

Lawyers: What is your obligation to report actual or potential allegations of negligence, liability, errors or omissions to your law society/E&O insurer?



Since there is legal service coverage¹ in the TitlePLUS policy, lawyers ask us whether they need to report situations that may be covered under that aspect of the policy to their law society/E&O insurer. Readers will recall that TitlePLUS legal service coverage includes protection for errors and omissions in providing legal services for the transaction for which liability is imposed by law.

Lawyers need to assess their personal obligation to report under their own professional liability insurance policy independent of the client's TitlePLUS coverage.

Province	Links	Comments
Alberta	Alberta Lawyers Insurance Association (ALIA) Claim Form	Review ALIA's requirements.
British Columbia	Law Society of British Columbia's Professional Conduct Handbook	Consider the Law Society of British Columbia's Professional Conduct Handbook's requirement that lawyers comply with the terms of each professional liability insurance policy and discussion of the lawyer's contractual requirement to give written notice to the insurer as soon as practicable after they become aware of an actual or alleged error or any circumstances which could reasonably be expected to be the basis for a claim or lawsuit.
Manitoba	Law Society of Manitoba's Code of Professional Conduct Law Society of Manitoba's Rules	<p>Watch for:</p> <ul style="list-style-type: none"> a) A requirement to give prompt notice of any potential claim; b) A duty to notify the insurer as soon as practicable after becoming aware of any acts or omissions that may give rise to a professional liability claim; and c) Provision setting out that failure to co-operate with the law society and insurer may constitute professional misconduct.
New Brunswick	Law Society of New Brunswick's Code of Professional Conduct	
Newfoundland and Labrador	Law Society of Newfoundland and Labrador's Code of Professional Conduct	
Northwest Territories	Canadian Bar Association's Code of Professional Conduct (2006) Rules of the Law Society of the Northwest Territories What to do if you might be liable, from the website of the Law Society of the Northwest Territories	Assess whether you are directed to report a potential claim to The Alberta Lawyers Insurance Association (ALIA) and the Law Society of the Northwest Territories, in order to comply with the professional liability insurance policy.
Nova Scotia	Nova Scotia Barristers' Society Legal Ethics Handbook	

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Province	Links	Comments
Nunavut	Canadian Bar Association's Code of Professional Conduct (2006)	
Ontario	The Law Society of Upper Canada's Rules of Professional Conduct Lawyers' Professional Indemnity Company's 2008 Professional Liability Insurance Policy	See Rule 6.09. See Part IV.F. of the Policy.
Prince Edward Island	Code of Professional Conduct	
Québec	Québec Bar – In the Event of a Claim Code of Ethics of Notaries	
Saskatchewan	Code of Professional Conduct	
Yukon	Rules Code of Professional Conduct Canadian Bar Association's Code of Professional Conduct (2006)	Watch for requirement to report all claims and potential claims to the Executive of the Law Society.

The requirements to report such situations vary by province, from recommendations to report potential claims, to requirements to report circumstances that might give rise to a claim, to obligations to give prompt notice of any circumstance you may reasonably expect to give rise to a claim.

Above is a chart with links to sources that outline the requirements in each province. For more detailed information on your duty to report actual or potential claims, please contact your law society/E&O insurer directly.

Even when you are required to report a claim or a potential claim to your professional liability insurer, there may be no loss under your reported claim where the client's loss is paid under the client's TitlePLUS insurance claim.

¹ Not available for an OwnerEXPRESS® or a Québec policy. Please refer to the policy for full details, including actual terms and conditions.



Just a reminder...

As of January 21, 2008, LAWPRO, including the TitlePLUS department, moved to:

250 Yonge Street
 Suite 3101, P.O. Box 3
 Toronto, ON M5B 2L7

Our phone numbers, fax numbers and e-mail addresses did not change.

Talk to Your Clients About Title Insurance – Now More Than Ever

By Mitchell D. Goldberg, LAWPRO Claims Counsel



In early 2007, the Law Society of Upper Canada adopted a new set of [practice guidelines](#) aimed at the residential real estate bar. These guidelines cover a wide variety of topics, with an emphasis on the role of title insurance in real estate practice.

It is important to review these guidelines regularly to ensure that you are continuing to comply with them.

The guidelines make it clear that an Ontario real estate lawyer has an obligation to enter into a thorough conversation with his or her clients regarding title insurance and its impact on the real estate transactions. The obligation to talk about title insurance with your clients has been in place under the *Rules of Professional Conduct* for some time. The 2007 practice guidelines put some “flesh on the bones” of the existing rule.

The guidelines point out that where a client selects title insurance as a method of assuring title, the lawyer should advise the client about the searches that lawyer will not be performing and the type of information that the searches would reveal about the property.

In addition, there is a specific section of the guidelines regarding communication prior to closing. The guidelines recommend that the lawyer should meet with the clients before closing and should review, among other things, the manner in which title is being assured, and the state of

title, including the coverage that will be available under the client’s title policy. When a title insurance policy is being used, the lawyer should obtain information from the client regarding any adverse knowledge about the property that could give rise to the insurer relying on the “knowledge” exclusion if the matter is not disclosed and “insured over” before closing.

