



## TitlePLUS® Legal Service Coverage: Why it's important for clients and their lawyers

It is not uncommon to hear from a lawyer or lender that they spoke to a title insurance company and were told that their policy covers “lawyers’ negligence.” As a result, some lawyers and lenders are under the impression that coverage under a TitlePLUS policy<sup>1</sup> is no different than coverage under other title insurance policies. This is not the case.

Unlike other title insurance policies widely available in the market today, TitlePLUS policies automatically cover all the standard aspects of a real estate deal plus the legal services<sup>2</sup> provided by the lawyer in the transaction. The Legal Service Coverage is included in TitlePLUS policies at no extra charge.

Our coverage explicitly covers losses resulting from the lawyer’s negligence regardless of whether or not the loss otherwise falls under one of the covered title and compliance risks. This means that there are no circumstances in which a purchaser or lender protected by a TitlePLUS policy should be forced to sue their lawyer to obtain compensation for a loss suffered in relation to the transaction where the lawyer was negligent at law. Most other title insurance providers do not cover *all* services provided by the lawyer - they only indirectly cover such lawyer’s negligence if the result is a loss which is otherwise a covered risk.

### Legal Service Coverage versus Errors & Omissions Coverage

Other title insurance companies sometimes argue that legal service coverage is unnecessary because clients are protected by their lawyer’s E&O insurance. This is not quite accurate. Although all lawyers in private practice in Canada are required to carry E&O insurance, this coverage protects the *lawyer* from liability for their clients’ losses suffered as a result of the lawyer’s negligent error or omission. It does not directly protect the client and the client does not have the right, as an insured, to make a claim directly against the lawyer’s E&O policy.

For an aggrieved client to benefit from a lawyer’s E&O insurance, the client may be forced to:

- sue the lawyer;
- pursue the litigation to trial;
- prove that he or she suffered a loss;
- prove that the loss was caused by the lawyer’s error or omission;
- prove that the error or omission was the result of negligence; and
- obtain a judgment against his or her lawyer.

Even with a judgment in hand, there may be further problems and complications for the client hoping to benefit from his or her lawyer’s E&O insurance, depending on the provincial program in which the lawyer participates:

- the lawyer may have breached a term of the E&O policy and coverage is not available; or
- the lawyer normally would have coverage under the E&O policy, but the lawyer’s available policy limits will not satisfy the judgement (e.g., other claims have already been paid out during the policy period that have reduced or exhausted the policy limits; or the lawyer has had a change in status and now carries a lower sublimit of coverage; or the judgment is simply too high for the E&O policy limits).

If the client has a TitlePLUS policy, he or she would simply submit a claim directly to LAWPRO under his or her TitlePLUS policy. The lawyer’s E&O policy need not be engaged, and there would be no impact on the lawyer’s deductible or premium in respect of the claim.<sup>3</sup>

<sup>1</sup> Please refer to the policy for full details, including actual terms and conditions. The TitlePLUS policy is underwritten by Lawyers’ Professional Indemnity Company (LAWPRO®).

<sup>2</sup> Excluding OwnerEXPRESS® policies and Québec policies.

<sup>3</sup> Please consult the requirements of your individual E&O insurer.

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## Title Insurance + Legal Service Coverage: Examples of Claims

