



# Commercial Title Insurance Policy

Owner Endorsements



# Commercial Title Insurance Policy Owner Endorsements

At FCT, we're dedicated to providing your clients with the best possible coverage in the market. We customize coverage for each transaction by issuing endorsements based on the information you provide when placing an order. Standard endorsements are issued on each owner plus 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 owner 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 centers, 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.

## Condominium

When the insured property is a condominium, this endorsement provides coverage for loss or damage when:

- the status certificate fails to disclose any situation that would give the condominium corporation the right to levy an increase in common expenses or a special assessment (save for reserve fund studies);
- the land does not form part of a condominium under applicable statutes;
- the documents required by statute fail to comply with the statutes to the extent the failure affects title.

## Contiguity

This endorsement applies in instances where the purchaser is acquiring a parcel of land adjacent to the land they already own, or when acquiring tracts 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 one parcel or those tracts of land and it is determined that they are not contiguous to one another.

## Covenants, Conditions & Restrictions (CC&R) Violations

This endorsement provides coverage for loss or damage resulting from outstanding violations of certain covenants, conditions and restrictions registered in the public records (e.g. site plan, subdivision or development agreement).

If the insured land contains a structure, this endorsement also provides coverage against loss if there is damage to existing improvements that encroach onto an easement, if the damage results from the exercise of the right to use the easement, 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.

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## Deal Protection Endorsement\*

This endorsement provides coverage for losses that may arise due to certain errors or omissions made by the lawyer in complying with the written instructions of the insured owner under the title insurance policy or failing to perform those professional obligations imposed by law or by their governing body. Coverage includes loss pertaining to errors or omissions in reviewing the purchase or financing agreement or preparing the written legal opinion or statement of adjustments; errors in the disbursement of closing proceeds; failure to conduct title or off-title searches; and fraud, theft, dishonesty or negligence.

The coverage is up to a maximum of \$5 million.

## 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.

## Leasehold

This endorsement converts the fee simple 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, damages the insured tenant is obligated to pay to sublessees, and reasonable costs to secure a replacement lease.

## Limited Marketability

This endorsement can be issued to provide coverage over a known defect during the insured's period of ownership and often allows transactions to close as planned without waiting to resolve certain issues (e.g. known zoning violations, encroachments onto adjoining land, attempting to locate a party that isn't involved in the current transaction etc.). There is no marketability coverage if the issue arises when the property is sold; however, the same coverage would be available to subsequent purchasers (a new policy would be issued at that time for a new premium).

Known defects are always underwritten on a case-by-case basis and the endorsement is customized accordingly to address the circumstances of the defect and the assumed risk.

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## Non-Imputation

This endorsement applies when the transaction involves a share purchase to confirm that a claim under the policy will not be denied on the grounds that the insured shareholder had imputed knowledge of any matter through the selling shareholder and/or former directors and officers. The endorsement supersedes the exclusion in the owner policy jacket for matters known to the insured shareholder, even though the selling shareholder may have been aware of a problem that gave rise to the claim.

Versions of the endorsement are applied depending on whether the transaction involves a full or partial transfer of shares

## Pending Improvements

In instances where the insured owner intends to build improvements on the land, this endorsement increases the policy amount to include the estimated value of the land together with the completed improvements (including soft and hard costs) in the event of a loss.

## Post-Policy Date Fraud

The owner 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 a fraudulent transfer of title or the registration of a fraudulent mortgage on title.

The coverage is up to a maximum of \$5 million. This coverage does not apply for vacant land.

## Subsequent Insurance

This endorsement applies when the insured owner is increasing the amount of insurance under the policy. It is most relevant when improvements are being built on the insured land or it has appreciated significantly in value. This endorsement would be requested at some point after the initial policy was issued if FCT is satisfied that had the increased coverage been applied for at the date of policy, we would have been willing to issue that amount at that time.

## Survey

FCT provides full survey\*\* coverage in the owner policy jacket for properties valued up to \$25 million (excluding vacant land). The jacket provides coverage 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 or right-of-way issues. If there is an existing survey available that reveals defects, those details must be disclosed to FCT so that we can underwrite the defects and provide coverage accordingly.

For properties valued over \$25 million, certain vacant land transactions, or transactions where a survey currently exists or is being obtained, there are different levels of survey coverage available by way of endorsement.

### Survey - Same As

This endorsement stands behind the accuracy of an existing survey by providing coverage for loss or damage resulting from matters that were not disclosed on the existing survey.

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## **Survey - Enforced Removal Limited Marketability (existing survey provided)**

This endorsement is issued when there is an existing survey and it reveals a defect, such as an encroachment. The defect would be underwritten, and assuming FCT is prepared to assume the risk, coverage would be provided in the event the insured owner is forced to remove or remedy the defect through their course of ownership. There is no marketability coverage if the issue arises when the property is sold, however the same coverage would be available to subsequent purchasers (a new policy would be issued at that time for a new premium).

## **Survey - Enforced Removal Limited Marketability (no existing survey)**

This endorsement is issued when there is no existing survey, but the structure has existed in its current position for 10+ years. It provides coverage for loss or damage resulting from the enforced removal of the structure if it violates the setback requirements, or because it encroaches either onto adjoining land or an easement. There is no marketability coverage if the issue arises when the property is sold, however the same coverage would be available to subsequent purchasers (a new policy would be issued at that time for a new premium).

## **Tax Lot**

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

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

## **Work Order - Gap Coverage**

This endorsement provides coverage for loss or damage resulting from an unknown issuance of a workorder, deficiency notice, or notice of zoning bylaw violation prior to the Date of Policy following the receipt of a clear written search report. The Insured must conduct searches and receive clear written reports dated within 45 days of the Date of Policy for transactions equal or under \$10M and within 90 days of the Date of Policy for transactions over \$10M. Coverage under this endorsement will be limited to the lesser of ten percent (10%) of the Amount of Insurance or One Million Dollars (\$1,000,000.00).

## **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 owner is prohibited from using the land or must remove or alter the structure because of a violation of a zoning bylaw relating to various structural matters (e.g. area, width, or depth of the land as a building site, floor space, setbacks or height).

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.

## 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.

### Do you have a gap endorsement for owners?

Gap coverage is contained in the owner's policy jacket. Gap coverage insures against intervening registrations between the time the deal is closed/funds are advanced and the security documents 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 owner/purchaser 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 instrument 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 coverage that isn't included in the owner's 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, where possible.

## Frequently Asked Questions

### 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 may be required to issue certain endorsements and when applicable, those requirements will be identified when the order is submitted and may vary depending on the insured value of the property and the property type.

☎ 1.866.804.3112    ▶ [FCT.ca](https://www.fct.ca)



\*In British Columbia, lawyers and notaries are the insured.

\*\*Real property report or building location certificate where applicable.

Subject to certain exceptions, commercial title insurance policies equal or below \$10M CAD are provided by **FCT Insurance Company Ltd.** Commercial title insurance policies above \$10M CAD are provided by **First American Title Insurance Company**. 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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