

Lenders' lawyers: beware of fake title insurance policies

While relatively rare, LAWPRO has seen instances of fake title insurance policies. Kathleen Waters, LAWPRO's President & CEO, touched on the subject at the Law Society's recent Real Estate Summit.

An example of a situation in which a policy has been discovered to be fake is where the lender insured has asked that the borrower's lawyer procure the policy on its behalf. Later, when a claim arises, the lender contacts the insurer only to discover that the policy is counterfeit.

Why would a borrower's lawyer send a lender a fake policy? There are a few reasons:

- The lawyer ran out of time to arrange the policy and so created a fake stand-in, with the intention of arranging one after closing;
- The lawyer decides not to submit the deal to title insurance companies out of fear that it will be rejected on grounds that will put the whole deal at risk (for example, where the lawyer is covering for a purchaser who has been involved in fraud); or
- The lawyer has been cut off from ordering policies by the title insurer of the lender's choosing, or by all available title insurers, and doesn't want to reveal this.

Regardless of the reason, a fake policy means that the lender will be without title insurance coverage. To avoid this risk, lawyers representing lenders should order title insurance personally, and be in control of the choice of the title insurer, the form of the policy and the type of exceptions and endorsements.