the Deputy DRES (or designee) is required.

8-4.4 Private Easements

8-4.4.1 General

A private easement is a property right which enables one party to use property owned by another party. To be fully binding, an easement must be in writing just as any other conveyance in real estate. The benefited parcel is the dominant tenement and the encumbered parcel is the servient tenement. An appurtenant easement right will travel with the conveyance of the benefited parcel, even if not mentioned in the conveyance.

8-4.4.2 Rules

A. The state recognizes a private easement when it is evidenced by either:

1. An existing enjoyment of a property right by one party over a property owned by another party.
2. A written (recorded or unrecorded) document.

B. An easement right affected by the state's acquisition is cleared or adjusted as to the encumbered parcel by acquisition of such easement rights as are appropriate from the benefited parcel.

C. When the state acquires all of both the dominant and the servient tenements, or all of the dominant tenement and so much of the servient tenement as contains the easement, the interests merge and the easement may be ignored. (See Section 8-4.4.3C below.)

8-4.4.3 Procedures

A. The Region RESM:

1. Determines the location of all private easements affected by a highway as a part of the Project Inspection (see Chapter 6).
2. Identifies any easement which obviously has no bearing on the property as it currently exists (e.g., 1880 irrigation easement encumbering land presently developed to commercial use) and:
   a. Requests that the Assistant Director of the Title and Condemnation Program ignore such easement.
   b. Makes a full explanation in the *Encumbrance Report* (see Section 8-2.1.2C.)
3. Identifies the ownership(s) benefited by the easement.
   a. On nonlimited access projects, identifies situations wherein ownerships (from which there is to be no acquisition) are benefited by an easement across a servient parcel from which there is to be an acquisition and a functional replacement of the service provided by the easement. Coordinates with the Assistant Director of the Title and Condemnation Program on the procedure for clearing the easement encumbering the servient parcel by appropriate instruments from the owners of all the benefited ownerships.
   b. On limited access projects, directs the clearance of the easement with respect to all benefited parcels from which access rights must be acquired pursuant to Chapter 6.

B. The Acquisition Agent assigned to the encumbered parcel:

1. Coordinates with the Region RESM on cases relating to Section 8-4.4.3A.
2. Identifies the location of the easement in relation to the property being acquired (see Section 8-4.4.3A1).
3. Acquires the property and/or property rights called for by the state's project plans.
   a. If a special procedure is prescribed pursuant to Section 8-4.4.3A4, follows pertinent instructions.
   b. If no special procedure is prescribed (Section 8-4.4.3A4), obtains the instrument normal to the acquisition called for by the project plans. No special instrument or instrument clause is required.

4. Makes appropriate notation in his Encumbrance Report (see Section 8-2.1.2C) to cross-reference the transaction to the benefited ownership(s) or parcel(s).

5. If the benefited ownership is not a parcel, clears the encumbrance as indicated in C1, below.

C. The Acquisition Agent assigned to the benefited parcel(s) obtains (an) instruments in accordance with the following:

1. Benefited parcel is outside the state's acquisition:

a. If special procedures are prescribed pursuant to Section 8-4.4.3A4, follows pertinent instructions.

b. If no special procedures are prescribed (Section 8-4.4.3A4), obtains a Quit Claim Deed (modeled on Form RES-306 et seq.) from the parties in interest in the benefited parcel, conveying to the state of Washington " . . . all rights in and to that certain easement as in Auditor's File No. _____ that lies within the following described real estate situated in _____ County . . ." The Quit Claim Deed is completed to include the standard highway project heading, legal description (of the encumbered parcel) etc., in accordance with Section 9 et seq.

2. Total Acquisition of Benefited Parcel: Obtains the normal instrument (see Chapter 6) appropriate to the total acquisition as called for by the project plans. No special instrument or instrument clause is required.

3. Partial Acquisition of Benefited Parcel: Obtains the normal instrument (see Chapter 6) appropriate to the partial acquisition as called for by the project plans in which instrument he also includes the language " . . . together with easement as in Auditor's File No. _____."

4. Makes appropriate notation in his Encumbrance Report (see Section 8-2.1.2C) to cross-reference the transaction to the encumbered parcel(s).

8-4.5 Mineral Rights

8-4.5.1 General

A mineral right or reservation is generally a right of exploration and/or franchise to the subsurface as compared to mining claims or oil and gas leases. A mining claim is a form of surface ownership and is discussed in Chapter 6. An oil or gas lease is handled in the same manner as any other type of lease as discussed in Section 8-4.2.

