AmTrust Title Insurance Company

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NEW CASES MAY 2026

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WHAT IS AN INTEREST?

1723 S. Mich. (Chi.) Landco LLC v. Chi. Title Ins. Co., 2026 U.S. Dist. LEXIS 60403 (N.D. Ill. March 23, 2026)

On May 17, 2022, plaintiff 1723 S. Michigan (Chicago) Landco, LLC ("Landco") purchased 1723 South Michigan Avenue in Chicago, Illinois (the “Land”) for $7,000,000. Chicago Title Insurance Company (“Chicago Title”) issued an ALTA Owner's Policy for $7,000,000. Schedule B of the Policy included Exception 8 for "Rights of the public and City of Chicago in and to the 16 Foot Alley Running North and South through the Center of Block 3 aforesaid[] (Affects the East 8 feet of the Land)."

The Policy also contained five general exceptions, including General Exception 1, that excepted to "[r]ights or claims of parties in possession not shown by Public Records[,]" and General Exception 3, that excepted to "[e]asements, or claims of easements, not shown by the Public Records." Landco secured a General Exceptions Endorsement that deleted all five general exceptions. This endorsement stated: "[T]o the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls."

In early 2023, the City of Chicago denied Landco's application for a building permit for its planned development of the Land. On March 15, 2023, Landco tendered a claim to Chicago Title and asserted that the City denied Landco's application because it owned the easterly eight feet of the Land. The City's claimed property interest was not recorded in the Public Records. Chicago Title then denied coverage on April 17, 2023, because of Exception 8.

Landco contended that Exception 8 did not apply to the City's claim and that Chicago Title wrongfully denied coverage. This argument was incorrect because: (1) Exception 8 is unambiguous and excepts the rights of the City; and (2) and Exception 8 did not conflict with the General Exceptions Endorsement.

The Schedule B exceptions in the title insurance policy identified matters affecting the Land that were excepted from coverage. Exception 8 excepted the "[r]ights of the public and City of Chicago in and to the 16 Foot Alley" and noted that it "[a]ffects the East 8 feet of the Land" specifically at issue. Lando argued that the operative word is "rights” and disputed what property interest the City possessed, that is what "right" the City may hold. Because the City's claimed interest was not

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reflected in the Public Records, Landco argued that the City cannot own fee simple and, at most, may have an easement. In reply, Chicago Title argued that Exception 8 (claim of an "interest") excepted any rights of the City (or public) in the Land.

The Court concluded that it need not resolve what interest the City may have had. Under Exception 8's plain meaning, "rights . . . in and to" the Land encompasses the interest the City (or public) may possess, whether ownership or easement.

The Court stated that it would not strain to find ambiguity in the word "rights" in order to support a finding that the exception is ambiguous.

But the General Exceptions Endorsement and Exception 8 dealt with different issues.

The deletion of the general exceptions expanded Landco's coverage against unrecorded claims; Exception 8 is a specific interest that Chicago Title noted as a concern.

Landco argued that Exception 8 could reasonably cover only "use" rights—easements—rather than ownership. But the Court held that this interpretation would require it to read language into the Policy that is not there.

NO DUTY OF DEFENSE TO ISSUE EXCEPTED

Ash Dev., LLC v. Fidelity Natl. Title Ins. Co., 2026 N.Y. App. Div. LEXIS 2250, 2026 NY Slip Op 02091 (April 8, 2026)

The court addressed general principles of the defense obligation of the title insurer. "Where an insurance policy includes the insurer's promise to defend the insured against specified claims as well as to indemnify for actual liability, the insurer's duty to furnish a defense is broader than its obligation to indemnify[1]" (*Melamed v First Am. Tit. Ins. Co.*, 190 AD3d at 726, quoting *Seaboard Sur. Co. v Gillette Co.*, 64 NY2d 304, 310, 476 N.E.2d 272, 486 N.Y.S.2d 873). "The duty to defend arises whenever the allegations in a complaint against the insured fall within the scope of the risks undertaken by the insurer, regardless of how false or groundless those allegations might be....The duty is not contingent on the insurer's ultimate duty to indemnify should the insured be found liable, nor is it material that the complaint against the insured asserts additional claims which fall outside the policy's general coverage or within its exclusory provisions. Rather, the duty of the insurer to defend the insured rests solely on whether the complaint alleges any facts or grounds which bring the action within the protection purchased. However, an insurer can be relieved of its duty to defend if it establishes as a matter of law that there is no possible factual or legal basis on which it might eventually be obligated to indemnify its insured under any policy provision."

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In this case, the court found that the defendant was not required to defend and indemnify the plaintiff in the adverse possession action because the title insurance policy included an exception for claims arising from the rights of persons in possession. No other reasonable interpretation of this exception to the policy was possible.

WHEN DOES AN IMPLIED EASEMENT ATTACH TO TITLE FOR EXCLUSION 3.d?

Bel-Red Partners LLC v. First Am. Title Ins. Co., 2026 U.S. Dist. LEXIS 5622 (W.D. Wash. Jan. 12, 2026).

