



## Instructions for Use of the TitlePLUS® Acknowledgment and Direction<sup>1</sup>

All purchaser clients must sign a TitlePLUS Acknowledgment and Direction (“TitlePLUS A&D”) prior to closing. Normally, a customized version of this document is prepared by TitlePLUS staff based upon information you provide in the application for coverage.

Some lawyers in Western Canada have expressed concern that the decision to apply for title insurance is often not made until the meeting with clients prior to closing. As the clients will not be returning until after the closing, they will not be able to sign the customized TitlePLUS A&D prior to the closing.

To address this, the attached form of TitlePLUS A&D may be used. It is designed to be completed by you and signed by the purchasers immediately upon making the decision to apply for TitlePLUS coverage. If you have sufficient time to apply for coverage and obtain the customized TitlePLUS A&D prior to meeting with your clients, you may of course choose to do so. Otherwise, please use the attached TitlePLUS A&D in accordance with the following instructions:

1. **Information Section – Page one.** Please insert:
  - Name of lawyer;
  - Name of firm;
  - Information in Re: line;
  - Mortgage details; and
  - Property address.
2. **Choice for protecting clients’ ownership interest – Page one.** Place check mark in box to indicate TitlePLUS coverage as the choice to protect clients’ ownership interests.
3. **Services to the Property – Page two.** Place check mark in appropriate box.
4. **Various issues – Pages two and three.** Place check mark in box beside heading if applicable. The relevant headings on pages two and three are as follows:
  - Outstanding Subdivision/Development Agreements;
  - Private Water and Septic System;
  - Condominium/Strata Property Status;
  - Rental Property; and
  - Multi-Unit Properties.
5. **Title to the Property – Page four.** Indicate how the clients wish to take title.
6. **Schedule “A”.** This schedule details those matters that are likely to be exceptions to coverage under the TitlePLUS policy. Please:
  - Indicate the name(s) of the mortgagee(s);
  - Insert all defects, encumbrances, deficiencies or other adverse matters revealed by your searches or otherwise known to you regarding the property and/or the transaction; and
  - Contact TitlePLUS Customer Service immediately at 1-800-410-1013 if you wish to obtain coverage in order to insure over any item (instead of it being listed as an exception to coverage on Schedule “A”).

Lawyers’ Professional Indemnity Company, 250 Yonge Street, Suite. 3101, P.O. Box 3, Toronto, ON M5B 2L7

<sup>1</sup> Applicable in Alberta, British Columbia, Manitoba and Saskatchewan.

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(April 2018)



**Acknowledgment and Direction From Purchaser<sup>1</sup>**

**TO:** \_\_\_\_\_

**AND TO:** \_\_\_\_\_

**RE:** \_\_\_\_\_

**AND RE:** First Mortgage: \_\_\_\_\_

Mortgage Reference: \_\_\_\_\_

**PROPERTY:** \_\_\_\_\_

**This will confirm that:**

- you as our lawyer have reviewed and explained all of the information listed below; and
- we instruct and direct you to complete our purchase, fully understanding and appreciating the importance of this information and its impact on our real estate purchase.

**LAWYER'S RETAINER**

You have advised us of the various options available to protect our interests, including Lawyer's Opinion on Title, Conventional Title Insurance and TitlePLUS Title Insurance, and reviewed the respective advantages and disadvantages of each (a summary of which is included in Schedule "D" attached). We are aware that we are free to select any of the options listed below based on our preferences and that you will not receive any commission, fee or portion of the premium from any insurer, agent or intermediary if we choose TitlePLUS title insurance or conventional title insurance.

You have also disclosed to us that TitlePLUS title insurance is being offered by the Lawyers' Professional Indemnity Company (LAWPRO®), which is the malpractice insurer for all lawyers in Ontario and a subsidiary of The Law Society of Ontario (the governing body for all lawyers in the Province of Ontario).