The rights of ownership held by the fee holder include subsurface mineral rights unless such subsurface rights have previously been conveyed or otherwise reserved (severed) from the fee ownership. The state's power of eminent domain is capable of stopping any exercise of subsurface rights potentially detrimental to the state's project.

8-4.5.2 Rules

A. Mineral rights which have not been previously reserved (severed) from the fee are automatically acquired with the fee conveyance to the state, unless the owner insists on retaining them by the reservation clause in Section 9.

B. Mineral rights which have been reserved (severed) from the fee are:

1. Ignored if the property is in an area in which subsurface exploration or interest is not apparent.

2. Cleared or adjusted in the state's acquisition:
   a. If the property is in a known or suspected mineral rich area.
   b. If there are observed mining operations in the area.
3. Included for acquisition in any formal condemnation action or if the holder of such right is also the holder of a fee interest to be acquired within the project.

8-4.5.3 Procedures

A. The Region RESM:
   1. Determines if mineral rights interests and/or explorations are apparent as a part of the project inspection (see Chapter 6).
   2. Reviews the appraisal report(s) and/or the applicable *Determinations of Value* (Form RES-214) and assures inclusion of any actual value of mineral rights in the approved compensation.
   3. If there is any question of mineral rights activity, submits the problem to the Assistant Director of the Title and Condemnation Program for a project-wide determination of necessity for clearance or adjustment.
   4. Assigns acquisition in accordance with the determinations made pursuant to Sections 8-4.5.2 and 8-4.5.3A3, recognizing that one encumbrance may affect several parcels.

B. The Acquisition Agent:
   1. Determines the present ownership of the outstanding (severed) mineral rights which are assigned to be cleared or adjusted.
   2. If the appraisal data and reports conclude that there is no value attributable to mineral rights, determines if the rights can be readily acquired or adjusted either by donation or for a nominal consideration (up to $500).
      a. If severed mineral rights can be readily acquired, obtains a Quit Claim Deed from the holder of such rights using the same description used to purchase the required right of way, and if applicable, a *Real Property Voucher* in accordance with Chapter 10.
      b. If such rights can be adjusted (if the holder insists on reserving mineral rights), obtains a Quit Claim Deed using the same description used to purchase the required right of way, reserving to the holder the subsurface rights by special instrument clause in accordance with Chapter 9, and if applicable, a *Real Property Voucher* in accordance with Chapter 10.
   3. If the appraisal reports conclude that there is value attributable to mineral rights, may either:
      a. Join the holder of such rights with the fee holder on the normal instrument and *Real Property Voucher*.
      b. Handle in accordance with Section 8-4.5.3B2.
   4. If mineral rights cannot be acquired, reports the facts to the Region RESM in the *Diary of Right of Way Activities* (Form RES-301), and, as advised by the Region RESM may either:
      a. Turn the transaction over to the Region RESM for administrative handling in accordance with Chapter 6, or
      b. Complete a condemnation report in accordance with Chapter 6, as appropriate.

8-4.6 Water Rights

8-4.6.1 General

The right of any person to private use of the water resources within the state is controlled by state law. While specifically providing for the preservation of water rights existing at the time of the adoption of the state law (RCW 90.03), such law sets out that all waters within the state belong to the public and any right thereto, or to the use thereof, shall be acquired for a beneficial use and only in the manner provided by law. Even though the state law provides for certain differences between rights in "surface waters" as opposed to "ground waters," there is no basic difference requiring separate procedures in acquisitions for highway projects.

Note: Riparian/littoral rights are not included in the subject addressed here (see Section 8-4.1).

8-4.6.2 Rules

A. The state recognizes water rights evidenced by either:

1. An existing beneficial use of water resources by way of private diversion.
2. A "Water Right Claim" filed with the Department of Ecology or one of its predecessors.
3. A "Permit" issued by the Department of Ecology or one of its predecessors.

B. A water right is an encumbrance if the state's acquisition leaves a remaining property that is physically or functionally severed from an existing water right of measurable value to such remaining property.

