

Commercial Existing Owner Policy
Guide to Making a Claim



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This Guide is designed to assist you with making a claim under Stewart Title Limited's Commercial Existing Owner Policy (the Policy) as well as navigating and understanding the conditions in the Policy relating to making a claim. This Guide is general in nature and is for information only. It should be read in conjunction with your Policy wording (including Schedule A, Schedule B and any applicable Endorsement(s)). Stewart Title Limited has issued other Guides relating to the Policy that you may find of assistance, these are listed at the end of this document. Please refer to the definition section on page 1 of the Policy for meaning of defined terms. Usually a defined term will be capitalised; for example, the terms Cover, Title and Actual Loss to name a few.

IMPORTANT INFORMATION ABOUT YOUR POLICY AND YOUR COVERAGE

The Policy provides cover for specific risks relating to your ownership and use of your property. The Policy will insure you against your Actual Loss and Authorised Expenses which result from:

- (a) the Covered Risks described in the Policy up to the Policy Amount; and
- (b) costs, legal fees and expenses that we have to pay in defending the Title to your Land under this Policy.

The Policy is not your "title" nor does it take the place of your certificate of title. Your title will be recorded on a certificate of title held at a land titles office. Your certificate of title gives you certain protection. This Policy is intended to provide you protection against losses arising from many of the additional risks not otherwise covered under the title registration system which exists in the jurisdiction where your land is located.

The Policy is NOT a home building insurance product, a home contents insurance product or a personal and domestic property insurance product.

The Policy does not provide cover in respect of the destruction of or damage to a building on the land.

The Policy therefore **does not provide** insurance for loss or damage as a result of the typical kinds of risks covered under such policies, including, but not limited to:

- (a) fire;
- (b) flood;
- (c) earthquakes;
- (d) storm;
- (e) land slip;
- (f) mine subsidence;
- (g) theft of possessions; or
- (h) mechanical breakdown

The Policy also does not provide insurance any loss of rental income or loss of business revenue. Except as provided in the Policy itself, you are insured in relation to risks which exist at the date that settlement of your purchase occurs and as such, you are not insured for any inability to use the land in the future for any particular desired use or purpose.

We recommend you consult a legal practitioner and consider other forms of insurance to offer protection against these kinds of issues. Except as provided in the Policy itself, you are insured in relation to risks which exist at the date that settlement of your purchase occurs and as such, you are not insured for any inability to use the land in the future for any particular desired use or purpose.

We recommend you consult a legal practitioner and consider other forms of insurance to offer protection against these kinds of issues.

Attention: This document is intended only to be a guide and is furnished for informational use only. It should not be construed as a commitment by Stewart Title. It does not form part of your Policy or insurance contract with us. Changes are periodically made to the information in this document; these changes will be incorporated in new editions of this publication and Stewart Title may make modifications to the claims process as described in this document at any time. Stewart Title assumes no responsibility or liability for any errors or inaccuracies that may appear in the content of this document. You must carefully review your actual Policy and any Endorsements, Schedules and other policy documentation for all the conditions, exclusions and limitations that will specifically limit or exclude cover under your Policy. Should you have any questions about the Policy, please visit our website at www.stewartau.com or contact us on 1 800 300 440.

PART 1. MAKING A CLAIM

This part of the Guide provides commentary on the sections of the Policy relating to making a claim.

Section 5.1: Claims are subject to this Policy

You can make a claim in respect of a Covered Risk at any time after the Policy Date. Any claim you make against us must be made under this Policy and is subject to its terms.

Please read your Policy carefully prior to making a claim as you are only entitled to make a claim in relation to a Covered Risk under the Policy and any claim you make will be subject to the terms set out in the Policy.

! If you are unsure about whether you may have a potential claim, please contact us on 1300 552 975 to speak to our Claims Department.

Section 5.2: You must give us notice of your claim

If you have a claim, you must give us notice in writing as soon as possible after you become aware of:

- (a) legal proceedings, whether commenced or threatened, in relation to your Title to the Land or your use of the Land;*
- (b) any information or claim which is or may be adverse to the Title to your Land or the use of your Land;*
- (c) any information or circumstance that might entitle you to make a claim under this Policy.*

All notices should be sent to:

*Claims Department
Stewart Title Limited
GPO Box 527
Sydney NSW 2001*

Please provide the policy number and the full street address of the Land. We may require you to complete a claim form.

