

# Title Insurance

## Overview

We handle a wide range of matters for title insurers and their insureds. We serve as lead counsel in complex title matters in 17 states.

### Key Matters

#### Class Action Defense

- Obtained denial of class certification in consumer class action alleging title insurance underwriter overcharged for title insurance premiums in mortgage refinance transactions.
- Obtained denial of motion for class certification in putative multistate class action alleging overcharging for title insurance.
- Obtained dismissal of putative multistate class action alleging violations of RESPA, unfair trade practices, and unjust enrichment based on alleged overcharging for title insurance.
- Obtained reversal of class action discovery order requiring production of more than 300,000 title agent closing files.
- Obtained dismissal of putative class action alleging that the unearned split of premiums with agents constituted a RESPA violation.
- Represented national title insurance underwriter in defense of putative class action alleging improper fee splitting with national builder in violation of RESPA; Settled.
- Represented numerous national title insurance underwriters and agents in defense of approximately 15 separate putative class actions around the country alleging failure to comply with reissue rate regulations; Five were dismissed, two settled, balance pending.
- Collaborated with lead counsel in federal class action in Ohio in which the court decertified a statewide class alleging overcharges for title insurance premiums.

#### Coverage Disputes

- Represented national title insurance underwriter in defense of claim involving restrictive covenants at shopping center where title policy did not contain exception for restrictions; Obtained settlement that limited loss to less than 10 percent of damages sought.

- Represented national title insurance underwriter in defense of claim involving a lis pendens not excepted from title policy; Defeated coverage based on the "assumed and agreed to" policy exclusion.
- Represented national title insurance underwriter in defense of claim involving allegations of adverse possession and an unrecorded agreement; Defeated coverage based on the "parties in possession" and "accurate survey" policy exceptions.
- Represented national title insurance underwriter in defense of claim involving allegations that insured leases were disguised financing arrangements; Defeated coverage based on the "assumed and agreed to" policy exclusion.
- Represented national title insurance underwriter in defense of claim involving absence of title to submerged lands where title policy had no "sovereignty lands" exception; Obtained settlement substantially limiting loss and pursued subrogation claim against seller on behalf of insurer.
- Represented national title insurance underwriter in defense of claim involving allegations of overburdening of easements and rights of way ownership; Defeated coverage based on the "assumed or agreed to" and "created subsequent to date of policy" policy exclusions.

### **Defalcation Actions**

- Represented major title insurance underwriter in coordinating claims resolutions stemming from multimillion-dollar title agent defalcation; Obtained \$1.89 million restitution order and coordinated with criminal authorities who obtained a five-year jail term for title agent's principal.
- Represented national title insurance underwriter regarding agent defalcation of more than \$8.5 million; Recouped more than \$6.5 million.
- Represented national title insurance underwriter regarding agent defalcation of more than \$4 million; Obtained contribution from bank, fidelity insurer, and third parties significantly reducing loss.
- Represented national title insurance underwriter regarding third-party misappropriation of approximately \$4 million; Obtained prejudgment writs of attachment against approximately 50 properties and prejudgment writs of garnishment against multiple bank accounts leading to recoupment of entire loss.

### **Closing Protection Letter Disputes**

- Represented national title insurance underwriter in defense of claim by national lender for \$8.6 million alleging series of inflated appraisals and failures to follow closing instructions; Obtained dismissal of all tort claims and settled remaining contract claim.

- Represented national title insurance underwriter in defense of lender's claims of \$100,000 in losses, and that underwriter's agent was part of fraud scheme to inflate the property's value and divert loan proceeds to the borrower; Claim denied after factual investigation resulting in no liability to underwriter.

### **Market Conduct and Unfair Trade Practice Disputes**

- Represented national title insurance underwriter in defense of RESPA investigation by U.S. Department of Housing and Urban Development that involved alleged kickbacks to realtors; Consent agreement negotiated with no liability finding.
- Represented two title insurance underwriters regarding market conduct examinations by the Florida Office of Insurance Regulation.
- Represented national title insurance agency regarding market conduct examination by Florida Department of Financial Services; Consent agreement negotiated with no liability finding.

