

PART A: PURPOSE OF THE PROTOCOL

The Western Law Societies Conveyancing Protocol is a joint initiative of the Law Societies of Manitoba, Saskatchewan, Alberta and British Columbia. The project was mandated to respond to the many changes in the residential conveyancing and financing marketplace within which Lawyers provide legal services to the public. The Protocol contemplates a new conveyancing practice, which is designed to expedite the residential mortgage process for lenders, to ensure consumers have continued access to independent legal advice, and to preserve the integrity of the Torrens land titles system and survey fabric in Western Canada.

Each Law Society has developed a real estate conveyancing Protocol which is tailored for use in that Province. The Protocols reflect jurisdictional differences in law and procedure, but are consistent in their fundamental purposes, which are:

1. to allow for the release of Mortgage proceeds and other purchase funds on Closing, for the mutual benefit of Purchasers, Vendors and Mortgagees (Since existing conveyancing practices in British Columbia effectively achieve this, the Protocol of that Province does not address funding issues.);
2. to encourage the continued exercise of due diligence by Purchasers in survey matters; and
3. to enable Lawyers to satisfy the unique security requirements of Mortgagees without obtaining a current Building Location Certificate.

The Protocol prescribes enhanced standards of conveyancing practice, which will result in better service for clients and loss prevention for Lawyers. In addition, the existing professional liability insurance coverage afforded to all Manitoba Lawyers will protect against two new types of claims, namely:

- a) claims resulting from actual loss to a Purchaser due to an intervening Registration which impairs the Purchaser's Title; and
- b) claims resulting from actual loss to a Mortgagee:
 - (i) due to an intervening Registration which takes priority over the Mortgage; or
 - (ii) due to a Survey Defect which was unknown at the date of advance but which would have been disclosed by an up-to-date Building Location Certificate or Zoning Memorandum.

In any of the above occurrences, where a claim is paid by the Professional Liability Claims Fund:

- (a) no deductible will be payable by the insured Lawyer; and
- (b) the payment will not be considered as a “Paid Claim” for purposes of future surcharges or graduated deductibles,

provided that the Lawyer has adhered to the practices prescribed by the Protocol.

Where a claim is paid by the Professional Liability Claims Fund as a result of a Vendor’s failure to attend to payment of the final water account:

- (a) the deductible payable by the insured Lawyer will be reduced to \$1,000.00; and
- (b) the payment will not be considered as a “Paid Claim” for purposes of future surcharges or graduated deductibles,

provided that the Lawyer has adhered to the practices prescribed by the Protocol.

The usual insurance implications will apply to claims arising from any other error or omission.