Our obligation to you under this Policy may be reduced in part or in whole if you fail to promptly notify us and that failure adversely affects our ability to dispute or defend any claim or to timely commence any claim against other persons.

Claims must be notified in writing. You should notify us as soon as you become aware of information or circumstances that may lead to a claim under your Policy, or where legal proceedings have been commenced or threatened in relation to your Title to the Land or your use of the and.

! If you are unsure about whether you may have a potential claim please contact us on 1300 552 975 to speak to our Claims Department.

! Important Note: If you do not notify us as soon as you become aware of information or circumstances that may lead to a claim, then we may be able to reduce our obligation to you under the Policy, in whole or in part.

Section 5.3: Proving your loss

You must provide us with a written statement to prove your loss. This statement is to be given to us as soon as the circumstances permit, however, this must not be later than 90 days after you know the facts that will permit you to establish the amount of your loss. The following must be included in the statement:

- (a) *the Covered Risk which constitutes the basis of your loss;*
- (b) *the amount of your loss;*
- (c) *the method you used to compute that amount, or an assessment prepared by an expert; and*
- (d) *whether you are entitled to an Input Tax Credit for the premium paid and the extent of Input Tax Credit in relation to the period during which the event giving rise to the claim happened.*

If you are not in a position to calculate the amount of your loss when notifying us of your claim, you must inform us. Thereafter, you must notify us of the amount of your loss in a written statement promptly after your loss can be established. You must also explain how you calculated that amount or provide us with an assessment prepared by an expert.

We reserve the right to independently assess the amount of your loss, the method of calculation of your loss and any assessment prepared by an expert when you notify us of your claim.

As soon as possible after submitting a claim you should:

- provide a written statement which sets out the Covered Risk which constitutes the basis of your loss,
- the amount of your loss,
- your method of loss calculation, and whether you are entitled to an Input Tax Credit for the premium paid and the extent of Input Tax Credit in relation to the period during which the event giving rise to the claim happened.

Please let us know if you are not in a position to calculate your loss. We have the right to independently assess your loss.

Section 5.4: Your obligation to co-operate

After we receive your claim notice, you must:

- (a) *provide us with all records, in whatever medium maintained, including books, ledgers, cheques, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after the Policy Date which are in your possession or your Conveyancing Practitioner's possession which reasonably pertain to the loss or damage;*
- (b) *take all reasonable precautions to prevent any further damages or claims;*
- (c) *give us the opportunity to inspect your Land before any actions are taken to protect you from any covered risk;*
- (d) *assist us in all our endeavours to negotiate, defend or settle any claim under this Policy and to exercise for our benefit your legal right of recovery against any other party; and*
- (e) *answer questions relating to the claim under oath.*

After making a claim, you are obligated to co-operate with us and assist us in resolving your claim. We may require any records and information that you or your legal practitioner or conveyancer may have in relation to your claim, and we may further require your assistance in our endeavours of negotiating, defending or settling your claim.

At times, we may require you to provide a statutory declaration when answering questions under oath.

! Important Note: Failure to co-operate may have consequences in terms of our obligations to cover you in relation to your claim – you should read clause 5.5 of the Policy carefully.

Section 5.5: Our obligation to you could be reduced or cancelled

If you fail or refuse to meet the obligations described in Clause 5.4 (a) – (e) inclusive, and that failure affects our ability to assess and dispose of your claim, discharge our duty under the Policy or adversely affects our ability to dispute or defend any claim or to timely commence any claim against other persons, then our obligation to you could be reduced or cancelled.

You must comply with the obligations set out in clauses 5.4 (a) – (e) of the Policy.

! Important Note: If you refuse to carry out the required obligations, then we may be able to cancel or reduce our obligation to you under the Policy.

