



The Value of Title Insurance in the Coming Months

The COVID-19 pandemic has had a sudden and massive impact on the Canadian Commercial Real Estate market – an impact that will likely drive decisions and create challenges for months and possibly years to come. As lenders and their customers consider how they will navigate this new reality, it is important that they are aware of all the tools available to support them.

One of the emerging realities of the pandemic is the unforeseen pressures it will put on businesses. This means that there will be more restructuring of existing debt as well as an increase in companies seeking protection under the Companies' Creditors Arrangement Act (CCAA). FCT has been asked by lenders and their legal counsel if we can insure the Debtor-in-Possession (DIP) financing that is offered to a business when CCAA protection is granted.

The quick answer is “yes” and the following outlines some of the reasons why title insurance is relevant for debt restructuring, whether formally in CCAA proceedings or with borrowers and lenders working together directly.

Advance funds quickly

Time is critical for a business that is restructuring its mortgage debt or putting in place DIP financing. When the financing is title insured, only 3-4 searches are typically conducted (i.e. title search, corporate search, tax search and execution search, where applicable)*. This speeds up the closing significantly, allowing transactions to close in days instead of weeks.

By relying on registration gap coverage, the lender can advance funds as soon as the security documents are signed, rather than having to wait for the documents to be registered or certified at the Land Titles / Land Registry office. This is extremely valuable in provinces where there is a time delay of days or weeks between closing and registration.

Mitigate unforeseen risk

Offering DIP financing puts a lender in a unique position because they are granted a special priority charge over any existing secured and unsecured creditors. Unfortunately, the lender is still at risk of potential litigation issues resulting from unforeseen claims from existing lenders, shareholders or suppliers during the restructuring period. All FCT title insurance policies include a 'duty to defend' provision, which means that we will pay all of the legal costs of defending the lender's interest if it is ever challenged by a third party.

Benefit from competitive premiums

When existing debt is being restructured to add new properties as collateral or amend existing mortgage amounts, for example, FCT provides reduced premiums if we previously title insured the current debt. Also, for companies that successfully emerge from CCAA protection, FCT provides reduced premiums for the longer term exit financing that will likely be put in place provided the DIP financing was title insured by FCT. All of this means the borrower saves money and their lenders are protected.

Access flexible coverage

The structure of any financing can be complicated, including DIP financing and subsequent exit financing, which often involve multiple facilities. FCT offers endorsements to customize the lender's title insurance policy based on the type of financing, to provide greater flexibility and protection. Endorsements are available, for example, for secured revolving credit lines, and for loans that allow for future advances. FCT works with lenders and their legal counsel to help them understand the transaction and to ensure lenders receive the best protection for their loans.

Why work with FCT?

As the industry leader in Canada, FCT has practical experience title insuring DIP financing and other secured loans from coast-to-coast.

- Depth of experience in insuring commercial real estate transactions with creative underwriting solutions for complex issues
- Started the title insurance industry in Canada and now has over 900 employees nationally and issues close to 1 million policies annually
- Servicing approximately 450 lenders, 43,000 legal professionals and 5,000 recovery professionals across Canada
- Named one of Canada's top 50 Best Workplaces™ for six consecutive years by the Great Place to Work® Institute

Contact our Commercial solutions team to learn more about how FCT can create the best policy for your next commercial financing transaction.

📞 1.866.804.3112 ▶ commercialsolutions@fct.ca

*For loans valued over \$50M, additional searches are typically conducted.

Most commercial title insurance policies are provided jointly by **FCT Insurance Company Ltd.** and **First American Title Insurance Company**, with the remainder being solely provided by **FCT Insurance Company Ltd.** Reference should be made to policy documents to confirm the insurer on any individual transaction. Services by **First Canadian Title Company Limited.** The services company does not provide insurance products. This material is intended to provide general information only. For specific coverage and exclusions, refer to the applicable policy. Copies are available upon request. Some products/services may vary by province. Prices and products/services offered are subject to change without notice.

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