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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.

The Headquarters Real Estate Services Manager (RESM) determines the acceptable title risk in each state acquisition. A title report, consisting of a “Commitment for Title Insurance” plus any “Supplemental Title Reports” (STRs), is obtained for each parcel. The title report lists the recorded encumbrances affecting the title. In addition, the Property and Acquisition Specialist (PAS) may discover other encumbrances (e.g., unrecorded leases).

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

In some situations it may be difficult to clear encumbrances in the prescribed manner. In such cases, check with the title company to see what they will require to clear the encumbrance.

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) and approved by the Acquisition and Title Section Manager. Any such instructions and approvals are documented in the pertinent transaction.
- B. Clearance of encumbrances is normally accomplished by the region office in non judicial 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 commitment 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 commitment and any supplementals and all other questions of title which appear during the acquisition process.
 - 2. Resolves all title questions in accordance with [Sections 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 PAS:
 - 1. Includes an Encumbrance Report in the appropriate location on the Right of Way Acquisition Transmittal (Form RES-353), 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.
 - 2. Total acquisition involving payoff of monetary encumbrances. (e.g., Deeds of Trust, Judgments).
 - 3. 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).

8-2.2.2 Procedures

When in compliance with [Section 8-2.2.1](#) it is necessary to close a transaction in escrow, the PAS:

- 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).
- E. 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.
- F. Prepares the Real Property Voucher (Form RES-321) 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 when the treasurer of each county completes the tax roll and provides notification of said completion each year. The entire year's taxes become delinquent if the first half taxes are not paid on or before April 30. The second half taxes become delinquent if not paid on or before October 31.

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 1 and notification of the completed tax roll: The region will have to determine the tax payable date for each county.
 - 2. January 1 through June 15: At least the first half real property tax must be cleared.
 - 3. After June 15: 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.

8-3.1.3 Procedures

8-3.1.3.1 *Payment of Current Year's Tax*

- A. For either a total or a partial acquisition, the PAS, or at the owner's discretion:
 - 1. Allows the owner to pay the tax lien. The PAS includes proof of the payment with the Right of Way Acquisition Transmittal.
 - 2. Pays the tax lien by a separate Real Property Voucher (Form RES-321) made payable to 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 PAS requests that this letter be prepared and signed by the appropriate official of the mortgage company guaranteeing payment of the real property taxes. The PAS 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 PAS 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 PAS 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 PAS 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 may be prepared by the PAS, is signed by the owners and is approved by the county assessor and the county treasurer. The PAS includes the Tax Set Over Letter (Form RES-334) 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 procedure does not apply to total acquisitions

8-3.2 *Personal Property Taxes*

8-3.2.1 *General*

Personal property taxes are subject to the same levy rate as real property taxes. Personal property includes machinery, equipment, furniture, and supplies of businesses and farmers. It also includes any improvements made to land leased from the government (leasehold improvements).

Property taxes are due on April 30 and October 31. The owner of the property on January 1 of the assessment year owes the tax due the following year. The tax is due even if the business closes, or the property is sold or transferred before the end of the year.

Note: If WSDOT is acquiring a mobile home, personal property taxes must be paid in full.

8-3.2.2 Rules

Any personal property tax lien (current year and prior years) is an encumbrance which is cleared on acquisition of the personal property as a result of the state's project.

8-3.2.3 Procedures

- A. The PAS at the owner's election or tenant's election, if tenant owned:
 - 1. Allows the owner (tenant) to pay the tax lien. The PAS includes proof of payment with the Right of Way Acquisition Transmittal
 - 2. Pays the tax lien by a separate Real Property Voucher made payable to the appropriate county. The amount of this voucher is shown as a deduction on the "primary" Real Property Voucher.
- B. If the transaction is to be closed in escrow, includes instructions to pay the personal property tax in the escrow agreement.

