

WORKING WITH A LAWYER WHEN YOU BUY A HOME



Buying a home is one of the most

important investments

you will make

Protecting that investment is important to you

You need to know that all of the legal issues involved in buying your home are properly handled. You want to feel secure about the fact that you own your home. You may also need advice about who should officially own the property, what kind of mortgage you should get, and many other decisions that have to be made when buying a home.

Your lawyer is there to help guide you through this process, and to protect your interests at every step of the way.

About this Booklet

This brochure explains how your lawyer will work with you when you buy a home. This booklet is not complete without “A comparison of methods for assuring title” chart, which explains the three different ways in which your lawyer could protect your ownership interest in your home.

It is important that you take the time to understand these options. Once you have read this brochure, you should **immediately** tell your lawyer which one of the three methods you would like him or her to use for your home purchase.

Before you sign an offer to purchase

An offer to purchase is a contract that is binding on both you, the buyer, and on the vendor. Seeing a lawyer before you sign that offer can help avoid difficulties later on, and ensures you that your best interests are protected.

For example, your lawyer can advise you to:

- include escape clauses that will allow you to cancel your offer if you cannot proceed with the purchase. For instance, you may want to cancel your offer if you discover that the property is not what you thought it was, you were not able to arrange the mortgage you need, or you were unable to sell your present home;
- request a warranty that the property conforms to all municipal by-laws, zoning regulations and housing standards;
- include an exact listing of the accessories that you expect to buy with the home;
- require that the vendor produce an up-to-date survey;
- request that your deposit be held in a bank account that will pay you interest.

Your lawyer can also help you determine exactly how much it will cost to buy the house. You need to plan for extra costs such as land transfer tax, document registration fees, search fees, your lawyer's fees, and monies that you will have to pay the vendor for items such as heating oil already in the tank or any pre-paid utility bills and taxes – none of which are included in the purchase price.

After the vendor accepts your offer to purchase

The offer to purchase is only the beginning of the complex process of buying a home.

Once the vendor has accepted your offer, your lawyer starts to work on many fronts. You can expect your lawyer to ask you many questions about the specific property you plan to purchase and how you intend to use it. Over the following weeks, your lawyer will complete a series of legal inquiries, searches of records and extensive fact-checking, to make sure that, on closing, you really own the home and that you will be allowed to live there (in other words, confirming that the present use of the property is legal).

Providing Advice and Fact-Checking

Among many responsibilities, your real estate lawyer acts as your trusted advisor. It is your lawyer's job to check various details and advise you on a wide range of matters.

For example, your lawyer usually will:

- prepare and check mortgage documents and explain the terms of your mortgage;
- explain the different ways in which you can own the property if you are buying it with someone else, and the difference between being joint tenants and tenants-in-common;
- check the statement of adjustments to ensure that you are paying only your share of the taxes, utility and fuel bills, and other costs that have been pre-paid by the vendor;
- explain the purposes of the documents that you have to sign.

Facilitating the Buying Process

To help make the transfer of ownership from vendor to you, the buyer, as smooth as possible, your lawyer may also:

- arrange with utility companies to have hydro, water and fuel meters read on the day of closing, and to have all future bills addressed to you;
- ensure that you have home insurance in place as of the closing date;
- hold in trust your closing funds and those provided by the mortgage lender, and transfer them to the vendor to ensure the home purchase closes; and
- arrange for you to receive the keys to your home as soon as possible after closing.

Assuring you of Good Title

One of the more important parts of your lawyer's job is to make sure that you have good title to the property that you are buying.

Why is good title important?

Good title ensures that you really own the property, that it is correctly described in official documents and properly registered, and that no one else has a claim or a lien to it that you do not know about.

For example, mortgage holders, contractors, tenants and the spouse of the person selling the home may all have rights to the property that need to be resolved before the sale can proceed.

Good title is essential for you to be able to sell your home in the future.

As part of title-related responsibilities, your lawyer usually will:

- check that the person who is selling you the home has a right to sell the property, and that no one else has a claim to it or a lien on it;
- consider survey-related issues such as whether anything on your property encroaches (intrudes) on neighbouring properties, or if neighbours are in fact using a part of your property;
- contact the municipality to make sure that there are no work orders against the property which you could be forced to comply with after your home purchase has closed;
- determine if any other organizations have interests in your property that could restrict your use of it. For example, there may be easements that give utilities the right to install and access hydro or gas lines. As well, if some or all of the home is being rented, tenants have rights that could affect your ownership;
- contact local utilities and the municipality to find out if there are liens against the property because of unpaid utility or tax bills.

