Title Insurance

5 Things Every CMBA Member Should Know

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A Loan Policy Of Title Insurance. It is required as part of every loan originated by members of the California Mortgage Bankers Association – or at least it should be. Title insurance is supposed to protect lenders and owners from many of the pitfalls that are inherent in the business of originating loans secured by real property and obtaining ownership of real property. This article shall explain five things that every CMBA member should know about title insurance.

Preliminary Reports

A policy of title insurance is generally preceded by a preliminary report. A preliminary report is not a guarantee of the state of title. Instead, a preliminary report is an "offer[] to issue a title policy subject to the stated exceptions. . . [and] shall constitute a statement of the terms and conditions upon which the issuer is willing to issue its title policy." See, *Insurance Code* § 12340.11.

While a preliminary report is not a guarantee of title, it may form a basis to dispute a subsequently issued title insurance policy which contains exceptions that are not contained in the preliminary report. In the same vein, misrepresentations contained in a preliminary report may support a fraud claim. *Alliance Mortg. Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1240.

Title Insurance Is A Contract Of Indemnity, Not A Guarantee

A policy of title insurance is a contract of indemnity and not a guarantee. *See Dollinger Deanza Assoc. v. Chicago Title Ins. Co.* (2011) 199 Cal.App.4th 1132, 1145. By issuing a policy of title insurance, the insurer is not guaranteeing that the information contained in the title insurance policy is correct. Instead, the insurer agrees to indemnify its insured for a loss covered by the title insurance policy, subject to the terms and exclusions contained in the policy itself.

If a CMBA member wants a guarantee of the state of title, an abstract of title must be purchased from an insurer, not a title insurance policy. See, *Insurance Code* § 12340.10.

Endorsements

A title insurance policy will not protect a CMBA member from every title related pitfall that may occur in a loan transaction. This is why title insurers sell endorsements. An endorsement is an amendment to, or a modification of, an existing insurance policy. It is not a new and separate contract of insurance. Instead, an endorsement modifies or changes the terms of an existing policy to add new terms or to delete terms. *See Adams v. Explorer Ins. Co.* (2003) 107 Cal.App.4th 438, 450-451, cited with approval in *Frontier Oil Corp. v. RLI Ins. Co.* (2007) 153 Cal.App. 4th 1436, 1463. As pertinent here, endorsements can be purchased to increase the protections afforded by a title insurance policy.

There are literally *hundreds* of endorsements available for purchase, which makes a discussion of each endorsement beyond the scope of this article. However, it is worth noting that an endorsement exists which can *increase* the limits of a title insurance policy beyond the amount of the loan. This endorsement is sometimes referred to as the 125% endorsement. When title issues arise, this particular endorsement can prevent an insured from taking what would otherwise be a loss.

Tender Early And In Writing

When a title issue arises - tender a claim as early as possible. An insurer must pursue a thorough, fair and objective investigation and shall not persist in seeking information not reasonably required for or material

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to the resolution of a claim. See, *Insurance Code* Section 790.03 (h) (3) and *Fair Claims Settlement Process Regulations* Section 2695.7(d).

While the failure to notify a primary level insurer of a claim or potential claim will not operate to bar coverage *unless* the insurer has been substantially prejudiced thereby, it is better not to give the insurer any ammunition to deny your claim. Time passes rapidly – and only to the detriment of the insured.

In addition, if the title insurer accepts your claim, Section 2695.7(h) (2) of the *California Fair Claims Settlement Practices Regulations* requires, in pertinent part, that "[u]pon acceptance of the claim in whole or in part and, when necessary, upon receipt of a properly executed release, every insurer . . . shall immediately, but in no event more than thirty (30) calendar days later, tender payment or otherwise take action to perform its claim obligation . . . (2) Any insurer issuing a title insurance policy shall either tender payment pursuant to subsection 2695.7(h) or take action to resolve the problem which gave rise to the claim immediately upon, but in no event more than thirty (30) calendar days after, acceptance of the claim."

The earlier your claim is tendered, the earlier your claim may be accepted and the insurer required to resolve your claim.

What To Do If Your Claim Is Denied

If a title insurance claim is denied, do not take "no" for an answer. Experienced coverage counsel may be able to convince the title insurer that its denial was wrongful or in bad faith and that coverage should be afforded. If the title insurer changes its coverage determination, the insurer is liable to its insured for the attorneys' fees and costs incurred by the insured post-tender. *See, Hogan v. Midland National Ins. Co.* (1970) 3 Cal.3d 553, 558 (holding that an insurer that breaches its duty to defend its insured is liable to its insured for all costs and attorneys' fees incurred).

If the title insurer does not change its coverage determination, a lawsuit should immediately be filed against the insurer. An insurer that, in bad faith, withholds policy benefits due to its insured, is liable for the insured's attorneys' fees and litigation expenses which are reasonably incurred in obtaining those benefits. *See, Brandt v. Superior Court* (1985) 37 Cal.App.3d 813, 819 and *White v. Western Title Insurance Company* (1985) 40 Cal.3d 870, 890.

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of trust erroneously specified the amount as $100,000 and was not recorded until August 30, 2007.[6] In December 2007, Navjot refinanced with WaMu and the proceeds paid off the existing first priority deed of trust.[7] This was consistent with WaMu's instructions that its deed of trust be a first priority lien and MMB's agreement that its deed of trust would remain in a second position.[8] Through the refinance escrow, Branscomb's agent, Menon, provided escrow with a zero balance pay-off demand , reconveyance of the deed of trust as well as the original promissory note and deed of trust.[9] Based on these documents, escrow closed without paying any monies to Branscomb.[10] Evidentially, Menon forged Branscomb's name on the pay-off demand and reconveyance. A lawsuit followed in which Branscomb sought to enforce his deed of trust as a senior lien with priority over WaMu

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