

LAWPRO raises concerns about current lender programs

LAWPRO has thrown its support behind a joint OBA-CDLPA-ORELA working group created to help make lawyers more aware of and vocal about new lender outsourcing initiatives being piloted in various regions across Ontario.

Over the coming months, the OBA-CDLPA-ORELA working group will mount an education-and-action campaign designed to ensure that lawyers understand the costs and consequences of mortgage processing programs introduced by third parties such as First Canadian Title and CLN Highlander, who are working in conjunction with a variety of lending institutions. Carleton County Law Association (CCLA) has voiced its concerns in a strongly-worded letter to TD Canada Trust executives, and has mobilized lawyers in the Ottawa Valley to make known their views on a TD-First Canadian Title initiative in the area. In a recent issue of *Lawyers' Weekly*, Deborah Rogers, chair-elect of the OBA Real Property Section, provided an overview of the lender outsourcing initiatives and concerns these programs raise among the bar.

For its part, LAWPRO will work with the OBA, CDLPA, ORELA and other lawyer representatives to reinforce, with financial institutions and consumers, the vital role that lawyers play in real estate conveyancing.

"As the profession's malpractice insurer, we can talk with some authority about the respective benefits that lawyers and title insurance provide in a real estate transaction," points out LAWPRO President & CEO Michelle Strom. "In our view, the outsourcing models now being tested, which interpose an intermediary between the lawyer and the lender, create obstacles to consumer protection and good client relations – and add risk for both the lawyer and the consumer in the transaction. Any efficiencies that may be created for the financial institution come at the cost of decreased protection for the consumer – and decreased choice.

"As well, we want to ensure that lenders see lawyers as vital conduits, not only in conveyancing but in business building in communities across the province," adds

Strom. "Lenders have much less presence in non-urban Ontario than in the past; but lawyers are well represented in every corner of this province; instead of looking to limit the involvement of lawyers, lenders should be looking on them as potential distribution network."

One of the programs being criticized by lawyers in the Ottawa Valley sees First Canadian undertake mortgage documentation and do all post-closing reporting for TD Canada Trust; consumers who want a TD mortgage for their purchase are required to purchase a lender-only title insurance policy from First Canadian for \$159; to secure their own interests, consumers would have to pay an additional \$109 – for a total of \$268 – significantly more than if they had insured the purchase through TitlePLUS (which automatically insures both the lender and purchaser on a home purchase for \$185 – including all applicable fees), or if they had closed through other means.

As well as economic concerns, the program raises potential conflict issues: Because of the intermediary role that First Canadian plays (lawyers receive instructions from First Canadian, not TD Canada Trust, do all searches and due diligence, register the mortgage and then report to First Canadian which in turn reports to TD Canada Trust), there is some doubt as to who the lawyer's client(s) actually are. Moreover, the interests of the purchaser and lender client (if the lender is a client) are not clearly aligned, raising additional potential Rules of Professional Conduct issues. Lawyers also take issue with the lack of disclosure by First Canadian and TD to purchasers – thus putting lawyers in the position of having to explain the scheme and charges to consumers who have already negotiated TD Canada Trust mortgages.

A similar, but more costly venture for consumer purchasers, has been rolled out by CLN Highlander in conjunction with a number of lending institutions, including ING Bank nationally, and with RBC in the London/Niagara/St. Catharines areas.

In these scenarios, lawyers are being told to bill clients a “technology and processing fee” of about \$200, imposed on the transaction in addition to costs for the lawyers’ fees and any title insurance policy purchased. Lawyers continue to do much of the same work as they normally do in these transactions, with the added complexity of having to report to CLN which processes the electronic mortgage, does the post-closing reporting to the lenders and may have deposited mortgage funds. The practice of having a non-financial institution responsible for depositing mortgage funds to a lawyer’s trust account raises concerns about the liability for lawyers should funds not clear – among others.

The OBA-CDLPA-ORELA working group is encouraging lawyers to educate themselves about what is happening with title insurers,

lenders and third party suppliers of services in their communities, in an effort to thwart any future initiatives of the kind now being tested. As well, it is encouraging lawyers to be proactive in their communities, raise their profiles and build stronger lender relationships as part of an overall campaign to ensure that lawyers continue to play a key role in real estate conveyancing in Ontario.

As Deborah Rogers says in her column in the July 18, 2003, issue of Lawyers’ Weekly: “TitlePLUS is the only lawyers’ title insurance company that has a mandate of ensuring that the lawyer continues to have a role in the real estate transaction – and the stronger we help make it, the more secure is our future as real estate professionals.”

LAW SOCIETY PRACTICE NOTICE CAUTIONS LAWYERS ON *RULES* ISSUES RAISED BY LENDER OUTSOURCING

The Law Society recently issued a Practice Notice that outlines how many of the requirements imposed on lawyers by programs in which lenders outsource services to third party providers are inconsistent with lawyers’ obligations under the Society’s Rules of Professional Conduct. Specifically, the Notice describes conflict of interest, professional independence, unauthorized practice, referral fee and risk management issues raised by these programs.

For more information, see “Real Estate Transactions’ Use of Third Party Service Providers by Lenders to Process Residential Mortgages” on the Law Society Web site at www.lsuc.on.ca or contact Practice Advisory at 1-800-668-7380 ext. 3369 or 416-947-3369 or by e-mail: advisory@lsuc.on.ca

TitlePLUS takes lead in online services

If your excuse for not using TitlePLUS is that it’s too difficult to use – it’s time to give TitlePLUS a second look. Because securing a TitlePLUS policy for your transaction is now an easy “point-and-click” exercise that you can complete in minutes via the Web.

Applying for TitlePLUS coverage online is easy, fast and completely intuitive. Highlight a common title-related defect and the appropriate wording pops up in the required boxes. Online definitions, descriptions, hints and help guides make the application process virtually foolproof. Because of the back-end intelligence built into the system, the application is dynamic: That means questions change to reflect the information you enter; and action checklists that are created as you enter data reflect your specific transaction and remind you specifically of the items you need to review before closing. Information from online searches is easily imported into the TitlePLUS application from Teraview®, further reducing the amount of data entry required by you and your staff. Best of all, all of the documents related to your TitlePLUS application are created automatically and pre-populated with the transaction-specific data – further streamlining your workflow.

The next step for TitlePLUS is to provide the title insurance piece of the puzzle for a Web-based real estate practice management and document production system being rolled out by LawyerDoneDeal Corp. later this year. The system will co-ordinate various aspects of a real estate transaction.

TitlePLUS, through its strategic alliance with LawyerDoneDeal Corp., now also has the technological capability to deliver virtually all of the services that lenders are now outsourcing to third party suppliers, points out TitlePLUS Vice President Kathleen Waters. “In fact, we believe we’re ahead of the pack in terms of what we can offer to lenders: We got the capability to provide lenders with a one-stop shopping opportunity where they can post mortgage documentation, which lawyers can access electronically, and from which we can do all post-closing reporting. This is a core message that we will be working hard to communicate to the lending community in the coming weeks and months.”

TitlePLUS is available at titleplus.lawyerdonedeal.com.