McSEVNEY
LAW OFFICES

www.mcsevneylaw.com

Phone: *(519) 653-3217*
Fax: *(519) 653-3702*
Toll Free Fax: *(866) 891-7016*

Title Insurance v. Traditional Lawyer's Opinion

Title insurance streamlines your lawyer's work and it reduces the need for many searches and inquiries which would otherwise cost you money. When title insurance is used, your lawyer is relieved from having to make investigations that would otherwise be necessary to express a traditional lawyer's opinion. For example, with title insurance your lawyer does not need to enquire with the municipality as to whether a subdivision agreement registered on title has been complied with. All municipal governments charge a fee to reply to a lawyer investigating such matters and that government fee is generally passed on to the client as a disbursement.

Therefore, the cost of obtaining a title insurance policy is offset by these disbursements which need not be incurred – and your coverage is greater – all of which makes obtaining title insurance the most often recommended way to proceed.

Title insurance policies can be issued in favour of a purchaser, a lender, or both. In the absence of a current survey, almost all lenders now require title insurance as a condition of making the loan - another reason why title insurance has become so prevalent. Title insurance protects purchasers and/or lenders against loss or damage sustained if a claim that is covered under the terms of the policy is made.

Types of risks that are usually covered by title insurance include:

- survey irregularities
- forced removal of existing structures
- claims due to fraud, forgery or duress
- unregistered easements and rights-of-way
- lack of pedestrian or vehicular access to the property
- work order deficiencies
- zoning problems
- set back non-compliance or deficiencies, etc.

For a risk to be covered, it has to have existed as of the date of the policy. As with any type of insurance policy, certain types of risks might not be covered. For example, native land claims and environmental hazards are normally excluded. The insured purchaser is protected against actual loss or damage sustained up to the amount of the policy, which amount is generally based on the purchase price at the time the property is acquired by the insured person.

In the traditional lawyer's opinion method of assuring title, the purchaser/lender relies on the lawyer giving the opinion on title; if a problem is discovered after closing, the lawyer would have to be sued and found to have been negligent.

However, if the lawyer has acted reasonably in accordance with the standard of practice (or the lawyer couldn't have discovered the problem, as is often the case with fraud), there may not be any negligence.

In a title insurance regime, the client only needs to prove that the problem exists and that the problem falls within the terms of coverage in the policy (in other words, it falls within the "insured risks"). Coverage is therefore not dependent on any lawyer negligence.

Another less known fact is that lawyers in Ontario are insured on a "claims made" basis. This means that if the lawyer is not insured at the time the claim is made, a successful claimant could have trouble collecting a judgment. Lawyers need to be insured to practice law but some lawyers get disbarred or cease to practice law and fail to maintain insurance afterwards. If a claim arises when a lawyer is not insured, the lawyer could potentially claim bankruptcy making collection improbable.

Although these are uncommon scenarios they are nevertheless risks you need to be aware of when relying on a solicitor's opinion alone.