Bel-Red Partners, LLC (“Bel-Red”), filed suit against the title insurer, First American Title Insurance Company (“First American”), after First American denied Bel-Red's claim for defense and indemnity concerning litigation it had settled with a neighbor regarding an implied easement.

Bel-Red requested that the Court find as a matter of law that the implied easement claim was covered by its policy, while First American filed a cross-motion for summary judgment that requested that the Court find that it was entitled to judgment as a matter of law on all or at least some of Bel-Red's claims.

The Court found that there was no coverage for Bel-Red's claims under the policy, denied Bel-Red's motion, and granted First American's motion for summary judgment.

In June 2021, Y.L. Foundation, LLC (“Y.L”) filed a complaint against Bel-Red and alleged that Bel-Red's planned construction would interfere with its implied easement for underground utility lines running underneath the Bel-Red property to the Y.L. property. These utility lines had been installed decades before it acquired the Bel-Red property.

Bel-Red and Y.L. thereafter settled both actions in May 2024. Bel-Red moved the utility lines at "considerable expense."

In July 2024, Bel-Red tendered a claim for defense and indemnification to First American. On August 9, 2024, First American sent a coverage denial letter to Bel-Red and stated that Bel-Red's claim tendering defense was not covered because "First American's ability to resolve any covered matter and defend Bel-Red was prejudiced by Bel-Red's untimely submission of this claim. Indeed, First American lost the opportunity to participate in the litigation and the settlement of the ... lawsuit."

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First American also stated that even if the claim had been timely submitted, the dispute in the Bel-Red action as to Y.L.'s implied easement was excepted from coverage by Exceptions 18, 22, and 24 to Schedule B to the policy, and any allegations regarding Bel-Red's post-policy plans for development and their interference with Y.L.'s easement rights are excluded from coverage by Exclusions 3(a) and 3(d) to the policy. First American's denial letter stated that if Bel-Red had timely submitted a tender of defense, "then the tender of defense to alleged implied easement would have been covered by Covered Risk 2 to the Policy."

A few weeks after the coverage denial letter was sent, Bel-Red filed suit against First American.

The Court found that both claims tendered were excepted or excluded from coverage, and thus First American had no duty to defend or indemnify.

Y.L.'s complaint also alleged that Bel-Red's proposed development would interfere with its reciprocal easement for ingress and egress through the existing parking lot on the Bel-Red property to the parking lot on the Y.L. property, and the vehicular parking and pedestrian access to seven parking stalls located on the Bel-Red property.

First American asserted that the reciprocal easement was excepted from coverage by Exception 24 to the policy. Bel-Red did not dispute the applicability of Exception 24 in its briefing, and it therefore was undisputed that, under Exception 24, the Policy did not cover Y.L.'s complaint. First American's duty to defend and indemnify was not triggered by Y.L.'s complaint.

The Court agreed with First American that Y.L.'s implied easement attached after the policy incepted and was excluded from coverage under Exclusion 3(d). Although Bel-Red emphasized that the underground utility lines "within the Implied Easement were installed decades before Bel-Red purchased the Bel-Red Property and First American issued the Policy", the installation date was not dispositive. First American cited authority holding that an implied easement does not attach until a court judgment establishing its existence (citing *Easterling v. HAL Pac. Props., L.P.*, 171 Idaho 500, 522 P.3d 1258 (Idaho 2023); *Woodle v. Commonwealth Land Title Ins. Co.*, 287 Neb. 917, 844 N.W. 2d 806 (Nev. 2014); *Carstensen v. Chrisland Corp.*, 247 Va. 433, 442 S.E.2d 660, 10 Va. Law Rep. 1224 (Va. 1994)). Because no court had yet established the existence of Y.L.'s implied easement, it was First American's position that the implied easement was excluded from policy coverage under Exclusion 3(d).

Bel-Red cited Washington authority holding that an implied easement exists where two properties were previously owned by the same owner, which supported the proposition that an implied easement arises at the time that the common ownership is severed. *See Boyd v. Sunflower Props., LLC*, 197 Wn. App. 137, 389 P.3d 626, 631 (Wash. Ct. App. 2016) (addressing the "three essential predicates" needed to establish the existence of an implied easement); *Bryant v. Sandberg*, No.

35592-6-III, 2019 Wash. App. LEXIS 3029, 2019 WL 6499442, at *2 (Wash. Ct. App. Dec. 3, 2019) ("An implied easement arises at the time of conveyance."). But again, the date when an implied easement *arises* is not controlling.

Similarly, in *Woodle*, the Nebraska Supreme Court applied *Carstensen*'s reasoning to an implied easement in the context of an identical policy exclusion for encumbrances that attach or are created subsequent to the policy's inception date. 844 N.W. 2d at 813-14. The *Woodle* court concluded:

"[T]he implied easements "attached" to Lot 2 at the time of the district court's decree which recognized their existence. Easements that are created or attach subsequent to the date of the policy are excluded. Because the implied easements remained inchoate, they did not attach to Lot 2 until they were legally recognized by the decree of the district court which was entered September 7, 2010. The date of the title insurance policy was December 31, 2008. Because the implied easements attached subsequent to issuance of the policy, the easements were excluded by the terms of the policy. As a matter of law, Commonwealth did not have a duty to defend or indemnify the Woodles."