If there are problems that could affect title to your property, your lawyer could take steps to fix the matter (often working with the vendor's lawyer). If the problem cannot be corrected, your lawyer will explain to you the risks of taking title without resolving the problem.

Assuring you of good title: Three options to choose from

There are three different approaches that your lawyer can take to assure you of good title. **It's up to you and your lawyer** to decide which one of the three options is most appropriate in your situation.

With any of the options described below, your lawyer will conduct searches and inquiries to find out if there are any title-related problems with the home you plan to buy. Your lawyer will try to resolve most of these problems, and will advise you of how best to deal with any situations that cannot be resolved.

Option 1: Lawyer's Opinion on Title

If you select this option, your lawyer will provide you with a Letter of Opinion which states your lawyer's view of whether or not you have good and marketable title to your property. As well, your lawyer will provide you with a description of the results of the searches and inquiries conducted on your behalf, and will inform you in writing of any outstanding issues that may affect your title to the property in the future.

If a problem is identified after you have closed, you can only seek compensation from your lawyer if you can prove that he or she failed to do something that was legally required or provided legal services that did not meet the standards set by the legal profession. You may have to hire another lawyer to help you sue your first lawyer and get compensation from the lawyer's malpractice insurance plan.

Option 2: Title Insurance

Title insurance is an insurance policy that you can buy to protect your investment in your property if there is a problem with title. For example, you may find out after you have bought your home that someone else has a legitimate claim to it that has to be satisfied, or you may have to pay to move a building that is too close to a neighbour's property line.

The title insurance policy protects you against the loss that you suffer because of many title-related problems. Most title policies also cover your legal costs if your title is challenged.

Option 3: TitlePLUS®

TitlePLUS is a system that includes both an insurance policy and an electronic process that collects information from lawyers who apply for a TitlePLUS policy as they proceed through the steps in a residential real estate transaction.

The TitlePLUS insurance policy provides protection for both the title-related aspects of buying a home and the legal services provided by your lawyer. It also automatically provides both you and the lender with coverage.

If you opt to use TitlePLUS, your lawyer will ask you to sign an *Acknowledgment and Direction* just before your home purchase actually closes. This document confirms your instructions to your lawyer and that your lawyer has provided you with specific information about your purchase.

Your Choice of Options: An Important Decision

Making your choice among the three options described is a very important decision for the home buyer. The chart enclosed with this booklet addresses specific questions you may have about each option, and is designed to assist you in making the most appropriate decision in your situation.

Tips on title insurance & TitlePLUS

- Read your insurance policy in full to understand the insurance protection that you are buying. Your lawyer can provide you with a draft of the policy.
- Ask your lawyer about any items that are not covered (exclusions) by the title insurance or TitlePLUS policy before you make any decisions.
- Provide your lawyer with as much information about the property as you know. For example, make sure your lawyer knows that your home contains a separate apartment that is rented, or that there is a swimming pool in the backyard that does not show up on the survey. You must provide your lawyer with accurate and complete information to ensure that your insurance coverage is valid if there is a dispute later on.
- Your lawyer will have to disclose some information about your purchase to the company providing title insurance or TitlePLUS, assuming you choose one of these options. This is standard procedure when buying many types of insurance.
- Your lawyer will always be bound by professional rules that require him or her to act in your best interests.

® TitlePLUS is a registered trademark of Lawyers' Professional Indemnity Company, which is owned by The Law Society of Upper Canada. The Law Society is the governing body of the legal profession in Ontario. To practise law, your lawyer must be a member of the Law Society; your lawyer also is obliged to follow the Rules of Professional Conduct set by the Law Society.

If you choose title insurance or TitlePLUS, your lawyer will not receive any commission, fee or any portion of the premium from the insurer or any agent or intermediary. He or she, however, is entitled to charge legal fees and for the out-of-pocket expenses that arise from the legal services provided.



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A COMPARISON OF METHODS FOR ASSURING TITLE

(MUST ACCOMPANY THE “WORKING WITH A LAWYER WHEN YOU BUY A HOME” BOOKLET.)

