

# PROTECT YOUR BOUNDARIES.ca

Understand Land™ Seminar Series for Real Estate Professionals  
Seminar # 3

## “The A-to-Z of Title Insurance”

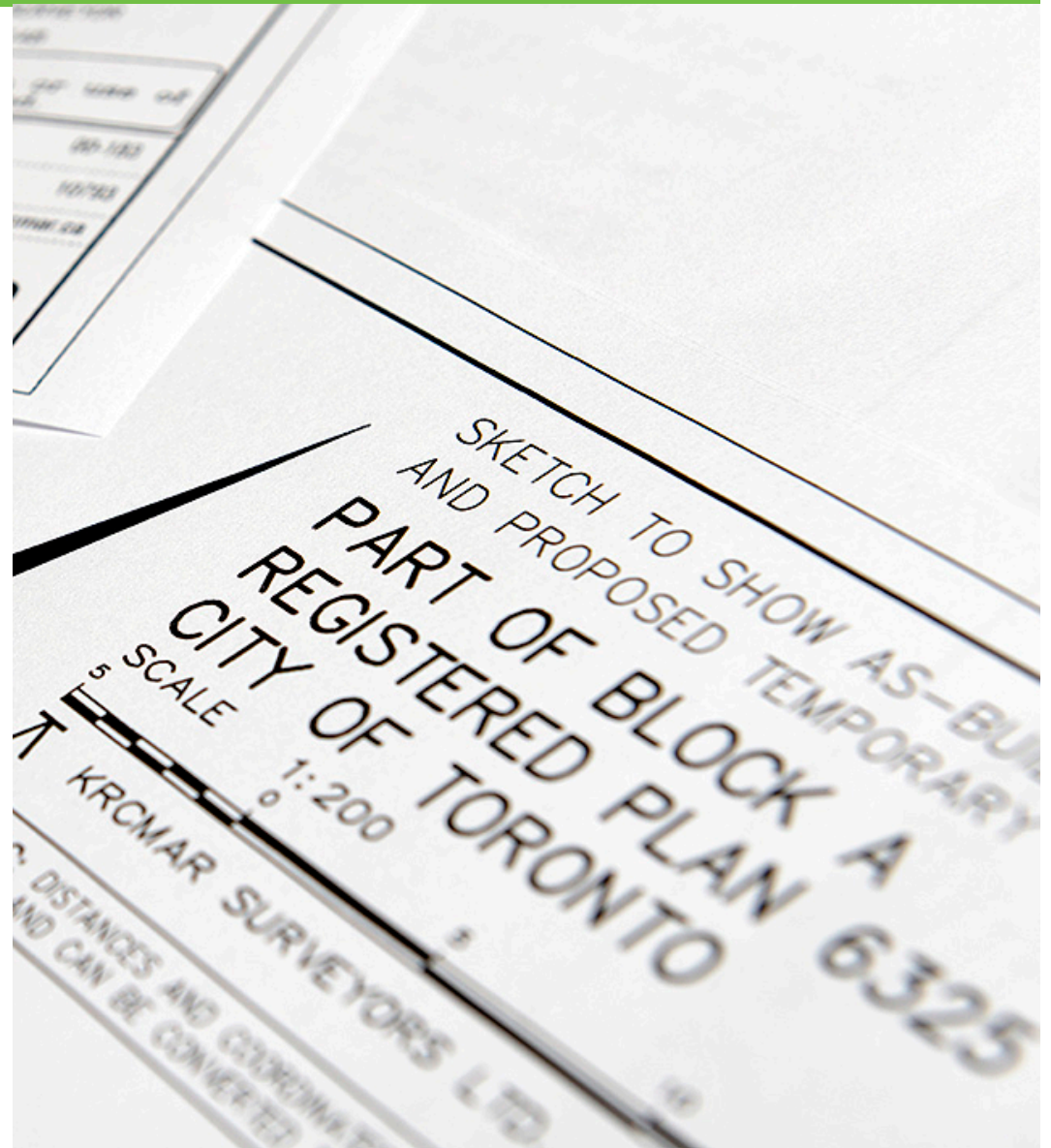
Chris Kamarianakis Executive Director, Protect Your Boundaries Inc.

## Today's Program

- ✓ What is "Title"?
- ✓ What is Title Insurance?
- ✓ Why does it exist?
- ✓ What does it cover (and not cover)?
- ✓ Responses to claims;
- ✓ Benefits and Criticisms;
- ✓ Pitfalls for REALTORS;
- ✓ Best Practices



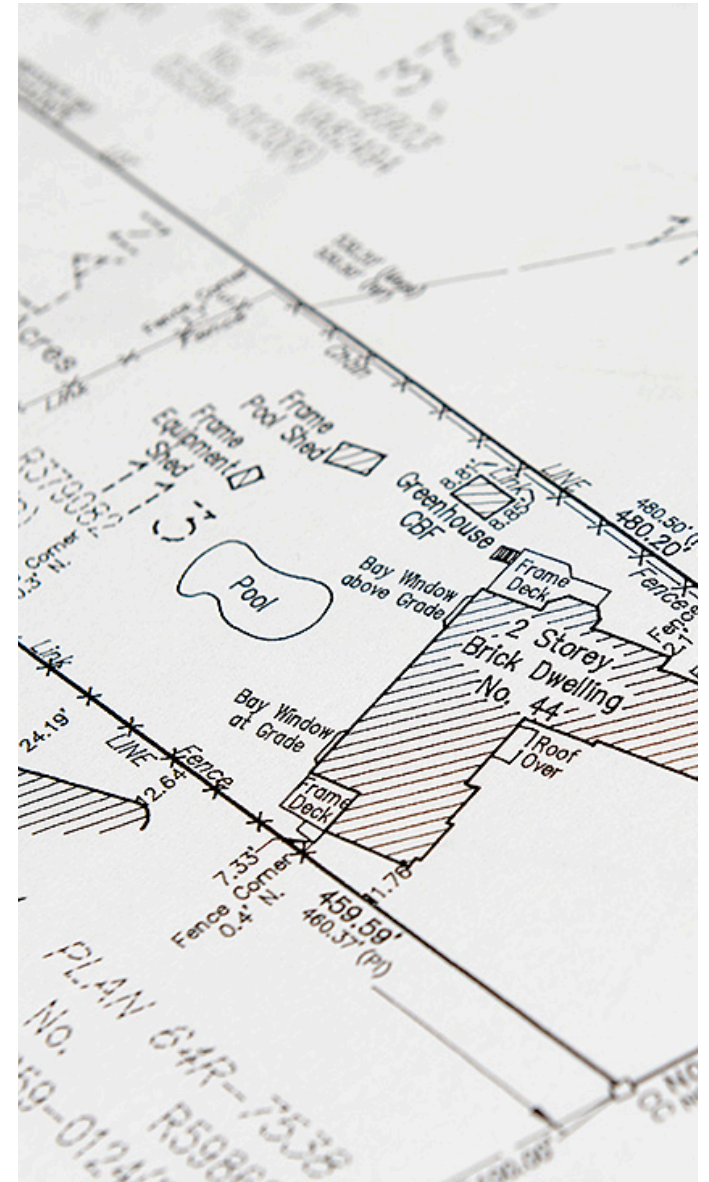
What is  
Title?



## Title

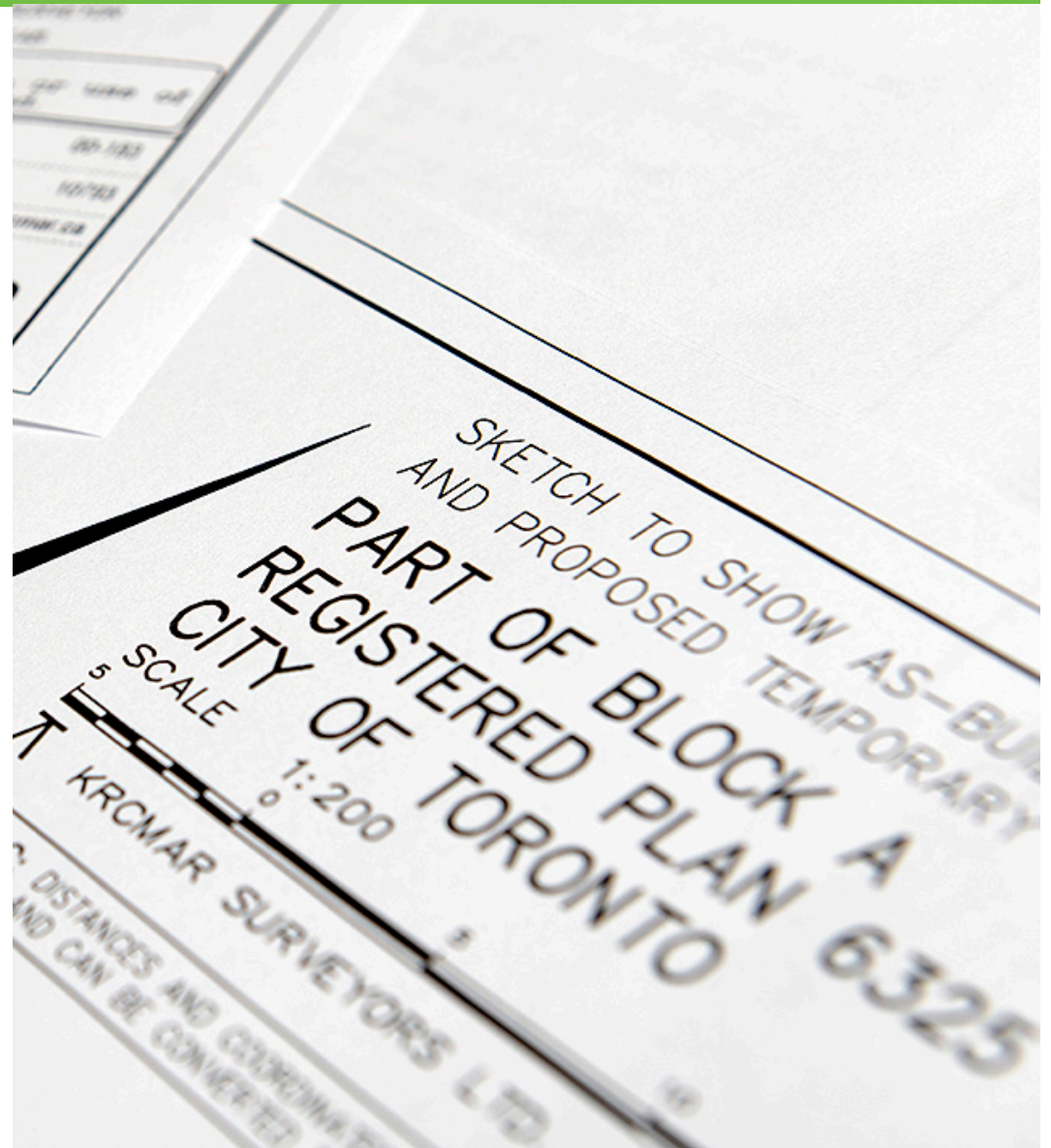
“The rights of ownership recognized and protected by the law.”