8-3.3 Assessments

8-3.3.1 General

- A. There are two basic types of assessments:
 - 1. 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. Most of these assessments are lump sum levies (which usually are payable over a number of years).
 - 2. When the operation is continuous, e.g., a drainage district, diking district, surface water management, fire district, an assessment is usually levied annually and thereby become a recurring lien in the same sense as real estate taxes on private property.
- B. The taxing district per [RCW 84.56.035](#) may contract with the county treasurer to collect the special assessments.
- C. Assessments cannot be set over to the remainder property unlike property taxes.

Note: The Acquisition Specialist should notify the Property Management Section of any ongoing assessments by Memorandum or e-mail.

8-3.3.2 Rules

- A. The lien of current and delinquent assessment is cleared:
 - 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.
- B. Irrigation districts are cleared per [RCW 87.03.810](#) and [RCW 87.03.815](#).

8-3.3.3 Procedures – Irrigation Districts

- A. If the Regional 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 Regional Administrator determines that the department-controlled lands or highways should be removed from an irrigable status. Per [RCW 87.03.810](#) and [RCW 87.03.815](#), the Region RESM determines a lump sum payment for lands that are to be removed from irrigable status 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.
- C. The Region RESM:
 - 1. Prepares a resolution for action by the Board of Directors of the irrigation district.
 - 2. Prepares a Real Property Voucher (Form RES-321) 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 the computer system.
 - b. Transmits the resolution and Real Property Voucher together with the determination of the sum due to the Headquarters RESM as a separate acquisition using the procedures set forth in [Chapter 6](#) for approval.

8-3.3.4 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 any market value added by the improvement for which the assessment was levied.
3. On acquisitions of less than fee title: coordinates with the Region RESM to determine the required actions.
4. Instructs the PAS on the appropriate steps to be taken to clear, assessments, and any amounts to be deducted from the “principal” Real Property Voucher (Form RES-321) because of any separate clearance of assessment liens.

B. The PAS:

1. Clears 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 is shown as “Deductions” on the principal Real Property Voucher (Form RES-321).
2. Shows the method for clearance on the Encumbrance Report.

8-3.4 Deeds of Trust and Mortgages

8-3.4.1 General

Deeds of trust and mortgages are discussed together. For the purpose of this section, both are encumbrances cleared with either a reconveyance document or a satisfaction of mortgage, respectively, and may require payment of funds.

Most deeds of trust and mortgages contain a condemnation/eminent domain or an acceleration clause, if all or a portion of the property is sold, 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.

In the following discussion, the language appropriate to a deed of trust is shown first, with the language appropriate to a mortgage shown in parentheses. The term “trustee” is appropriate only to deed of trust and is used only in that context.

8-3.4.2 Rules

- A. A full reconveyance (satisfaction of mortgage) is required to clear a deed of trust (mortgage) in the case of any total acquisition.
- B. A partial reconveyance (partial release of mortgage) is not required on partial acquisitions when the dollar amount of compensation is under \$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 \$10,000 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 Region RESM and the Regional Administrator (or delegate).

- C. In the case of partial acquisition of fee and an easement, the following clause should be added to the partial reconveyance (partial release of mortgage) “The Beneficiary (Mortgagee) herein consents to an easement for the purposes of ____ over the following described property_____”

Note: The Request for Partial Reconveyance should also recite this clause.

- D. In the case of an easement only acquisition, the beneficiary (mortgagee) should also execute the document consenting to the easement.
- E. For the acquisition of temporary rights. Based upon the length of time involved, the compensation, the degree of interference, and size of the easement, consider having the beneficiary (mortgagee) execute the document
- F. In accordance with [Chapter 6](#), certain “incidental expenses” incurred in transferring property to the state are payable by the department including reasonable fees for processing and reconveyance fees.

8-3.4.3 Procedures

The PAS determines the identity of the “servicing agent” by asking the grantor where the deed of trust (mortgage) payments are made. The servicing agent is the initial point of contact for dealing with the beneficiary (mortgagee).

8-3.4.3.1 Total Acquisition

- A. **Instruments Obtained.** If the beneficiary (mortgagee) is willing to deliver a full reconveyance (satisfaction of mortgage) without funds in hand, the PAS:
 - 1. Obtains the signatures of both the trustor (grantor) and the beneficiary (mortgagee) on the Real Property Voucher (RES Form-321) using the mailing address of the beneficiary (mortgagee) as the address of the “claimant.”

