

FAQs: New Real Estate Practice Coverage

Ed. note: The following frequently-asked questions (FAQs) are extracted from a more comprehensive discussion of the Real Estate Practice Coverage Option found on the LAWPRO website at <http://www.lawpro.ca/Insurance/faqs/faqs.asp>.

1. Who has to apply for this real estate practice coverage?

Any lawyer licensee intending to practise real estate law in Ontario in 2008 must apply for this additional coverage under the LAWPRO policy.

"Real estate law" is a broadly defined term and is not limited to specific types of transactions, such as transfers or charges. Rather, the term is defined as follows:

Real estate law means the practice of the law of Canada, its provinces and territories, that concerns:

- i. the registration of any instrument under the *Land Titles Act*; and/or
- ii. the actual or contemplated transfer, charging, insuring, or otherwise affecting, an estate, right or interest in land;

and may include, without limitation, any one or more of the following services by a solicitor: the receipt of instructions, preparation of documents, searches and/or the providing of one or more opinions or certificates with respect to the title, transfer or charge, and/or with respect to the issuance of any title insurance policy.

2. Given that title insurance provides coverage for fraud, and that most transactions are now title-insured, why do we need this new Real Estate Practice Coverage. And why do lawyers have to pay this additional premium?

Fraud takes many forms, and occurs regardless of the type of transaction or whether any or all of the parties acquiring an interest in the land happen to be title-insured.

By requiring that all lawyer licensees who intend to practise real estate law in Ontario purchase this coverage, the public and Land Titles Assurance Fund are assured of protection against the effecting of registration of fraudulent instruments under the *Land Titles Act* where there is no title insurance to respond.

Consider, for example:

- the involvement of lawyer licensees on either side of a transaction, in instances involving opinions on title;
- lawyer licensees acting for the vendor or transferor on title insured transactions; and
- transactions that are entirely fraudulent in nature, with no opinion or title insurance having been provided.

The Real Estate Practice Coverage responds where the registration causes damages that arise out of any dishonest, fraudulent, criminal or malicious act or omission of the lawyer licensee.

The coverage is specific in its nature, in that:

- It does not apply to other types of circumstances involving fraud.
- It applies regardless of whether there was a retainer between the wronged party and the lawyer licensee.
- It assures a greater aggregate sub-limit protection than what is purchased by most lawyer licensees for innocent party protection.
- It affords protection even in the instance of sole practitioners, who may not carry any amount of innocent party protection.

3. If only one lawyer licensee in our firm assumes responsibility for registering all transfers handled by our firm, do I and the others also have to have this real estate practice coverage in place?

Yes – all lawyer licensees who practise real estate law must apply for this coverage.

4. I understand that the new Real Estate Practice Coverage may not be required until later in the first quarter of 2008. Can I continue to practise real estate law for the first part of 2008 without having the coverage in place?

Any lawyer licensee intending to practise real estate law in 2008 must be ELIGIBLE and apply for this coverage, and must have this coverage in place **before** being able to practise real estate law.

The implementation date depends largely on government requirements, but is expected to be on or around April 1, 2008. The \$500 annual premium has been adjusted accordingly; for 2008, the cost of this coverage is \$375.

If you have not already applied for this coverage on your 2008 application, you should apply for this coverage as soon as possible so that you are assured that you have coverage for your real estate work when this coverage first is required of real estate lawyer licensees in 2008.

For more information on how to apply, contact the Customer Service Department as service@lawpro.ca or call 416-598-5899 (toll-free 1-800-410-1013).

5. If I intend only to practise real estate law later in the year, do I need to apply for this coverage option now and pay for the whole of the year?

If you start or stop practising real estate law part way through the year, you will qualify for a pro rata premium adjustment to reflect the amount of time not practising real estate law, subject to:

- a 60-day minimum premium for this option;
- only one premium adjustment per lawyer for this option for the year (beyond this, the full \$500 annual premium would apply); and
- the Return of Premium Provision described on page 13 of the Program Guide.

If you commence or cease the practice of real estate law part way through the year, you should provide LawPRO with a completed Application for Mid-Term Changes Form at least 10 days prior to the date that the requested change is to take effect. This form is available from our Customer Service department at service@lawpro.ca, tel. 416-598-5899 or 1-800-410-1013.

6. How does this coverage differ from Innocent Party Coverage?

This coverage goes beyond the Innocent Party protection that is carried by many Ontario lawyer licensees. It differs from Innocent Party protection in a number of ways, including:

- All eligible real estate lawyer licensees must carry this real estate practice coverage – including sole practitioners, who otherwise are not obliged to carry innocent party protection.
- Protection is limited to the registration of fraudulent instruments under the *Land Titles Act* where the lawyer licensee is the fraudster or implicated in the fraud, and does not apply to other types of circumstances involving fraud.
- This protection applies regardless of whether there was a retainer between the wronged party and the fraudulent lawyer licensee.
- The sub-limit protection is \$250,000 per claim/\$1 million aggregate, ensuring greater aggregate sublimit protection than what is purchased by most lawyer licensees for innocent party protection.

- No protection is provided under this real estate practice coverage for registrations occurring prior to the new coverage coming into force, nor for claims to which title insurance would apply.

7. Does this change affect my obligation to buy Innocent Party Coverage?

No. The endorsement providing for the real estate practise option coverage accommodates various practice circumstances.

So, if you are a sole practitioner or a lawyer licensee practising alone in a law corporation, you will continue not to have to purchase any amount of Innocent Party coverage. If you are a lawyer licensee practising in an association, partnership (including general, MDP and LLP partnerships) or law corporation (with more than one lawyer licensee), you will continue to have to purchase the minimum Mandatory Innocent Party coverage without obligation to purchase increased Innocent Party Sublimit protection.

Fraud – a continuing concern

Fraud continues to account for a significant portion of the claims in LawPRO's E&O portfolio.

More than 80 claims with a fraud component were identified in the claims reported to LawPRO in 2007 – similar levels to 2005. Although the ultimate costs of the 2007 fraud files will not be known with any certainty for some time, the comparable 2005 files have cost the program \$9 million or 12 per cent of the claims cost for that year.

Real estate-related fraud continues to represent a major portion of our fraud portfolio, accounting for 63 per cent of fraud-related claims reported and 56 per cent of costs in 2007. Schemes run the gamut from fraud by employees, and clients to fraud where lawyers are complicit. With the new real estate coverage in place for April 2008, it is more important than ever for members of the profession to be vigilant in fraud detection.