

TitlePLUS claims...

the stories behind the statistics



Just as title insurance has gone from a novelty to becoming the practice norm, the number of claims reported by title insurance policy holders has increased. Insurers are reporting increases of 45 per cent or more claims reported in 2002 over 2001, and 20 to 30 per cent increases in the cost of resolving those claims.

TitlePLUS, has fared better than many of its competitors. While TitlePLUS sales volumes grew by 40 per cent in 2002, total claims payouts were up about five per cent.

Stringent yet competitive underwriting has played a key role in keeping TitlePLUS claims statistics at these relatively low levels: Less than one per cent of all TitlePLUS policies issued to date have resulted in a claim. Moreover, most of these claims have a value of less than \$1,000 (expenses and indemnity combined). Many TitlePLUS claims are resolved at relatively low expense and quickly (many in less than one month, although two to three months is the average), using the in-house

expertise of a TitlePLUS/LawPRO claims team and occasionally the resources of an external expert.

That's not to say that TitlePLUS does not see more complex and costly claims; but they are few and far between. For example, we have very few fraud and forgery claims, which other insurers have reported as a significant issue. The majority of TitlePLUS claims centre around building permit issues and realty tax arrears. The following are summaries of some of the claims that our TitlePLUS/LawPRO claims team has resolved recently – to the satisfaction of both the policy holder and lawyer involved.

Survey coverage

In place of an up-to-date survey, Mr. and Mrs. A obtained TitlePLUS coverage two years ago for their purchase of an isolated rural property measuring 200 by 600 feet, on which was built their dream home. This spring, a neighbour planning to build on an adjacent parcel of land obtained a survey, and then informed Mr. and Mrs. A that part of the As' driveway was actually located on the neighbour's property.

As part of its investigation of this claim, TitlePLUS explored the possibility that Mr. and Mrs. A could claim adverse possession of the land underneath their driveway. Subsequent investigation indicated that we would likely not be successful with this approach. Instead, TitlePLUS has paid to build a new driveway to the As' home, and restore the land on which the driveway had been built. Total cost was just under \$10,000.

Compliance risks

The increased attention that municipalities (primarily outside Toronto) are paying to outstanding notices of violation such as open permits and lack of building permits has also prompted increased claims activity for TitlePLUS.

"These types of claims are often very time-consuming," explains DJ Campbell, staff adjuster. "In the case of an open permit, we have to figure out why the permit was not closed – and for that we may have to hire engineers, investigators or other experts to help us determine the nature of the deficiency, and the cost to resolve it. If there has been misrepresentation on the part of the vendor, we have a subrogation interest to pursue, which again takes time and resources."

Adding to the complexity, says Claims Examiner Rosanne Manson, is the fact that the standards and approaches to these outstanding violations by municipalities vary from one city or town to another. "Different municipalities have different requirements. So we first have to determine how that specific municipality handles that specific problem, and what they require to resolve it."

Typical is a home in northern Ontario where the vendors had obtained a permit to construct a deck, but never had a final inspection completed on the finished deck. The permit remained as an "open" permit with the municipality. After our insureds purchased the property, the municipality issued an Order to Comply. Deficiencies such as handrail requirements on the height of the deck, and an engineer's report for the structure of the deck would have to be completed before the municipality would close the permit. Because the property was a whole of a lot, TitlePLUS did not require a building department search before the deal closed. The problem therefore was covered under our policy, and we paid to have the required work completed so that the permit could be closed.

A helping hand

While on the one hand TitlePLUS will take measures to recover costs via subrogated claims, at other times, it has gone to bat for insureds.

One such example involves the purchaser of a condominium unit who believed her purchase included use of a specific locker and parking space in the condo building. When the purchaser subsequently decided to sublet her parking space, she was informed by the condominium corporation that it was their responsibility to assign spaces, and that she in fact had no right to the specific parking space she believed to be hers.

TitlePLUS worked on behalf of the insured to resolve the dispute with the condominium corporation, pointing out that its Declaration did not reference the corporation's exclusive right to assign spaces. The condominium corporation acknowledged the discrepancy, and the insured was granted use of both the specific locker and parking space. The corporation subsequently changed the wording of its Declaration to avoid this type of confusion in the future.

Declining coverage

Having to decline coverage – because insureds turn to TitlePLUS for issues that clearly fall outside the scope of coverage – goes with the territory, says Manson.

One situation that she and Campbell handled recently involved an insured who asked TitlePLUS to replace the liner on his pool this spring, when it became apparent that the liner had not fared well through the winter. "The fact that they had used the pool all of last summer without any problem did not deter them from trying to make a claim," said Campbell.

In another example a purchaser who complained that she detected a sewer-like smell whenever she did her laundry was advised to contact her public works department and a contractor to discuss her plumbing problems. Yet a third situation involved a couple who bought a home two years ago and, to their chagrin, were told this spring that they could not build the pool they wanted in their back yard because of zoning bylaws. "Absent specific knowledge of the insured's intentions, title insurance does not provide compensation because an insured cannot build what they want on the land," points out Manson.

"Moreover, situations such as this – where purchasers come to their lawyer with a binding agreement of purchase and sale, and fail to disclose their plans for the property with the lawyer – fall outside the scope of our policy's legal services coverage, because there was no error or omission made by the lawyer in question. What insureds typically fail to understand is that even if the lawyer had done a zoning bylaw inquiry, without a warranty in the agreement by the vendor as to the future use of the property, they had bound themselves to complete the transaction."