Title to real property is commonly evidenced by a deed, judgment of distribution of an estate, or other documents in the public record (Parcel Register.).





# What is Title Insurance?



## What is Title Insurance?

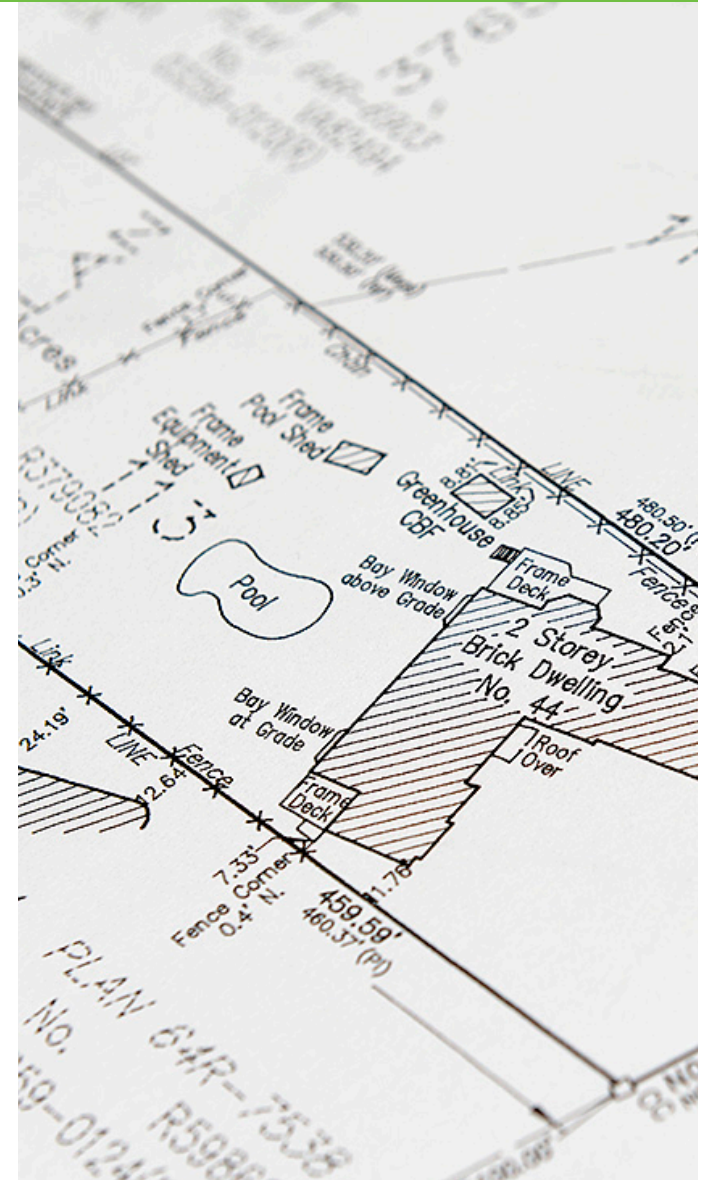
- Insurance policy that provides purchasers and lenders with protection against specific title risks.
- Alternate method to assuring good title.

## Who Provides It?

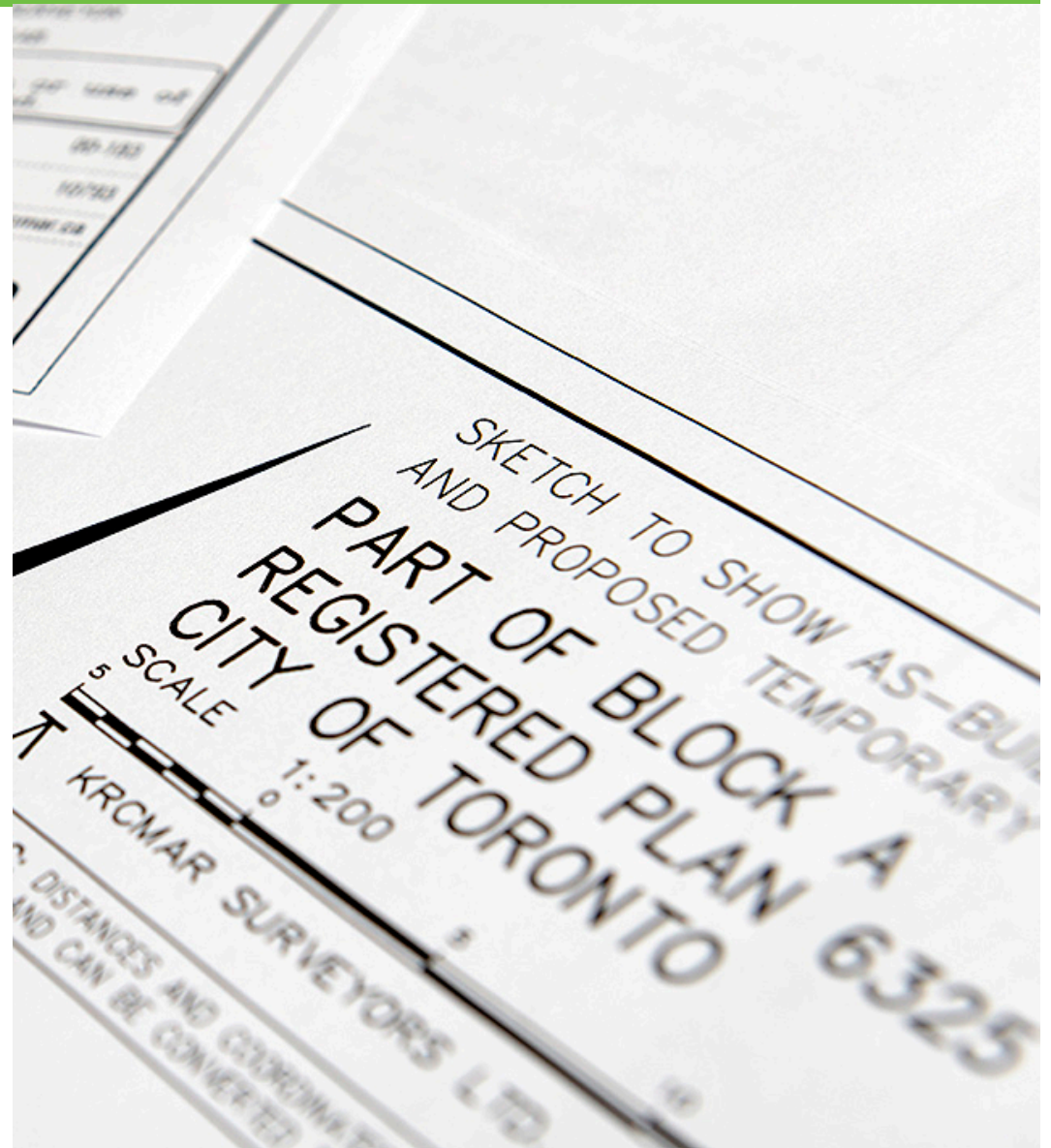
- TitlePLUS, Stewart Title, First Canadian Title, Chicago Title and Travellers.
- One-time premium for lifetime of ownership
- Residential, commercial and existing owner.

## TITLE INSURANCE IS NOT BOUNDARY INSURANCE

It's an insurance policy against defects found in spite of good research and due diligence.



Why does it  
exist?





### Before 1990: The Pre-Title Insurance Era

*Clean title, clean boundaries, slow deals.*

Title was assured by:

- ✓ A current survey;
- ✓ Full title search and lawyer's opinion;
- ✓ Building & zoning bylaw compliance certificate.

### The Opportunity

- ✓ US insurance companies looking for expansion into new territories.
- ✓ Lawyers & lenders - reduce their risk. RELATORS - faster deals.
- ✓ 1989 – Real Estate crash – perfect storm

### 1990 – 2010: Capturing & Dominating the Market

- ✓ High level of payout, “established as a necessity” in the RE transaction.

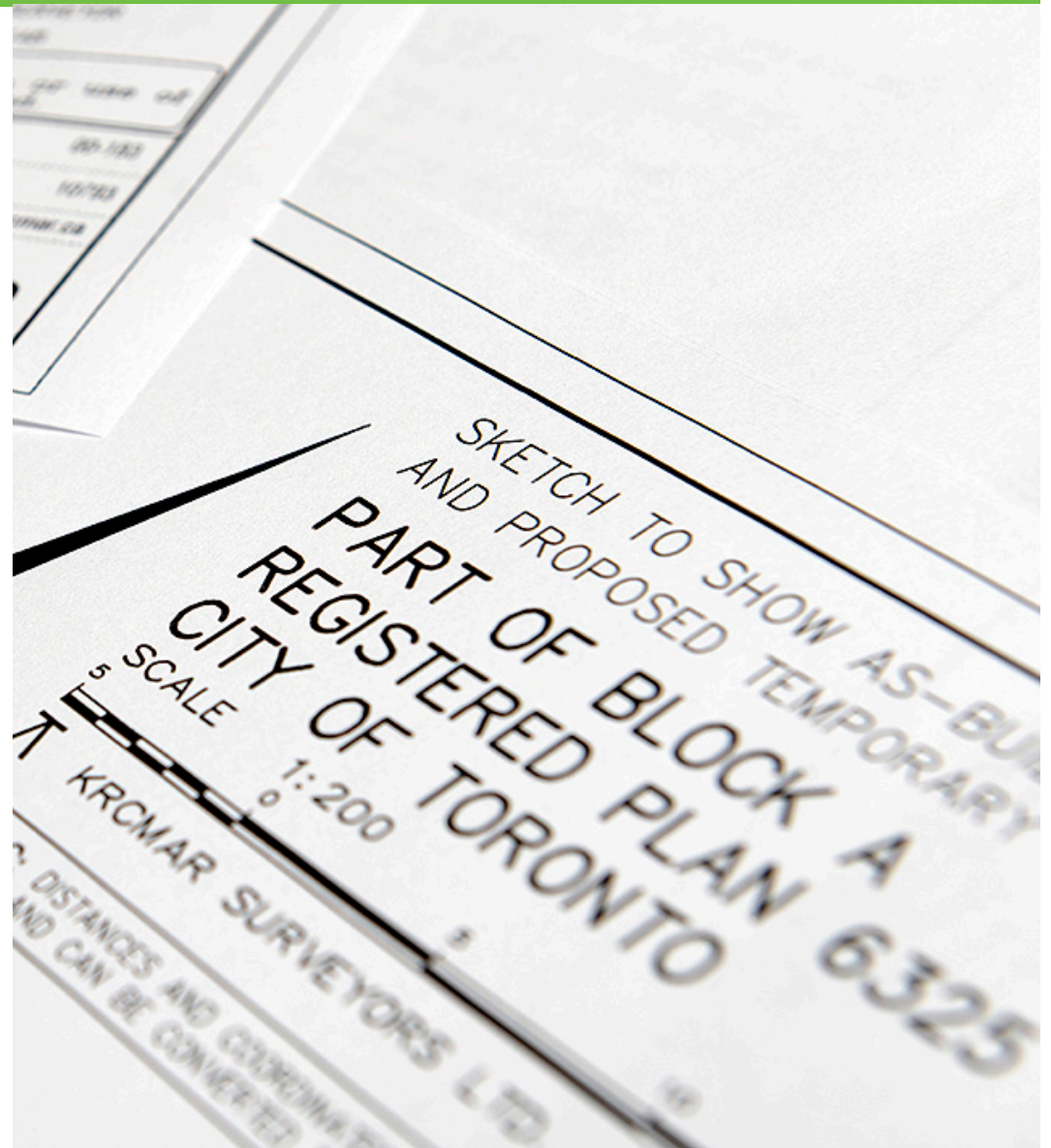
### Present Day

- ✓ Unprecedented claim numbers, TIP claim denial, lawsuits to recover costs.