<b>TITLE</b>	<b>LEGAL SERVICES</b>
<b>Coverage</b>	<b>LEGAL SERVICES</b>
<p>TitlePLUS policies insure against unpredictable and undetectable issues that could affect the ownership or marketability of a property – issues such as errors in information provided by a municipality or in a survey, forgery or fraud. TitlePLUS policies protect against common problems such as work orders, access rights and conflicting interests in the property. They also insure certain post-policy date events, such as encroachments, fraud against the home owner or lender, and selected construction liens affecting the lender’s interest. And because your clients’ TitlePLUS policy will be tailored to the specific property, it could insure certain known problems, such as an addition that is not shown on an existing survey or a known encroachment.</p>	<p>TitlePLUS policies provide comprehensive coverage for the legal service provided by the lawyer acting on the deal. Not all title insurers provide equivalent coverage in this area. TitlePLUS legal service coverage is special in that it covers all aspects of the lawyer’s work in the real estate transaction for the insured purchaser and lender and not solely the risks associated with pure title, compliance or access issues. Without TitlePLUS legal service coverage, home buyers may have to sue their lawyer for negligence to recover their losses — a time-consuming and potentially costly process.</p>
<b>Claims Examples</b>	
<p><b>A building encroaches onto a neighbour’s land</b></p> <p><b>The background</b>            Shortly after closing, buyers of a large rural property discovered that an addition on the home built by the vendor encroached 15 to 20 feet onto a neighbour’s property. The vendor had sworn a statutory declaration that he had not made any structural alteration to the exterior of the building while he owned it. A survey would have identified the encroachment. The purchasers had bought a TitlePLUS policy and an up-to-date survey of the property had not been required for this deal.</p> <p><b>The benefit of obtaining a TitlePLUS policy</b>            The buyers of this property benefited from TitlePLUS coverage in two ways. First, they saved hundreds of dollars by buying a TitlePLUS policy instead of having to pay for a new property survey. Secondly, the title insurance provisions in the TitlePLUS policy provide coverage for certain encroachments and setback deficiencies which a buyer may be required to correct.            In situations where an encroachment is an issue, the TitlePLUS program has a number of options: it can purchase the property underneath the encroachment (and then apply to the municipality for a consent to sever), or pay for the removal of that portion of the building that encroaches on the neighbour’s land and any decrease in the value of the property that results from the change to the building. In either case, all expenses up to the policy amount are borne by the TitlePLUS program.</p> <p><b>Mortgage is given fraudulently</b></p> <p><b>The background</b>            Alice provided a \$30,000 private mortgage to Carl which was secured by a property owned by Betty, the common-law spouse of Carl. Carl and a woman impersonating Betty signed the required documents at the office of the lawyer retained to act for them, then proceeded to forge Betty’s signature on the mortgage cheque. When the first mortgage payment did not arrive, Alice contacted her lawyer, who in turn contacted Betty, only to learn that she had no knowledge of a mortgage having been registered against her property.</p> <p><b>The benefit of obtaining a TitlePLUS policy</b>            Luckily, Alice had bought a TitlePLUS mortgage-only policy to protect the mortgage loan she had made to Carl. The broad title provisions of the TitlePLUS policy provide coverage where title is invalid because of fraud or forged documents, and Alice was promptly compensated for the full cost of the mortgage she had advanced.</p>	<p><b>Purchaser takes title to the wrong condominium unit</b></p> <p><b>The background</b>            After carefully inspecting a variety of condominium units in a new condo complex, the purchaser selected a lakeview unit, described in the purchase agreement alternately as unit 5321 and as unit 5, level 2. None of the vendor, real estate agent or purchaser knew that unit 5, level 2 was in fact unit 5531 which did not have a view of the lake. When the purchaser’s lawyer reviewed the status certificate with his client, the client noted that the certificate actually referred to unit 5531; the lawyer assumed (incorrectly) that this number was an error. The insured took title to a unit which he had no intention of purchasing, and the unit he had intended to purchase was sold to another party.</p> <p><b>The benefit of obtaining a TitlePLUS policy</b>            The legal service provision in the TitlePLUS policy ensured that this buyer was covered for his loss. A settlement was negotiated with the condo buyer, to compensate for the difference between a unit with a view of the lake and one without such a view.</p> <p><b>Buyer incurs extra costs because instructions were not followed</b></p> <p><b>The background</b>            The buyer of a condominium unit told her lawyer that she preferred to pay cash for the unit rather than incur the interest charges associated with a vendor take-back mortgage. Although the purchase agreement provided for this option, the buyer’s lawyer did not follow through on these instructions. The buyer received a vendor take-back mortgage on closing, even though other buyers in the same complex paid cash for their units.</p> <p><b>The benefit of obtaining a TitlePLUS policy</b>            The legal service provision in the TitlePLUS policy ensured that the buyer was compensated for her loss, approximately \$9,000.</p>