

4.3. Adequacy of Title

The Approved Lender may discharge its responsibility for good and marketable title at time of claim by warranting that the title of the security complies with CMHC's requirements. This warranty as to title may be supported by (i) a solicitor/notary's opinion as to title, extended directly to CMHC with the solicitor/notary's consent, or (ii) a title insurance policy that is acceptable, beneficial and assignable to CMHC, or another Approved Lender in the event of transfer, sale or assignment of the mortgage. See section 4.4 for acceptability criteria for a title insurance policy.

Permitted Encumbrances

In general, CMHC will not object to encumbrances that in the opinion of qualified local solicitors or, in the case of Quebec, notaries, who are experienced in real estate and mortgage financing:

1. Are considered standard or ordinary for properties having similar characteristics and value in the same geographic area, such that their existence on title to the property would not negatively impact marketability, or
2. Do not otherwise limit the reasonable use of the land for residential purposes or negatively impact the marketability or value of the property.

Examples of encumbrances, liens or common defects that would be considered permitted encumbrances as per above would include the following:

- Easements for public utilities that do not interfere with the use or value of the buildings or improvements on the mortgaged property
- Registered easements for mutual driveways
- Minor encroachments by or upon the mortgaged property by eaves or overhanging projections
- Minor encroachments by hedges, wooden or wire fences belonging to the mortgaged property.

Unless specifically approved by CMHC, restrictive covenants would not generally constitute permitted encumbrances. This is particularly the case where the restrictive covenant limits access, occupancy or reasonable use for residential purposes (including age-/gender-restricted communities), restricts rents/income stream/sale price, or otherwise impacts marketability of the property.

Where the Approved Lender and the qualified solicitor/notary are satisfied a title registration represents a permitted encumbrance, as per the above, a specific request is not required to be sent to CMHC for review and consideration.

Surveyor's Certificate

A survey certificate is not required where title insurance is obtained by the Approved Lender provided the title insurance policy specifically covers against defects that would have been disclosed had a survey certificate been obtained. Otherwise, the Approved Lender is required to obtain a surveyor's certificate in support of the loan application submitted for insurance. The surveyor's certificate or sketch must show or describe the distance of the building from the lot line, and any apparent encroachments on the property.