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Title insurance policies can differ

Are all title insurance policies the same? Are the coverages provided by the various title insurance companies so similar that it doesn't matter which one you choose?

These questions arise in the wake of a recent article on title insurance which appeared in the Aug. 18 New in Homes. The article quoted Toronto real estate lawyer Bruce McKenna, and Mississauga lawyer Lorne Shuman, who works for First Canadian Title.

"Both Shuman and McKenna suggest purchasers go with the insurance provider recommended by their lawyer," the article said, adding that "while there are small differences between providers, your lawyer will be working with the provider he or she feels is best for you."

McKenna is also quoted as saying that, "basically, the coverages are so similar and the market pressures to deal with claims in a reasonable way are so large that I don't feel the insurer matters very much."

I have to differ, but in doing so I should first point out in fairness that I am an elected bencher (director) of the Law Society of Upper Canada, which owns the Lawyers Professional Indemnity Company (LawPRO). That company insures all Ontario lawyers for errors and omissions, and also owns TitlePLUS, one of several licensed title insurance companies in Ontario.

In my capacity as a Law Society bencher, my legal duty is to assist in governing Ontario lawyers in the public interest. I am not, however, a cheerleader for the Law Society.

I have no role in the operations of LawPRO or TitlePLUS except to approve or not approve their annual reports, along with more than 50 other bencher colleagues. I do not sit on the board of LawPRO and do not attend its meetings.

Having said that, I feel compelled to explain that there is, in my opinion, a significant difference among title insurers. Conventional title insurance policies cover a lawyer's negligence only if the mistake relates to a loss that is listed in the policy as an insured risk.

In contrast, only TitlePLUS routinely makes available comprehensive coverage for the legal services provided by a lawyer, in addition to the listed risks. In other words, any negligence by a lawyer in a real estate transaction is covered by a TitlePLUS policy, whether or not the mistake is an insured risk set out in the policy.

What this means is that in a real estate transaction, if a lawyer makes an error amounting to negligence, the legal services coverage in a TitlePLUS policy protects the homeowner, even if the lawyer's mistake is not related to one of the itemized title risks insured by the policy.

One example of legal services coverage occurred when the buyer of a condo unit told her lawyer she wanted to pay cash, but wound up getting stuck with paying interest on a vendor-take-back mortgage during the interim occupancy period. The legal services provision in the TitlePLUS policy compensated the buyer for her \$9,000 loss even though the policy did not specifically insure against this type of loss.

Without the coverage, the client would have had to sue the lawyer for the loss.

The Aug. 18 article also quotes Lorne Shuman as saying that title insurance costs about \$299 for a house purchase with a mortgage, but it varies with properties and price range.

In fact, there is a significant difference in the cost of residential title insurance policies among three companies that I called last week. For a resale house selling at between \$200,000 and \$500,000, with one institutional mortgage, First Canadian Title (FCT) quoted \$322.92. Stewart Title Guaranty Company (STG) quoted \$351, and TitlePLUS (TP) quoted \$238.80 including the legal services coverage.

For new homes, the premiums drop to \$268.92 (FCT), \$324 (STG), and \$233.10 (TP). In both of these types of policies, Stewart Title rebates a fee of \$100 to qualified lawyers who arrange coverage over the Internet. The fee must be disclosed to the lawyer's client.

For resale condominium units in the same price range, the premiums are \$193.32 (FCT), \$189 (STG) and \$184.80 (TP).

Whenever I can, I use TitlePLUS policies for purchaser clients. The cost is lower, and the coverage is in my opinion far superior.

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