

# BALASUNDERAM LAW OFFICE

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## What does "title" mean?

When you buy a home, you are buying the legal "title" to the property, which consists of a bundle of rights that attach to it. These include the rights to exclusive possession, exclusive use, conveyance and partition, among others. This means that you own the property and your lawyer registers you as the owner in the land registry system. Having "good title" to your property is important because it protects your investment so that you will be able to sell your property in the future or obtain financing, such as a mortgage, against your home, if needed. Evidence of a person possessing title is frequently embodied in a document called a "deed".

## What is title insurance?

Title insurance is one-time insurance that covers against loss from title defects or other legal problems that arise in the course of purchasing a particular piece of real property. More specifically, it is insurance purchased from a third-party that indemnifies for loss from title defects or encumbrances such as liens and defects that were unknown at the time of closing. It is different from standard home insurance which only protects the contents of your home or its structure, and for which you have to pay a monthly or annual premium. Unlike home insurance, title insurance requires that you pay only a one-time premium with no deductible. Title insurance is also distinctive in that it protects your ownership or title against losses incurred as a result of undetected title defects, for as long as you own your home.

## Why is title insurance important for the client?

Title insurance secures your investment as owner, and protects you from financial loss. It covers a broad range of losses and potential costs: for example, it provides coverage for work orders which arise from the failure of previous owners to obtain proper permits, for losses that an up-to-date survey might reveal (such as encroachments of buildings over lot lines), for access-related problems, fraud, mortgages or other encumbrances affecting title and, in general, for the unmarketability of title to the property. In addition, use of title insurance often lowers your closing costs by eliminating many of the costly "off-title" searches. It allows you to close your transaction sooner instead of waiting weeks for responses to the off-title searches.

## What is the role of the lawyer re: title insurance?

Although title insurance is intended to protect the purchaser against pure title risks, it is not a substitute for a lawyer's services in a real estate transaction. Even where there is title insurance for a transaction, the lawyer should be involved in advising the client regarding the insurance itself, determining which of several title insurers to deal with in terms of financial backing and experience. Therefore, where title insurance is being obtained, instead of an opinion on title from a lawyer, there emerges a significant role for the lawyer regarding aspects of the policy itself.

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**DISCLAIMER:** This information is meant for information purposes only and is not intended to be a substitute for you reading your own policy and making the necessary inquiries from your policy provider and lawyer. Please feel free to contact your policy provider and/or the **BALASUNDERAM LAW OFFICE** for further information. The information outlined here may not be current!

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**CHART Appendix:**

- The term “Yes” under the **INCLUDED** coverage Chart means that those listed areas **ARE** covered in Title Insurance.
- The term “Yes” under the **EXCLUDED** from cover Chart means that those listed areas are **NOT** covered in Title Insurance.
  
- **Schedule A** is a form that has a description of the Land that is being insured.
- **Schedule B** has the exceptions to coverage for that policy.

**SCHEDULE A** 1. Name of Insured; 2. the estate or interest in the land which is covered by this policy: Fee Simple; 3. Title to the estate or interest the land is vested in; 4. The land referred to in this Policy is described as follows: Municipal address and legal description.

**SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, legal fees, or expenses) which arise by reason of:

1. Environmental Concerns or matters of any kind, and any native or aboriginal claims affecting the land. And any other restrictions affecting good title.
2. All by-laws, easements, rights of way, rights of re-entry, restrictions/restrictive covenants; and agreements or notices of agreement registered against Title.
3. Mortgages, assignments of rents, or other financial obligations created or agreed to by you.

## INCLUDED

Title coverage	Chicago Title	Title PLUS	Stewart Title	First Canadian
The following are <b>INCLUDED</b> :				
<b>Residential Owner’s Coverage</b>				
1. Someone else owns an interest in your title.	Yes	Yes	Yes	Yes
2. A document is not properly signed, sealed, acknowledged or delivered.	Yes	Yes	Yes	Yes
3. Forgery, fraud, duress, incompetency, incapacity or impersonation.	Yes	Yes	Yes	Yes
4. Forgery (by deed) after the Policy Date by which someone else claims to own an interest in or have a lien on your title.	Yes	Yes	Yes	
5. Defective registration of any document.	Yes	Yes	Yes	Yes
6. You do not have any legal right of pedestrian and vehicular access to and from the land.	Yes	Yes	Yes	Yes
	Yes	Yes	Yes	Yes