You are authorized and instructed to use the method which we have chosen below to protect our ownership interests arising from the purchase of the property:

- Lawyer's Opinion on Title
- TitlePLUS Title Insurance (Title insurance & Legal Service Coverage)
- Conventional Title Insurance

You are further authorized and instructed to disclose to LAWPRO all necessary personal information required for purposes of applying for a TitlePLUS policy and to consent on our behalf to the collection, use and disclosure by LAWPRO of such personal information. We acknowledge that this is intended to confirm the equivalent authorization and instruction (whether written, verbal or implied) that we provided to you at the outset of this matter when we advised you of our need for legal services in this transaction.

**We confirm your advice that you have not yet contacted LAWPRO to order TitlePLUS coverage for our transaction and that the decision to issue a TitlePLUS policy is entirely within LAWPRO's discretion. You will advise us if LAWPRO declines the application for insurance.**

<sup>1</sup> Applicable in Alberta, British Columbia, Manitoba and Saskatchewan.

## **PURCHASER'S INFORMATION**

We have told you that:

### ***Residential Use of Property***

- the property will only be used for residential purposes.
- the property contains no more than 6 separate dwellings units.

### ***Future Use***

- Except as may be provided in a special endorsement (if any) attached to Schedule "A" to the policy, we are satisfied with the present use and state of the property and we are not purchasing the property on the basis that we can legally alter, modify or add to the property or any buildings or structures located on it.
- We do not require or desire any assurances or TitlePLUS coverage regarding the limitations or prohibitions on our ability to carry out changes to the property and the buildings and structures located on it.
- We may not be able to make any further changes to the property and any changes permitted will be governed by and subject to all applicable laws, as well as any restrictions registered on title.

### ***Services to the Property (check appropriate boxes)***

- |                                                                        |                                                                            |
|------------------------------------------------------------------------|----------------------------------------------------------------------------|
| <input type="checkbox"/> The property is on town/city water service.   | <input type="checkbox"/> The property is on rural/private water service.   |
| <input type="checkbox"/> The property is on town/city sanitary sewers. | <input type="checkbox"/> The property is on rural/private sanitary sewers. |

## **TITLEPLUS COVERAGE**

We understand the protection provided under the TitlePLUS policy and the standard exclusions<sup>2</sup> to coverage under the policy, which you have discussed with us. We further understand that you will provide us with a sample policy for our review upon request. The TitlePLUS policy provides a right to compensation if we suffer an actual loss (as defined in the policy) arising from a risk covered in the policy. In addition, you have explained the possible exceptions to coverage that are specific to our property, and that these will be listed as exceptions in Schedule "A" to the policy. For example, any mortgage we may be granting or assuming will be an exception to coverage. We understand that the exceptions may involve, but are not limited to, matters that would normally be qualifications to your opinion. Should there be substantive changes to these exceptions, you will inform us prior to closing and seek our instructions. Except as set out in Schedule "A" or Schedule "B" (if any) attached, you are not aware of any defects in title to the property. Defects described in Schedule "B" (if any) are not exceptions to policy coverage, as the insurer has been asked and agreed to provide insurance for any actual loss arising from these items.

We also understand that except as may be set out in any special endorsement to the policy, you will not be conducting any inquiries or investigations with respect to any matters which are exclusions or exceptions to the TitlePLUS policy coverage and we are not relying on you to carry out any such additional inquiries or searches.

We are aware that LAWPRO is relying upon this Acknowledgment and Direction and the facts stated herein in issuing a TitlePLUS policy to us and/or any Lender and if LAWPRO agrees to issue the TitlePLUS policy, it will be relying upon the truth and complete accuracy of the foregoing.

### ***Outstanding Subdivision/Development Agreements ( please check if applicable)***

Furthermore, you have also told us that title to the property is currently subject to certain outstanding claims, interests and/or encumbrances under subdivision, development or other similar agreements registered on title which have not been described in Schedule "A" attached.

