

Feedback on the Home Buyer Worksheet –

It works!



We are very pleased to learn that you are using the TitlePLUS® Home Buyer Worksheet and that you are finding it to be a useful tool when meeting with your clients. It helps explain TitlePLUS title insurance and the various types of products available for residential real estate transactions. The Worksheet also gives you the opportunity to discuss other legal matters with your clients, for example, whether they should update their will or whether there are other legal issues that need to be addressed.

The Worksheet highlights the benefits of TitlePLUS title insurance for residential transactions, including the one-time premium, direct coverage, fraud protection and legal services coverage¹. It also touches on issues such as unpaid utility bills, building permits, renovations and cottage property considerations.

We would be happy to provide you with Worksheets for your office. [Click here](#) to request copies of the Home Buyer Worksheet and other TitlePLUS materials, which are available to you free of charge.

¹ Excluding OwnerEXPRESS® policies and Québec policies.

SALES & MARKETING

Further to our request for articles related to real estate practice in the last issue of the TitlePLUS EXPRESS, we are pleased to present:



What is good service worth?

by L.G. William Chapman, sole practitioner, Almonte, Ontario

The truth about the practice of residential real estate is that most lawyers would never choose to do it. Forty-two years ago, my parents paid a reputable Ottawa firm a fee of \$400 on a \$36,000 purchase price. Today, after all those years, lawyers often charge \$750 or less for the same service.

In my experience, many clients are quite willing to pay a reasonable fee for good service. When I use the expression “reasonable fee,” I am talking about \$2,250 for a sale transaction, \$2,975 for a purchase transaction, and, \$2,000 for a mortgage transaction, plus disbursements and GST. When I use the expression “good service,” I am talking about the professional involvement of the solicitor from beginning to end.

(continued)

SALES & MARKETING cont'd

Modern conveniences, such as Land Titles, title insurance and electronic software are merely tools, which should not replace due diligence and value-added services. The use of the modern tools of conveyancing must be handled as skilfully as the tools of any profession.

As an example, when acting on the purchase of a vacant lot, my first recommendation to my client was to obtain a survey (even though the property was an entire lot on a plan of subdivision), as the neighbours had built all around the property and there was a good chance of encroachment. Since my client proposed to build a new house on the property, it seemed prudent to have a survey done, especially since the lot was relatively small and the survey could be used in connection with the building permit application process. My second recommendation was title insurance.

When my client began to dig for the foundation, a buried active sewer line was discovered. The seller had no knowledge of the ancient sewer line. When the municipality was confronted with the dilemma, it flatly stated that it was my client's obligation to pay to move the sewer line since it was on private property. You will be pleased to learn that TitlePLUS title insurance came to the rescue.

This account illustrates that there are opportunities to provide value added services to one's client, and that one should never assume to know all the facts without conducting the proper due diligence. It is for this latter reason that I make a habit of obtaining the standard zoning compliance certificate, even if not required by the title insurer. It is better to know of any issue in advance than to have to deal with the problem later.

Also, more and more clients are appreciating the involvement of a solicitor in the transaction at an early stage. If consulted at the agreement stage of the transaction, it is an ideal opportunity to share the wealth of knowledge that a real estate lawyer has. One may be able to provide the client with a helpful brochure, a checklist and a draft account, all of which are useful planning devices. In some cases, the client may seek additional advice involving estate conveyancing, powers of attorney, tax issues and mortgage concerns. By addressing these collateral matters, the solicitor is not only improving service but also heightening the client's experience.

Finally, it is imperative to keep in mind that not everyone can afford superior service, and there is no more reason a lawyer should cut prices to satisfy the smaller budget than we would expect any other merchant to chop prices because the product is out of our reach. There is no shame in establishing a commensurate price. Virtually all of my work is referral. If someone calls and their first question is "How much?", I tell them they can get it cheaper elsewhere. There is no need to waste time trying to do what will provide no return.

The opinions expressed herein are those of the authors and do not represent the position of Lawyers' Professional Indemnity Company, the TitlePLUS Department or any other entity, except where expressly stated.

We want
to hear
from you



To share your ideas about the practice of real estate, please submit your articles to Mahwash Khan by e-mail at mahwash.khan@lawpro.ca.

Communication Sign-Up Form for law firm staff

This sign-up form was created to enable us to communicate electronically with your law firm staff and provide them with regular updates on the TitlePLUS Program, information on real estate-related topics and invitations to events, etc. [Click here](#), complete the form and mail or fax it back to us.

