

Reference Guide for Residential Real Estate Transactions

A resource for Quebec notaries



The following searches and considerations are the only ones required by FCT when issuing a residential title insurance policy.

Loan policy (without purchase transaction)

Perform a title search going back only to the title of the borrower insofar as said title is an arm's length transaction. Consequently, all deeds registered before the publication of the borrower's deed of acquisition do not need to be checked.

Loan policy and homeowner policy (purchase transaction)

Perform a title search over a period of ten years provided that at least one arm's length deed of acquisition of the property has been registered within this period. If this is not the case, the search must be extended to the last arm's length deed of acquisition published prior to this period. For divided co-ownership, the ten-year search is limited to privative portions.

Verification of real estate taxes

Verify the real estate tax status by obtaining one of the following:

- verbal confirmation from the municipality, or
- written proof, such as a statement of account in the borrower's possession, or
- an affidavit or a solemn declaration from the borrower that the taxes are paid.

Verification of co-ownership fees

Verify that co-ownership fees are paid by obtaining verbal confirmation of payment from the association of co-owners.

Verification of certificate of location

A certificate of location is not required. However, if you have a certificate of location (old or recent) in your possession, any uncorrected irregularities should be reported in the Request for Title Insurance.

Verification of the publication of the deed

Title insurance policies make it possible to release the funds, even if the deeds have not yet been registered.

Summary of Coverage

For each transaction, FCT offers two policies: one for the homeowner and one for the lender. In addition to the covered title risks described in each policy, they both include the “duty to defend”. This means that if the insured’s interest in the property is ever challenged due to a covered risk, FCT will defend the insured and pay resulting costs, legal fees and expenses.

The chart below lists examples of coverage that are available in each policy.

Coverage	Homeowner Policy	Lender Policy	Future coverage (after the policy date)
1 A third person owns an interest in your title.	✓	✓	✓
2 The priority of the security.		✓	
3 A third person claims to have rights affecting your title arising out of forgery, impersonation, fraud, duress, incompetency or incapacity.	✓	✓	✓
4 A third person has a servitude on the land.	✓	✓	✓
5 A third person has the right to limit your use of the land.	✓	✓	✓
6 Your title is defective.	✓	✓	✓
7 The title is invalid because it is not properly signed, sealed, delivered or registered.	✓	✓	
8 Enclosed land issue.	✓	✓	
9 You are forced to remove or correct an existing violation of any condition or restriction affecting the land.	✓	✓	
10 Your title is lost because of a violation of any condition or restriction which occurred before you acquired your title.	✓	✓	
11 There is a lien or charge on your title because of a mortgage, a judgment, a tax or a charge by a condominium association.	✓	✓	
12 After the policy date, a governmental authority assesses supplemental real estate taxes not previously assessed against the land before the policy date.	✓	✓	✓
13 The land is unmarketable, which allows a third person to refuse to perform a contract to purchase, lease or make a mortgage loan because: a) of the violation of a restriction; b) of adverse matters that would have been disclosed by an up to date certificate of location; c) your land violates an existing zoning by-law at the policy date; d) your existing structures are located on land under the jurisdiction of a conservation authority or similar governmental authority without approval.	✓	✓	
14 Your title is unmarketable, which allows another person to refuse to perform a contract to purchase, lease or make a mortgage loan.	✓	✓	
15 There are legal hypothecs for construction on your title.	✓	✓	✓
16 There is a violation of the provisions of a provincial act which restrict the subdivision of land.	✓	✓	
17 The existence of work orders, unless you agreed to be responsible for them.	✓	✓	
18 Lack of a building permit.	✓	✓	
19 Enforced removal of a structure because it violates zoning by-laws, it encroaches onto the neighbouring land, it is located on land under the jurisdiction of a conservation authority or similar governmental authority without approval (for example, the Cultural Property Act) or there is an outstanding notice of violation.	✓	✓	
20 Damage to the land because of the exercising of mining rights or a right to maintain or use any servitude affecting the land.	✓	✓	✓

