



Bob Aaron bob@aaron.ca

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## Independent legal advice crucial in title insurance purchase

Should Ontario consumers always have the benefit of independent legal advice when they obtain title insurance for their real estate purchases?

That topic became the subject of intense debate among industry stakeholders earlier this month when [Stewart Title Guaranty Company](#) sent a letter to thousands of real estate lawyers advising them of its opposition to the lobbying activities of the [Title Insurance Industry Association of Canada \(TIIAC\)](#).

In October, TIIAC had asked the Ontario government to review the need for regulation 69/07 under the Insurance Act.

That regulation, dating back to 1956, protects homebuyers by ensuring that they receive independent legal advice.

The regulation states that title insurance cannot be sold to a homebuyer in Ontario unless the title insurance company receives a certificate of title from a lawyer who is not employed by the insurer. This means that an independent lawyer will always be involved in a title insured purchase transaction.

Repeal of the regulation would substantially water down the protection it provides to consumers.

Stewart's letter stated that the business model involving independent lawyers "provides tangible benefits to all stakeholders, including title insurance companies, lenders, developers/builders and most importantly, consumers who are purchasing or refinancing their homes."

Stewart also wrote to Ontario Finance Minister Dwight Duncan to oppose any review or change to the regulation.

Stewart's letter unleashed a blizzard of letters and emails from lawyers to each other, to the ministry, to TIIAC and to its member insurance companies.

The Law Society-owned [Lawyers' Professional Indemnity Company \(LawPRO\)](#), operator of its TitlePLUS title insurer, waded into the controversy with a statement opposing the TIIAC request to revisit the regulation, calling it "just the latest in a series of efforts by TIIAC and its members to lobby government officials to revisit (and remove) what LawPRO considers an important piece of consumer protection legislation."

Neither TitlePLUS nor Stewart Title is, or has ever been, a member of TIIAC.

In her statement, LawPRO president Kathleen Waters noted that its "TitlePLUS title insurance program is founded on the premise that a real estate lawyer is pivotal to any real estate transaction. With the TitlePLUS program, it is the real estate lawyer who explains to the client the many ways in which the client can take title, and describes the title insurance options available. On direction from the client, the lawyer applies for a TitlePLUS title insurance policy."

LawPRO endorsed the continued existence of the regulation "as an important consumer protection/access to justice issue. Ensuring consumers have access to expert legal advice and guidance when they purchase a home (likely their most expensive single investment) is fundamental to effective consumer protection."

(Disclosure: I am a non-voting director of the Law Society of Upper Canada, which owns the TitlePLUS title insurer.)

Less than 24 hours after Stewart released its letter to real estate lawyers and the same day LawPRO released its own statement, TIIAC backed down. In a letter to Duncan, TIIAC's acting president Patrick Squire withdrew its request for a review of the Insurance Act regulation 69/07.

An accompanying announcement stated that the clients of its member companies had "expressed significant concern regarding the request" to the government. TIIAC, it said, "remains committed to the lawyer's role in the real estate transaction and regrets the unintended concern regarding the association's purpose in making this request."

In a letter to its own lawyer clients, TIIAC member FCT Insurance ([First Canadian Title](#)) took aim at its competitor, Stewart Title. "Regrettably," it said, "our competitor Stewart Title has chosen to incorrectly and irresponsibly characterize TIIAC's position as one of support or non-support of lawyers as opposed to an industry initiative to standardize insurance regulations across the country."

As I see it, Stewart Title was fully justified in waving the red flag and is to be applauded for its attack on the TIIAC initiative. Without regulation 69/07, Ontario consumers could easily be deprived of the role of an independent lawyer to protect their interests in real estate transactions.

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*Bob Aaron is a Toronto real estate lawyer. [www.aaron.ca](http://www.aaron.ca) ©Aaron & Aaron. All Rights Reserved.*