ISSUE	SOLICITOR'S OPINION ON TITLE	TITLE INSURANCE	TITLEPLUS®
WHAT SERVICES WILL MY LAWYER PROVIDE?	<p>Home buyer's lawyer will:</p> <ul style="list-style-type: none"> • undertake extensive searches and inquiries related to assuring buyer of good title; • act as your advisor on title-related and other legal issues affecting home purchase; • facilitate the closing process, 		
	<ul style="list-style-type: none"> • provide a qualified Letter of Opinion on whether buyer has good and marketable title to property, as described more fully in this booklet. 	<ul style="list-style-type: none"> • apply, on home buyer's behalf, for title insurance policy which replaces lawyer's Opinion on Title. 	<ul style="list-style-type: none"> • use software-based TitlePLUS system to apply, on home buyer's behalf, for TitlePLUS insurance policy, which replaces lawyer's Opinion on Title.
WHAT DO I PAY FOR AND HOW MUCH DOES IT COST?	<p>Home buyer pays:</p> <ul style="list-style-type: none"> • legal fees; • disbursements lawyer has to pay to do the required searches and inquiries. 	<p>Home buyer pays:</p> <ul style="list-style-type: none"> • legal fees; • disbursements, including title insurance policy premium, which varies for different policies. 	<p>Home buyer pays:</p> <ul style="list-style-type: none"> • legal fees; • disbursements, including TitlePLUS policy premium, which varies with price of home.
		<ul style="list-style-type: none"> • overall cost may be less than cost of Opinion on Title, depending on searches required. 	
WHAT KIND OF COVERAGE OR PROTECTION DO I HAVE?	<p>Through lawyer's malpractice insurance, home buyer is covered if lawyer:</p> <ul style="list-style-type: none"> • makes negligent mistake(s) or omits to do something that affects the home buyer's title to the property; • was negligent in legal services provided (for example, provided incorrect advice on mortgage matters). <p>No coverage for events occurring after closing.</p>	<p>Home buyer has coverage for following types of issues (which vary with policies) if problem exists at time of purchase:</p> <ul style="list-style-type: none"> • title-related problems, such as conflicting ownership interests in the property; old or improper mortgages; liens from judgments, special assessments, realty tax arrears or public utility arrears; improper documents; certain rights arising from tenancies, contracts, options, or rights of possession by a spouse; and any title defects not specifically excluded by policy; • regulatory compliance issues, such as certain breaches of restrictive covenants, encroachments, setback deficiencies, work orders and building permit deficiencies; • inability to live in home as a single residential dwelling under zoning by-laws; • absence of legal right of access to home; • in some policies, adverse circumstances affecting the land which would have been disclosed by a local authority search. <p>Generally no coverage for legal services provided by lawyer.*</p> <p>Home buyer may be able to sue lawyer for negligence through lawyer's malpractice insurance.</p> <p>There is often limited coverage in the policy for post-closing events.</p>	<p>Home buyer has coverage for following issues defined in the TitlePLUS policy, if problem exists at time of purchase:</p> <ul style="list-style-type: none"> • title-related problems, such as conflicting ownership interests in the property; old or improper mortgages, liens from judgments, special assessments for local improvements, realty tax arrears or public utility arrears; improper documents; certain rights arising from tenancies, contracts, options, or rights of possession by a spouse; and any title defects not specifically excluded by policy; • regulatory compliance problems, such as certain breaches of restrictive covenants, notices of violation, work orders, encroachments, building permit problems, and setback deficiencies; • inability to live in home as a single residential dwelling under zoning by-laws; • access-related problems, such as the absence of a legal right of access to home or inability to use certain easements or rights-of-way over neighbour's property. <p>Full coverage for legal services provided by lawyer handling purchase, including all advisory services.</p>

A COMPARISON OF METHODS FOR ASSURING TITLE

(MUST ACCOMPANY THE “WORKING WITH A LAWYER WHEN YOU BUY A HOME” BOOKLET.)

