



MARYLAND TITLE COMPANY CAN BE LIABLE IN NEGLIGENCE FOR TITLE SEARCH ERRORS

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Does a title company owe a tort duty of care to its customer when conducting a title search? And, if such a duty exists and is breached, is a title insurance company vicariously liable for the title company's negligent title search? The Court of Appeals of Maryland considered both questions in [100 Investment Limited Partnership v. Columbia Town Center Title Company](#), decided January 29, 2013.

To determine whether a tort duty exists, Maryland courts consider the type of harm resulting from a failure to exercise due care and the relationship between the parties. Where a failure to exercise due care creates a risk of economic harm only, Maryland requires something more than a contractual duty; rather, there must be an "intimate nexus" between the parties to impose tort liability.

In this case, an intimate nexus was found between the customer, who had contracted with the title company to "do the title work" for two land sales, and the title company retained to do "the title work" because (a) the customer engaged that title company to conduct the title search with reasonable care and skill; (b) the customer relied on the title search report to decide whether the seller had marketable title to the property and to proceed with the purchase of that property; and (c) the title company knew that the customer would rely on the title information.

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The error in the title search was a failure on the part of the title company to discover that a 1.144 acre tract of land, conveyed as part of a 49.845 acre sale, had a little more than four years earlier been conveyed by the same seller to a different purchase. The Court of Appeals emphasized that title companies carried a duty only to employ “reasonable care” in conducting title searches, but not to act as a guarantor of title. This duty would not “extend to those defects that a reasonable title search would not disclose.”

As to the alleged vicarious liability of the title insurance company for the negligent act of its title company agent, exculpatory language in the title insurance policy issued by the title insurance company to the land purchaser clearly precluded negligence claims. Consequently, the title insurance company was not responsible for the negligence of the title company.

If you would like to discuss how this decision may affect your business or discuss this case further, please contact Shumaker Williams, P.C. by visiting our [website](#) or by calling [Harry Levy](#), Esquire, at 410-825-5223.

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