



CHICAGO TITLE INSURANCE COMPANY

TOPIC: Tell Me More! – Attorney’s Obligation to Disclose

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The title insurance business is a business driven by communication. This business is one where proper communication is a must. There can be no misunderstanding, or I thought you meant this, or that. Everybody has to be on the same page and have the same conception about what is being said.

Joe Friday of “Dragnet” use to say, “Just the truth, nothing but the truth”. Title attorneys and title companies need to get on this page. Telling the title company too much is certainly better than not telling them enough. Too often, something not said can cause the title company to do or not do something that is vital to a real estate transaction closing. Tell the title company everything. Let the decision be that of the title company. Do not fail to tell all the story and cause something to be insured over that otherwise would not and should not be. This could be fatal to the closing attorney in that the company could actively seek reimbursement for the loss because of a concealed fact that should have been shared. In addition, the client may be denied coverage for matters suffered, assumed or agreed to by the proposed insured or matters known to the insured but not disclosed to the title insurer under the standard exclusions of the ALTA policies as set forth below. Title issues are not to be decided by the closing attorney when trying to procure insurance.

When filling out forms such as preliminaries, finals, or other title documents, be thorough. Do not fail to answer each and every question. The title company should not be placed in the position of having to assume that a commitment requirement has been met. Assumptions can be costly and cause attorneys much trouble. Spell out everything on the applications. When a title application is received, the company should be able to rely on it as a true and complete picture of the title status.

Nothing is more frustrating than having to become like a dentist when discussing title issues. Trying to pull out of some people the information you need makes you feel like pulling wisdom teeth. It is as if they just do not want to tell you everything unless you ask the right question. But sometimes knowing the right question is a hard thing to try to figure out. The attitude is not one of “I will tell only if asked or forced to tell,” but of disclosure.

Sometimes title companies are faced with dealing with someone other than the attorney. Secretaries, paralegals, or other office personnel often times call to ask questions. It is a fact that many times these individuals can relay the problem in a clear, concise manner. Yet, sometimes things can and do get lost in translation. This is not good because a decision for or against something can be determined on advice that is not correct or complete. The attorney

should remember that if the information given the company is wrong, incomplete, or not exactly what is going on, and a decision is made which adversely affects the company, he could be held liable. Paralegals and others oftentimes relay information. This is okay as long as the individual making the phone call has a good understanding of the problem.

Do not hold back on any bit of information; possibly it is more significant than you think. I would rather be told too much than not enough. If you have the slightest concern over something, reveal it to the company. The company should make the call, not you. That way you do not have to worry about any consequences. Do not make business decisions on your own about what is or what is not important. Remember the Exclusions from Coverage set forth in the policy jacket. The ones that are pertinent in our discussions are as follows:

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

Defects, liens, encumbrances, adverse claims or other matters:

- (a) created, suffered, assumed or agreed to by the insured claimant**
- (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy**

Remember that the company cannot cure all title ills. Sometimes we make business decisions and agree to insure over something. That means that defect will be there, although covered presently, when the client gets ready to sell the property. As with the title company, be frank with your client. Full disclosure up front will take care of a lot of problems and heartache on the backside. Sometimes the insured thinks because he has insurance that all is gone away and his title is clear.

I cannot emphasize enough the importance of total communication with the title company about the title problem. This is a valuable tool to obtain the best possible coverages for your client. Remember the title company did not create the problem. They want to make the deal work and will try to reach a solution that will benefit all parties involved. Remember, HONESTY IS THE BEST POLICY!