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7. There are restrictive covenants limiting your use of the land.				
8. There is a lien (legal right to keep or sell your land as security for a debt) on your title because of:  (a) a mortgage; (b) a judgment, tax, special assessment or public utility account; or, (c) a charge by a condominium corporation. * (d) because of a local improvement charge which accrued prior to the Policy Date.*	Yes	Yes	Yes	*(d) applies here
9. After the Policy Date, a Governmental Authority assesses supplemental real estate taxes not previously assessed against the Land for any period before the Policy Date.				Yes
10. Charges incurred for public utilities supplied to the land prior to the Policy Date—except for final meter reading charges and charges you agreed to pay.	Yes		Yes	Yes
11. Your land is unmarketable (not fit for sale), which allows another person to refuse to purchase, lease or make a mortgage loan because: (a) it violates a restriction set out in Schedule B (see appendix below); (b) of adverse matters that would have been disclosed by an up-to-date survey; (c) your land violates an existing zoning by-law; or, (d) it is located on land under governmental authority without approval.	Yes	Yes	Yes	Yes
12. There is construction liens on your title, for service or material furnished before the Policy Date—unless you agreed to pay for the service or material.	Yes		Yes	Yes
13. Others have rights arising out of leases, contracts, options, or rights of possession under the Family Law Act, where the Land is located dealing with matrimonial or community of property rights.	Yes	Yes	Yes	Yes
14. Someone else has an easement (limited right of way/use) on your land.	Yes		Yes	Yes
15. If your title is not good, it allows another person to refuse to purchase, lease or make a mortgage loan.	Yes	Yes	Yes	Yes
16. You are forced by governing public authority (or the affected neighbour) to remove your existing structure, or any portion, other than a boundary wall or fence, otherwise it cannot be used for single-family residential purposes, because: (a) it extends on to land next-door or on any easement; (b) it violates Schedule B; (c) it violates a zoning by-law; (d) it is located on land under governmental authority without approval; (e) of any outstanding notice of violation or deficiency notice; or	Yes	Yes	Yes	Yes

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(f) Any portion of it was built without obtaining a building permit from the proper government office or agency, provided a building permit would have been required by such office at the time of construction.				
17. You are forced to correct or remove an existing violation of any covenant, or restriction affecting the Land. And your title is lost or taken because of such a violation.		Yes		Yes
18. There is a violation of the Planning Act (subdivision and part lot control provisions).				Yes
19. Work orders, unless you agreed to be responsible for them.	Yes		Yes	Yes
20. Someone seeks to take away your Title because of a violation of Schedule B, which happened before you became the owner of your Land.	Yes	Yes	Yes	
21. Someone seeks to enforce a restriction for the same reasons given in #20 above.	Yes			
22. Someone refuses to lease or make a mortgage loan because of any violation in Schedule B, which happened before you became the owner of the Land.	Yes			
23. After the Policy Date, someone builds a structure – other than a boundary wall or fence—which encroaches on to your land.	Yes	Yes		Yes
24. Any bad circumstance affecting the land which would have been disclosed by a local authority search of the land at the Policy Date.	Yes		Yes	Yes
25. Your existing structure or one that is built after the Policy Date to replace or modify the existing structure or its parts, is damaged because another person uses the surface of your Land to rightfully extract minerals or water.	Yes	Yes	Yes	
26. Any defect on the Title or the above Covered Title Risks 1 through 25 that were created or registered in the Public Records after the Policy Date and before registering the deed in the Public Records that vests Title in the land being insured.	Yes			
27. Other defects, liens or encumbrances.	Yes	Yes		Yes

### EXCLUDED

The following are <b>EXCLUDED</b> from Title Coverage. You are not insured against loss, costs, legal fees, and expenses resulting from:	<b>Chicago</b>	<b>Title PLUS</b>	<b>Stewart</b>	<b>First Canadian</b>
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1. Governmental power, and the existence or violation of any law or regulation. This includes building and zoning by-laws and also laws concerning land use, improvements on land, or environmental protection.	Yes	Yes	Yes	Yes
2. The right to take the land for public use, unless a notice of such right appears in the public records on the Policy Date; or this right happened before the Policy Date and is binding on you if you bought the land without knowing of this right.	Yes		Yes	Yes
3. Title risks that are agreed to by you; that were known to you on the Policy Date, but not to us; that result in no loss to you; or that affect your title after the Policy Date.	Yes	Yes	Yes	Yes
4. Failure to pay value for your title.	Yes		Yes	Yes
5. Lack of a right to any area outside your land or the streets, lanes, or waterways that touch your land.	Yes		Yes	Yes
6. Environmental concerns including legislation with respect to environmental protection, underground fuel storage tanks, water quality and quantity.		Yes	Yes	
7. Did not construct your existing structure(s) or its parts in accordance with building codes. This does not apply if notice is given in the Public Records or by a Local Authority Search of the Land at the Policy Date.			Yes	Yes
8. A breach of any government regulation requiring that improvements on the Land comply with fire safety requirements.			Yes	
9. Any matters disclosed in a building or home inspection report obtained by the Insured before the Policy Date.			Yes	
10. Any lien for real estate taxes imposed on the Land by governmental authority that become due, but unpaid, between the Policy Date and the date of recording the deed in the Public Records that vests Title in the Insured.	Yes		Yes	

