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May 17, 2008

## Buyer soaked with vendor's final water bill

When Donna bought her home near Warden Ave. and Ellesmere Rd. last summer, she had no idea she would get stuck with the final water bill of the former owners.

When the transaction closed in July, Donna's lawyer Rachel Loizos got a standard form undertaking from the sellers. An undertaking is a promise, among other things, to pay all final utility accounts.

As of the closing date, the City of Toronto had not issued a final water bill based on the meter reading on that day. When the bill for \$137.87 arrived, Loizos wrote Bang-Gu Jiang, the solicitor for the sellers, requesting payment of the bill, which was their responsibility.

In the vast majority of cases, sellers are responsible, and pay their final bills for gas, water and hydro, although water is the only bill that can actually be added to the tax bill to create a lien on the property.

The sellers in Donna's case had apparently moved back to Hong Kong, and did not pay the bill. The sale was completed in Toronto by someone using a Power of Attorney document, and the former owners were "unreachable" in Hong Kong.

Eventually, the city transferred the arrears, plus interest and fees, to the property's tax bill. Loizos then submitted a claim to First Canadian Title, the title insurer, which insured the purchase transaction under its Platinum Policy.

In February, First Canadian responded to the claim for \$137.87. A clerk in its claims administration department advised that the First Canadian title insurance policy does in fact cover charges incurred for public utilities supplied to the property prior to the date of the policy, except for final meter reading charges.

To trigger coverage, First Canadian required proof the arrears did not relate to the final meter reading. Since that was exactly what the arrears were for, the claim was not covered by the policy.

Last week I contacted First Canadian to verify what their policy is for cases like this. Susan Leslie, vice-president of claims and underwriting for the company, confirmed to me "we do not pay claims for final meter readings, as they are not covered under the policy."

Stewart Title Guaranty Company also provides title insurance in Ontario. A copy of their Gold Policy emailed to me some time ago shows an exclusion for final meter readings, similar to the wording of the First Canadian policy.

Kathleen Waters is the president and CEO of the Lawyers' Professional Indemnity Co. (LAWPRO), which is owned by the Law Society of Upper Canada. Until recently, she was president of TitlePLUS, a division of LAWPRO that operates its own title insurance company.

A word of disclosure is necessary at this point. I am an elected bencher (director) of the Law Society of Upper Canada, which owns LAWPRO and TitlePLUS. That company insures all Ontario lawyers for errors and omissions. As a bencher, I have no role in the operation of LAWPRO or TitlePLUS except to approve or not approve their annual reports, along with more than 50 other bencher colleagues. I do not sit on the board of LAWPRO and do not attend its meetings.

I asked Waters last week whether the TitlePLUS policy covers arrears resulting from final meter readings. In an email to me, she replied that, "the TitlePLUS policy does NOT have an exclusion built in for final utility bills as I have often seen in other title insurance policies. We simply say that we cover 'liens ... arising as a result of public utility arrears ...'"

In the end, Donna got hit with paying the final water bill, plus fees and interest, which were really the responsibility of the former owners. Although the amount of the bill was relatively small in comparison to the price of the house, it was still a bitter pill to swallow.

Donna and her lawyer learned the hard way that not all title insurance policies are the same. If TitlePLUS had insured the transaction, the company would have paid the final water bill.

The lesson of her story is that purchasers should always review with their real estate lawyers what is and what is not covered under their title insurance policies.

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