Note: As an alternate, the amount to be paid to the beneficiary (mortgagee) may be paid by a separate Real Property Voucher (RES Form 321) made payable to the beneficiary (mortgagee) 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 beneficiary (mortgagee) take all necessary steps to file a full reconveyance (satisfaction of mortgage) with the county auditor/recorder where the property is located.
 - 3. Obtains the recording data of the full reconveyance (satisfaction of mortgage) and recites same in his Encumbrance Report (Form RES-353, Right of Way Acquisition Transmittal) as reference for the clearance of the encumbrance.

- B. Instruments Guaranteed.** If the beneficiary (mortgagee) is unwilling to deliver a request of full reconveyance (satisfaction of mortgage) without funds in hand (beneficiary cannot deliver a reconveyance, the reconveyance is prepared by a trustee), the PAS:
1. Requests a letter of guarantee in lieu of the full reconveyance (satisfaction of mortgage) if the beneficiary (mortgagee) is an established lending firm. This is a letter signed by an appropriate officer of the beneficiary (mortgagee) that states they will request a full reconveyance (satisfy the mortgage) upon receipt of the funds for the same.
 2. Submits the transaction to escrow if the beneficiary (mortgagee) is an individual or is unwilling to deliver a reconveyance (satisfaction of mortgage) prior to delivery of funds.

8-3.4.3.2 Partial Acquisition

- A.** Where a partial reconveyance (partial release of mortgage) is not required the following procedures apply:
1. Under \$10,000:

The PAS informs the property owner of any condemnation, due on sale, or acceleration clauses and associated risk and so notes in the activities diary. The response of the owner should also be clearly noted. The PAS also notes in the encumbrance report on the Right of Way Parcel Transmittal Sheet that the property is being acquired subject to the lien.
 2. Between \$10,000 and \$25,000:
 - a. The PAS completes the Request to Accept Encumbrance (Form RES-333) and submits it prior to transmittal to the Region RESM for consideration.
 - b. The Region 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 Region RESM, the PAS obtains written permission from the property owner that they have been informed of any condemnation, due on sale, or acceleration clauses and associated risk.
- 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 request and the PAS clears the encumbrance, per normal procedure.

3. Over \$25,000:

The procedure outlined above for \$10,000 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.

- B. When a partial reconveyance (partial release of mortgage) is required, the PAS determines, by coordinating with the beneficiary (mortgagee) and the grantor, any necessity to make payment of money to the beneficiary (mortgagee). 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 deed of trust (mortgage).
1. Some payment of money to the beneficiary (mortgagee) 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): PAS obtains execution of a Real Property Voucher and submits for mortgagee's signature a Partial Release of Mortgage (Forms RES-308 and RES-309).
 - b. Partial Reconveyance: PAS obtains execution of a Real Property Voucher and prepares Request for Partial Reconveyance (Form RES-310) and Partial Reconveyance (Form RES-311). The Request for Partial Reconveyance is signed by the beneficiary, requesting the trustee to execute the partial reconveyance. The PAS, using the "Request" as his authority, obtains execution of the Partial Reconveyance from the trustee.
 2. If no payment of money to the beneficiary (mortgagee) is required by the parties: the PAS proceeds as in [Section 8-3.4.3.1A](#) except in this instance the trustor (grantor) is the payee and the beneficiary (mortgagee) does not join in execution of the Real Property Voucher.

The PAS:

- a. Includes in the partial reconveyance (partial release of mortgage) the appropriate clause (see [Chapter 9](#)) authorizing full payment to the grantor, and
- b. Includes in the request for partial reconveyance the appropriate clause (see [Chapter 9](#)) authorizing full payment to the grantor.

8-3.4.3.3 Security Instruments That Include an Assignment of Rents

8-3.4.3.3.1 General

Certain loans may secure payment of a debt and be a lien on commercial property that is occupied by tenant(s). The PAS, with the assistance of the region title examiner, needs to be familiar with the provisions in the loan documents and understand how to remove any Assignment of Rents.

