Welcome to the first issue of TitlePLUS Express, our redesigned newsletter.

The objective of this newsletter is to update real estate lawyers and their staff about TitlePLUS developments and related changes in conveyancing. Your comments and suggestions are welcome.

We are presenting this newsletter in full colour to the subscribers who have provided us with e-mail addresses. If you did not receive this newsletter via e-mail, and would like to, please send your name and e-mail address to titleplus@lawpro.ca. E-mail is our preferred method of communication, due to its ease of use. Watch your e-mail inbox for new issues of this newsletter at various times throughout the year.

Proudly Canadian.
The TitlePLUS New Home Program: Less work for you

LawPRO developed the TitlePLUS New Home Program with you in mind

The TitlePLUS New Home Program is a Web-based TitlePLUS policy delivery system for purchase transactions involving specific new freehold and condominium projects. Currently, this program is only available in Ontario. Please contact us to discuss national expansion plans. The easy point-and-click interface and centrally administered underwriting will save you and your staff time, and the 24/7 accessibility ensures that you get your client’s TitlePLUS policy when it’s convenient for you.

And here’s the best part: Since we arrange the underwriting for the site on a centralized basis, your clients should save money on many disbursement costs, in addition to receiving the added protection that a TitlePLUS policy provides.

What does this mean?
Lawyers acting for purchasers who wish to apply for TitlePLUS coverage do not:
• search or review title;
• prepare and send requisitions;
• prepare, send out, and review responses to clearance letters; or
• deal with blanket mortgage discharges.

Why not?
Because the underwriting details for the property are on the Web site before you apply for TitlePLUS coverage.

(continued)
NEW HOME PROGRAM cont’d

What do you need to do?
Simply search executions against the purchaser(s) within 14 days before the closing date and then complete your quick and easy TitlePLUS application. The TitlePLUS Web site will tell you the number of the last registered instrument, so you can check your subsearch on closing. After closing, you log in, insert the closing particulars, then issue and print the policy.

If you work with developers in your area and you would like to get them signed up or if you have been retained to act for more than five deals in a subdivision or condominium development that is not enrolled in the TitlePLUS New Home Program, please contact Anna Colacitti, TitlePLUS New Home Program Specialist, at 416-598-5885 or anna.colacitti@lawpro.ca.

UNDERWRITING & LEGAL

TitlePLUS coverage for survey issues

As this is the subject of some of our most frequently asked questions, we’re including the following information on survey coverage to help you understand it better.

Almost all TitlePLUS applications qualify for coverage for survey-related issues. Specifically, properties can qualify for survey coverage in one of the following ways:

1. The property is in the Land Titles system, including Land Titles Absolute, LTCQ, and Land Titles Plus.

2. The property is in the Land Registry system and one of the following apply:
   (a) It is a “whole lot” for TitlePLUS purposes, including:
      (i) The whole of a lot or block on a registered plan of subdivision, compiled or other plan, except for reference plans;
      (ii) Two or more whole lots or blocks on the above plans;
      (iii) Properties severed under a part lot control exemption by-law;
      (iv) Properties that were the subject of a consent to severance or the whole of a remainder parcel after a severance with consent; or
      (v) Properties that were whole lots before an expropriation or road widening; or

(continued)
(b) You obtain one or more Declarations of Possession covering 10 or more consecutive years before the closing date; or 
(c) You obtain a Surveyor’s Inspection Report.3

3. If the property does not qualify for survey coverage under 1 or 2, you can obtain survey coverage with an existing survey where 
(a) The purchaser(s) review it for accuracy; or 
(b) The vendor(s) provide a Statutory Declaration advising whether it is up-to-date.

If coverage for survey issues is obtained by 3(a) or 3(b), you are required to include any additions, changes or new structures not shown on the survey in your TitlePLUS application as an exception to coverage or an insure over request.

A few properties in the Registry system will not qualify for survey coverage under any of the above categories. In that case, the following warning will appear in a pop-up box when you indicate that there is no survey for the property:

“There will be a general survey exception included in the TitlePLUS policy. You should confirm that this is acceptable to your client and any mortgage lender/insurer.”

