

Extended Coverage: Super Priority Liens/Deemed Trust Endorsement



Extended coverage for lenders

Coverage for super priority liens and deemed trust amounts owed to the government prior to the date of policy already exist in all residential and commercial loan title insurance policies issued by us. We are happy to extend this coverage to ten (10) years after the discharge of the insured mortgage for a maximum amount of \$500,000.

A judgement by the Federal Court of Appeal caused quite a stir among the legal and lending community. This judgement confirmed that the lender is required to pay to the Canada Revenue Agency (CRA) proceeds for unremitted GST that the lender received as repayment from a borrower upon the discharge of the mortgage.

The coverage* under this endorsement is triggered by deemed trust amounts owed to a Governmental Authority before the date of policy where the insured lender is requested to remit such amounts after their mortgage has been discharged.

What is deemed trust?

A deemed trust is a trust that comes into being by virtue of a federal or provincial legislation whether you like it or not. Payroll deductions and taxes collected by businesses as agent for the government and these amounts are deemed to be held in trust for the government and to be remitted at a later date.

The coverage

Currently, a deemed trust claim for remittance due and payable prior to the date of policy would be covered under the residential and commercial loan policies as long as the amounts owed to the government were due and payable before the date of policy and to the extent the claim is a valid one during the life of the policy (i.e. before the insured mortgage is discharged). This endorsement extends the life of the policy to a later date after the insured mortgage has been discharged and the claim is for amounts owed to the government are due and unpaid before the date of policy. The extension of coverage is for a term of ten (10) years after the discharge of the insured mortgage and is capped at \$500,000.

How does it work

The most common scenario for the application of this coverage is a borrower, who is obligated to remit sales tax or payroll deductions, being in arrears in his remittance prior to the date of policy. He most likely would have used the deemed trust amounts as cash flow. If the borrower is still in arrears when they sell the property, the money owed to the Government for sales tax remittance and payroll deductions needs to be paid first (i.e. before the mortgagee can apply the proceeds to pay out the mortgage).

Should the lender not remit these deemed trust amounts to the government, because he did not know they were owed, and proceeds to discharge the mortgage, they can now claim under the policy for 10 (ten) years after the discharge and for a maximum amount of \$500,000.

Residential policies - the endorsement will automatically be attached to all institutional lender policies, at no additional cost.

Residential private lender policies - the endorsement is available for private lenders (1st, 2nd and 3rd priority only) for a nominal one-time premium of \$77 plus applicable tax.

Commercial policies - the endorsement is available for both institutional and private lenders (1st and 2nd priority only) for a nominal one-time premium of \$175 plus applicable tax.

***Please note:**

- Liens that first accrue after the Date of Policy will not be covered.
- The Super Priority Liens / Deemed Trust Endorsement is not available for vendor take-back mortgages (VTB), residential private lenders that are not in 1st, 2nd, or 3rd priority, or commercial private lenders that are not 1st or 2nd priority. For commercial private lenders, a statutory declaration confirming remittances are current will be required.
- Lawyers and lenders should continue to conduct their normal due diligence regarding borrower remittances.
- Any knowledge of existing liens or unpaid remittances must be disclosed to the Company. Failure to do so will jeopardize coverage offered to the insured Lender under this endorsement.

_____ **Please contact your Regional Manager if you have any questions or would like a copy of this endorsement.** _____

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This document is intended to provide general information on Title Insurance. For specific details regarding policy coverage, exceptions, and exclusions, please contact us for copies of the complete title insurance policy. Known title and survey defects are subject to underwriting review and approval.