## RESIDENTIAL LOAN POLICY

Insures against loss or damage incurred by the Insured, from or after the Policy Date, due to the following:	Chicago	Title PLUS	Stewart	First Canadian
1. Title to the estate or interest in the land being held other than as stated;	Yes		Yes	Yes

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2. Any defect in, lien, right of priority, prior claims or encumbrance on the title;	Yes	Yes	Yes	Yes
3. Unmarketable title meaning title that a reasonable buyer would not accept because of a conflict over the property;	Yes		Yes	Yes
4. Lack of a right of pedestrian or vehicular access to and from the Land;	Yes		Yes	Yes
5. The invalidity or unenforceability of the Insured Mortgage upon the title;	Yes	Yes	Yes	Yes
6. The priority of any lien, right of priority, prior claims or encumbrance over the Insured Mortgage;	Yes		Yes	Yes
7. No priority of the Insured Mortgage as to advance of proceeds of the debt secured, which at the Policy Date were made by the Insured over any lien, labour or material arising from an improvement or work related to the land. It does not matter if the lien arises, or the improvements or work starts before or after the Policy Date;	Yes		Yes	Yes
8. Any invalid or unenforceable assignment of the Insured Mortgage, if listed in Schedule A, or its failure to vest title free and clear of all liens, prior claims or rights of priority;	Yes		Yes	Yes
9. Invalid or unenforceable Insured Mortgage on the title based on the usury laws of the jurisdiction where the Land is located;	Yes		Yes	Yes
10. The failure of the Land to have the municipal address;	Yes	Yes	Yes	Yes
11. The failure of the Land to contain at least one family residence or condominium with the municipal address;	Yes		Yes	Yes
12. Any outstanding notice of non-compliance or work orders against the Land and the failure of the Land to comply with the zoning by-law and to be zoned to permit at least one family residence or condominium ;	Yes		Yes	Yes
13. The failure of the Land to be a lawfully created parcel according to the laws in the jurisdiction where the Land is located dealing with the subdivision, replacement or renovation of land and any by -laws or local ordinances;	Yes		Yes	Yes
14. The existing residential structure, or its modification or replacement constructed after the Policy Date, without a valid building permit from the appropriate local government issuing office;	Yes		Yes	Yes
15. Any violation affecting title disclosed by an up-to-date survey, including any encroachment of existing improvements onto land next-door (other than boundary walls or fences);	Yes	Yes	Yes	Yes

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16. Cannot use the existing residential structure for residential purposes because that use violates any restrictions appearing in Public Record;	Yes		Yes	Yes
17. Encroachment onto the Land by improvements constructed after Policy Date by someone else;	Yes	Yes	Yes	Yes
18. Any improvements, before or after Policy Date, interfering with the use of any easement or right of way, including lawns, shrubbery and trees;	Yes	Yes	Yes	Yes
19. Using the Land for family residential purposes is affected and damaged because of reservation of minerals or mineral rights;	Yes	Yes	Yes	Yes
20. The Insured Mortgage is invalid, unenforceable or does not have priority as a result of any provision that states (i) interest on interest; (ii) changes in interest rate; or (iii) adding unpaid interest to the principal balance of the loan;	Yes		Yes	Yes
21. Forgery of the Insured Mortgage after Policy Date by deed, and by claiming that title is conveyed where the Insured acquired estate, but title is not yet conveyed;	Yes	Yes	Yes	Yes
22. The Insured Mortgage is invalid, unenforceable or has no priority as to: (a) Advances made after Policy Date based on the terms of the Mortgage existing at Policy Date; and (b) Changes in the interest rate charged based on modified terms of the Mortgage;	Yes		Yes	Yes
23. Any covenants or restrictions appearing in the Public Records, under which the Insured Mortgage is not valid and enforceable.	Yes	Yes	Yes	Yes
24. Any violations on the Land of any enforceable covenants or restrictions appearing in the Public Records.	Yes	Yes	Yes	Yes
25. Any future violations on the Land of any existing covenants or restrictions appearing in the Public Records, that occur before the Insured gets title or interest in the Land, as long as the violations result in: (a) The Insured Mortgage being invalid; or (b) the Insured loses title or interest in the Land if acquires title to satisfy the debt secured by the Insured Mortgage.	Yes		Yes	Yes
26. Any covenants or restrictions, appearing in the Public Records, providing for: (a) an easement on the Land; (b) a lien for liquidated damages; (c) a private charge or assessment; or (d) an option to purchase, a right of first refusal or the prior approval of a future purchaser or occupant.	Yes	Yes	Yes	Yes