If there are no objections from your clients to the exception, click “OK” to proceed with the application. When you submit the application for pre-approval, the following exception to coverage will appear in Schedule “A” to the policy: “Any:
(a) encroachment over or by your LAND;
(b) deficiency in set back requirements;
(c) non-compliance with a restrictive covenant; or
(d) rights over the LAND in favour of someone else because of their continued use or occupation of part or all of the LAND;
not disclosed by REGISTERED TITLE or shown on any surveys provided to your lawyer handling the TRANSACTION that would otherwise be revealed by an up-to-date survey of your LAND.”

While some clients, lenders or mortgage insurers may be content to leave this exception in the policy, most will want coverage for survey issues. Therefore, if you anticipate that a property will not qualify for survey coverage, or you see the above pop-up box when submitting your application, please contact a TitlePLUS Underwriter immediately to discuss how the property can qualify for survey coverage.

1 Properties which are located in an area with mandatory electronic registration, but remain in Registry, will be subject to manual review because of their lack of conversion to Land Titles. This does not affect the criteria for survey coverage.
2 If you have a property which you believe should qualify as a TitlePLUS “whole of a lot”, please call a TitlePLUS Underwriter to discuss.
3 If a property qualifies for survey coverage under 1 or 2, and you also have an existing survey, review the survey and if it discloses problems, please include the problem in your TitlePLUS application as an exception to coverage or an insure over request. In these circumstances, you are not required to contact your client to determine whether there are any additions, changes or structures not shown on the survey.
When we receive notice of a claim from a TitlePLUS insured, it is not always instantly apparent whether the claim is covered by the TitlePLUS policy. In analyzing coverage, we always ask the same four questions, regardless of whether a claim is simple or complex.

**Question One:**
Does the matter fall within the title coverage risks insured by Part I of the TitlePLUS policy?

If the answer is no, the inquiry does not end here (as it would under coverage offered by American style title insurance policies). With the TitlePLUS policy, we proceed to Question Four. Conversely, if the answer is yes, we proceed to the next two questions.
Question Two:
If the matter falls within the title risks in Part I of the TitlePLUS policy, does an exception apply?

Sometimes, things which would otherwise be covered may be excepted from coverage. For example, if the home owners are fully aware of an encroachment prior to closing and inform their lawyer, the lawyer will include the encroachment as an exception to the survey coverage.

If no exception applies, we proceed to Question Three. Even if there is an exception, we will proceed to Question Four.

Question Three:
Does a policy exclusion apply?

Exclusions are found in Part III of the TitlePLUS policy. Exclusions can be something as simple as whether the subject matter of the claim arose after the Policy Date or as complex as environmental or aboriginal land claims matters.

If the claim falls within the insured title risks in Part I of the TitlePLUS policy and no exceptions or exclusions apply, there is coverage for the claim.

Even if an exclusion applies, we still proceed to Question Four.

Question Four:
Does the claim fall within the legal services coverage under Part I of the TitlePLUS policy?

As noted above, this is an analysis unique to the TitlePLUS policy. Even where a claim is apparently not covered based upon the answers to the prior questions, there still may be coverage due to the legal services coverage.

Paragraph 4 of the legal services coverage is what we call the “basket clause.” That paragraph provides coverage if the lawyer in the transaction “commits an error or omission in providing legal services for the transaction for which liability is imposed by law.” I am often asked how we arrive at a determination of coverage under this section. The answer is simple. LawPRO is the Errors & Omissions insurer for the lawyers of Ontario. The Examiners and Managers handling TitlePLUS claims have years of experience in managing professional liability claims. In short, we know an error when we see one.

Even matters that would otherwise be excluded may be saved by the legal services coverage. For example, aboriginal land claims and environmental problems are often excluded by title insurance policies. However, with TitlePLUS coverage, even these claims do not limit the legal services coverage.

We hope this outline will assist you in advising clients about title insurance coverage.
SALES & MARKETING

Tips to improve your practice

Selling is needs fulfillment

Determine needs by:
- Listening (80%)
- Asking/speaking (20%)

All incoming telephone calls are buying signs (opportunities)
Be sure your staff is trained to recognize this. Even simple questions from callers could lead to new business opportunities for you. Call one of your competitors and see how they answer the phone. You might be shocked to hear how poorly they handle calls (are they impolite, for example) and how many opportunities they miss.

After closing service pays off
Did you ever buy a new car and get a phone call from the dealership sales manager? Not likely, but if you did, just imagine how this would make you feel. You would feel important and think that they really cared. Why not call your client after you close their real estate transaction? Just think how this would make them feel. They might even tell a friend who would tell a friend, who would tell a friend and so on, and so on.