The Claims Corner: Take the Claims Quiz

Description

Article by Joe Shepherd, FNF

Below are 4 actual, yet abbreviated, claim scenarios that have occurred in Virginia. How good are you at resolving each?

1. You are claims counsel for ABC Title Company and receive the following claim. Big Bank has recently foreclosed on a four acres parcel in Smyth County on which ABC issued a $350,000 standard loan policy to Big Bank dated March of 2020. Big Bank is now preparing to market the property, and counsel for Big Bank makes the following claim:

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â??The parcel in question is landlocked, and although the property abuts State Route 607, the Virginia Department of Transportation will not allow a driveway from the parcel to exit on to 607, because 607 is very curvy with limited visibility. The previous owner had been accessing the highway over a family memberâ??s adjacent property, but permission by the family member has just been rescinded.â?•

A review of the policy indicates that there is no exception to right of access. How do you opine?

a. The claim is good because the policy insures against no right of access.
b. The claim is not good because the insured had access as of policy date.
c. The claim is not good because it is excluded.
d. Both (b) and (c).

2. You are ABC Title Company claims counsel and are handling a claim with the following factual situation. Mr. Biggers purchased Lot 60, Sunnybrook Farms at foreclosure sale two months ago in an all cash purchase for $650,000 and was planning to move in after doing some improvements to the dwelling. He purchased an ALTA Enhanced Ownerâ??s policy. Ms. Small, the foreclosed owner, has refused to vacate the property, and Biggers has proceeded to evict her via an unlawful detainer action. Ms. Small has filed an action in the Circuit Court to set aside the foreclosure for certain alleged failures made on behalf of the trustee, and ABC has hired counsel and is defending on Mr. Biggers behalf. The Court has asked for briefs and has continued the proceeding, and it is obvious to all that the matter will not be resolved for several months. Biggers has advised that he used all of his cash to make the purchase, is living in a hotel, and is running out of money. He is asking ABC to make a significant cash advance on his eventual settlement in order to cover his expenses pending a final decree by the court. How do you opine?

a. Biggers claim for expenses falls outside the parameters of the policy.
b. Biggers has a claim for expense, but his failure to retain some cash in the purchase falls under exclusion 3 (a) â?? a loss created, suffered, assumed or agreed to by the insured claimant.

c. Biggers has no claim for his expenses until the Court enters a final decree.
d. Biggers has a legitimate claim for expenses now, because he was insured by ABC as of date of foreclosure, and does not have the current use of his property.

3. You are claims counsel for ABC Title Company and received the following claim; In 2023, insured purchased Lot 8 on Main Street for $150,000 and purchased an ABC ownerâ??s policy. Lot 8 was encumbered by a $2,000 per year assessment for an alternative sewer system. The title examiner missed the assessment which was delinquent for the prior two years and has remained so to this day. Insured has filed a claim and advised that â??not only do you need to pay the two years assessment prior to my purchase of Lot 8, you need to also pay it for as long as I own the property, because I never would have purchased the property had I been aware of the alternative sewer system.â?• You have conducted some research and have concluded that the alternative sewer system is actually a benefit to Lot 8. How do you opine?

a. Pay the delinquent assessments only, since all other assessments are post policy.
b. Pay the delinquent assessments and obtain a DIV appraisal.
c. Pay the delinquent assessment, and each subsequent annual installment until payments equal policy limits.
d. Donâ??t pay anything â?? the system benefits the property and there is no loss.

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4. You are ABC Title Company claims counsel and receive a claim from an attorney representing a lender in a foreclosure proceeding. Counsel notes that lenderâ??s 2018 loan policy took exception to a 2003 deed of trust in the amount of $65,000, but affirmatively insured against loss or damage resulting from the enforcement of the deed of trust. While recognizing that the deed of trust has not resulted in a loss, counsel notes that it does affect marketability of title, and is requiring that ABC issue a â??cleanâ?• policy to any prospective purchaser at the foreclosure. How do you opine?

a. ABC needs to issue a clean policy, since marketability is an insuring provision.
b. ABC should issue a clean policy because the 2003 deed of trust is no longer enforceable.
c. ABC doesnâ??t need to do anything, because by taking an exception, no marketability coverage is given as to the 2003 deed of trust.
d. ABC doesnâ??t need to do anything, because as counsel correctly stated, there has been no loss.

Answer Key:

1. D â?? Both (b) and (c). The insured had access as the parcel abuts State Route 607. The refusal by VDOT to allow a driveway to exit on to 607 is a 1(b) exclusion â?? â??Any governmental police power.â?•
2. A â?? The claim for expenses falls outside the parameters of the policy. ABC has an obligation to defend, but compensation for loss of use of the property is not covered under a title policy.
3. B â?? The delinquent assessments are a monetary lien and must be paid. Then obtain a diminution in value (DIV) appraisal to determine loss of value to Lot 8 as a result of the alternative sewer system (which is probably zero since it is a benefit to the property.
4. C â?? By taking an exception, the subject matter of the exception (the 2003 deed of trust), is carved out as to marketability and other coverages, except for the actual affirmative coverage given against the enforcement of the 2003 deed of trust.. Coverage under a title policy is given â??subject to the exclusions from coverage contained in schedule B, and the conditionsâ?¦â?•

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Prior to becoming affiliated with Fidelity National Financial in 1996, Joe was engaged in the private practice of law in Richmond with the emphasis of his practice being in the areas of residential real estate and corporate law. He is a 1986 graduate of the University of Notre Dame with a degree in Business Administration, and he earned his law degree in 1989 from the Washington and Lee University School of Law located in Lexington, Virginia.

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