8-4.6.3 Procedures

8-4.6.3.1 Identification of Rights Affected

A. The Region RESM:

1. Determines if a water right exists on each affected parcel, pursuant to information received through any appropriate combination of the following:
   a. Title reports.
   b. Field observations including but not limited to those made by the Region Project Development Engineer, and the Project Inspection (see Chapter 6).
   c. Appraisal reports.
   d. Discussions with the parties in interest.
2. Determines if the water right is endangered or severed by virtue of the highway project.
3. Investigates all feasible methods for future water service including, but not limited to, the following:
   a. Reconnection to the self-same source by passing through or preserving same within the state's project.
   b. Connection with a suitable existing alternate source such as a neighbor or community system.

c. Replacement and connection with a new source by entering into an agreement with the parties at interest.

d. Leaving the present system alone.

4. Determines suitable action for future water service which may include, but is not limited to:

a. A construction item for reconnection or new connection (see Chapter 6).

b. A *Well Agreement* (Form RES-313) for replacement.

c. Acquiring the affected rights which may include acquiring a remainder or paying damages.

d. Ignoring rights not expected to be affected.

5. Submits to the Region RESM, a written request for a test and report on each existing endangered domestic source as to capacity and potability, identifying each case by project title, parcel number, name of owner, address of property, type of existing source (e.g., private well, community well, etc.) and location of the respective sources.

B. The RESM forwards each request to the appropriate Region Office of the Department of Ecology, requesting that each reply be directed to the RESM.

C. The Region RESM coordinates with appropriate region personnel and obtains approval by the Regional Administrator on any necessary Construction Memos (see Chapter 6).

8-4.6.3.2 Clearance

The Acquisition Agent:

A. Includes language appropriate to the settlement in the deed and *Real Property Voucher*.

B. If the settlement is by construction item, includes the approved "Memo: Construction Item" (see Chapter 6) in his transaction package.

C. If the settlement is by *Well Agreement*:

1. Advises the parties at interest that it is the state's intent to compensate on the basis of a replacement, not a betterment, unless betterment is incidental to fulfillment of the state's obligation.

2. Obtains execution of a *Well Agreement* by the parties at interest.

3. Prepares and submits the complete transaction package including the original Department of Ecology water report (see Section 8-4.6.3.1B). Retains a copy of the *Diary of Right of Way Activities* (Form RES-301).

4. Upon completion and testing of the new system by the owner and/or his agents, obtains the following from the owner:

a. An itemized account of the charges in accordance with the specifications in the *Well Agreement*.

b. Execution of a *Real Property Voucher* in accordance with Section 10, covering the costs chargeable to the state in compliance with the specifications of the *Well Agreement*.

c. Execution of a *Release of Damages* (Form RES-315) as specified in the *Well Agreement*.

d. A statement by the installer of the pump which specifies the actual capacity of the re-established water system.

5. Prepares and submits a supplemental transaction package containing the items specified in Section 8-4.6.3.2C4, using *Right of Way Acquisition Transmittal*, and including therewith the completed, signed and dated copy of the *Diary of Right of Way Activities*.

8-4.7 Reservations, Restrictions, and Defects

8-4.7.1 General

Deed restrictions, deed reservations, plat restrictions, and defects in prior conveyances are generally reported as encumbrances in the title report. Some of these restrictions or reservations may be of the same nature and effect as easements, mineral reservations, or other rights subtracting from fee simple title. A defect in a prior conveyance may involve a reversionary right, a will restriction against sale to outside parties, or other unusual circumstances. Most restrictions on the use of property as contained in a plat or in a deed are surpassed by the state's higher right of Eminent Domain.

8-4.7.2 Rules

A. Reservations, restrictions, and title defects are individually analyzed as to any encumbering effect on the state's acquisition.

B. Encumbrances are cleared or adjusted in accordance with suitable procedures.

8-4.7.3 Procedures

A. The Region RESM:

1. Analyzes reservations, restrictions, and defects and identifies those which affect the state's acquisition.
2. If the encumbrance has the same effect as another property-rights type encumbrance covered in Section 8-4, handles such encumbrance in accordance with the section governing that type of encumbrance.
3. If the encumbrance does not have the same effect as any other property-rights type encumbrance covered in Section 8-4, coordinates with the Assistant Director of the Title and Condemnation Program on handling appropriate to the individual case.
4. If the reservation, restriction or defect does not affect the state's acquisition, instructs the Acquisition Agent to ignore the reported encumbrance.

B. The Acquisition Agent:

1. Handles encumbrances in accordance with instructions by the Region RESM as in A, above.
2. Makes appropriate explanations in his Encumbrance Report (see Section 8-2.1.2C).

