

Client Alert: PennyMac Holdings, LLC v. First American Title Insurance Company

4 Dec 2020

Christopher A. Glaser

Recognizing that Maryland appellate courts have not previously issued a published opinion as to either whether a closing protection letter constitutes a policy of title insurance or when claims against a closing protection letter accrues for statute of limitations purposes, the Court of Special Appeals of Maryland has issued a decision clarifying these, and other, areas of the law.

In *PennyMac Holdings, LLC v. First American Title Insurance Company*, First American issued a closing protection letter in 2006 stating that it would reimburse PennyMac's predecessor, New Century Mortgage Corp., from certain identified actual losses in connection with the closing conducted by TransContinental Title Company as the approved closing services vendor. The closing, however, was conducted by Lawyers Title Company. The deed of trust executed at settlement was not recorded and was subsequently lost. In the interim, the property was transferred and the borrower defaulted on underlying loan.

At the summary judgment stage, the trial court conflated PennyMac's claim of breach of the title insurance policy with its claim of breach of the closing protection letter. After conflating these two issues, the trial court held that PennyMac's claims were barred by the statute of limitations. PennyMac appealed.

The Court of Special Appeals first affirmed the dismissal of the title insurance claims as being barred by the three-year limitation period. In analyzing the closing protection letter claims, the Court noted that most states have held that closing protection letters are indemnification agreements protecting against risks beyond those covered under a title insurance policy. Here, the closing protection letter indemnified the lender for losses such as the agent's fraud or dishonesty which may be unrelated to title itself and, as such, the letter's scope went beyond Maryland's statutory definition of title insurance.

Concluding that the closing protection letter was a contract for indemnity separate from the policy of title insurance, the Court of Special Appeals remanded the case with instructions to separately consider PennyMac's breach of contract claims under the closing protection letter apart from the context of the title insurance policy. Importantly, the trial court was also instructed to consider the provision in the closing protection letter that First American agreed "to reimburse you for actual loss incurred by you" after first noting that, in Maryland, indemnity causes of action accrue only after the indemnitee makes payment or otherwise suffers an actual loss within the scope of the agreement. Though raised by First American on appeal, the Court of Special Appeals did not provide guidance as to whether the closing protection letter afforded indemnification in this instance as Lawyers Title and not TransContinental, the identified approved closing services vendor, conducted the closing.

Jackson & Campbell, P.C. represents title insurers and insureds in Maryland, Virginia, and Washington, D.C. and we strive to keep our clients and other title professionals up to date on various developments in the law. Additionally, we present no cost in-house updates of the nation's most noteworthy cases and national trends following the spring and fall American Land Title Association's Title Counsel meetings.

If you have any questions about this case or laws impacting real estate in and around the Washington, D.C. region, feel free to contact us. Our [Real Estate Litigation and Transactions](#) Practice Group is ready to assist.

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TAGGED: Cushman & Wakefield of Maryland Inc. v. DRV Greentec LLC, Court of Special Appeals of Maryland, PennyMac Holdings LLC v. First American Title Insurance Company, closing protection letters