

Legal Services Coverage

What's It All About?

It is not uncommon to hear from a lawyer or lender that they spoke to ABC 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 (excluding OwnerEXPRESS™) is no different than coverage under any conventional title insurance policy. This is clearly not the case.

Conventional title insurance does not explicitly cover lawyer’s negligence. It only indirectly covers such lawyer’s negligence if the result is a loss which is otherwise a covered title risk.

For example, if a client suffers a loss because his lawyer negligently failed to discover a mortgage registered against the client’s property, conventional title insurance would cover this loss not because it covers the lawyer’s negligence but because the mortgage encumbering the property would be a covered *title* risk. Similarly, there are other forms of lawyer negligence that would lead to a loss that is a covered title risk.

This is very different from the legal services coverage in the TitlePLUS policy.¹ This 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 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. This is not the case for conventional title insurance as such policies do not cover *all* services provided by the lawyer.

Other title insurance companies often *cannot* provide legal services coverage because they are simply not licensed to do so. Conversely, LAWPRO® is licensed to provide **both** title insurance and legal services coverage (the latter because of our

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Coverage is
beautiful.

LEGAL SERVICES COVERAGE cont'd

license to insure for lawyers' professional liability) and does so through the TitlePLUS policy.

Legal Services Coverage versus E&O Coverage

Conventional title insurance companies sometimes argue that legal services 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 cannot 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 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 as opposed to a simple mistake; and
- Obtain a judgment against her lawyer.

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

- The lawyer's E&O policy may not be in force at the date on which a claim is made due to the death, retirement or disbarment of the lawyer, whereas coverage under a TitlePLUS policy is available for so long as the insured has an interest in the property;
- If the lawyer has retired, his or her E&O policy limits may be reduced;
- If the lawyer's E&O policy is not available or if limits under the policy have been exceeded, then the client will be left to pursue the lawyer's personal assets, which may not be sufficient to satisfy any judgment granted.

Had this aggrieved client obtained a TitlePLUS policy for her purchase transaction, then she would simply submit a claim to LAWPRO under *her* TitlePLUS policy.

¹ Please refer to the TitlePLUS policy for full details, including actual terms and conditions.

TM Trademark of Lawyers' Professional Indemnity Company.

New Standard Approved Exception for Royal Bank Lenders*

All exceptions on Royal Bank policies, except standard exceptions that have been pre-approved by Royal Bank of Canada, must be subject to an insure over request.

In all TitlePLUS-eligible provinces, Royal Bank has agreed to add a new standard approved exception for mineral rights, so you will no longer need an insure over request for an exception involving mineral rights.

* Includes Royal Bank of Canada, Royal Trust Corporation of Canada and The Royal Trust Company.

Did you know...?

You can now get a TitlePLUS Policy for the purchase (with or without a mortgage) or refinance of a farm property in Ontario, up to \$2 million.



Update on Confirmed Lenders

Ottawa Police Credit Union Limited
(Ontario – residential, commercial and farm)

Innisfil Shelburne Credit Union Limited has changed its
name to Peoples Credit Union Limited
(Ontario – residential)

Doing a Purchase Deal in Western Canada?

Order your TitlePLUS
Policy on-line using
titleplus.lawyerdonedeal.com

We are pleased to announce that our Web-based purchase application system will be accessible in Alberta, British Columbia, Manitoba and Saskatchewan² as of January 16, 2006.

You will be able to complete your TitlePLUS purchase (and mortgage-only/refinance) applications, print the applicable TitlePLUS documentation, and request issuance of your policies quickly and conveniently from your own office, using titleplus.lawyerdonedeal.com. The on-line application guides you through the process, and generates all of the required TitlePLUS documentation associated with the transaction. The Web site is available 24/7, so the application process can be conducted anytime, anywhere – and in minutes.

If you are a Web-eligible TitlePLUS subscriber, all you need to access titleplus.lawyerdonedeal.com is an internet connection and Internet Explorer (version 5.x or higher).

If you are not a Web-eligible TitlePLUS subscriber and you would like to use titleplus.lawyerdonedeal.com, please [contact the TitlePLUS Department](#).

If you are acting on an Xceed transaction, begin your deal as you do now and when you select “send to TitlePLUS”

and choose coverage for the purchaser, you will be automatically sent to the new Web site where you can enter the appropriate information.

2 Quebec and the Territories excluded. In Manitoba, contact Reider Insurance Services at 204-338-3888. In Saskatchewan, contact a member broker of IBAS. In Alberta, contact Phoenix Group Edmonton Inc. at 780-482-6936 or 1-800-563-5325.



E-mail?

If you did not receive this newsletter via e-mail, please send your name and e-mail address to titleplus@lawpro.ca and we will send all future issues to you via e-mail.

What if the mortgage amount is higher than the purchase price?

Sometimes lenders instruct lawyers to register mortgages with a face principal amount higher than the purchase price for a property.

The TitlePLUS Program insures mortgages for the full face principal amount of the mortgage, plus 25%.³

Often lenders advance less than the face principal amount on closing, so the potential exists for further advances up to this amount after closing, without further notice. As a result, the TitlePLUS Program treats these mortgages as equivalent to a mortgage in the same amount that is fully advanced on closing.