ISSUE	SOLICITOR’S OPINION ON TITLE	TITLE INSURANCE	TITLEPLUS®
ARE THERE ANY RESTRICTIONS OR LIMITS ON THE COVERAGE I HAVE?	<p>Coverage limited to the terms and conditions of lawyer’s malpractice insurance:</p> <ul style="list-style-type: none"> • home buyer must prove lawyer’s legal services fell below normal standard of practice (i.e., lawyer was negligent); • compensation from malpractice insurer often limited to \$1 million per claim. 	<p>Exclusions (specific items policy does not cover) vary with title insurer and specific home purchase.</p> <p>Standard exclusions include:</p> <ul style="list-style-type: none"> • some rights governments may have in buyer’s land; • problems the buyer agreed to in purchase agreement or failed to tell title insurer about; • certain expropriations; • lack of any right to lands not described in policy or in abutting streets, lanes or waterways. <p>Policy also may include some exceptions specific to home buyer’s property.</p> <p>Exceptions and/or exclusions may limit coverage for environmental and/or native land issues.</p> <p>Home buyer is compensated for actual financial loss up to the policy amount, subject to some inflationary protection.</p>	<p>Exclusions vary, depending on specific home purchase.</p> <p>Standard exclusions include:</p> <ul style="list-style-type: none"> • some rights governments may have in buyer’s land; • certain environmental hazards; • buyer’s ability to change use of the land; • buyer’s right to undertake renovations or construction; • certain native land claims; • problems the buyer agreed to in purchase agreement or failed to tell lawyer about. <p>Policy may include exceptions specific to home buyer’s property.</p> <p>Lawyer will review exceptions with home buyer before closing.</p> <p>Home buyer is compensated for actual financial loss (as defined in TitlePLUS policy) up to policy amount, subject to some inflationary protection.</p>
WHO IS COVERED UNDER EACH OF THE OPTIONS?	<p>Generally covers only home buyer.</p> <p>Separate reports prepared for lender.</p>	<p>Generally covers home buyer, buyer’s spouse/children, certain trust interests, successor/assign of vendor take-back mortgage and anyone who receives title to buyer’s property if buyer dies.</p> <p>Separate policy required for lender.**</p>	<p>Generally covers home buyer, buyer’s spouse/children, certain trust interests, successor/assign of vendor take-back mortgage and anyone who receives title to buyer’s property if buyer dies.</p> <p>One TitlePLUS policy automatically covers both home buyer and lender.</p>
WHAT HAPPENS WHEN THERE IS A PROBLEM AFTER I HAVE CLOSED? HOW DO I MAKE A CLAIM OR SEEK COMPENSATION?	<p>Home buyer does not have absolute right to compensation but instead:</p> <ul style="list-style-type: none"> • must prove lawyer’s services fell below the normal standard of practice; • may have to hire new lawyer to sue lawyer who handled home purchase; • must make a claim promptly against lawyer who first handled your purchase. <p>Lawyer being sued:</p> <ul style="list-style-type: none"> • must have malpractice insurance in place when claim is made, or home buyer may have difficulty obtaining compensation; • must report claim to malpractice insurer. <p>Home buyer may have difficulty obtaining compensation if purchase lawyer has not complied with all terms of malpractice insurance policy and lawyer needs insurance money to compensate home buyer.</p>	<p>Home buyer makes claim directly with title insurer provided problem is covered by specific title policy.</p> <p>Claim must be made promptly, as required by specific insurance policy.</p>	
WHAT IF SOMEONE OTHER THAN MY LAWYER MADE A MISTAKE. AM I COVERED?	<p>Generally no coverage under lawyer’s malpractice insurance for errors made by someone else (e.g., municipality responding to lawyer’s search request provided incorrect information).</p>	<p>It does not matter who committed the error, provided type of loss relates to the matters covered by specific insurance policy.</p>	
DO I NEED A SURVEY TO BE PROTECTED?	<p>Lawyer generally needs up-to-date survey to provide opinion on survey-related issues.</p>	<p>Depending on specific policy, survey coverage often available without up-to-date survey.</p>	
WHAT IF THERE WAS SOME FRAUD INVOLVED? AM I COVERED?	<p>No coverage for fraud by lawyer that affects title to property.</p>	<p>Retroactive coverage for any losses because of fraud on part of lawyer, provided losses are for matters covered under the policy.</p>	

* On selected new home projects, legal services coverage may also be included. Consult your lawyer. ** On selected new home projects, single policy may be available. Consult your lawyer.