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## The Docket: Corporate Seal on Title Policy Extends Statute of Limitations

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*The Docket is a monthly TitleNews Online feature provided by ALTA's Title Counsel Committee, which reviews significant court rulings and other legal developments, and explains the relevance to the title insurance industry.*

Lance Pomerantz reviews a recent South Carolina case that dramatically increases exposure for title insurers in that state. Pomerantz is a New York sole practitioner who provides litigation consultation, strategy and expert testimony in land title disputes. He can be reached at [lance@landtitlelaw.com](mailto:lance@landtitlelaw.com).

**Citation:** *Lyons v. Fidelity National Title Insurance Company*, Case No. 2013-002137, (S. C. App., December 2, 2015).

**Facts:** Security Title issued a fee policy to Lyons in 2005. In 2006, Lyons learned the federal government claimed an easement over their property. The easement was not excepted in policy Schedule B, but Lyons did not submit a claim until 2011. Security Title rejected the claim. In 2012, Lyons filed an action for breach of contract and bad faith failure to pay. Security defended on the merits, as well as pleading South Carolina's three-year statute of limitations for contract actions. The trial court determined the policy was a "sealed instrument" subject to the 20-year statute of limitations applicable to "an action upon a sealed instrument." The basis for this determination was the *pro forma* Security Title corporate seal on the face of the policy. Security Title appealed.

**Holding:** The Court of Appeals of South Carolina upheld the trial court's determination. Security Title had cited South Carolina case law explaining that the seal of corporation is not, in itself, conclusive of an intent to create a "sealed instrument." The court brushed this aside. Referring to "the unique circumstances of this case," the court observed "there is no statutory requirement that a title insurance company place its corporate seal ... on a policy." Due to "the rules of contract construction requiring that insurance policies be construed against the drafter and in favor of coverage ... we find the presence of the seal on the face of the policy, next to the president's signature, evidences an intent to create a sealed instrument." Just like that, the court extended sevenfold the statute of limitations on any title insurance policy bearing a corporate seal. It went on to rationalize this result with the observation that "a twenty-year statute of limitations allows policyholders to carefully monitor situations as they unfold, ultimately preventing the bringing of unnecessary claims or litigation." [The on-the-merits policy defenses are the subjects of a pending motion for rehearing and will not be discussed here.]

**Relevance to the Title Industry:** This decision dramatically increases exposure for title insurers doing business in South Carolina that include their corporate seal on the face of the policy. Most states adhere to the basic rule that the mere affixation of a corporate seal to a contract, by itself, is insufficient to create a "sealed instrument." Unless this holding is overturned by the South Carolina Supreme Court, however, the pro-consumer policy rationale may begin to influence other courts around the country.

Read the full opinion [here](#).

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