Statistics on claims covered –

Numbers don't lie

There has been much discussion recently about title insurance claims being on the rise. Home buyers are relying much more on their title insurance policies, seeking coverage for small ticket items such as unpaid utility bills as well as larger items such as building department work order issues.

With all this talk of claims on the rise, we recently gathered statistics on our claims files to see how well we fared with providing our insureds with the coverage that they so

obviously are relying upon. We are pleased to report that on average we are covering 84 per cent of all claims received. Upon digging deeper, we discovered that the 16 per cent of claims that were not being covered were items that were all specifically excluded from coverage.

With this information, you can be confident that your clients will be getting the coverage they are relying upon and paying for, when they purchase a TitlePLUS title insurance policy.

What your clients are saying about us

Once a claims file is closed, we send out surveys asking the insureds to provide us with feedback about the services we provided and how they thought their claim was handled. Some of the survey responses indicate:

- The service provided was excellent.
- The premium for the TitlePLUS policy was well worth the cost.
- LAWPRO® came to the rescue.
- Thanks for the prompt service.



The importance of disclosing registered easements

We often discuss the importance of making your clients aware of all registered easements that affect the property that they are purchasing, so that they know whether others can use part or even all of their property. Once you enter the easements in a TitlePLUS application and choose the action “remain outstanding,” they will appear in Schedule “A” to the TitlePLUS Policy and in the TitlePLUS Acknowledgment and Direction, helping you to communicate to the client important issues relating to the title of the property.

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Bill 106, *Safer Communities and Neighbourhoods Act, 2008* in Ontario

Bill 106, *Safer Communities and Neighbourhoods Act, 2008* (“Bill 106”), was introduced as a private member’s bill on October 2, 2008. If adopted as law in Ontario, Bill 106 will enable a municipality or “board area²” to deal with anonymous complaints regarding properties that are routinely used for activities that negatively impact a community or neighbourhood.

Similar legislation already exists in Alberta, Manitoba, Newfoundland & Labrador, Nova Scotia, Saskatchewan and the Yukon.

The legislation is applicable to municipalities and boards only if the council passes a by-law appointing a Director of Safer Communities and Neighbourhoods (“Director”) for the municipality. Once a Director has been appointed, he or she may accept complaints regarding activities taking place on or near a property for a specified purpose that is adversely impacting the person’s community or neighbourhood. Specified purpose is defined in section 1 of Bill 106, and includes some of the following:

- the use of property for illegal or unsafe purposes relating to liquor, intoxicating substances, controlled substances, prostitution, sexual abuse or sexual exploitation of a child; and
- the use of the property for the possession or storage of prohibited firearms or weapons.

Section 26 of Bill 106 ensures that the complainant can remain anonymous and that information that may identify the complainant cannot be disclosed to another person, including the court, without obtaining prior written consent from the complainant.

Bill 106 provides the Director with several options to deal with the matter including applying for a community safety order from the Superior Court of

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Oops! Made a mistake and need a correction to a TitlePLUS Policy?

Making a correction to your client’s issued TitlePLUS policy has never been easier. With the new streamlined procedure, you can make your correction and submit the request on-line. Just look for the “Request Correction Endorsement” button that appears once you log in and open an issued policy on the titleplus.lawyerdoneadeal.com website. [Click here](#) to view the instruction sheet.

LEGAL & UNDERWRITING cont'd

Bill 106 (continued)

Justice. The court may make a community safety order if it is satisfied, on a balance of probabilities, that:

- (a) activities on or near the property indicate that the property is being habitually used for a specified purpose; and
- (b) the community or neighbourhood is adversely affected by the activities.

Bill 106 further allows the court making the community safety order to close the property for 90 days or order the termination of a tenancy agreement of any resident of the property. The court may also limit a community safety order to a part of the property about which the application was made, or to particular persons.

A resident affected by an order may make a motion, before the date specified in the order for termination of a residency agreement or closure of the premises, but it does not stay the operation of the order. However, the court may grant an extension if satisfied that it would be in the interest of justice.

It should also be noted that in the case of any conflict between the *Safer Communities and Neighbourhoods Act, 2008* and the *Residential Tenancies Act, 2006*, the *Safer Communities and Neighbourhoods Act, 2008* will prevail.

