

The TitlePLUS® OwnerEXPRESS® policy:

Peace of mind in new anti-fraud era

New fraud-prevention and consumer protection measures¹ introduced by the government have prompted lawyers to ask if current owner title insurance, such as the TitlePLUS OwnerEXPRESS policy, is still relevant.

What is a TitlePLUS OwnerEXPRESS policy?

It is a title insurance policy for homeowners across Canada who did not get a title insurance policy when they acquired their property. For a one-time premium, you can provide these clients with automatic coverage for matters related to fraud (including future fraud) and registered title.²

For residential properties in Ontario, including houses, condominiums, cottages, residential rental (up to four units), vacant land, and rural properties with property values up to \$2 million, you can order an OwnerEXPRESS policy quickly and easily on www.titleplus.lawyerdonedeal.com. For property values over \$1 million, additional search requirements may apply. For all other provinces or for leasehold properties in Ontario, you can order an OwnerEXPRESS policy by completing an order form on www.titleplus.ca.

Why is it still a useful tool for real estate lawyers to use?

The OwnerEXPRESS policy contains coverage for more than future fraud. It automatically covers matters related to fraud and forgery before and after the policy date, and registered title matters up to the policy date. It also provides survey

coverage as of your client's purchase or acquisition of the property.

For instance, the OwnerEXPRESS policy provides coverage for future encroachments onto your clients' property by neighbours. It may also provide coverage for other types of title and off-title issues that existed at the time of purchase of the property, subject to meeting the TitlePLUS underwriting requirements (if any).

A classic example would be a renovation that occurred without a building permit before your client's purchase. Even though you may have done a building department search at the time of the purchase, it is possible that the building department did not know the renovation had been done illegally and therefore, the building department files looked "clean." If the illegal renovation later comes to light (as often happens when a later, compliant owner goes to the building department to do a further renovation), your clients would be able to make a claim under their OwnerEXPRESS policy for the cost of cleaning up the old problem. This can be particularly helpful if a title or off-title issue is only raised when the clients sell, and suddenly you need to resolve a problem quickly to get the deal to close. Your title insurer will often suggest "insuring over" the problem for the new owner, in order to have the sale close as scheduled.

Coverage for fraud-related costs: In the event that a fraud is perpetrated against your homeowner clients, even if they are in a good position to get title restored under the new law, do they really want to go through the ministry process of filing(s) and/or hearing(s) without a lawyer? Your

clients may even end up having to go to a court hearing if there are competing innocent interests.

For example, what if your clients went to Florida for the winter and a fraudster sold their house to another innocent family? Because of the "duty to defend" coverage in a title insurance policy, you or your clients can contact the title insurer and ask that a lawyer be retained for the clients. It saves the homeowners having to come up with a deposit for the lawyer's fees, which could be a problem up-front even if that money will later be refunded by the ministry.

Back-stop coverage if no compensation under new law: Under the new law, even an innocent homeowner may have to be able to demonstrate some level of due diligence (i.e., reasonably cautious behaviour) in protection of his/her home ownership, in order to seek compensation under the new law from the Land Titles Assurance Fund. We will not know what (if any) that due diligence will be until the Director of Land Titles issues guidelines.

Finally, none of the provisions of the new law have been interpreted by a court yet. Until the courts interpret the legislation, it is not possible to predict what a court may say. Consider how long it took for the Court of Appeal to hand down their decision in the *Lawrence*³ appeal.

For more information on the TitlePLUS OwnerEXPRESS program or to order a free supply of brochures to help explain the OwnerEXPRESS policy to your clients, please contact the TitlePLUS Customer Service Centre or go to www.titleplus.ca/Lawyers/Products/Services/OwnerExpress.asp.

¹ In May 2007 the government announced changes to the *Land Titles Act* contained in the *Ministry of Government Services Consumer Protection and Service Modernization Act, 2006* (previously called Bill 152).

² OwnerEXPRESS policies do not insure mortgage lenders or include TitlePLUS legal services coverage (please refer to the policy for full details, including actual terms and conditions).

³ *Lawrence v. Maple Trust Company & Wright*, [2006] O.J. No. 2907 (S.C.J.), 2007 ONCA 74.

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