

Understanding the UCCPlus Insurance Policy

An interview with Gary Zimmerman, Senior Vice President and Chief Underwriting Counsel of Fidelity National Title Group's UCCPlus Division



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What is a UCCPlus Insurance Policy?

A UCCPlus Insurance Policy (UCCPlus Policy) is a title insurance product that insures most personal property taken as collateral for a loan. Similar to a lender's real estate title insurance policy that insures a mortgage or deed of trust is a first priority lien on real property, a lender's UCCPlus Policy insures that the personal property pledged to the lender as collateral for a loan is a first priority lien. The UCCPlus Policy shifts all of the risk from the insured lender to the title company by insuring proper validity, enforceability, attachment, perfection and priority relating to the lender's security interest or lien on the personal property. Secured lenders value this as a risk management tool that decreases their operational risk by shifting the documentation, perfection and fraud risk to the title company. Leading commercial law firms and lending institutions recognize the use of a UCCPlus Policy as a best practice.

Are there other ways that a UCCPlus Policy shifts risk?

Yes. A UCCPlus Policy shifts the risk from the insured lender to the title insurance company for loan documentation defects, fraud and forgery, search office errors and omissions, indexing inconsistencies and financing statement irregularities and defects. The attorneys and paralegals who underwrite and issue the UCCPlus Policy are highly-trained professionals with commercial transaction expertise as well as specific knowledge of Articles 8 and 9 of the Uniform Commercial Code.

So the name UCC policy is short for Uniform Commercial Code policy?

Yes. Since the policy insures the first priority security interest or lien of any loan secured by any of the collateral referenced in Articles 8 and 9 of the Uniform Commercial Code, the policy is generically referred to as a UCC policy. The brand name of the Fidelity family UCC policy is UCCPlus.

Where does the "Plus" come from?

The "Plus" comes from the value and expertise that the Fidelity National Title Group (FNTG) adds to the UCCPlus Policy. The UCCPlus Policy can be underwritten for all of the underwriters in the Fidelity family — Fidelity National Title Insurance Company, Chicago Title Insurance Company and Commonwealth Land Title Insurance Company. Since FNTG is the largest title company in the country with the greatest claims reserves, that is the Plus when selecting a title insurance company. The Plus is also what the legal professionals working at UCCPlus are for your transaction — a valuable, experienced and knowledgeable second set of eyes on your transaction.

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So what types of loan transactions does a UCCPlus Policy insure?

UCCPlus Policies are issued for many types of loan transactions. The UCCPlus Policy may be utilized in any transaction where a security interest is granted to a lender in collateral specifically described in Articles 8 and 9 of the Uniform Commercial Code. Most typically, the UCCPlus Policy is underwritten for real estate mezzanine loans, power-production facility loans or other types of related energy transactions, and working capital or term loans for businesses. The UCCPlus Policies range from insuring a single piece of equipment or single pledge of equity to insuring all assets of a corporation or other entity. In all of these transactions, personal property is either the sole asset that the lender is relying on to recover their loss if a default occurs or is a significant portion of the reliance collateral.

What coverage does the UCCPlus Policy provide for a real estate mezzanine loan?

In a real estate mezzanine loan transaction, the insured lender is making a loan that is secured by a pledge of the ownership interest in the entity that owns the underlying real estate. The ownership interest in a typical property-owning entity, a limited-liability company, can be perfected in multiple ways under the UCC. The UCCPlus Policy insures that all of the documentation and the perfection documents are properly crafted to fully comply with the chosen method of perfection.

What does the UCCPlus Policy cover for a power-production facility transaction?

In an energy loan, the insured lender is making a loan to a power-production facility secured by the power purchase agreement, equipment and fixtures found in the power plant or solar farm or wind farm. The UCCPlus Policy for this type of transaction is typically utilized in conjunction with a real estate title insurance policy to give insured lenders the complete coverage they need, given the substantial amount of personal and real property involved. Just as a lender to an office building or shopping center depends on its security interest in the cash flows from the rents, a lender to a power-production facility must ensure that it has a perfected first security interest in the cash flow from the power produced, all governed by the power purchase agreement. Additionally, there is great uncertainty in the law and risk to the lender as to whether a fixture — solar panels, turbines and generators — is an interest in real property or personal property. By obtaining both a real property policy and a UCCPlus Policy, this risk is eliminated.

What coverage does the UCCPlus Policy provide for a working capital or term loan made to a business?

For these types of transactions, an insured lender is making a loan to a business looking to expand or enhance its operation. These loans are typically secured by all assets of the business, but usually focus on accounts, inventory, equipment and the general intangibles of the company. Given the stringency of underwriting requirements and the difficulty in obtaining credit, obtaining a UCCPlus Policy — and shifting the loan’s documentary and perfection risk to the title company — will make the granting of such a loan by the lender much easier and more likely.

Are there other types of transactions that the UCCPlus Policy covers?

Yes. If a lender is taking a security interest in any collateral described in Articles 8 or 9 of the UCC, the UCCPlus Policy can provide value to the lender. The Policy can be issued for transactions as simple as insuring deposit accounts and security accounts established for rental payments from an office building. To discuss specific transactions, contact UCCPlus.

