Real Estate Council Alberta

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TITLE INSURANCE

Purpose: To explain the types of title insurance, its benefits, when consumers may require insurance, and to compare title insurance to Real Property Reports.

This bulletin applies to all real estate and mortgage broker professionals.

What is title insurance?

Title insurance works like a standard insurance policy, which protects against future discoveries about the subject property, some title-related and some non title-related. It is a form of indemnity insurance for a property that has a mortgage that covers the loss of an interest in a property due to legal defects. A lender's title insurance policy, which the borrower usually pays for, is for the sole benefit of the mortgage lender. This type of title insurance gives protection regarding the priority, validity and enforceability of the mortgage.

Owner's title insurance is a separate policy where either the buyer or seller may pay the insurance premiums to protect the buyer's equity in the property. This title insurance may relate to coverage for title and non-title issues, though the purchaser of the insurance must disclose any known issues or defects regarding the property's title or non-title items to the insurer prior to acquiring a policy.

Title insurance operates on a no-fault basis. No-fault insurance is any insurance contract under which insurance companies indemnify the policyholder for losses, regardless of fault in the incident generating losses. It also restricts the right to seek recovery through the civil-justice system for losses that other parties cause.

Title insurance benefits

Title insurance policies can benefit the lender and/or the property owner. It:

- defends the insured's interest in the property for fraud and forgery, as examples
- provides coverage of some non-titled items such as building permits
- provides coverage between submission and registration of documents at the Land Titles Office

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Last Revised October 2016

- facilitates transactions when a current RPR is unavailable or the parties to the transaction cannot deal with municipal compliance issues in a timely manner
- offers no-fault policies

When do buyers/borrowers need title insurance?

- title insurance can provide "gap coverage" to buyers and borrowers, which will protect their interests during the closure of the transaction. There is often a gap of several days between the submission of the land transfer and/or the mortgage document to the Land Titles Office and the registration of these interests on title. Lawyers cannot release mortgage funds to a seller until registration is complete and the title shows no intervening registrations. A borrower can arrange a title insurance policy quickly and it takes effect on the date of issue. It assures the state of the title at date of registration of the land transfer (real estate trade) or loan document (mortgage deal)
- buyers may purchase title insurance to protect themselves from any unknown municipal compliance defects or other encroachments

If the buyer/borrower purchases title insurance at the time of closing the transaction, the premium will be lower. If the lender buys title insurance for its purposes, the buyer/borrower may also purchase a title insurance policy at that time for a lower premium. If the buyer/borrower purchases title insurance after the transaction closes, the premium is greater.

The cost of title insurance is separate from the mortgage funds. The lawyer in the transaction can review title insurance options with the buyer or borrower and arrange for a policy. If your buyer or borrower have questions about title insurance, you should refer them to a lawyer. If a buyer or borrower wishes to buy title insurance after the transaction closes, he or she can contact title insurance companies.

What is a Real Property Report (RPR)?

A RPR is a legal document an Alberta Land Surveyor prepares that clearly illustrates the boundaries of a property and the location of improvements, such as buildings, garages, sheds and fences, relative to property boundaries. An RPR with evidence of municipal compliance is critical protection for all parties in a real estate transaction as it confirms the property improvements comply with municipal regulations.

Although some lenders require a RPR with municipal compliance, some lenders accept a policy of title insurance from an approved title insurance company in its place, but title insurance and an RPR are not the same thing.

If the lender requires a title insurance policy as part of the transaction, the policy is for the benefit of the lender and does not cover the borrower. A title insurance policy specifies the insured party and who benefits from the policy. Those considering buying title insurance should be clear on the risks of coverage, as well as the limitations and exclusions to coverage.

The standard Alberta residential purchase contract does not require title insurance, but it does require an RPR. The Real Estate Council of Alberta's sample Seller Representation Agreements do not require title insurance. A buyer's decision to purchase title insurance in a real estate transaction does not absolve the seller to provide a Real Property Report (RPR) to the buyer, unless the parties otherwise agree.

Comparing title insurance and Real Property Reports

Title Insurance	Real Property Reports
• not required in Alberta	• standard residential purchase contract in Alberta requires the seller or the seller's lawyer to give an RPR to the buyer or buyer's lawyer
• is an insurance product that cannot fix problems, but rather gives financial protection if problems arise in the future	• provides information about property compliance issues upfront, so issues can be dealt with before closing (an RPR with a stamp of municipal compliance is critical protection for all parties in a real estate transaction)
• may cover internal non-compliance issues that do not show on an RPR (such as a lack of building permits or failure to meet building code on renovations) and may cover hidden deficiencies (such as underground storage tanks)	• does not provide any insurance coverage/financial protection – the goal is to avoid problems arising later by having an RPR with a stamp of municipal compliance

Example – application of title insurance

- **Title fraud or forgery:** Sydney owns a residential property with clear title. His title shows no mortgage. Arnie applies for a mortgage on Sydney's property by representing himself to be Sydney. Arnie forges Sydney's signature on the mortgage documents and the lender registers the mortgage on title. Arnie receives the mortgage funds and immediately leaves town. Sydney now has a mortgage showing against his property. If Sydney has title insurance, it may cover any loss or damage from the fraud or forgery, including the costs to defend Sydney's interest in the property

- **Non-title defect:** After moving into an existing home, Max receives a notice from the municipality requiring him to obtain a building permit for a family room addition the previous owner built without a permit. Max hires a contractor to inspect the addition. The inspection report recommends the demolition of the addition. Title insurance may cover the cost of demolition and the loss of property value or the cost of reconstruction
- **Unknown municipal compliance issue:** Cindy purchases her first home, which includes a large rear deck off the kitchen that the previous owners built. After moving into the property, the utility company advises Cindy that it needs to repair an underground service and will be digging along its utility right-of-way. Much to her surprise Cindy discovers that a portion of the deck is over the company's utility right-of-way, creating an encroachment. She must remove this portion of the deck to allow the excavation that repair the underground service. An owner's title insurance policy may cover Cindy's cost for the removal of the encroaching structure
- **Known municipal compliance issue:** Norman decides to buy a house with a large two-car garage off a back lane. Carl, the current owner, discloses that the location of the garage foundation is too close to the rear lane. This creates an encroachment on municipal property. It may be possible for the seller and the buyer to agree to title insurance to facilitate the sale. The seller would purchase the insurance for the buyer in lieu of, or in addition to, providing a RPR. The buyer may accept title insurance with the understanding that the insurer can refuse to pay the claim should the situation arise. The seller must disclose to the insurer the encroachment prior to purchasing the policy

Land Titles Assurance Fund

Alberta's land registration system uses the Torrens System of land registration and operates under the *Land Titles Act*. Under this system, the Alberta government has custody of all original titles, documents and plans, and has the legal responsibility for the validity and security of all registered land title information. The Alberta government guarantees the accuracy of the title.

The *Land Titles Act* establishes an Assurance Fund to "provide compensation to anyone for loss or damage as a result of the operation of the *Land Titles Act*." Anyone who suffers a loss because of an error on the title or from a fraudulent transaction may take steps to obtain compensation from the government through the operation of the Assurance Fund. For more information about that Assurance Fund, contact Service Alberta.

Related information

Information Bulletins

- Real Property Reports