### **Title and Closing Agent Disputes**

- Represented lender in challenge to validity of its mortgage on grounds it was unauthorized under a partnership agreement; Obtained summary judgment based on finding of ratification; affirmed on appeal.
- Represented lender in challenge to the priority of its mortgage; Obtained summary judgment based on doctrine of equitable subrogation; affirmed on appeal.
- Represented title company regarding "flip" transaction where plaintiff alleged failure to disclose the recent purchase, and environmental problems with the property; Obtained dismissal with prejudice; affirmed on appeal.
- Represented prior owner of property in action to establish title under constructive trust; Obtained judgment re-establishing title after bench trial; affirmed on appeal.

## **Experience**

- *Partell v. Lawyers Title Ins. Corp.*, No. 1:08-cv-00166, 2011 WL 4974730 (W.D.N.Y. Sept. 30, 2011). Dismissal of putative class action alleging violations of RESPA and New York General Business Law, and claims for money had and received, unjust enrichment, and breach of implied contract, based on alleged overcharging for title insurance.
- *Corwin v. Lawyers Title Ins. Co.*, 276 F.R.D. 484 (E.D. Mich. 2011). Denial of class certification in putative statewide consumer class action against title insurance underwriter alleging overcharging for title insurance premiums.

- *Calbough v. Fidelity Nat'l Title Ins. Co.*, No. 05-6642 (Fla. Cir. Ct. 2011). Order granting motion to abate, holding that “the reasons underlying the proposition that an insured may reject an insurer’s defense under a reservation of rights do not apply to an insurer’s right to establish an insured’s right of title.”
- *Chicago Title Ins. Co. v. Lerner*, 435 B.R. 732 (S.D. Fla. 2010). Order denying motion to abate action for breach of personal undertaking against principals of bankrupt developer for failure to remove liens on insured property pending resolution of state court lien cases and holding that, absent the bankruptcy court’s extension of the automatic stay to principals, insurer’s action may proceed.
- *Macula v. Lawyers Title Ins. Co.*, 264 F.R.D. 307 (N.D. Ohio 2009). Denial of putative statewide consumer class action against title insurance underwriter alleging overcharging for title insurance premiums.
- *Hoving v. Lawyers Title Ins. Co.*, 256 F.R.D. 555 (E.D. Mich. 2009). Denial of class certification in putative multistate class action alleging overcharging for title insurance premiums.
- *Smith v. Lawyers Title Ins. Corp.*, No. 2:07-cv-12124, 2009 WL 514210 (E.D. Mich. Mar. 2, 2009). Dismissal of putative multistate class action alleging violations of RESPA, unfair trade practices, and unjust enrichment based on alleged overcharging for title insurance.
- *Commonwealth Land Title Ins. Co. v. Higgins*, 975 So. 2d 1169 (Fla. 1st DCA 2008). Reversal of class action discovery order requiring production of more than 300,000 title agent closing files.
- *Hwang v. Junron Fla., Inc.*, 965 So. 2d 132 (Fla. 2d DCA 2007). Dismissal of action by buyer against title insurer and closing agent in “flip” transaction; affirmed on appeal.
- *Lehman Bros. Holdings, Inc. v. Hirota*, No. 8:06-cv-2030, 2007 WL 1471690 (M.D. Fla. May 21, 2007). Dismissal of fraud, conspiracy, and negligence claims against title insurer and closing agent on economic-loss rule grounds.
- *Mickens v. Stewart Title Guar. Co.*, 902 So. 2d 804 (Fla. 2d DCA 2005). Imposition of equitable lien after bench trial; affirmed on appeal.
- *Chicago Title Ins. Co., Inc. v. Alday-Donalson Title Co. of Fla., Inc.*, 832 So. 2d 810 (Fla. 2d DCA 2002). Summary judgment for title insurer in interference with contract action; affirmed on appeal.
- *Gulf Island Resort, L.P. v. Yale Mortg. Corp.*, 783 So. 2d 259 (Fla. 2d DCA 2001). Summary judgment for lender in challenge to validity of mortgage; affirmed on appeal.
- *Wash. Enters. v. DiMaria*, 773 So. 2d 550 (Fla. 2d DCA 2000). Summary judgment recognizing priority of mortgage under equitable subrogation doctrine; affirmed on appeal.