8-4.8 Vacated Streets and Roads

8-4.8.1 General

A. Streets and roads are vacated by either city or county ordinance. Such vacations will be noted in the PC.

B. If applicable, the *Nonuser Statute* (RCW 36.87.090) may be used as the basis to vacate a platted street.

Note: The state of Washington has no statutory authority to vacate any road, street, or highway. The *Nonuser Statute* is permissive only and action thereunder must be taken by the city, county, or courts to perfect title.

8-4.8.2 Rules

A. A recorded claim of title to a vacated street will appear in the PC, and is cleared by the Acquisition Agent in the course of the negotiations with the abutting owner (i.e., the property owner to whose lands the vacated street or road "attaches by operation of law").

B. A nonrecorded claim of title to a vacated street or road must usually be perfected by a court decree.

C. The *Nonuser Statute* permits the vacation of a street or road under the following circumstances:

1. If the street is dedicated by a plat:

   a. The plat must have been recorded prior to March 12, 1904.

   b. The plat must have been outside the corporate limits of a city or town at the time of platting and for five years thereafter.

   c. The streets dedicated on the plat must have remained unopened for a five-year period prior to March 12, 1909.

2. If the street or road is not dedicated by a plat:

   a. The street or road must have remained unopened for public use for a period of five years after the order is made or authority granted for opening it.

   b. The lands must have not been conveyed to the state, or to any county, city or town for highways, streets, roads, alleys, or other public places.

8-4.8.3 Procedures

A. The Acquisition Agent:

1. If the PC indicates that a vacated street (or portion thereof) is attached to the parcel by operation of law, includes any required portion of the vacated street in the description of the acquisition from the property owner (see Section 9-9.4).

2. If the property owner has an unrecorded claim to an unopened street or road, obtains information on the owner's claim and refers the matter to the Region RESM for further action.

B. The Region RESM:

1. Coordinates with the Assistant Director of the Title and Condemnation Program to determine the appropriate course of action (e.g., condemnation, allow the claim, and obtain a new appraisal).

2. Instructs the Acquisition Agent as to required procedures.

8-4.9 Prescriptive Streets and Roads

8-4.9.1 General

The legislature frequently adds a county road to the state highway system. When the entire right of way of the county road has been acquired by recorded deeds, waivers, or condemnation actions, the width of the right of way is known. However, many county roads have been acquired by prescription (i.e., without a formal conveyance to the county), and the widths of these roads must be determined when they become a part of the state highway system.

The principle which governs the width of a prescriptive road is set out in the *Matter of the Extension of West Marginal Way* (109 Wn 116). In this case, the city of Seattle sought to widen the existing West Marginal Way (a former county road). The city took the position that the prescriptive right of way was 60 feet wide because that was the width set out in the petition and the County Commissioners' order which established the road. Sixty feet was also the maximum width permissible for county roads under the statute during the prescriptive period. The abutting property owners argued that the city could only claim title to the actual width of the travelled way (approximately 10 to 15 feet). The State Supreme Court upheld the city's position and stated that: "The county actually laid out and surveyed a road 60 feet in width. We think, under the authorities cited, and the facts, which are not disputed, that the county acquired by prescriptive right the whole of the 60-foot road, notwithstanding the fact that but a portion thereof was actually used."

8-4.9.2 Rules

A. When a county road becomes a part of the state highway system, the Region RESM ascertains the width of the right of way so acquired.

B. In the absence of any acquisition instruments, the county road is prescriptive, and its width is determined by the statute applicable at the time the road was created:

1. Territorial law: Section 7, Act of January 11, 1859: "County roads shall be 60 feet in width unless the county commissioners shall, upon prayer of the petitioners for same, determine a less number of feet in point of width."
2. Legislature of 1881, Section 3119, page 578: Continued Territorial law.
3. Laws of 1890, Chapter 19, Section 1: Provided that county roads should be not less than 30 nor more than 60 feet in width.
4. Laws of 1925, Ex. Sess., Chapter 173, Section 3: Provided that county roads should be not less than 30 nor more than 120 feet in width.
5. RCW 36.68.010: county road rights of way designated as being 60 feet in extremities and 30 feet on each side of the centerline of the road, unless the commissioners elect a different width.

C. The period of uninterrupted public use required to establish a road as a public highway is seven years if the county is performing maintenance on the right of way (RCW 36.75.070), and is ten years if there is no county maintenance (RCW 36.75.080).