EXCLUSION FOR FAILURE TO PAY VALUE

Cottonwood Acres v. First Am. Title Ins., 2026 U.S. Dist. LEXIS 71228 (Dist. Utah March 31, 2026)

Before the court was the defendant's motion for summary judgment. The court granted in part and denied in part the defendant's motion.

The court issued a default judgment declaring Mr. Augason Trustee of the Church and vesting him with "all rights, powers, duties, and obligations of a Trustee for a Corporation Sole." Mr. Augason then conveyed the land to Cottonwood Acres, which he fully owned. Cottonwood Acres applied for a title insurance policy with First American Title Insurance ("First American"). On September 29, 2021, First American issued Cottonwood Acres a "title commitment" on the land. However, on November 18, 2021, before First American issued the policy, the Church emailed Mr. Augason's counsel that the Church intended to file a motion to set aside the court's default judgment.

On December 16, 2021, the Church moved to set aside the default judgment because the Church's due process notice rights were violated. The Third Judicial District Court granted the Church's motion on January 7, 2022 and ordered that "[a]ny action that Plaintiff P. Robert Augason took as Trustee of the Church is hereby deemed NULL and VOID, including the Special Warranty Deed he signed."

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On February 17, 2022, Beth Schrieber, the Vice President and Senior Claims Counsel for First American, sent a letter denying Cottonwood Acres's claim. Ms. Schreiber said that the Church's counterclaims "appear to affect title to the Property," but that the counterclaims "fall within the exclusionary language of the Policy " and quoted Exclusions 3(a), (b), and (e).

On May 6, 2022, Cottonwood Acres reconveyed the Land to the Church. Thereafter, Cottonwood Acres made an indemnity claim to First American for $2,000,000. First American again denied Cottonwood Acres's indemnity claim on September 7, 2022.

The Policy's relevant Exclusions provided that "the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of" those matters. The relevant sections of Exclusion 3 included:

"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; ... or

(e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title."

The court found that there are genuine factual issues regarding Exclusions 3(a), (b), and (e) and declined to grant summary judgment.

First American asserted that since Cottonwood Acres did not pay money for the Land, it was proper for First American to deny Cottonwood Acres's claim under Exclusion 3(e). However, Exclusion 3(e) required that the loss "would not have been sustained if the Insured Claimant had paid value for the Title." In order for denial to be proper under Exclusion 3(e), the failure to pay value for the Land must have caused the loss of Title.

The same factual issue would prevent the court from finding that denial was proper under Exclusion 3(a) at the summary judgment stage. Under Exclusion 3(a), Cottonwood Acres cannot recover for defects "created ... by the Insured Claimant." First American states that "Cottonwood created the defect or other matter by taking title to the property without providing valuable consideration to the Church." But whether the failure to pay value for the property created the defect and loss of title is a factual question.

In Exclusion 3(b), defects "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

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Insured Claimant prior to the date the Insured Claimant became an Insured under this policy" are excluded from coverage by the Policy. First American argued that Exclusion 3(b) justified the denial of Cottonwood Acres's claim because Mr. Augason failed to disclose to First American information about the facts concerning the Church's counterclaims, but the court disagreed and found that there was evidence Mr. Augason disclosed all relevant information to First American.

AUTHORITY TO BIND LLC AND THE MEANING OF KNOWLEDGE

Loan Funder LLC, Series 715 v. Farm Life, LLC, 86 Va. App. 552, 924 S.E. 2nd 692 (Va. Ct. App. Jan 20, 2026)

Where a sophisticated lender accepted documents from an LLC manager seeking to encumber the LLC's only substantial asset for a personal business venture unrelated to the LLC's ordinary business, after it received documents that showed the manager's lack of authority, the lender had constructive knowledge of the manager's lack of authority, which rendered the deed of trust void.

Zhongwei Lu was one of five managers of Farm Life, LLC (“Farm Life”) with a one-seventh ownership share. He applied for a $1.567 million loan and used Farm Life's land as collateral. The loan was to be used for Lu's personal bakery project in Florida but was not related to Farm Life's business. Lu then falsified documents to appear as majority owner and to circumvent majority requirements. Farm Life's operating agreement required majority approval for transfers of substantially all assets not in the ordinary course of business.

Lu never informed other members until after obtaining the loan, and he defaulted.

Virginia Code § 13.1-1021.1(C) makes instruments transferring LLC real property interests conclusive in favor of those giving value without knowledge of the signer's lack of authority. The court interpreted “knowledge” to include constructive knowledge, which was consistent with common law principles of apparent authority. Under common law apparent authority principles, a third party cannot rely on an agent's authority when the agent is evidently operating outside the principal's ordinary business. Loan Funder should have recognized Lu's actions were unrelated to Farm Life's business and investigated further. Lu's provision of flawed documents should have raised further doubts about his authority.