Section 5.6: Legal Action – your duty to co-operate

5.6.1: Defence of litigation

If we elect to defend a court case related to a claim, we have the right to select the lawyer to handle such defence (subject to your right to object for reasonable cause) and we will not be responsible for or pay the fees of any other lawyer. We will not be liable for any fees, costs or expenses incurred by you in the defence of those stated claims which allege matters not covered under this Policy, or for any loss or damage for liability voluntarily assumed by you in settling any claim or proceeding without our prior written consent.

If we deem legal proceedings to be appropriate in relation to your claim, then we will have the right to select the lawyer to handle the defence and we will not be responsible to pay the fees of any other lawyer (which we do not select). You have the right to object for reasonable cause.

! Important Note: You should contact us prior to incurring any legal fees as we are only liable for legal costs that we have agreed to pay under a valid claim. If you agree to make a payment in relation to your claim without our consent, then we are not responsible for paying that amount.

5.6.2: Right to prosecute any claim

We have the right, at our sole cost, to commence and prosecute any action or proceeding or to do anything else which in our opinion may be necessary or desirable to establish the estate or interest in the Land as indemnified, or to prevent or reduce your loss or damage. We may take any appropriate action under the terms of this Policy, whether or not we are liable hereunder, and by doing so we shall not be taken to have conceded any liability or waived any provision of this Policy. If we exercise our rights under this paragraph, we will do so diligently.

We have the right at our sole cost to commence legal proceedings or do anything else which we consider necessary to defend your title as insured under the Policy.

! Important Note: We may commence legal proceedings even where we have no obligation or liability under the Policy and any such action taken by us does not constitute any waiver or concession in relation to the terms of the Policy.

5.6.3: Final court determination

Whenever we have brought an action or filed a defence as required or permitted by the provisions of this Policy, we may pursue any litigation to a final determination by a court of competent Jurisdiction and we expressly reserve the right, in our sole discretion, to appeal against any judgment or order.

If we have pursued litigation in accordance with our rights under the Policy, we have the right to pursue that litigation to a final determination and we reserve the right, at our sole discretion, to appeal any judgment or order.

! Important Note: You are not entitled to require us to appeal any judgment or order. The decision to appeal any judgment or order is solely at our discretion.

5.6.4: Your co-operation

In all cases where this Policy permits or requires us to prosecute or meet the cost of any defence of any action or proceeding, you give us the right to participate in such action, proceeding or appeal and allow us, at our sole option, to use your name for this purpose. If we request, you must, at our expense, give us all reasonable assistance and help us in:

- (a) securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding or effecting a settlement; and*
- (b) any other lawful act which in our opinion may be necessary or desirable to establish Title to the estate or interest in the Land.*

After making a claim, you are obligated to co-operate with us and assist us in resolving your claim. We may require any records and information that you or your conveyancer may have in relation to your claim, and we may further require your assistance in our endeavours of negotiating, defending or settling your claim.

! Important Note: At times, we may require you to provide a statutory declaration when answering questions under oath.

Failure to co-operate may have consequences in terms of our obligations to cover you in relation to your claim – you should read clause 5.5 of the Policy carefully.

5.6.5: Mitigation

Following an event which may result in a claim, you must take all reasonable precautions to prevent further loss or damages or further claims.

You have an obligation under the Policy to take all reasonable precautions to prevent further loss or damage or further claims following an event which may result in a claim, regardless of whether you have lodged a claim with us or not.

! Important Note: If you fail to take reasonable precautions and this failure leads to additional loss or damage or leads to further claims, then we may be entitled to exclude that additional loss or damage or those further claims from cover.

Section 6: Our choices when you notify us of a claim

If you make a claim under this Policy for which we are liable can do one or more of the following:

- (a) pay the claim against the Title to your Land;*
- (b) negotiate a settlement;*
- (c) prosecute or defend a court case related to the claim;*
- (d) pay you the amount required by the Policy;*
- (e) take other action that will protect you;*
- (f) pay the Policy Amount and costs, legal fees and expenses incurred up to the time of payment which we are obligated to pay. Upon payment of the Policy Amount the Policy will be cancelled.*

The Policy allows us to pursue various options at our complete discretion, in respect of resolving a claim, depending on the circumstances of the claim and the nature of the loss or damage which you are claiming.

