







an owner that their lender may be covered for such things as Fire Department compliance, Electrical Safety Authority and Technical Standards and Safety Authority, but the owner is not covered for these. Business interruption losses are also not covered under a title insurance policy.

One more thing to remember, there needs to be a loss suffered for the policy to “kick in,” for example, if taxes were not up to date, but the lender does not suffer a loss as a result – there is no claim.

## Endorsements

The true benefits of the commercial title insurance policy are found, not in the jacket, but in the endorsements.

Some lenders have a set of standard endorsements that attach to every policy, which is helpful. Some endorsements that are commonly found in a title insurance policy include: Access Endorsement, Future Insurance Endorsement, Contiguity Endorsement, Leasehold Endorsement, Government Response Endorsement, Survey Endorsement and Super Priority Liens.

## What searches do you need?

No matter what – title insurance is not a substitute for work or searches – it is a tool that can assist a lawyer in getting a deal done. Many insurers will accept a statutory declaration from the borrower that taxes,

utilities, and other items are current. Where commercially reasonable – there is no substitute for the search results. Companies offering commercial title insurance for the Canadian market include FCT; Stewart Title Guaranty Company; TitlePLUS title insurance and Chicago Title.

## Something unique – TitlePLUS title insurance

While most commercial insurers provide policies with unlimited policy amounts and must be tailored to fit the situation, TitlePLUS insurance offers commercial title insurance policies up to a maximum limit of \$2,500,000. What makes this policy unique is that it is a full all-inclusive policy that also covers legal services. As previously described the typical commercial title insurance policy is a stripped down policy with a number of endorsements added to it and it is the lawyer’s role to determine what endorsements are required. The TitlePLUS policy requires a comprehensive list of due diligence searches. The process requires the lawyer to send in an order request describing the parameters of the transaction; TitlePLUS staff will review the structure and report back to the lawyer as to what searches will be required to obtain coverage. The legal services coverage can be a very desirable element in the policy and TitlePLUS insurance is the only insurance that generally offers this type of coverage. In keeping with the TitlePLUS program’s efforts to highlight the role the lawyer plays in a transaction, ordering this policy provides

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the opportunity to identify and resolve issues prior to closing a transaction, which really is part of our role after all.

## How does commercial title insurance help the lawyer?

In days of short turnaround times, sophisticated parties and cost conscious clients, a title insurance policy can assist the lawyer in closing a deal. It is a tool that helps us do our jobs – it does not do our job for us.

## Pitfalls and notes

- Most commonly missed are building and zoning issues (a search is done but there is no follow up).
- Most common types of claims are tax arrears, but in particular insurers are seeing more instances of super priority lien claims.
- What type of property is it? The insurer needs to know what type to provide correct coverage – commercial/ industrial/retail/commercial condominium/multi-unit.
- Not realizing what “construction” means. If the property is “under construction” coverage can be afforded for lien claims.
- Make sure to insure for the correct amount.
- Insurance companies waive right of subrogation against lawyers (except for the lawyer’s gross negligence or wilful misconduct).
- Speak with the insurer when ordering the policy; they can assist in identifying issues to provide correct coverage.
- Read the issued policy to see if you need anything added.
- Be sure to be clear with your client – put in writing what the policy covers, what searches you are doing or not doing and what your role is in the transaction. ■

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