We have concern about these mortgages as fraudsters often seek to borrow as much as possible on the security of the property. Also, we seek to prevent possible claims where mortgage lenders, having suffered a loss, take the

position that they were not aware that the mortgage amount exceeded the purchase price, and allege that the lawyer should have advised them of this fact.

For these reasons, some purchase applications where the mortgage amount (or combined amounts of more than one mortgage) is higher than the purchase price require a manual review by a member of the TitlePLUS Underwriting Group.

For a manual review of this kind, the member of the TitlePLUS Underwriting Group who contacts you will ask you to confirm that the mortgage lender is aware of the amount of the purchase price. You may be asked to:

- (a) confirm that the mortgage lender received a copy of the Agreement of Purchase and Sale, and that the purchase price remains as stated in that Agreement;

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UNDERWRITING & LEGAL cont'd

- (b) speak with the lender's authorized representative, and confirm that the lender is aware of the amount of the purchase price, in which case you will be asked to keep a note in your file of the date and time of the conversation and the name of the person spoken with; or
- (c) obtain written confirmation from the lender that they are aware of the amount of the purchase price and have agreed to provide a mortgage in excess of that amount.

In the majority of cases, the member of the Underwriting Group will then grant pre-approval of the application. In some, rare instances, the TitlePLUS Program may refuse to insure a mortgage that is grossly in excess of the purchase price (for example, 150% or more).

To allow time for a member of the Underwriting Group to complete this manual review and for you to do any necessary follow-up work, it is especially critical that you submit applications where the mortgage amount exceeds the purchase price well in advance of closing.

³ See page 6 of the TitlePLUS Policy, version 2.0 for the definition of POLICY AMOUNT.

Help us contact the correct staff member at your office: sign up now for Advanced User Access

We strongly recommend that you sign up for Advanced User Access, a simple system that allows lawyers and their staff members to log into titleplus.lawyerdonedeal.com and lawyerdonedeal.com with their own personalized user login credentials. Based on this login, the system will indicate who has worked on a file, providing the firm with greater privacy and security, and allowing TitlePLUS staff to contact the correct staff member for each application.

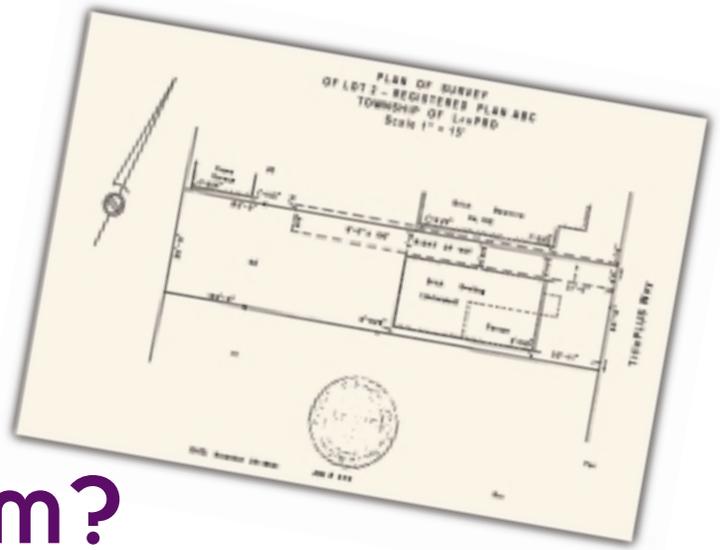
To set up an account with individual user login credentials, please contact LawyerDoneDeal Corp. at 1-800-363-2253.

Hold the Date

The TitlePLUS 2006 Conference, for lawyers and their staff, will occur on **May 17, 2006** in Toronto. Please mark the date on your calendar and watch for further information.



Buying a part lot under the Registry system?



Make sure that you have survey coverage!

For purchases of properties under the Registry system,⁴ it is important to ensure that the property qualifies for TitlePLUS survey coverage.⁵

A Registry property qualifies for survey coverage if:

- (a) it is a whole lot on a registered plan of subdivision for TitlePLUS purposes;⁶ or
- (b) there is a survey or real property report for the property; or
- (c) you can obtain Declarations of Possession for 10 or more years preceding the closing date (Ontario only); or
- (d) you can obtain a Surveyor's Inspection Report.

If the property does not meet these criteria, it does not qualify for survey coverage and the following exception to coverage will be inserted 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 or lenders 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 a pop-up box warning of the above when submitting your application, please contact the TitlePLUS Department immediately to discuss how the property can qualify for survey coverage.

⁴ Applies to properties in the Registry system in Ontario and Manitoba, and all properties in Prince Edward Island, and Newfoundland and Labrador. Properties in Ontario that are located in an area with mandatory electronic registration, but remain in Registry, will still be subject to the survey criteria for Registry properties. Manual review will also apply automatically to the latter properties because of their lack of conversion to Land Titles.

⁵ For a complete list of the ways a property can qualify for TitlePLUS survey coverage, please see the [TitlePLUS Quick Facts](#).

⁶ For a complete definition of a TitlePLUS "whole lot," please see the [Whole of a Lot Explanation](#). If you have questions about whether a property qualifies as a TitlePLUS "whole lot," please call a TitlePLUS Underwriter to discuss.