



## **Instructions to Lawyers for Use of the TitlePLUS<sup>®1</sup> Declaration & Acknowledgment in Xceed Originated Mortgage Transactions<sup>2</sup>**

These instructions apply to TitlePLUS Mortgage-Only applications at the time of a purchase, where Xceed Mortgage Corporation is giving you instructions. They do not apply to other TitlePLUS applications.

All borrower clients must sign a TitlePLUS Declaration & Acknowledgment (“TitlePLUS D&A”) prior to closing. Normally, a customized version of this document is prepared by the TitlePLUS web system ([titleplus.lawyerdonedeal.com](http://titleplus.lawyerdonedeal.com)) based upon information you provide in the electronic application for coverage.

Some lawyers in Western Canada have expressed concern that the standard-form generated by the website is not appropriate where the borrowers are just purchasing the property and have limited knowledge regarding its circumstances.

To address this, the attached form of TitlePLUS D&A may be used. It is designed to be completed by you and signed by the borrowers immediately upon making the decision to apply for TitlePLUS coverage.

Please complete all blanks on the first page of the TitlePLUS D&A and have the borrowers sign on the last page.

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

2 Applicable in the provinces of Manitoba, Saskatchewan, Alberta and British Columbia.

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<sup>®</sup> Registered trademark of Lawyers’ Professional Indemnity Company.

(March 2016)

PROVINCE OF \_\_\_\_\_

) IN THE MATTER OF THE TITLE TO AND A  
) CHARGE/MORTGAGE (the "Mortgage") OF:

) \_\_\_\_\_  
) (the "lands")  
) \_\_\_\_\_  
)

) FROM: \_\_\_\_\_  
) \_\_\_\_\_  
)

TO WIT:

) TO: Lawyers' Professional Indemnity Company  
) ("LAWPRO®")  
)

) AND TO: \_\_\_\_\_  
) (the "Lender")  
)

) AND TO: \_\_\_\_\_  
) (the "Lawyer")

I / We, \_\_\_\_\_, of \_\_\_\_\_, \_\_\_\_\_, Canada,

**A. DECLARE THAT:**

1. I/We am/are the Mortgagors named in the Mortgage and as such have knowledge of the matters declared herein.
2. To the best of my/our knowledge and belief, all services and materials supplied for any improvement upon the lands within 45 days before the date of this declaration have been fully paid for, or will be fully paid for as of the date of the mortgage advance. As of the date of the mortgage advance, no one will have, or will be entitled to claim, a lien against the lands under any construction, mechanics' or builders' lien legislation. I/We have not received notice of any claims for construction, mechanics' or builders' liens against the lands.
3. I/We do not retain the fee, or the equity of redemption in, or a power or right to grant, assign or exercise a power of appointment with respect to, any land abutting the lands.
4. To the best of my/our knowledge and belief, there are no liens, judgments or executions affecting the lands.
5. To the best of my/our knowledge and belief, no work orders, deficiency notices or notices of violation are outstanding against the lands from any governmental authority and to the best of my/our knowledge and belief, the lands comply with all applicable laws regarding zoning, land use, occupancy and construction, including without limiting the foregoing, limitations on use, setback requirements, building permit requirements, density limitations, water potability and septic/sanitary requirements.

6. The information regarding my/our spousal status contained in the Mortgage is full, complete, accurate and up-to-date.
7. To the best of my/our knowledge and belief, there are no arrears outstanding for realty taxes, utilities, common expense arrears (if condominium) or any other charge or fee which could give rise to a lien on the lands. If the lands are part of a condominium, I/we have no knowledge of any special assessments, whether pending or contemplated.
8. To the best of my/our knowledge and belief, all covenants and restrictions affecting the lands have been complied with to the date hereof and I/we have not received any notice of non-compliance with said restrictions or covenants.
9. I/We confirm that all parties charging, encumbering or consenting to the charging or encumbering of their interests in the lands, and all guarantors of the Mortgage, are receiving the direct benefit of the monies loaned and those monies are not being borrowed for use in a business, investment, undertaking or other property in which some of the parties or guarantors have no direct interest. In the alternative, I/we confirm that:
  - (a) any party or guarantor not receiving the direct benefit of the monies loaned has received independent legal advice; or
  - (b) any party or guarantor not receiving the direct benefit of the monies loaned is the spouse of a party receiving the direct benefit of the monies loaned and has been advised to obtain independent legal advice, but has waived it in writing; or
  - (c) I/We have been advised by my/our lawyer that the Lender does not require independent legal advice for any party or guarantor not receiving the direct benefit of the monies loaned; or
  - (d) any party or guarantor not receiving the direct benefit of the monies loaned is (i) a director, officer or shareholder of a corporation which is receiving the direct benefit of the monies loaned, or (ii) is a corporation, a director, officer or shareholder of which is receiving the direct benefit of the monies loaned.
10. To the best of my/our knowledge and belief, no part of any building or improvement erected on the lands has been insulated with urea formaldehyde foam insulation.
11. To the best of my/our knowledge and belief, the lands are not rented in whole or in part to any tenants.
12. I/We am/are aware that LAWPRO is relying upon this declaration and the facts stated herein in issuing a TitlePLUS® policy to the Lender and that LAWPRO has agreed to issue the TitlePLUS policy based, in part, in reliance upon the truth and complete accuracy of the foregoing.
13. I/We make this solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath.