If Bill 106 is adopted as law in Ontario, it will provide a streamlined framework for addressing activities that negatively impact a community or neighbourhood. Proponents of Bill 106 argue that current enforcement measures addressing this issue are inefficient, expensive and not always successful.³ Detractors of Bill 106 argue that it will undermine security of tenure for tenants, violate tenants' rights to a fair and open process and infringe The Canadian Charter of Rights and Freedoms and Human Rights provisions.⁴ Wherever one stands on the debate, it is clear that Bill 106 provides the Director with a great deal of discretion with regards to evicting tenants.

² Defined in the draft legislation as "the geographical area within which a local services board may exercise its jurisdiction."

³ Westboro Community Association, *Bill 106 – Safer Communities*, online: Hello Westboro <http://lovewestboro.wordpress.com/2009/03/04/bill-106-safer-communities>.

⁴ Advocacy Centre for Tenants Ontario, online: http://cleonet.ca/news_files/1223998769SCANfactsheet.pdf.



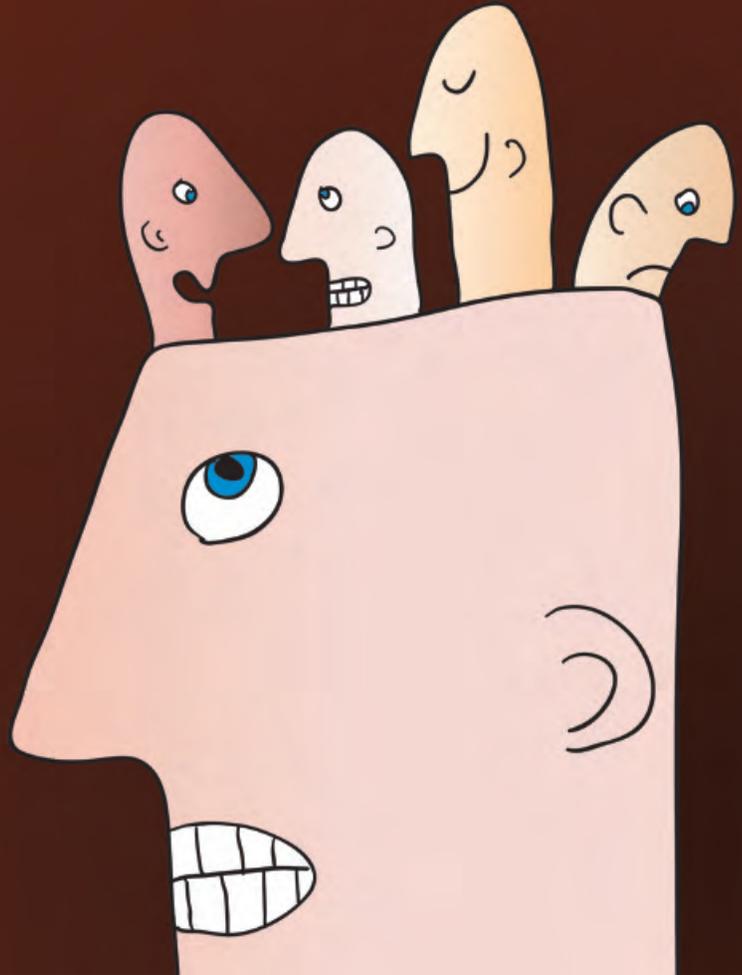
Update on Confirmed Lenders

The following are new TitlePLUS Confirmed Lenders for residential, commercial and farm properties in Ontario:

- Caisse populaire Azilda inc.
- Caisse populaire Coniston inc.
- Caisse populaire d'Alfred Limitée
- Caisse populaire de Cochrane Limitée
- Caisse populaire de Cornwall inc.
- Caisse populaire de la Vallée
- Caisse populaire des Voyageurs Incorporée
- Caisse populaire Hawkesbury Ltee
- Caisse populaire Nouvel-Horizon inc.
- Caisse populaire Orléans inc.
- Caisse populaire Pointe-aux-Roches-Técumseh inc.
- Caisse populaire Rideau d'Ottawa inc.
- Caisse populaire St-Jacques de Hanmer inc.
- Caisse populaire Trillium inc.
- Caisse populaire Val Caron Limitée
- Caisse populaire Vermillon
- Caisse populaire Vision inc.
- Caisse populaire Welland Limitée
- La Fédération des Caisses populaires de l'Ontario inc.

La Caisse populaire de New Liskeard Limitée and La Caisse populaire d'Earlton Limitée, which were already TitlePLUS Confirmed Lenders for residential properties in Ontario, are now also accepting TitlePLUS policies for commercial and farm properties in Ontario.