We appreciate that such subdivision, development or other similar agreements are intended to govern the development of the subdivision/condominium/strata property that includes our property and that those agreements may contain provisions that affect the use and enjoyment of our property. We also understand that although it is primarily the developer's obligation to carry out the requirements of these agreements, we are also bound by their terms. We have been advised by you that we are covered under the policy if we experience an actual loss (as defined in the policy) because of any instance of non-compliance with these agreements that exists as of the closing date.

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<sup>2</sup> Some rights governments may have in your land; certain environmental hazards; your ability to change use of the land; your right to undertake renovations or construction; certain native land claims; problems you agreed to in purchase agreement or failed to tell me about. Refer to the TitlePLUS policy for full details, including actual terms and conditions.

**Private Water and Septic System** ( please check if applicable)

Because our property is serviced by a non-municipal or private (or shared condominium/strata system, if applicable) septic system and/or private water system, we understand that there is no coverage under the TitlePLUS policy except as provided in the Rural Property Endorsement for:

- the adequacy and working order of the private water or septic system;
  - the compliance of the water or septic system with current laws and regulations or with the laws and regulations that existed at the time the water or septic system was installed;
  - our (or, if applicable, the condominium/strata corporation's) ability to replace the existing water or septic system with a new water or septic system that meets current standards;
- and that you cannot provide any confirmation or assurance about the items described above.

You have advised us that it is our responsibility to obtain a potability certificate for the private water system and that in the absence of this certificate, there is no assurance that the water is suitable for household consumption and our mortgage lender(s) may not advance mortgage funds without the potability certificate. Even where a potability certificate is obtained, the tests undertaken only cover a limited range of health-related issues. Any test results (i) are dependent on the sample having been taken from the correct source (over which you have no control), and (ii) only address any contamination at the time of sampling. A potability certificate does not guarantee the taste or smell of the water.

**CONDOMINIUM/STRATA PROPERTY STATUS** ( please check if applicable)

We know that the property being purchased is a condominium/strata property and is, therefore governed by our province's legislation, and that our use of the property will be subject to:

- the provincial act and the condominium/strata plan's declaration, by-laws, rules and regulations in effect from time to time; and
- various easements, rights-of way and agreements which are registered on title.

We also acknowledge that you have provided us with a copy of the condominium/strata property disclosure package (including any Status/Estoppel/Information Certificate, if applicable) issued by the Condominium/Strata Corporation and advised us to familiarize ourselves with the information contained in these documents because they may limit our use of the property and impose financial obligations on us. We confirm that except as specifically set out in the TitlePLUS policy or in any of the schedules attached:

- You will not be reviewing this documentation on our behalf; and
- We will not be receiving opinion or protection from you or the TitlePLUS policy regarding the issues addressed in this documentation.

The Condominium/Strata Corporation insures the common elements within the condominium/strata plan. We are responsible for:

- Insuring the contents of our unit and any improvements, renovations or additions we make to the unit; and
- Obtaining liability insurance coverage and insurance coverage for expenses relating to alternative accommodation required if the dwelling unit should become uninhabitable.

**RENTAL PROPERTY** ( please check if applicable)

The property that we are purchasing will be rented in whole or in part on closing. We confirm that except as may be set out on Schedule "C" attached (if any), we are not receiving any opinion or protection from you or the TitlePLUS policy regarding the legality or enforceability of the rents for the property. We are not relying on you to assure us, in deciding to purchase the property, that there is a specific level of income from the property. If the rents are illegal, it could result in:

- (a) us being required to make rent rebates to tenants,
- (b) a reduction in the rents, and
- (c) a significant decrease in the value of our property.

**MULTI-UNIT PROPERTIES** ( please check if applicable – where lawyer not retained to make relevant inquiries)

The property that we are purchasing consists of more than one dwelling unit. We are not receiving any opinion or protection from you or the TitlePLUS policy regarding our ability to legally use the property for more than one dwelling unit, or for the existence of any fire work orders requiring work at the property and potential fines if the work is not done.