Why is this  
important?

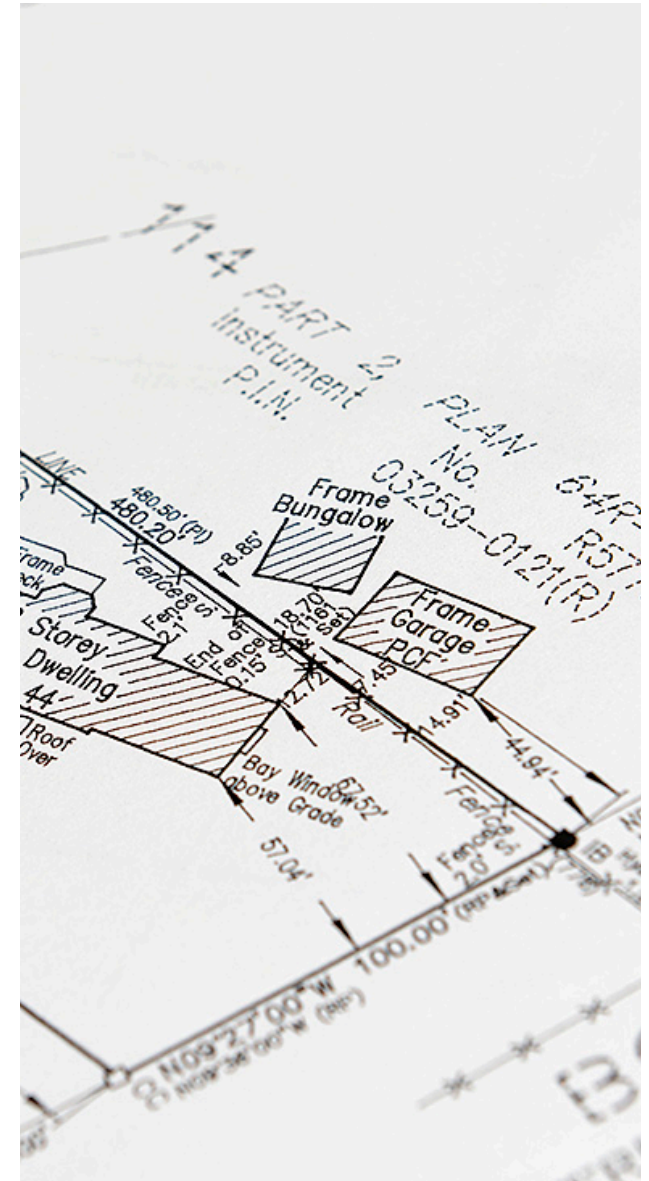


## Cause and Effect

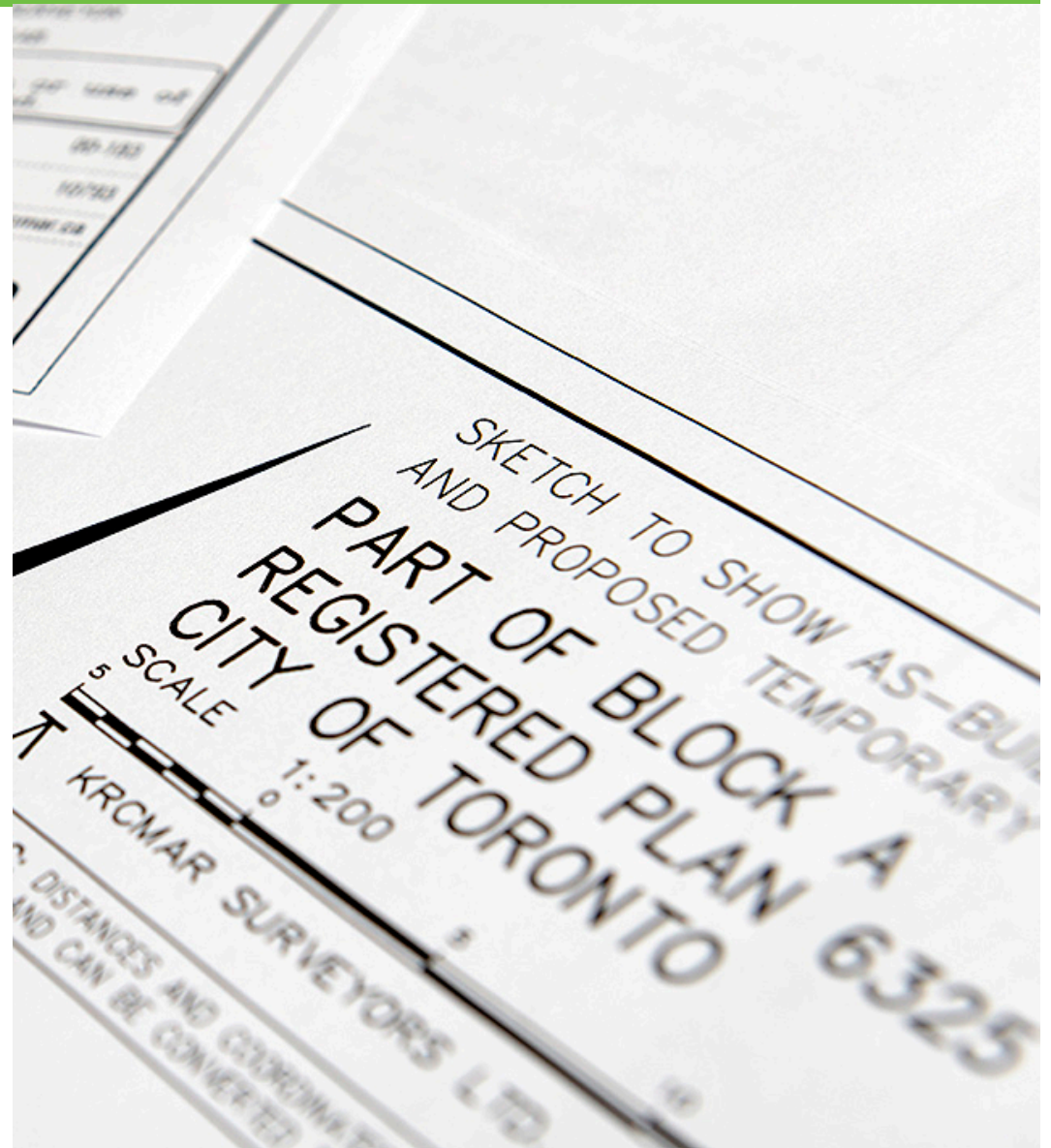
- ✓ TI (wrongly) accepted as a replacement for good due diligence.
- ✓ 20 years of buying homes without appreciation/ understanding of boundary location.
- ✓ 49% of properties have hidden boundary issues.
- ✓ Land values at all-time high.
- ✓ TI claims at all-time high.

Result: TI companies protect their interests.

