Lawyers Title Claims Awareness

Case of the Problem Accommodation Recording

From time to time a customer may request that documents not pertinent to an insured transaction be recorded by the title company as an accommodation. Recording a document without the issuance of a policy "just as an accommodation" can be dangerous. Any document a title company is handed for recordation should be recorded in a timely manner and reviewed to make certain that it is at least recordable in the county in which it is intended. Remember the principals consider the recordation of these documents very important. Usually recording means the conclusion of a transaction, money or other consideration may pass from one party to another and be dependent upon the title company recording the documents.

It is also important that the title companies protect themselves as well. As was the case in Rooz v. Kimmel, 55 Cal. App. 4th 573 (1997). This case is of great importance to title and escrow companies in California that are asked to record documents as accommodations where no policies are issued.

A Title Company (who was a defendant in this case) was handling an escrow on a property in Berkeley. The title company was asked to record a deed of trust in favor of Rooz as an accommodation. It was to be a second lien on a property in San Francisco, after Kimmel (another defendant in this case), acquired the property. The title company's escrow officer required the parties to sign an indemnity and hold harmless agreement that protected the title company with regards to the accommodation recording since Rooz was not obtaining title insurance on the deed of trust.

Kimmel acquired the property, and Rooz authorized the title company to record the deed of trust, but Kimmel refused to authorize the recording of the deed of trust. Rooz' agent was notified of Kimmel's refusal and he notified Rooz. Nearly four months passed without the deed of trust being recorded. During this time Kimmel further encumbered the San Francisco property to the tune of $1,050,000. By the time the Rooz deed of trust was recorded, it was in fourth position instead of second and only partially secured. Then the real estate market collapsed in the 1990's and the Rooz deed of trust was wiped out by a prior lienholder.

Rooz proceeded to sue not just Kimmel who defrauded him, but the title company as well, notwithstanding the indemnity and hold harmless agreement that he signed in favor of the title company. The trial court held, and the appellate court affirmed, that the hold harmless and indemnity agreement Rooz signed protected the title company and was fully enforceable. The court stated the agreement could be improved to specifically cover "active" as well as "passive" negligence but was still nonetheless fully enforceable.

The moral of the story: Don't be surprised if your title company asks for indemnity and hold harmless agreements signed by parties requesting documents to be recorded without insurance.

Source: Claims Awareness & Prevention: A Compendium of CLTA's Claims Awareness Hot Sheet Articles

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