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Va. Code § 13.1-1021.1(B) provides a set of rules governing unauthorized acts performed by LLC managers in manager-managed LLCs. Subsection B's rules hinge on whether an LLC manager's actually unauthorized actions are "for apparently carrying on in the ordinary course the [LLC's] business or business of the kind carried on by the [LLC]." Code § 13.1-1021.1(B)(3), (B)(4). If they are, then the LLC is bound by its manager's actions unless "the person with whom the manager was dealing knew or had notice that the manager lacked authority." Code § 13.1-1021.1(B)(3). On the other hand, if a manager's actually unauthorized actions do *not* appear to be for carrying on in the ordinary course the LLC's business, the LLC is not bound by those actions. Code § 13.1-1021.1(B)(4).

The trial court found that Lu lacked actual authority to encumber the LLC's property with a deed of trust in order to fund a personal bakery project "unrelated to any of Farm Life's business." This finding was binding on the appellate court. This finding was also supported by the provisions of Farm Life's authentic operating agreement. The operating agreement said that no transaction transferring all or substantially all of the LLC's assets outside of the ordinary course of business could be performed without the consent of members owning over half of the company. Lu owned one seventh of the company, and the transaction involved transferring the LLC's only substantial asset outside the ordinary course of business.

The trial court found that Lu was not "even apparently carrying on in the ordinary course of Farm Life's business" when Lu took the actions. This finding was also unappealed and, thus, binding and was supported by the evidence that Farm Life's work had no relation to the bakery business or the state of Florida.

Farm Life argued that given these findings and evidence, Loan Funder could not be said to have "give[n] value without knowledge" of Lu's lack of authority. Code § 13.1-1021.1(C). For this reason, Farm Life argued, it was not bound by the deed of trust.

In response, Loan Funder took the position that the term "knowledge" used in Code § 13.1-1021.1(C) should be read to mean "actual knowledge."

If "knowledge" included "constructive knowledge," then the appellate court had to consider whether the unchallenged findings and the evidence in this case compelled the conclusion that Loan Funder had constructive knowledge of Lu's lack of authority.

Code § 13.1-1021.1(C) incorporated the common law's notion of constructive knowledge as used in the doctrine of apparent authority. After examining the plain text, the appellate court concluded that the term "knowledge" contained an ambiguity that it must interpret. Therefore, the court held that the term "knowledge" in Code § 13.1-1021.1(C) meant "constructive knowledge" as that term is understood in the relevant Virginia common law.

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Here, the common law rule directly on point is the doctrine of apparent authority. "The general rule is that as between the principal and agent and third persons, the mutual rights and liabilities are governed by the apparent scope of the agent's authority."

Because the legislature had not "plainly manifested" or "necessarily implied" a decision to diverge from the common law rule of constructive knowledge, Code § 13.1-1021.1(C) was read so as not to "alter or change" the common law rules of apparent authority in the case of LLC managers' property transfers. Consequently, the term "knowledge" in Code § 13.1-1021.1(C) meant "'as near to the reason of common law' as possible," and was interpreted to mean "constructive knowledge." *See Siquina*, 28 Va. App. at 698 (quoting *Wicks*, 215 Va. at 276).

The court held that Farm Life was not bound by Lu's signing the deed of trust. This conclusion followed from apparent authority precedent related to divergences from the ordinary course of business, the role of sophisticated business entities, the performance of acts that cast doubt upon an agent's authority, and representations made by agents without the permission of the principal.

In sum, the court held as follows: The trial court errored by relying on Code § 13.1-1021.1(B) instead of Code § 13.1-1021.1(C). However, this error was harmless to the outcome of the case because the trial court's findings and the evidence in the record compelled the conclusion that Farm Life was not bound by the relevant deed of trust under the standards set forth in Code § 13.1-1021.1(C), read to preserve the common law of apparent authority. Therefore, the judgment of the trial court was affirmed.

WHAT IS SUFFICIENT ACCESS TO BE LEGAL RIGHT OF ACCESS?

Michel L. Schlup Revocable Tr. v. Attys. Title Guar. Fund, Inc., 2026 COA 16, 2026 Colo. App. LEXIS 340 (Colo. App. March 19, 2026)

The Michel L. Schlup Revocable Trust (the “Trust”) asserted that claims by Michael Nassimbene (“Nassimbene”) related to the Trust’s right to access the insured land and, thus, were covered by the title insurance policy. The Trust also argued that, even if Nassimbene's claims weren't covered by the policy, Attorneys Title Guaranty Fund, Inc. (“ATGF”) was nevertheless required to defend against them under the complete defense rule. The court rejected both arguments.

An unimproved private road, Homestead Lane, which crossed multiple adjacent tracts, was the only means of access between the land and State Highway 34. In 2021, the Trust began paving the private road. Thereafter, Nicholas Stark (“Stark”), the owner of a parcel that Homestead Lane

crossed, sued the Trust and claimed that the Trust had no legal right of access to the land across his property. The Trust tendered Stark's claims to ATGF, and ATGF retained an attorney who successfully defended the Trust against Stark's claims.