**This means MINIMIZING CLAIM COSTS and RECOUPING EXPENSES wherever possible.**



# What does Title Insurance cover?

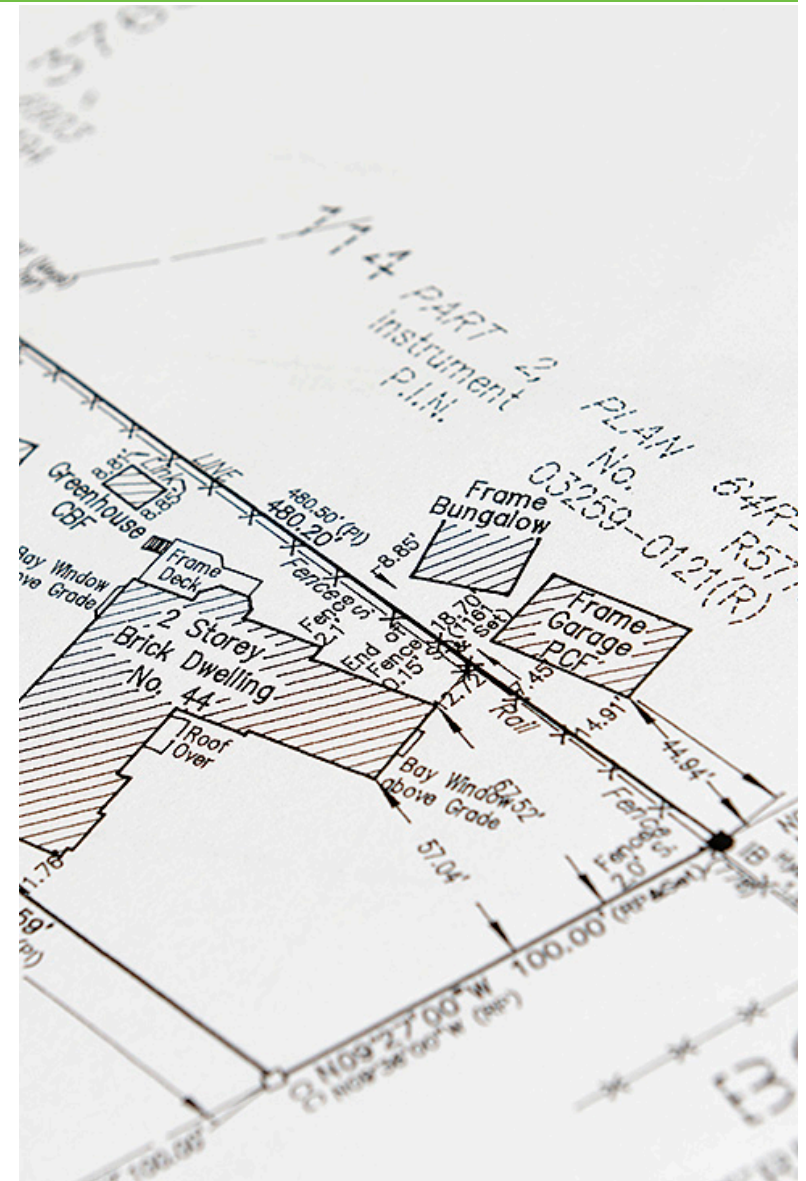




## General Title Insurance Coverage

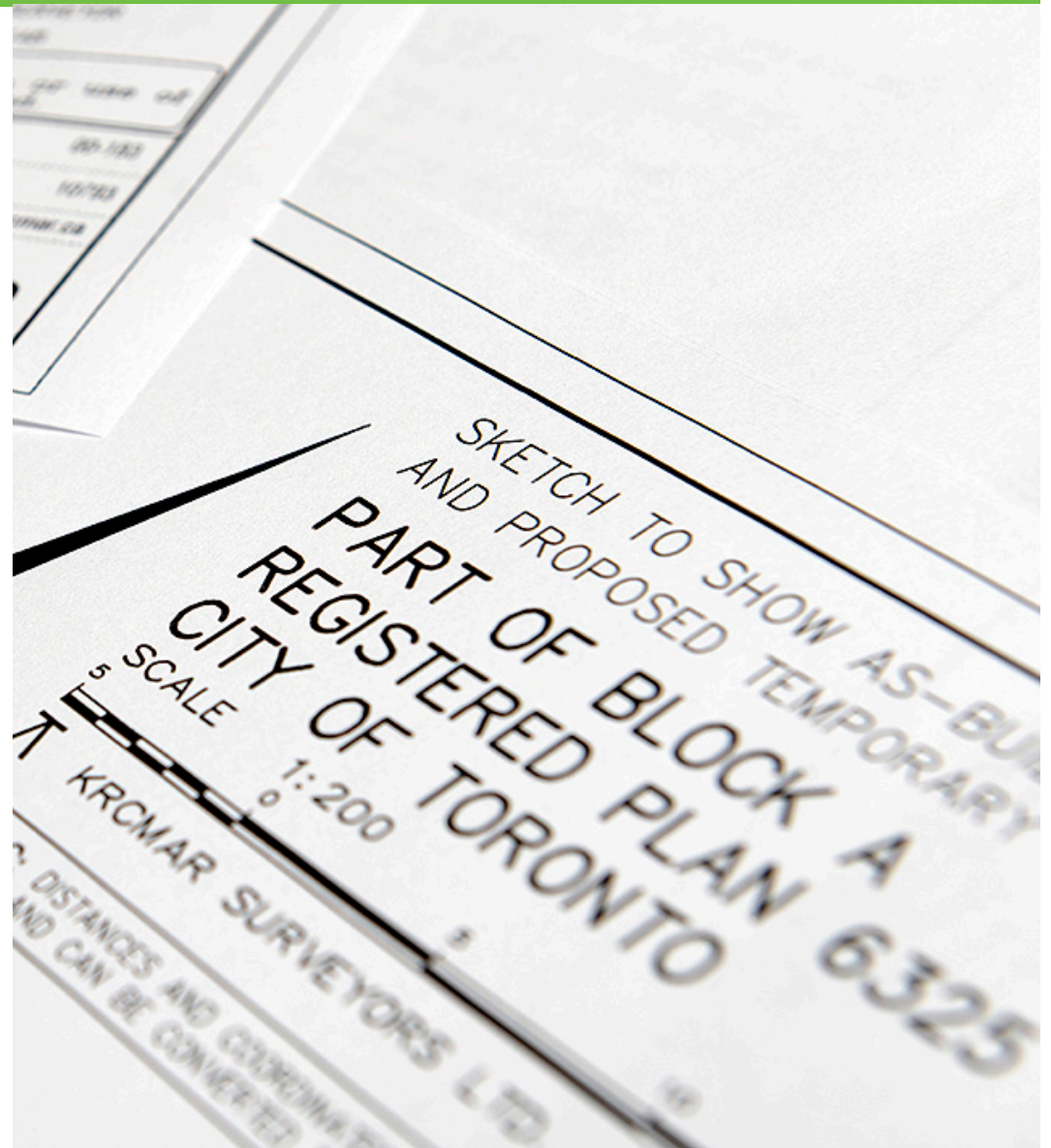
- ✓ Defects in Title
  - E.g. Part of property in other's name;
- ✓ Compliance Issues
  - E.g. Bylaws, setbacks, building permit violations;
- ✓ Access and other Rights & Defects
  - E.g. Right of way, easement violations.
- ✓ Some of what an up-to-date survey would reveal.
  - E.g. Encroachments on neighbouring properties.
- ✓ Title Fraud
  - E.g. Someone takes out mortgage on your property.

**UNLESS buyer has PRIOR KNOWLEDGE of the (otherwise covered) issue.**





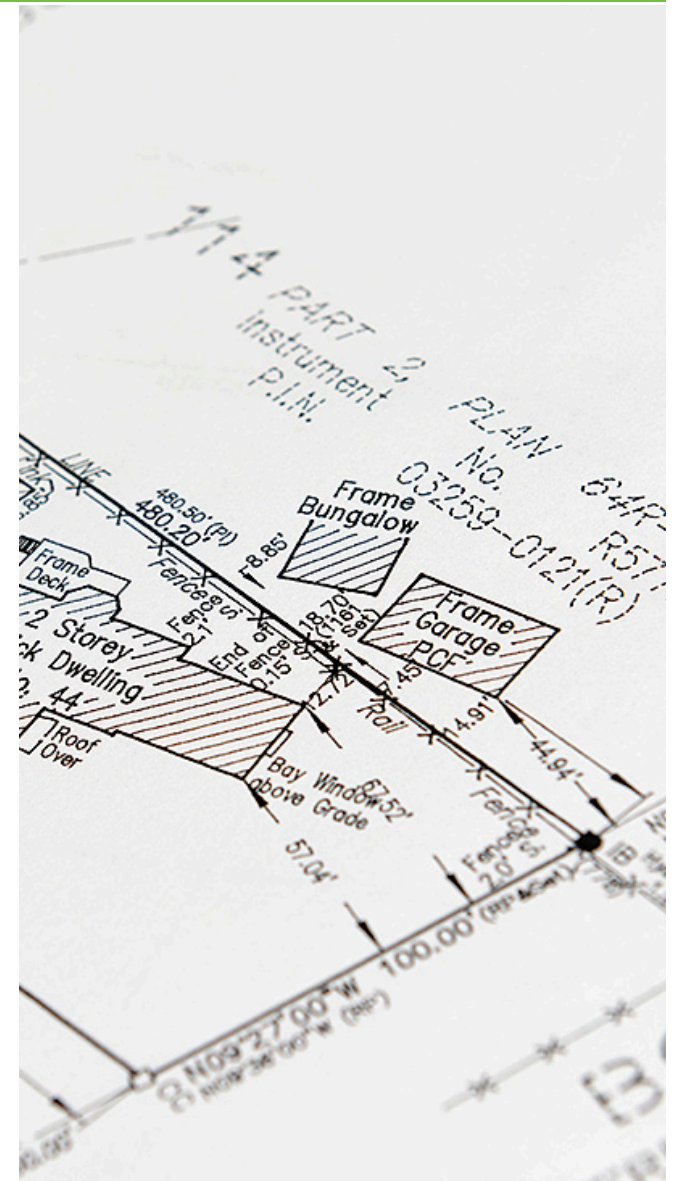
What does  
Title Insurance  
**NOT** cover?



## Typical TIP Exceptions

- ✓ **Fences, hedges, boundary walls;**
- ✓ **Encroachments on subject property by neighbours;**
- ✓ Environmental hazards;
- ✓ Zoning violations caused by new owner;
- ✓ Buyer's ability to change the use of land;
- ✓ Problems buyer agreed to assume but failed to inform TIP or lawyer about;
- ✓ Native Land Claims;
- ✓ Certain government rights (e.g. expropriation)

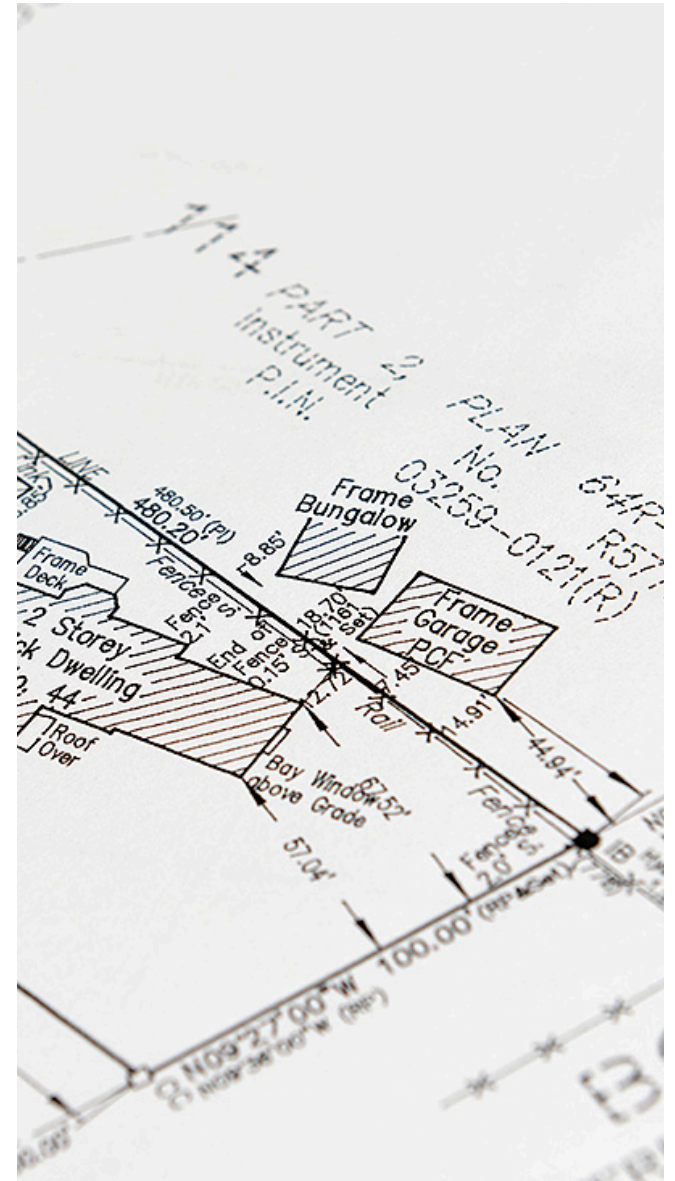
**PLUS: Anything of which the buyer has PRIOR KNOWLEDGE that would otherwise have been covered.**



49% of residential properties in the  
GTA have hidden boundary issues.

