

# Lending and Taking Security in Real Property (QC)

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A Q&A guide to provincial law on corporate/commercial lending and taking security in Québec.

To compare these answers against other jurisdictions, see the [Provincial Q&A Comparison Tool](#).

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## Security Interest in Real Property Regime

1. Describe the regime for taking a security interest or charge over real property in your jurisdiction.

Québec's civil law system is different than common law jurisdictions with respect to the legal framework surrounding real property and security. The variations span from divergences in terminology to differences in legal principles.

As an example, a mortgage in Québec is called a "hypothec". A mortgage lender is called a "hypothecary creditor", and a mortgage borrower is called a "hypothecary debtor". Furthermore, real and personal property are known respectively as "immovable property" and "movable property". Therefore, a mortgage on real property is an "immovable hypothec". Rental income and insurance proceeds covering loss of rental income are also deemed to be real property under Québec's legal framework.

The immovable hypothec is the most widely used type of security interest for real property in financing commercial transactions. It grants its holder the right to use the debtor's hypothecated property to satisfy the debt to the preference of other creditors (including other secured creditors ranking after the prior ranking hypothec on the hypothecated property), as well as the right to follow the hypothecated property into the hands of third parties.

A lender will often take additional security, including the personal property of the borrower, which may or may not be limited to that which is related to the real property being financed.

In addition to the elements described in [Question 3](#), in order for a hypothec on real property to produce the desired results of a right of preference and a right to follow the hypothecated property, it must be duly published or registered at the appropriate registration division of the Land Registry Office. If the lender takes additional security, including the personal property of the borrower, additional registration will be required at the Québec Personal and Movable Real Rights Register. For more information, see [Provincial Q&A, Lending & Taking Security in Personal Property \(QC\)](#).

Québec's real property registry is called the Land Register and the acquisition, creation, recognition, modification, transmission, and extinction of rights in real property are published therein (*Civil Code of Québec*, S.Q. 1991, c. 64, section 2938). Publishing these rights establishes their rank in juxtaposition to other creditors, makes them enforceable against third parties, and provides protection from claims brought by third parties.

Québec is divided into 73 land registration divisions, each with its own Land Registry Office, and each of which is subdivided into cadastres.

The publication of rights to real property takes place at the Land Registry Office of the territory or registration division in which the charged real property is situated by filing an electronic copy of the authentic notarized copy of the immovable hypothec (i.e., an original notarial stamped copy of the deed or the electronic copy that has been notarized and signed using technological means, as more particularly described in [Question 3](#)).

The Land Registry Office provides a listing of a series of transactions but does not guarantee the quality or authenticity of title, unlike land title systems in other jurisdictions. As such, persons relying on the Land Registry Office system are responsible for determining the quality of title of a real property, such reliance being based primarily on the priority of the time of registration.

## Creating a Security Interest or Charge over Real Property

2. What are the requirements for a valid and enforceable charge over real property in your jurisdiction? Highlight any differences that you are aware of from other jurisdictions.

An immovable hypothec charging real property in Québec must be done by notarial act, meaning it must be executed before a Québec licensed notary (i.e., not a public notary or commissioner of oaths).

The main elements necessary to create a security by way of an immovable hypothec are:

- **Identification of the parties.** The legal name of each of the parties is required. Note that certain restrictions and requirements apply if:
  - the hypothec purports to charge the universality (all present and future) immovable property of certain debtors; and
  - the secured party acts for more than one lender. Similar to the concept of agent in common law provinces, in Québec an immovable hypothec may be granted in favour of the hypothecary representative for present and future creditors (*Civil Code of Québec* (CCQ), S.Q. 1991, c. 64, section 2692).
- Hypothecs can be given either on specific property or on one or several universalities of property. In practice, lenders will seek hypothecs on the universality of the borrower's property, covering the present and future property of the borrower. In hypothecary loans involving a nominee (prête-nom) being the registered title holder of the real property,

it is the nominee (prête-nom) who must sign and deliver the immovable hypothec in favour of the lender in order for the hypothec to be published in the Land Registry Office with the beneficial owner also granting the same charge in the same deed of hypothec, typically as an intervening party, given that it is the true owner of the real property.