In early 2022, Michael Nassimbene, the owner of a second parcel adjacent to the land that included a portion of Homestead Lane, intervened in the Stark lawsuit. Nassimbene asserted trespass and unjust enrichment. Both claims were based on the Trust's paving the portion of Homestead Lane running across Nassimbene's property without his consent. Nassimbene didn't dispute that the Trust had an easement across his property by Homestead Lane to access the Land, but Nassimbene disputed the Trust's right to *improve* that easement over his objection. In his complaint, Nassimbene argued that the Trust was trespassing by paving, without his approval, that portion of Homestead Lane on his property.

The Trust tendered Nassimbene's claims to ATGF for defense and indemnity, but ATGF declined to defend and asserted that the claims weren't covered and were subject to exclusions. Then the Trust hired its own counsel to defend against Nassimbene's claims, and the Trust later settled with Nassimbene. The Trust sued ATGF and alleged that ATGF was obligated to defend against Nassimbene's claims because they were covered by the title insurance policy. The Trust also argued that ATGF was obligated to defend against Nassimbene's claims under the complete defense rule. Nassimbene didn't dispute that the Trust had an easement to access the Property by Homestead Lane; instead, he argued that the Trust's easement didn't include the right to pave the portion of Homestead Lane running across his property.

The court began its analysis by rejecting the Trust's assertion that because the term "access" isn't defined in the title insurance policy, a "right of access" is ambiguous and includes something more than "access." The phrase "no right of access" in Covered Risk 4 is not ambiguous. Access is defined as "[a] right . . . to enter, approach, [or] pass to and from." *Access*, Black's Law Dictionary 16 (12th ed. 2024). Therefore, "No right of access" under the policy would mean that the Trust had no right to enter, approach, or pass to and from the Land. The court concluded that Nassimbene's claims against the Trust didn't implicate Covered Risk 4 because the Trust didn't allege that it had "[n]o right of access to and from the [Property]." Instead, Nassimbene claimed that the Trust had trespassed onto his land by paving and expanding the road, which caused damage to his land and unjustly enriched the Trust by potentially burdening Nassimbene with significant future maintenance costs. Nassimbene's complaint did not challenge the Trust's right of access to the Property.

The Trust's right of access to the Land was not in jeopardy as the Trust never claimed that its ability to access the Property was limited, only that its ability to pave Homestead Lane was. And the fire protection district never suggested that the Trust's right of access to the Property was contingent

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on paving Homestead Lane. Instead, it determined only that, if any portion of Homestead Lane was paved, the entire Lane would have to be paved to comply with the fire code.

In the alternative, the Trust argued that unencumbered access to and from the local highway also has to be sufficient to develop the Land. The Trust cited *First American Title Insurance Co. v. GS Industries, LLC*, an unpublished federal district court case from Hawaii, for the proposition that a right of access must be sufficient to develop a tract. No. 21-CV-00078-DKW-KJM, 2021 U.S. Dist. LEXIS 240601, 2021 WL 5985124, at *4-8 (D. Haw. Dec. 16, 2021). However, the *First American* case doesn't support this.

In *First American*, GS Industries, LLC ("GS") obtained ownership of a parcel of land that had legal ingress but did not have legal egress because the public road that serviced the land was a one-way road and the portion of the road that allowed for egress from the land was privately owned. 2021 U.S. Dist. LEXIS 240601, at *1, *3. GS leased the land to a church that planned to build low-income housing units on the parcel. 2021 U.S. Dist. LEXIS 240601, at *3. While pursuing its plan to develop the land, the church applied for affordable housing exemptions from the Department of Planning and Permitting. *Id*. The Department denied the church's application due to the lack of egress. *Id*. The church submitted a claim to First American Title Insurance Company ("First American") for the cost of obtaining legal egress from the land — estimated at approximately $10,000. *Id*.

After First American denied the claim several times, GS sued to determine its rights under the policy. 2021 U.S. Dist. LEXIS 240601, at *4. First American argued that because the policy excluded issues with access that resulted from governmental regulation, it had no duty to cover the cost of obtaining egress. The court disagreed and ruled that the issue of lack of egress predated the governmental regulation and noted that the land had lacked legal egress before, and regardless of, the plans to develop. 2021 U.S. Dist. LEXIS 240601, at *7. Thus, the court reasoned, GS never had a complete right of access to the land, and its lack of access *wasn't* due to governmental regulation, but to a covered deficiency in the title to the land. The church in *First American* never had a complete right of access because the land never had legal egress.

However, the Trust had a right of access to and from the local highway by Homestead Lane when it bought the Land. It was only when the Trust decided to build a residence on the Land, which required the Trust to pave a portion of Homestead Lane, that the fire protection district's regulations required the Trust to pave the entire Homestead Lane to comply with the fire code. Unlike F*irst American*, the requirement for the Trust to *upgrade* access to the Land was a direct result of governmental regulation; it wasn't due to a pre-existing defect in the title. Thus, Nassimbene's claims didn't fall under Covered Risk 4. *See Bainbridge*, 159 P.3d at 750.

