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Court Clarifies Insurance

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Anyone who has purchased property has probably heard of title insurance. But many may be operating under a misconception of how it works.

Earlier this year, the Arizona Court of Appeals issued an opinion clarifying some of these issues.

In *Centennial Development Group, LLC v. Lawyer's Title Insurance Corporation*, the court explained that before a title insurance company issues a policy, it first reviews public records for any defects or encumbrances affecting the property (such as liens or easements). The company then issues a "title commitment" that lists the defects and encumbrances it found. When the company issues the title insurance policy, it attaches this list, called a list of "exceptions."

The list of exceptions is a common source of confusion. In some states, a title insurer can be sued for negligently failing to discover and disclose additional defects. That was the law in Arizona until 1992, when the Legislature amended statute to effectively bar negligence claims against title companies for failure to identify a cloud on title.

Under the current state law, the list of exceptions is not a promise that title is

Legal Ease

clear or that the list is a complete list of defects and encumbrances on the property.

So – you may ask – what is the benefit of a title insurance policy?

The answer is the policy is a contract by which the insurer agrees to indemnify the insured (usually the purchaser of the property) against losses caused by encumbrances or defects that are not included on the list of exceptions.

This contractual obligation is, of course, subject to any applicable and enforceable terms or restrictions contained in the policy. As a result, the coverage provided by a title policy may be more limited than the relief available prior to the statutory change in 1992.

Finally, like other forms of insurance, if the insurer breaches its obligations under the title policy, it can be held liable for breach of contract. Also, a title insurer is subject to the covenant of good faith and fair dealing and can be sued for bad faith, just like other carriers.

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