

Real Estate Lawyer comments on Illinois Appellate Decision finding Title Insurance Company not responsible for damages

Though it took 18 months to clear liens, Title Insurance Company not liable; this will affect real estate transactions where lien is discovered after closing.

ST. CHARLES, ILLINOIS, UNITED STATES, July 21, 2018 /EINPresswire.com/ -- Real Estate Attorney [William B. Blanchard](#), general counsel for [Gaia Title, Inc.](#), spoke about a recent [real estate law](#) case where the Illinois Appellate Court held that the standard ALTA Owner's Policy gives a title insurance company wide latitude in how to remove liens from the title, and protects it from liability for damages. This court opinion may affect any real estate purchaser who seeks to have liens or other encumbrances removed from a title insurance policy after closing.

The case of *Wade v. Stewart Title Guaranty Company* arose from a breach of contract regarding a title insurance policy for a multi-unit residential building in Chicago, Illinois. Plaintiff Josephine Wade, the purchaser of the property, filed suit against Stewart Title Guaranty Company ("Stewart Title"), alleging that it had failed to timely remove

defects on the property's title. As a consequence of the delays, according to Ms. Wade, the building was demolished because she could not comply with the City of Chicago's building code. The trial court ruled in favor of Stewart Title, finding that the title company did not breach any duties under the policy. The Illinois Appellate Court affirmed, noting that the Plaintiff did not meet the burden of proof needed to establish that the 18 months Stewart Title took to clear the defects was not "reasonably diligent."

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Title insurance companies ... in the future will cite this case as precedent for a broad interpretation of both Section 4's grant of discretion and Section 9's protection from liability.”

William "Bill" Blanchard, Real Estate Lawyer



William B. Blanchard, Real Estate Attorney

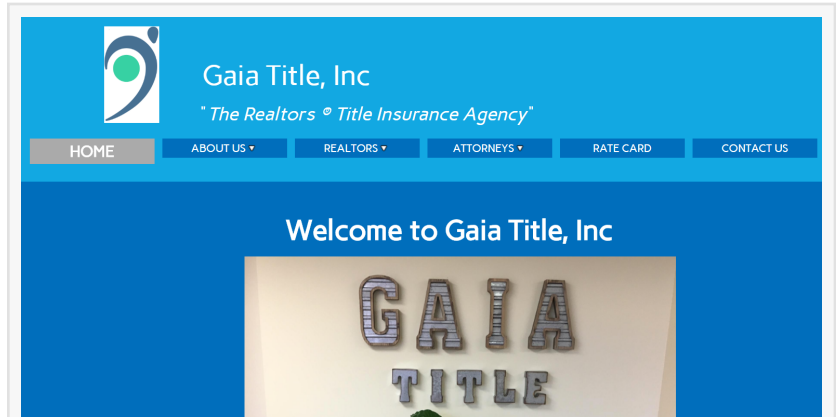
Apparently, the title insurance company pursued lengthy litigation during which time the building's value quickly deteriorated. The litigation was designed to settle the liens for less money, rather than immediately paying the liens in full. Section 9. of the title insurance policy, "Limitation of Liability," provided: "If the (Title) Company establishes the title, or removes the alleged defect, lien or encumbrance *** in a reasonably diligent manner by any method, including litigation

and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused hereby.”

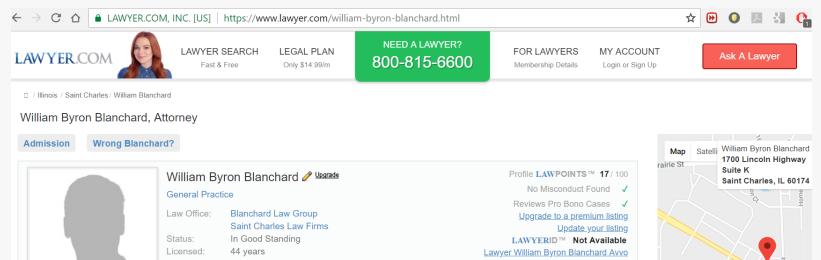
Section 4 of the policy gave the title insurance company the right to determine how to defend or settle the claims. On ambiguity of provisions in insurance contract, the Court stated, “...an insurance contract will be liberally construed in favor of the insured. First Chicago Insurance Co. v. Molda, 2015 IL App (1st) 140548, ¶ 33.” Then, ironically, the Court held that Plaintiff had the burden of proof to show the defense was not “reasonably diligent.” Note that the trial court heard evidence that the defense provided by Stewart Title was for its own benefit, and to the detriment of their policy holder.

