

Help your clients understand what is and isn't covered by title insurance

There are a lot of documents homebuyers are asked to review with their lawyers when purchasing a property so it's understandable that they may not give a lot of thought to the nuances of their TitlePLUS policy when the lawyer goes over it with them.

For many buyers it's just one more document to hear about, and since the cost is relatively minor compared to others in the transaction they may not spare it much thought. Clients may simply take away that it's "insurance" and not give it another thought until they have a claim to report.

Generally speaking, TitlePLUS coverage can be grouped into four categories:

1. defects in legal title,
2. compliance risks (where there is an order by a government authority to fix a problem with the property),
3. property access and encroachment issues, and
4. the legal services provided by the lawyer on the purchase.

But there are three types of claims commonly reported that are not generally covered:

Title insurance isn't home insurance

Homeowners often report claims under their title insurance for things like leaky roofs, flooding basements, mould, or shoddy work that a contractor has told them is not up to the building code. However, title insurance isn't intended to cover physical problems with a property unless that problem also falls under one of the covered risks in the policy.

An example of a physical problem that is also a title insurance covered risk is work done without a permit where a permit would have been required, resulting in a work order from the municipality. So, a roof leaking in an added sunroom is not a covered claim on its own, but if that sunroom was built without a permit by a former owner and a building department inspector issues an order to the current owner to make it legally compliant, then coverage would be triggered.

The distinction here is that coverage is not for the leak; it is for the order that is now in the public record and could be discovered when attempting to sell the property in the future. TitlePLUS would cover what is required to satisfy the order so that it no longer hangs over the property.



Vendor misrepresentation is not covered in and of itself

The vendor is supposed to make potential buyers aware of all known problems with a property so the buyers can make an informed decision about whether to purchase and what the price should be. Unfortunately, vendors sometimes hold back information that might hurt their sale prospects. The new owners may then discover the problem and report it as a title insurance claim.

Often these claims relate to the kinds of physical problems (e.g. leaking roof, basement the floods in the spring) described above. And just as a physical problem with the property alone is not a covered title insurance claim, neither is vendor misrepresentation. The issue that the vendor misrepresented (intentionally or not) needs to also fall under one of the TitlePLUS policy coverage clauses. So the vendor withholding information that the basement floods in the spring would not be covered on its own, but it likely would be covered if the foundation was the subject of an open permit that had not yet had a final inspection, and that inspection found defects with the construction that must be addressed in order to close the permit.

Where there is no coverage under title insurance for vendor misrepresentation, we often suggest that the buyers speak to a lawyer about whether to take legal action against the vendor to recover their costs if they believe information was withheld.

Future use plans for the property are not covered

Title insurance is only intended to cover (with a few exceptions) title to the property as it existed at the time of purchase, and title-related problems that could reasonably have been discovered by a lawyer prior to closing. There is generally no coverage for the homeowner's future-use plans such as putting in a pool, adding an addition, severing the lot or developing vacant land if those plans end up being prevented by zoning regulations, by-laws, or municipal planning departments.

An exception to this may be if the buyers had asked their lawyer in writing to make sure certain plans for the property could be carried out and the lawyer failed to do so or provided incorrect information. That situation may fall under the TitlePLUS legal services coverage if it was an error or omission for which liability would be imposed by law.

Every claim will still be thoroughly investigated

Of course, the specifics of every claim are different, and homeowners are encouraged to report their problem and TitlePLUS will investigate to determine if coverage can be provided. For lawyers purchasing title insurance for their clients, helping them better understand what their policy is and isn't designed to cover will help manage client expectations later if it comes time to report a problem with their new property. ■

Tim Lemieux is CPSR & TitlePLUS Claim Specialist at LAWPRO



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250 Yonge Street, Suite 3101, P.O. Box 3, Toronto, ON, M5B 2L7