

Real estate buyers offered product they don't need

LEGAL AFFAIRS

U.S. title insurance companies have made inroads in Ontario, but B.C. has different scheme

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Lately, we've been hearing more about title insurance in BC. American title insurance companies have been trying to push their huge, billion-dollar industry beyond U.S. borders into Canada. Already, they've made substantial inroads in Ontario where, according to *The Lawyers Weekly*, more than 50 per cent of residential real estate purchases are now title-insured, up 30 per cent from last year.

But B.C. has a very different land title scheme than both the deed system that historically



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prevailed in those parts of the U.S. where title insurance sprang up and the registry scheme that traditionally served parts of Ontario.

The question is: are real estate buyers and mortgage lenders in B.C. being offered a product they don't need?

Title insurance came about because of problems with the old system in parts of the U.S., in turn based on the old English deed conveyancing system. When a piece of property was sold, a packet of deeds would be handed over by the owner/seller. The

buyer's lawyer would review these and the chain of title going back many decades to a "good root of title." But despite this, title defects might still exist. This meant someone else could turn out to be the rightful owner of the property, and the buyer would lose out. When the property changed hands again, the whole cumbersome process had to be repeated. And any lender wishing to be satisfied with its land security had to carry out the same search process.

Enter title insurance in the U.S. Pay a premium, and buyers and lenders are offered protection against potential title defects. Like other insurance coverage, though, it has exclusions and needs to be properly understood.

B.C. benefits from a newer, different land title system. Our modified "Torrens" system was invented by an Australian, Robert Torrens, to get rid of repetitive searches and lingering title prob-

lems. His chief aims were ease of title transfer and certainty and security of title, and he proposed what may be loosely described as a "government-backed" land title system. So in B.C., buyers of land can generally rely on the register in the Land Title Office and who it shows is the owner, subject to certain exceptions.

To deal with the possibility of a rightful owner losing title through fraud or suffering loss as a result of this system, an assurance fund under the provincial Land Title Act exists to provide financial compensation.

This system, improved over the years, has functioned quite successfully in B.C. since the late 19th century — for ordinary real estate deals, it's usually considered just fine. Title insurance thus arguably tackles potential problems already adequately dealt with here by a different solution — the Torrens system — at least for most real estate trans-

actions.

Knowing this, title insurance companies have tried to identify niches where they can chip away to establish a competitive advantage. In B.C., to date, this has largely been by way of selling title insurance coverage for survey defects. Lenders usually demand a survey as a condition of funding a mortgage, which involves time and extra money; title insurance can often be obtained more cheaply and quickly.

The Law Society of British Columbia currently takes the position that title insurance isn't appropriate in most conventional real estate transactions. To deal with the survey issue, it urges banks and lenders to adopt a short-form real estate conveyancing "protocol." This involves a short-form solicitor's opinion, which essentially advises that the lender can release the mortgage funds. If a lender does

suffer a loss because of an unknown building location defect, which a survey would have disclosed, the Lawyers Insurance Fund will cover the claim.

A protocol opinion thus gets rid of a lender's need for a buyer to obtain a survey certificate, which can cost \$300 or more (though buyers may still want one for their own protection), plus it eliminates any perceived need for title insurance.

Title insurance may well have a limited place in B.C. in some situations. No doubt we'll hear more about it given the recent multimillion-dollar Wirick scandal.

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