

What do title insurers expect from lawyers?

Still relatively new in Canada, title insurance is not fully understood by many consumers. Even certain less-sophisticated lenders lack detailed knowledge of the product. The responsibility for explaining title insurance to those who purchase it – and for supporting insureds in obtaining coverage that suits their needs – falls squarely on lawyers' shoulders.

Lawyers are also responsible for communicating accurately with the proposed insurer about the details of a real estate transaction, the property to be purchased, and the expectations and needs of the purchaser and lender.

At the Law Society's recent Real Estate Summit, LAWPRO's Vice President, TitlePLUS Lisa Weinstein outlined ten expectations title insurers have of the lawyers with whom they do business. The full paper written by Ms. Weinstein, Mr. Ray Leclair, Vice President, Public Affairs, LAWPRO and Bayly Guslits, Student-at-Law on the subject is available [here](#), but the following is a summary of those ten expectations.

1. Know the client's expectations: Without a detailed understanding of the client's plans for use of the property, a lawyer will not be in a position to arrange appropriate coverage. For example, a failure to ask about the client's plans to rent out part of the property or to run a home business may mean that the coverage obtained does not apply to these uses.

2. Know the policies: Lawyers need to be familiar with the standard title insurance policies and endorsements used in Ontario, in order to help their clients make the right choices. The TitlePLUS program, for example, provides the Supplementary Coverage Endorsement for Residential Properties and endorsements for condominium and rural properties. A solid understanding of a policy means being able to explain not only the standard coverages and exclusions, but also knowing how to prepare and understand property-specific exceptions to coverage.

3. Communicate with clients: A lawyer should obtain a draft policy and review all exceptions to coverage with the clients before closing. This includes lender clients, unless any exceptions are fully insured over for the lender, or the exceptions are limited to those that the lender has approved.

4. Be accurate: A lawyer must ensure that the application for title insurance contains the correct legal description of the property being insured, and that this description coincides with the expectations of the client. For example, the application must accurately report:

- In the case of a condominium, not only the main condo unit number, level and PIN, but also the unit numbers, levels and PINs of associated storage units and parking spaces;
- Where a freehold property being purchased includes multiple parcels (or parts thereof), the legal descriptions and PINs of all parts; and
- Details and descriptions of easements affecting the property.

Where there is a valid easement benefiting the property, it should be included in the legal description. Any easements to which the property is subject should be made exceptions to coverage and reviewed with the client before closing.

5. Be thorough: The lawyer, who should be familiar with the title insurer's due diligence requirements for different types of properties and transactions, should carry these out in a timely way. Should it become clear that a required search cannot be performed in time for closing, the lawyer should alert the insurer. In Ontario, all title insurers require lawyers to review instruments deleted from title. If this leads to detection of a pattern suggestive of possible fraud, the lawyer must advise the title insurer immediately.

6. Be timely: Title insurance applications should be made well before closing. Acceptance of applications is not automatic, and timely application will ensure that a commitment to insure (sometimes called a pre-approval) can be obtained prior to closing. Applying with time to spare allows the lawyer to review exceptions with the insured, and to arrange to insure over risks, if appropriate. Once the deal closes, the lawyer should ensure that the policy is issued promptly, in case a claim is discovered soon after closing.

7. Communicate with the title insurer: The lawyer is expected to maintain ongoing and open communication with the title insurer. As the insurance intermediary between the title insurer and the lawyer's client, full disclosure is important. Should the lawyer determine that the client has adverse information about the property, the lawyer must advise the title insurer. Title insurance policies contain a "knowledge" exclusion which applies if the client has allowed, accepted or agreed to, or knows of, any matters that would otherwise be covered under the policy.

8. Supervise and train law firm staff: Lawyers are required to supervise the work of their staff. Where staff assists in arranging title insurance policies, the lawyer must provide training about the application process, including disclosure and timing requirements. Staff should also be trained to recognize possible signs of fraud. Finally, Rule 6.1-5 of the Rules of Professional Conduct states that the lawyer shall not permit others, including staff inside or outside the firm, to use the lawyer's e-regTM Personal Security Pass.

9. Know existing and emerging risks: Real estate risks and fraudulent schemes evolve as fraudsters seek to avoid fraud prevention measures. Lawyers should be aware of the most recent trends, so that they can avoid new risks (and train their staff to be vigilant). Two more recent emergent risks are:

- impersonation of a mortgagor, and payment of the proceeds of a mortgage to third parties with no credible relationship to the transaction, who in fact are working with the fraudster or are his/her alter egos; and
- the use of fake title insurance policies – a topic covered in an article in this webzine – see it [here](#).

10. Be wary of fraud: One of the most important skills that the lawyer brings to the real estate transaction is the ability to assess risks, including the risk that a transaction may be a fraud. A lawyer who has concerns about aspects of a transaction should not hesitate to contact the title insurer, who can arrange for the lawyer to speak with an underwriter so that the transaction details can be assessed. Lawyers can familiarize themselves with some of the most common red flags of fraud by reviewing our [Fraud Fact Sheet](#).

To be able to properly advise clients, lawyers must be knowledgeable about all aspects of title insurance. They must also be able to communicate effectively with clients about future plans for the property, the implications of search results, and known problems with the property. Lawyers also need to be open in their dealings with title insurers, so that all parties can work towards the best solution for the client.

For elaboration of the ten expectations outlined here, including references to the related Rules of Professional Conduct and fuller details about issues of concern when arranging title insurance, see the full paper by Ms. Weinstein, Mr. Leclair and Ms. Guslits, available [here](#).

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