

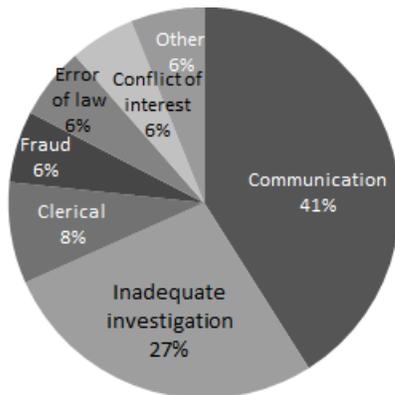
Quick stats

- #1 claims area by cost
- #2 claims area by count
- Average **618 claims** per year
- Average cost **\$21.4 million** per year
- Average cost per claim: \$34,500
- Average of 3.5 years before claim reported
- Longest claim reporting time: 42 years

As the price of real estate in Ontario has steadily risen, so has the dollar value of real estate claims, making it the costliest area of law for LAWPRO.

Breakdown in lawyer/client communication is the most common cause of real estate claims. Busy, high-volume practices often lead to situations where the lawyer is not taking the time to communicate with clients properly. Lawyers often rely on clerks, so the lawyer becomes removed from the process. If a claim arises, there is frequently inadequate documentation in the lawyer's file to back up the lawyer's version of what occurred. Spending more time meeting with clients and documenting discussions can be of great help in both preventing and defending a claim.

Common errors



There has been a sharp increase in 'inadequate investigation' claims in recent years. As with communication claims, these result from busy lawyers not spending enough time on a file. Important information from the client is overlooked, or crucial details missed on surveys, condo status certificates or the agreement of purchase and sale. Despite the time pressures of a real estate practice, take the time to do it right and avoid short-cuts.

See reverse page for specific examples of real estate errors and steps to reduce exposure to a malpractice claim.

Speakers and resource materials

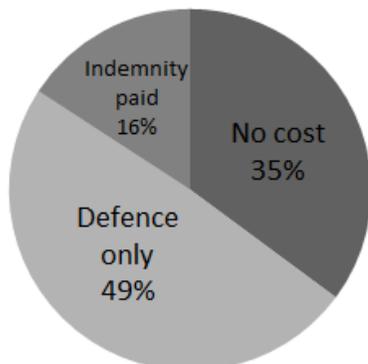
We can provide knowledgeable speakers who can address claims prevention topics. Email practicepro@lawpro.ca

Visit practicepro.ca for resources including LAWPRO Magazine articles, checklists, precedents, practice aids and more.

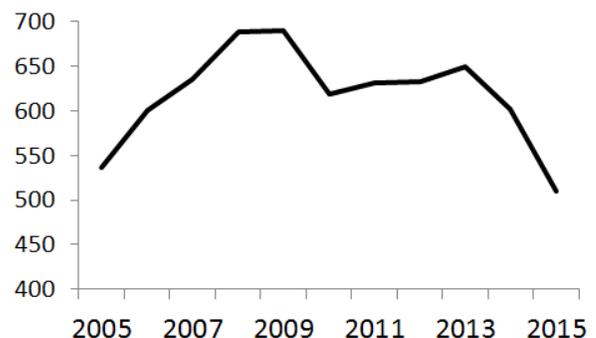
Hot topics in real estate law claims

- Take the time on each file to ensure you've met the client and obtained all the relevant information. Don't over rely on clerks to deal with clients
- Ensure the title insurance policy addresses all the client's needs for the property
- Be aware of the red flags of real estate fraud (see our Fraud Fact Sheet at practicepro.ca/fraudfactsheet)

Resolution of real estate claims



Count of real estate claims



Risk management tips

Meet clients in person at least once.

Take the time to meet with the client in person to review the transaction and understand client instructions, particularly with respect to the client's intended uses of the property. Not every matter is straightforward, and you don't want to have to be addressing a problem that was only noticed the day of closing, or never noticed at all.

Remember, the lender is also your client in most residential transactions.

The lender is also your client and is owed a duty of care. Provide any information to the lender that is material to the lender's decision to advance funds under the mortgage. Lending clients can sue lawyers for failing to disclose all relevant information they knew or ought to have known.

Document your conversations with and instructions from the client.

This is the best defence against a malpractice claim. Clients may only be involved in one or two real estate transactions in their lifetime and will remember the details, while the lawyer who sees countless transactions will likely have little specific recollection of one matter. Keep notes of your conversations with the client and document discussions and your actions in a detailed reporting letter to the client.

Do not give your electronic registration password to your clerks or anyone else.

Only the lawyer who received the electronic registration credentials provided by the Ministry of Government Services is entitled to use the Teraview[®] key and password to register an instrument. As tempting as it may be in a busy real estate practice to let the clerk register instruments requiring a lawyer's electronic signature...don't.

Review the title insurance policy with your client.

You should have a solid understanding of the title insurance policy and be able to explain standard coverages, exclusions and property-specific exceptions. It is also important to have a detailed understanding of the client's planned use of the property to ensure the coverage obtained applies to those uses.

Most common malpractice errors

Lawyer/client communication errors (41%)

- Failing to inform a client about restrictions on land use contained in a subdivision agreement
- Failing to review the survey and to discuss the risks or problems it reveals with the client
- Not inquiring about or following through on the client's intentions for future use of the property. For example, not doing the necessary zoning searches or getting title insurance with a future use endorsement. The client may intend to build a swimming pool, but sewers or utility easements may make this impossible. Zoning may not permit a home-based business or multiple dwelling units
- Failing to ensure that the condominium unit shown on the plan meets the client's expectations (e.g., whether it overlooks a lake or a parking lot)

Inadequate investigation of fact or inadequate discovery (27%)

- Misreading (or not reading) a survey, search, or reference plan
- Failing to review a condo status certificate and bring deficiencies to the client's attention
- On a condominium purchase, failing to ensure that the parking space and locker specified in the agreement of purchase and sale are actually for sale and that the legal description of both units is correct

Clerical and delegation (8%)

- Not meeting with the client. Delegating the entire file/transaction to a law clerk
- Failing to review the statement of adjustments for clerical errors

Errors of law (6%)

- Failing to fully understand or properly apply the part-lot control provisions of the *Planning Act*
- Not being sufficiently aware that different types of searches are required depending on the type of property being purchased (e.g., single unit vs. multi-unit, commercial vs. residential)