

LawPRO Webzine



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Title insurance and recreational properties: What you need to know

Recreational properties present a unique set of challenges. Here are some issues to keep in mind when obtaining title insurance policies for your clients' purchases of recreational properties, to help ensure your clients' interests are protected.

Legal description: If the property was created years ago, the thumbnail description on the PIN may be brief, for instance, "as in instrument 123456," but the actual description in that instrument can be long and complex. It may have multiple elements: "Firstly," "Secondly" and more. Older descriptions may not refer to closed shoreline road allowances, or take account of parts that have been added to, or severed from, the original property. Make sure the policy includes the description and PINs for all the land described in the transfer, including easements benefiting the property for access and other purposes. Easements to which the property is subject should be shown in the policy as exceptions to coverage.

Waterfront issues: The value of many recreational properties depends on proximity to a body of water. Was there an original shoreline road allowance, and if so, has it been closed up and conveyed? If not, your clients will not have exclusive access to the water's edge. Many bodies of water are navigable, and the bed of navigable waters belongs to the province. As a result, boathouses, docks and other structures may be located on public land. Make your clients aware of this so that there are no surprises later. Title insurance with survey coverage and legal services coverage will provide protection for all aspects of your advice concerning the real estate transaction.

Seasonal zoning and access: Road allowances or streets and roads on plans may never have been opened, or may provide access only during some months of the year. If your clients expect to use the property year-round, ensure that the zoning and access provisions of the policy meet their requirements, and ask the title insurer for an "insure over" if necessary.

Future use: Standard title insurance policies do not insure changes in use after closing. If your clients plan to change the property's current use, for example, to convert part of it to a home office or separate dwelling, consider obtaining custom coverage for their intended future use. The same applies if your clients want to build an addition or install amenities, such as a hot tub, deck or pool.

"Insure over" requests: If you discover problems or issues relating to title, survey, zoning or other matters, contact the title insurer as soon as possible to determine the coverage they will provide. If an "insure over" request is granted, ensure that it is confirmed in writing. Some matters will be covered for the mortgage lender, but not for the purchaser. For survey-related issues such as encroachments, "forced removal" coverage may be given, but not coverage for marketability of the property. Make your clients aware of any limitations on coverage.

Have coverage "bound" before closing: The procedures to issue title insurance policies are different for each title insurer. They may issue a policy immediately, to take effect on closing, or agree before closing to issue a policy afterwards, based on an application submitted before closing (this may be called "pre-approval"). Sometimes, lawyers who are instructed to obtain title insurance take the initial step of contacting the insurer, but do not follow up to ensure that coverage is bound before closing. In this situation, if signs of a problem emerge after closing, the insurer may decline to insure it, and the lawyer may be responsible to the client for the failure to obtain coverage.

In conclusion, for all types of real property, know your clients' expectations and review a draft policy with them before closing to ensure that it meets their needs. If coverage is not available for an issue or problem, explain this to your clients before closing. As with all real property matters, forewarned is forearmed.

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