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The court also held that Nassimbene's claims didn't fall under Covered Risk 5 for three reasons. Covered Risk 5 requires notice of a regulation or of the intent to enforce the violation of a regulation to be in the Public Records as of the policy's effective date, and that the notice mention at least part of the land. The Trust didn't claim that such notice as to the need to pave the entirety of Homestead Lane because of the fire code was present in the Public Records.

While Covered Risk 5 covers violations and enforcement of governmental regulations, Exclusion 1 excludes from coverage any impact of governmental regulation on the property if a notice of that impact isn't recorded as of the policy's effective date. Because the mandatory paving of the entirety of Homestead Lane was incidental to the development of the property and resulted from governmental enforcement occurring *after* the effective date of the policy, the Trust's argument failed.

Because the fire protection district didn't require the rest of Homestead Lane to be paved until the Trust decided to develop the Land and upgrade the driveway, the enforcement of the fire code occurred *after* the policy's effective date. Therefore, the code enforcement issue was necessarily "created . . . by the Insured Claimant" and falls under Exclusion 3.

Neither Nassimbene's claims, nor the case law on which the Trust relied, nor the terms of the title insurance policy supported the argument that the Trust has "no right of access" unless it has sufficient access to develop the Land. Accordingly, there was no error in the district court's determination that Nassimbene's claims weren't covered by the title insurance policy.

The Trust argued that because Nassimbene's claims couldn't be easily bifurcated from Stark's original claims, and because both Nassimbene's and Stark's claims were asserted in a single suit and implicated the Trust's right to access the Land, ATGF was required to defend the Trust against both sets of claims under the complete defense rule.

In holding that the complete defense rule doesn't apply to litigation involving title insurance, the district court relied substantially on *Cherry Hills*, 428 F. Supp. 3d at 522-24. In *Cherry Hills*, the federal district court observed that no Colorado appellate case had applied the complete defense rule in a title insurance case but applied the complete defense rule in a general liability context. Based on decisions from other jurisdictions that similarly declined to apply the complete defense rule in the title insurance context, the court in *Cherry Hills* then predicted that the Colorado Supreme Court wouldn't apply the complete defense rule to a dispute involving title insurance.

In *GMAC Mortgage, LLC v. First American Title Insurance Co.*, 464 Mass. 733, 985 N.E.2d 823, 828 (Mass. 2013), the Massachusetts Supreme Judicial Court also held that the complete defense rule is inapplicable in title insurance litigation because title insurance is "fundamentally different from

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general liability insurance." The court stated that "[b]efore issuing a policy, a title insurer searches real property records for title defects and, if any are discovered, excludes such known defects from the policy coverage." The court pointed out that title insurance is retrospective because it "narrowly covers defects in, or encumbrances on, titles that are in existence when a policy issues," in contrast to general liability insurance, which covers prospective risks. The *GMAC* court also noted that, unlike general liability insurance, which requires the payment of ongoing premiums, title insurance requires the payment of a single premium for indefinite coverage. The court also reasoned that "the central policy behind [the complete defense rule] — that parsing multiple claims is not feasible — is not implicated to the same extent in the title insurance context as in the general liability insurance context" as the issues in title insurance disputes tend to be discrete and easily bifurcated from other related claims (recognizing that "an attorney for a title insurance company . . . feasibly can defend only the title-related issues").

Similar reason has occurred in other jurisdictions, which have concluded that the complete defense rule doesn't apply to title insurance litigation. *See Lupu v. Loan City, LLC*, 903 F.3d 382, 393-95 (3d Cir. 2018) (applying Pennsylvania law and predicting that the Pennsylvania Supreme Court would decline to apply the complete defense rule to title insurance disputes); *Phila. Indem. Ins. Co. v. Chi. Title Ins. Co.*, 771 F.3d 391, 398-401 (7th Cir. 2014) (declining to apply the complete defense rule to a title insurance dispute under Illinois law); *Findlay v. Chi. Title Ins. Co.*, 2022 IL App (1st) 210889, ¶¶ 57-64, 465 Ill. Dec. 801, 215 N.E.3d 1006 (endorsing *Philadelphia Indemnity*'s interpretation of Illinois law); *Badger Mining Corp. v. First Am. Title Ins. Co.*, 534 F. Supp. 3d 1011, 1021-22 (W.D. Wis. 2021) (holding that the complete defense rule doesn't apply to title insurance under Wisconsin law).

The convincing policy rationale presented in *Cherry Hills* and the out-of-state authority on which it relies were persuasive. In particular, the distinctions between title and general liability insurance were convincing that the complete defense rule shouldn't extend to title insurance. For instance, general liability insurance policies typically have broad language promising to defend against "'a suit' or 'any suit,'" *Cherry Hills*, 428 F. Supp. 3d at 524 (quoting *Phila. Indem.*, 771 F.3d at 399), whereas ATGF's title insurance policy promised to cover expenses "incurred in defense of any matter insured against by the Policy, but only to the extent provided in the Conditions." Similarly, other language in the ATGF policy — namely, Covered Risk 5(a) — states that ATGF will only "provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy" and clarifies that "[ATGF] shall not be liable for and will not pay the fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy."

This clear language limiting ATGF's liability naturally invoked another reason not to extend the complete defense rule — the parties bargained for an unambiguous and limited range of liability.