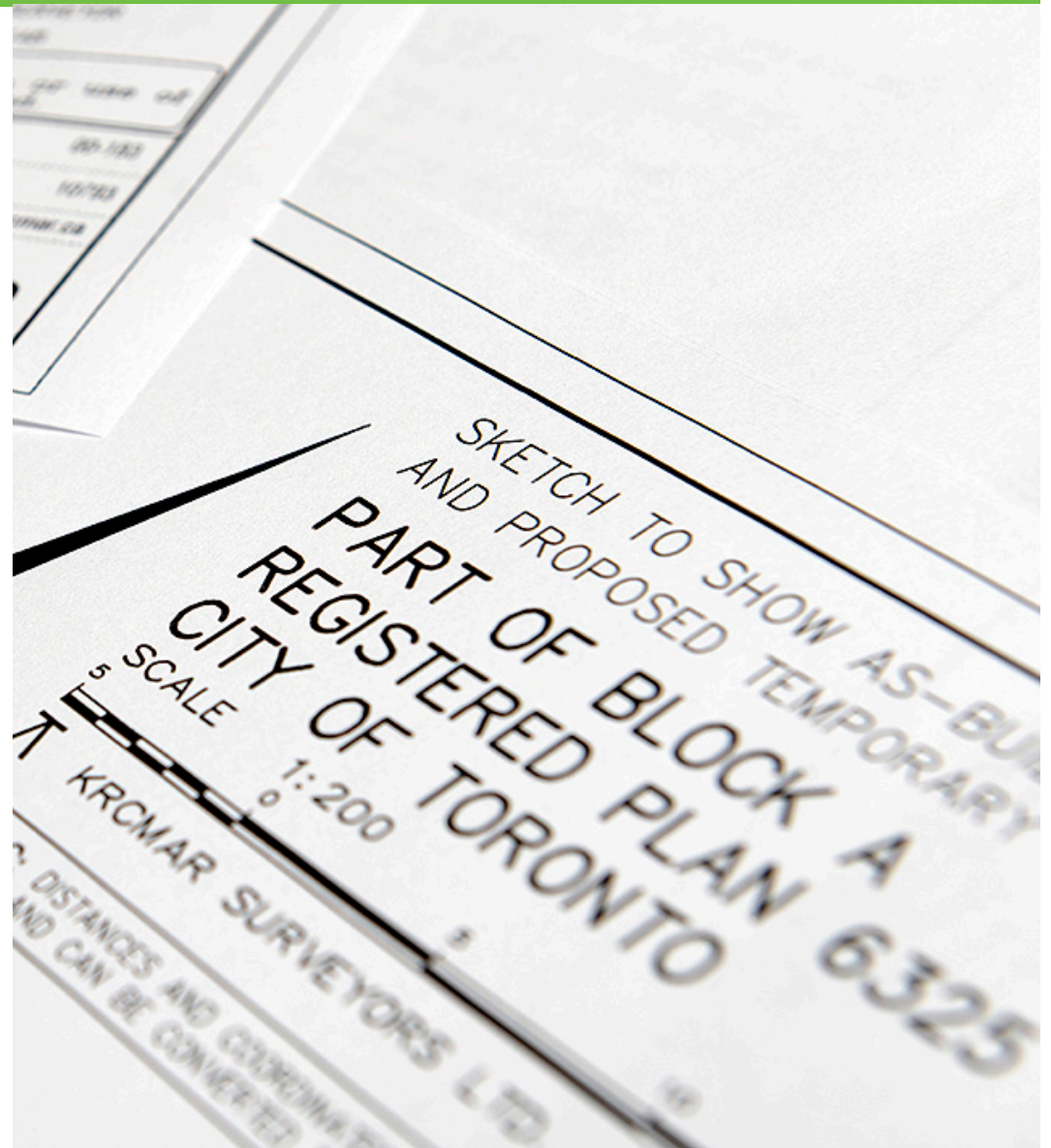
85% of these are not covered by TIP.

Question: If TIP isn't going to cover most likely defects,  
why are we protecting it at the expense of informed  
decision-making?





# Possible Claim Responses





## Spectrum of Claim Responses

Policy Holder's  
Best Interest



- ✓ Pay the Claim;
- ✓ Repair, replace or relocate the building, structure or improvement;
- ✓ Prosecute or defend a legal proceeding;
- ✓ Negotiate a settlement;
- ✓ Remove and pay the diminution value, if any;
- ✓ Pay amount required per policy (sub-limits?);
- ✓ Take other action which protects the insured;
- ✓ Cancel the policy;
- ✓ Deny the Claim;

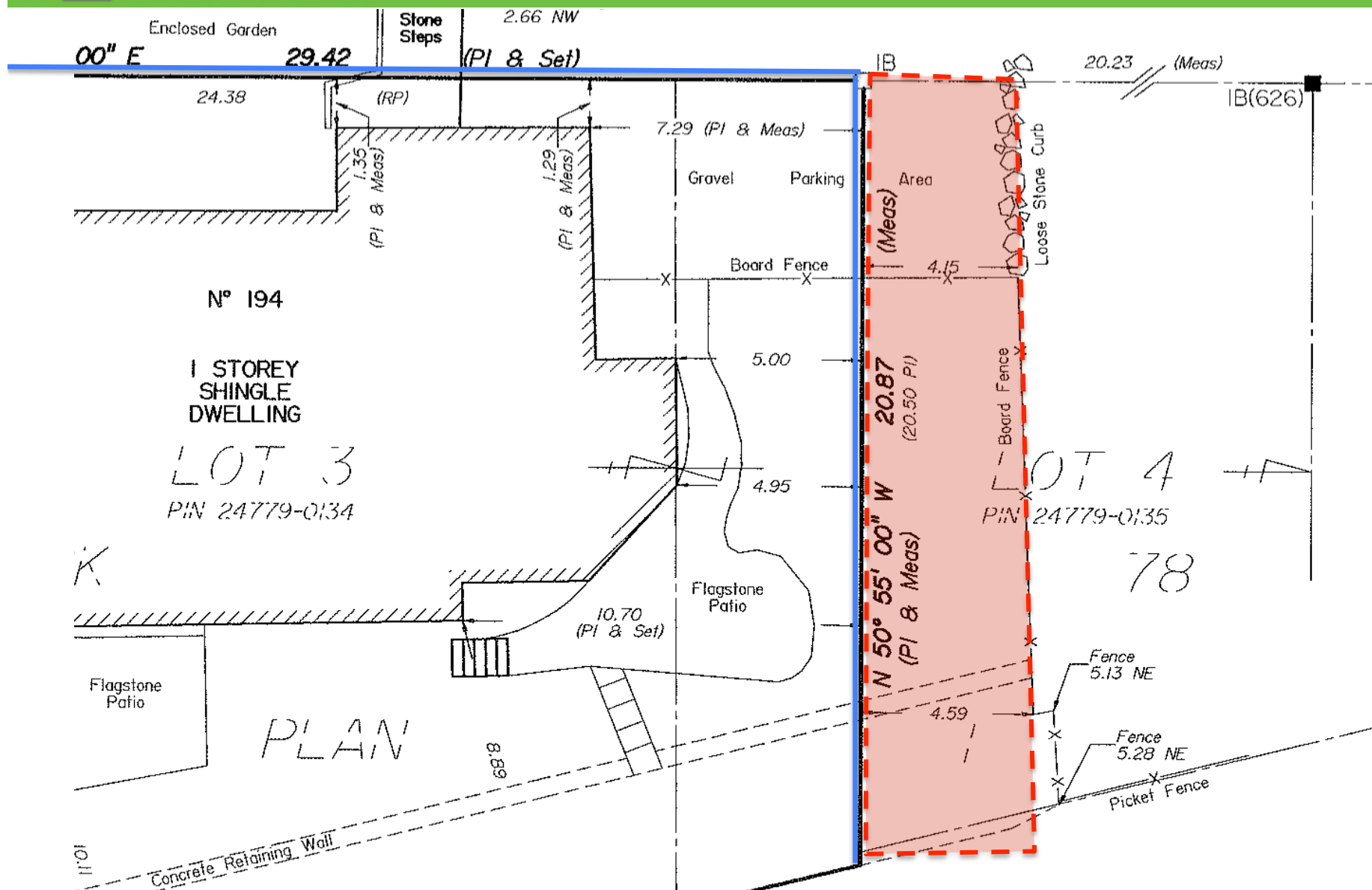
TIP's Best Interest



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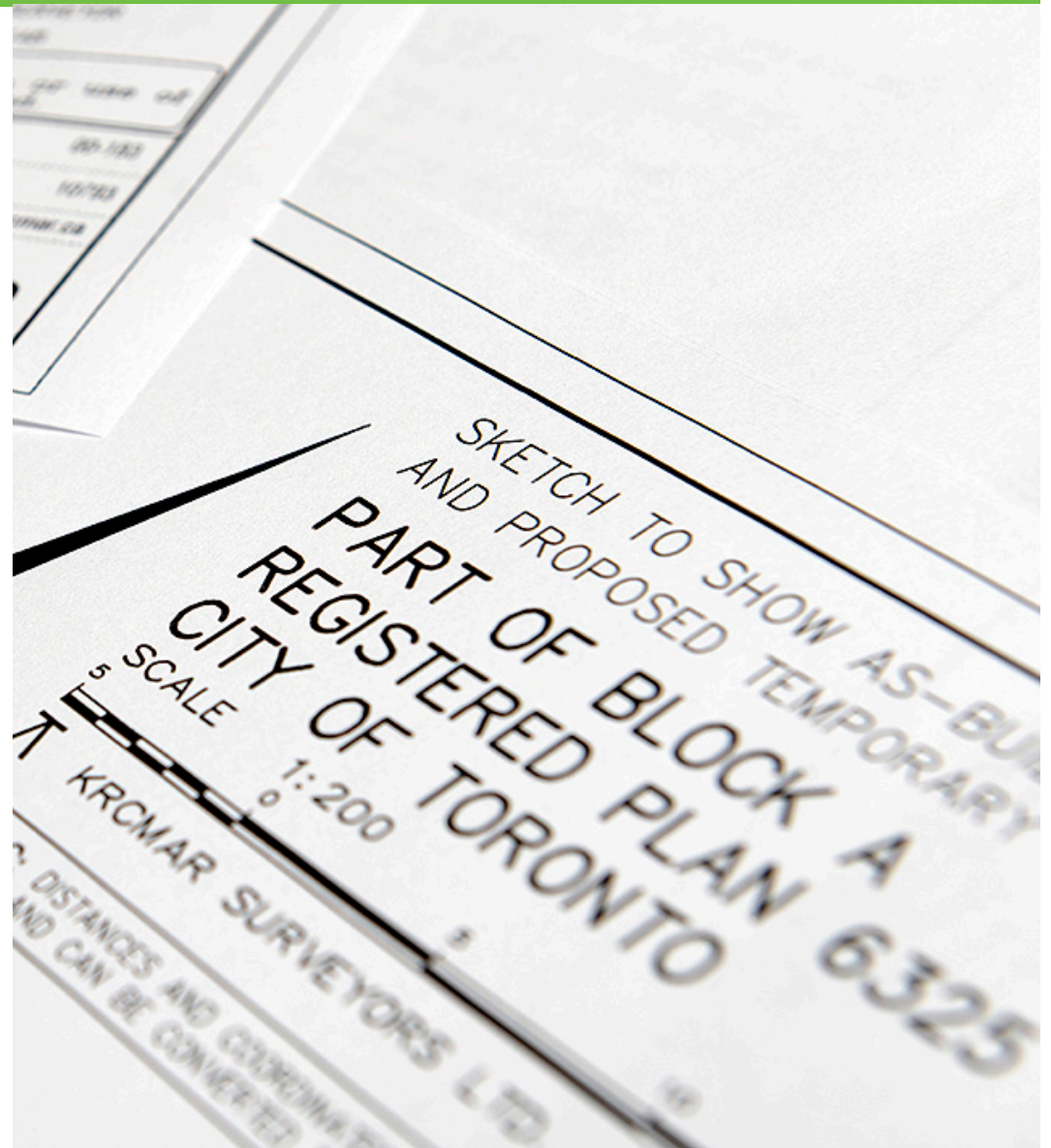








# Title Insurance benefits



### To the Lender

- ✓ Lower risk (therefore cost) of doing business.  
Purchaser pays for TIP to assume the lender's risk.

