



TITLE TIP

From the Central Alabama Title Center, LLC

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Avoiding Title Claims, Part 1 Can one little letter really make a difference?

This is part one in a three part series that will discuss avoidable title insurance claims.

There is an old Navy expression that every ship can be a minesweeper ... *once*. This adage recognizes that one small slip — whether a lack of training, a failure to follow proper procedures or a momentary lapse of attention — can be fatal.

We can use this saying as an analogy to what we do as parties to a real estate transaction. Although lives are not on the line in the closing process, the same small slips — training deficiencies, poor procedure and inattention — can cause our titles to be “blown out of the water,” resulting in significant financial losses. Recent studies by the Fidelity family of companies show that a large portion of claims result from simple human error and are avoidable: search and exam errors, mistakes made at closing, and the failure to properly complete post-closing duties such as timely recording. Many of these claims —resulting in millions of dollars in losses — flowed from those “little” problems just mentioned. Through this three part series of Title Tips, you will be introduced to just a few of these claims. These are not isolated incidents, but examples of recurring claims on matters insured by our companies through its agents.

SCENARIO 1: ONE LITTLE “A”

Do you think that one letter dropped from the name of a mortgagor could result in total failure of title? That is what happened in the *Badagliacca* case, resulting in a loss to the lender of more than \$100,000.

Mr. and Mrs. Badagliacca had refinanced their home. Afterward, they began to have financial difficulties and commenced a Chapter 13 bankruptcy proceeding. In reviewing the documents relating to the Badagliaccas’ financial circumstances, the bankruptcy trustee noticed that their name was incorrectly spelled as *Badaglicca* (one of the A’s was dropped) on the mortgage. The trustee brought an adversary proceeding against the mortgage lender, claiming that the mortgage was invalid. The trustee claimed that under bankruptcy law, he took title to the Badagliacca property as a *bona fide* purchaser (BFP) for value. To be a BFP, one must take title without notice or knowledge of a defect, lien or encumbrance. The trustee asserted that, as of the filing of the bankruptcy case, he did not have actual notice of the mortgage. Furthermore, since the name Badagliacca was misspelled on the mortgage, he claimed that he did not have *constructive* notice of the mortgage because it was recorded *outside the chain of title*. The court ruled in favor of the trustee and declared the mortgage void. In so doing, the court relied upon other cases that involved indexing problems. Because the title insurance policy insured the “validity and enforceability” of the mortgage, the title insurer had to pay the lender for the loss. However, as we all know that this could result in a different answer should a different judge review the case; the judge could say that you the lender knew how to correctly spell the borrowers name and by spelling it incorrectly you caused the claim and based on the exceptions shown in the jacket the title insurer is not liable for the loss and therefore you the lender would be out of the money.

The basics: Agents, their employees and their representatives (such as processors, closers, persons responsible for preparing closing documents and closers) must carefully check the names of the property owners against the names set forth on every instrument that is being recorded.

As always, should you have questions, please feel free to give CATC at call at 888-207-6200 or check out our web site at www.titlecenter.com

“The claims discussed here resulted from a seemingly simple error: not checking the spelling of the names on a mortgage before it was executed and recorded.”