



# Commercial Title Insurance Policy

Loan Endorsements



# Commercial Title Insurance Policy Loan Endorsements

At FCT, we're dedicated to providing your clients with the best possible coverage on the market. We customize coverage for each transaction by issuing endorsements with our commercial title insurance policy. Using our expertise, we add endorsements based on the information you provide when placing an order. Additional endorsements may be added as a result of our underwriting process or based on your client's individual requirements.

---

The endorsement summaries below are for general information only. In order to issue certain endorsements, issuing guidelines may need to be satisfied and may vary depending on the property value and type. Please refer to the actual policy and endorsements for precise legal reference.

## Access

The loan policy jacket provides coverage for loss or damage resulting from not having legal access to and from the insured land. This endorsement provides further coverage for loss or damage due to lack of legal or physical access from the land to a general or specific road, either directly or via a right-of-way. Having access from a specific road is often key to the viability of businesses like shopping centres, restaurants and gas stations.

## Address

This endorsement provides coverage for loss or damage if a specific improvement, that was intended to be the principal piece of security, is not located on the land referred to in the policy.

## Advance Date of Policy

This endorsement moves the date of policy forward with each advance of funds, which extends coverage for covered risks occurring between the original date of policy and the date of the future advance. It can apply when the hypothec is for construction purposes, however, it does not provide coverage over construction legal hypothecs.

## Aggregation

When the indebtedness is secured by hypothecs on a number of properties and is insured under multiple title insurance policies, this endorsement permits the insured lender to aggregate all policy amounts together and apply any portion of the cumulative insured amount to any particular loss. Doing so allows the insured lender to take advantage of any increase in value that may have occurred in any of the insured properties.

## Commercial Lender Group

This endorsement applies when there is a syndicated loan and the named insured is an agent for the group of lenders. The endorsement acknowledges that there may be a change in the composition of the group from time-to-time, as well as in the agent holding the registered title to the hypothec and confirms these changes will not affect the coverage available under the policy.

In instances where a new lender is buying into the insured hypothec and the previous lender is aware of the defect, the endorsement also confirms that a claim under the policy will not be denied on the basis of the previously insured lender's knowledge of the defect.

## Condominium

When the hypothec is secured against a condominium, this endorsement provides coverage if the priority of the insured hypothec is impaired as a result of legal hypothec or assessments under the Civil code of Québec ("CCQ") (for loans up to \$50 million). It also provides coverage for outstanding special assessments that would have been revealed by a current syndicate of co-owners disclosure statement and for loss or damage in the following instances:

- lack of priority of the insured hypothec over any legal hypothecs or assessments provided for in the CCQ ;
- the land does not form part of a condominium under the CCQ;
- the documents required by law fail to comply with the CCQ to the extent the failure affects title

## Contiguity

This endorsement applies in instances where the borrower/purchaser is acquiring a parcel of land adjacent to the land they already own, or when acquiring parcels of land that are adjacent to each other and they intend to use the parcels together. It provides coverage for loss or damage if there is a gap in the parcel or those parcels of land and it is determined that they are not contiguous to one another.

# Commercial Title Insurance Policy Loan Endorsements

## Controlled Substance

This endorsement provides coverage if the insured lender is forced by a government authority to remove or remedy the structures on the insured property because they were used for the production of a controlled substance. There is also coverage for the cost incurred to reconnect utilities to the property, for the costs of compliance with any law prohibiting the production of a controlled substance being added to the municipal tax bill, and for the unenforceability of the hypothec.

## Cross Default

When the indebtedness is secured by hypothecs on a number of properties and is insured under multiple title insurance policies, this endorsement permits the insured lender to tie all policies together and apply any portion of the cumulative amount of insurance to any particular loss. Doing so allows the Insured lender to take advantage of any increase in value that may have occurred in any of the properties.

## Doing Business

The loan policy jacket excludes coverage for violations of “doing business” laws. However, this endorsement provides coverage for loss or damage in the event there is a court order denying the insured the right to enforce the hypothec on the grounds that making the loan violated the “doing business” laws of the applicable jurisdiction.

## Environmental Legal Hypothecs

This endorsement provides coverage for loss or damage resulting from an environmental protection legal hypothec that affects the priority of the insured hypothec.

## First Loss Payable

This endorsement applies when several properties or other collateral are used as security under the same hypothec. In the event of a claim for a defect, legal hypothec or encumbrance that creates a loss to the insured lender, it will be paid without requiring the lender to first foreclose and sell the properties that are not affected by the title defect, legal hypothec or encumbrance, and without having to pursue remedies against any other collateral secured by the insured hypothec.

## First Nations – Amend definition of public records

This endorsement adapts certain terms contained in the policy jacket to apply for transactions involving First Nations land.