### To the Buyer

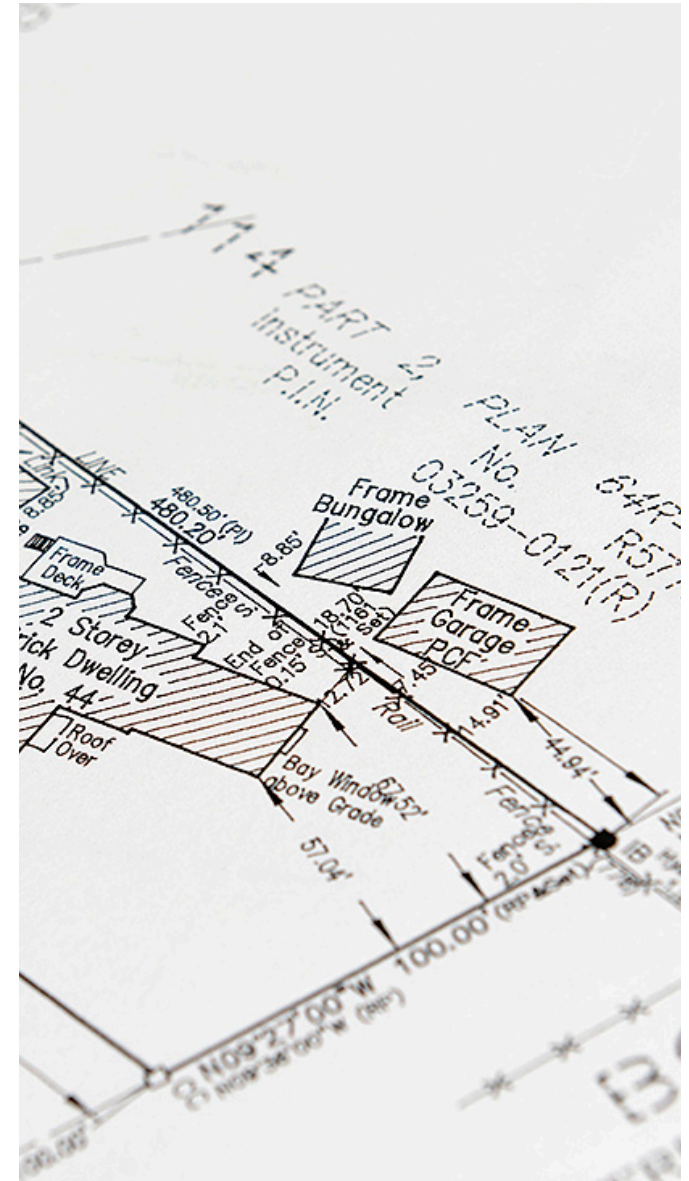
- ✓ Lower risk purchases, lower cost closings. TIP has assumed risk.

### To the Lawyer

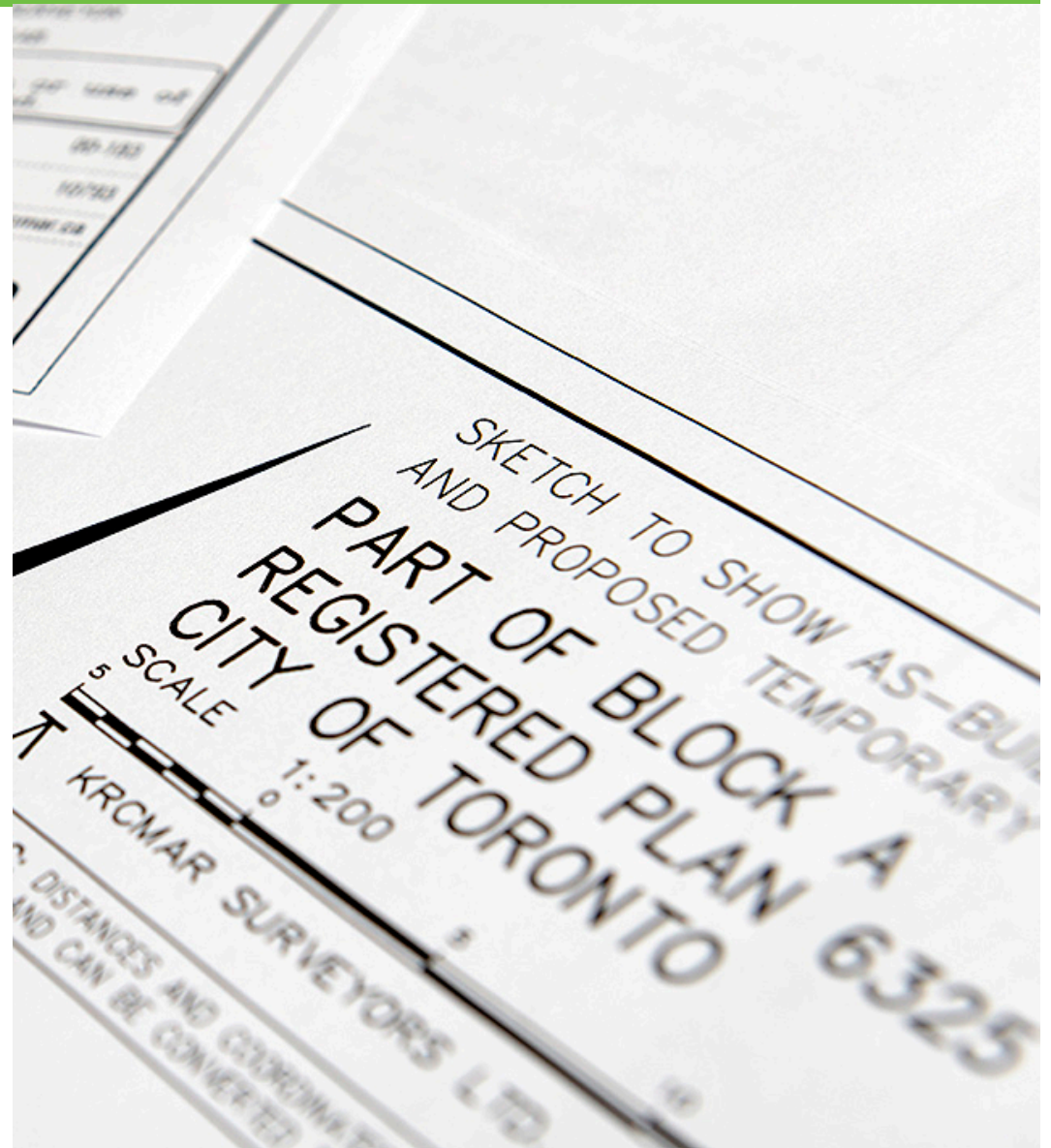
- ✓ Less time/cost per deal. TIP has assumed risk of defects that full diligence would have uncovered (taxes, bylaws, permits, surveys etc.).

### To the Agent

- ✓ Faster deals, fewer barriers to closing.



# Title Insurance criticisms





## Prior Knowledge = Willful blindness

- ✓ TIP encourages blind, uninformed buying decisions.
- ✓ Buyer puts complete trust in TIP to indemnify her for a risk that arises later without knowing what that risk is at the time of purchase.

## Misaligned Interests

- ✓ Interests of Insurer are often contrary to those of the insured.
- ✓ Complex policies, loopholes buried in fine print, remedies not always clients' best outcome.

## It may not be necessary

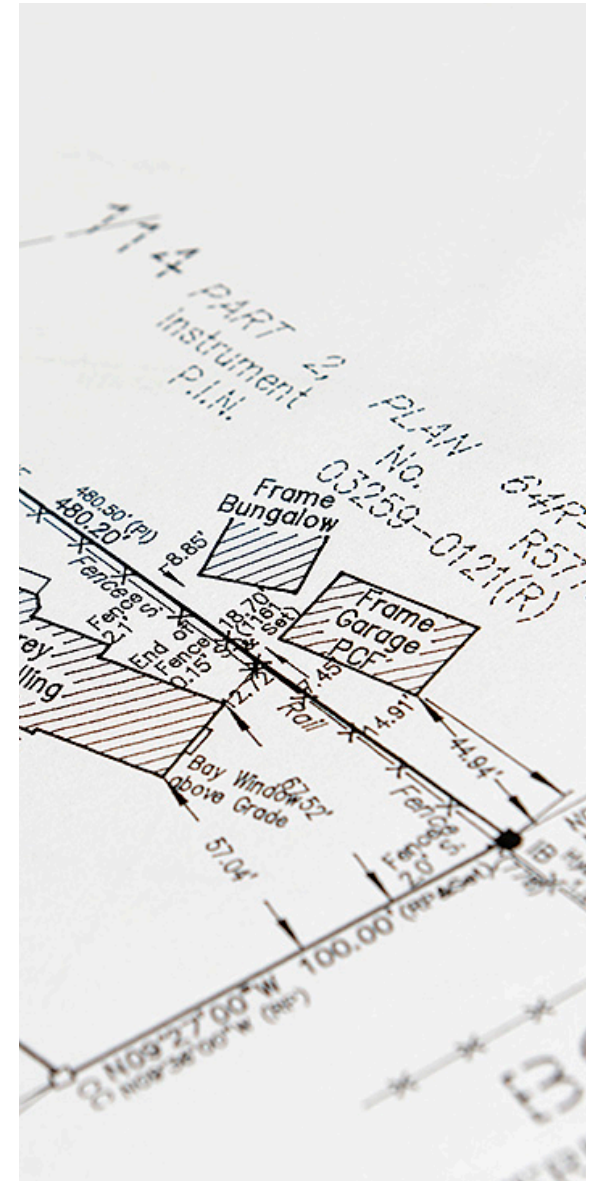
- ✓ Land Titles Assurance Fund, Surveyors Assurance Fund, Lawyer's and Realtor's E&O Insurance.

