

## PRODUCT INFORMATION

# Commercial Lender Title Insurance

The Stewart Title Commercial Lender Policy insures the interest held by a lender as security for payment of its debt.

A title insurance policy can be integrated into your risk management program where lending is made against properties that are zoned:

- Commercial
- Industrial
- Retail
- Mixed use

### Safeguarding Against Failure of the Mortgage as Security

We provide a contract of indemnity to you until you discharge the mortgage (including assignments to another lender, at no additional charge).

You are indemnified against **actual loss** suffered where the loan has gone into default and there is a loss in relation to covered risks on realisation of the security.

For a **one time premium** indemnity is provided on a **no fault basis** for the **principal amount of the mortgage**.

Stewart Title will also pay all **costs, legal fees and expenses** associated with **defending proceedings** based on covered risks or with respect to defending the validity or priority of the insured mortgage. These payments are in addition to payments made with respect to any loss that you suffer.

### An Outline of What We Cover

Our policy provides cover for the following risks which are inherent in the lending transaction:

- where the mortgage is not valid and enforceable as an encumbrance against the title
- the mortgage does not have the correct priority
- fraud, forgery, duress, incompetence or incapacity which cause a defect in title
- risks arising in the period between advancing funds at settlement and registration of documents
- any defects that would have been revealed by an up to date survey including encroachment of improvements onto easements or on to other land or vice versa (for loans over \$10 million\*)
- non compliance with covenants and restrictions on title
- title to the land is unmarketable
- lack of legal right of access to and from the land
- any defect or lien or encumbrance on title which is unknown to you
- invalidity or unenforceability of any assignment of the mortgage
- the mortgagor is not the owner of the estate or interest in the land
- someone other than the mortgagor owns an estate or interest in the land

\* Loans above \$10 million are underwritten on a case by case basis.



## A Customised Solution

Stewart Title has the expertise to handle all of your commercial transaction requirements. In addition to the standard policy cover, we offer a variety of specialised commercial endorsements, which are designed to tailor the policy to suit your particular needs.

For example, for loans of up to \$5 million\*, we can provide cover (at no additional cost) by way of endorsement where:

- there has been a failure to obtain the necessary building or planning approvals for existing structures on the land, or any modification or replacement of those structures after settlement
- any applicable zoning laws prohibit or substantially impair and affect the use of the land for commercial purposes

*\* Loans over \$5 million are underwritten on a case by case basis.*

## Claims Scenarios

### Zoning Cover

A lender can obtain a Zoning Endorsement which provides cover that a property can continue to be lawfully used for its present use.

Where a loan is secured by a commercial property, it is important that the current use of the property can be continued for two reasons. First, where the commercial business on the property is responsible for payments, it is imperative that the business be able to continue operating to make the payments. Second, where the valuation is based on a particular use, if the use is not permitted, it could drastically affect the value of the property and a lender's ability to recover the loan amount.

**Scenario:** A borrower has a property which is used as a Bed & Breakfast. The income from the Bed & Breakfast is essential to pay the loan.

**Stewart Title's Solution:** The lender can obtain a title insurance policy ensuring that Stewart Title will pay any loss if the use of the property as a Bed & Breakfast cannot be lawfully continued.

### Cover over Known Defects

Frequently title which is being offered as security has defects in the title. By insuring over those defects, title insurance can allow deals to close which would otherwise be delayed or fall through.

**Scenario:** A borrower owns a piece of land which was originally part of a larger block. When the block was subdivided, the water pipes to the borrower's building were no longer wholly on their property. Rather, they passed over the adjoining property to connect to the main water pipe, and no easement for the water pipes was retained.

**Stewart Title's Solution:** The lender can take out a commercial policy obtaining cover for this encroachment, allowing the loan transaction to proceed.

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This material is intended to provide information of a general nature. Please refer to the policy for full details, including the specific terms and conditions. Sample policies are available upon request. 0905

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