

Traditionally a Real Property Report (RPR) and compliance letter or stamp (or non-conformance, referred to throughout as simply compliance) has traditionally been the preferred method of providing security to a buyer. However, as some municipalities no longer offer compliance documents, the contractual requirements to provide a RPR with compliance documents are increasingly difficult for sellers to meet. It is important to ensure that you and your clients are aware of the alternatives, such as title insurance, and that the appropriate steps are taken to ensure that all parties involved are properly protected.

RPRs, compliance, and title insurance are all useful. On their own, each has its distinct benefits and both buyers and sellers are best served when all three are in place. However, this is often not practicable or possible.

It is important for buyers and sellers to understand both the benefits and shortcomings of each one.

Real Property Report (RPR)

<i>Benefits</i>	<i>Drawbacks</i>
<ul style="list-style-type: none"> • It provides a complete disclosure of all structures on the property, the exact location of property lines and the location of fences. • It discloses the exact location of non-physical items such as easements and utility right-of-ways. • It shows any encroachments by the subject property onto neighboring property (and vice versa), or easements and the exact dimensions of the encroachments. • It provides certainty to the buyer so they know exactly what they are buying and an opportunity to remedy any deficiencies such as encroachments before or concurrent with the closing of the purchase and sale. • If a buyer decides to accept a certain deficiency, it provides both the buyer and the seller with the certainty of knowing exactly the deficiency they are accepting. • Provides documentary evidence to support the warranty in 6.1(e)(ii) of the standard AREA contract. • Even an RPR that is not current (missing structures that have been added or altered since the RPR was prepared) can be used to address all the above issues regarding the structures and other matters shown on the RPR. • The RPR can be reused provided there are no changes to the property. 	<ul style="list-style-type: none"> • On its own, it does not provide any disclosure or information as to the compliance issues which are warranted by the seller in 6.1(d) and (e)(ii) of the AREA contract. • It does not provide any information on the interior portion of any of the structures of the property. • It does not provide any information on “hidden items” on the property, such as the location of septic tanks or other items below ground level. • The cost of an RPR is typically many times higher than the cost of title insurance, especially in outlying areas. • During boom times in the oil industry, no matter the price someone is willing to pay, it can be extremely difficult to find a surveyor to do an RPR in certain parts of the province. • It does not deal with many of the items covered by title insurance. • It can take several weeks to obtain and even if a rush fee is paid, it can still take several days.

Compliance or Non-Conformance Stamp or Letter

<i>Benefits</i>	<i>Drawbacks</i>
<ul style="list-style-type: none"> • It provides documentary evidence supporting the warranties in 6.1(d) and (e)(ii) regarding issues of compliance with land use and development bylaws. • It provides certainty for both the buyer and seller at the time of closing regarding compliance with development issues. • It provides the opportunity for the buyer to have the seller remedy any deficiencies in this regard prior to or in conjunction with the closing. • If a buyer decides to accept a certain deficiency, it provides both the buyer and the seller with the certainty of knowing exactly the deficiencies they are accepting. • It can be used to address the above issues regarding the structures and other matters shown on the RPR, even if a compliance certificate or letter is not current (the RPR is missing structures that have been added or altered since the RPR was prepared). • It can be reused, provided there are no changes to the property, the buyer can use the same RPR with compliance when they sell the property. Even where there have been changes, the same compliance can be used to support the warranties in the AREA contract to the extent of all the structures and other matters on the existing RPR with compliance. 	<ul style="list-style-type: none"> • It only provides information on compliance with municipal land use and related bylaws for the exterior dimensions of structures on the land. • It does not provide any information that allows a municipality to confirm or deny compliance with any interior developments. • It does not provide any assurance of compliance with restrictive covenants on title and compliance with any other municipal bylaws aside from the exact bylaws covered by the compliance stamp or letter. • A request to the municipality for a certificate may lead to a requirement for substantial alterations, relocation or destruction of certain structures. • Depending on the nature of the deficiencies, the buyer may not be able to recover any costs for required alterations or destruction from the seller. • Many municipalities will only offer a limited form of compliance or non-conformance, and some municipalities no longer provide compliance or non-conformance stamps or certificates. • Under the AREA contract, the warranties provided by the seller only relate to development issues and not building code issues; and while there is some debate amongst lawyers on this issue, most take the view that any building code deficiencies including the lack of building code permits are the responsibility of the buyer. • Can take several weeks to obtain and even if a rush fee is paid, it can still take several days.

Title Insurance

<i>Benefits</i>	<i>Drawbacks</i>
<ul style="list-style-type: none"> • It offers a wide range of protection for issues that are not covered by an RPR and compliance. • Common examples of covered risks include: <ul style="list-style-type: none"> ○ Intervening registrations – Anything registered on title between the time the lawyer submits to the Land Titles Office and the time of actual registration. ○ Unknown Liens, encumbrances, tax arrears or defects in the title to a property. ○ Unknown special assessments on condos that were implemented prior to closing. ○ If an RPR or compliance is not obtained, it covers any defects that would have been revealed by an accurate up-to-date RPR and compliance. ○ Forced removal of an existing structure with the exception of a boundary wall or fence where there is only limited coverage ○ Forced compliance with work orders or deficiencies on an existing building permit. ○ Loss of priority due to matters such as construction liens, agreements on title, and other mortgages. ○ Another party claims an interest in the property. ○ Protection against title defects or encumbrances that were unknown or undiscovered at the time of closing. ○ Protection against identity theft, mortgage fraud, and fraud against the title. ○ Cost savings. Typically, the cost for title insurance is far less than the cost of an RPR and compliance. ○ Available on short notice. • Title insurance without a RPR and compliance is acceptable all the major mortgage lenders • Title insurance will often provide coverage for the lender for known defects. • Unlike other insurance products, there is only one premium paid at the time of closing which provides coverage to the owner throughout their ownership of the property. 	<ul style="list-style-type: none"> • It is an insurance product. This means when an issue arises, it may not be covered by the policy and if there is coverage the insurer can decide the method used to solve the issue which may not be the preferred choice of the insured party. • There is a lack of disclosure and certainty, especially for the buyer, at the time of closing. If an issue is discovered later, it is more difficult to pursue the seller for a fix after closing., • There is no coverage for known defects, except for some coverage for the lender only. • There must be some form of enforcement or government action to trigger coverage in most cases. For example, the previous owner did renovations that do not meet the requirements of the building permit or development permit. The title insurance will only pay for the cost to fix these deficiencies if there is some form of enforcement and not simply due to the deficiencies. • It does not guarantee that all structures will remain 'as is'. For example, if the municipality mandates the alteration or destruction of a certain structure, the title insurance company may pay for the cost of appealing that decision however they cannot guarantee a favourable result. • The coverage is for the buyer only (not the seller). • If a buyer or their lawyer purchases a lender only policy that is sufficient to close the deal however the buyer still has no title insurance protection. • There is no specific protection or coverage for the seller. If a claim is made and the title insurance company determines it is the seller who created the deficiency, the title insurance company can pursue the seller for recovery of the costs they have paid. • In most instances, title insurance only defers the need to deal with a particular issue. It does not solve it. The issues will still be there when the property is resold. • Title insurance cannot be passed onto a new owner. Every new owner must purchase their own policy.