## Long term harm

- ✓ 49% of properties have hidden boundary issues.

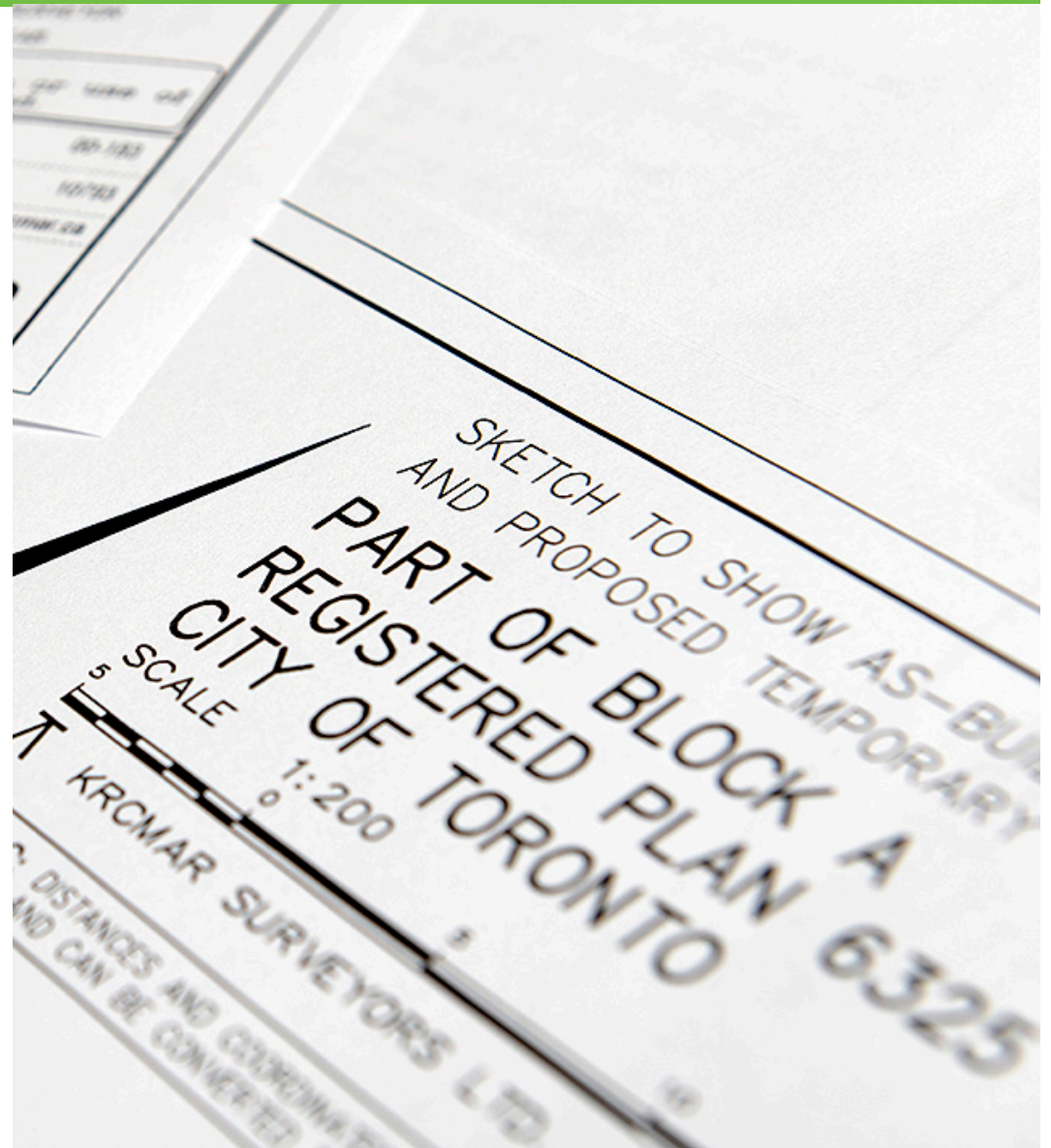
## Doesn't address emotional aspects

- ✓ Conflict creates misery. TIP does not fix or relieve that.



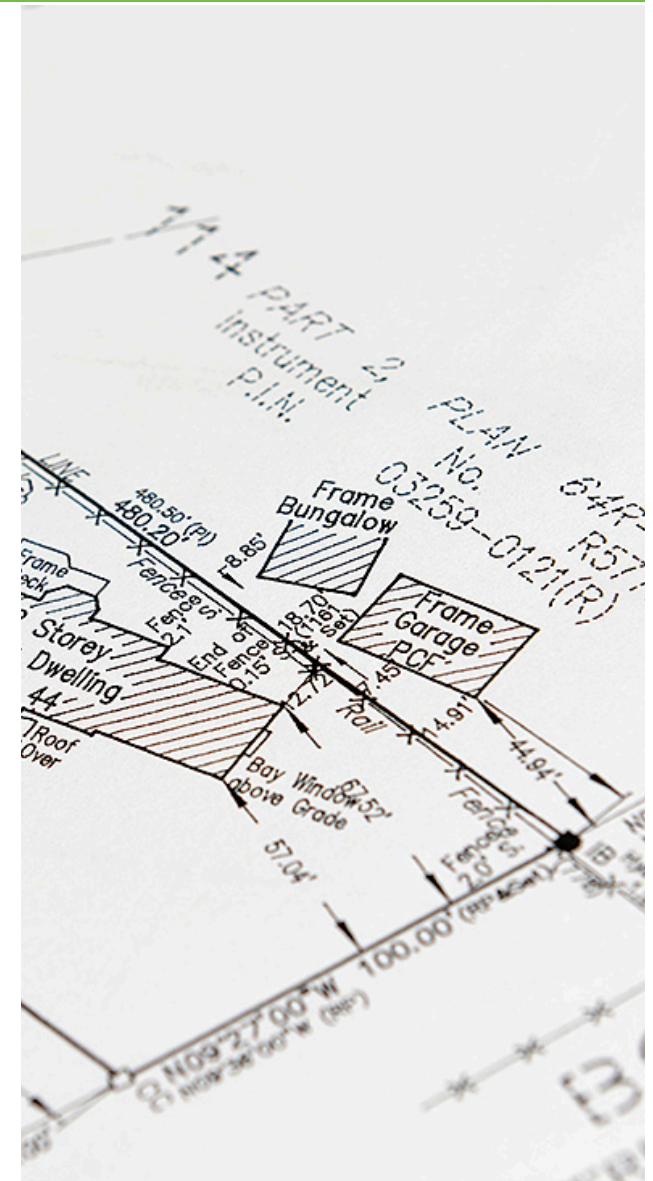


# Pitfalls for REALTORS



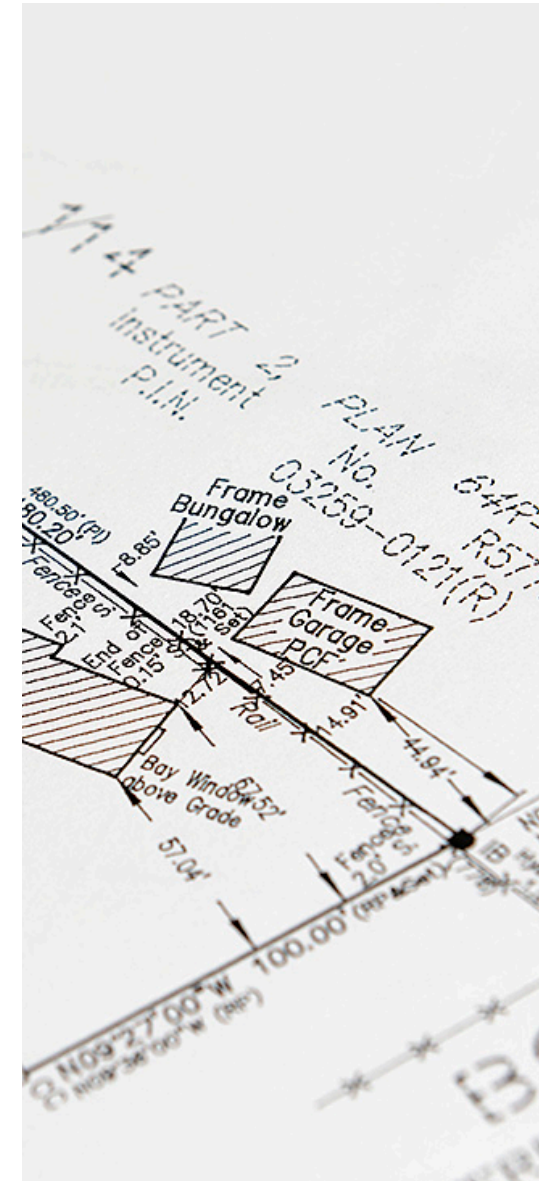
## Don't Fall For It!

1. **Assuming that Nothing's Changed**  
It has. In Real Property AND Title Insurance.
2. **Over-reliance on Title Insurance**  
Know the limits of what it covers.
3. **Title Insurance Fixes Everything**  
Remedies are applied to minimize TIP's costs.
4. **This has nothing to do with me.**  
It has everything to do with you.
5. **I don't need a survey plan.**  
It has everything to do with you.
6. **Foregoing Good Due Diligence**  
TIP is not a reason to make an uninformed buying decision. It's unprofessional and dangerous.



