

Title Insurance: The Claims Process

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Prepared by:

Frank Maggisano

Stewart Title Guaranty Company

Toronto, Ontario

Presented by:

Ryan MacKay

MacKay Real Property Law

Calgary, Alberta

Mae Chow

Duncan Craig LLP

Drayton Valley, Alberta

Frank Maggisano

Stewart Title Guaranty Company

Toronto, Ontario

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INTRODUCTION

The use of title insurance in a lawyer's practice allows for the timely closing of real estate transactions; facilitates solutions to issues preventing closing; saves costs; and provides insured homeowners, property owners, and lenders with comprehensive coverage against hidden risks affecting title to real property. The effective use of title insurance by lawyers requires a basic understanding of the coverage, both its benefits and limitations.

This paper will address some key areas of knowledge that all lawyers in Alberta who use title insurance should possess. A sample residential policy and sample residential lender policy are attached as Schedules A and B to this paper. Unless otherwise noted, the information in this paper relates only to residential transactions.

The Information provided is for informational purposes only and may change without notice. Always refer to issued policies for each transaction when advising your client about coverage.

TITLE INSURANCE BASICS

The following are basic questions about title insurance that every lawyer should be able to answer:

What is covered?

Title insurance is an insurance policy that protects insureds from losses arising from certain risks that could adversely affect their title or interest in real property. This paper goes into detail as to what types of risks are covered.

What is not covered?

As with all insurance policies, there are exceptions and exclusions contained within and no coverage is provided for those matters. Exceptions may be specific to the property and reflect matters that are known prior to the closing for which the insurer will not provide coverage. Standard exceptions and exclusions include:

- Risks created, allowed or agreed to by the insured;
- Risks actually known to the insured, but not to the insurance company, on the policy date;
- Risks that result in no loss to the insured;

- Quality of construction;
- First Nations land claims against the property;
- All environmental matters;
- Expropriation (unless it has occurred without the purchaser's knowledge before closing);
- Governmental changes to laws and regulations;
- Legality of rents; loss of rental income;
- Water quality and quantity (limited coverage for residential lenders); and
- Orders by a fire department to retrofit a building (limited coverage for commercial lenders).

How can exclusions impact a claim?

In the event of a claim, Stewart Title will require that it be provided with a copy of the agreement of purchase and sale, any building inspection reports and other relevant material to the transaction. If these documents or other circumstances reveal that the insured was aware of a deficiency that was not disclosed to Stewart Title prior to closing, then a claim will most likely be denied.

Another example of how an exclusion may impact a claim is in relation to risks that result in no loss to the insured. This issue can come up with a lender policy when no owner policy was purchased and a deficiency is discovered. Regardless of the significance of the deficiency, the lender does not sustain a loss until the borrower defaults on the mortgage. Therefore a claim is not valid until default occurs.

What is the policy amount?

The policy amount is the purchase price for an owner policy, and most often is the loan amount for a lender policy. Residential owner policies also include inflation coverage so that as the value of the property increases, so does the policy amount, up to 200% of the original policy amount.

What is the significance of the policy date?

The policy date is the date of registration of the transfer of title to the purchaser, or the date of registration of the mortgage in the case of a lender policy. For gap purposes the policy date is the date that the transfer is submitted to the land registry office for registration. The policy date is significant because, with certain exceptions – including the title fraud coverage on residential transactions – matters that first arise after the policy date are not covered.

How long does the coverage last?

The coverage lasts for as long as the purchaser owns the property, or in the case of a lender, as long as the mortgage is registered against the property. In addition, under certain circumstances the policy coverage will automatically transfer to another party. The following parties would receive the benefit of the policy upon transfer of the title to them:

- The beneficiary under the insured's will;
- A spouse or child of the insured as long as the transfer is for nominal consideration;
- A trustee, if the insured transfers the title into trust; and
- The beneficiaries of a trust if the title is transferred to them pursuant to the terms of the trust.

How and when to make a claim?

Claims may be made by contacting the insurance company in writing. The policy has provisions with respect to the time frame in which the claim should be made and how it should be made. These should be reviewed. It is important to provide prompt notice as the failure to do so, if it prejudices the insurer's ability to handle the claim, may reduce the obligations of the insurer.

Generally many lawyers will include all of the above information in introductory letters to clients (perhaps along with brochures from title insurers) so that the client can make an informed decision regarding obtaining title insurance.

A more detailed knowledge of covered title risks is useful in order to identify when a matter may need to be reported to the title insurer before closing, for an underwriting decision, or after closing in the event the insured is seeking advice as to whether or not to file a claim.

How will my claim be resolved?

With respect to a claim, there is specific language in the policies that give the title insurance company options to resolve a matter, including:

- Fixing the problem (ie pay for the removal or remediation);or
- Paying the insured an amount equal to the actual loss as determined by an appraisal.

While we endeavour to fully satisfy the insured, there are occasions where we may resolve the issue in a manner different than what the insured prefers. For example we will not remediate a deficient