

Archive of Questions

Mentoring Initiative

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Questions

1. **Question:**

Do you obtain a tax certificate for every residential purchase resale transaction? (Yes / No)

- if yes, why? _____

- If not, why not?

- Too costly

- not required by title insurance

- municipality does not provide timely certificates

- municipality does not provide a convenient method to order the certificate

- I obtain verbal tax information from the municipality

- The vendor's lawyer provides a copy of the most recent tax bill for the property

- Other: _____

Results:

56% of respondents obtain a tax certificate for every residential purchase resale transactions.

- Many respondents noted the high cost and disruption in post-closing adjustments when the wrong information is obtained to close the deal and prefer to get it right the first time, even if title insurance could provide a reimbursement.
- Most respondents who do not order a certificate do so because their title insurer does not require it.

Committee comment:

Obtaining the tax certificate, in addition to other benefits, eliminates the reputational risk to the lawyer's practice as the client perceives or is told by others that the lawyer did something wrong when the adjustments are not accurate.

2. **Question:**

Do you obtain an abutting land search for every parcel where you act for the purchaser?

Options:

Yes, to confirm compliance with the Planning Act (Note: unless the property is a full lot on a registered plan of subdivision or another Planning Act exemption applies);

Yes, in all case to confirm there is no boundary dispute/discrepancy (if not a lot on a plan of subdivision or a part/block on a reference plan)?

Yes, in all cases where there is a right of way or easement to confirm it is registered on both the dominant and the servient tenement?

Results:

65% of the respondents conduct an abutting land search for every parcel where they act for the purchaser. They indicated they do so in order to confirm compliance with the Planning Act, confirm there is no boundary dispute/discrepancy and confirm any easements are registered on both the servient and dominant parcels.

3. **Question:**

Do you always sign the Planning Act Statements? Yes or No?

Results:

65% of respondents indicated that they always sign the Planning Act Statements.

Committee Comment:

Lawyers should remember that:

- the standard OREA Agreement of Purchase and Sale provides in paragraph 16: "If required by the Buyer, Seller covenants that the Transfer/Deed of Land to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O. 1990."¹-

Where a deed or transfer contains (the statements) any contravention of (section 50) of The Planning Act does not and shall be deemed never to have had the effect of preventing the conveyance of any interest in the land.²

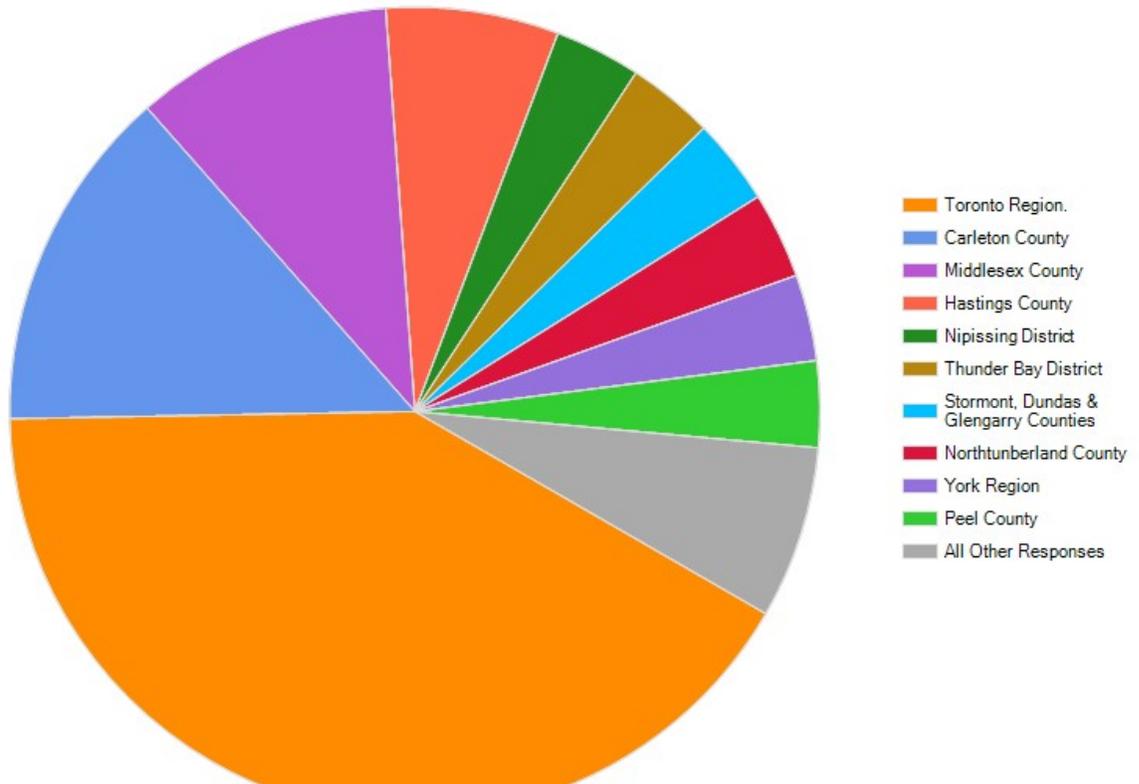
The Committee recommends that all lawyers add a request in their standard letter of requisition and sign the Planning Act Statements when the opportunity is presented.

