

New Ontario underwriting:

an easier application process for you and your staff



The changes affect TitlePLUS[®] purchase applications for resale freehold homes in Ontario, created on or after February 15, 2011:

- elimination of the “TitlePLUS whole of a lot” definition;
- automatic survey coverage for all residential properties (up to \$1 million);
- no need to review or retain home inspection reports;
- no inquiries required regarding previous renovations; and
- in most cases, no requirement to conduct a Building Department search.¹

For details, please refer to the [Hotsheet](#).

¹ The search is required for multi-unit properties and purchases under default or forfeiture. The search is also required for properties in the City of Greater Sudbury (see the Sudbury [Hotsheet](#)). For further details, please call the TitlePLUS Customer Service Centre.



Powers of sale, tax sales and more:

Potential concerns

Some real estate deals may have issues or problems that you may not see every day, but sooner or later they will cross your desk. Examples include a sale by:

- a mortgage lender under power of sale or foreclosure;
- CMHC or another mortgage insurer;
- the court;
- a sheriff under execution;
- a trustee in bankruptcy or receiver;
- a municipality for arrears of realty taxes; and
- the federal or provincial government, where the government obtained title by forfeiture due to criminal activity.

Firstly, these types of sales usually do not include chattels. Your client will not get title to appliances and other moveable items on the premises unless the vendor exercises a power of sale or seizure under the *Personal Property Security Act*². This occurs very rarely in residential deals. Therefore, it is important that the purchaser is aware that although he or she may get possession of the chattels, someone else may claim them later. This is especially important for multi-unit properties, as the

cost of replacing appliances in multiple dwellings can be significant.

Secondly, these sales are usually on an “as is” basis. The implications of this are broad and include, among other things, the fact that the vendor takes no responsibility for the condition of the property. Because the sale is the result of the owner’s default under a mortgage, failure to pay taxes, insolvency or (in the case of government forfeitures) involvement in crime³, the property is often in serious disrepair. Your clients may be buying at a bargain price, but they should be made aware of the risks.

There may also be tenancy issues. Usually the Agreement of Purchase and Sale does not require vacant possession on closing. In such a case, proceedings to evict existing tenants may need to be commenced or an extension of closing may need to be arranged.

For more information or assistance with applying for a TitlePLUS policy for these types of transactions, contact the TitlePLUS Customer Service Centre.

² R.S.O. 1990, chapter P.10.

³ If there was a grow operation or drug lab on the property, contact the TitlePLUS Customer Service Centre.

Parcels of Tied Land in Ontario: A TitlePLUS perspective

By D. Bruce Heakes, Underwriting Counsel, TitlePLUS

On May 5, 2001, when the *Condominium Act, 1998*⁴ came into force, it created the real estate entity known as a Parcel of Tied Land (“POTL”). A POTL is a freehold parcel of land, or a standard condominium unit, which is inextricably tied to a share in a Common Elements Condominium (“CEC”). The POTL is “tied” to the share in the CEC in the sense that the owner must transfer or mortgage them together.

A CEC consists of only common elements, not units. The property owned by a CEC is only limited by the developer’s imagination. It can range from something as simple as a shared parking area to a marina or golf course. In many cases, the CEC includes roadways and underground sewer services, which are maintained at the CEC’s expense. You can expect to be dealing with more POTLs in the future, in both urban and rural settings.

If your client is purchasing or mortgaging a POTL and its interest in a CEC, you are essentially dealing with two separate properties. In addition to the searches required for the POTL, you also need to conduct a title search of the CEC’s property and obtain a status certificate from the CEC (for mortgage-only transactions where the loan to value ratio is 80% or less, you are not required to obtain a status certificate for TitlePLUS purposes).

When completing a TitlePLUS application to insure a POTL and its interest in a CEC where the POTL is a condominium, under “Property Type,” choose “Condominium.” If the POTL is not a condominium, choose “Freehold.” You can then complete the application in the usual way. A description of the interest in the CEC should be included in the “Together With” section of the Legal Description.

