

# TALES FROM THE TRENCHES™

## BY BARRY C. MCGUIRE

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February, 2016

### TITLE INSURANCE: IS IT WORTH IT?

\$21,000. That's what it cost a recent Calgary buyer who failed to buy a title insurance policy!

Briefly, when you purchase property, title insurance is available for both the lender's interest and the buyer's interest. Amongst other things, title insurance covers registration gap, survey, building permits, municipal compliance, or fraud coverage. Some lenders require title insurance to cover their interest; it is always a choice for the buyer. The title insurance company involved here was [First Canadian Title](#) (FCT).

#### **Lewis & Dayo v. FCT:**

Why homeowners need their own title insurance policy - a case in point

Consider the recent judgment of the Alberta Court of Queen's Bench in the case of "[Lewis v First Canadian Title, 2015 ABQB 726 \(CanLII\), retrieved on 2016-06-23](#)"

FCT was asked to insure a mortgage being used to purchase a residential property in Alberta. The lender's title insurance policy was purchased for \$179, however when the homeowner policy was offered for an additional \$50, it was declined. This decision not to purchase a homeowner policy was documented and provided to the homeowners in writing.

#### **Claim Details:**

Shortly after closing, a claim was made to FCT regarding a gap registration issue in the amount of \$21,000 (a judgement by Royal Bank of Canada), which had priority to the transfer and mortgage. What is important to note is that FCT's lender's coverage can only be invoked when a loan goes into default and the lender suffers a loss as a result. Only then does the lender have a viable claim.

In this instance, the mortgage was still in good standing and therefore the lender had not suffered a loss, meaning it had no claim to make under its policy of title insurance. The claim was denied and the uninsured homeowners were left with the responsibility for clearing the \$21,000 from their title. The homeowners sued FCT, seeking coverage for themselves under their mortgage lender's policy.

**Had the homeowners purchased the additional homeowner policy when it was offered for \$50, they would have been covered and FCT would have paid the \$21,000 claim on their behalf.**

Unfortunately, without a policy in place, the homeowners did "*not have the benefits of any of the coverages associated with the policy including registration gap ...*" and as a result, the Court ruled in FCT's favour.

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### LESSONS LEARNED:

- 1 Reading between the lines, I'm not sure the buyer's lawyer fully explained title insurance. Ask your lawyer about title insurance, how it works, and whether you should buy it.
- 2 Yes, the buyer could sue their lawyer for not explaining and sue the seller for failing to clear the title, but having title insurance take care of the problem would've been so much easier.
3. Bottom line, title insurance is cheap. I always recommend my clients purchase title insurance and I bet these buyers wish they did too.

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