The guidelines also include a section on title searches that suggest that a solicitor should discuss with the clients that certain off-title searches may be appropriate or advisable in view of the nature of the property or the circumstances of the transaction. This is very important to note, even though it is not new (we have been advising lawyers in Ontario for many years that it is important to have a detailed discussion with clients regarding searches that may be conducted even if a title insurance policy would otherwise provide coverage).²

In other words, if your clients are purchasing a house on the basis of a beautiful “gut reno” they may well want the security of knowing that the renovation was conducted with the benefit of a building permit before they purchase the house, rather than close and rely on coverage that would eventually be provided by their title insurer. The fact that this issue is raised in the new practice guideline ensures that if there was ever a doubt regarding the standard of care in connection with this type of client communication, **it is clear that from this point forward that a solicitor who does not have a thorough discussion with their clients about the coverage available under a**

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title insurance policy will be found to have fallen below the standard of care.

The guidelines also feature a section that reminds lawyers to review the coverage that will be available under the title insurance policy with specific reference to exclusions and exemptions contained in the draft policy. It is important that the client understands the nature of the exclusions contained in the title insurance policy so that there is no misunderstanding in the event that a claim is eventually raised.

While the practice guidelines updated in 2007 can be used as an effective tool by real estate solicitors, there is no doubt that they may be referred to by the courts as establishing the standard of practice for those real estate solicitors who do not reflect upon and follow the guidelines. Of course, if you place a TitlePLUS policy on behalf of your clients, there will be coverage under the Legal Service provisions so that you will not be responsible for payment of the deductible and the claim will not have an impact on your claims history.³ However, we take the view that a claim prevented is better than a claim defended.

If you haven't already taken the time to review these practice guidelines, I urge you to do so. If you have reviewed them, it wouldn't hurt to take a second look. To access the new practice guidelines, [click here](#).

² See "Things You Need to Know About Title Insurance Claims" Clarke and Kumar, Six Minute Real Estate Lawyer, November 2002.

³ Not available for an OwnerEXPRESS® or a Québec policy. Please refer to the policy for full details, including actual terms and conditions.



The TitlePLUS Program Promotes Lawyers – Across Canada

As part of our mandate to be the partner of the real estate lawyer and encourage opportunities for the business of practicing real estate law, we undertook a public awareness campaign in 2007 to promote the valuable contributions of lawyers in real estate transactions.

As part of this campaign, our articles were published in newspapers and trade magazines across the country, including: the Calgary Sun, the Sudbury Star, the Halifax Chronicle Herald, the Halifax Daily News, the Moncton Times & Transcript, the Fredericton Daily Gleaner and more. All of these articles include a positive statement or discussion about the significance of lawyers in the real estate transaction and readers of the articles are encouraged to consult their lawyer regarding the topic of the article.

Here are some examples of topics that were covered and where they were published:

- "Planning for Legal Costs when you buy or sell a home" (Toronto Sun, ResaleHomes Magazine, Metro News)
- "Planning for Legal Costs when you buy or sell a Commercial Property" (Commercial Investor)
- "Understanding real estate lawyer fees" (published in twenty publications, including the Calgary Sun and the Ming Pao Daily (in Chinese))
- "How your lawyer can help you avoid a nightmare in a hot housing market" (Toronto Sun, ResaleHomes Magazine, New Dreamhomes Magazine)
- "Don't just sign when you refinance your mortgage" (Halifax Chronicle Herald)
- "Rising rates one more reason to take time, seek advice before getting a mortgage" (Canadian Press article, Money Monitor Column by M. Morrison, reproduced in Moncton Times & Transcript, Halifax Daily News, Daily Gleaner (Fredericton), Sudbury Star, The Record)
- "How a Lawyer can help you when you Refinance your mortgage" (published in 18 publications, including The Niagara Falls Review, the Hudson Gazette and the Lindsay Post)

Our campaign continues in 2008, with a Canadian Press article entitled "Deep pockets needed to buy a vacation property these days: real estate experts" by E. Shackleton, which was published in the Kingston Whig-Standard, the Barrie Examiner, the New Brunswick Telegraph-Journal, and on Canoe.ca. Watch for more articles coming to your local publications.

NEW HOME PROGRAM



The TitlePLUS Ontario New Home Program:

Frequently Asked Questions

1. Do you need to confirm Occupancy?

No. Once the development is enrolled with the TitlePLUS New Home Program, we have an agreement with the Vendor and/or the Vendor's solicitor that the closing will not take place until occupancy is granted.

2. When do I need to pay for my own up-to-date status certificate for a New Home Program condominium closing?

You need to get an up-to-date status certificate after the "turn over" of control of the condominium to the condominium corporation's unit owners. If the "turn over" meeting has not yet happened, the builder's solicitor will provide you with one.

3. Where do I confirm whether the development is enrolled in the TitlePLUS New Home Program?

On titleplus.lawyerdoneadeal.com, choose "Create New Home Program File" to view the list of active projects.

On titleplus.ca, choose "Lawyers and Clerks," then "Products and Services" and click on the link called "To view developments with upcoming Ontario New Home Program closings."