When you submit an application to insure a POTL and its interest in the CEC, it is important for you to insert an insure over request in the application, notifying

TitlePLUS staff that the property is a POTL with an interest in a CEC. The application will then be manually reviewed by a member of the TitlePLUS Underwriting Group, who will contact you to confirm that title was searched and a status certificate was obtained for the CEC. The TitlePLUS Common Elements Condominium Endorsement, which is provided at no additional charge, will then be attached to the policy. This endorsement contains coverage with respect to the CEC.

When reviewing the condominium documents of the CEC with your clients, it is a good idea to bring to their attention the fact that while they will be entitled to the benefits of the CEC’s facilities, they will also be responsible for a share of the future operating costs, maintenance costs and liabilities of the CEC. This is especially important because the common elements of a CEC are often more extensive and expensive to maintain than the common elements of an older, standard condominium.

⁴ S.O. 1998, c.19.

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Entering TitlePLUS-qualifying

Subdivision/Development Agreements in purchase applications⁵

You are not required to conduct any searches or inquiries⁶ for subdivision agreements, development agreements or agreements categorized as TitlePLUS-qualifying subdivision/development agreements (“TitlePLUS SDAs”). However, reference to these agreements must appear in TitlePLUS purchase applications.

Definition

In addition to agreements expressly called “subdivision” or “development” agreements, TitlePLUS-qualifying SDAs are defined as agreements:

- a) with a government, government-related body/agency (e.g., school board) or a utility company;
- b) that impose the primary obligation on the developer; and
- c) that require the developer to post security.

Examples of TitlePLUS SDAs include site plan agreements, condominium agreements, water/hydro/gas servicing agreements, cable/internet/telephone servicing agreements, CNR noise warning agreements, road and servicing agreements, and financial agreements. See the Action/Issues List for additional examples.

The following are not TitlePLUS SDAs and must be entered as exceptions in the TitlePLUS application: reciprocal/cost-sharing/shared facilities agreements between condominiums, other private cost-sharing agreements, and deferral agreements for development charges.

Unknown non-compliance existing as of the Policy Date

Losses arising from instances of unknown non-compliance with TitlePLUS SDAs that exist as of the Policy Date will be covered, subject to the terms of the policy. Where there is no known non-compliance, the TitlePLUS SDAs should be entered in the application with “Acknowledgment and Direction” as the TitlePLUS Action. Then, instead of appearing as exceptions to coverage in Schedule “A,” they will appear in the “TitlePLUS Acknowledgment and Direction From Purchaser,” which should be reviewed with the purchasers and signed by them before closing.

It is not necessary to enter agreements amending or assuming TitlePLUS SDAs, agreements that are expired on their face, or those that are expressly superseded by later agreements (the later agreements, however, should be entered).

To enter TitlePLUS SDAs in a TitlePLUS application, follow these steps:

On titleplus.lawyerdonedeal.com: In the Action List, go to “Other Title Issues” and select the “Subdivision/Development Agreements” defect. In the “TitlePLUS-qualifying Subdivision/Development Agreements (“SDAs”)” window that appears⁷, insert a check mark beside each of the applicable agreements appearing on title. Click “OK” at the bottom of the window to return to the Action List.

In RealtiWeb®: In the Master Issues List, go to “Other Title Issues” and click on “Agreements” to open the “Subdivision/Development Agreements” subfolder. Make a selection from the five agreements listed. Insert a check mark to activate the TitlePLUS tab, and ensure that “Acknowledgment and Direction” is selected as the TitlePLUS Action.

Known non-compliance existing as of the Policy Date

Where there is a known instance of non-compliance with a TitlePLUS SDA that will not be resolved prior to closing: (a) enter the agreement in the application as described above; (b) create another defect/issue (e.g., “Other”) describing the non-compliance; and (c) select either “Remain Outstanding” or “Insure Over.” If you select “Remain Outstanding,” the TitlePLUS SDA will appear as an exception to coverage.