8-3.4.3.3.2 Procedures

There are many different types of security instruments. Each must be read for how to obtain a release of the Assignment of Rents. Some provide that the Release of Assignment of Rents must be executed solely by the lender and others consider the Assignment of Rents to be released upon the execution of the reconveyance.

8-3.4.3.4 Mortgage Electronic Registration Systems (MERS) Reserved

8-3.5 Judgments

8-3.5.1 General

- A. A 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 will expire. It is often advantageous to the debtor to ignore the judgment if the time for levy by the creditor has almost expired.

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 on the date of filing the judgment.
 2. All properties to which the debtor acquires ownership or a contract purchaser's 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.

8-3.5.2 Rules

- A. Judgments are cleared by payment, partial payment, and/or release of the property being acquired.
- B. On partial acquisition or acquisition of easements, the Region RESM may acquire subject to the judgment with appropriate documentation.
- C. **Except that all child support judgments shall be cleared.**
- D. 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 expired.

8-3.5.3 Procedures

- A. **Identity of Debtor.** The PAS determines whether the judgment debtor and the state's grantor is the same person. **Note:** The title company may require an identity affidavit for completion.
- B. **Verification of Status of Judgment Against State's Grantor**
 1. **Expired.** If the Title Report and/or the PAS's investigation indicate that no action has been taken to collect or renew the lien within the past ten years, the PAS requests that the Region RESM obtain a STR showing that the judgment is eliminated.
 2. **Paid.** If such judgment has been paid, the PAS 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 PAS 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.

Note: An Assignment of Judgment must include an acknowledged execution by the judgment creditor.
- C. **Clearance**
 1. If the conditions stated in [Section 8-3.5.3B1](#) appear to pertain, but a new STR does not show that the judgment has expired, the PAS submits a complete explanation of the evidence to the Region RESM requesting that specific guidance be obtained from the Acquisition and Title Section Manager.

2. If the judgment remains of record against the state's grantor and is to be cleared, the PAS:
 - 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 (RES Form-321).
 - 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 an Abstract judgment, has the satisfaction or partial release filed in the original county that the judgment was filed.

8-3.6 Miscellaneous Monetary Liens

8-3.6.1 General

Any monetary debt may be reduced to judgment 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. **Mechanics' and Materialmen's Liens.** Valid for a period of eight calendar months. However may be enforced by court action or, subject to further specific conditions (per [RCW 60.04.141](#)).
 2. **Federal Tax Lien.** Delinquent federal taxes are a lien when properly filed with the appropriate county auditor. May be considered expired after ten years from date of filing unless a continuance has been recorded.
 3. **Department of Social and Health Services Lien for Child Support.** Per [RCW 26.18.055](#) when not paid, becomes a lien against all real and personal property of the debtor. It is WSDOT's policy to obtain a release of lien for the property acquired. There are no exceptions for clearing this type of lien.

4. **Uniform Commercial Code (UCC) Financing Statement.**

The Uniform Commercial Code is a nationwide system for the simplification, clarification and modernization of the laws regarding commercial transactions as defined per [RCW 62A.1-102](#).

- B. At time of death, debts of the decedent become a lien against the estate without necessity for filing or recording and are generally only questioned in the commitment. 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 that may require clearance, e.g., tax warrants, financing statements.

8-3.6.2 Procedures

A. **Mechanics' and Materialmen's Liens**

1. **Verification of Status of Lien.** If eight months have lapsed since the date of filing of the lien, and no pending action to enforce the lien, the PAS obtains an STR (by request through the Region RESM) removing the lien.
2. **Clearance.** The following procedures apply only if an action to enforce the lien in court has not occurred:
 - a. The attachment period is eight months.
 - b. The lien is released by the claimant.
 - 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 RESM in coordination with the Section Manager of Acquisition and Title.
 - e. The documents of release are recorded with the county auditor.

Note: If an action has been filed to enforce the lien then the procedures for releasing a judgment shall apply.

