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 and opportunities for months and possibly years to come.

One of the emerging realities of the pandemic is the unforeseen pressures on distressed businesses looking to sell properties or restructure their portfolio in other ways. Unfortunately, this could also result in companies filing for bankruptcy protection – FCT has already experienced an increase in transactions we insure pursuant to vesting orders as well as Debtor-in-Possession (DIP) financings. There are also companies that are well positioned to purchase properties once they've determined that the timing is right. Whether a company is planning to buy, sell or refinance assets, it is important to understand that title insurance is a tool to support them.

Close deals quickly and efficiently

FCT title insures transactions of all sizes. While there is reduced due diligence required on all title insured transactions, there are even greater efficiencies when the transaction is title insured and the value of the property is $25 million or less. This is because the number of searches and other due diligence required by FCT for properties valued up to $25 million are reduced significantly, which speeds up the closing and is a competitive advantage in a bidding scenario.

FCT

For example, FCT provides full real property report/building location certificate/survey (referred to only as "survey" in this document) coverage, which means purchasers are protected for issues that would have been revealed by an up-to-date survey of the property and can forego the time and expense of obtaining a survey prior to closing[1].

Another example is coverage for zoning-related matters. FCT covers the purchaser if the use of the land on closing does not comply with the zoning by-law as it relates to its use or setback, height and area requirements[1]. The purchaser's counsel does not need to wait on the response of the Zoning department to obtain the coverage.

For portfolio purchases, properties are underwritten based on their individual values so the reduced search requirements apply for every property valued up to $25 million, even if the transaction as a whole is valued much higher. Legal counsel should speak with FCT before acting on a purchase to confirm what advantages FCT can offer from both a coverage and a due diligence standpoint.

Another way title insurance expedites closings is with registration gap coverage, so funds can be released as soon as the closing documents are signed and submitted for registration, rather than having to wait for the documents to be registered or certified at the Land Titles / Land Registry office. This is extremely valuable for portfolio purchases because the entire transaction can close at once – even if some of the properties are located in provinces where there is a time delay of days or weeks between closing and registration.

Title insurance provides even more efficiencies on financing transactions so the borrower can access the funds from the lender much quicker than they would be able to otherwise.

Protect your investment

When a company is restructuring or unwinding, it is not uncommon for there to be disputes with existing lenders, shareholders and suppliers as the assets are sold. This puts the purchaser at increased risk of potential litigation issues resulting from unforeseen claims from these parties. FCT's title insurance policy includes a 'duty to defend' provision, which means that we will pay all of the legal costs to defend the purchaser's interest in the property if it is ever challenged by a third party. The purchaser is also covered for other issues such as title fraud, errors in old surveys and errors in responses from governmental authorities to inquiries made about existing work orders, deficiency notices, zoning violations or other matters. Without title insurance these issues would not be covered.

In instances where a property is sold pursuant to a vesting order, there is inherently more risk to the purchaser because there are no representations and warranties from the seller as could typically be relied upon. This makes title insurance even more valuable because the purchaser is covered for loss on various issues including non-compliance with registered municipal agreements and zoning by-laws.

Leverage a second set of eyes

Title fraud has become more prevalent in commercial real estate transactions in recent years. Given the current climate, FCT expects to see this trend continue with sophisticated and opportunistic fraudsters developing new ploys to sell or mortgage properties. While the policy provides coverage for title fraud, we look for ways to stop these transactions before they happen with our rigorous underwriting practices and national experience.

With an increase in the number of requests to insure transactions pursuant to vesting orders, we have noticed that these orders may contain errors. To avoid issues arising in the future, FCT underwrites each vesting order carefully to ensure the proper instruments are deleted and the permitted encumbrances are accurate prior to issuing the policy.

While FCT generally covers the purchaser for issues that were unknown to them when they purchased the property, we also commonly underwrite issues that are uncovered during the due diligence period like previously unknown encroachments and clouds on title. By engaging FCT to review the issue, we will underwrite it and look for specific ways to cover it and allow the transaction to close on time.

Benefit from competitive premiums

Whether a company is purchasing and mortgaging properties or refinancing existing properties, FCT offers premium reductions to make title insurance a cost effective option. On purchase transactions involving financing, there is a significant reduction in premium on the second policy2 when the owner's and lender's policies are issued together. For financing transactions where an existing FCT title insured mortgage is being amended to increase its amount or replaced entirely with a new mortgage, premiums for the lender's updated policy are significantly reduced.

Why work with FCT?

As the industry leader in Canada, FCT has practical experience title insuring properties of all values for thousands of commercial property owners 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 thebest policy for your next commercial transaction.

1.866.804.3112 commercialsolutions.ca

1 Coverage as described is for properties valued up to $25 million, excluding vacant land.
2 The second policy is defined as the policy with the lower amount of insurance.

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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