

LTAA 2021 Claims Update

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SERVING ARIZONA SINCE 1921

*Results.
Relationships.
Reputation.*

Cases

- Policy Exception and Bad Faith
- Public Roads
- Legal Description Errors
- Navigability of Arizona Rivers
- Adverse possession/prescriptive easement
- Trust Certificates

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Policy Exception, Bad Faith

VACC LLC v. Chicago Title, 2021 WL 710793 (Ariz.App. 2021)

Facts:

- A single large parcel platted with lots/units
- CC&Rs: “declarant intends to lease portions of the Lots to be used as the sites for residential dwellings.”
- Plat incorporated the CC&Rs
- Insured constructed homes on individual lots/units, sold some in fee title, and then tried to sell large number of lots to buyer
- Buyer refused to close because CC&Rs precluded conveyance of individual lots

Policy Exception, Bad Faith

VACC LLC v. Chicago Title, 2021 WL 710793 (Ariz.App. 2021)

Policy exception: “loss or damage... because of easements, covenants, conditions and restrictions set forth on the plat.”

Policy Exception, Bad Faith

VACC LLC v. Chicago Title, 2021 WL 710793 (Ariz.App. 2021)

Court declared no coverage:

- Exclusion referenced restrictions stated on the plat
- No recorded violation of the approved plat
- Reasonable expectations doctrine not applicable because exceptions were negotiated
- No damages = no coverage

Policy Exception, Bad Faith

VACC LLC v. Chicago Title, 2021 WL 710793 (Ariz.App. 2021)

Bad faith: Court affirmed summary judgment finding no bad faith because insurer conducted reasonable investigation and had a reasonable basis for denying claim.

Good news for escrow agencies: agent dismissed from policy claim

Policy Exception, Bad Faith

Application points:

- Specifically reference CC&Rs in exceptions
- Conduct a reasonable investigation
- Explain reasonable basis for denying claim

Roadways

Maricopa Cnty. v. Rovey, 250 Ariz. 419 (App. 2020) (petition for review pending)

- County road widening project in Buckeye
- Inverse condemnation case for existing roads with claimant asserting ownership of roads
- Deeds in chain: except 33 feet for roads
- Issues: 1) who owns the road; 2) if claimant owns road, is it subject to a public road easement
- Superior court and court of appeals: Under rule of strips and gores, claimant owns road subject to public road easement
- Courts not specific whether easement created by common law dedication or statutory authority

Roadways

Common law dedication:

- “The effect of a common law dedication is that the public acquires an easement to use the property for the purposes specified, while the fee remains with the dedicator.” *Pleak v. Entrada Prop. Owners’ Ass’n*, 207 Ariz. 418, 421, ¶ 8 (2004).
- “An effective dedication of private land to a public use has two general components—an offer by the owner of land to dedicate and acceptance by the general public.” *Id.* at ¶ 21
- No particular words, ceremonies, or form of conveyance is necessary to dedicate land to public use; anything fully demonstrating the intent of the donor to dedicate can suffice.” *Id.* at ¶ 21
- Acceptance may be established by public use. *Lowe v. Pima County*, 217 Ariz. 642, 648, ¶ 27 (App. 2008).

Roadways

Statutory authority:

- USA authorized the creation of roads over public land if they were created pursuant to state law. R.S. 2477 (1866) (repealed 1976)
- Maricopa County complied with state law in 1919 when the Maricopa County Board of Supervisor’s formally approved certain roads 33 feet on either side of certain section lines and recorded a map showing such roads
- Confirmation of the creation of certain roads appears in a second map recorded by the County in 1921
- Certain public roads confirmed on a 1937 map prepared by the Arizona State Highway Department in cooperation with the U.S. Department of Agriculture, Bureau of Public Roads

Roadways

Application point:

Be careful about assuming public roadways exist.

Legal Description Issues

Background:

- House built on two lots in Desert Mountain
- Deed of trust only includes one lot
- Default and legal description issue discovered
- Delay in foreclosing
- Insured brings quiet title/declaratory relief claim
- Court in phase one of litigation: insured loses because three year limitation to reform legal description

Legal Description Issues

Phase two:

- Record a notice of correction
- Start trustee's sale
- File for judicial foreclosure
- Superior court: not allowed to do anything
- Appeal filed

Legal Description Issues

Deutsche Bank v. Pheasant Grove LLC, 2020 WL 2988677 (Ariz.App. 2020):

- “Reformation Is Not Required Before Enforcing the Deed of Trust.”
- “A Party is Not Required to Assert a Claim for Judicial Foreclosure in the Same Action as a Claim to Reform a Deed of Trust.”
- “Foreclosing on an Imperfect Deed of Trust Is Not Governed by the Statute of Limitation for Judicial Reformation.”

Legal Description Issues

Application point:

Recording a notice of correction/affidavit of scrivener's error is cheaper than a formal reformation action.

River Navigability

- Navigable rivers on date of statehood are state owned
- Can trigger a title claim if river bed is insured
- What rivers were navigable on February 14, 1912?
 - Colorado River
- Salt, Gila and Verde Rivers?
- *Defenders of Wildlife v. Arizona Navigable Stream Adjudication Commission*

River Navigability

History:

- 1985: State (Babbit) asserted ownership of river beds
- 1987: State law (Mecham) relinquished claim
- 1991: Courts invalidated legislation as unconstitutional
- 1992 and 1994: State law established commission to evaluate navigability
- 1998: Based on commission findings, state (Hull) disclaimed interest in rivers
- 1998-now: court cases regarding standard to apply

River Navigability

Defenders of Wildlife v. Arizona Navigable Stream Adjudication Commission

Current case:

- Commission held not navigable = privately owned
- Superior court affirmed
- Pending at the Court of Appeals
- LTAA filed amicus brief
 - Emphasized need for certainty of titles
 - Nothing in any patent suggested state owned

River Navigability

Application point:

Be careful about insuring near the Salt, Gila and Verde Rivers

LTAA Convention 2021 Claims Update

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