

Title PLUS[®]

Hotsheet

Changes to Mandatory Due Diligence in Mortgage-Only Applications

The TitlePLUS[®] program has become aware of an increased risk of fraud in connection with mortgage transactions, where the mortgage proceeds are directed to be paid to one or more third parties. After closing, it is discovered that the borrower was impersonated, and the money paid to third parties is lost. LAWPRO[®] has recently seen several instances of this scenario in its primary professional liability program, involving substantial dollar amounts. It appears that this type of fraud is becoming more common.

In the cases we have seen, the mortgage was title insured, but the title insurer denied coverage to the lender due to an exception in the policy stating that the insurer has no liability to the lender if the proceeds of the mortgage are paid or payable (depending on the exception) to any person or entity other than the registered title holder, the holder of a prior registered encumbrance, a judgment creditor, or other specified, limited types of payees.

TitlePLUS policies¹ do not contain this type of exception to coverage as a matter of course. The risk of fraudulent third party payees is addressed by the Mandatory Due Diligence section in TitlePLUS mortgage-only applications.

Please note the following changes to the Mandatory Due Diligence section:

1. You must indicate if the mortgage proceeds are being paid to “an approved recipient” and/or “a non-approved recipient.” If any of the mortgage proceeds are being paid to “a non-approved recipient,” you must enter the amount of proceeds being paid to the non-approved recipient. An indication of funds being paid to a “non-approved recipient” may trigger a review of the application by TitlePLUS underwriting counsel.
2. The definition of “approved recipient” has been revised, as follows:
 - the borrower or a spouse, child or parent of the borrower who is guaranteeing the mortgage;
 - the holder of a prior registered mortgage, lien or other encumbrance, in accordance with a payout statement;
 - the holder of an execution, writ or judgment binding the property, in accordance with a payout statement;
 - a municipality, government authority, utility supplier or condominium corporation;
 - a bank, trust company, insurance company, credit union, caisse populaire or credit card issuer for debts owed by the borrower or a spouse, child or parent of the borrower who is guaranteeing the mortgage;
 - a builder or material supplier, if the mortgage is a construction mortgage; or
 - another solicitor in trust:
 - where the solicitor gives a written undertaking to make the mortgage proceeds payable to an approved recipient as defined above; or
 - in furtherance of a purchase deal where the solicitor acts for the borrower in the purchase of real property.

For more information on the frauds referred to in this Hotsheet, please see the LAWPRO AvoidAClaim blog post “Warning re: Claims exposure where private mortgage advance goes to third party” at <http://avoidaclaim.com/2014/warning-re-claims-exposure-where-private-mortgage-advance-goes-to-third-party/>.

If you have any questions, please call the TitlePLUS Customer Service Centre at 1-800-410-1013 or 416-598-5899 or e-mail us at titleplus@lawpro.ca.

¹ The TitlePLUS policy is underwritten by Lawyers’ Professional Indemnity Company (LAWPRO). Please refer to the policy for full details, including actual terms and conditions.

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