8-4.9.3 Procedures

A. When a county road becomes a part of the state highway system, the Region RESM:

1. If the road was previously on the state highway system, sends an *Intra-Departmental Communication* to the Assistant Director of the Title and Condemnation Program requesting information on the status of the road.
2. If the road was not previously on the state highway system, or if the Assistant Director of the Title and Condemnation Program so requests, ascertains the width of the right of way by:
   a. Searching for deeds, waivers, condemnation actions, or other acquisition instruments.
   b. Searching the county commissioners' records to determine whether the road was established by petitions and county commissioners' orders. If so, determines that the width was within the limits of the applicable statute, and that the proper period of public use exists (see Section 8-4.9.2).

B. The Assistant Director of the Title and Condemnation Program submits to the District RESM a status report on the road upon request (see Section 8-4.9.3A1).

8-4.10 Riparian/Littoral Rights

A. The rights of a riparian/littoral owner (see Chapter 3) may be so effected by the state's proposed acquisition as to require clearance thereof as an encumbrance on the state's acquisition. Such rights will seldom be set up in the Title Report, but should be the subject of concern by the Acquisition Agent whenever the property or property rights to be acquired include the bed or banks of a stream, river, lake, or ocean.

B. Most adverse effects of the state's acquisition will occur downstream from such acquisition (e.g., change in water flow, change in channel causing bank cutting, etc.), but some may occur upstream (e.g., back-up flooding).

C. The nature of "riparian/littoral rights" are so complex and an adverse effect on them occurs so seldom (when not part of the plan) that the Acquisition Agent should in all cases consult with the Region RESM and/or the Assistant Director of the Title and Condemnation Program if any question should arise in his mind on this subject. He should also enter into such consultations if the Title Report should raise such a question.

D. Clearance is obtained, usually by Quit Claim Deed (of riparian/littoral rights appurtenant to the effected property), in accordance with instructions received from the Region RESM or the Assistant Director of the Title and Condemnation Program.

E. Compensation for loss of effected riparian/littoral rights is determined through the appraisal process.

8-5 Personal Rights Encumbrances

8-5.1 Life Estate

8-5.1.1 General

A title report may disclose the existence of a life estate either by virtue of the vesting, or by a paragraph within the body of the report. A life estate is a possessory right in real property held for the life of the holder. The parties in interest are the holder of the life estate (holder) and the holder of the remainder (remainderman), or if there are no remaindermen named, then upon termination of the life estate, the possessary right returns to the grantor and is referred to as a reversion.

Although a life estate may have value, such value is but a part of the total value of the fee ownership. The division of the value of the fee ownership to determine the value of the life estate is a matter of negotiation between the holder and the remainderman.

8-5.1.2 Rule

The state recognizes all parties in interest.

8-5.1.3 Procedures

The Acquisition Agent:

A. Investigates to determine which party (holder or remainderman) is in possession.

   1. If holder is in possession, determines address of remainderman.

   2. If remainderman is in possession, determines if holder is alive or deceased.

a. If holder is deceased, determines date and place of death, and secures copy of death certificate if available to remainderman. Otherwise, corresponds with appropriate officials at place of death to secure copy of death certificate.

Note: Such death terminates the life estate; hence no acquisition (of the life estate) from the heirs of the deceased is necessary.

b. If holder is alive, determines address.

3. If neither is in possession, determines interest claimed by possessor and facts concerning status and addresses of holder and remainderman.

B. If both holder and remainderman are alive, either:

1. Joins the parties in interest on both the deed and *Real Property Voucher*, or

2. Joins the parties in interest on the deed which includes the appropriate clause authorizing payment to a specific party (see Section 9) and obtains execution of the *Real Property Voucher* by the party authorized on the deed, and if neither holder nor remainderman are in possession, clears interest of possessor as the nature of his interest dictates (see Section 8-4.2).

3. As an alternate to 1 and 2 above, the signatures of the holder and remainderman may be taken on separate deeds and either a single *Real Property Voucher* or separate *Real Property Vouchers*, provided that, in the latter case, a written agreement of a mutually satisfactory distribution of funds is available for inclusion in the transmittal package. The payment due one party is shown as a deduction from the total amount due, and the second voucher made in the amount of the deduction.

C. If holder is deceased, obtains execution of deed and *Real Property Voucher* by remainderman (or remaindermen) only and clears holders interest by including copy of death certificate in the transmittal package.