Mr. Blanchard stated, “this decision is important for anybody in a real estate transaction where a lien or other encumbrance is first discovered after closing. Basically, the standard title insurance policy provides that you must let the insurer do the job in any manner it chooses. The appellate court concluded that if the policy owner suffers damages while the title company engages in its defense, a policy holder cannot prevail in a claim damages absent clear and convincing evidence that the defense did not act in a “reasonably diligent” manner.”

“This is an important case also for what the Court didn’t consider in reaching its opinion,” adds Mr. Blanchard. “The Appellate Court affirmed because the reasonableness and diligence of the title insurance company’s defense was a matter for the trial court to determine based upon the evidence presented. Before this case, a plaintiff was required to present evidence that it suffered damages during the time it took the title company to remove title defects, and it was then up to the title company to present evidence that its efforts were reasonably diligent.”



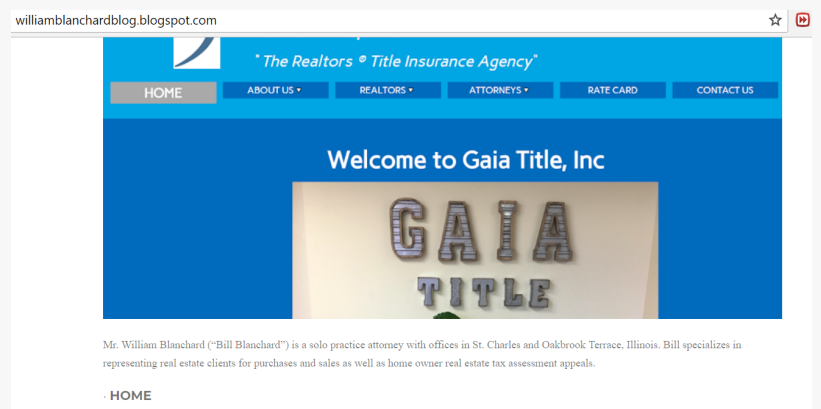
Website of Gaia Title, William B. Blanchard, General Counsel



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Attorney Profile of William B Blanchard



Blog of William B Blanchard at williamblanchardblog.blogspot.com

“Title insurance companies defending similar actions in the future will cite this case as precedent for a broad interpretation of both Section 4’s grant of discretion and Section 9’s protection from liability. The ruling is contrary to Illinois precedent establishing that unclear terms in insurance policies should be interpreted in favor of Plaintiffs, and shifts the burden of proof on the question of “reasonable diligence” from Defendants to Plaintiffs,” opines Mr. Blanchard.

The case is *Wade v. Stewart Title Guaranty* 2017 ILAP (1st) 161765. The full opinion is on the court website <http://www.illinoiscourts.gov/Opinions/AppellateCourt/2017/1stDistrict/1161765.pdf>

William B. Blanchard is General Counsel for Gaia Title, Inc. and a real estate law attorney representing clients in the Western suburbs of Chicago in all types of real estate transactions including real estate closings, short sales, and real estate tax appeals. See <http://www.giaatitle.com/>

As General Counsel, Mr. Blanchard provides title insurance examinations, commitment and policy reviews, supervises closing activities and regulatory compliance issues. Mr. Blanchard received his Juris Doctor Degree from DePaul University College of Law in 1972, and was admitted to the practice of law in Illinois in 1973. His LinkedIn Profile is at <https://www.linkedin.com/in/william-bill-blanchard-080a48b/>

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