



Enhanced Legal Services for Lenders

Western Law Societies Conveyancing Project

Enhanced Legal Services

Lawyers and financial institutions have enjoyed a long-standing and mutually beneficial business relationship in placing residential mortgages. Financial institutions have relied on solicitors' opinions to maintain enforceable security. Recognizing that the residential conveyancing marketplace and the technological environment within which lawyers provide legal services to lenders is changing, the law societies of British Columbia, Alberta, Saskatchewan and Manitoba have responded by initiating changes to lawyers' conveyancing practice standards across Western Canada. These changes enhance the residential mortgage services lawyers provide to lenders in three ways:

- By closing the "registration gap" (in Alberta, Saskatchewan and Manitoba) by funding mortgage monies on the date of closing.
- By eliminating the lender's need for a survey/real property report (absent the lawyer's advice to the contrary).
- By providing a standardized short form report. This short form Solicitor's Opinion will advise the lender that in the lawyer's opinion the mortgage can be funded. The short form report can eliminate the need for lengthy legal reports and copies of the documents on file, if the lender so wishes.

Meeting the Challenge of Changing Needs

Quick and Efficient Delivery of Legal Services

The development and implementation of new practice standards for lawyers in the conveyance of residential properties reflects the keen interest of the legal profession in adapting the delivery of legal services to meet the changing needs of institutional lender clients. The new closing procedures, which form part of these practice changes, are quick and efficient. They are also safe because they leave intact the insurance comfort institutional lenders already enjoy when retaining lawyers.

Benefits to Lenders

A lawyer will now be able to issue a short form Solicitor's Opinion to a lender, confirming that in the lawyer's opinion, the mortgage can be funded and the funds disbursed. The lawyer still does the work necessary to give the opinion, but conclusion of that opinion is now neatly summarized. If the lawyer discovers problems with the security in advance of funding, those issues are brought to the lender's attention, and instructions obtained. On the date of closing, once the Solicitor's Opinion is issued by the lawyer, the mortgage funds are fully releasable. As always, if a lender suffers actual loss as a result of the lawyer's advice, the lawyer's insurance is available to respond.

Two steps are modified in the lender's process:

Closing Without a Building Location Survey (Real Property Report)

The lender no longer has to insist that a building location survey/real property report be obtained prior to advancing funds under its mortgage security, and can instead rely on the lawyer's advice in this regard. This is because the lawyer will be able to issue a Solicitor's Opinion even in the absence of a building location survey/real property report.

Closing Without Delay

In Alberta, Saskatchewan and Manitoba, lawyers have postponed the request and release of mortgage funds until after registration of the mortgage, often causing a delay of several weeks. The new practice standards allow transactions to be completed without delay, because lawyers will be able to "close the registration gap"; that is lawyers will issue their opinion - thereby allowing the funds to be disbursed - when the mortgage documents are submitted for registration.

Change at No Additional Cost

A lawyer will be able to issue a Solicitor's Opinion to the lender in the absence of a building location survey/real property report and will be able to pay out funds on the closing date all at no additional cost to the lender, seller or buyer. There are no hidden charges because these practice changes will not impact on the lawyer's cost of doing business.

Security for Lenders

For more than 100 years, the law societies of Manitoba, Saskatchewan, Alberta and British Columbia have upheld and protected the public interest by ensuring the integrity, competence and honour of members of the legal profession in Western Canada. Each society has a legislated insurance program with compulsory professional liability insurance for lawyers. All lawyers in private practice in Western Canada are obliged to carry coverage of \$1,000,000 per claim through their law society's insurance program, with a \$2,000,000 annual aggregate. Many law firms purchase additional coverage. In the rare event of an error by a lawyer, financial institutions have relied on compensation for actual loss from the compulsory professional liability insurance carried by all lawyers in private practice.

One of the primary purposes of each insurance program is to ensure that the public is protected from financial loss resulting from a lawyer's negligence. For institutional lender clients, the programs offer the security that their lawyer is backed by this insurance. Insurance coverage in British Columbia is provided by the LSBC Captive Insurance Company Ltd. The Law Societies of Manitoba, Saskatchewan and Alberta (with three other Provinces and the Territories) are insured by the Canadian Lawyers Insurance Association (CLIA).

Fair Claims Management and Fast Resolution

The goal of each insurance program is to manage claims fairly, resolving them in an expeditious and cost effective manner. If a lender suffers actual loss due to an intervening charge or lack of survey/real property report, then the insurance program will accept liability on the part of the lawyer and move quickly to quantify damages.

Repair Measures at the Insurance Program's Expense

Taking steps to avoid or minimize a loss is often the most expeditious and cost effective means of resolving a claim. Often errors can be repaired. Whenever appropriate, repair measures will be undertaken by the programs, at their expense, to remedy defects in the lender's security.



Lasting Claims-Made Insurance

The Societies' insurance policies for their members continue to insure lawyers for mistakes made while they were in active practice even after they retire, change occupation or die. Throughout, the insurance remains in place under the Policy in effect when a claim is reported.

Claims Handling

If a lender discovers it may have suffered a loss because of a building location defect or an intervening charge, the lender may notify their lawyer or give notice to:

In British Columbia

Ms. Susan Forbes, Director of Insurance
Lawyers Insurance Fund of British Columbia
845 Cambie St., 6th Floor, Vancouver BC V6B 4Z9
Phone: 604 669-2533

In Saskatchewan

Mr. Tom Schonhoffer, Director of Insurance
Saskatchewan Lawyer's Insurance Association Inc.
2500 Victoria Avenue, Suite 1100
Regina SK S4P 3X2
Phone: 306 569-8242

In Alberta

Lisa Sabo, Director of Insurance
Alberta Lawyers' Insurance Association
Suite 500, 919 - 11 Avenue S.W., Calgary AB T2R 1P3
Phone: 403 229-4717

In Manitoba

Ms. Tana Christianson, Director of Insurance
Professional Liability Claims Fund
The Law Society of Manitoba
219 Kennedy Street, Winnipeg MB R3C 1S8
Phone: 204 942-5571

For more information about this new process, please contact Susan Billington, Director of the Western Law Societies Conveyancing Project at 403 229-4705.