

“I will be out of the office...forever” and I don’t want to deal with claims

Are you thinking of changing careers or law firms, selling the practice, or retiring? As other articles in this issue have highlighted, even after you retire, malpractice claims can engage your LAWPRO E&O run-off coverage. Real estate lawyers should consider TitlePLUS title insurance since claims covered under the Legal Service Coverage¹ in a TitlePLUS policy will not affect your run-off insurance.



In other words, TitlePLUS Legal Service Coverage significantly broadens the protection that your clients receive – and it protects you in these situations too.

Coverage that sets you apart

TitlePLUS policies automatically cover all the standard aspects of a real estate deal plus the legal services provided by the lawyer in the purchase or mortgage transaction whether or not the loss otherwise falls under one of the covered title and compliance risks.² This goes well beyond the coverage provided under other title insurance policies generally available in the market today. In TitlePLUS policies, this coverage is automatically included at no extra charge.

What this means for you

If a purchaser or lender protected under a TitlePLUS policy suffers a loss in relation to the transaction where the lawyer missed something while closing the deal, they would simply submit a TitlePLUS claim directly to LAWPRO, eliminating the need to commence proceedings against their lawyer to obtain compensation. This means, the lawyer’s primary E&O policy will not be engaged and will not trigger a deductible or claims history levy surcharge in respect of the claim.

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.

Although some title insurers offer additional coverage for aspects of the lawyer’s services in the transaction (which can be purchased on an individual application basis at an additional charge), lawyers should review the terms of these coverages very carefully. Some of them contain limitations or exceptions, such as a requirement to give notice of a claim within one year of closing, or exclusions for transactions associated with mortgage enforcement proceedings or private lenders.

TitlePLUS Legal Service Coverage is part of the policy and remains in force as long as the policy does. It provides protection for you and your client for as long as the property is owned by the client or his/her heirs. It protects the mortgage lender for as long as the insured mortgage constitutes a charge on the property, even if the mortgage is renewed, extended or amended. The TitlePLUS policy also continues to cover insured mortgages after they have been assigned.

Claims data

LAWPRO’s E&O program shows that real estate claims are high in cost and numbers. Some claims have involved title insurance policies that do not contain the type of legal service coverage offered under the TitlePLUS policy and, therefore, the title insurers of those policies rightfully denied coverage.

Issues that may fall under TitlePLUS Legal Service Coverage, but are not generally covered under other title insurance policies include:

- errors in drafting and/or reviewing the agreement of purchase and sale;

- failing to disclose information to the lender client that is material to the decision to advance funds under the mortgage;
- an error made in the application for title insurance, such as applying for the wrong type of title insurance policy (which may result in insufficient coverage for the client);
- failing to ensure that a purchaser’s intended future use of the property is protected (where the lawyer was retained to confirm the legality of a proposed future use);
- obtaining title insurance for a single family dwelling when the property features multiple units;
- incorrectly advising (or failing to advise) about taxes applicable to the transaction or tax consequences; and
- inadequately drafting undertakings, warranties or other documents in connection with the transaction.

Move on to your next adventure with peace of mind

By ensuring your clients have a TitlePLUS policy, you can move on to your next adventure with peace of mind that both you and your clients are well protected. TitlePLUS Legal Service Coverage is automatically included free of charge and runs for as long as the policy is valid. ■

©2017 Lawyers’ Professional Indemnity Company.

This article originally appeared in LAWPRO Magazine (Vol. 16 no. 2).

It is available at www.lawpro.ca/lawpromag

The practicePRO and TitlePLUS programs are provided by LAWPRO

¹ Excluding OwnerEXPRESS® policies and Québec policies.

² See policy for full details, including actual terms and conditions.