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



Fraud:

The many-headed monster

You may not have heard much about real estate fraud recently. Is it going away? Or has it just become so common that it doesn't make headlines anymore?

While we can't answer the second question, we can answer the first. Fraud has not gone away. Fraudsters are always coming up with new, more sophisticated schemes, designed to deceive lawyers, lenders and other legitimate participants in the real estate transaction. And fraud is not confined to Ontario, Alberta or any other province or location.

The "classics," identification and value fraud, are still happening. In fact, a recent CBC News article⁵ described police raids on an alleged international ID fraud ring at several locations in two provinces. The ring allegedly produced fake passports, driver's licences and credit cards. In other cases, fraudulent appraisals were used to obtain large mortgages on properties worth much less than the value shown by the appraisal.

One type of fraud that has gained prominence recently is "straw buyer" fraud. In this scenario, a fraudster approaches someone who needs money and offers him or her a few thousand dollars to "sign some papers." The "straw buyer"

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Fraud (continued)

may be unemployed, homeless, elderly or a student. The fraudster provides fake employment letters, bank statements and other evidence of the assets and income required to qualify for a mortgage. Once the deal closes, the fraudster steals the mortgage money. Some signs of this type of fraud are a buyer who seems incompatible with the type of property he or she is buying, or who shows no interest in moving in.

What can you do about this and other frauds? Here are some tips:

- Check for misspellings in ID documents, in the personal particulars and the standard wording. They may indicate a forgery.
- The validity of Ontario driver's licences can be checked on the Ministry of Transportation website at <https://www.dlcheck.rus.mto.gov.on.ca/Scripts/OrderForm.asp>, or by calling 1-900-565-6555, at a cost of \$2.00 and \$2.50, respectively.
- Fraudsters may retain you on routine matters, such as an incorporation, before they bring you a fraudulent deal, so don't assume that all fraudsters are new clients.
- If the deal seems inconsistent with market trends in the area, find out why before closing.
- Don't allow documents to be taken outside your office for execution. If the clients cannot come in and you cannot meet with them, have them sign in another lawyer's or notary's office.
- Don't be rushed. Ask questions if the client is pressing you to close quickly.

For more information, see the LAWPRO Fraud Fact Sheet and other resources at <http://www.practicepro.ca/practice/fraud.asp>.

⁵ "ID fraud raids include daycares," <http://www.cbc.ca/canada/montreal/story/2009/11/25/quebec-fraud-rcmp.html>, November 25, 2009.

Don't be a victim, see the complimentary webinar on fraud

Last year LAWPRO helped 12 lawyers avoid becoming victims of an organized multi-million dollar fraud scheme. The complimentary presentation entitled "**Fraud: How you can avoid being its next victim**," includes an audio and a PowerPoint presentation. The information helps you become familiar with the common fraud schemes that target lawyers and assists you in recognizing the "red flags" of a fraudulent deal. It also outlines the steps you can take to protect yourself and lessen the likelihood of becoming a victim of fraud.

You can access the MP3 (audio) file at

<http://www.cmcgc.com/DEMO/OBA/09GEN0526T.mp3>.

The PowerPoint presentation is available for free download at <http://www.oba.org/en/pdf/09GEN0526T.pdf>.

The new AvoidAClaim blog can help you stay out of trouble

LAWPRO recently launched the AvoidAClaim blog (www.avoidaclaim.com). As part of the practicePRO® risk management program, the new blog has a narrow and specific focus: providing law firms with information, tips and tools to help them practise more effectively and reduce the risk of legal malpractice claims.

AvoidAClaim complements the practicePRO website (www.practicepro.ca) and provides a range of risk management, claims prevention and law practice management information, including checklists and precedents you can download and customize; information on how you can avoid being duped by a fraudster; helpful tips on how to build client relations; and a business plan and budget to help you manage the finances of your practice.

Visit [AvoidAClaim.com](http://www.avoidaclaim.com) and be sure to check out the top 40 downloads, where you will find articles ranging from how to get the most out of your BlackBerry smartphone to how not to get sued over the GST.



by Tim Anningson, National Consultant, TitlePLUS

Are you considering making a change in your law practice? Perhaps you have decided to update your technology, switch service suppliers or modify your work processes?

