



## The Docket: Coverage Continues Despite Sale of Insured Parcel

January 21, 2014

*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.*

Today's review of a recent Arizona case construing a fundamental policy provision was provided by Lance Pomerantz, a sole practitioner in New York focusing exclusively on land title issues. He can be reached at [Lance@LandTitleLaw.com](mailto:Lance@LandTitleLaw.com).

**Citation:** *Centennial Development Group, LLC v. Lawyer's Title Insurance Corporation*, No. 1 CA-CV 12-0080 (Court of Appeals of Arizona, Division 1, Sept. 19, 2013)

**Facts:** Centennial purchased 75 acres using a 25 percent cash down payment and seller financing for the balance. Neither the title commitment nor policy disclosed the existence of a roadway and utility easement that burdened a portion of the property.

After defaulting on the carry-back loan, Centennial conveyed 74 of the original 75 acres back to the seller, in lieu of foreclosure. The easement was excluded from the warranty contained in the deed-in-lieu. The retained acre is not burdened by the easement.

Following the reconveyance, Centennial sued for negligence in the preparation of the commitment, as well as for damages under the policy. Centennial alleged the omission of the easement from the commitment constituted a negligent misrepresentation on which it reasonably relied in deciding to buy the property. Centennial's damage theory under the policy was that it paid too much for the property because it was unaware of the easement, and ultimately had to give back the property because it was not worth the purchase price.

Lawyer's Title defended the negligence claim by citing an Arizona statute that made clear the commitment was not a "representation as to the condition of title" on which Centennial could rely. On the policy claim, the insurer defended by pointing out that Centennial no longer owned the burdened property at the time the claim was made. (Under the ALTA 2006 Owner's Policy, Condition and Stipulation 2, coverage "shall continue in force ... in favor of an insured only so long as the insured retains an estate or interest in the land ....")

**Holding:** The lower court as well as the Court of Appeals upheld Lawyer's Title's defense to the negligence claim. The lower court also upheld the policy defense.

On the policy claim, the Court of Appeals reversed. The appeals court declined to construe the policy condition as a "restriction on when an insured may file a claim." Because Centennial alleged that it suffered damages while the policy was in force, i.e. on the date it discovered the defect, the court perceived it to be a "post-coverage claim" that "may be made on a title insurance policy so long as the damages were sustained during coverage" (internal quotation marks and citations omitted).

**Relevance to the Title Industry:** If it stands, this decision signals a significant expansion of risk for title insurers, even though the insurer in this case may ultimately prevail on other grounds. The lower court proceedings did not address Centennial's ability to prove damages, its obligation to mitigate damages or other possible defenses (such as timeliness of claim or non-cooperation by the insured). *Note: As of this writing, a petition for review of this decision was pending in the Arizona Supreme Court.*

Read the full opinion [here](#).

[Close Window](#)