4. Where do I find the last registered instrument?

Once your application is in the "preliminary" stage, click on the twisty "Please read Special Closing Instructions." This will give you the particulars of the last registered instrument as well as closing instructions.

5. Should I call the TitlePLUS Department when the last registered instrument does not match what is posted on the application website?

Yes. Call to advise the TitlePLUS Customer Service Centre of the discrepancy for all documents except the following:

- 1) discharges of mortgages or other encumbrances;
- 2) postponements;
- 3) part-lot control exemption by-laws;
- 4) reference plans;
- 5) parcelization transfers from builder to itself; and
- 6) transfers of part of a lot or block to other purchasers, and mortgages given by these purchasers.

TitlePLUS Customer Service Centre goes bilingual



The TitlePLUS Customer Service Centre is pleased to offer English- and French-speaking representatives. When you call in, if you wish to speak to someone in French, please press 2 and, when prompted, press 2 again.

"Providing bilingual services reflects our commitment to being a national provider of title insurance," said Chris March, TitlePLUS National Sales Manager. "We are continually enhancing the range of services and support we offer to those interested in learning more about our title insurance program, as well as to existing subscribers and policyholders. We are pleased that we can now better address the needs of the French-speaking communities across the country, by offering access via our call centre to bilingual TitlePLUS lawyers."

The TitlePLUS Customer Service Centre is open from 8:30 a.m. to 7:00 p.m., Eastern time.

Attention Ontario law firms...

You can quickly and easily notify Hydro One when your clients move. Simply go to www.HydroOneNetworks.com/SelfService, choose the appropriate option (either "Move In" or "Move Out"), then complete the on-line form and submit it to advise Hydro One of your client's upcoming move.



Add Value to your Services

for your Borrower and Lender Clients

The TitlePLUS team spends a great deal of time working with large and small lenders and they have taught us a lot over the last 10+ years. For example, regional lenders regularly tell us that they want to keep their business local. They prefer to deal with local real estate lawyers, as they believe this keeps them involved and informed of the status of each transaction. Many of these lenders continue to want local lawyers to handle their refinance deals. They appreciate the benefits that they gain from the professional legal advice that you give them.

When was the last time you dropped by your local lender's office and talked about the legal services you can offer? You might be surprised how well received you will be. Talk to the lender, negotiate your price and service standards. And don't forget, when you meet the borrowing customer, you have access to other opportunities.

Also, when you are completing refinance transactions, the lender will almost always want title insurance to protect itself. Don't forget, our mortgage-only product does not protect the borrower. If the borrower doesn't have title insurance this is a great time for you to recommend that he/she consider an OwnerEXPRESS policy, the TitlePLUS product designed for homeowners who didn't buy title insurance when they purchased their home. [Click here](#) for more information about our OwnerEXPRESS product.

We believe that there are many opportunities in your market, so we encourage you to give them a try! If you know of lenders that don't accept the TitlePLUS products, [let us know](#). We would be pleased to meet with them and actually try to get you in the door as well.



Update on Confirmed Lenders

The following are new TitlePLUS Confirmed Lenders:

- **Autoworkers Credit Union Limited**
(Ontario – Residential, Commercial, Farm)
- **ING Bank**
(Ontario – Residential, Commercial, Farm; National – Residential)
- **Magenta Mortgage Investment Corporation**
(Ontario – Residential, Commercial, Farm)
- **Magenta II Mortgage Investment Corporation**
(Ontario – Residential, Commercial, Farm)
- **Regency Finance Corp.**
(Ontario – Residential, Commercial, Farm; Alberta, Nova Scotia & Prince Edward Island – Residential)

The Equitable Trust Company will now accept TitlePLUS title insurance for purchase and/or mortgage-only transactions on residential properties in Manitoba.

Please refer to the TitlePLUS Confirmed Lenders Page on titleplus.ca for a complete listing of Confirmed Lenders along with their approved transaction types.

Kathleen A. Waters appointed LAWPRO President & CEO



A happy congratulations from the TitlePLUS Department to Kathleen A. Waters on her recent appointment as the President and Chief Executive Officer of the Lawyers' Professional Indemnity Company (LAWPRO) and a member of its Board.

Ms. Waters was the first Vice-President of LAWPRO's TitlePLUS program and was also LAWPRO's Chief Privacy Officer. She succeeds retiring LAWPRO President & CEO, Michelle L.M. Strom.

Prior to joining LAWPRO, Ms. Waters was a partner at the Toronto law firm of Torkin Manes Cohen Arbus LLP. She joined LAWPRO in 1995 with a mandate to develop and build a lawyer-centric title insurance option and related technology tools for Ontario's real

estate bar. Under her guidance, the TitlePLUS program has grown into one of Canada's four largest and most "high-tech" title insurers.

Ms. Waters was instrumental in securing membership for LAWPRO in North American Bar-related Title Insurers (NABRTI®); LAWPRO still is the first and only Canadian title insurer admitted to that organization, and Ms. Waters now serves as NABRTI's Secretary-Treasurer.

® BAR-RELATED Mark is a registered Mark of North American Bar-related Title Insurers used by LAWPRO under license.