## Government Response

This endorsement provides coverage for loss or damage resulting from an error in any of the written governmental or quasi-governmental off-title responses received that relate to outstanding work orders or deficiency notices or to the zoning of the land (e.g. municipal work orders, conservation authority, health department, etc.). Searches/inquiries must be made prior to closing the transaction in order for the coverage under this endorsement to apply. Coverage is not provided for incorrect responses relating to environmental matters.

## Illegal Rents

When the hypothec is secured against a residential apartment building, this endorsement provides coverage for loss or damage resulting from a governmental or quasi-governmental authority reducing or ordering a rebate of the rent charged under a residential lease.

## Leasehold

This endorsement converts the right of ownership language and coverage in the policy to leasehold, and provides coverage for issues that are specific to a leasehold interest, such as relocation expenses, leasehold improvements and reasonable costs to secure a replacement lease.

## Post-Policy Date Fraud

The loan policy jacket provides coverage for fraud that occurred prior to or during the insured transaction. This endorsement extends coverage to include a fraudulent act occurring during the course of ownership. Examples would include the insured hypothec being fraudulently discharged from title, a fraudulent transfer of title or the registration of a fraudulent hypothec on title.

The coverage is capped at the lesser of the amount insured under the policy or \$5 million. This coverage does not apply for vacant land.

# Commercial Title Insurance Policy Loan Endorsements

## Private Rights

This endorsement provides coverage against loss or damage if the enforcement of a private right in a covenant affecting title to the property impacts the validity, priority or enforceability of the insured hypothec.

## Restrictions, Encroachments and Minerals (REM)

This endorsement provides coverage against loss or damage resulting from outstanding violations of certain covenants, conditions and restrictions registered in the public records.

If the insured land contains a structure, the endorsement also provides coverage against loss if there is damage to existing improvements that encroach onto a servitude, if the damage results from the exercise of the right to use the servitude, and for damage to existing improvements resulting from another's rights to extract or develop minerals from the surface of the land.

Versions of the endorsement are applied based on whether the land contains a structure.

## Revolving Credit Operating Line Facility

This endorsement applies when the insured hypothec secures an "operating" or "line of credit" facility. It insures that subsequent advances will have the same priority as advances secured by the hypothec at the date of policy, notwithstanding that amounts may have been advanced, repaid and subsequently re-advanced, subject to certain matters such as taxes.

## Septic System

The Work Order endorsement provides coverage for loss or damage relating to governmental or quasi-governmental work orders pertaining to the septic system that existed at the date of policy, and the survey\* coverage contained in the loan policy jacket provides coverage for loss or damage if the septic system encroached onto adjoining land, a right-of-way or a servitude at the date of policy. This endorsement provides further coverage if there are structures on the land that existed at the date of policy that violate the septic system use permit or if the septic system was installed without the required use permit.

## Servitude – Damage or Enforced Removal

This endorsement provides coverage if an existing structure on the insured land is damaged or required to be removed or altered resulting from a granted or reserved right to use or maintain a servitude listed on Schedule B of the loan policy.

## Subsequent Advances (Increase Amount of Insurance or Up to Amount of Insurance)

This endorsement applies when the insured servitude permits for subsequent advances. It moves the date of policy forward with each advance, which extends coverage for covered risks occurring between the original date of policy and the date of the future advance. For example, this would include coverage for loss of priority of the new advance. If in future the amount of the loan is increased above the initial amount insured under the policy, the insured can request an increase in the amount of insurance (additional premium would apply). This endorsement does not apply when the servitude secures an "operating" or "line of credit" facility.

Versions of the endorsement are available based on whether or not the future advance exceeds the initial amount of insurance.

## Super Priority Liens – Extended Coverage<sup>†</sup>

The hypothecary loan policy jacket provides coverage for deemed trust claims made by governmental authorities. This endorsement extends the existing title insurance coverage to include super priority lien claims made within 10 years of the hypothec being radiated. The maximum amount of coverage is the lesser of the insured amount defined in the policy or \$500,000.

This coverage is not available for vendor take-back (VTB) mortgages or for policies insuring private lenders where the lender is not in first or second priority.

## Tax Lot

This endorsement provides coverage for loss or damage resulting from land being taxed as part of either a larger or another parcel in which the borrower has no ownership interest. There would be coverage, for example, if the borrower purchased Land A, but received a tax bill for Lands A and B.

There is also coverage for registered servitudes onto the insured land that are cut off or disturbed due to non-payment of land taxes or assessments imposed on the servient land by a government authority.

# Commercial Title Insurance Policy Loan Endorsements

## Usury

This endorsement provides coverage for loss or damage resulting from a judgment or court order holding that the insured hypothec is invalid or unenforceable, on the basis that the loan is usurious (i.e. illegal) under federal law.

## Utility Facility

This endorsement provides coverage for loss or damage incurred if certain utility services are not available to the land at the date of policy, either by public rights-of-way or benefitting servitude. If the utility services are connected under or upon servitudes, there is also coverage if those services are terminated by the grantor.