## Think about it...

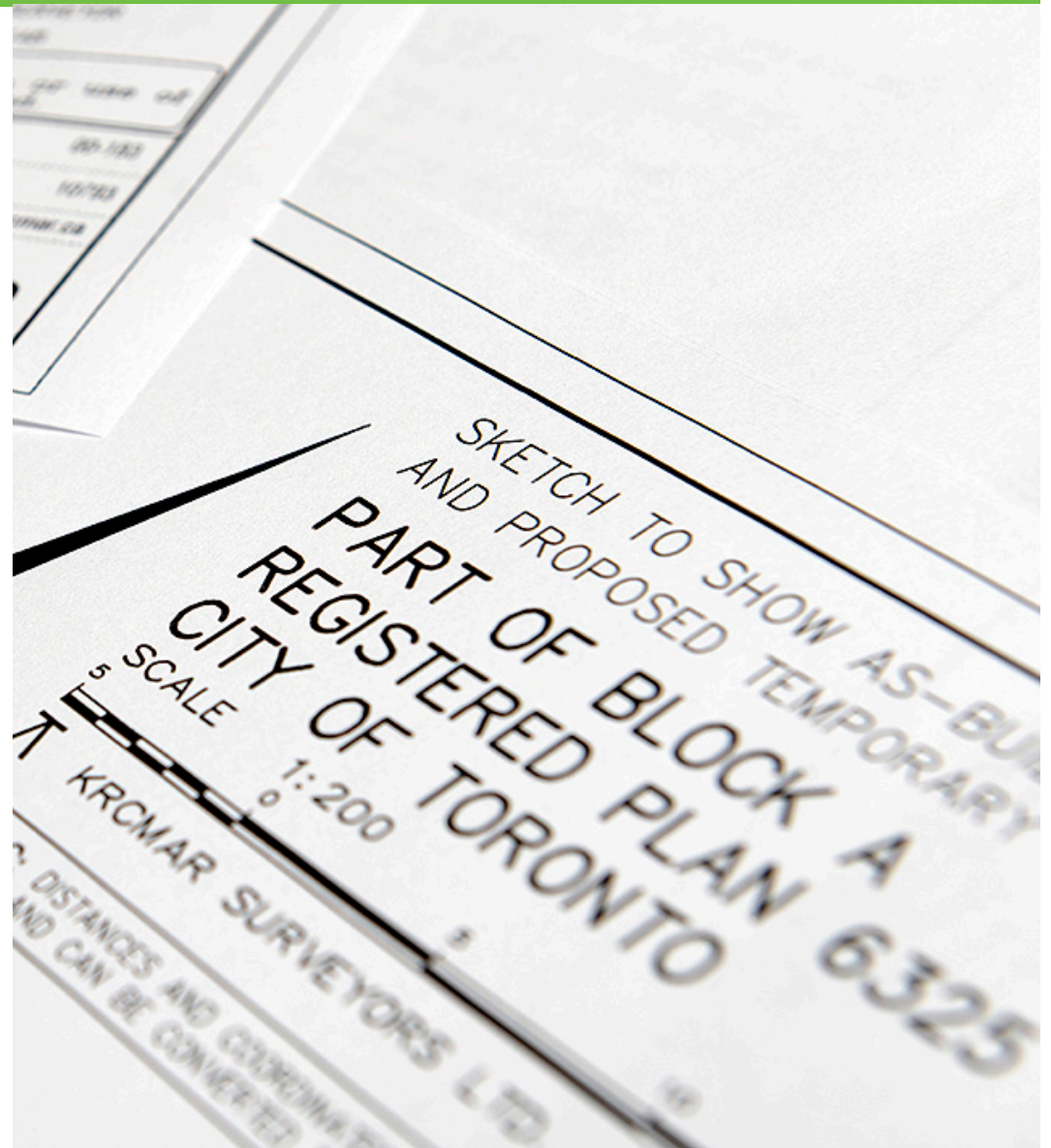
- ✓ Just because you are getting TI doesn't mean you don't make a careful buying decision.
- ✓ Title Insurance is not an excuse to skip over/neglect helping your client make a good, informed buying decision.
- ✓ Because just like all these examples, the real cost to a homeowner of a TI claim is far greater than the monetary payout they receive.
- ✓ TI is not permission to make a sloppy buying decision. It doesn't protect you from making a BAD decision. It doesn't protect you from not really knowing what you're buying.





# Best Practices

How do you  
protect  
yourself and  
your client?



## #1 best practice:

Get a survey plan AND title insurance.

TIP protects against title defects (your rights of ownership), and a survey protects against not getting what you thought you bought (extent of ownership).

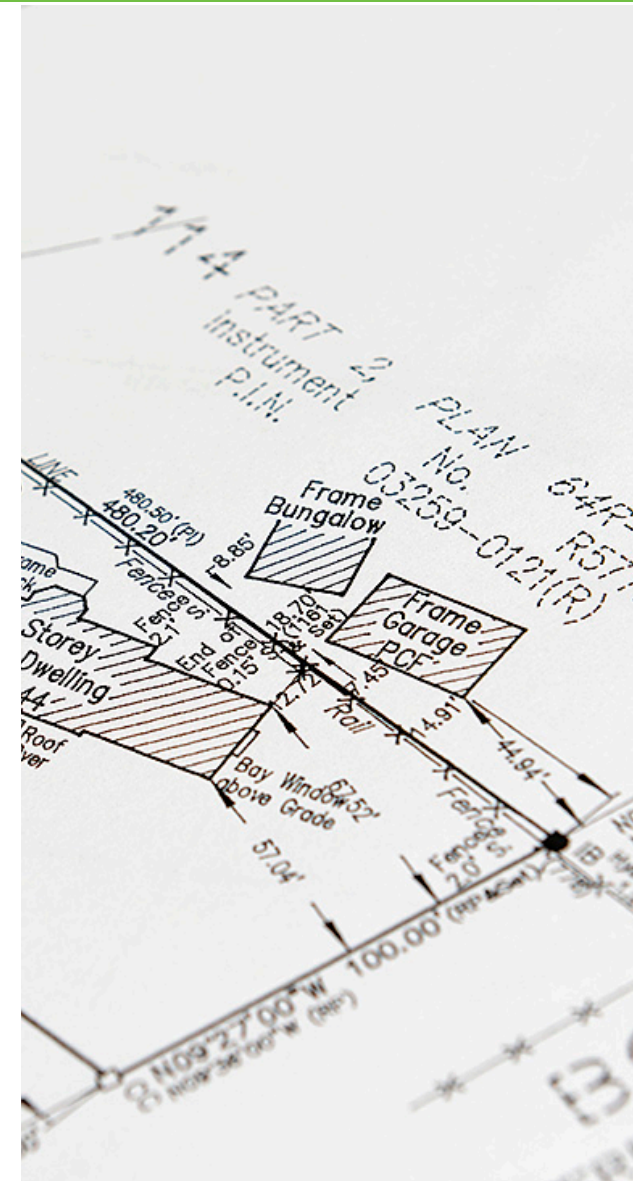
## Best Practices for Buying Side

- ✓ Always demand a survey plan from seller;
- ✓ Don't forego thorough due diligence;
- ✓ Don't trust that TI will remedy any issues to your client's satisfaction;

## Best Practices for Selling Side

- ✓ Always provide a survey plan in selling package;

Remember, TI companies are *insurance* companies.





## Your source for land survey plans and boundary expertise.

23 Wanless Crescent, Toronto

GO

Survey plans provided in association with leading GTA surveyors.  
Find out more.

TAKE THE TOUR



CLOSE

ADDRESS:  
23 WANLESS CRES



[Click here to enlarge](#)

Survey plan date: 2008  
Rank: ★★★★★  
Price: \$ 300.00  
Source: Land Survey Records

BUY

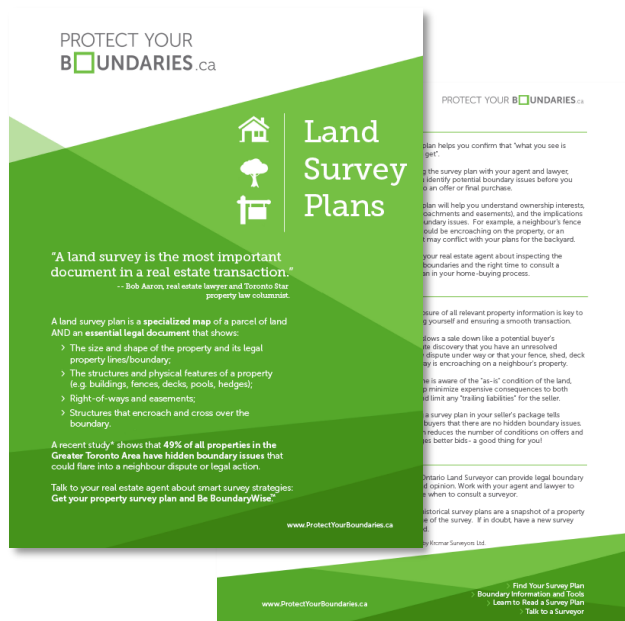
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Chris Kamarianakis Executive Director, Protect Your Boundaries Inc.



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Thank You!

## Does TI Cover Work Order and Building Bylaw Violations?

Paul & Stephanie Macdonald vs. Chicago Title

Paul and Stephanie (P&S) bought Toronto house in 2006. Also bought Chicago TI.

Moved in, discovered that loan bearing walls had been removed.

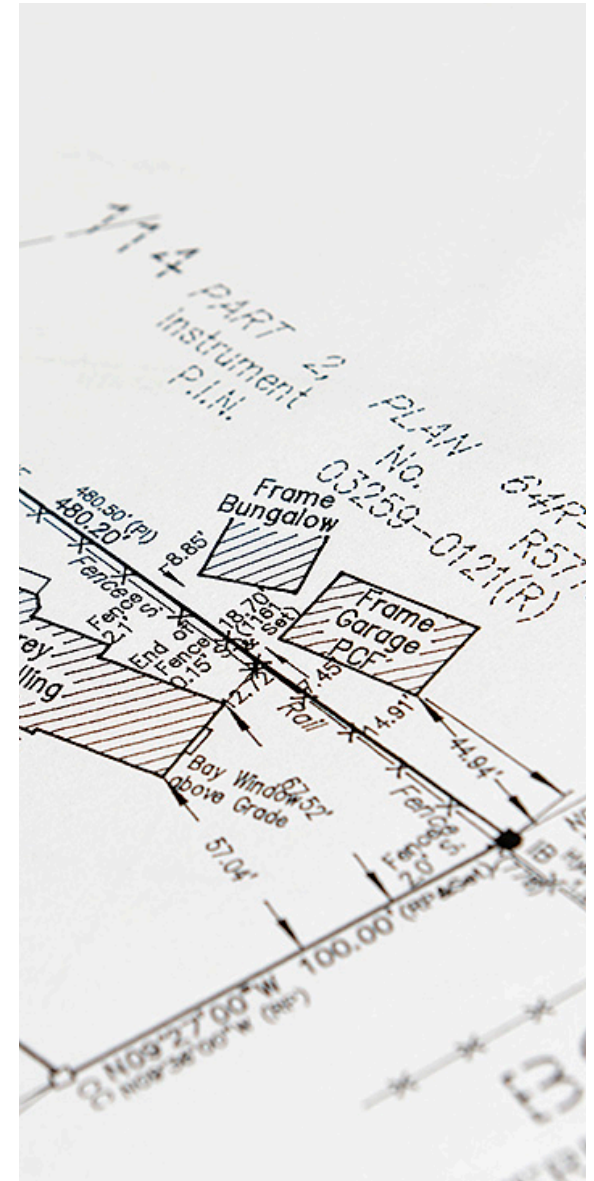
They believed that TI covers municipal work orders and building bylaw violations by buyers after they purchase a home.

Made claim. Chicago Title denied the claim.

Went to court. Judge ruled in favour of Chicago. Their policy only covered defects that affected the *quality of title* of the property. Building permits and WO's are not attached to a property's title in Ontario so Chicago was off the hook.

TitlePLUS, Stewart and First Canadian would have covered this.

(Bob Aaron: <http://www.thestar.com/life/homes/2015/02/20/homeowners-title-insurance-can-differ-from-one-policy-to-another.html>)



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