



# Commercial Title Insurance: What You Need to Know

## Welcome!

Please make yourself comfortable, the session will start shortly.

# About the presenters



**Tom Nguyen**  
Business Development Director,  
Commercial Solutions



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Senior Legal Counsel

# Agenda

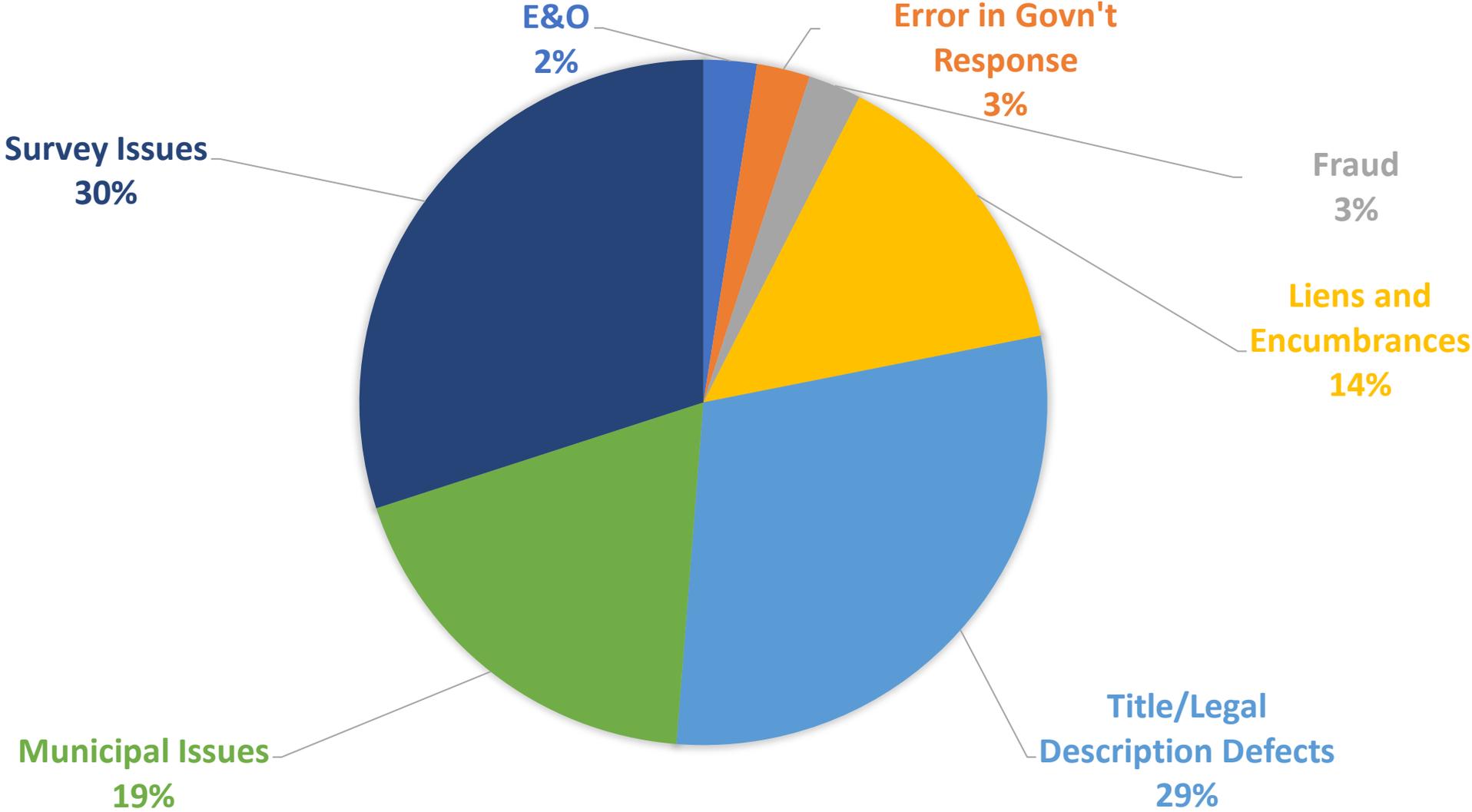
- Real life challenges
- Value of Commercial Title Insurance
- Real life solutions
- The power of underwriting
- Live Q&A

Questions?

