

The Real Property Story

Real Property Reports *vs* Title Insurance

This brochure is provide to you compliments of:

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What is a Real Property Report?

A Real Property Report is a legal document that clearly illustrates the location of all pertinent visible public and private improvements relative to property boundaries.

It generally takes the form of a plan or illustration of the various physical features of the property including a written statement detailing the surveyor's opinions or concerns.

It can, therefore, be relied upon by the buyer, the seller, the lender and the municipality as an accurate representation of the improvements on your property.

Don't buy uncertainty—a Real Property Report is the only true way of knowing the legal boundaries of the property one is buying or selling.

What is title insurance?

Several American insurance companies have introduced the concept of title insurance to Canada. Title insurance has been used in the United States as a way of guaranteeing the security of title on a piece of property. In Alberta, we use the Torrens System, in which security of title is already guaranteed by the Alberta Government through the Land Titles Assurance Fund.

There is no need for American style title insurance in Alberta.

Companies have modified title insurance to apply to other parts of a real estate transaction. Essentially, the new title insurance offered is designed to insure a financial institution's mortgage liability while at the same time removing the need for a Real Property Report and a municipal Bylaw Compliance Certificate. An additional policy is required to protect the landowner.

Speeding up of the real estate transaction process seems very attractive; however, title insurance may cause more problems than it solves. When a Real Property Report is arranged early, and municipal compliance is determined, problems can usually be resolved and the real estate transaction can proceed.

What are you selling?

A Real Property Report is the only true way of knowing exactly where an improvement is located on a parcel of land. Often, a house, garage, outbuilding, deck, fence or other improvements may encroach upon another parcel of land or upon a utility easement. In other cases, improvements may not comply with local bylaw requirements. Only by measuring the property and improvements and comparing the measurements to the legal restrictions of the land use bylaws or registered easements can problems be identified.

If problems are identified the situation can usually be remedied by the vendor of the property or by agreement with the municipality, holder of a registered easement, or purchaser. Title insurance avoids this “taking of a picture in time” and problems are not identified.

A Real Property Report prepared by an Alberta Land Surveyor is an “accurate picture in time”.

What are you buying?

Without a clear picture and measurement of the actual dimensions of a parcel of land or siting of improvements it is impossible to know exactly what the vendor is selling or what the purchaser is buying.

Title insurance masks problems and leaves settlement of them to some future date—when they are discovered. The problems instead of being identified and resolved prior to sale of the property, now have to be handled by the purchaser.

Don't inherit problems—title insurance masks problems!

How are problems solved before a sale?

When a Real Property Report is prepared and any problems are identified, the vendor usually has the responsibility of solving them. The Alberta Land Surveyor takes the measurements and makes the “picture in time” that gives an accurate assessment of the property.

Whether or not the location of improvements on the property complies with a land-use bylaw is determined by the local municipality or the company holding an easement on the property—utilizing the Real Property Report.

The vendor of the property must come to agreement with the municipality, the company holding the easement or the purchaser. Often a simple agreement is all that is required.

What happens when problems are masked by title insurance?

It becomes the responsibility of the new owner of the parcel of land to sort things out. The new owner must then deal with the title insurance company to solve the problem. The insurance company will determine the solution in accordance with the conditions of the insurance contract and will make payment in accordance with their appraisal. If the new owner of the land is dissatisfied with the settlement, they may have to pursue a legal action through the courts either against the insurance company, the realtor, or the vendor of the property.

It is important to read the insurance contract carefully. Often problems uncovered by a Real Property Report may be excluded in a title insurance policy. Also some policies expire when the mortgage is paid out. The purchaser may have to buy additional insurance to cover problems that still may arise after the property is no longer mortgaged.

Is the vendor or realtor off the hook?

The title insurance company may decide to initiate a legal action against other parties in the real estate transaction if they feel a participant to the transaction knew or should have known about a deficiency in the property that later made it necessary to pay out a claim.

In addition, a dissatisfied purchaser of the property may choose to initiate legal action against other parties to the transaction to cover any costs or inconvenience not covered by title insurance.

A Real Property Report is part of full disclosure!

What does it cost?

Because of the nature of the protection it provides and the amount of work involved, a Real Property Report and a municipal certificate of compliance may initially be more expensive than title insurance. However, usually a title insurance policy expires with a mortgage and must be renewed each time the property changes hands or a new mortgage is negotiated. A Real Property Report can usually be updated for a small fee.

It is about peace of mind!

The purchase of property is a major expense. Only knowing what a vendor is selling and what a purchaser is buying brings peace of mind—no surprises—no hidden costs—no fine print—just peace of mind. It's your choice.

"A Real Property Report may be the best and least expensive insurance a person ever buys!"

Stan Galbraith, lawyer, Edmonton

Note: *This brochure is for general information only. For detailed information about Real Property Reports or title insurance contact the Alberta Land Surveyors' Association or vendors of title insurance.*