

Compliance claims a challenge



After purchase, a homeowner notices that the foundation of his house is settling badly. A city inspector determines that the previous owner's installation of a sump pump was done without a permit and was washing away soil each time it was used. Subsequent attempts at 'fixing' the problem apparently made the situation worse. Now the current homeowner is faced with a municipal work order to bring the property into compliance. The TitlePLUS investigation reveals there will be major costs for adjusters, contractors and accommodation for the displaced family. In the end, the full amount of the policy (more than \$150,000) is paid out.

This example will be familiar to those who read our analysis of [TitlePLUS claims trends](http://www.practicepro.ca/LawPROmag/titleplus_claims2010.pdf) (www.practicepro.ca/LawPROmag/titleplus_claims2010.pdf) in a recent issue of *LAWPRO Magazine*, as well as the article "[Reining in compliance costs](http://www.practicepro.ca/LawPROmag/TitlePLUSBuilding.pdf)" (www.practicepro.ca/LawPROmag/TitlePLUSBuilding.pdf) in which we discussed compliance claims in the TitlePLUS portfolio.

Building compliance claims continue to be the major source of claim costs in the TitlePLUS program. In 2010, these types of claims accounted for close to 50 per cent of all TitlePLUS claims costs, compared to 44 per cent of costs and 22 per cent of claims reported in 2009. Since 2000, the TitlePLUS program has recorded more than 850 building compliance claims, costing a total of \$13.1 million (payments plus reserves on claims in progress).

Fortunately, it remains true that about 90 per cent of TitlePLUS claims are resolved for less than \$10,000, with the average indemnity payment on a claim being only \$4,650. Most TitlePLUS claims are tax and utilities arrears that are closed for an average cost of \$1,400.

There is also good news on the fraud front. In 2009 and 2010 only a few claims with a fraud component were reported, representing a total cost of less than \$500,000. This result is significantly better than in the 2005 to 2008 period during which we saw more than \$4 million in costly fraud claims.

Vigilance also paid off in claims avoided: The TitlePLUS underwriting group declined to issue policies on four transactions suspected for fraud in 2010, avoiding potential losses of about \$440,000. As well, the insertion of a grow house exception in specific TitlePLUS policies reduced our potential claims exposure by more than \$1 million.

The decrease in fraud claims can be attributed to a determined effort by TitlePLUS staff to identify fraud flags and communicate this information to lawyers using TitlePLUS insurance. “Lawyers and their staff have been attentive and proactive with the information,” says TitlePLUS Vice President Ray Leclair. “Listening and adjusting law practice accordingly has made all the difference.”

Over the history of the TitlePLUS program, the claims-paid ratio (the ratio of claims paid to premiums) stands at 40 per cent.

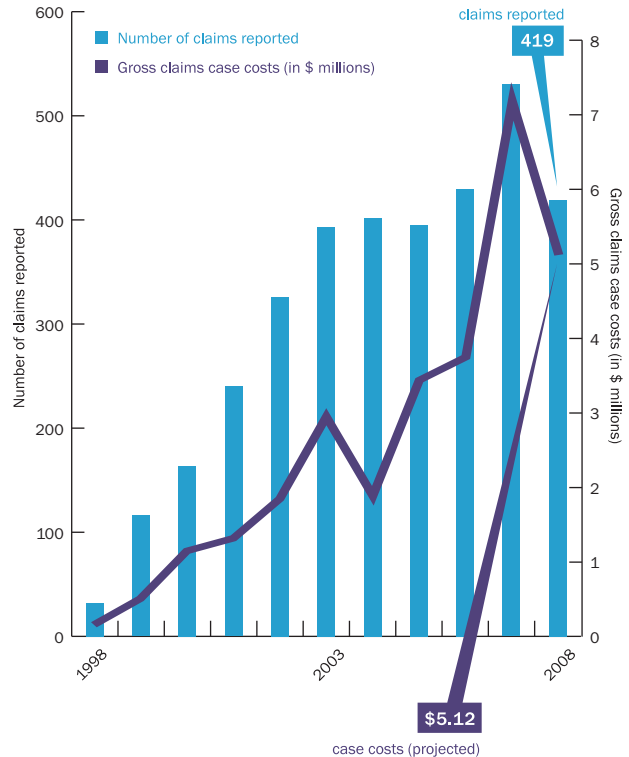
Compliance: a new approach to an industry problem

However, building compliance claims continued to affect the program to such an extent that certain underwriting changes were made to the program. After soliciting feedback from subscribers and users, changes were made to TitlePLUS underwriting that will make the program more appealing while at the same time addressing cost concerns. “It’s always a struggle between best practices versus an easy program,” says Leclair.

Other title insurers facing the same issue of escalating compliance costs chose to cap coverage by implementing a lower sublimit for claims arising out of compliance issues. “This is not the LawPRO approach,” says Leclair. “We view the building compliance claims problem as a multi-party issue: Clients don’t want claims; lawyers get blamed for not solving the problem beforehand; municipalities lament the lack of information provided to homebuyers; and we have to deal with the claims.”

The TitlePLUS way was to approach the problem on several fronts. A new pilot project to automate the process of identifying potential compliance issues is now being developed in one municipality. This initiative will get information from the municipality to lawyers (and their homebuyer clients) more quickly and earlier in the process, so that informed decisions can be made prior to purchase. “We prefer to take a leadership role to resolve this problem for all parties, and not just for ourselves,” says Leclair.

TitlePLUS claims (as at February 28, 2011)



As well, the TitlePLUS policy – which has always contained exceptional building compliance coverage not included in the policies of competitor title insurance companies – has been amended to bring the coverage into line with that offered by competitor title insurance providers.

The TitlePLUS application also has been streamlined to address issues that are no longer relevant (e.g., the elimination of the “whole of a lot definition”) or have proven to be problematic, such as questions related to renovations. “It was difficult for lawyers and their clients to respond to this question with any good solid information given the time constraints of a real estate transaction,” says Leclair.

The TitlePLUS department will be closely monitoring the effects of these changes and will continue to welcome feedback from subscribers and users. Additional underwriting changes may yet be made, and in the months to come there will be new initiatives to help lawyers provide their homebuyer clients even more value and protection through the TitlePLUS program.

As well, the TitlePLUS claims team has stepped up its recovery initiatives as well as salvage opportunities; about 100 claims in the TitlePLUS portfolio are in promising stages of recovery.

Tim Lemieux is practicePRO coordinator at LawPRO.