

## Title Insurance



Photo Credit: iStock Ildo Frazao

Title Insurance is sometimes regarded by purchasers as yet another unnecessary add-on in the complicated and costly business of buying a property. Our experience suggests otherwise. In Atlantic Canada clear title is often an aspiration, rather than reality. Caution is the watchword, especially in overheated property markets that eschew careful investigation prior to purchase. Several decades ago the author of this article, an impecunious immigrant with a large family and a consulting business dedicated to consuming cash, was seized with the irrational desire to purchase a peninsular in Cape Breton's Bras d'Or Lake. Overwhelmed by the area's natural beauty, and impelled by a vision no nobler than the desire to own something that could be identified by the Landsat satellite, he stumbled upon a likely candidate and slapped his (few) dollars down. Alas, his lawyer, a tardy fellow, having left the title search until the afternoon before the closing, phoned that evening with the bad news. The registered owner, and vendor, was not the actual owner, though the property had been given to said vendor by a benevolent soul, albeit using the legal description of an adjacent property (which was not for sale). The benefactor had many heirs, so uncontested clearance of title at tax sale was far from certain. Happily, the sale eventually proceeded with pristine title; sadly it proved to be a thirsty purchase, well water was not available because of a gypsum deposit, and the briny Bras d'Or Lake is not for drinking. Still, it is visible from space.

It is doubtful if title insurance would have solved the foregoing problems but it can address defective titles resulting from easements or encroachments that may rear their ugly head, sometimes several years after the property purchase. Imagine finding out that your beautiful ocean frontage actually belongs to somebody else, that your river bank is girded by a public right of way shared with all and sundry, or that part of your building is actually located on somebody else's property. And what happens when your neighbour casually informs you that your driveway is actually not yours at all because part runs across his property and you have no deeded right of way? You have a parking space but no way to get to it! Or that your fire exit is non-compliant because it discharges over what now proves to be somebody else's land? That renovations were carried out without a permit and were not up to code? These and other equally unpleasant surprises are much more common than most purchasers appreciate. Title insurance will not address the defect in title, but it is one way to protect the property owner against monetary loss. Calculating that loss often utilises the same *before and after* methodology employed in expropriation (the forcible taking of property for public projects such as road widening). Take for example a property purchased on the erroneous assumption that it has ocean frontage. To assess the owner's monetary loss, the property is valued on the hypothetical assumption that it has the water frontage (its "before" value) and then again recognising that the intervening land is owned by another party (its "after" value). The difference between the two values represents the monetary loss covered by the title insurance and comprises, in expropriation parlance, "the value of the land acquired plus the injurious affection". The valuation date is fixed at the date the *defect in title was discovered* but having regard to *the physical state of the property on the date the insurance was purchased* (usually the date the property was acquired by the present owner).