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Separating fact from fiction on deductibles and surcharges

LAWPRO has received a number of inquiries from lawyers looking for more information on deductibles, surcharges and the need for additional errors and omissions insurance protection. This article explains the many ways in which deductible costs can be managed under the LAWPRO program; it also addresses misconceptions about claims reporting and how and when deductibles and surcharges are applied when a claim is filed with LAWPRO.

Do I need "extra" deductible insurance?

Consider these facts: Each year, LAWPRO closes about half of all claims reported without a payment of any kind (defence or indemnity) being made. Moreover, we close about 80 per cent of claims without making any indemnity payment. In other words, the majority of lawyers reporting a claim are never called on to pay a deductible.

Furthermore, the LAWPRO program provides you with a number of options to further reduce the likelihood of having to pay a deductible – for substantially less than the premium to secure alternative E&O coverage from another insurer:

- For only \$345 you can apply to reduce your LAWPRO deductible to \$nil; so if a claim was made against you under your LAWPRO E&O policy and a deductible called on, you would not have to pay a cent.
- For \$230 or less, you can minimize the likelihood that you will have to pay any deductible by opting to have your LAWPRO deductible **apply to only indemnity payments and/or repair costs**¹.

If my deductible is called on, do I have to pay it when I report the claim?

Contrary to some information being circulated, LAWPRO deductibles are **not pre-payable**, nor does reporting a claim automatically trigger a deductible. What happens all depends on the type of deductible you select.

For example, deductibles that apply only to indemnity payments and repair costs are

called on only when a judgment, settlement and/or repair cost has been incurred.

In the case of deductibles that apply to defence as well as indemnity and/or repair costs together, 50 per cent of the deductible will be called upon when a Statement of Defence is filed and 50 per cent at the commencement of discoveries or when an indemnity payment is made. For more information see your 2008 Program Guide or visit the Insurance FAQs on the LAWPRO website at: http://www.lawpro.ca/insurance/faqs/lawyers_private_practice_faqs.asp#AboutDeductible

Does reporting a claim mean I end up paying the LAWPRO claims history levy surcharge?

Only a very small percentage of lawyers insured by LAWPRO have to pay the claims history levy surcharge. In fact, of the 6,500 lawyers who practised real estate law in 2007, only eight per cent paid a claims history levy surcharge.

As outlined in your insurance policy, the claims history levy surcharge applies to claims which resulted in LAWPRO having to make a payment as a result of a judgment or to settle or repair a claim. Consider again that 80 per cent or more of claims reported to us annually are closed without any indemnity payment made and one might well question the need for additional E&O coverage.

What are my obligations to report a claim where a property is title insured?

You have a professional obligation to report an E&O claim, or potential E&O claim, to LAWPRO, as described in the Law Society *Rules of Professional Conduct* [Rule 6.09(2) and (3)]. Failure to report – and report promptly – could result in a denial of coverage if the delay has prejudiced our position as your insurer.

Even on title-insured claims, it is to your advantage to report the matter to LAWPRO. It costs you nothing to report, as deductibles and claims history surcharges are not triggered by the mere reporting of a claim or potential claim. If there is a debate over coverage, we can assist you by giving you access to the expertise and experience of our examiners and, if needed, claims counsel. Contrary to what has been claimed by others, we know, from experience, that claims do happen, sometimes to the very best of lawyers.

One of our first steps when a matter is reported to us is to determine if there is title insurance coverage in place. If the real estate transaction on which a claim is being made is TitlePLUS-insured, it is handled by LAWPRO's TitlePLUS claims group. If another insurer has provided the title insurance coverage, and the matter falls within title coverage, we will advise you to report the claim to that insurer.

TITLEPLUS® INSURANCE OFFERS

LEGAL SERVICES + TITLE COVERAGE

The TitlePLUS title insurance policy offers your clients both broad title coverage and legal services protection that is more comprehensive than that available through your LAWPRO E&O program (TitlePLUS coverage, for example, includes coverage for post-closing fraud).

If a claim arises from a lawyer's legal services on a real estate transaction that is not covered by the other clauses of the TitlePLUS policy, a client would report the claim under this

provision rather than the lawyer reporting through his/her LAWPRO policy. Any claim expenses, indemnity payments and/or costs of repairs will not affect the LAWPRO insurance premium; as well, no deductible would be called on, nor would any claims history levy surcharge. This level of protection for the client is included in every TitlePLUS policy at no additional cost, and eliminates the need for the lawyer to consider additional E&O coverage for title-insured transactions secured from another insurer.

¹ Amount of increased premium to have deductible apply only to indemnity payments or costs of repairs varies from \$172.50 to \$287.50, depending on the amount of deductible selected.