B. **Federal Tax Lien.** The PAS clears the Federal Tax Lien by:

1. A request for the amount of funds necessary to clear the lien from the acquired property should be obtained from the Internal Revenue Service Lien Payoff Unit.

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. **UCC Financing Statement.** Per [RCW 62A.9A-502\(b\)](#) a financing statement is considered sufficient as fixture filing if it indicates that it is to be filed for record in the real property records.
1. If there is a record of the UCC filed with county auditor then a termination of UCC must be filed with said auditor.
 2. Whether or not a recorded UCC is filed, since the only requirement is that the filings indicate it is to be filed in the real property records, an UCC search needs to be completed with the Washington State Department of Licensing.
- HQ Acquisition and Title Section have access to the UCC Web site. Please contact HQ for any searches.
- If any UCCs are found affecting the real property, they will need to be released by filing with the Department of Licensing a termination once the creditor has been paid.
- D. **Lien on Estate of Deceased.** Refer to [Section 8-5.5](#).
- E. **Miscellaneous Monetary Encumbrances.** When the Title Report or any information obtained by the PAS discloses or raises questions concerning possible existence of other types of indebtedness on the part of the state's grantor, the PAS refers the information to the RESM and requests specific guidance.

8-4 Property Rights Encumbrances

8-4.1 Real Estate Contracts

- A. A real estate contract is similar to an installment plan transaction between seller (vendor) and purchaser (vendee) 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 a Warranty Deed, a Quitclaim Deed, or by a Seller's Assignment of Contract and Deed.

The purchaser's interest is transferred by a Quitclaim 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 PAS 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, the Region RESM coordinates with the Acquisition and Title Section Manager.

8-4.1.3.2 Distribution of Funds

After obtaining agreement of the “equitable owner” to the state’s offer to purchase, the PAS contacts all necessary parties in interest to establish a mutually-agreeable disbursement of funds. If the parties cannot agree on the distribution, the PAS turns in the parcel for possible condemnation.

8-4.1.3.3 Conveyance

- A. **Joint Conveyance.** Two alternatives are available:
1. **Joint Conveyance, Single Voucher, and Single Payee:** If there is no distribution of funds required, or if the parties wish to arrange their own private distribution of funds, the PAS 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 PAS has the contract purchaser (owner) and the contract seller join on an appropriate instrument. The “primary” Real Property Voucher is executed by and made payable to the contract purchaser and indicates (a) the full amount of the state’s transaction, and (b) a deduction of the amount to be paid separately to the contract seller. A secondary Real Property Voucher is executed by and made payable to the contract seller for the amount deducted from the “primary” voucher.
- B. **Separate Conveyances.** The PAS 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 [Section 8-4.1.3.3A](#).
- C. **Security Assignees.** The PAS clears the interest (as to the state’s acquisition) of any security document assignee following the procedures for clearing of a mortgage except that a Quitclaim Deed is used instead of a Satisfaction of Mortgage or a Partial Release of Mortgage.
- D. **Escrow.** If the transaction meets the requirements for closing in escrow, the PAS:
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 that, if exercised, would extend the term of the lease.

A lease may include an option to purchase all of or a portion of the property being leased.

- 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).
- B. A lease and sublease interest in effect on the date of delivery of the initial Firm Offer Letter are cleared 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 (Form RES-313) 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 acquisition.
- 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 Headquarters RESM when:
1. The leasehold lies entirely within the acquisition 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 Clearance of Lease Interests

A. **Release.** The PAS:

1. Obtains the signature of the lessee on a Partial Release of Lease (Form RES-312) or Release of Lease (Form RES-). The identity of the lessees should be established per [Chapter 6](#) on the Landlord Tenant Form (Form RES-352)
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. **Commercial Lessees.** 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 the PAS):
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 PAS obtains a copy of such satisfaction for inclusion in the transaction package.
 - b. If the chattel mortgage was recorded, the PAS 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.
 7. If access rights are acquired in the instrument from the owner, they must also be acquired in the release from the lessee.
 8. See [Chapter 6](#) for refunds of deposits.