- **Description of the hypothecated property.** The hypothec must include an adequate description of the hypothecated property, including the legal description of the charged immovable property.
- **Hypothecated amount.** A hypothec must contain the principal amount for which it will secure the performance of the obligations (CCQ, [S.Q. 1991, c. 64, section 2689](#)). The hypothec must therefore be for a principal amount sufficient to cover the value of the secured obligations. It is also customary practice for hypothecs in Québec to bear interest at the rate up to 25%. This 25% interest would serve only to cover for any interest accruing during the term of the loan and the enforcement process if the principal amount of the hypothec is not sufficient. This 25% interest rate is not related to the rate applicable to the secured obligations. Notwithstanding the amount of the hypothec, the secured party's rights are always limited to the amount of the secured obligations (including related interest, costs, and expenses).
- **Description of the obligations secured.** An adequate description of the obligations secured by the hypothec must be included. Note that the hypothec can secure all present and future obligations of the debtor to the lender or all such obligations of a third party to the lender or certain obligation of the hypothecary debtor to the hypothecary creditor.

By effect of law, the hypothec secures the capital, the interest accrued, the interest on the interest, and the legitimate costs, other than extra-judicial professional fees, incurred for the recovery or for conserving the charged property. Furthermore, a hypothec secures interest due for the current year and the three years preceding its publication.

## Registration

3. What is required to register a mortgage (or other instrument that creates a charge over real property) in your jurisdiction?

Prior to the [COVID-19](#) pandemic, closings of transactions involving real property in Québec were usually conducted fully or partly in person, as documents are typically notarized (hypothecs, which are the primary form of security on real estate, must be notarized) or at least attested to by Québec licensed counsel. Often Québec counsel is authorized to sign registration documents on behalf of their clients.

Since August 31, 2020, as a means of ensuring the sound administration of justice in light of the COVID-19 pandemic, the Québec Minister of Justice authorized notaries licensed to practice in Québec to take signature of and close a notarial act *en minute*, such as a deed of hypothec, remotely using technological means (see in particular [Order 2020-4304](#) of the Minister of Justice dated August 31, 2020, renewed by Order 2021-4556 of the Minister of Justice dated August 20, 2021 and renewed by Order 2022-4841 of the Minister of Justice dated August 24, 2022). This authorization has since been limited by Bill 34, [An Act to modernize the notarial profession and promote access to justice](#), which received assent on October 24, 2023. Currently, notaries are authorized to take signature of and close a notarial act *en minute*, such as a deed of sale and/or deed of hypothec,

remotely using technological means only under limited and exceptional circumstances. Signing remotely is no longer the norm but rather the exception.

Québec is divided into 73 land registration divisions, each with its own Land Registry Office, and each of which is subdivided into cadastres. The publication of rights to real property takes place at the Land Registry Office of the territory or registration division in which the real estate in question is situated, either by filing an authentic notarized paper copy of the immovable hypothec (i.e., an original notarial stamped copy of the deed) or filing such copy electronically by the notary having received the deed. Each Land Registry Office contains and maintains an index of real property, a copy of all documents (excluding discharges), and plans.

Since 2000, most of the information available at Land Registry Offices has been digitized and is now available electronically. This includes indexes, documents published since 1973, discharges deposited since 2000, plans of renovated lots, and reference books.

As of September 1, 2022, all applications for registration in the Land Register must be drawn up and presented exclusively in French and any documents accompanying an application for registration must either be drawn up and presented in French, or be accompanied by a French translation that has been authenticated in Québec (*Civil Code of Québec*, S.Q. 1991, c. 64, sections 2984 and 3006, as amended by Bill 96, *An Act respecting French, the official and common language of Québec*, S.Q. 2022, c. 14, sections 129 and 130). Notwithstanding the foregoing, there are exceptions that permit deeds that seek to correct or amend deeds that were registered exclusively in English at the Land Register prior to June 1, 2022, to be registered in English.

