

Real Estate Practice Coverage FAQs

Who has to apply for this real estate practice coverage?

Any lawyer who intends to practise real estate law in Ontario in 2009 must be eligible for, apply for, and be granted this additional coverage before being able to practise real estate law.

"Real estate law" is a broadly defined term and is not limited to specific types of transactions, such as transfers or charges. Rather, the term is defined as follows:

Real estate law means the practice of the law of Canada, its provinces and territories, that concerns:

- i) the registration of any instrument under the *Land Titles Act*; and/or
- ii) the actual or contemplated transfer, charging, insuring, or otherwise affecting, an estate, right or interest in land;

and may include, without limitation, any one or more of the following services by a solicitor: the receipt of instructions, preparation of documents, searches and/or the providing of one or more opinions or certificates with respect to the title, transfer or charge, and/or with respect to the issuance of any title insurance policy.

Is everyone eligible for this coverage?

Only lawyers who are eligible to practise real estate law in Ontario as permitted by the Law Society of Upper Canada are allowed to maintain the Real Estate Practice Coverage Option (subject to Part IV N. Cancellation and Exemption provisions of the policy).

Categories of lawyers that are not eligible for this coverage include, but may not be limited to:

- those who are in bankruptcy;
- those who have been convicted or disciplined in connection with real estate fraud;
- those under investigation, where the Law Society obtains an interlocutory suspension order or a restriction on the lawyer's practice prohibiting the lawyer from practising real estate or an undertaking not to practise real estate.

You are not permitted to practise real estate law in Ontario for any period during which you do not meet the eligibility criteria according to Law Society records even though the Real Estate Practice Coverage Option may continue in force for a period of time.

Given that title insurance provides coverage for fraud, and that most transactions are now title-insured, why do we need this new Real Estate Practice Coverage?

Fraud may take many forms, and may take place regardless of the type of transaction or whether any or all of the parties acquiring an interest in the land happen to be title insured.

With the requirement that all eligible lawyers who intend to practice real estate law in Ontario purchase this coverage, the public and Land Titles Assurance Fund are assured of protection against the effecting of registration of fraudulent instruments under the *Land Titles Act* where there is no title insurance to respond.

Consider, for example:

- the involvement of lawyers on either side of a transaction, in instances involving opinions on title;
- lawyers acting for the vendor or transferor on title insured transactions; and
- transactions that are entirely fraudulent in nature, with no opinion or title insurance having been provided.

The Real Estate Practice Coverage responds where the registration causes damages that arise out of any dishonest, fraudulent, criminal or malicious act or omission of the lawyer.

The coverage is specific in its nature, in that:

- It does not apply to other types of circumstances involving fraud;
- It applies regardless of whether there was a retainer between the wronged party and the lawyer;
- It assures a greater aggregate sub-limit protection than what is purchased by most lawyers for innocent party protection; and
- It affords protection even in the instance of sole practitioners, who may not carry any amount of innocent party protection.

If only one lawyer in our firm assumes responsibility for registering all transfers handled by our firm, do I and the others also have to have this real estate practice coverage in place?

Yes – all lawyers who practise real estate law must apply for this coverage.

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Self-Assessment Tool

for Real Estate Practice Coverage Option

Not sure if you need to apply for the new Real Estate Practice Coverage Option? Take our self-assessment test to determine your obligations.

As soon as you answer “yes” to any of the questions where there is a “✓” in the “Yes” column, you will have to apply for the Real Estate Practice Coverage Option.

For more information see www.lawpro.ca/insurance/Practice_Type/REPO_coverage.asp

Do you...	Yes – you need to buy the endorsement	No – this alone does not require the endorsement	Comments
Register or deposit any instrument(s) under the Land Titles Act or Registry Act?	✓		
Act on transfers (whether purchases, sales or transfers to or from trusts), charges or discharges of charges?	✓		
Arrange title insurance or give opinions/certificates on real estate interests?	✓		
Prepare documents for or undertake searches for real estate transactions?	✓		
Prepare or opine on leases or related documents for residential or commercial tenancies or other leasehold interests?	✓		
Prepare or opine on documents for the development or re-development of land?	✓		
Undertake advocacy before a court or tribunal where a real property interest may be affected by the outcome, or relevant in the course of the litigation, but make no registrations or deposits on title to real estate yourself?		✗	This could include mortgage enforcement, construction lien, zoning or related municipal administrative proceedings, bankruptcy & insolvency, residential rental terminations, residential rent control, human rights, matrimonial or aboriginal/First Nations, environmental, property & casualty insurance litigation. In these cases, the court or tribunal is ultimately “affecting” the “estate, right or interest in land”, not yourself.
Prepare wills?		✗	The “estate, right or interest in land” will not be affected simply by your drafting of the will; steps will be taken at a later date by the Estate Trustee or a beneficiary that will affect title.
Administer estates, but make no registrations or deposits on title yourself?		✗	The “estate, right or interest in land” will not be affected simply by your acting for the Estate, provided that you are not dealing with the real estate assets.
Give opinions on environmental, municipal or tax law compliance?		✗	You are not opining on or affecting the ownership of, or priorities in, the underlying real estate interest, but instead commenting on the application of legal principles to a given state of affairs.
Register security interests under the PPSA or equivalent personal property regime, but make no registrations or deposits on title to real estate?		✗	
Act on purchase or charging of shares of a company, where the company owns real estate, but make no registrations or deposits on title to real estate yourself?		✗	

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If I practise real estate on a part-time basis, can I get the 40 per cent premium discount for part-time practitioners?

No. This coverage provides specific protection against real estate fraud. Statistics indicate that the risk of fraud in real estate practice is not proportional to the volume of work processed. In other words, a lawyer who practises on a part-time basis – or a lawyer who does only very little real estate work as part of his or her overall practice – is not less likely to generate a claim with a fraud component than a lawyer who specializes in real estate on a full-time basis.

A better indicator of the risk of real estate fraud is the absence of systems and controls in place in the real estate practice. Therefore, all lawyers conducting any real estate law in Ontario must purchase this real estate practice coverage.

What if I decide to change practice at some point during the year and stop practising any real estate law?

The premium will be pro-rated and adjusted to reflect the amount of time you engaged in real estate practice, subject to:

- a 60-day minimum premium for this option; and
- only one premium adjustment per lawyer for this option for the year (beyond this, the full \$500 annual premium would apply).

If you cease to practise real estate law part way through the year and prefer not to continue to carry this coverage, you should provide LAWPRO with a completed Application for Mid-Term Changes Form within 30 days for any available reduction in premium to be applied, subject to the criteria above and Return of premium provision described on page 13 of the insurance Program Guide available in the Insurance Forms section of the LAWPRO website (www.lawpro.ca). This form is available from our Customer Service department at service@lawpro.ca, tel. 416-598-5899 or 1-800-410-1013.

If you commence practising real estate law part way through the year, you will qualify for a pro rata premium adjustment to reflect the amount of time not practising real estate law, subject to the criteria listed above.

For additional information on the Real Estate Practice Coverage, please see www.lawpro.ca/repro.



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