D. If for any reason (except the death of the holder) it is impossible to secure the signatures of both the holder and the remainderman or the remainderman's heirs and devisees if deceased, the interests of all parties are acquired through condemnation action.

8-5.2 Incompetent, Mentally Ill, and Insane Persons

8-5.2.1 General

A. It is a fundamental precept of law that in order for any person to enter into a binding legal contract transaction or obligation, that person must be *legally competent*.

B. In general, there are two categories of *Persons* considered incapable of legally entering into a legal and binding contract. They are:

1. Minors, persons under legal age; and

2. Persons who although of legal age, are suffering from some form of mental illness or other disability which renders them incapable of comprehending and understanding the consequences of their acts.

C. A person could be, in fact, incompetent at the time he signs a deed conveying the title to his property and, if he had never been legally adjudged incompetent, there would be *no record notice* of the fact of incompetency and persons later dealing with the property would not know that the validity of the deed is doubtful and that it might be declared void by proper court proceeding, due to the incompetency of the grantor.

D. Every person is presumed sane and competent until adjudged insane or incompetent by a court of competent jurisdiction. Therefore, unless there is an adjudication of insanity or incompetency, or unless sources, other than a mental illness proceeding disclose insanity or incompetency, the question of the legal capacity of the parties executing instruments cannot be raised.

8-5.2.2 Historical Background

For many years, under the mental illness statutes then in force (RCW 71.02.650) the order of the Superior Court declaring a person to be mentally ill and ordering hospitalization created a presumption of incompetency which status continued until such incompetent had been certified as discharged as recovered.

8-5.2.3 1973 Mental Illness Act

A. Effective Date:

The legislature passed a new comprehensive mental illness act which became effective January 1, 1974.

B. Repeal of Prior Law:

The new act repealed the entire prior mental illness — commitment procedure statute (RCW 11.02) except the sections having to do with hospital charges and except RCW 71.02.490 pertaining to federal agencies and RCW 71.02.900 concerning construction and purpose.

C. Court Order — Effect:

Under the new act, the court order entered in a mental illness case *does not adjucate incompetency*. It only commits the person for *treatment and evaluation.*

D. Competency, Mental Illness, Effect:

A person subject to confinement resulting from any petition or proceeding pursuant to the provisions of this chapter (*1973 Mental Illness Act*) shall *not* forfeit any legal right or suffer any legal disability as a consequence of any actions taken or orders made, other than as specifically provided therein.

Competency *cannot be determined or withdrawn* by operation of, or under the provisions of the new act.

No person shall be presumed incompetent or lose any civil rights as a consequence of receiving evaluation or treatment for mental disorder either voluntary or involuntary or certification or commitment pursuant to this act *or any prior laws* of this state dealing with mental illness.

It is obvious from the foregoing that the commitment of a mentally ill person for hospitalization under the new act cannot affect the legal competency of such person or his right to sign contracts and dispose of his property. This, therefore, leaves us in the position of relying upon the basic presumption of competency mentioned in Section 8-5.2.1D.

However, the foregoing should *not* be confused with a *guardianship* proceeding in which a court makes a finding of incompetency.

E. Property and Contract Rights:

Insofar as imminent danger to the individual or others is not created, each person *involuntarily* detained, certified or committed for treatment and evaluation pursuant to this chapter (*1973 Mental Illness Act*) shall have, in addition to other rights not specifically withheld by law, certain enumerated rights which list shall be posted in all facilities, institutions and hospitals.

The list of such rights includes the right:

"To dispose of property and sign contracts unless such person has been adjudicated an incompetent in a court proceeding directed to that particular issue."

F. Conclusions and Comment:

The following conclusions are fairly clear:

> A commitment under the act does not affect the legal competency of the person committed. However, all that provision did was to restore the continuation of the presumption of sanity following the commitment, a presumption which may be controverted by the facts. It is still possible, therefore, for a person who has been committed under this act to be legally incompetent at the moment he or she is called upon to sign a deed, mortgage, or contract because *at that time* he or she may be temporarily unable to comprehend and understand the consequences of his or her act. If a person at the time of signing a legal document is unable to understand and comprehend the consequences of his act he is not competent to sign the document.

8-5.2.4 Procedures

A. Party of interest has been adjudicated incompetent through a court determination.

1. Agent proceeds with acquisition through the incompetent party's court appointed guardian. (See Chapter 6 for procedures.)