Generally, there is a registration delay for the confirmation of the registration of a deed of hypothec, which results in escrow closings that may differ from those in other jurisdictions. In Québec, unlike in other jurisdictions, it is not possible to publish a hypothec until it has been executed. Furthermore, the publication is not instantaneous, but rather involves delays that vary between 6 and 48 hours. This particularity in the publication of security in Québec can cause problems in multi-jurisdictional financing transactions because financing in many jurisdictions is available on the day of the closing. To deal with this type of situation, the lender can consider several disbursement options, such as:

- Disbursement upon confirmation of the deposit of documents for publication (even though this deposit is not equivalent to actual publication).
- In the absence of existing security at the moment of deposit, total or partial disbursement in escrow.
- The withholding of all or part of the amount of the loan given on property situated in Québec.
- Subscription to a title insurance policy with interim coverage (in the case of a real estate financing, this constitutes coverage from the moment of the signature and of publication).

These alternatives to disbursement carry a risk for the lender regarding the rank of security.

The rank of the immovable hypothec can be impacted in the event an adverse entry (for example, another immovable hypothec) is registered against the title to the immovable property between the day the lender's immovable hypothec is sent for registration at the Land Registry Office and the date it is registered. Therefore, in most instances where title insurance is not involved, the lender will choose to proceed to the full disbursement once its solicitor confirms that its immovable hypothec has been registered at the Land Registry Office without adverse entries, confirming the rank of the immovable hypothec contemplated in the loan documents.

Generally, and notwithstanding the 2017 Supreme Court judgment in *Ostiguy v. Allie, 2017 CarswellQue 2270 (S.C.C.)*, the practice remains to review all deeds registered against title since at least January 1, 1964, meaning that claims not protected by registration prior to that time period no longer affect title to the property, although some searches (for example, easements,

which are known as servitudes in Québec, wills, and gifts) can go “back to the cadastre”, which involves searching the entire record back to the 19th century. There is no governmental assurance of title, so the practice in Québec is to have manual title searches and reports or use title insurance coverage.

## Other Searches

In real estate financing, it is particularly important to ensure the validity of the title of ownership of the immovable property (land and constructions) as well as its conformity with various regulations. Defects of title and contravention of municipal by-laws can affect the market value of the property and can therefore diminish the value of the security held by the lender. To this end, the lender must obtain a recent certificate of location (known as a land survey in common law provinces) as well as a title opinion regarding the property. These documents will reveal any defects in title, encroachments, and other irregularities vis-à-vis real estate by-laws, and will determine the conformity of the property with zoning by-laws. In lieu of the foregoing, the lender can obtain title insurance for the property.

Other searches generally include the following principal elements:

- **Legal status.** The constituting statutes of the borrower and guarantors to ensure that the lender is contracting with the proper persons, that their corporate documents are in order, and that their constituting acts and corporate documents do not contain any restrictions on the powers to borrow, to consent to security, or to conclude the proposed financing.
- **Security and other charges in favour of third persons.** A prudent lender in Québec must ensure that the following security searches have been undertaken:
  - **Register of Personal and Movable Real Rights.** To determine whether movable hypothecs or other security (rights resulting from a lease, an instalment sale, or a leasing contract) have been published against the borrower, or the property of the borrower;
  - **Bank Act Security Registry System, pursuant to the *Bank Act, S.C. 1991, c. 46*.** To determine whether a borrower has given a particular guarantee to a bank. The search must be done in the province where the entity being researched has its head office or in its province of residence. These guarantees are only on property that is generally defined as inventory;
  - **Other registry.** It is also important and suggested to undertake searches to determine whether the borrower is the object of insolvency proceedings or of any litigation (civil, statutory, and penal litigation).
- **Environment.** Enquiries can be made to the Québec Ministry of Sustainable Development, Environment and Parks to see if the ministry has a file on the current or previous owners relating to the real property. An environmental report and expert opinions can also be used to pinpoint any environmental risks.
- **Municipal and school taxes.** Enquiries to municipal authorities and school boards to determine if all taxes on the property have been paid. If not, the lender may withhold amounts in order to pay these amounts directly to the respective authority. As a condition to the financing, the lender may require establishing a tax reserve account where the lender will make the payments to taxing authorities when due.
- **Municipal or borough clerk.** To determine whether the property is in default of any applicable municipal by-laws, specifically by-laws relating to construction, fire safety and the environment.
- **Municipal planning department.** To determine the permitted use of the property, so as to ensure that any current or proposed use respects zoning by-laws.

