THE VALUE OF TITLE INSURANCE FOR THE CASH PURCHASER

Owner's Coverage an Essential Option

By: Michele Green, SVP, Senior Business Counsel-Agency Division, First American Title

CLAIM SUMMARY FACTS

An owner's policy of title insurance was issued in the amount of $1.2 million, concurrent with the insured's cash purchase of vacant land in a high-value area. The transaction was an REO sale of property recently foreclosed upon by a local bank, and the insured, Ms. Able, received a quitclaim deed. The title agent reviewed the land records and made the determination that title had validly passed to the lender via a non-judicial foreclosure, and that the lender had subsequently evicted the former owners in court. The insured Ms. Able began the process of building her dream home on the lot.

Our insured was well underway in the construction of her new home on the vacant lot and all was proceeding smoothly – right up until she was served with a lawsuit initiated by the foreclosed prior owners. The complaint alleged numerous defects not only in the foreclosure itself, but in the underlying mortgage documents. The lawsuit of course sought to set aside the foreclosure and restore title in the former owners. Unfortunately, it was discovered in the context of investigation that a few of the allegations about the validity of the foreclosure had merit under state law.

OUTCOME

Counsel was engaged at the underwriter's expense to defend the Ms. Able's title and, although the validity of the foreclosure process was questionable, a motion to dismiss the former owners' complaint was filed based upon numerous theories of bad faith, laches, fraud, estoppel and res judicata. It's never fun to be hanging your $1.2 million hat on murky equitable defenses from law books, but thankfully the court in this case got it right. The court ruled that because the former owners had allowed a default judgment to enter in the bank's post-foreclosure eviction proceeding against them, the issue of the bank's rightful title to the property had already been adjudicated. Any claim by the foreclosed owners that the loan documents were bad, or that the foreclosure was void, was barred by the doctrine of res judicata. The case was dismissed, and good title rested in the hands of Ms. Able.

LESSONS LEARNED

There are some interesting points to consider from the perspective of the title agent and the insured on the value of title insurance, especially had things not gone so well in court:

- When underwriting a transaction where a foreclosure or other statutory process is in the back chain, title agents must confirm—often by a review of off-record evidence—that every statutory base was tagged. The consequence of a bad foreclosure is more often than not a complete failure of title.
- Ms. Able purchased the vacant property for $1.2 million, and that was the amount of the policy coverage. Having designed and substantially begun construction at the time of the lawsuit, Ms. Able's damages in the event of a failure of title would have grossly exceeded policy limits.
- What would have happened if Ms. Able hadn't purchased title insurance at all? Even though the litigation to defend title was successful, it was at a cost of tens of thousands of dollars, all of which was covered by the title insurance policy. Had the defense not been successful, Ms. Abel's large purchase price in cash, as well as at least that much in construction costs, would have been at risk without the policy. How many investors purchase foreclosed property for cash, and then pump money into it for improvements before selling? For the prudent purchaser, owner's coverage is never an "optional" investment!

National Settlement Services
O: 703-354-9677 | F: 703-642-1999
www.natsett.com

First American Title Insurance Company makes no express or implied warranty respecting the information presented and assumes no responsibility for errors or omissions. First American, the eagle logo, First American Title, and firstam.com are registered trademarks or trademarks of First American Financial Corporation and/or its affiliates.

AMD: 09/2016

AN INDEPENDENT POLICY-ISSUING AGENT OF FIRST AMERICAN TITLE INSURANCE COMPANY

©2016 First American Financial Corporation and/or its affiliates. All rights reserved. NYSE: FAF