- *Chicago Title Ins. Co. v. S. Clark Butler*, 770 So. 2d 1210 (Fla. 2000). Adverse summary judgment finding anti-rebating statute for title agent's share of title insurance premium unconstitutional; affirmed on appeal.

## Insights

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06.24.2022

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06.10.2022

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06.03.2022

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05.20.2022

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12.28.2021

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12.18.2021

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12.11.2021

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11.19.2021

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11.12.2021

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11.05.2021

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08.27.2021

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08.20.2021

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06.04.2021

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05.21.2021

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05.07.2021

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04.30.2021

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04.23.2021

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03.26.2021

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12.26.2020

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11.23.2020

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09.25.2020

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08.28.2020

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07.31.2020

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06.26.2020

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06.05.2020

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05.29.2020

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04.03.2020

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03.06.2020

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02.28.2020

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12.27.2019

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10.30.2019

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03.29.2017

Real Property & Title Insurance Update: Week Ending March 24, 2017

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03.20.2017

Real Property & Title Insurance Update: Weeks Ending March 10 & 17, 2017

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03.07.2017

Real Property & Title Insurance Update: Weeks Ending February 17 & 24, 2017

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02.14.2017

Real Property & Title Insurance Update: Week Ending February 10, 2017

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02.10.2017

Real Property & Title Insurance Update: Week Ending February 3, 2017

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02.03.2017

Real Property & Title Insurance Update: Week Ending January 27, 2017

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01.25.2017

Real Property & Title Insurance Update: Week Ending January 20, 2017

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01.19.2017

Real Property & Title Insurance Update: Week Ending January 13, 2017

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01.11.2017

Real Property & Title Insurance Update: Week Ending January 6, 2017

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12.15.2016

Real Property & Title Insurance Update: Weeks Ending December 2 & 9, 2016

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12.02.2016

Real Property & Title Insurance Update: Weeks Ending November 18 & 25, 2016

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11.17.2016

Real Property & Title Insurance Update: Weeks Ending November 4 & 11, 2016

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11.02.2016

Real Property & Title Insurance Update: Weeks Ending October 21 & 28, 2016

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10.19.2016

Real Property & Title Insurance Update: Week Ending October 14, 2016

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10.13.2016

Real Property & Title Insurance Update: Week Ending October 7, 2016

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10.03.2016

Real Property & Title Insurance Update: Weeks Ending September 23 & 30, 2016

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10.01.2016

10 Lawsuits You Can't Ignore

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09.19.2016

Real Property & Title Insurance Update: Week Ending September 16, 2016

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09.14.2016

Real Property & Title Insurance Update: Weeks Ending September 2 & 9, 2016

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09.09.2016

Defalcation is a Dirty Word, But Not the End of the World

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08.30.2016

Real Property & Title Insurance Update: Week Ending August 19 & 26, 2016

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08.23.2016

Appeals Court Sends Full Credit Bid Defense to Arizona Supreme Court

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08.17.2016

Real Property & Title Insurance Update: Week Ending August 12, 2016

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08.11.2016

Real Property & Title Insurance Update: Week Ending August 5, 2016

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08.01.2016

Real Property & Title Insurance Update: Week Ending July 29, 2016

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07.25.2016

Real Property & Title Insurance Update: Week Ending July 22, 2016

