

The Law Society  
of Upper Canada



Le Barreau  
du Haut-Canada

# ERRORS & OMISSIONS

A periodic update from the  
Lawyer's Professional Indemnity Company

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## Replenishing the deep pocket

Persistence can play a major role in ensuring claims against members have a satisfactory outcome. The file outlined below began with a mortgage miscue and ended with a returned deductible.

A lawyer acted for a husband and wife in connection with the purchase of property in 1987. They paid \$175,000.

There were already two mortgages on title. In early 1989 the member acted on behalf of these clients and the lender bank in connection with a collateral third mortgage of \$20,000. That mortgage was registered on title in the normal way.

Shortly after that the clients entered into an Agreement of Purchase and Sale and agreed to sell the property for \$295,000. On closing, two prior mortgages were dealt with in the normal fashion. Certified cheques were made payable

directly to the mortgagees and discharges were ultimately registered on title.

Unfortunately, neither the lawyer for the vendor, nor the lawyer for the purchaser remembered the existence of the third mortgage. The balance of the funds in the amount of \$160,000 was made payable directly to the vendors. They immediately left Ontario. When their lawyer contacted them out of province and advised them that they still owed \$20,000 to the bank, the clients refused to pay, simply indicating that the lawyer's insurance would take care of it.

This is what we did: We paid the amount owing to the bank to clear title for the purchasers and obtained in return an assignment of the mortgage. We subsequently obtained default judgment against the clients. We discovered that the clients had moved back to Ontario, but, happily, had not sold their property in Manitoba. We registered our judgment against that property and when it was ultimately resold, recouped the payment we had made, plus costs. We will return the lawyer's deductible.

The client was right; the lawyer's insurance did "take care of it".

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### *Did you know?*

Since its inception more than a decade ago, the Mandatory Insurance Program has closed a total of 20,281 files.

Some 13,917, or 68 per cent, of these files have been closed without a claim payment. We estimate that less than 5 per cent of our claims end up at trial.

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*File in Section 9*

# Accuracy essential in PPSA registrations

The current *Personal Property Security Act* (Ontario), in combination with a number of recent cases, continues to require a high standard of accuracy in completing the debtor name portion of financing statements. Close scrutiny is also required in reviewing the transcription of financing statements into the *Personal Property Security Act* registry system by reviewing the Verification Statement when received. We continue to receive files involving lawyers who have neglected to confirm the debtor's real name.

Prudent practice requires that the debtor's name, **including middle initial**, be established by birth certificate or citizenship card, together with evidence that there has been no change of name since the date of the document renewal, whether by change of name under the Change of Name Act, marriage, or otherwise.

Verification Statements must be reviewed carefully against the financing statement or financing change statement and any errors identified and corrected in the Personal Property registry system. Absent a Verifica-

tion Statement, a certified printout should be obtained and reviewed to ensure accurate transcription of the financing statement.

Finally, the regulations enacted under the *Personal Property Security Act* impose a requirement for the inclusion of a French form of name on the financing statement as well as an English form of name if a debtor corporation has an English form of name and a French form of name. Articles of Incorporation or Amalgamation, together with all subsequent Articles of Amendment, must be reviewed to determine whether the debtor corporation has a French form of name since it does not always appear from the corporation's name on commercial documents.

*Robert J. Potts*