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In summary, the court declined to apply the complete defense rule to the title insurance context. The court concluded that the district court properly granted summary judgment in ATGF's favor.

A MISSED INQUIRY, A LOST PRIORITY: THE COST OF INCOMPLETE DUE DILIGENCE

Emigrant Bank v. Rosabianca ,2026 N.Y. Misc. LEXIS 3854 , 2026 NY Slip Op 31681(U) (Sup. Ct. April 15, 2026)

In March 2014, Emigrant Bank (“Emigrant”) sued both Rosabianca and SLC, seeking to foreclose on Rosabianca's mortgage and to establish lien priority over SLC. On this motion, Emigrant moved under CPLR 3212 for partial summary judgment in its favor on its first and second causes of action and to dismiss the remaining affirmative defense asserted by SLC. Plaintiff argued that SLC was not a bona fide encumbrancer for value. According to plaintiff, Little Bay (and therefore SLC as Little Bay's assignee) was on notice of the Emigrant mortgage. Therefore, Emigrant claimed that its mortgage had priority over SLC's even though the Emigrant mortgage was recorded later. Alternatively, plaintiff argued that it was entitled to equitable subrogation to the extent that funds from the Emigrant loan were used to pay off prior mortgages on the land.

Under the New York Recording Act, a bona fide encumbrancer for value that properly records its mortgage lien has priority over previous unrecorded mortgages encumbering the same property. (See Real Property Law (RPL) §§ 266, 291.) A subsequent lender that records first but is not a bona-fide encumbrancer is not entitled to these protections. A bona fide encumbrancer is a party that encumbers real property "in good faith, for valuable consideration, without actual or record notice of another party's adverse interests in the property and is the first to record the deed or conveyance." (Irwin v Regal 22 Corp., 175 AD3d 671, 672 [2d Dept 2019] [internal quotation marks omitted].)

Here, the court noted that no allegations of fraud, bad faith, or lack of consideration had been made. It was also undisputed that Little Bay did not have actual notice of the Emigrant mortgage. The question was thus whether Little Bay was on constructive or inquiry notice of that mortgage at the time Little Bay took its mortgage against Rosabianca's land. If so, then Little Bay was not a bona fide encumbrancer for value, and the Little Bay/SLC mortgage would not have priority over the Emigrant mortgage.

Plaintiff provided evidence of two tax bills from July 2011 that were riddled with references to amounts owed and paid by Emigrant Mortgage Co. and "You, The Property Owner." As plaintiff noted, the April and July tax bills stated, in bold, "If Emigrant Mortgage Co Wants To Pay All Property Tax Owed . . . Please Pay . . . ." It was asserted that these tax bills were sufficient to

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establish, prima facie, that Little Bay was on constructive or inquiry notice of the Emigrant Mortgage.

Plaintiff also provided evidence of a December 2011 Equifax credit report showing that Rosabianca was late on payments on the Emigrant mortgage and had an unpaid mortgage-loan balance of over $1.75 million. SLC's statement that a lender has no duty to run a credit report may be accurate. However, a failure to run a credit report will not excuse a lender from the results of what due diligence would have yielded. A lender is chargeable with notice of facts that a proper inquiry would have disclosed. In this case, a search for a credit report would have disclosed the Emigrant mortgage or would have caused a reasonable and prudent lender to inquire further. SLC argued that even had Little Bay obtained a credit report, that, by itself, would not be sufficient to have put it on notice of the Emigrant mortgage. SLC provided no case that holds that a lender was not on notice of a prior lien after obtaining a credit report.

Here, given the existence of the July 2011 tax bills, the December 2011 Equifax credit report, and Rosabianca's recent past mortgage history, there was no genuine dispute that Little Bay, and therefore SLC as assignee, were on constructive or inquiry notice of the Emigrant mortgage. As such, SLC was not a bona fide incumbrancer for value shielded by RPL § 266 or § 291.

Given the court's ruling on the first cause of action—that SLC was not a bona fide encumbrancer for failure and that Emigrant was entitled to lien priority over SLC in the foreclosure of the land—the court held that it need not reach Emigrant's arguments for summary judgment in its favor on the second cause of action for equitable subrogation. The request for summary judgment on that cause of action was denied.

A TITLE INSURANCE POLICY IS NOT A REPRESENTATION OF TITLE, AND PRELIMINARY REPORTS ARE NOT ABSTRACTS OF TITLE

Vaughan v. Fannie Mae, 2026 U.S. Dist. LEXIS 94832 (N.D. Cal. April 29,2026)

In early 2021, plaintiffs Matthew V. Vaughan and Amy A. Vaughan (the “Vaughans”) bought a condominium unit ("Unit 5410") in the "Trask Lofts" project and occupied Unit 5410 as their exclusive residence from March 2021 to March 2022, during which they "experienced severe habitability and safety problems.”

