

RESOLUTION 5-02-03

DIGEST

Preliminary Title Reports: Admonition to Consumers

Amends Insurance Code section 12340.11 to require that title insurers print any disclaimer of liability in preliminary title reports in at least 10 point bold type.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

None known.

Reasons:

This resolution amends Insurance Code section 12340.11 to require that title insurers print any disclaimer of liability in preliminary title reports in at least 10 point bold type. This resolution should be approved in principle because it provides a reasonable warning to purchasers of real property as to the reliability of preliminary title reports.

Consumers often rely on preliminary title reports in connection with the purchase of real property. Section 12340.11, which came into effect on January 1, 1982, significantly changed the potential liability of an insurer who issues an inaccurate preliminary title report by shielding insurers from liability where a purchaser relies to his or her detriment on an inaccurate preliminary report. However, consumers continue to rely. This resolution would require insurers to put the consumer on notice that the preliminary title report is not a representation of the condition of the title of the property, but only an offer to purchase a policy of title insurance.

An incorrect preliminary title report can saddle a purchaser with significant damages, including legal fees. By comparison, this resolution requires only that insurers provide a warning to the consumer. This burden is not onerous and is certainly justified by the benefit to consumers.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to amend Insurance Code section 12340.11 to read as follows:

1 §12340.11
2 "Preliminary report", "commitment", or "binder" are reports furnished in connection with an
3 application for title insurance and are offers to issue a title policy subject to the stated exceptions set
4 forth in the reports and such other matters as may be incorporated by reference therein. The reports
5 are not abstracts of title, nor are any of the rights, duties or responsibilities applicable to the
6 preparation and issuance of an abstract of title applicable to the issuance of any report. Any such
7 report shall not be construed as, nor constitute, a representation as to the condition of title to real
8 property, but shall constitute a statement of the terms and conditions upon which the issuer is willing
9 to issue its title policy, if such offer is accepted. This limitation on liability shall apply only if such
10 report contains a specific admonition in at least 10 point bold type specifically disclaiming any such
11 abstractor's liability based solely on such report.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

Existing Law: Under current law, in theory, no party can rely on a preliminary title report as a true statement of the condition of title to a specific parcel of real property. This has been the law since 1982. Prior to the enactment of this statute, if a title company issued an erroneous preliminary title report, and someone relied upon it to their damage, i.e., proceeded on the assumption that an undisclosed cloud did not exist and suffered damages from such undisclosed cloud, the title company would be liable for such damage. With the enactment of this section, title companies were able to avoid such liability.

This Resolution: Amends Insurance Code section 12340.11 to require title insurance companies disseminating such preliminary title reports to include a clause that specifically disclaims abstracting liability, to avoid liability to recipients who would rely on them as abstracts of title.

The Problem: Individuals who purchase real property typically receive, during the course of escrow, or preliminary to making an offer, a preliminary title report. It is the normal process in California that such individuals, particularly private parties purchasing single family residences and condominiums, rely on these reports as a true description of the state of the title. As the law now stands, if a person does that, and it turns out that there is a cloud on title that is not found in the preliminary title report, the only responsibility the title company has is to attempt to remove the cloud. Any damages that might result from a failure by a title company to disclose such a defect in title are not compensable. Please see, *e.g.* *White v. Western Title Ins. Co.* (1985) 40 Cal.3d 870; *Rosen v. Nations Title Ins. Co.* (App. 2 Dist. 1997) 56 Cal.App.4th 1489, as modified.

This resolution would require that in order to avoid such abstractor's liability, a title company would have to include an admonition on a preliminary title report in at least 10 point bold type (such as that used for home solicitation contracts under Civil Code section 1689.7) to specifically warn users of the report that it is not an abstract of title and they should not rely on it as a statement of the condition of the title to real property for any purpose other than the purchase of title insurance.

IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

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