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07.20.2016

Real Property & Title Insurance Update: Week Ending July 15, 2016

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07.08.2016

Real Property & Title Insurance Update: Weeks Ending June 24 & July 1, 2016

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06.21.2016

Real Property & Title Insurance Update: Weeks Ending June 10 & 17, 2016

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06.07.2016

Real Property & Title Insurance Update: Weeks Ending May 29 & June 3, 2016

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05.26.2016

Real Property & Title Insurance Update: Weeks Ending May 13 & May 20, 2016

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05.10.2016

Real Property & Title Insurance Update: Weeks Ending April 29 & May 6, 2016

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04.26.2016

Real Property & Title Insurance Update: Weeks Ending April 15 & 22, 2016

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04.11.2016

Real Property & Title Insurance Update: Week Ending April 8, 2016

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04.06.2016

Real Property & Title Insurance Update: Week Ending April 1, 2016

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03.30.2016

Real Property & Title Insurance Update: Week Ending March 25, 2016

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03.23.2016

Real Property, Financial Services & Title Insurance Update: Weeks Ending March 11 & 18, 2016

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03.08.2016

Real Property, Financial Services & Title Insurance Update: Week Ending March 7, 2016

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02.23.2016

Real Property, Financial Services & Title Insurance Update: Weeks Ending February 12 & 19, 2016

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02.11.2016

Real Property, Financial Services & Title Insurance Update: Weeks Ending January 29 & February 5, 2016

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01.26.2016

Real Property, Financial Services & Title Insurance Update: Week Ending January 22, 2016

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01.22.2016

Real Property, Financial Services & Title Insurance Update: Week Ending January 15, 2016 (and bonus opinion from January 20)

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01.14.2016

Real Property, Financial Services & Title Insurance Update: Weeks Ending January 1 & 8, 2016

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03.25.2015

New CFPB Consent Orders Point to Growing Indirect Regulation of Title Insurance

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01.01.2015

Winning The Next War: Title Insurers Can Expect a New Set of Challenges in the Coming Years

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12.22.2014

Aggressive Regulators and the Plaintiffs' Lawyers Who Follow Them

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09.16.2014

In for One, and Only One – Title Insurers' Limited Duty to Defend

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Title Insurers Face a Decade of New Challenges

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08.27.2013

What You Must Know About Florida's Commercial Mortgage Foreclosure Process

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6 Things to Include in a Final Money Judgment

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08.09.2013

General Guidelines for Florida Landlords

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01.08.2013

Checklist for Foreclosure or Deed-in-Lieu of Foreclosure Involving Subdivision and Condominium Properties

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06.28.2012

Equitable Subrogation and Mortgage Lien Priority in Florida

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01.03.2012

Nuts and Bolts of the Florida Commercial Mortgage Foreclosure Process

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01.03.2012

Is There Coverage When an Insured Was Aware of a Title Defect?

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12.30.2011

Responding to a Defalcation

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12.30.2011

An Overview of Closing Protection Letters for Title Insurance

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12.30.2011

What to Include in a Money Judgment to Make It Enforceable/Collectable

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12.30.2011

Remedies in a Foreclosure Action

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11.29.2011

Can Congress Create a Right of Action for People Who Have Suffered No Injury?

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06.03.2009

New Case on Class Action Settlement

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06.01.2009

Capitol e-Report - SB 360 Growth Management Bill Signed in Florida

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03.01.2009

Annual Review of Developments in Business and Corporate Litigation, Chapter 24

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01.01.2009

Breach of Real Estate Contract Litigation, Case Law Update and Ethical Considerations

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01.01.1976

Comment, The Budd Co.: The Toehold Defense to a Section 7 Attack

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## Related Capabilities

### Practices

- Banking, Commercial, and Consumer Finance
- Consumer Finance
- Litigation and Trials
- Real Property Litigation
- Construction Litigation
- Construction
- Real Estate
- Distressed Asset and Workout

### Industries

- Banking, Commercial, and Consumer Finance
- Property & Casualty Insurance
- Construction
- Real Estate

- Eminent Domain
- Class Actions