In Claim Eleven, the Vaughans accused Old Republic of constructive fraud. As the Court's previous order explained, "a title insurer who has not undertaken to perform as an abstractor owes no duty to disclose recorded liens or other clouds on title" (quoting *Siegel v. Fid. Nat. Title Ins. Co.*, 46 Cal. App. 4th 1181, 1189-90 (1996)). The court also observed that "Plaintiffs do not provide

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support for their argument that Old Republic had a fiduciary duty to affirmatively investigate and disclose the legal status of Unit 5410 to Plaintiffs before selling them a title insurance policy."

As the case law explains:

“A title insurance policy does not constitute a representation that the contingency insured against will not occur. Thus, when such contingency occurs, no action for negligence or negligent misrepresentation will lie against the insurer based upon the policy of title insurance alone. The insurer does *not* represent expressly or impliedly that the title is as set forth in the policy; it merely agrees that, and the insured only expects that, the insurer will pay for any losses resulting from, or the insurer will cause the removal of, a cloud on the insured's title within the policy provisions. A title policy is *not* a summary of the public records and the insurer is *not* supplying information; to the contrary the insurer is giving a contract of indemnity. Every insurer can and does contract to indemnify against specific risks.” *Hovannisian v. First Am. Title Ins. Co.*, 14 Cal. App. 5th 420, 429 (2017).

Preliminary reports "are not abstracts of title" and "shall not be construed as, nor constitute, a representation as to the condition of title to real property[.]" Cal. Ins. Code § 12340.11. Therefore, Claim Eleven was dismissed without leave to amend. *See Zucco Partners, LLC*, 552 F.3d at 1007 ("[W]here the plaintiff has previously been granted leave to amend and has [*13] subsequently failed to add the requisite particularity to its claims, the district court's discretion to deny leave to amend is particularly broad.")

Similarly, Claim Twelve failed because (1) the Vaughans had not plausibly alleged that Old Republic had the requisite fiduciary duty, (2) California Insurance Code § 12340.11 commands that preliminary reports "shall not be construed as, nor constitute, a representation as to the condition of title to real property," and (3) the Vaughans had not plausibly alleged fraudulent intent on the part of Old Republic. Claim Twelve was dismissed without leave to amend.

THE DEFINITION OF PUBLIC RECORDS MATTERS

Forrest Equities LLC v Old Republic Natl. Tit. Ins. Co., 2026 N.Y. App. Div. LEXIS 2901 (Sup. Ct. April 30, 2026)

In June 2018, the plaintiffs entered into a contract to buy a multiple-dwelling residential building in the Bronx from the third-party defendant NJCRE 2013 Fund, LLC. The plaintiffs were aware of an explosion that had destroyed a portion of the building and that led the Department of Buildings to

issue a vacate order for the tenants. The plaintiffs knew they would likely be subject to relocation and emergency repair liens.

The title policy that plaintiffs purchased from defendant Old Republic National Title ("Old Republic") Insurance Company insured plaintiffs against a number of risks, including covered risk 3, which insured against loss arising from "Unmarketable Title"; covered risk 5, which insured against loss arising from the violation or enforcement of any law relating to the occupancy, use, or enjoyment of the property; and covered risk 6, which, under certain conditions, insured against loss arising from "[a]n enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5." Covered Risks 5 and 6 required that "a notice of the enforcement action, describing any part of the Land," be "recorded in the Public Records." "Public Records," in turn, was defined as "[r]ecords established under state statutes . . . for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge." Paragraph 3(a) of the policy's Exclusions excluded liens and other matters "created, suffered, assumed, or agreed to by the Insured Claimant." Exclusion paragraph 3(d) also excluded matters "attaching or created subsequent to Date of Policy."

In November 2018, NYC Department of Housing Preservation and Development commenced an action against plaintiffs that sought civil penalties for failure to correct housing violations, and four former occupants of the Land also commenced an RPAPL article 7-A proceeding against plaintiffs and sought the restoration of the building's essential services so that they could regain occupancy of their units.

The Supreme Court found that plaintiffs did not demonstrate coverage under covered risk 3. As the court noted, a lis pendens does not itself create an encumbrance apart from the equity on which the action is founded. A lis pendens filing instead provides notice that an action is pending that may affect title. Likewise, a filing of a vacate order is not a lien. The litigation, which occurred postclosing, did not constitute a defect rendering title unmarketable. For these reasons, to the extent that plaintiff relied on covered risk 3 of the title policy, the complaint's allegations did not offer "a reasonable possibility of coverage" so as to require Old Republic to defend the litigation.

Similarly, plaintiff could not rely on covered risks 5 and 6 for coverage because under the terms of the policy itself, the lien had to be recorded in the ACRIS system for those provisions to apply. But the lis pendens was never recorded in ACRIS, and the relocation lien was not listed in ACRIS until more than a year after the closing. Although plaintiffs asserted that the vacate order was in the Public Record, they offered no basis to conclude that the Supreme Court erred in finding that the vacate order had to be recorded in ACRIS.

Although the parties agreed to omit exceptions 2, 11, and 32 in the marked-up policy — for rights of tenants in possession, emergency repair liens that may exist but are not filed, and vacate order

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docketed March 27, 2026, respectively — those omissions would allow coverage under covered risk 3 only if that risk had covered the matters.