C. Residential Leases

1. Per [RCW 59.18.200](#) (Landlord/Tenant Act) when premises are rented for an indefinite time whether by oral or written lease with monthly or other periodic rent reserved, such tenancy shall be construed to be a month to month tenancy. These leases shall be terminated by written notice of 20 days or more, preceding the end of any of the months or periods of tenancy. Therefore when WSDOT requests a release of lease from a residential tenant, the displacee lease must be signed concurrently in order to not violate the statute.
2. See [Chapter 6](#) for refunds of deposits.

8-4.2.3.2 Acquisition Subject to Lease

- A. When the PAS has reached agreement with the owner of land to be acquired but finds that it is subject to a lease that the lessee refuses to release and *all* the conditions of [Section 8-4.2.2D](#) are present, the PAS requests the RESM to obtain the approval of the Headquarters RESM 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 Headquarters RESM for acquisition subject to the lease. If such approval is obtained, directs the PAS to acquire subject to the lease; if approval is not forthcoming, directs the PAS to turn the parcel in for condemnation.
- C. If the PAS is directed to acquire subject to the lease, the PAS 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 fee interest and/or easements for construction and operation of their facilities. 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 Region Real Estate Services Office should work closely with the Region Utilities Office to ensure that all utility property rights issues are addressed.

8-4.3.2.1 Real Property Interests

A. Responsibilities:

1. **Railroad Utilities and Bonneville Power Administration Utilities.** Any interest in real property (operating and nonoperating) is cleared as specified in [Chapter 6](#).
2. **All Other Utility Properties.** Any interest in real property (operating or nonoperating) held by a utility company (except those held by a railroad or the Bonneville Power Administration) is cleared by the Region RESM as specified in [Chapter 6](#).

8.4.3.3 Procedures

8.4.3.3.1 Identification of Interests

The Region Utility Engineer (or designee) and the Region RESM (or designee):

- A. In the early stages of plan development, determines the location of all utility interests that need to be cleared. Determination is made by:
 1. Research of existing utility permits or franchises held in the Region Utilities Office.
 2. Inspection and Subsurface Utility Engineering (SUE) process investigation.
 3. Examination of all title reports and easement documents.
- B. Prepares a summary of their findings to the region project engineer listing each location on a project encumbered by a utility interest. The following information should be given in each instance:
 1. The parcel number affected, if assigned.
 2. The owner of the utility interest and the type of utility service.
 3. The location, bracketed by the pertinent Highway Engineer's Stations delineating a crossing or encroaching interest.
 4. The type of property interest held, e.g., fee or easement.
 5. Whether the property is classified "operating" or "nonoperating."
 6. The action required to clear the encumbrance.

8-4.3.3.2 Clearance

The Region RESM (or designee):

- A. Prepares the appropriate instruments:
 1. A Quitclaim Deed (Form RES-306) is used if the utility system is to be relocated or otherwise removed from its existing right of way.
 2. A Subordination Agreement (Form RES-314) is used if the utility system is to be reestablished remaining within its existing right of way, crossing or encroaching on the state's acquisition. (**Note:** A Subordination Agreement is intended for use only when a utility company cannot convey its rights to the state due to restrictions on conveying operating properties during periods of indebtedness.)
- B. Coordinates with the Region Utility Engineer as necessary on presenting their respective matters to representatives of the affected utility.
- C. Transmits instruments to HQ pursuant to [Chapter 6](#).

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 benefitted parcel is the dominant tenement and the encumbered parcel is the servient tenement. An appurtenant easement right will travel with the conveyance of the benefitted 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 as to the encumbered parcel by acquisition of such easement rights as are appropriate from the benefitted parcel.
- C. When the state acquires all of both the dominant and the servient tenements, or the entire dominant tenement and so much of the servient tenement as contains the easement, the interests merge (see [Section 8-4.4.3C](#)).