**B. HEREBY ACKNOWLEDGE THE FOLLOWING AND CONSENT TO THE LAWYER ACTING FOR ME/US:**

1. I/We have requested the Lawyer to act for me/us in connection with the above-noted matter. The Lawyer is also (or will also be) acting on behalf of the Lender in connection with the mortgage.
2. The Lawyer regularly acts on behalf of the Lender and I/we am/are aware that I/we can obtain independent legal advice, but have elected not to do so.
3. I/We have been advised that because the Lawyer is (or will be) acting on behalf of me/us and the Lender, the Lawyer cannot treat any information received from (or on behalf of) me/us as confidential, insofar as the Lender is concerned, and that in the event a dispute arises between me/us and the Lender, then the Lawyer cannot continue to act for me/us and the Lender and may have to withdraw completely (except for such reasonable efforts to resolve such dispute, with the consent of both parties).
4. The Lender is obtaining coverage under a TitlePLUS policy, the premium for which is included in the amount paid to the Lawyer. I/We are not, however, obtaining any coverage under the policy. The TitlePLUS program is being offered by LAWPRO, which is the malpractice insurer for all lawyers in Ontario and a subsidiary of The Law Society of Upper Canada (the governing body for all lawyers in the Province of Ontario). No lawyer receives any commission, fee or portion of the premium from any insurer, agent or intermediary where TitlePLUS insurance is acquired in a transaction.
5. LAWPRO will have access to the file(s) relating to the mortgage and accordingly, the Lawyer cannot withhold information about these matters from LAWPRO.
6. Furthermore, the Lawyer is authorized and instructed to disclose to LAWPRO, all necessary personal information required for purposes of applying for a TitlePLUS policy and I/we consent to the collection, use and disclosure by LAWPRO of such personal information. I/we acknowledge that this is intended to confirm the equivalent authorization and instruction (whether written, verbal or implied) that I/we provided to the Lawyer at the outset of this matter when I/we advised the Lawyer of my/our choice of method for completing this retainer.
7. I/We understand that LAWPRO will use my/our personal information only to the extent necessary for the following purposes:
  - (a) To establish insurance coverage;
  - (b) To determine and collect premiums and other amounts owing;
  - (c) To underwrite and rate the insurance programs, including the development of statistics for underwriting and risk management purposes;
  - (d) To advise me/us of loss control initiatives or methods of managing or reducing risk in connection with the ownership of real property;
  - (e) To handle claims;
  - (f) To detect and prevent fraud;
  - (g) To obtain reinsurance and comply with any requirements thereof; or
  - (h) To fulfill any regulatory and accounting obligations.

8. I/We further understand that:
- (a) LAWPRO may disclose my/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 my/our personal information is necessary for handling or resolution of the claim;
  - (b) LAWPRO may disclose my/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;
  - (c) LAWPRO will retain my/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 the Lawyer applies for a TitlePLUS policy on my/our behalf and I/we ultimately choose not to obtain a policy for any reason, my/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
  - (d) LAWPRO operates under a comprehensive Privacy Code, a copy of which I/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.

**I/We am/are executing this document to swear the Declaration set out in Part A and to confirm my/our agreement with Part B.**

(SEVERALLY) DECLARED before me at	)	
_____ , _____ , Canada	)	
	)	
	)	
This _____ day of _____ , _____	)	_____
	)	(signature)
	)	
	)	
_____	)	_____
A COMMISSIONER ETC	)	(name)
	)	
	)	
_____	)	
(name)	)	
	)	