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Title insurance really isn't optional

Despite the fact that residential title insurance has been commonplace in Ontario for the last 15 years, many of my clients still ask me what it covers just as we are about to sign the closing papers for their home purchase.

Even though I provide them in advance with an electronic or paper copy of the excellent Ontario Bar Association brochure "Working With a Lawyer When You Buy a Home" (find it at oba.org/en/pdf/lawyer1.pdf), examining the brochure often gets moved to the B list of priorities in the frantic rush before closing.

The [Financial Services Commission of Ontario](http://fsc.o.gov.on.ca) also has an excellent brochure called "Understanding Title Insurance" on its website (fsc.o.gov.on.ca). It explains that for a one-time fee, or premium, a title insurance policy may provide protection from such losses as:

- Unknown title defects that would affect clear ownership.
- Existing liens against title.
- Encroachment issues, such as a structure on the land that needs to be removed because it sits partly on a neighbour's property.
- Title fraud, before or after closing.
- Errors in surveys or public records.
- Any other title-related issues that would affect the ability to sell, finance, or lease the property in the future.

Although title insurance is never a substitute for a current land survey, it provides coverage for losses suffered as a result of failing to have an up-to-date survey.

Title insurance also covers losses sustained by owners when title to their property has been affected or stolen by fraudulent transactions. Typically, the insurance covers most legal expenses in restoring clear title.

Title insurance also protects owners against losses due to unresolved conflicting ownership claims at the time of purchase, old or improper mortgages, liens, special assessments, tax and public utility arrears, improper title documents and regulatory compliance issues such as notices of violation, work orders, building permit problems and setback deficiencies.

Other covered risks include the inability to live in the home under zoning bylaws and the absence of a legal right of access to the property.

Title insurance policies usually do not provide protection against:

- Title defects that were known prior to closing.
- Environmental hazards and soil contamination.
- Native land claims.
- Problems that would only be discovered by a new survey or inspection (such as a smaller lot size than originally anticipated).
- Matters not listed in public records, such as unrecorded liens.
- Zoning bylaw violations caused by changes, renovations or additions performed by the policy owner.
- Certain government rights in the land (such as the right of expropriation).
- Problems the buyer agreed to assume but failed to inform the title insurer or lawyer about.
- The buyer's ability to change the use of the land or undertake renovations, construction or expansion.

The three most common types of residential policies are those for new homeowners, existing homeowners and residential mortgage lenders. Policies are available for houses, condominiums, cottages, rental units, vacant land, co-operatives, leased properties and rural properties.

Two title insurance companies also offer all-important coverage for the legal services provided by the lawyer in the transaction. (Not all insurers offer this coverage.) If the lawyer overlooks something or makes an error while handling a real estate transaction, even if the mistake is not related to a risk listed in the policy, the policyholder can seek compensation directly from the insurer without having to sue the lawyer.

Claims under the legal services section of a title insurance policy have, for example, compensated buyers for losses in taking title to the wrong condominium unit.

Title insurance can also provide "gap" coverage for a delay between the handing over of the purchase money and the subsequent registration of the property in the purchaser's name.

Coverage lasts for the entire period of ownership of the property and most companies extend this coverage to the heirs who inherit the property, to a spouse in the event of a divorce, and to children if the property is gifted to them.

Most real estate lawyers today regard title insurance as a critical component of the transaction and will usually not close a purchase without it.

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