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27. Any circumstance affecting the land which would have been disclosed by a Local Authority Search of the Land at Policy Date.	Yes		Yes	Yes
28. Any rights arising from tenancies, contracts, options, or rights of possession in favour of a spouse under laws of the jurisdiction where the Land is located dealing with matrimonial or community of property rights.	Yes			
29. The Insured Mortgage is not enforceable because of a lack of, or inadequate, independent legal advice.	Yes			
30. Any defect in the title or other matter included in insuring provisions 1 through 29 that was created or recorded in the Public Records after Policy Date and before recording the Insured Mortgage in the Public Records. The Company will pay costs to defend title.	Yes			
31. Any assessments for street improvements under construction or completed at Policy Date which now have gained or may gain priority over the Insured Mortgage;			Yes	

**SCHEDULE A – loan policy**

1. Name of Insured:
  2. The estate or interest in the land which is covered by this policy: Fee Simple
  3. Title to the estate or interest the land is vested in:
  4. The insured mortgage and assignments, if any, are described as follows: \_\_\_\_\_ Mortgage in favour of \_\_\_\_\_ securing the principal sum of \$\_\_\_\_\_. Where Assignment(s) of Rents is/are being registered in conjunction with the Insured Mortgage, coverage is provided for said Assignment(s) of Rent as if they were included in Schedule A, Paragraph 4.
- The land referred to in this Policy is described as follows by its Municipal Address and Description

**SCHEDULE B – loan policy**

- This policy does not insure against loss or damage (and the Company will not pay costs, legal fees, or expenses) which arise by reason of:
1. Environmental Concerns or matters of any kind.



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## FOR LOANS ON PROPERTIES CONTAINING ONE TO SIX FAMILY RESIDENCES

<b>EXCLUSIONS FROM COVERAGE</b> - The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, legal or notarial fees or expenses which arise by reason of:	<b>Chicago</b>	<b>Title PLUS</b>	<b>Stewart</b>	<b>First Canadian</b>
1. (a) Any law or government restriction (including zoning by-laws) regulating (i) the occupancy, use, or enjoyment of the Land; (ii) improvements on the Land; (iii) ownership rights in and to the land or change in the dimensions of the Land; or (iv) environmental protection and conservation, or the effect of any violation of these laws, except where notice of the enforcement or defect resulting from a violation affecting the Land was registered in the Public Records at Policy Date. (b) Any governmental power not excluded by (a) above, except to the extent that a notice of the exercise or defect resulting from a violation affecting the Land has been registered in the public Records at Policy Date.	Yes	Yes	Yes	Yes
2. Rights of expropriation unless notice has been registered in the Public Records at Policy Date, and any expropriation for which notice has been given before the Policy Date.	Yes		Yes	Yes
3. Defects or other matters that the Insured agreed to; that were known on the Policy Date, but not to known by the Company; that the Insured suffered no loss, or affect to title after the Policy Date. Not registered in the Public Records at Policy Date. This was not disclosed in writing to the Company before the date the Claimant was Insured under this policy. There was damage unless the Insured paid value for the Insured Mortgage.	Yes		Yes	Yes
4. The Insured Mortgage is unenforceable because at the Policy Date, the Insured (or subsequent owner) failed to comply with applicable business laws where the land is located.	Yes	Yes	Yes	Yes
5. The Insured Mortgage is invalid or unenforceable, which arises out of the Insured Mortgage transaction and is based on any Consumer Protection Law.	Yes	Yes	Yes	Yes
6. Taxes or assessments which become a lien, prior claim or right of priority on the Land after the Policy Date.	Yes		Yes	Yes
7. Any covenants, restrictions, servitudes, rights of way, statutory building schemes, minerals and mineral rights, lease, grant, exception or reservation appearing in the Public Records.	Yes		Yes	Yes
8. The overvaluation of the Insured Land as of the Policy Date.			Yes	

