

The TitlePLUS conundrum: Can you help?

“Everything we do supports lawyers” – that’s the tag line on a brochure that the TitlePLUS program released several years ago. While owned and underwritten by LAWPRO, the TitlePLUS initiative was designed by members of the Ontario real estate bar and intended to have a symbiotic relationship with the bar. By providing an excellent scope of coverage, including full legal service coverage for all the lawyer’s services for the purchaser and lender in connection with the real estate transaction (see the sidebar on page 37 for more details on TitlePLUS legal service coverage), TitlePLUS insurance was intended to help the real estate bar best protect their clients while practising to a standard of professionalism and excellence in conveyancing that could make any lawyer feel proud.

LAWPRO’s admission as the only Canadian member in the North American Bar-Related* Title Insurers (“NABRTI”) is recognition of the depth of our commitment to lawyer-centric conveyancing. To gain entry to NABRTI, we demonstrated compliance with 10 operating principles, such as:

- a commitment to working with the real estate bar in the public interest over the long term;
- delivering the title insurance product only through lawyers;
- proven financial strength and viability; and
- evidence of educational initiatives aimed at informing both the public and lawyers about the role of the lawyer and title insurance in the real estate transaction.

Living up to our NABRTI commitments, the TitlePLUS program sponsors many CPD events each year, and produces both the *TitlePLUS Today* for lawyers and the

TitlePLUS Tips for law clerks (visit titleplus.ca for current and past issues). We are also very active on social media with our @TitlePLUS Twitter account and our TitlePLUS Home Buying Guide page on Facebook. Several of our staff members are also active on LinkedIn, Twitter and Facebook.

The TitlePLUS program promotes lawyers in our marketing materials and our interactions with lender, real estate agent and consumer audiences. We talk to lenders about the benefits of keeping business local and why it makes sense to deal with local lawyers. We meet with MPPs regularly to emphasize the importance of having lawyers all throughout Ontario, and how real estate practice is often the workhorse that keeps the doors of a law firm open. MPPs well understand that their local communities will be much diminished if lawyers no longer provide the myriad of services (both professional and volunteer) that keep the business and institutional framework of Ontario functioning.

But we can’t tell (or even ask) you to order TitlePLUS insurance for your client because LAWPRO’s efforts are in your best interest! Integrity and professionalism are paramount in our world – just think of our LAWPRO Vision, Mission and Values statement. The *Rules of Professional Conduct* are quite clear in our view that you must consider what is best for your client and put that first. We don’t want to tempt you to breach that principle, or take any risk of opening you to accusations from others. That is why for example, the TitlePLUS program has never provided any sort of premium splitting with its subscriber lawyers, despite requests received. We charge what we charge and you charge what you charge: It really is that simple for the client. We also treat the active subscriber who orders one policy per year the same as the subscriber who orders 20 per month.

So, all LAWPRO can do is appeal to your fiduciary duty to consider what is best to protect your client. Use our updated Home Buyer/Client Worksheet to help you explain the benefits of TitlePLUS title insurance to your client. Consider Bob Aaron’s comments on the benefits of legal service coverage in the May 24, 2013 Toronto Star article “Some Title Insurance is Better Than Others.” See how streamlined we can make your work (and the savings we can deliver for your clients) through our new home projects and/or our New Home Direct premium pricing.

Is the TitlePLUS program experiencing a history like some vaccination programs? People want diseases to be eradicated, but

may not feel the need to vaccinate their own children if they think everyone else is doing so. Similarly, few real estate lawyers will say they are opposed to the TitlePLUS program and its goals, and indeed most are happy to see its continued existence. The rubber hits the road, however, when a law clerk would prefer another title insurance program with less legal rigour and due diligence or the lawyer may have to contemplate giving up other benefits that accrue to their practices from the use of some other title insurance.

After all, providing legal service coverage means that the TitlePLUS program has always had to address a broader spectrum of risks than traditional American-style title insurance underwriting, and in the insurance world, more coverage usually means a higher premium. So, we surmise that some lawyers are probably happy to see the TitlePLUS program exist, and continue to pursue its mission, without having direct involvement on a regular basis. Dare I suggest it is akin to a “free ride” syndrome?

Could you find one client per month (or more) that could benefit from a TitlePLUS policy? Think about what is best for the client. If so, you know what to do: call us at 1-800-410-1013, become a TitlePLUS subscriber or ask for a refresher meeting with your TitlePLUS Consultant, and start getting your clients great coverage from the only bar-related title insurer in Canada. ■

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TitlePLUS® Legal Service Coverage: Why it's important for clients and their lawyers

Unlike other title insurance policies widely available in the market today, TitlePLUS policies automatically cover all the standard aspects of a real estate deal plus the legal services¹ provided by the lawyer in the transaction. The Legal Service Coverage is included in TitlePLUS policies at no extra charge.

Our coverage explicitly covers losses resulting from the lawyer's negligence regardless of whether or not the loss otherwise falls under one of the covered title and compliance risks. This means that there are no circumstances in which a purchaser or lender protected by a TitlePLUS policy should be forced to sue their lawyer to obtain compensation for a loss suffered in relation to the transaction where the lawyer was negligent at law. Most other title insurance providers do not cover *all* services provided by the lawyer – they only indirectly cover such lawyer's negligence if the result is a loss which is otherwise a covered risk.

For example, there could be a financial mistake in the detailed adjustments of property costs made between a purchaser and vendor on closing. Such mistakes don't make the purchaser's ownership invalid, but can cost the purchaser money.

Moreover, LAWPRO's claims statistics demonstrate that more than 40 per cent of real estate claims arise out of communications-related issues – such as the lawyer not acting on a client's instructions, or not ensuring the client fully understands all aspects of the transaction or the implications of certain decisions. This is where the legal services coverage of the TitlePLUS policy can save the day.

Legal Service Coverage versus Errors & Omissions Coverage

Other title insurance companies sometimes argue that legal service coverage is unnecessary because clients are protected by their lawyer's E&O insurance. This is not quite accurate. Although all lawyers in private practice in Canada are required to carry E&O insurance, this coverage protects the *lawyer* from liability for their clients' losses suffered as a result of the lawyer's negligent error or omission. It does not directly protect the client and the client does not have the right, as an insured, to make a claim directly against the lawyer's E&O policy.

If the client has a TitlePLUS policy, he or she would simply submit a claim directly to LAWPRO under his or her TitlePLUS policy. The lawyer's E&O policy need not be engaged, and in Ontario there would be no impact on the lawyer's deductible or premium in respect of the claim.²

* BAR-RELATED Mark is a registered Mark of North American Bar Related Title Insurers used by LAWPRO under license.

¹ Excluding OwnerEXPRESS® and Québec policies.

² Outside Ontario, please review the requirements of your individual E&O insurer.