With any decision to make a change, you will inevitably encounter resistance to that change. It is human nature to want to keep doing things the same way we have always done them. For many individuals, a change can stimulate a fear of the unknown, of loss (“will this make my job redundant?”), or of failure (“this software looks hard to learn”).

At the firm level, resistance can be met if the focus of change is too limited. For example, have you considered how implementing a change in process or technology in one work group will affect other groups?

In order to meet the objectives of any planned change it is important to **manage that change**. Start with the following exercise based on Kurt Lewin’s Force Field Analysis Model⁶. Make a list of all the factors that will move you towards the desired change and a list of forces resisting that change. Once this is done, find ways to increase the positive forces, while at the same time eliminate the restraining forces. For example, a factor for implementing new conveyancing software might be to end the perennial backlog of reporting, but a force resisting this implementation could be that the

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“ When you are through changing,
you are through. ”

~Bruce Barton

change is being proposed during the peak real estate season. Deciding to hold off the implementation until after the busy time would cause less tension and would decrease overall resistance to the change.

In addition, be prepared to overcome resistance to change through communication, training, employee involvement, facilitation and support⁶:

- whenever possible, give plenty of advance notice of any impending change;
- communicate both the details and the rationale for the change. This will help to overcome the fear of the unknown;
- provide opportunities for training and education. This will increase the feeling of competence and help overcome the fear of failure; and
- involve employees in the decision-making process. This helps to instil a sense of ownership in the project.

Finally, emotional support and encouragement can go a long way towards reducing anxiety related to a change.

Change is inevitable. Whether the impetus for change is external, such as a change in legislation, or internal, such as risk mitigation, cost control or increasing efficiency, firms that are adaptable and prepared in the face of change have a better chance at thriving.

⁶ Sniderman, Pat R. et al. *Managing Organizational Behaviour in Canada*. Toronto: Nelson Education Ltd., 2009.

TitlePLUS “Tools of the Trade” Conference



The 2009 TitlePLUS conference was held on September 22nd at Casino Rama. One could feel the energy in the Silvernightingale Ballroom, as the guests started arriving and the excited chit chat began.

The conference was opened by Chris March, Master of Ceremonies, followed by Kathleen Waters, LAWPRO President & CEO, who presented “LAWPRO’s Project for 2009: What needs Renovation?”.

Dan Pinnington captivated the crowd with his “40 Practice, Technology and Risk Management Tips in 40 Minutes.” Jolie Bradley Sousa and Mahwash Khan highlighted the search requirements for the TitlePLUS program in their presentation entitled “Beyond the Nuts and Bolts.” This year, a twist was added, when Nicky Kokologianakis and Shawna Ramsay included a role-play segment using the new TitlePLUS Home Buyer Worksheet, in their presentation.

Finally, legal and underwriting updates were provided by Kathleen Waters and Lisa Weinstein. This last segment was thought-provoking and informative and a great way to conclude the formal part of the conference.

LEGAL & UNDERWRITING cont'd

Disclosing registered easements (continued)

We recently came across an interesting Ontario case dealing with the disclosure of registered easements. In *Hallinan v. Coughlin* [2009] O.J. No. 1313 (Ont. Sup. Ct.), the purchaser (Hallinan) was informally told by the real estate agent that she would not be able to put up a stationary fence in the backyard because it would hinder neighbouring homeowners' access to their yards, but the existence of the neighbours' registered easements was not disclosed in the Agreement of Purchase and Sale. Accordingly, the Superior Court of Justice found that the purchaser did not have formal notice of the easements, so the transaction did not close and the purchaser was entitled to the return of her deposit.

This case highlights the importance of ensuring that all easements are duly noted and disclosed to clients. Inserting easements in TitlePLUS policies and explaining them when you are discussing the TitlePLUS Acknowledgment and Direction with your clients helps reduce the risk of claims that could arise from lack of communication.

Real Property Program

at the Ontario Bar Association Annual Institute

Register now for the Real Property Program at the Ontario Bar Association Annual Institute, being held on February 16, 2010, in Toronto. This full day program is called "Real Property Law – Closing the Deal."

For more information, or to register, visit the [OBA website](#).

2010 TitlePLUS Essay Contest now underway



One Canadian law student⁷ has the opportunity to win \$3,000 by submitting an essay on a topic related to the current practice of real estate law. This educational initiative was launched in 2006 and continues to serve as a way to reward academic excellence.

The submission deadline is March 31, 2010. For full contest details, [click here](#).

⁷ Excluding Québec.



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