



The Kwok is Ticking:

An Unwanted Surprise for California Title Insurance Holders

By DONALD A. HUNSBERGER

Homeowners in California with estate plans have historically transferred title to their property to the trustees of their planning entities.

This has been the practice in the Golden State since the first days of trust writing and through to the days of limited liability companies, simply because it is the most effective method for making sure that their homes do not have to pass through probate following California homeowners deaths. Simply stated, a home held in trust is not included in the deceased's probate estate.

A recent dispute between a property owner and his title insurance company knocked the California real estate world, including estate planners, off their normally placid podiums. The property owners transferred the title to their real estate from a limited liability company to a trust, then later entered into a dispute with another land owner over a boundary issue. Under most situations, this would send out the troops from the title insurance company to enter into battle on behalf of the owners to defend the title which is insured by the policy purchased at the time owners first bought the property. For the Lawyers and Accountants: *Kwok v Transnation Title Ins. Co.* (2009) 170 CA4th 1562.

The problem with the case of the Kwok family stemmed from the fact that the insurance company said that the limited liability company, not the trustees, was the owner of the property, and was therefore the insured party under the title policy. The California Court of Appeals agreed with this argument and emphasized that the title policy held no language which allowed the property owners to change who would be able to benefit from the insurance policy simply by changing who was what the law calls a "beneficial owner" of the property.

Title insurance is a crucial element of property ownership, so everyone who uses a trust to hold property free from probate in his or her estate plan needs to revisit the title policy which he or she purchased when buying a home. Owners should take their title policies to their attorneys to have the documents reviewed to make certain that there is language in the policy which allows the term "insured" to cover individuals or entities such as trustees of trusts, partners in limited partnerships, members of limited liability companies, or any other devices used in estate planning documents.

It is important to be proactive with planners on this issue; after discussing the matter with an attorney and assuring counsel of the reality of this decision through the foregoing citation, the attorney will know that if a policy for title insurance does not cover, within the definition of its insured, a trustee or other estate planning entity, then it is necessary to approach the insurance company *before* there is a title claim and seek what is called an endorsement for that

policy to get what the law calls an *Additional Insured Endorsement*.

This endorsement form is available from the California Land Title Association in its form CLTA 107.10, which covers the inclusion of an “additional insured” in a title insurance policy. The intention of this endorsement is to address situations where the additional insured (here, a trustee or other estate planning entity) would have been included when the original policy was written at the time of the purchase of the property and the policy.

There are numerous types of policies which people purchase in California for their title insurance. The policy which the insureds in the Kwok case purchased, the most common form at the time, was one which did not define estate trustees in the definition of insureds. It was a policy from the California Land Title Association “Standard Policy Coverage Policy.” Under the interpretation of the Court of Appeals for California, this policy does not cover estate planning transferees in its definition of insureds.

Many property owners will not have any idea where to find their title insurance policies. They may be able to address this problem by examining the original deed from the escrow office at the time of the purchase of the property (not the deed that transferred the property to the estate planning entity) to see if the escrow company, the lender, or the title insurance company is listed on the deed for a request for a copy of the deed following recording. Any of these three entities should help recover information about the policy if it is not in a file ready for review.

If title insurance were not important, it would not be required as a prerequisite for the transfer of title at the time of purchase of real estate. The fact that its validity is threatened by the Kwok case should prompt every estate owner to examine his or her policy to be certain that the coverage he or she paid for has remained in place; this is a good time for the property owner to call his or her lawyer.



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