



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 Chicago Title Insurance Company. We are pleased to extend this coverage to ten (10) years after the discharge of the Insured mortgage for a maximum amount of \$500,000.

A recent 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 new 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 a 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 GST / HST / PST amounts 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 new endorsement extends the life of the policy to a later date after the Insured Mortgage has been discharged insofar as 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 (GST/HST) 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.

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. Say Yes to the Super Priority Liens / Deemed Trust Endorsement when ordering a Commercial Loan Policy.

*Please note:

- Capitalized terms are defined in the endorsement or in the policy jacket.
- Liens that first accrue after the Date of Policy are not be covered.
- The Super Priority Liens / Deemed Trust Endorsement is not available for vendor take-back mortgages (VTB), residential private lenders, 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.

[Contact your Regional Manager](#)

to obtain a copy of this new endorsement or for any additional information.

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