

Title insurance is a homeowners' security blanket: Covers everything a lawyer does, plus fraud and forgery

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Byline: Joanne Lovering

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Land title insurance will not guarantee homebuyers a good night's sleep, but it can sure help, says Stephen Shub, a real estate lawyer.

"It's good to know that if there is something lurking behind the scenes, you're fully covered," Mr. Shub told a group of real estate agents at a meeting hosted by Sutton Group, The Old Mill.

"If you can get land title insurance and the total cost of the legal fees package is the same as without it, the choice to get it is a no-brainer," he says. "It covers everything a lawyer would normally cover, plus more, including frauds and forgeries."

Title insurance protects a buyer against losses or damages suffered as a result of title problems. Mr. Shub says some lawyers are opposed to it because they feel it encroaches on their territory. Traditionally, Ontario purchasers have relied solely on their lawyer's legal opinion that they have clean title.

No lawyer can assure a purchaser there is no chance of an error in government records, no undisclosed claims, or that what appears to be the signature of the prior owner or consenting spouse is a true signature, Mr. Shub says. Title insurance can satisfy such gaps.

"Because buying a home is such an important investment, you want assurance that title is yours 100%, except for any mortgage. You don't want to find out, after closing, that an old lien was never discharged, that the previous owners didn't pay their property taxes, their utilities, or that someone has a claim against your land."

Because of the security it offers purchasers and their mortgage holders, he expects that within one year, no institutional lender will advance money on a mortgage without this coverage.

He gave an example of a Toronto homebuyer who could have benefited from title insurance. The individual was buying a home and received a copy of the existing survey, as per the Agreement of Purchase and Sale. The survey showed the property and the footprint of the house as it was originally built. About 95% of all surveys are original builder's foundation surveys, which do not show decks, additions and sheds built at a later date, said Mr. Shub.

When the purchaser applied to the city to install a pool in the backyard, the building department discovered that a two-storey addition -- not on the survey -- had been built on the back of the house.

The building department demanded the purchaser submit plans for the addition, obtain approvals, correct the wiring and make other changes to bring it to code standards. The purchaser was on the hook for \$15,000. Land title insurance, being a non-deductible and no-fault insurance, would have paid these expenses, Mr. Shub says.

Without title insurance, if a purchaser gets into a bind caused by a lawyer's error or omission, he or she can hire a new lawyer to sue the first lawyer, but if the first lawyer is out of business or deceased, the purchaser could be out of luck.

Cost of land title insurance is \$150 to \$250 for a house less than \$500,000. However, because title insurance saves the lawyer some costs, the homebuyer in effect can get it for no extra cost.

First Canadian Title, an arm of First American Title, is the largest provider in Canada. First Canadian Title celebrates its 10th anniversary this year.

The Law Society of Upper Canada requires lawyers to inform clients about title insurance. Although the insurance has long been standard in American real estate transactions, it has only recently become popular in Ontario.