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## POLICY PRICING

House	TitlePLUS	Stewart
Purchase of a home – \$200,000 and under	\$320.68	\$225 + \$50 per additional policies
\$200,000.01 - \$500,000	\$373.60	\$275 + \$50 per additional policies
Over \$500,000.00		\$275 plus \$0.90 per \$1,000 over \$500,000 + \$50 per additional policies
New Home Program – \$200,000 and under	\$290.44	\$225 + \$50 per additional policies
\$200,000.01 - \$500,000	\$337.96	\$250 + \$50 per additional policies
Over \$500,000.00		\$250 plus \$0.90 per \$1,000 over \$500,000 + \$50 per add policy
Owner EXPRESS or Existing Home Owners Under \$500,000.00 Over \$500,000.00 This provides coverage for residential property owners who did not get a title insurance policy at the time of purchase.	\$261.28	\$225 + \$50 for new lender policy \$225 plus \$0.90 per \$1,000 over \$500,000 + \$50 per new lender policy
Mortgage-Only (Refinance) \$100,000 and under (houses of up to 4 units) \$100,000 to \$750,000	\$92.30 \$151.70	
Below \$50,000 (houses of up to 6 units) \$50,000.01 - \$750,000 Over \$750,000		\$100 + \$50 per additional policies (EC Price \$65) \$135 + \$50 per additional policies (EC Price \$100) \$135 plus \$0.90 per \$1,000 over \$750,000 + \$50 per additional policies (EC Price \$100 plus \$0.90 per \$1,000 over \$750,000)
<b>Condo</b>		
Purchase of a Condo - \$200,000 and under	\$212.14	\$100 + \$50 per additional policies
\$200,000.01 - \$500,000	\$233.20	\$125 + \$50 per additional policies
Over \$500,000		\$125 plus \$0.90 per \$1,000 over \$500,000 + \$50 per additional policies
New Home Program – \$200,000 and under	\$193.24	Same as above
\$200,000.01 - \$500,000	\$212.68	
Over \$500,000		
Owner EXPRESS \$200,000 and under \$200,000 to \$500,000	\$212.14 \$212.14	
Mortgage-Only (Refinance) \$100,000 and under \$100,000 to \$750,000 Below \$50,000 (houses of up to 6 units)	\$92.30 \$151.70	\$100 + \$50 per additional policies (EC Price \$65)

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\$50,000.01 - \$750,000 Over \$750,000		\$100 + \$50 per additional policies (EC Price \$100) \$100 plus \$0.90 per \$1,000 over \$750,000 + \$50 per additional policies (EC Price \$100 plus \$0.90 per \$1,000 over \$750,000)
<b>Commercial Property</b>	<b>TitlePLUS</b>	
<b>Up to \$100,000.00</b>		
Purchase – No Mortgage or Mortgage-Only	\$300	
Purchase with One Mortgage	\$350	
Purchase with Two Mortgages	\$400	
<b>\$100,000.01 to \$300,000.00</b>		
Purchase – No Mortgage or Mortgage-Only		
Purchase with One Mortgage	\$350	
Purchase with Two Mortgages	\$400	
<b>\$300,000.01 to \$500,000.00</b>	\$450	
Purchase – No Mortgage or Mortgage-Only		
Purchase with One Mortgage		
Purchase with Two Mortgages	\$500	
<b>\$500,000.01 to \$2,000,000.00</b>	\$550	
Purchase – No Mortgage or Mortgage-Only	\$600	
	\$500.00 +	
Purchase with One Mortgage	\$1.00 per \$1,000.00	
	\$550.00 +	
Purchase with Two Mortgages	\$1.00 per \$1,000.00	
	\$600.00 +	
	\$1.00 per \$1,000.00	

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### **\*Pricing above is subject to change depending on the number of units per housing**

The pricing chart above is for policies for transactions (which include legal services coverage), for the following types of residential properties:

- a new purchase, a resale or a mortgage-only transaction, with no more than 4 dwelling units on the property;
- secondary homes, cottages or recreational properties;
- vacant land;
- fee simple properties; and
- condominium properties.

For residential properties with 5 or more dwelling units, and for farm, leasehold or commercial properties, please contact the respective Insurance providers for pricing.

Whether or not a commercial property contains an operating business, it will qualify for all of the benefits of TitlePLUS protection, including title, fraud, and survey coverage, plus coverage for the legal services provided by the lawyer in the transaction (excluding Owner EXPRESS policies and Québec policies). The TitlePLUS premium is paid only once and will vary based on the purchase price or mortgage amount.