- **Preservation of Agricultural Land Commission.** To determine if the property is in an agricultural zone, in which case further due diligence will be required unless the property is to be used for agricultural purposes.
- **Ministry of Culture and Communications.** To determine whether the property being financed is "cultural property" or a "heritage site", in which case further due diligence will be required.
- **Régie du Bâtiment du Québec.** Enquiries to this building authority will determine whether there are defects or infractions under the Building Code and related regulations.
- **Ministry of Natural Resources.** To determine if permits have been issued and to obtain information on any non-conformity or any file concerning the owner or the property.
- **Hydro-Québec and Gaz Métropolitain.** To determine if utility bills for the property have been paid.

The above are the usual verifications undertaken by a lender in Québec. If the borrower carries on activity or has assets outside of Québec, the lender should exercise prudence and carry out due diligence outside of Québec as well.

## General Priority Rules

4. What are the general priority rules in your jurisdiction?

## Mortgages Against Mortgages

Rights rank according to the date, hour, and minute entered into the book of presentation in the Land Register, unless otherwise provided by law. A real estate hypothec ranks only from the time of the registration of the grantor's title in the hypothecated property and after any hypothec granted to the vendor of the property in the act of sale.

## Leases Against Mortgages

Leases are not real rights and, as such, will not have any priority to a hypothec.

Since the 1994 reform of the *Civil Code of Québec*, S.Q. 1991, c. 64 (CCQ), the landlord's lien no longer exists. Furthermore, any clause by which a landlord, with a view to securing the performance of the obligation of the tenant, reserves the right to become the irrevocable owner of the tenant's property or to dispose of it is deemed ineffective (CCQ, S.Q. 1991, c. 64, section 1801). Today, the landlord's lien is considered a legal hypothec without delivery. For leases entered into since the reform of the CCQ, the landlord must negotiate a conventional movable hypothec without delivery, which must be constituted in writing, for a specific amount and must contain a sufficient description of the charged property. The landlord's hypothec lender must also obtain a similar movable hypothec if it would like security on the tenant's property located at the leased premises. In all cases, the hypothec is only enforceable against third parties upon presentation of a notice to the Register of Personal and Movable Real Rights. Since the elimination of the landlord's lien, there is no longer a Québec civil law concept equivalent to the landlord's

right to distraint as found in the common law provinces. Landlords will often subordinate the rank of their security in favour of the tenant's secured creditor.

In common law provinces, the tenant's mortgage lender can obtain a leasehold mortgage because the lease constitutes an interest in the real estate in which the leased premises is located. In order to be enforceable against third parties, a leasehold mortgage must be registered at the land registry office as prescribed by the applicable provincial legislation.

Conversely, because a lease in Québec is a contractual arrangement and does not constitute a property right for the tenant, the concept of a leasehold mortgage does not exist in Québec. Therefore, the leased premises can never be pledged to the tenant's hypothec lender as security.

## Super Priority Liens

The law creates certain claims that rank ahead of all other claims, including hypothecs and the claims of secured creditors. The following are certain civil law prior claims under Québec laws, and they rank in the following order:

- Legal costs and all expenses incurred in the common interest.
- The claim of a vendor who has not been paid the price of a movable sold to a natural person who does not operate an enterprise.
- The claims of persons having the right to retain movable property, provided that the right subsists.
- Legal hypothecs, such as construction hypothecs in favour of the persons having taken part in the construction or renovation of an immovable for the work requested by the owner of the immovable, or for the materials or services supplied or prepared by them for the work. It is not necessary to publish a legal hypothec for it to exist.
- Claims of the State for amounts due under fiscal laws.
- Claims of municipalities and school boards for property taxes on taxable immovables as well as claims of municipalities, specially provided for by laws applicable to them, for taxes other than property taxes on immovables and movables in respect of which taxes are due.