Summary of Coverage

Coverage	Homeowner Policy	Lender Policy	Future coverage (after the policy date)
21 After the policy date, someone else builds a structure, other than a boundary wall or fence, which encroaches onto your land.	✓	✓	✓
22 Any adverse circumstance affecting the land between the signature of the act and its publication at the registry office.	✓	✓	
23 Errors in a written statement received from a governmental authority, indicating the land's compliance with applicable building and zoning by-laws.	✓	✓	
24 The failure of the land to contain a single family residence with the municipal address shown in Schedule A.		✓	
25 Any other defects, encumbrances or charges on your title.	✓	✓	
26 Lack of conformity regarding the septic system, non-potability of water and sufficiency of the waterflow.		✓	
27 Septic system a) The existence, at the date of policy, or any violation notice, default notice or work order concerning the septic system; b) Forced removal or remedy of the septic system because of the failure to obtain the building permit from a public or private agency; c) Forced removal or remedy of the septic system because it encroaches onto neighbour's land; d) Forced removal or remedy of the septic system because of a violation of an existing zoning by-law at the date of policy.	✓		
28 Illegal views.	✓	✓	
29 Occupation without title.	✓	✓	
30 Discrepancy between titles, occupancy and cadastre (or revised cadastre).	✓	✓	
31 Divided co-ownership issues.	✓	✓	

Exclusions

Fences, walls, hedges, environmental problems, construction defects, problems created or assumed by the insured, claims causing no losses or damages, problems created after the policy date, problems excluded specifically under title insurance policies provided that coverage exclusions are subject to exceptions so that certain problems can be covered.

Title insurer compensation

Homeowner policy

Up to a maximum of 200% of the insured amount (inflationary clause).

Lender Policy

Up to a maximum of 125% of the insured amount.

The title insurer has an obligation to defend the insured. The costs, legal fees, and expenses are not counted as compensation. Claims are processed on a no-fault basis. Title insurance is a first-instance compensation fund.

Depth of coverage

The insured benefits from all coverages stipulated in the policy, subject to the exceptions and exclusions provided therein. As a result, the insured is protected against any and all covered risks relating to title issues that are undisclosed or unknown at the time of underwriting.

Popular endorsements

Construction Legal Hypothec Endorsement (Homeowner Policy)

Insures the owner against loss or damage that might be incurred in respect to legal construction hypothecs for services or materials finished before or after the policy date, provided that the subject work was contracted before the policy date (unless the owner agreed to pay for the services or materials).

Construction Legal Hypothec Endorsement (Lender Policy)

Insures the lender against loss or damage that might be incurred in respect to legal construction hypothecs and allows disbursement in full before the expiry of the 30-day period following the date on which construction was completed.

Divided Co-Ownership Endorsement (Homeowner Policy)

Despite the exclusion of the declaration of co-ownership, this endorsement allows us to expand our usual coverage (arrears in common expenses statement, non-compliance of the declaration of co-ownership to the Civil Code requirements, violation of a clause contained in the declaration of co-ownership which restricts the use of the property). The lender benefits from full coverage.

Potability Endorsement (Lender Policy)

Insures the lender against actual loss or damage sustained by reason of the non-potability or insufficient water flow.

Septic system endorsement (Homeowner Policy)

Insures the owner against actual loss or damage sustained as a result of the existence of a violation notice, default notice or work order because of encroachment or violation of a zoning by-law or in the absence of a building permit.

This document is intended only to provide general information to notaries. This document is therefore provided for informational purposes only and cannot replace the provisions of the policies themselves, which establish the terms and conditions of the insurance contract, as related to coverage and exclusions.

For customized coverage, please contact our residential underwriting service at:

Tel 514.744.8969 or 1.866.744.8969

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► FCT.ca



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