## Variable Rate

This endorsement applies when the insured hypothec contains a variable rate of interest by providing coverage if the insured lender suffers a loss resulting from provisions in the hypothec failing to provide effectively for changes in the rate of interest.

## Work Orders

This endorsement provides coverage for loss or damage relating to governmental or quasi-governmental work orders (excluding environmental matters) outstanding on the date of policy as well as:

- any work order arising from open building permits that existed on the date of policy;
- work orders issued post-policy with respect to violations of fire safety regulations that existed as of the date of policy; and
- lack of building permits or occupancy permits for any building or improvement or portion thereof presently on the land.

## Zoning – Completed Structure

This endorsement provides coverage for loss or damage if the use of the insured land at the date of policy is not a permitted use under the applicable zoning bylaw. It also provides coverage if the insured is prohibited from using the land or must remove or alter the structure because of a violation of a zoning bylaw relating to various matters (e.g. area, width or depth of the land as a building site, floor space, setbacks, height or the number of parking spaces).

There is no coverage if the use is not permitted because of non-compliance with any conditions contained in the zoning bylaw. For example, there is no coverage if a business does not comply with a bylaw requiring a permit be obtained by a separate authority before the use is permitted.

## Zoning (As to Use)

This endorsement provides coverage for loss or damage if the use of the land at the date of policy is not a permitted use under the applicable zoning bylaw. It is typically issued in place of the Zoning – Completed Structure endorsement when the insured land is vacant.

\*Certificate of location where applicable.

† The loan policy jacket provides coverage for deemed trust claims made by governmental authorities. This endorsement extends the existing title insurance coverage to include super priority lien claims made within 10 years following the discharge of the mortgage. The maximum amount of coverage is the lesser of the insured amount defined in the policy or \$500,000. This coverage is not available for vendor take-back (VTB) mortgages or for policies insuring private lenders where the lender is not in first or second priority.

## Frequently Asked Questions

### How do you issue endorsements? Why are they different from other title insurers?

We believe in working with legal professionals to build the best possible policies for their clients. As the leading commercial title insurer in the country, we use our expertise to determine and issue relevant endorsements to give your client the most comprehensive policy. We do this by asking key questions to understand your transaction, and act as your second set of eyes to ensure the correct coverage is provided.

It's important to know that fewer endorsements doesn't necessarily mean less coverage. While we offer a broad range of endorsements, we also update our policy jackets regularly to incorporate specific coverage changes. In many cases, we also include more streamlined and comprehensive endorsements, instead of issuing the same coverage over multiple endorsements.

Unsure if an endorsement applies to your transaction or where certain coverage is located in the policy? Just ask us! We're here to help.

### Why don't you have a survey endorsement for lenders?

We provide full survey\* coverage in the loan policy jacket. We agree to cover the insured lender for loss or damage relating to defects that would have been revealed had an up-to-date survey been completed prior to closing the transaction. Potential defects could include encroachments onto and from the insured land, setback violations, right-of-way issues, etc. If there is an existing survey available that reveals defects, those details must be disclosed to FCT and we can underwrite the defects and provide coverage accordingly.

### Why don't you have a gap endorsement for lenders?

Gap coverage is contained in the loan policy jacket. Gap coverage insures against intervening registrations between the time the deal is closed/funds are advanced and the security documents (deeds) are registered. This coverage is important in jurisdictions with registration delays, for closings with crucial timing issues, and for multi-site, multi-jurisdictional deals.

As long as the title search is up-to-date as of the closing date and the insured lender is making reasonable efforts to effect registration with a minimum delay, the gap coverage is automatically in place and confirmation of gap coverage from FCT isn't required — you just need to keep a copy of the subsearch on file. Any new deed appearing on the subsearch must be disclosed to FCT prior to closing so the issue can be underwritten accordingly.

### Do endorsements cost extra?

Certain endorsements may carry an extra charge, but most don't. Generally speaking, endorsements that increase the insured amount and/or move the date of policy (coverage) forward are the ones that result in an extra charge.

### Do you offer specific endorsements for energy projects?

Yes, we offer endorsements that provide coverage for issues that are specific to energy projects like wind and solar energy farms. Please contact our Commercial Solutions team for details.

### What if I need certain coverage that isn't included in the loan policy jacket or in any of the listed endorsements?

Please contact us as early in the transaction as possible. We'll work with you to provide custom coverage if possible.

### What searches need to be completed?

Please refer to our search guidelines for a list of searches that need to be completed to issue a title insurance policy. Additional searches or information may be required to issue certain endorsements and when applicable, those specific requirements will be identified when the order is submitted and may vary depending on the insured value of the hypothec and the property type.

☎ 1.866.744.8962    ▶ [FCT.ca](https://www.fct.ca)



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.