B. It is suspected that interested party may be incompetent.

The Acquisition Agent:

1. Obtains all information available regarding relatives of said party and means of contacting them.
2. Refers all pertinent data to the Region RESM.

The Region RESM:

1. Reviews all data submitted by the Acquisition Agent and also may:
   a. Contact relatives of interested party for additional information.
   b. Refer matter to the Assistant Director of the Title and Condemnation Program for recommendations.
2. Directs the Acquisition Agent as follows:
   a. To proceed with negotiations without questioning competency of interested party.
   b. To submit parcel for condemnation so that question of competency may be resolved as a part of the court action and a guardian ad litem appointed, if necessary.

8-5.3 Minors

8-5.3.1 General

A. All persons are deemed and taken to be of full age for all right of way purposes at the age of 18 years (RCW 26.28.010). All persons married to a person of full age are considered to be of full age (RCW 26.28.020).

B. A conveyance by a minor is not void but merely voidable (i.e., the minor may disaffirm a conveyance within a reasonable time after reaching majority).

C. A sale of real property owned by a minor may be consummated by a general guardian or a guardian ad litem appointed for that purpose when the guardian acts through the court.

8-5.3.2 Rule

The state accepts a conveyance involving significant value from a minor only through the services of a properly authorized guardian.

8-5.3.3 Procedures

The Acquisition Agent:

A. If the party in interest is a young person, requests evidence of majority (e.g., drivers license, birth certificate, marriage license, etc.).

B. If the party in interest is a minor, handles the transaction directly with the minor only when the following condition is met:

1. The property and/or rights required by the state have a value of $1,000 or less, and the Assistant Director of the Title and Condemnation Program authorizes the transaction be made.

C. If the party in interest is a minor and Section 8-5.3.3B does not apply, handles the transaction in accordance with Chapter 6.

8-5.4 Dissolution of Marriage (Divorce)

8-5.4.1 General

A. Dissolution of a marriage is the legal separation of a husband and wife by the court. The status of the community property is unaffected until the marriage is terminated on the date of entry of the Decree of Dissolution subject only to the expiration of a 30-day appeal period. If no Decree of Dissolution is entered, the filing of the legal action has no effect on the status of the parties' property.

B. A Decree of Dissolution may include a disposition of the property of the parties including the separate property of either party, and is effective to decide the property rights of either party.

1. If community property is not awarded to either party, the parties are legally "tenants in common."

2. If, prior to the decree, property is vested as the separate property of one of the parties and the property is not mentioned in the court action, the property remains the separate property as last vested.

3. If the court action took place in another state, the validity of any award of property in this state is questionable for lack of jurisdiction.

C. A lump sum judgment against either party awarded in the decree, becomes a lien against that person's property, but if the lump sum judgment was entered in another state, it is not a lien against property in this state until the foreign judgment has been registered in this state and additional proceedings completed to levy on the local property (RCW 6.36).

8-5.4.2 Rules

A property settlement granted by any county in this state is valid as to the award or division of real property in all counties in the state.

8-5.4.3 Procedures

A. The Acquisition Agent:

1. Obtains from the parties in interest, information concerning current marital status and any related property settlement.
2. If the field inquiries indicate a conflict with the disclosures in the title report, obtains the following information from the parties at interest:
   a. Place of the court action (county, state).
   b. Date of the decree.
   c. Full names of the parties to the dissolution.
3. Submits the information to the Region RESM and requests further instructions.

B. The Region RESM:

1. Makes the following determination:
   a. Whether a decree has been entered.
   b. Whether the appeal period has expired.
   c. Whether the property in question was awarded in the court action.
   d. Whether, and against whom, a judgment was entered in the court action.
2. Submits any relevant information to the title company and requests an SPC.
3. Provides the Acquisition Agent with any necessary special instructions.

C. The Acquisition Agent closes the transaction dealing with the parties in accordance with any special instructions and the following, as applicable:

1. If the property was community property and not awarded in the court action, joins both parties in a normal conveyance as tenants in common (see Chapter 9).
2. If the property was vested as the separate property of one of the parties and the property is not mentioned in the court action, obtains a normal conveyance from the party as his or her separate property (see Chapter 9).
3. If the property was awarded in the court action, obtains a normal conveyance from the party to whom the property was awarded as separate property (see Chapter 9).
4. If the court action took place in another state, joins both parties in a conveyance and/or in accordance with special instructions (see Section 8-5.4.3B3).

