

The Case: Problem Accommodation Recording

Some time ago, California Court of Appeal decided a case that is significant to title and escrow companies in California that are asked to record documents as accommodations where no title insurance policies are issued. This seems to include virtually all of the title companies operating in the state, since every good customer, on occasion, requests that the title company record some document or documents as an accommodation. This also includes any party remotely related to any transaction that was placed, but not necessarily insured with a title company, in the last 15 years.

The facts of the case were complicated, therefore, the following summary (in which the names have been changed for anonymity purposes) contains information relevant to the discussion on accommodation recordings.



XYZ Title Company, which was also a defendant, was handling an escrow on property in Any Town, CA. XYZ Title Company was asked to record a \$515,000 deed of trust in favor of Smith as an accommodation. It was to be a second lien on property in Any City, CA, after Jones, another defendant in this case, acquired the property. XYZ Title Company's escrow officer required the parties to sign an indemnity and hold harmless agreement that protected XYZ Title Company with regard to the accommodation recording, since Smith was not obtaining title insurance on the deed of trust. Jones acquired the property, and Smith authorized XYZ Title Company to record the deed of trust, but Jones refused to authorize the recording of the deed of trust. Smith's agent was notified of Jones' refusal and he then notified Smith, but nearly four months passed without the deed of trust being recorded. During this time, Jones further encumbered the Any City property to the tune of \$1,050,000. By the time the Smith deed of trust was recorded, it was in fourth position instead of second, and only partially secured. Eventually, the real estate market collapsed in the early 1990's and the Smith deed of trust was wiped out by a prior lien holder.

Smith proceeded to sue not only Jones, who defrauded him, but also XYZ Title Company, notwithstanding the indemnity and hold harmless agreement that he signed in favor of XYZ Title Company. The trial court held and the appellate court affirmed that the hold harmless and indemnity agreement Smith signed protected XYZ Title Company and was fully enforceable. The court stated that the agreement could be improved to specifically cover "active" as well as "passive" negligence, but was still, nonetheless, enforceable.

The case described above is just one example of why accommodation recordings should be avoided, due to the inherent risks associated with them. All documents carry possible risk that is mitigated if there is title insurance being issued. Proper research needs to be done to evaluate the grantor, grantee and property history. Without the research, wrong parties, wrong percentages, wrong conveyancing and encumbering can occur. Some documents can incur reassessment and supplemental taxes can be assessed.