

**SURVEY CERTIFICATE, WESTERN LAW SOCIETIES CONVEYANCING PROTOCOL
AND TITLE INSURANCE INFORMATION GUIDE**

INTRODUCTION

This Guide is intended to provide information to assist realtors, mortgage brokers, lenders and consumers, who are buying or financing a home, in determining the appropriateness of Survey Certificates, Western Law Societies Conveyancing Protocol (“the Protocol”) and Title Insurance. The appropriateness of each product varies from property to property and an institutional lenders concerns may be different from that of a consumer purchasing a property. Therefore, a consumer should consult with their lawyer or notary public to discuss their particular situation.

BACKGROUND

Historically, institutional lenders required that a borrower obtain a survey certificate to ensure that the home and other improvements on a property do not encroach onto the neighboring properties or into municipal setbacks. The concern by the institutional lenders being that an encroachment may create a risk to recovery under their mortgage security. For example, if a home encroached onto a neighbors property would a court order the removal of the encroachment resulting in the destruction of the home or some financial compensation to the adjoining property owner. Some years ago the Credit Unions in British Columbia recognizing that the risk was minimal discontinued the practice of requiring a survey certificate. More recently the Protocol and Title Insurance have become alternative products that are acceptable to most lenders instead of a survey certificate. There are many properties in the Lower Mainland that in fact encroach into “setbacks” or on to adjacent properties. This is particularly the case in certain older areas of Vancouver. These encroachments have existed for decades without risk to the lender or the homeowner. In the event the home is demolition the new home would, of course, need to be built with the proper setbacks.

SURVEY CERTIFICATES

The survey document is formally called a “Certificate of Location”. A survey is based on a site inspection and measurement by qualified personnel and shows the location of buildings, easements and rights-of-way on the property in relation to boundaries. It allows a buyer to decide if any problems disclosed by the survey need to be resolved before completing a purchase. It can be particularly helpful if a buyer is intending to make improvements to the property such as an addition or a swimming pool. A Survey Certificate is usually acceptable to satisfy a lender requirement for many years and in the event of a sale the certificate is usually acceptable to the buyer’s lender if the seller executes a statutory declaration stating there have been no changes to the property or the buildings. The cost of a Survey Certificate is usually \$200 - \$250.

WESTERN LAW SOCIETIES CONVEYANCING PROTOCOL

In 2001 the Law Societies of British Columbia, Alberta, Saskatchewan and Manitoba introduced the Western Law Societies Conveyancing Protocol. The Protocol can only be obtained through lawyers and was introduced to provide a cost effective solution to consumers and lenders to satisfy lenders' concerns about encroachments and easements. Most lenders now accept the Protocol in lieu of a Survey Certificate. In the event there is not an existing Survey Certificate the Protocol provides protection to a lender for any loss that could have been avoided if they obtained a Survey Certificate. In conducting the due diligence necessary to issue a Protocol opinion the lawyer may encounter information that enables them to advise the client on whether or not to obtain a survey certificate or title insurance. The use of the Protocol can save a borrower money as lawyers usually only charge a nominal fee such as \$50 for issuing a Protocol opinion.

TITLE INSURANCE

Title Insurance has been part of American real estate practice since 1876. Title Insurance was introduced to British Columbia in 1996 with the expansion of the U.S. based companies to Canada. Title insurance covers the policy holder for loss that may arise from such defects as encroachments or non-compliance with current zoning bylaws. Most commonly it has been used in B.C. as an approved alternative to Survey Certificates. Title insurance also contains coverage for loss arising from real estate fraud. This coverage has been promoted by the title insurance companies as a compelling reason for home owners to acquire title insurance. In some jurisdiction, particularly in the U.S., fraud coverage is important as those jurisdictions do not have the equivalent of the B.C. Assurance Fund that protects innocent home owners from fraud. Claims against the Assurance Fund are infrequent. Over the past 17 years, the land title system in B.C. has processed 13.5 million transactions. During that period there were only two claims related to property ownership and the Assurance Fund paid out a total of \$375,000. The cost for title insurance will depend on whether a lender only policy or lender and owner policy is obtained. The cost varies but is usually \$200 - \$250. The cost increases where the mortgage amount or property purchase price exceeds \$500,000.

SUMMARY

The selection of a Survey Certificate, Western Law Societies Conveyancing Protocol or Title Insurance needs to be decided in consultation with your lawyer or notary public. They are best able to provide independent advice on the product, if any, most suitable to your situation and lender requirements.

FIRM PROFILE

Bell Alliance is a Vancouver, British Columbia based law firm that uses innovative computer and communication technologies to support a focus on personal client service. The firm provides legal services in the areas of real estate, wills and estates, corporate and commercial law.

Bell Alliance is recognized for the extensive involvement of the lawyers in every file and the close advisory relationship they maintain with their clients and their clients' other professional advisors. For more information please visit our website at www.bellalliance.ca or call us at **604 873 8723**. Bell Alliance is conveniently located at 610 – 1385 West 8th Ave., Vancouver, B.C. V6H 3V9.



Richard Bell: Richard was called to the Bar in 1982. He has practiced in the Lower Mainland in the areas of Real Estate and Mortgage Law for over 20 years with a brief hiatus of five years in Toronto where he worked with companies providing services to the financial services industry. Richard has been an active member of numerous community and professional groups and associations. He was founding Chairman of one of the largest mortgage broker companies in Canada.

Richard apparently plays a respectable game of squash and enjoys the occasional game of golf.



Ron Usher: Ron was called to the bar in 1980 and has practiced law in private practice in Vernon and Vancouver. In the mid-80's Ron provided management and technology consulting to a variety of law firms and law related organizations. Ron was the founder of a law firm that specialized in Wills and Estates. Prior to joining Bell Alliance Ron was with the Law Society of British Columbia for eight years as a staff lawyer in the policy department focusing on real estate and technology matters.

Ron is a bit of a musician and lends his guitar skills to a group of Ukulele players every Wednesday night.



Khushhal Bains: Khushhal practices in the areas of Real Estate and Wills and Estates. Khushhal is from Toronto but moved to Vancouver due to a love of the mountains, ocean and his wife. He obtained his law degree from Osgoode Hall Law School, previously having completed a B.A. in Economics and Philosophy from the University of Toronto. Khushhal articulated with the Ministry of the Attorney General and most recently worked with Lerner LLP, one of Ontario's leading law firms.

In his spare time Khushhal enjoys volleyball, basketball and squash. He balances his competitive nature through yoga.



Ronan Reinart: Ronan practices in the areas of corporate, commercial and entertainment law. Ronan obtained an undergraduate degree in English Literature from Simon Fraser University and his law degree from the University of Manitoba Law School. Ronan works with small and medium sized businesses on a wide array of commercial matters including incorporations, intellectual property, licensing and business contracts.

In a previous life, Ronan toured and recorded as a professional guitar player. He is a member of the board of directors of Cucumber Satellite Theatre and Film Society, a not-for-profit society empowering youth through the arts.