⁵ Entries are not required for mortgage-only and OwnerEXPRESS® applications.

⁶ Applies to properties up to \$1 million. For properties from \$1 to \$2 million, the search may be required. Please contact us for details.

⁷ If you do not see this pop-up window, you may not have accepted pop-ups from our website. Save your application and contact us for assistance.

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TitlePLUS applications: The importance of pre-approval

By Marilyn Nelson, Consultant, TitlePLUS

To ensure your client is able to obtain a TitlePLUS policy, you must have pre-approval of your TitlePLUS application **before** closing the transaction. It is good practice to request pre-approval as far in advance of the closing date as possible, as some types of properties and transactions may require review and additional information. Applications submitted after closing will be rejected by the system.

Before submitting an application for pre-approval, enter and save all relevant information. Be sure to review the Action/Issues List and enter any defects/issues as applicable:

- On titleplus.lawyerdonedeal.com click on the “Request Pre-Approval” button.
- In **RealtiWeb** click on the drop-down arrow next to the TitlePLUS button and select “Submit for Pre-Approval.”

If your application is incomplete, red text will indicate where you have missed information – you must complete the missing/incorrect information and re-submit your application for pre-approval.

You can confirm the status of your application on-line. On titleplus.lawyerdonedeal.com, open the application and look at the Application Status. In **RealtiWeb**, once you have logged in, you can check your TitlePLUS application status directly on the main page under “TP Status” or by going into the file and looking at “Status” which appears at the top of the page. Another helpful feature on **RealtiWeb** is the calendar reminder. This reminder is activated if you do not have your pre-approval in place

48 hours before the closing, and will appear in the calendar (which can be viewed on the main page).

If the TitlePLUS status indicates “Preliminary,” “Reviewing,” “Manual Review” or “Rejected,” you do not have pre-approval and title insurance is not assured for this transaction.

If you are having problems with your web connection and are unable to submit the application for pre-approval, please contact the TitlePLUS Customer Service Centre for assistance with securing pre-approval in time for your closing.

Avoid the stress of late applications – remember to check the status of your applications in advance of closing the transactions. It only takes a minute!

Need refresher training? Your TitlePLUS area consultant will be pleased to visit your office to review the TitlePLUS program with you and your staff.





Educating home buyers: An interview with an insurance adjuster

The TitlePLUS Real Simple Real Estate Guide™, available on titleplus.ca, is a useful resource for those buying or mortgaging homes. It includes mortgage calculators, a glossary of real estate terms, helpful information on the role of real estate lawyers and much more.

We have added an item to the Guide – an interview with an insurance adjuster who provides valuable insight on the subject of renovations and building department issues. Read it on titleplus.ca.

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Electronic newsletter for your law firm staff



TitlePLUS Tips – an electronic newsletter created specifically to keep your staff up-to-date on real estate-related topics and provide them with tips on using the TitlePLUS program. View the first edition [here](#).

Want your staff to receive TitlePLUS Tips? Have them complete our [Communication Sign-Up Form](#) and mail or fax it back to us.

TitlePLUS staff update

The TitlePLUS Department congratulates Andrew Levin on his position as Operations Manager. We also congratulate Sunny Xu on her position as TitlePLUS Technology Coordinator.



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Editors:
Marcia Brokenshire
marcia.brokenshire@lawpro.ca
Mahwash Khan
mahwash.khan@lawpro.ca

Phone: 416-598-5899 or 1-800-410-1013
Fax: 416-599-8341 or 1-800-286-7639
e-mail: titleplus@lawpro.ca
titleplus.ca
titleplus.lawyerdonedeal.com

TitlePLUS®
LAWPRO®
250 Yonge Street
Suite 3101, P.O. Box 3
Toronto, Ontario M5B 2L7