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 requests that the Acquisition and Title Section Manager accept such easement.
 3. Identifies the ownership(s) benefitted by the easement.
 - a. On managed access projects, identifies situations wherein ownerships (from which there is to be no acquisition) are benefitted 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 Acquisition and Title Section Manager on the procedure for clearing the easement encumbering the servient parcel by appropriate instruments from the owners of all the benefitted ownerships.
 - b. On limited access projects, directs the clearance of the easement with respect to all benefitted parcels from which access rights must be acquired pursuant to [Chapter 6](#).
- B. The PAS 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.
 4. Makes appropriate notation in the Encumbrance Report to cross-reference the transaction to the benefitted ownership(s) or parcel(s).
 5. If the benefitted ownership is not a parcel, clears the encumbrance as indicated in [Section 8-4.4.3C1](#).

- C. The PAS assigned to the benefitted parcel(s) obtains (an) instruments in accordance with the following:
1. **Benefitted Parcel is Outside the State’s Acquisition.** The PAS obtains a Quitclaim Deed (modeled on Form RES-306 et seq.) from the parties in interest in the benefitted 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 Quitclaim Deed is completed in the usual manner outlined in [Chapter 9](#).
 2. **Total Acquisition of Benefitted 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 Benefitted Parcel.** Obtains the normal instrument (see [Chapter 6](#)) appropriate to the partial acquisition as called for by the project plans in which instrument also includes the language “. . . together with easement as in Auditor’s File No. _____.”
 4. Makes appropriate notation in his Encumbrance Report to cross-reference the transaction to the encumbered parcel(s).

8-4.5 Mineral Rights

8-4.5.1 General

A mineral right (reservation) is a right to extract a mineral from the earth or to receive payment, in the form of royalty, for the extraction of minerals. “Mineral” may have different meanings depending on the context and there is no universal definition. However, “mineral” generally includes: fossil fuels (oil, natural gas, and coal), metals and metal-bearing ores (gold, copper, and iron), non-metallic minerals and mineable rock products (limestone, gypsum, building stones, and salt), and sand, gravel, etc.

A mining claim is a form of surface ownership and is discussed in [Chapter 6](#).

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.

For further information on mining and mineral rights, see [Chapter 78 RCW](#).

8-4.5.2 Rules

- A. Mineral rights that 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 [Chapter 9](#).
- B. Mineral rights that 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 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 Acquisition and Title Section Manager for a project-wide determination of necessity for clearance.
 - 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 PAS:
 - 1. Determines the present ownership of the outstanding (severed) mineral rights that are assigned to be cleared.
 - 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 Quitclaim 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 modified (if the holder insists on reserving mineral rights), obtains a Quitclaim 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. Obtain a Quitclaim Deed.
 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 ([Chapter 90.03 RCW](#)), 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.

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 that may include but is not limited to:
 - a. A construction item for reconnection or new connection (see [Chapter 6](#)).
 - b. An agreement 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), and location of the respective sources.
- B. The Region RESM forwards each request to the appropriate region office of the Department of Ecology, requesting that each reply be directed to the Region 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 PAS:

- 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 the transaction package.
- C. If the settlement is by agreement, see [Chapter 6](#).

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 Acquisition and Title Section Manager on handling appropriate to the individual case.
 4. If the reservation, restriction, or defect does not affect the state's acquisition, instructs the PAS to ignore the reported encumbrance.
- B. The PAS:
 1. Handles encumbrances in accordance with instructions by the Region RESM as in [Section 8-4.7.3A](#).
 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

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

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 PAS 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. An unrecorded claim of title to a vacated street or road must usually be perfected by a court decree.

- C. Per [RCW 36.87.090](#) if the street or road is not dedicated by a plat, the street may be considered vacated under the following conditions:
1. 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.
 2. 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.

Note: Check with title company for insurance requirements.