Does every UCC policy look and operate the same? Is there a standard ALTA version of a UCC policy, similar to what is used for real estate title insurance policies?

No, not every UCC policy looks the same. There is no ALTA form. The UCCPlus Policy for the Fidelity family is essentially the same in all states where the policy is issued. The UCCPlus Policy provides similar but more comprehensive coverage than other UCC policies in the marketplace. Since Articles 8 and 9 — as enacted in each of the 50 states — are very similar, the UCCPlus Policy is issued in the same form.

What about pricing? Do you have different rates for each state or national rates?

The pricing is the same whether the Policy is issued in a state with a regulated rate or a non-regulated rate. This is because, as mentioned earlier, the law is essentially the same and the form of UCCPlus Policy is the same.

Are there restrictions on the transaction size that the UCCPlus division can handle?

Typically, the UCCPlus Policy is not underwritten for transactions below \$1 million. The Policy's upper limit is dependent on deal structure and internal FNTG house limits. For more information as it relates to a specific transaction, just contact a member of the UCCPlus team.

You mentioned that the UCCPlus Policy shifts the search and filing risk from the lender to the title company. Doesn't using a reputable search and filing company accomplish this? If the search is inaccurate or the financing statement is incorrectly prepared, can't the lender go back and make a claim against the search and filing company?

The lender could do this, but when it places its search or files its financing statement with a search company, the lender agrees in the fine print to limit its recourse against the search company to the cost of the search or filing. UCC insurance, in part, was a response to this gap in coverage for lenders. The full risk of search office errors and omissions, indexing inconsistencies, and financing statement irregularities and defects is borne by the title company when a UCCPlus Policy is obtained.

Can you give some examples where a lender without UCC insurance did not have a first perfected lien on its collateral because it failed to follow the rules of Article 9?

Yes. As a pretext, one of the cardinal rules of Article 9 is that the lender must get the name of the borrower absolutely correct on the face of the financing statement. There are numerous examples of lenders filing financing statements with improper debtor names. A single letter or misplaced punctuation mark is enough to create the error. The impact of filings without correct debtor names, which are determined to be misleading, is that the lender would not be a secured creditor. Filing in the wrong jurisdiction and not continuing a filing in a timely manner are other examples of not following the rules of Article 9.

What is a secured creditor, and why does a lender care if a creditor is secured?

Lenders need to be secured creditors because of the impact of bankruptcy laws. If the borrower under the loan defaults and then files for bankruptcy, the lender will file a "secured claim" in the borrower's bankruptcy to try to make whole on its loan and not suffer a loss. The bankruptcy rules state that if you have a secured claim, you can file a claim to get your outstanding loan proceeds back from the assets in the borrower's bankruptcy, with the caveat that the lender cannot recover more than the value of the underlying collateral securing the loan. If the loan is not properly secured — in other words, the lender made one of the mistakes described earlier, such as improper information in the financing statement,



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improper jurisdiction, or financing statement lapse — the lender will lose its status as a secured creditor and will be an unsecured creditor. If a lender loses its status as a secured creditor, the lender will likely write off a large loss on its loan. In obtaining a UCCPlus Policy, all of the risk of search office errors and omissions, indexing problems and financing statement errors are shifted to the title company. As mentioned earlier, real estate lenders have been requiring title insurance for many years. As a result of the work and due diligence of the title industry, real estate lenders minimize their losses due to document defects and filing errors. UCCPlus provides the same service for personal property secured lenders.

Could a lender just obtain a legal opinion instead of a UCCPlus Policy? Many lenders require this opinion and also require the borrower to pay for the opinion.

Actually, many of the requests for the UCCPlus Policy come from the borrower’s counsel, who does not want to render an unqualified legal opinion! Since many of the standard legal opinions contain pages and pages of qualifications and exceptions, the coverage provided by a borrower’s legal opinion pales in comparison to the coverage provided in a UCCPlus Policy. A bold, glaring omission in a typical legal opinion is that priority of the lender’s lien is not even included in the opinion! Other typical provisions include the presumption — therefore NOT covering — that the financing statement is properly drafted and that the jurisdiction of the financing statement is correct.

Are there any other benefits for legal counsel in ordering a UCCPlus Policy?

Real estate attorneys are now using this product for the same reason that they rely on real estate title insurance to shift the risk to the title company for all documentation and lien priority issues relating to real property and to minimize exposure on their firm’s errors and omissions policy.

Who in the Fidelity family can issue a UCCPlus Policy?

All UCCPlus Policies for Fidelity National Title, Chicago Title and Commonwealth Land Title’s direct operations and agents are issued by the UCCPlus Division, with headquarters in Chicago. This division has the knowledge, personnel and expertise to handle all transactions — from simple to complex.



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For More Information

All UCCPlus Policies underwritten and issued by the Fidelity family are issued by the UCCPlus Division in Chicago. To obtain a copy of the UCCPlus Policy or to learn more about the policy, call or email any of these experienced underwriters:

- **Gary Zimmerman** gary.zimmerman@fnf.com 1-312-223-2441
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