

TITLE INSURANCE BACKGROUNDER

Why is “good and marketable title” important?

- All financing parties (mortgagees) require good and marketable title.
- Good and marketable title is acceptable to (and capable of being forced upon) a subsequent purchaser who has signed a standard Agreement of Purchase and Sale.

Your Options

1. Obtaining a lawyer's opinion.
2. Obtaining a title insurance policy from a commercial (American-owned) insurer or from LawPro which is owned by the Law Society of Upper Canada.
3. No protection. Taking no title protection whatsoever is not usually recommended. A \$65 levy plus tax must be paid to the Law Society of Upper Canada.

Legal Opinions

Advantages of Legal Opinions

- The scope of routine enquiries made for lawyers' opinions is broader than that routinely made for title insurance requirements so if a problem exists, there is a better chance of identifying it prior to closing the purchase transaction.

Limitations of Legal Opinions

- Legal opinions rely on the accuracy of the information provided by the municipality and other third parties responding to the enquiries.
- The wording of responses given by third parties to the lawyer's enquiries may stop your successfully asserting rights against third parties later when errors are subsequently found.
- Without a current survey a legal opinion will be additionally qualified.
- Legal opinions contain the assumption that there are no forged documents in the chain of title.
- An opinion is valid only as at the point in time when the deed is registered.
- If there is a title defect not found by the lawyer, you have to sue the lawyer and prove that the lawyer acted in a negligent fashion to recover any compensation for the defect. Not all title defects arise from the lawyer's mistakes and in those cases, where there is no negligent mistake by the lawyer, there would be no compensation.

Costs of Legal Opinions

Various searches of government records can lead to hundreds of dollars in disbursements. A current survey of a residence will typically cost near \$1,000. And then there are legal fees associated with reviewing the results of the searches and giving the opinion. Delays in closing usually mean incurring additional subsearch costs also. A \$65 levy plus tax must be paid to the Law Society of Upper Canada.

Title Insurance

Advantages of Title Insurance

- Provides compensation for title defects even if there are forged documents in the chain of title or inaccuracies in the information provided by the municipality or other parties.
- Compensates the policy owner if, in the future, a forged document is registered which purports to affect legal ownership of the property.
- Provides "Defense of Title" coverage, whereby the title insurance company will pay legal costs associated with a challenge to your legal ownership for any covered title risk.
- Guarantees that the insured owner or lender has a direct claim if the specified title risks cause a loss, regardless of the source of the loss, and without any requirement to prove legal negligence.
- The need for a survey is often waived (most lenders will waive the requirement for a survey if you buy title insurance) which results in reduced costs.
- Delayed closings can be accommodated usually without the need to incur the costs of further searches.
- No \$65 levy is payable to the Law Society of Upper Canada.

Title Insurance coverage includes:

- Defects in title to the property
- Unmarketability of title
- Pre-existing municipal work orders
- Violations of municipal set back zoning requirements
- Liens on the property
- Arrears of realty taxes or utility charges (other than final water meter readings)
- Encroachments
- Encumbrances and their priority
- Contravention of subdivision & development agreements
- Survey errors
- Adverse claims to property
- Fraud and forgery
- Invalidity or unenforceability of the insured mortgage on title
- Authenticity of registered documents on title
- Structures located on an adjoining property other than fences or boundary walls
- Forced removal of structures on the insured property
- Known risks which can be added to coverage to facilitate the transaction
- Other matters specified in the policy
- Legal services provided by the lawyer with respect to the insured property
- Gap coverage for delayed closings

Limitations

- Not all potential problems threatening title will be identifiable during the title search process. If title problems subsequently surface, Title Insurance can either rectify the problem or, if a loss is sustained, protect the insured owner or lender up to the full amount of the policy.
- Using title insurance in one transaction does not guarantee that it will be used, or available in a future transaction.

Costs

The cost of residential title insurance varies based on the value of your property, and the insurance company you choose. You pay only a one-time premium and the benefit of title insurance passes to your estate and heirs.