Of these prior claims, only claims of municipalities and school boards for property taxes can create a legal lien on the property. These are the only claims that can therefore be exercised against the property after the property has been sold to a third party.

## Key Loan and Security Documents

5. What are the main loan and security documents for a single asset commercial real estate loan transaction?

In Québec, the loan documents for a term loan securing a single commercial real estate asset by a single lender, generally includes the following:

- Commitment letter or term sheet.
- A loan agreement or a deed of hypothecary loan and security. In smaller financings, the loan agreement will often include the sureties and hypothecs required by the lender as loan security. This usually takes the form of a deed of loan and hypothec. This has the advantage of including all the terms of financing and security, as well as all the involved parties, including the guarantor (surety). The main disadvantage of including security in the real estate financing agreement is that real estate security must be published in Québec, which will reveal the terms of the financing in its entirety and, as of September 1, 2022, is required to be drafted and registered in French.
- A deed of hypothec if a loan agreement is used.
- A suretyship (also called guarantee). The concept of solidary (joint and several) does exist under Québec laws. A guarantor is either jointly liable with the borrower (e.g., it is liable only for its portion of the guaranteed obligations) or solidary liable. It is also important to be aware of whether the suretyship is solidary, as well as whether the benefits of discussion and division have been renounced. A solidary suretyship allows the lender to claim against the surety and the borrower at the same time, and in the same capacity, in the case of default by the borrower. The benefit of discussion (*Civil Code of Québec* (CCQ), [S.Q. 1991, c. 64, section 2347](#)) gives the surety the right to require that the lender claim against the property of the borrower before suing the surety. The benefit of division (CCQ, [S.Q. 1991, c. 64, section 2349](#)) applies in cases where there are several sureties, and it allows the sureties to require that the borrower's debt be divided among them. Typically, a surety is required to renounce these rights, thereby rendering the suretyship more effective for the lender.
- An environmental indemnity agreement.
- A legal opinion.
- A title opinion or a lender's title insurance policy.
- Third party documents such as:
  - tenant estoppel certificates;
  - Payout Statement and Undertaking to discharge from existing secured party(ies), discharges or waiver letters;
  - any required third-party consents.
- Supporting documents including:
  - identity verification and know-your client materials;
  - authorizing resolutions;
  - officer's certificates;
  - certificates of status or compliance (as applicable).

Note that if the borrower is domiciled (i.e., its registered office) outside of Québec, additional security may need to be obtained.

As of September 1, 2022, all applications for registration in the Land Register must be drawn up and presented exclusively in French and any documents accompanying an application for registration must either be drawn up and presented in French, or be accompanied by a French translation that has been authenticated in Québec (CCQ, S.Q. 1991, c. 64, sections 2984 and 3006, as amended by Bill 96, *An Act respecting French, the official and common language of Québec*, S.Q. 2022, c. 14, sections 129 and 130). Notwithstanding the foregoing, deeds that seek to amend or correct deeds that were registered exclusively in English at the Land Register prior to June 1, 2022, may be registered in English.

Moreover, as of June 1, 2023, to the extent that any of these documents qualify as a contract of adhesion (an agreement whose main clauses have been drawn up and imposed by one party and are non-negotiable (CCQ, S.Q. 1991, c. 64, section 1379), such documents must be drawn up in French. The French version must be presented to the co-contracting party prior to such party expressing its wish to have the contract drawn up in English or in another language, the whole in accordance with Bill 96.

## Title Policy Coverage, Exclusions and Endorsements

6. What is covered and what are the exclusions and endorsements in a lender's title insurance policy in your jurisdiction? Review and highlight any differences or principles that are unique to your jurisdiction.

When no title opinion is available, lenders are requiring the purchase of a lender's title insurance policy by the borrower as a condition precedent to closing a commercial real estate loan transaction. If title opinions are to be used, a purchaser or lender would be prudent to confirm the amount of errors and omissions liability coverage carried by the notarial or law firm rendering the title opinion.