¹ OREA Form 100, Revised 2013.

² Planning Act, R.S.O. 1990, c. P.13, s. 50 (22).

For Q1, Q2 & Q3 respondents practiced in :

What county do you practice in:



4. Participants were asked about their building compliance issues (BCI) searching habits and responded as follows:
 - a. Do you verify the status of:
 - i. Outstanding work orders - 59.3% sometimes & 22.2% always
 - ii. Open building permits - 44.4% sometimes & 29.6% always
 - iii. Lack of building permits - 60.0% sometimes & 32.0% never
 - b. If no BCI searches, did they have clients sign a waiver - 73.9% did not
 - c. 54.5% indicated they had a standard waiver for clients to sign, which was prepared by:
 - i. Them - 50.0%
 - ii. The Conveyancer - 35.7%
 - iii. TitlePLUS - 28.6%
 - iv. Stewart Title - 28.6%
 - v. Realtiweb - 7.1%
 - vi. Chicago Title - 7.1%

- d. Those who did not have a waiver signed, indicated they discussed with the client, title insurance coverage, the lack of any search for BCI or the possible risks if there are any outstanding BCI.
- e. Most participants indicated discussing BCI with the clients at the signing meeting or on their initial contact.
- f. Most participants had no mention of BCI in their retainer letter or reporting letter.
- g. Most participants had BCI on their file checklist with a good number of those who indicated no, that it was a good idea and they would add it.
- h. Most participants obtained their BCI information from a report from the municipality with the cost of the reports ranging from \$50-\$150 and as high as \$600.

Committee Comment: Building Compliance Issues (BCI) are significant issues for the clients to have to deal with if there are problems discovered after closing. Clients will certainly be told that their lawyer should have discovered these or warned them of these. This is especially problematic if they could have been discovered by doing the searches. Therefore, the Committee emphasises the need to have a full discussion of BCI with clients and to document those discussions, especially if clients are not asked to sign a waiver. The discussion should preferably occur in the retainer letter or initial contact or as soon as practical in the transaction. Clients can be advised of title insurance coverage but as any insurance is not always the best or a full answer, clients should be aware of the risks and provided the option of having the searches completed to obtain any information which might be available before closing.

- 5. When you obtain title insurance, do you
 - a. also give the purchaser a title opinion in your reporting letter - over 90% did not
 - b. amend the lender's standard report to remove the title opinion option - all did or selected the title insurance paragraph provided.

Committee Comment: The Committee is pleased to see that the vast majority of participants do not provide a title opinion in addition to the title insurance policy. Title insurance is a substitute for the opinion and providing the opinion without undertaking all the due diligence which would otherwise be done if title insurance was not used, exposes the lawyer to a claim for coverage which a standard title opinion would provide.