

Potential Game Changer: Will Sachtleben v. Alliant National Title Insurance Co. Alter the Legal Landscape for Missouri Real Estate and Title Insurance Professionals and Their Ever-Evolving Industries?

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Fight the urge to pass on this miniature case note. Sure, my prior blog posts have focused more on practical considerations for title insurance and real estate professionals. Easy reading, pure bullet-list consumption. But, this case is one to watch whether you're a Reddit "Land Chad" or a 1L selecting your favorite stick in the bundle during second semester Property Law. Be on the lookout for a follow-up blog post after the potential game-changing opinion from the justices in Jeff City.

OK real estate nerds, this case involves multiple lawsuits, venues, areas of law, and phases of appeal. While the procedural machinations are worthy of a separate own blog post (two cases filed, one in the Circuit Court of St. Charles County, the other in the Circuit Court of St. Louis County, with certain claims in the St. Louis County case severed and sent to St. Charles County, save the claim that is now on appeal), the case scheduled for oral argument before the Missouri Supreme Court later this month on February 26, 2024 should be closely monitored and understood by all real estate professionals including real estate agents, brokers, title insurance agents and underwriters. Because of the potential impact on coverage and costs of closing/policy issuance, lenders should also pay heed.

A brief synopsis of the lower court holdings should grab your attention.

First, the trial court. Insureds under an owner's policy of title insurance issued by title insurance underwriter Alliant National Title Insurance Company ("Alliant") through its policy issuing agent Investors Title Company sued Alliant for breach of the policy. The trial court in St. Louis County granted partial summary judgment for Alliant because "[a]mong other things, ...the insurance contract only covers losses caused by ordinance violations if a notice of those ordinance violations was properly recorded ...as of the contract's effective date." Since the trial court found no such notice had been recorded as of the effective date of the policy, it granted summary judgment in favor of Alliant on the breach of policy claim.

Next, the appeal. The Eastern District reversed the summary judgment order last summer, reasoning that Alliant had actual notice of the applicable ordinance violation via a title commitment issued in advance of the policy. Appellant insureds contend a covered risk under the owner's policy can be triggered if the underwriter had actual notice of certain events, not just constructive notice through recorded instruments.

If Appellant insureds prevail before the Missouri Supreme Court later this month, the impact on the real estate closing and title insurance industries in Missouri could be significant. Enough to prompt meaningful revisions to internal closing and underwriting policies, procedures, and loss mitigation measures. The Missouri Land Title Association ("MLTA") echoed these concerns in its denied amicus brief application to the Missouri Supreme Court, explaining "[t]hese matters are of explicit interest to MLTA and its more than 175 member companies because the changed interpretation of the long-standing ALTA form title insurance policy could have wide ranging implications for the manner in which title searches are conducted, title commitments are issued, and title policies are bound by title companies." As of now, real estate closing and title insurance professionals in Missouri understand there are only two ways to charge a purchaser of realty with constructive notice - (1) a document or instrument that is recorded with the recorder of deeds for the county in which the property is located; or (2) a judgment entered by a circuit clerk in the county where the property is located. Courts in three other states have wrangled with this same issue in recent years - Washington, Kansas, and New York. All three have sided with Alliant's position which requires constructive, not actual notice.

See you back in a few months for the exciting conclusion. I've appended and attached the relevant briefs to tide you over.

ALLIANT SUB BRIEF MOSC.

SACHTLEBEN SUB REPLY MOSC.

MLTA AMICUS BRIEF MOTION