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Some title insurance is better than others

Legal services coverage provides protection from mistakes outside policy limits

In the world of real estate, it's not very well known that title insurance policies vary significantly from one company to another.

When it comes to basic title protection, though, policy coverage among insurers is very similar. Title insurance typically protects home buyers against loss from risks which are listed in the policy, including another person having an ownership interest in the property, outstanding liens, construction without a permit, fraudulent title dealing, breach of zoning bylaws and other circumstances which could result in loss.

But unlike insurance policies in other fields, some title insurance policies also include coverage for risks that are not specifically itemized.

This type of protection is called legal services coverage and not every title insurer offers it.

In plain language, if a mistake in a real estate transaction occurs due to a lawyer's negligence, legal services coverage in a title policy protects the owner—even if the mistake falls outside the specific risks listed in the policy.

I often say that there is no such thing as a simple real estate deal. There are numerous aspects of a real-estate transaction in which mistakes can occur, even though the owner has received good and valid title to the property.

A real-life example of legal services coverage occurred when a purchaser signed an agreement to buy a lakeview condominium unit, described as Suite 5321 and Unit 5 Level 2. It turned out that Unit 5 Level 2 was actually Suite 5531, which did not have a view of the lake.

In reviewing the status certificate, the buyer's lawyer missed the inconsistency.

The buyer took title to a unit he had no intention of buying and the lakeview unit was sold to someone else.

Normally, since the purchaser received good title to the numbered unit in his purchase offer, the loss would not be covered by a title insurance policy.

In this case, however, the legal services coverage came into play and the insurer compensated the buyer for the difference in value between the two units.

Other examples of legal services claims might include putting incorrect names on the deed, land transfer tax and income tax implications, errors in calculating the adjustments between buyer and seller, and financial consequences of the purchase.

In Ontario, only two title insurance companies are authorized to issue policies which provide legal services coverage: FCT Insurance Company Ltd. (First Canadian Title), and Lawyers' Professional Indemnity Company (LawPRO—TitlePLUS).

(Disclosure: I am a non-voting director of the Law Society, which owns LawPRO. I have no role in its operations.)

TitlePLUS routinely includes legal services coverage in all its Ontario residential purchase policies, and FCT does not include it although it is licensed to do so.

In the case of TitlePLUS, any negligence or mistake by a lawyer in providing legal services for a real estate purchase transaction is covered by the TitlePLUS policy whether or not the mistake is a specific insured risk set out in the policy.

This coverage is included in the policy without extra charge to the lawyer or buyer.

FCT Insurance offers what it calls E&O Extra coverage to lawyers who pay a one-time annual fee. The coverage reimburses the lawyer for his or her deductible and insurance premium surcharge if the client sues the lawyer due to an error in the transaction which is not covered by the title insurance.

With FCT, the homeowner would have to sue the lawyer in order to recover any losses.

Although Stewart Title is unable to provide legal services coverage, it does offer what it calls StewartPROTECT for an extra premium with each policy.

The wording of the coverage suggests that there is no protection from lawyer mistakes for post-closing errors (such as payout of funds) or mistakes (such as calculation errors) which do not affect use and enjoyment of the property. Stewart, though, may provide protection outside policy boundaries.

Home buyers who want the broadest possible protection with their title insurance policies should always discuss legal services coverage with their lawyers before closing.

My insurer of choice is TitlePLUS for the best coverage.

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