

TITLE INSURANCE LETTER

[On lawyer's Letterhead]

[The following letter is intended to be a sample letter to clients explaining in general terms what title insurance is, how it works, and some of the relative strengths and weaknesses of title insurance. It is meant to be essentially for information purposes and is not meant to be a comprehensive review of all of the issues related to title insurance generally or any particular title insurance policy; as you will note, the letter prompts the reader to make further inquiries if the reader identifies particular questions or concerns.]

Dear ●:

Re: Title Insurance

I am providing you with this letter to inform you of the option of purchasing a title insurance policy in connection with your upcoming real estate purchase. As explained in more detail below, title insurance may be purchased as an alternative or supplement to some of the services typically provided by a lawyer in a real estate purchase transaction.

This letter is intended to provide you with a general description of the risks that title insurance policies usually insure against and the risks not covered by title insurance. This letter is not intended to provide specific legal advice regarding the purchase of title insurance, and should you have any questions about the applicability of title insurance to this transaction, or should you have particular questions about title insurance policies, you should discuss those matters in further detail with me or other legal counsel.

What is Title Insurance?

Title insurance is a policy of insurance whereby a title insurer, in return for payment of a one-time premium, agrees to indemnify the policy holder up to a specified maximum dollar value in the event of a loss incurred as a result of an event or circumstance which is covered by the policy. Two separate policies provide coverage in a typical purchase transaction. The owner policy protects you for as long as you, or your heirs, own the property. The loan policy provides protection to your mortgage lender for as long as your mortgage remains outstanding. It is important to understand that purchasing a loan policy without also obtaining an owner policy will mean that you will not be covered in the event of an insurable loss.

Title insurance policies also include a "duty to defend" which requires the insurer to pay legal expenses in the event a claim is made against the policy holder's interest in the property. It should be noted that title insurance only responds to an actual loss suffered by the insured for covered risks, which means that a quantifiable monetary loss that is covered must be incurred before the insurer will indemnify the policyholder.

There are a number of title insurance providers operating in Nova Scotia. Each title insurer has various plans with various options for coverage. This letter does not provide a comprehensive review of all of the provisions of a typical title insurance policy, nor is it intended to compare and contrast the coverages offered by competing title insurers. With that in mind, the following paragraphs set out a brief description of the kinds of coverage offered in most title insurance policies, along with the exclusions from and exceptions to that coverage.

Title insurance normally provides coverage for losses arising from:

- (a) Title to the estate or interest of the policyholder being other than as stated in the policy;
- (b) Any defect in, charge, lien, or encumbrance on title;
- (c) Unmarketability of the title; and
- (d) Lack of right of access to and from the property.

The title insurance policy goes farther than the Certificate of Title provided by the purchaser's lawyer, in that the loss suffered by the purchaser need not be occasioned by the lawyer's negligence. The title insurance coverage also insures against circumstances which would not be certified by the purchaser's lawyer, including loss from forgery, fraud, duress, incompetence, incapacity or impersonation. Unlike a lawyer's legal services which are provided only to the person who retains the lawyer, title insurance coverage usually covers not only the policyholder but may also cover the spouse and children of the policyholder and anyone who inherits the insured property as described in the title insurance policy.

Depending on the title insurer and the type of coverage chosen, title insurance may offer an alternative to performing certain of the searches and inquiries which a purchaser's lawyer would undertake in the normal course of a real estate purchase transaction. For example, if the policy contains coverage for losses that would have been disclosed by obtaining an up-to-date survey of the property, the purchaser could rely on the title insurance policy in lieu of retaining a land surveyor to prepare a location certificate showing the boundaries of the property and the location of any building thereon. Likewise, if the policy contains coverage for losses occasioned by the presence of any outstanding tax bills, the purchaser may decline to have the lawyer obtain a tax certificate from the relevant municipality. It should be noted that not all title insurance policies will automatically provide coverage for these or other matters, so care must be taken to review the policy to determine if the coverage is obtained automatically or must be specifically negotiated with the insurer.

Exclusions from Coverage

As with other insurance contracts, title insurance policies contain various exclusions from the coverage obtained - these are losses not covered by the policy and for which the title insurer does not accept any obligation to indemnify. Each title insurer's standard policy will have different exclusions, and in-depth analysis of all of the risks not covered by these policies is beyond the scope of this letter. As a general comment, the following exclusions are typical to most title insurance policies:

- (a) Coverage for environmental contamination;
- (b) Coverage for future uses of the property (for example, a restriction on the ability of a Purchaser to put a structure on a piece of land that was vacant at the time the title insurance policy was purchased); and
- (c) Coverage for any matter known to or acquiesced in by the policy holder.

Again, the foregoing examples are not an exhaustive list of the kinds of items excluded from coverage. Prior to purchasing a title insurance policy, you should review in detail with legal counsel the excluded items in the policy.

Limitations of Title Insurance

While title insurance can provide many worthwhile benefits to purchasers of real estate in certain circumstances, title insurance may not be appropriate to respond to every issue that arises in a real

estate transaction. The appropriateness of title insurance requires an understanding of the kinds of remedies offered when a claim is made under a policy.

As noted, the title insurer is obligated to respond once you have incurred an actual loss caused by an insured event. Depending on what the problem is, the insurer may decide simply to offer to you a monetary settlement of your claim. Since many problems covered by title insurance will arise only after you have purchased the property, title insurance may only be able to compensate you for your loss, as opposed to solve the problem that arises.

Conclusion

I hope that the foregoing has been of some help in introducing the basic principles of title insurance to you. As you can see, there are many issues to think about when considering purchasing a title insurance policy. Please contact me at your convenience to discuss any questions you may have arising out of the matters discussed in this letter.