Therefore, we must rely strictly on any applicable provisions of the agreement of purchase and sale regarding the legality of the dwelling units and our rights against the vendor, if any (which rights may be limited by numerous factors including the vendor’s financial worth), if one or more of the dwelling units are not legally permitted to exist or be occupied.

**TITLE TO THE PROPERTY**

We wish to take title to the property as follows: **(please check appropriate response)**

- joint tenants
- tenants in common

Where there is more than one purchaser, we confirm that you have advised us that if we take title as joint tenants upon the death of a joint tenant, that person’s interest in the property automatically passes to the surviving joint tenant(s), regardless of the terms of any Will of the deceased joint tenant. On the other hand, upon the death of a tenant-in-common, the deceased tenant-in-common’s interest in the property passes to his/her estate.

**INSURER’S ACCESS TO INFORMATION – PRIVACY**

You and LAWPRO have relied on the information provided by us which is set out above in determining the protection and coverage under the TitlePLUS policy and your advice about other legal issues concerning our purchase of the property. We consent to LAWPRO having access to the file(s) relating to the purchase (and financing) of the property in your possession and understand that no information about these matters can be withheld from the insurer.

If there is a dispute in the future between us and LAWPRO, we understand that you will not be able to act as either side’s lawyer in the dispute.

We understand that LAWPRO will use our personal information only to the extent necessary for the following purposes:

- To establish insurance coverage;
- To determine and collect premiums and other amounts owing;
- To underwrite and rate the insurance programs, including the development of statistics for underwriting and risk management purposes;
- To advise us of loss control initiatives or methods of managing or reducing risk in connection with the ownership of real property;
- To handle claims;
- To detect and prevent fraud;
- To obtain reinsurance and comply with any requirements thereof; or
- To fulfill any regulatory and accounting obligations.

We further understand that:

- LAWPRO may disclose our personal information to third parties involved in a claim reported to LAWPRO as insurer, including counsel, adjusters, experts, mediators and adjudicators, but only to the extent disclosure of our personal information is necessary for handling or resolution of the claim;
- LAWPRO may disclose our personal information to regulatory bodies having jurisdiction over insurance and financial services companies, to the extent they require disclosure of, or access to, personal information;
- LAWPRO will retain our personal information only for the time it is required and for the purposes described. When it is no longer required, it will be destroyed or made anonymous. For example, if you apply for a TitlePLUS policy on our behalf and we ultimately choose not to obtain a policy for any reason, our personal information will not be retained indefinitely in an identifiable form by LAWPRO. However, where a policy is issued, most information collected and aggregated is kept indefinitely due to LAWPRO’s ongoing exposure to potential claims and need for actuarial analysis; and
- LAWPRO operates under a comprehensive Privacy Code, a copy of which we can obtain from the LAWPRO website at [www.lawpro.ca/privacy](http://www.lawpro.ca/privacy) or by phone at 416-598-5899 or 1-800-410-1013.

DATED at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

**Purchaser(s)**

Please print name(s) \_\_\_\_\_

Witness \_\_\_\_\_

Please print name \_\_\_\_\_, **Barrister and Solicitor**

**SCHEDULE “A”**

**EXCEPTIONS**

Assuming LAWPRO agrees to issue a TitlePLUS policy to us, the TitlePLUS policy will not insure against ACTUAL LOSS (and LAWPRO will not pay costs, legal fees, expenses or reimbursement of rent for substitute accommodation) which arise by reason of:

- First mortgage in favour of \_\_\_\_\_ to be registered on or about \_\_\_\_\_.
- Second mortgage in favour of \_\_\_\_\_ to be registered on or about \_\_\_\_\_.
- All ores, mines and/or minerals being reserved and/or excepted from registered title. This exception only applies to properties located in Alberta.

