

Question 4 – Building Compliance Issues

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. Realiweb - 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.

WG 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.