

# Risky Business

## Considerations for Closing Special Risk Transactions

**Dannielle Booth**

Senior Commercial Escrow Officer

# The Special Risk Team



# Not Your Lawyer

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# Adventures Across the Escrow Desk

What is opening?

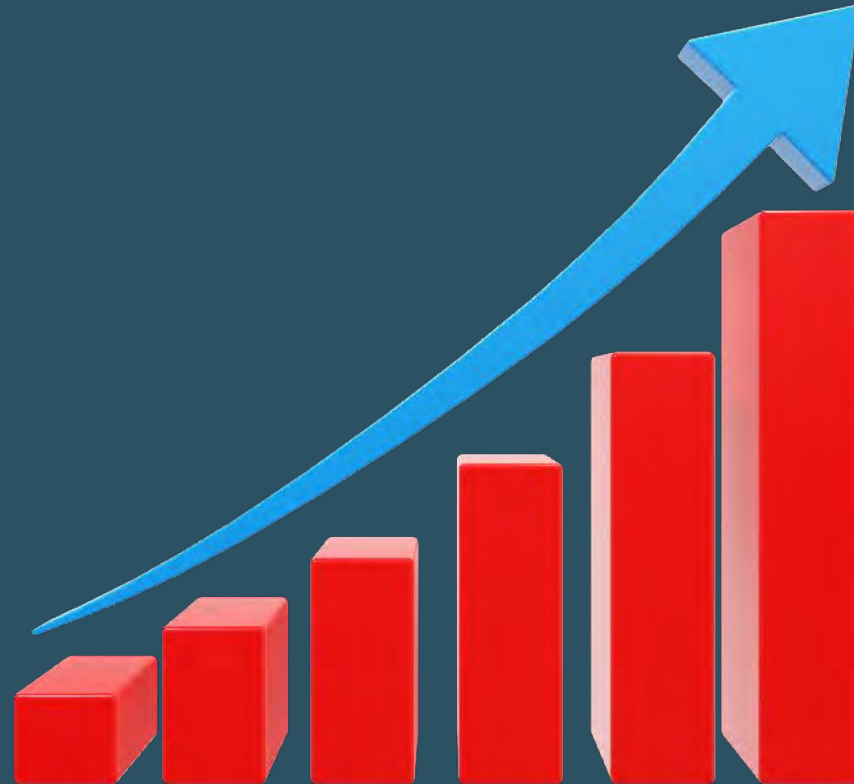
**Special Risk Transactions**

What is closing?

**Special Risk Transactions**

What is not?

