

REAL ESTATE TAXES & TITLE INSURANCE:
Princeton South Investors v. First American

Does a title insurance policy insure against loss resulting from potential future real estate taxes? In *Princeton South Investors v. First Am. Title Ins. Co.*, 437 N.J. Super. 283 (App. Div. 2014), the Appellate Division, affirming the Law Division's entry of judgment in favor of the title insurer, held that it does not. Two questions were presented. First, does a pending but as-yet undecided tax appeal by a municipality create a title defect or encumbrance or render title unmarketable so as to give rise to coverage under the policy? Second, is the insured's claim covered by the wording of the policy?

The insured, Princeton South Investors [PSI] purchased commercial property at a sheriff's sale. Although there were no delinquent taxes outstanding at that time, there were pending tax appeals by the municipality for prior years, based on the contention that the realty had been under-assessed. PSI obtained a title insurance policy from First American Title Insurance Company [FATICo], which insures (*inter alia*) against loss arising from:

- 2. Any defect in or lien or encumbrance on the Title. This covered risk includes but is not limited to insurance against loss from: ... The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid. ...**
- 3. Unmarketable Title.**

The policy's exclusions from coverage include:

Defects, liens, encumbrances, adverse claims or other matters...(d) attaching or created subsequent to Date of Policy.

In addition, Schedule B of the policy states:

The Company will not pay loss or damage...[arising] by reason of: ... 2. Lien of unpaid taxes for the year 2011. Taxes are paid through the 2d quarter of 2011. 2011 3d quarter taxes, a lien, due but not delinquent.

3. Subject to added or omitted assessments pursuant to N.J.S.A. 54:4-63.1 et seq., not yet due and payable.

PSI contended that the existence of the municipal tax appeals, in and of themselves, created a defect in or encumbrance upon its title or rendered its title unmarketable, since the appeals, if successful, would result in a higher assessment. This would in turn cause the imposition of additional taxes, which, if unpaid, would become liens upon the insured property. In response, the panel, in a unanimous opinion by Judge Reisner, found that PSI's argument "proves too much":

"Accepting [PSI's] argument would mean that any time a property was assigned to low a value by the tax assessor, the ...title would be considered defective or unmarketable due to the risk of tax appeal and reassessment. But to intelligently insure against such a risk, the title insurer would have to research the assessed value of every property to be insured, and to analyze its potential for ...re-evaluation." 437 N.J. Super. at 293. The decision went on to quote with approval our Supreme Court's statement that "because insurance premiums and coverage provisions are based on predictable levels of risk, title insurers need to rely on certain consistent conditions in order to calculate premium rates reliably". *Shotmeyer v. N.J. Realty Title Ins. Co.*, 195 N.J. 72, 83 (2008).

The opinion concluded by stating that "summary judgment was properly granted [by the Law Division] because (a) the pending tax appeal did not render the title unmarketable or constitute a defect in or encumbrance on the title, and (b) the ...policy, by its terms, did not cover the potential future lien of taxes that might be assessed after the policy was issued". 437 N.J. Super. at 298.