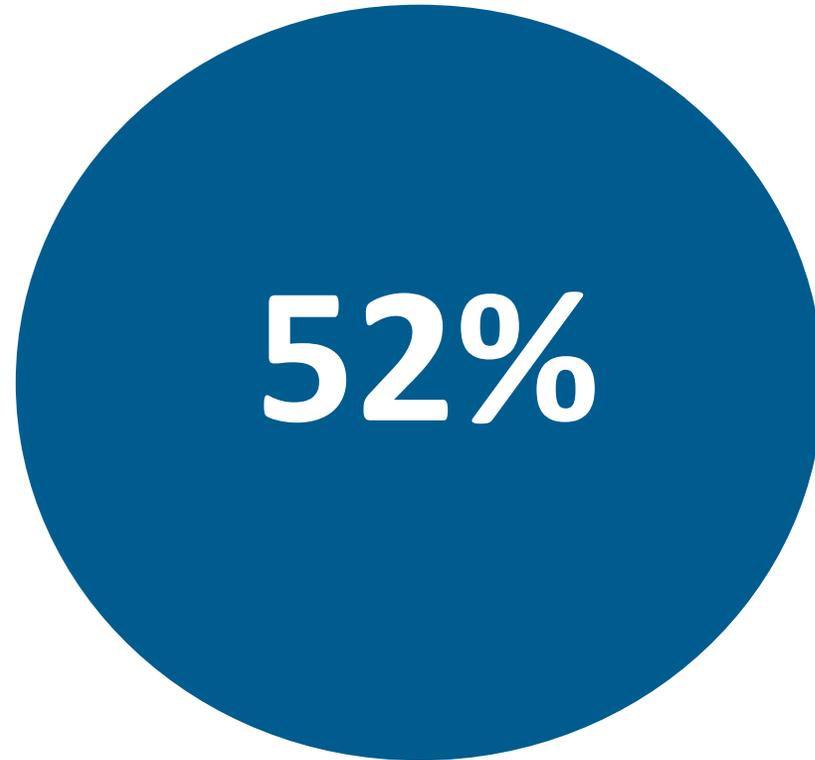
Please use the  
interactive Zoom

Q&A

# Commercial claim categories



# Benefits beyond a lawyer's title opinion



# Real life challenges

# Survey issues: encroachment onto the neighbouring property

- Purchaser owned a large shopping plaza that encroached onto the neighbouring property (restaurant). Encroachment includes a foundation wall.
- Owner of the adjacent restaurant sued the plaza owner.
- Plaza owner had two options (both of which are costly):
  1. Remove or relocate the encroaching structure, or
  2. Obtain an easement of license to keep the structure in place
- Shopping plaza unfortunately could not be altered to resolve the encroachment without causing structural damage.



# Lack of access

- Lawyer acted for the owner of a trucking company.
- Trucking company owned a commercial property where their trucks were parked.
- There was only one road accessing to and from the property.
- Neighbour recently got an up-to-date survey which revealed that the road the trucking company used belonged to the neighbour.
- Neighbour notified the owner of the trucking company and asked him to stop using the road.
- Owner now had no access to the road.



# Work order gap

- Lawyer has a deal that's closing on Sept 29, 2023.
- Clerk performs a building department search with the municipality.
- Search results received on Sept 1st. Search is clear and does not reveal any work orders.
- Unbeknownst to the lawyer and the purchaser, the city issues a work order against the property on Sept 15th.
- The deal closes as scheduled on Sept 30 and the seller never revealed to the purchaser the existence of the new work order.



# Fraud issue: change in corporate records

- Fraudster targeted a piece of vacant land.
- Fraudster hijacked a numbered company and named himself as the sole signing officer and director of the corporation that owns the property.
- The corporation applied for a mortgage with a private lender.
- Hired an inexperienced lawyer to act for them.
- Fraudster disappeared with the mortgage proceeds.



# Duty to Defend

- Owner of a large wind farm was notified by a government agency that 8 of the 50 turbines violated the airport zoning regulations registered on title.
- They were told the turbines needed to be shortened or removed which would have cost millions of dollars.
- Owner and their lawyers made arrangements previously such that they did comply, but the governmental agency now involved failed to recognize the compliance.



