

SUPER PRIORITY LIEN COVERAGE

PROTECTION FOR LENDERS

What is a Super Priority Lien?

Pursuant to legislation*, governmental entities have the ability to claim a deemed trust that may have a super priority status over registered mortgages. This in essence permits the governmental entity to collect from a mortgage lender, the amounts owed by the borrower. Deemed trusts can be claimed over the real property assets of a borrower that has collected, but failed to remit certain taxes (e.g., HST/GST) and source deductions such as employee remittances. Lenders often have difficulty protecting themselves from super priority liens because the relevant governmental authorities can be slow to respond and representations from borrowers may not be truthful.

Comprehensive Coverage Within Our Policies

Stewart Title's commercial and residential lender policies cover loss due to super priority liens that were due and payable prior to the policy date and were unknown by the insured lender.

Extend Coverage to Discharged Mortgages

Stewart offers an optional Post Date of Policy Super Priority Lien Endorsement** for lenders that extends the policy coverage for super priority liens enforced against the insured lender for 10 years following the discharge of the mortgage, up to a maximum liability amount of \$500,000.

For commercial transactions, the Endorsement is available for both institutional and private lender** policies for a nominal one-time premium. For residential transactions, the Endorsement is automatically attached to institutional lender policies.

A Claims Example of Our Standard Coverage

An insured lender was facing a significant loss as a result of the devaluation of the property. Additionally, prior to the completion of the lender's power of sale proceedings, the lender received notification from the CRA claiming a super priority lien in the property. The notice was with respect to arrears of source deductions of federal and provincial income taxes as well as arrears of Canada Pension Plan and Employment Insurance remittances. The amount claimed was over \$35,000.

Stewart Title confirmed with the CRA that prior to the advance of the mortgage, \$12,000 of the \$35,000 was deemed to be owed by the borrower for source deductions. Upon sale of the land, the insured lender remitted the amount of the super priority liens to the CRA. Stewart Title reimbursed the insured lender \$12,000, being the amount of the deemed trust that accrued prior to the mortgage being advanced.

How the Post Date of Policy Super Priority Lien Endorsement Adds Protection for Lenders

Stewart Title issued a lender policy for a transaction involving a borrower who was obliged to make HST payments. Unbeknownst to the lender the borrower had under-remitted the HST payments for a number of years. Two years after the mortgage closed, the borrower defaulted and the lender sold the property under power of sale and discharged the mortgage. Three years later the CRA approached the lender to recover the monies owing on the basis that the funds the lender received from the power of sale were a deemed trust and the lender was obliged to repay the HST from the sale proceeds. It was determined that prior to the closing of the mortgage there was unpaid HST. The lender approached Stewart Title to make a claim, unfortunately since the mortgage had been discharged, there was no longer any coverage for the lender.

With the Post Date of Policy Super Priority Lien Endorsement, the lender would have been able to make a claim and recover the outstanding HST amount.

Contact us for
more information.

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* Legislation such as the Income Tax Act (Canada), the Excise Tax Act (Canada), and other provincial statutes.

**The Post Date of Policy Super Priority Lien Endorsement is not available for vendor take-back mortgages (VTB), for residential private lenders, for commercial single-risk policies, or commercial private lenders that are not 1st or 2nd priority. For commercial private lenders, a borrower statutory declaration confirming remittances are current will be required. Existing liens or knowledge of unpaid remittances must be disclosed to Stewart Title, in which case the endorsement may not be issued. Lawyers and lenders should continue to conduct their normal due diligence regarding borrower remittances. Please note that liens that first accrue after the policy date continue to not be covered.

This brochure is intended to provide information that is of a general nature and is subject to change. For full particulars of coverage, including exceptions and exclusions, please review the actual policy issued. Each claim is reviewed on its own merits based on the transaction specific facts and the policy coverage provided. Sample policies are available on request. Sample policies may not represent the final policy language issued for any particular transaction.

The confidentiality and protection of personal information is important to Stewart Title. To view our privacy policy, visit www.stewart.ca/privacy.