

Title Insurance A Quandary for Surveyors in Ontario

By Carl Rooth, O.L.S., Executive Director, Association of Ontario Land Surveyors

Since the mid-1980s, title insurance companies have been attempting to gain a foothold in the Ontario real estate market. In the last five years, their marketing has escalated to where, in my opinion, title insurance in the real estate transaction is here to stay.

We have all seen the advertisement brochures that advocate - if title insurance policies are part of the transaction, they will eliminate the need for up-to-date surveys. Whether title insurance only protects the lender as well as the purchaser depends on the final documents signed and what exclusions are endorsed.

Initially in Ontario we developed presentations, brochures and articles on all the negative aspects of title insurance policies. The lawyers began a similar campaign with many articles in the local press. Both land surveyors and lawyers expanded on the merits of the traditional approach in the real estate transaction. It did not take the lawyers or our Title Insurance Committee long to realize that what was really happening in Ontario is that title insurance companies were offering innovative alternatives to traditional methods of completing real estate transactions. This all came about by title insurance companies assessing the risk in the real estate transaction in Ontario. Ontario has one of the premier registration systems in the world when it comes to tracking the route of title on parcels. In assessing this risk, title insurance companies realized they could play the odds and reduce the amount of work in the real estate transaction by eliminating several components. Time will be the test as the courts will determine the merits of title insurance in Canada.

Surveyors and lawyers are faced with the dilemma of how to deal with this change. No longer will the surveyor be receiving the traditional calls from the lawyers/lenders asking for an up-to-date survey before the transactions are closed. Change is inevitable and we have to adjust as quickly as possible to avoid

extinction in the real estate transaction. Here are two quotes from a book written by Jim Harris entitled *The Learning Paradox* - "...change is inevitable; either organizations change or their market share will..." and "...only by creating markets can a company avoid being at the mercy of price driven commodity markets."

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We, as surveyors, know what we do well. We provide professional expert opinions with respect to boundaries based on the evaluation of evidence and their application to all our academic and practical training over many years. We can explain to the public all the benefits of having a survey done in the real estate transaction. The question arises, "do they really want that product at that particular time?" What product do they really need? We all know that boundary problems do not go away, people want to make improvements to their property (i.e. fences, swimming pools, patio decks, garages).

***To do nothing is to
"die on vine."***

Early in 1996, the Lawyers' Professional Indemnity Company (LPIC) approached the Association of Ontario Land Surveyors to work to develop a new product to work hand-in-hand with their title insurance proposal called "TitlePLUS." TitlePLUS is a combination of title insurance policy and legal services policy. Only Ontario lawyers will be able to issue TitlePLUS policies.

It will be available through the TERA-VIEW Desktop, a product of TERANET Land Information Services Inc. (TERANET is a consortium of government and private sector who have been working several years to complete the computerization of the parcel registry office system in Ontario) which will be linked directly to LPIC. This product may be called the "Surveyors Inspection Report." Basically, this product would be prepared for one client, being LPIC. The purpose of the product is for LPIC to assess the risk of providing survey coverage under the TitlePLUS Policy. The Ontario Land Surveyor would be the eyes on-site giving a degree of comfort to LPIC from the Inspection Report. It is important to understand that this product is not prepared for the public, it is strictly for LPIC. It would be similar to an appraiser conducting an appraisal and the information simply being supplied to the lender for their information.

At our Annual Meeting in February 1996 a presentation was made by two lawyers on the pitfalls of title insurance policies and the fact that there was a movement being made or lobbying to the government to remove Regulation 666. Regulation 666 requires title insurers to obtain a lawyer's opinion before writing a policy. The end result of the repeal of this regulation could be that a lawyer's opinion would not be required in a real estate transaction. To our knowledge, there has been no further information forthcoming from the government on this issue to date.

Surveyors and lawyers in Ontario have a long history of working together to resolve title and boundary issues through the real estate transaction. This new initiative by LPIC will streamline the process, eliminate the need for many of the standard searches outside of the Registry Office which cost their clients a substantial amount of money in disbursements. The bottom line is that the

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public, being the purchaser, will often save substantial funds rather than using the traditional real estate methods of expediting a transfer or refinancing.

At our February 1997 Annual Meeting, LPIC gave a presentation along with members of our Title Insurance Initiatives Task Force. This turned out to be very controversial with a number of our members. Some viewed it as a step back in time (standards), demeaning to them as surveyors who believe their expertise should be applied to the demarcation of boundary lines and the illustrating of the results on a plan, also the suggested costs for the surveyors inspection report are ridiculously low.

The fact is, surveyors and lawyers have to meet the title insurance movement into Canada head-on. The status quo cannot be maintained. We may not have all the answers that are acceptable to all members of the AOLS. To do nothing is to "die on the vine." We are pleased to be working with the lawyers in Ontario on their new initiative and we hope to come to an amicable agreement with our members and TitlePLUS on an acceptable new product which will ensure that the lawyers and professional surveyors in Ontario stay in the real estate transaction.