**Special Risk Transactions**



# Special Risk Transactions

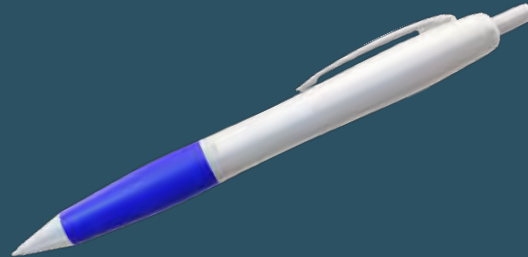
Receiverships



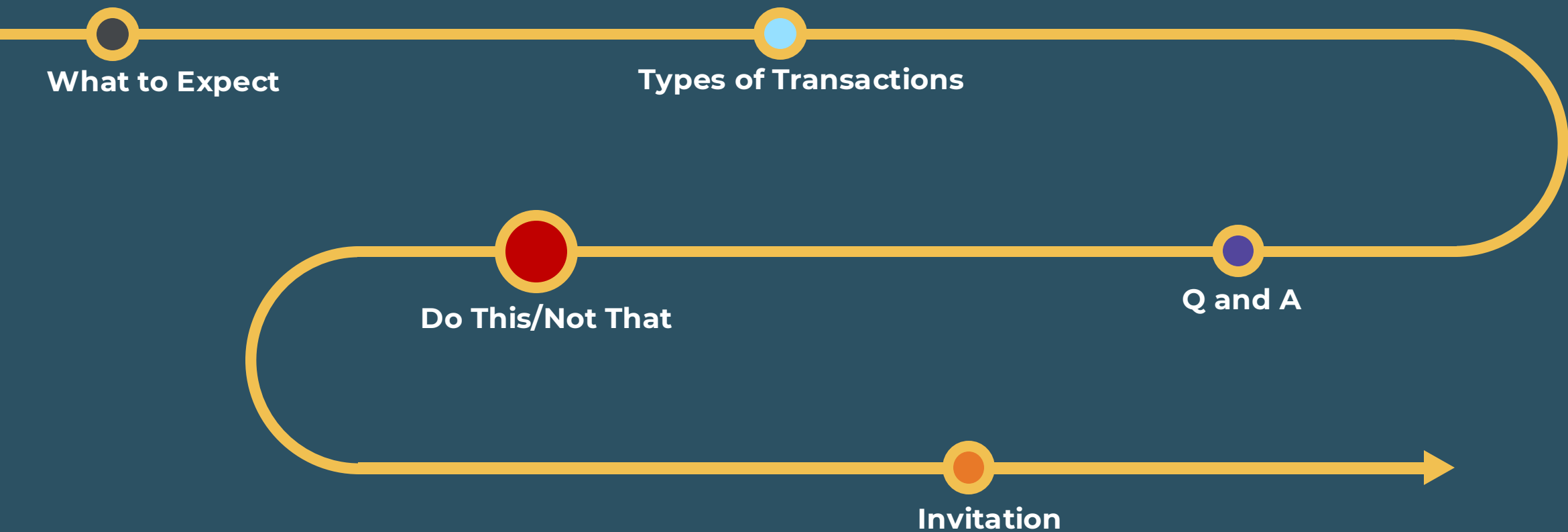
Voidable Transfers



Incomplete Signature Authority



# The Next Hour



# What to Expect

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# The unexpected.

# Escrow State Perspective

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# Escrow = Service Title Insurance = Product

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# The Closing of a Transaction

OPEN

REVIEW

CLEAR

CLOSE

POLICY





# Special Risk Transactions

CLEAR?



# RECEIVERSHIPS IN GENERAL

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A Receiver is neutral third party appointed under court order as an officer of the court and charged with managing and protecting assets.

The order appointing the receiver is commonly brought upon motion by creditor in a breach of contract action, through the course of a probate of an individual owner of businesses or by court appointment in cases alleging securities fraud or environmental violations.

A receiver may sell real property under the procedures set forth in a court's order to sell real property.

# RECEIVERSHIP CODES

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## Federal Receivership

- 28 U.S. Code § 3103
- Federal Rule of Civil Procedure 66

## State Receivership

- Oregon - Chapter 37 of the Oregon Revised Statutes
- The Uniform Commercial Real Estate Receivership Act (UCRERA)
- Washington - Chapter 7.60 of the Revised Code of Washington



# Challenges with Closing Receivership Transactions

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## Lack of Code Uniformity

Appeal Notice Periods Vary

Rules of Procedure Vary

# Challenges with Closing Receivership Transactions

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## Adequacy of Service

Identification of all interested parties

Lack of or Avoidance of Service

Non-appearance of an interested party

# Challenges with Closing Receivership Transactions

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## Inaccuracy

Failure to strictly comply with the procedures for sale set by the court

Conflict or ambiguity in the approved purchase and sale agreement

# Challenges with Closing Receivership Transactions

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## Filings that Increase the Risk

Motions to Stay

Notices of Appeal

# Challenges with Closing Receivership Transactions

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## Gap Periods

Off Record Matters

Acceptable Indemnification



# Challenges with Closing Receivership Transactions

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## Misguided Expectations

Short closing timelines

Drop-dead closing dates

Purchases of a primary residence

# VOIDABLE TRANSFERS

The effect of Bargain and Sale Deed - Statutory Form

**Dated: November XX, 2024**

**Recorded: November XX, 2024**

**Fee No.: 2024-XXXXXX**

The requirement that a copy of the Operating Agreement and Articles of Organization of ABC, LLC a \_\_\_\_\_ limited liability company, be submitted to us for examination. The above conveyance by said Company should be executed in accordance with the Operating Agreement of said Company.