# The value of commercial title insurance

# Commercial Title Insurance - Top 10 Coverages

Coverage	Loan \$50M or less	Owner \$25M or less
Matters that would be revealed by an accurate and up-to-date <b>survey</b> (encroachments, setback requirements, right-of-way issues)	✓	✓ <sup>1</sup>
Failure of the use of the insured land at the date of policy to be a <b>permitted use</b> , under applicable municipal zoning by-law (area, width, depth of the building on land, height and floor space, setback)	✓ <sup>1</sup>	✓ <sup>2</sup>
<b>Lack of access</b>	✓	✓
<b>Non-compliance</b> with agreements (development, subdivision and site plan agreements)	✓	✓ <sup>3</sup>
<b>Errors in public records</b> and government responses (work orders, building dept, fire, health etc.)	✓	✓
<b>Unknown issuance of work orders</b> during <b>gap</b> period between date of policy and search	✓	✓ <sup>4</sup>
Outstanding governmental <b>work orders</b>	✓	X
<b>Unknown interests affecting the property</b> (lease, charge, easement), or prior charges, <b>liens and encumbrances</b> over the insured mortgage including <b>CRA Super Priority Lien</b>	✓	✓ <sup>5</sup>
A <b>fraudulent act</b> that occurred <b>prior to closing</b> , during the insured transaction and <b>after the date of policy</b>	✓ <sup>6</sup>	✓ <sup>6</sup>
<b>Duty to defend</b> (legal fees and costs incurred to defend matter covered under the policy)	✓	✓

1: Not vacant land  
4: 45 and 90 days

2: Not vacant land, not parking spaces  
5: Not CRA Super Priority Lien

3: Municipal agreements only  
6: Post closing: Not vacant land, up to \$5M



# More protection than a title opinion

Coverage	Loan \$50M or less	Owner \$25M or less
Matters that would be revealed by an accurate and up-to-date <b>survey</b> (encroachments, setback requirements, right-of-way issues)	✓	✓ <sup>1</sup>
Failure of the use of the insured land at the date of policy to be a <b>permitted use</b> , under applicable municipal zoning by-law (area, width, depth of the building on land, height and floor space, setback)	✓ <sup>1</sup>	✓ <sup>2</sup>
<b>Lack of access</b>	✓	✓
<b>Non-compliance</b> with agreements (development, subdivision and site plan agreements)	✓	✓ <sup>3</sup>
<b>X</b> <b>Errors in public records</b> and government responses (work orders, building dept, fire, health etc.)	✓	✓
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# Real Life Solutions

# Survey issues: encroachment onto the neighbouring property

 Purchaser owned a large shopping plaza that encroached onto the neighbouring property (a restaurant). Owner of the adjacent restaurant sued the plaza owner. Encroachment includes a foundation wall which is impossible to alter without causing structural damage to the plaza building.

 **Solution:**

Plaza owner has a commercial title insurance owner policy from FCT.

FCT determined that obtaining an easement to keep the structure in place would be an appropriate option. FCT paid just under \$300,000 to settle with the restaurant owner in exchange for an encroachment agreement allowing the insured the legal right to maintain the building on the neighbour's land.

# Lack of access

 Neighbour got an up-to-date survey which revealed that the road the trucking company used belonged to the neighbour. Neighbour asked the owner of the trucking company to stop using the road. Owner of the trucking company was now road blocked.

 **Solution:**  
Owner has a commercial title insurance owner policy from FCT.  
FCT hired a lawyer to negotiate with the neighbour on sharing access of the road but it was unsuccessful.  
FCT paid just over \$100,000 to the Insured for the costs of building a new access point located adjacent to the neighbour's property and completely within the bounds of the insured's property, under the survey coverage.

# Work order gap

 Unbeknownst to the purchaser and the purchaser's lawyer, a work order was issued between the receipt of a clear work order search and the closing of the transaction.

 **Solution:**

It was determined after investigation that coverage was triggered under the Work Order Gap endorsement contained included with the Insured's policy. FCT covered the cost to remedy the outstanding deficiencies and had the work order closed by the municipality.

# Fraud issue: change in corporate records



Fraudster changed the corporate records, applied for a mortgage with a private lender and disappeared with the mortgage proceeds.



## **Solution:**

FCT reimbursed the lender for the full amount of the mortgage advance totaling over \$1MM.

# Duty to Defend

 Owner of a large wind farm was notified by a government agency that 8 of the 50 turbines violated the airport zoning regulations registered on title. They were told to turbines need to be shortened or removed. The owner and their lawyers made arrangements previously such that they did comply, but the governmental agency now involved failed to recognize the compliance

 **Solution:**  
Owner has a commercial title insurance owner policy from FCT.

Under FCT's Duty to Defend provision in the policy, FCT paid the legal costs (over \$1,500,000) to communicate what was done to make arrangements to comply with the regulations. After a number of months they finally signed off with their final approval.

# What's New in Commercial?

# What's new in Commercial

- **Deal Protection Endorsement (DPE)**

- ✓ FIRST provider in the market to offer DPE coverage on **commercial transactions of all sizes** with maximum coverage of \$5M

- **Work Order Gap Endorsement**

- ✓ ONLY provider in the market to increase gap period for search responses from 30 days to:
  - 45 calendar days for transactions equal and under \$10M
  - 90 calendar days for transactions over \$10M



# The Power of Underwriting

# Q&A

# Thank you!