*(Instructions to Lawyer: Insert all defects, encumbrances, deficiencies or other adverse matters revealed by your searches or otherwise known to you regarding the property and/or the transaction)<sup>3</sup>*

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The listing of any restrictive covenants above does not restrict the coverage provided under item (11) of the Title Coverage or item (6) of the Mortgage Coverage in a TitlePLUS policy, except for any instance of non-compliance as of the POLICY DATE:

- (i) specifically noted above; or
- (ii) related to the survey exception (if any) listed in this Schedule “A” or in Schedule “A” to the TitlePLUS policy.

Each exception set out in Schedule “A” shall operate independently and the inclusion of a specific exception in Schedule “A” shall not restrict or otherwise limit the applicability of any other exception noted in Schedule “A”.

A MORTGAGE LENDER’s coverage:

- (a) under the TitlePLUS policy is not limited or restricted by the inclusion of that MORTGAGE LENDER’s security documentation in the Exceptions set out in Schedule “A”; and
- (b) under items (7) – (10) of the Mortgage Coverage in the TitlePLUS policy is not limited or restricted by the listing of any easement or mineral rights as Exceptions in Schedule “A” unless expressly stated above.

<sup>3</sup> If you wish LAWPRO to insure over any item (instead of it being listed as an exception to coverage on this schedule), contact TitlePLUS Customer Service immediately.

## **SCHEDULE “D”**

### **Options for Assuring Good Title**

#### Option 1: Lawyer’s Opinion on Title

- You will be provided with your lawyer’s opinion as to whether or not you have good and marketable title to your property;
- You will be apprised of the results of searches and inquiries conducted and any outstanding issues that may affect the title to your property;
- If you discover a problem after the closing of the transaction, you may be able to seek compensation from your lawyer only if you can prove that he or she failed to do something that was legally required or provided legal services that did not meet the standards set by the legal profession. In this case, you may have to hire another lawyer to help you sue your first lawyer;
- An up-to-date survey is usually required;
- Generally no coverage for errors made by someone else.

#### Option 2: Conventional Title Insurance

- This is an insurance policy that will protect you if there is a problem with title. It will compensate you for the loss that you suffer as a result of many title-related problems;
- Legal costs are typically covered if your title is challenged;
- Covered losses are generally dealt with by a claim to the insurer and without the need to sue the lawyer;
- Survey coverage is often available without the need for an up-to-date survey;
- Does not matter who committed error, provided type of loss relates to matter covered by policy.

#### Option 3: TitlePLUS Title Insurance\*

- The TitlePLUS Program is a system that includes both an insurance policy and an electronic process that collects information from lawyers who apply for a TitlePLUS policy as they proceed through the steps in a residential real estate transaction;
- The TitlePLUS policy provides coverage for title related matters (similar to conventional title insurance) but also covers the legal services provided by your lawyer;
- Legal costs are typically covered if your title is challenged;
- Covered losses are generally dealt with by a claim to the insurer and without the need to sue the lawyer;
- Survey coverage is often available without the need for an up-to-date survey;
- Does not matter who committed error, provided type of loss relates to matter covered by policy.

### **Tips on Title Insurance and TitlePLUS Coverage**

- Read your insurance policy in full to understand the insurance protection that you are buying. Your lawyer can provide you with a draft of the policy;
- Ask your lawyer about any items that are not covered (exclusions) under conventional title insurance or the TitlePLUS policy before you make any decisions;
- Provide your lawyer with as much information about the property as you know. For example, make sure your lawyer knows that your home contains a separate apartment that is rented, or that there is a swimming pool in the backyard that does not show up on the survey. You must provide your lawyer with accurate and complete information to ensure that your insurance coverage is valid if there is a dispute later on.

\* This is a summary of relevant information. Refer to the TitlePLUS policy for full details, including actual terms and conditions.