8-5.5 Death

Acquisition from the estate of a decedent is achieved using one of the following general procedures:

8-5.5.1 Probate

If the estate is being probated, the Acquisition Agent:

A. Confirms that the probate has been filed by obtaining an SPC (see Section 8-5.5.3C).

B. Deals with the Administrator, Executor, or Personal Representative of the estate through the attorney disclosed representing the estate.

C. When the title report shows that the probate is complete except for payment of the state inheritance tax and/or the federal estate tax, the Acquisition Agent proceeds as described in Section 8-5.5.1B, except that a letter guaranteeing payment of the taxes is obtained in addition to the usual instruments.

8-5.5.2 Reserved

8-5.5.3 Lack of Probate

If the estate is not probated:

A. The Region RESM obtains an "Affidavit Re: Lack of Probate" form from the title company that issued the title report.

B. The Acquisition Agent:

1. Assists the decedent's surviving spouse or nearest relative in completing the affidavit.
2. Makes a copy of the affidavit and returns the original to the Region RESM.

C. The Region RESM obtains an SPC that indicates who can convey title and the basis upon which the title company will insure that title.

D. The Acquisition Agent deals with the heirs named in the SPC and joins them on the instrument to the state.

E. If an heir cannot be located:

1. The Acquisition Agent submits a written summary in his *Diary of Right of Way Activities* to the District RESM discussing the extent of the search.
2. The Region RESM:
   a. Coordinates with the Assistant Director of the Title and Condemnation Program:
      (1) To determine whether the state is willing to acquire title subject to the interest of the missing heir.
      (2) To obtain specifications for any additional and/or alternate actions suitable to the case.
   b. Inserts and signs appropriate instructions to the Acquisition Agent in the *Diary of Right of Way Activities* and returns same to such agent for completion of action.

8-5.5.4 Community Property Agreement

If the decedent and the surviving spouse executed a community property agreement, the Acquisition Agent:

A. Has the surviving spouse record the community property agreement in the county in which the parcel is located.

B. Assists the surviving spouse in completing the "Affidavit Re: Lack of Probate" (see Section 8-5.5.3).

C. Obtains from the surviving spouse, or from the appropriate officials at the place of death, a copy of the death certificate and furnishes same to the title company.

D. Upon receipt of the SPC (see Section 8-5.5.3C), completes the transaction with the surviving spouse.

8-5.6 Errors in Parties

8-5.6.1 General

At any point in the chain of title where a party has failed to convey or failed to appropriately join in a conveyance, the title report may recite the failure as an encumbrance against current vesting.

8-5.6.2 Rules

A. The state investigates potentials for clearing any encumbrance due to prior errors in parties.

B. Prior errors in parties are cleared if the appropriate party can be readily located and agrees to execute the instrument(s) required by the state.

C. As determined by the DRES, prior errors in parties maybe:

1. Cleared by specific court action brought by the state.
2. Ignored, and the state's parcel file documented as to the available pertinent facts.

8-5.6.3 Procedures

A. The Region RESM determines the form of instrument, the language and the parties appropriate to clear the encumbrance (usually a Quit Claim deed, or an affidavit).

B. The Acquisition Agent:

1. Attempts to locate the party indicated in the title report.
2. If he locates the party, requests that the party execute the necessary instrument.
3. If he fails to locate the party or if the party refuses to execute the instrument, submits a written summary to the Region RESM in his *Diary of Right of Way Activities* including:
   a. An explanation of his attempts to secure execution of the necessary instrument.
   b. The date of the instrument/conveyance in fault.
   c. The nature of the interest in fault (e.g., fee, mortgage).
   d. The amount of interest (e.g., fractional, partnership, community property, authority of corporate agent).
   e. Whether full value was paid for the faulty conveyance.
   f. The value of the conveyance required by the state.

C. The Region RESM reviews all information and contacts the Assistant Director of the Title and Condemnation Program requesting instructions.

D. The Assistant Director of the Title and Condemnation Program reviews the information and may request either court action or may waive further action.

E. The Region RESM inserts the instructions on the Acquisition Agent's *Diary of Right of Way Activities* dates and initials same and instructs the Acquisition Agent to, either:

1. Complete a *Negotiator's Report* (Form RES-320), or
2. Complete all other parcel transactions ignoring or handling the error in parties in accordance with any special instructions.