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## **CALIF. APP. CT. REAFFIRMS NO COVERAGE FOR RECORDED SUBSTANDARD CONDITION NOTICE**

### **Summary of Case**

In connection with an owner's policy, a title insurance company missed or otherwise failed to except from coverage a recorded Notice of Substandard Condition. On January 14, 2003 a California Court of Appeal published an opinion holding *no coverage exists*. It dismissed the owner/insured's arguments based on the general insuring provisions for (1) defects in or liens/encumbrances on title and (2) unmarketability of title. It also dismissed a rather creative argument based on a stated exception to the standard "Laws, Ordinances or Governmental Regulations" exclusion.

The case is *Elysian Investment Group, LLC v. Stewart Title Guaranty Co.* (\_\_\_ Cal.Rptr.2d \_\_\_, 2002 WL 31873625, 2003 DJDAR 543; Calif. App. Ct., 2<sup>nd</sup> App. Dist.; Dec. 26, 2002, ordered published Jan. 14, 2003) It can be viewed at <http://www.courtinfo.ca.gov/opinions/documents/B151224.PDF>

### **Facts**

Plaintiff purchased a residence from a lender holding the property as an REO following a foreclosure. As of the time of the sale, the City of Los Angeles recorded a Notice of Substandard Condition relating to an unpermitted garage-to-dwelling unit conversion. Interestingly, the selling lender was aware of the illegal conversion and the fact that the city required re-conversion to a garage.

Stewart Title issued a standard CLTA owner's policy to Plaintiff which did not specifically except the Notice from coverage. After the purchaser discovered the Notice, it tendered to Stewart and Stewart denied coverage. Stewart then prevailed on a Motion for Summary Judgment.

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## **Issues**

In its appeal, the insured owner asserted that the Notice constituted either a “defect in or lien or encumbrance on title” and/or rendered title “unmarketable,” pursuant to the general insuring provisions. The insured also asserted that the Notice falls within the stated “Notice of Enforcement” exception to the standard “Laws, Ordinances or Governmental Regulations” policy exclusion.

## **Analysis / Holding**

The appellate court, in the published opinion, cites a number of cases building on the proposition that no coverage exists for the physical condition of the insured property and concludes in favor of Stewart Title.

As to the insured’s argument based on the general insuring provision for “defects, liens and encumbrances,” the Court acknowledges case law finding coverage where the source of a building restriction is a privately created covenant. It distinguishes that authority on the ground that the instant case involves not a private recorded agreement, but a public ordinance. The Court also distinguishes a hypothetical situation where a city makes the repairs demanded in the Notice and then records a Notice of Assessment in an effort to collect for the cost of repairs.

As to the insured’s second argument based on the general insuring provision for “unmarketable title,” the Court concludes there is no coverage reasoning “The fact that [the owner] was required to bring the property up to code does not cast doubt on who owns the property.”

Finally, the Court finds that since the Notice does not fall within the basic insuring clauses, it can not be found to be covered by the stated “Notice of Enforcement” exception to the standard “Laws, Ordinances or Governmental Regulations” owner’s policy exclusion [ALTA/CLTA Exclusion 1(a)]. The Court further speculates that assuming *arguendo* Exclusion 1(a) provides coverage, the subject Notice fails to fall within the exception to the exclusion because it is itself not a “notice of enforcement,” but rather a mere warning or preliminary step to any formal enforcement action.

## **Further Information and Assistance**

For further information and/or assistance, please feel free to contact any member of the Title Insurance Defense Group at Wolfe & Wyman LLP, including:

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