8-4.8.3 Procedures

- A. The PAS:
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.
 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 Acquisition and Title Section Manager to determine the appropriate course of action (e.g., condemnation, allow the claim, and obtain a new appraisal).
 2. Instructs the PAS 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 that 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 a memorandum to the Manager 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 Acquisition and Title Section Manager 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 Acquisition and Title Section Manager submits to the Region 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 affected 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 PAS 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) 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 PAS should in all cases consult with the Region RESM and/or the Acquisition and Title Section Manager if any question should arise on this subject. The PAS should also enter into such consultations if the Title Report should raise such a question.
- D. Clearance is obtained, usually by Quitclaim Deed (of riparian/littoral rights appurtenant to the affected property), in accordance with instructions received from the Region RESM or the Acquisition and Title Section Manager.
- E. Compensation for loss of affected 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 (life tenant) and the holder of the remainder (remainderman), or if there are no remaindermen named, then upon termination of the life estate, the possessory 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 life tenant and the remainderman.

8-5.1.2 Rule

The state recognizes all parties in interest.

8-5.1.3 Procedures

The PAS:

- A. Investigates to determine which party (life tenant or remainderman) is in possession.
 1. If life tenant is in possession, determines address of remainderman.
 2. If remainderman is in possession, determines if the life tenant is alive or deceased.
 - a. If life tenant 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 life tenant is alive, determines address.
 3. If neither is in possession, determines interest claimed by possessor and facts concerning status and addresses of life tenant and remainderman.

- B. If both life tenant 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 [Chapter 9](#)) and obtains execution of the Real Property Voucher by the party authorized on the deed, and if neither life tenant nor remainderman are in possession, clears interest of possessor as the nature of his interest dictates.
 3. As an alternate to 1 and 2 above, the signatures of the life tenant 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 life tenant is deceased, obtains execution of deed and Real Property Voucher by remainderman (or remaindermen) only and clears life tenant's interest by including copy of death certificate in the transmittal package.
- D. If for any reason (except the death of the life tenant) it is impossible to secure the signatures of both the life tenant 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 Procedures

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

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 PAS and also may:
 - a. Contact relatives of interested party for additional information.
 - b. Refer matter to the Acquisition and Title Section Manager for recommendations.
2. Directs the PAS 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 from a minor only through the services of a properly authorized guardian.

8-5.3.3 Procedures

The PAS:

- A. If the party in interest is a young person, requests evidence of majority (e.g., drivers license, birth certificate, marriage license).
- B. If the party in interest is a minor, handles the transaction through a guardian as described in [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 and an appropriate court action must be initiated in this state or instruments must be executed by both parties.
- 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 ([Chapter 6.36 RCW](#)).

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 PAS:
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 a STR.
 3. Provides the PAS with any necessary special instructions.
- C. The PAS closes the transaction dealing with the parties in accordance with any special instructions and the following, as detailed in [Chapter 9](#), 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.
 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.
 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.
 4. If the court action took place in another state, joins both parties in a conveyance and/or in accordance with special instructions from the Region RESM.

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 PAS:

- A. Confirms that the probate has been filed by obtaining an STR.
- 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 PAS 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 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 PAS:
 - 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 STR that indicates who can convey title and the basis upon which the title company will insure that title.
- D. The PAS deals with the heirs named in the STR and includes them on the instrument to the state.
- E. If an heir cannot be located:
 - 1. The PAS submits a written summary in his Diary of Right of Way Activities to the Region RESM discussing the extent of the search.
 - 2. The Region RESM:
 - a. Coordinates with the Acquisition and Title Section Manager:
 - (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 PAS in the Diary of Right of Way Activities and returns same to such agent for completion of action.

8-5.5.3 Community Property Agreement

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

- 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" as provided in the previous section.
- 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 STR as provided in the previous section, 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 Headquarters RESM, prior errors in parties may be:
 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 Quitclaim Deed, or an affidavit).
- B. The PAS:
 1. Attempts to locate the party indicated in the title report.
 2. If the PAS locates the party, requests that the party execute the necessary instrument.
 3. If the PAS fails to locate the party or if the party refuses to execute the instrument, submits a written summary to the Region RESM in the 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 Title and Condemnation Program Section Manager requesting instructions.
- D. The Acquisition and Title Section Manager reviews the information and may request either court action or may waive further action.
- E. The Region RESM inserts the instructions on the PAS's Diary of Right of Way Activities dates and initials same and instructs the PAS 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.