RECORDING REQUESTED BY:  
Title

Multnomah County Official Records  
E. Murray, Deputy Clerk  
2024-  
11/ 2024  
DEED-DEED    Points 86.667 ACRES  
\$13.00 \$11.00 \$10.00 \$90.00

AFTER RECORDING RETURN TO:

SEND TAX STATEMENTS TO:  
Same as above.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

BARGAIN AND SALE DEED - STATUTORY FORM  
(INDIVIDUAL or CORPORATION)

11/2024

LLC, a limited liability company, Grantor, conveys to Grantee, all its rights and interest in the following described real property, situated in the County of Multnomah, State of Oregon.  
SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF  
Other true and valuable consideration given for this conveyance. (See ORS 93.030).  
BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 835, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND

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# CLAWBACK POWER

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A Bankruptcy Trustee may avoid any transfer of an interest of the debtor in property made, while the debtor was insolvent for a debt owed by the debtor before the transfer was made:

- on or within 90 days before the date of the filing of the petition;
- between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider.

11 U.S.C. § 547

# CLAWBACK POWER

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A Bankruptcy Trustee may void a transfer that was made or incurred on or within **2 years** before the date of the filing of the petition, if the debtor voluntarily or involuntarily:

- made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud
- **-OR-**
- received less than a reasonably equivalent value in exchange for a transfer; and
- was insolvent on the date that such transfer was made
- or became insolvent as a result the transfer

11 U.S.C. § 548 (B)

# Challenges with Closing Voidable Transfer Transactions

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- Availability of the transferor
- Broad definition of “insider creditor” extending the look back period
- Can’t “unsee” a recorded transfer
- Unwillingness of transferor to provide financials
- Subsequent judgments entered against the transferor



# INCOMPLETE AUTHORITY

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# Required Documentation By Entity Type

	Valid Photo ID for Signer	SOS Registry/ Good Standing	Certificate/ Affidavit	Agreement/ Bylaws/ Amendments	Resolution	Consent	Vote/Minutes	EIN/TIN/SSN
Individual	✓							✓
Trust	✓		✓	✓		If more than one trustee		✓
Partnership	✓			✓				✓
Limited Liability Company One Member	✓	✓	May be Accepted	✓				✓
Limited Liability Company Multiple Members	✓	✓	May be Accepted	✓		✓	✓	✓
Corporation	✓	✓			✓		✓	✓
Municipality	✓	✓		Charter/ Code	✓		✓	✓

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# Challenges with Closing Incomplete Authority Transactions

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- Untimely delivery of documents for review
- Funds cannot be released/invested prior to closing until signature authority is approved
- Blank, unsigned or missing sections submitted
- Multiple layered entities require submission of each layer's formation documents
- Inadequate provisions for incapacity or death of a partner or member.
- Unavailability of authorized signer

Do This.



Not That.



**Request a Title Report.**  
**Do it early.**  
**Click the links.**  
**Review the documents.**  
**Ask questions.**



# Obtain and Provide Formation Documents.

# Advise of ALL Court Filings and Pending Litigation.

# Actively Seek Resolution. Obtain Consents.

# Understand the Requirements for Extended Title Coverage.

# Complete Affidavits Early.

# Read All Documents.

# Make and Respond to Title Objections.

# Be Flexible.



# Thank you. Questions?

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## **Stewart Title Guaranty Company**

National Commercial Services

1000 SW Broadway, Suite 2460

Portland, Oregon 97205

[stewart.com/commercial](https://stewart.com/commercial)