It is worth mentioning that a title opinion and title insurance serve different purposes. The title opinion confirms the good and valid title of the immovable property and reveals any title defect, if any, which allows the lender to have a clear picture of the validity of the title of the immovable that will be hypothecated pursuant to the immovable hypothec and any possible defects. The title insurance policy insures the lender against damages suffered from any title defect of the immovable taken as security pursuant to an immovable hypothec. While the lender, as insured pursuant to the title insurance policy, will be indemnified should the lender suffer any damages arising from a title defect, the title defect will not be corrected. The lender will request that the borrower make arrangements to correct the title defect, at its own cost, and in the event the title defect is not or cannot be corrected, it may have an impact on the lender's hypothecary recourses.

With respect to title insurance, Canada is an "unregulated jurisdiction" (for example, there are no government set premium levels). Accordingly, there is a broad flexibility in the available endorsements (as many as 50 different endorsements have been identified) and some ability to negotiate the policy fee, particularly for large transactions and high-volume programs.

A typical lender's title insurance policy would include:

Policy Coverage	Exclusions	Endorsements
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<p>The lender's policy generally covers losses the lender may suffer from:</p> <ul style="list-style-type: none"> <li>Title defects (title insurers also have the ability to cover properties with known defects).</li> <li>Liens or encumbrances on title.</li> <li>Unmarketability of title.</li> <li>No right of access to and from the real property.</li> <li>Violation or enforcement of any law, ordinance, permit, or governmental regulation restricting, regulating, prohibiting, or relating to: <ul style="list-style-type: none"> <li>the occupancy, use, or enjoyments of the land;</li> <li>the character, dimensions, or location of any improvement erected on the land; or</li> <li>environmental protection, if a notice is registered in the public records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.</li> </ul> </li> <li>Exercise of the rights of expropriation if a notice of the exercise, describing any part of the Land, is registered in the public records.</li> <li>Survey errors.</li> <li>The lien of real estate taxes or assessments imposed on title to real property by a governmental authority due or payable, but unpaid.</li> <li>The invalidity or unenforceability of a hypothec.</li> <li>The priority of any lien or encumbrance over the hypothec.</li> <li>A defect in the title or the lien of the insured hypothec caused by forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation.</li> </ul>	<p>The standard matters generally excepted from coverage include loss or damage, costs, legal fees, or expenses that arise by reason of:</p> <ul style="list-style-type: none"> <li>Law, ordinance, permit, or governmental regulation restricting, regulating, prohibiting, or relating to: <ul style="list-style-type: none"> <li>the occupancy, use, or enjoyment of the land;</li> <li>the character, dimensions, or location of any improvement erected on the land;</li> <li>the subdivision of land;</li> <li>environmental protection.</li> </ul> </li> <li>Any other governmental power.</li> <li>Rights of expropriation.</li> <li>Defects, charges, prior claims, adverse claims, or other matters: <ul style="list-style-type: none"> <li>created, suffered, assumed, or agreed to by the insured claimant;</li> <li>not known to the insurer and not registered in the public records at the date of policy but known to the insured claimant and not disclosed to the insurer;</li> <li>resulting in no loss or damage to the insured claimant;</li> <li>attaching or created after the date of the policy; or</li> <li>resulting in loss or damage that would not have been sustained if the insured claimant had paid value for the insured hypothec.</li> </ul> </li> <li>Unenforceability of the insured hypothec upon the title because of the inability or failure of an insured to comply with applicable doing business laws of Canada and Québec.</li> <li>Invalidity or unenforceability in whole or in part of the insured</li> </ul>	<p>Endorsements can modify title insurance policies to provide greater coverage to the insured. Counsel must specifically request endorsements.</p> <p>The most common endorsements are:</p> <ul style="list-style-type: none"> <li>Access.</li> <li>Address.</li> <li>American Land Title Association Inclusion.</li> <li>Contiguity.</li> <li>Doing Business.</li> <li>Easement damage.</li> <li>Government Response.</li> <li>Interest Prepayment.</li> <li>Restriction, Encroachments, Minerals.</li> <li>Tax Lot.</li> <li>Usury.</li> <li>Utility Facility.</li> <li>Work Orders.</li> <li>Zoning.</li> </ul>
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