(g) for a claim under Clause 2.1(j), we have the following options:

- i. Subject to any applicable Exclusions or Exceptions from Cover, where the cost of removing, upgrading, rectifying or rebuilding the structure or part of the structure which does not comply with or was built or modified without obtaining building or development approvals from the relevant Local Authority is less than \$25,000, we will pay the costs of removing, upgrading, rectifying or rebuilding the structure or part of the structure as an Authorised Expense;

For claims made under clause 2.1 (j) of the Policy (See **Section 2.1(j) - Risks of Enforcement Orders affecting structures on the Land**) we will pay the costs of removing, upgrading, rectifying or rebuilding the structure (or part of the structure) as an Authorised Expense where those costs are **less than \$25,000**.

! Important Note: Please read the commentary on clause 6 (g) (ii) below for information on our rights where the costs of removing, upgrading, rectifying or rebuilding the structure (or part of the structure) are **greater than \$25,000**.

- ii. Subject to any applicable Exclusions or Exceptions from Cover and subject to Clause 7.1 of this Policy, where the cost of removing, upgrading, rectifying or rebuilding the structure or part of the structure which does not comply with or was built or modified without obtaining building or development approvals from the relevant Local Authority is greater than \$25,000, we may:
 1. pay the costs of upgrading, rectifying or rebuilding the structure or part of the structure as an Authorised Expense; or
 2. end the coverage for the claim by removing or paying the costs of removing the structure or part of the structure which does not comply with or was built or modified without obtaining building or development approvals from the relevant Local Authority as an Authorised Expense and paying you your Actual Loss as determined by an appraisal conducted by a member of the Australian Property Institute together with any Authorised Expenses incurred up to that time which we are obligated to pay.
 3. The appraiser will be selected and instructed by us. We will pay the appraiser's fees and expenses.
 4. In the event that a dispute arises between you and us regarding the value of the Actual Loss, the value of the Actual Loss will be finally determined by a further appraisal conducted by a member of the Australian Property Institute. You will select the further appraiser from a list of at least (2) two appraisers to be provided by us. The further appraiser will be instructed by us. The further appraisers will not have been previously instructed by us in relation to your claim. We will pay the further appraiser's fees and expenses. Upon payment to you of the finally determined Actual Loss and any applicable Authorised Expenses, our liability and obligations to you in relation to the claim, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

For claims made under clause 2.1 (j) of the Policy (See **Section 2.1(j)- Risks of Enforcement Orders affecting structures on the Land**) we have two options where the costs of removing, upgrading, rectifying or rebuilding the structure (or part of the structure) **are greater than \$25,000**.

We may pay the costs of removing, upgrading, rectifying or rebuilding the structure (or part of the structure) as an Authorised Expense or we may end coverage for the claim by removing the structure as an Authorised Expense and then paying you your "Actual Loss" as defined in the Policy, together with any other Authorised Expenses for which we are liable to pay.

In summary, this means we can choose whether we pay for the offending structure to be fixed or removed, or whether we pay for its removal and then compensate you for the amount that your property has lost in value as a result.

PART 2. COMPLAINTS AND DISPUTE RESOLUTION PROCEDURES

Stewart Title is committed to providing you with the utmost in customer service. However, should you ever have a concern about the service you receive we encourage you to tell us about it. In most cases, your concern can be resolved simply by discussing it with one of our Representatives at the office where you conduct business with us.

In the event that our Representative is unable to resolve your concern to your satisfaction, follow the process below so that we can ensure your concern is attended to in a timely manner.

Please contact our Complaint Officer by:

Telephone	(02) 9081 6200 Toll Free : 1800 300 440
Fax	Toll Free : 1300 898 175
E-mail	complaintsau@stewart.com
Mail	Complaint Officer Stewart Title Limited GPO BOX 527 Sydney NSW 2001

When you contact us, we will require:

1. Your Name; Street Address; Email Address and Phone Number with area codes.
2. Where you prefer to be reached.
3. The name of the person with whom you spoke.
4. Particulars relating to the matter.

The Complaint Officer will follow the process outlined below:

- A) The Complaint Officer, will acknowledge your complaint by letter or telephone call within 5 business days of receiving the complaint and in some cases, may need to direct your concern to the appropriate Manager for investigation and response. The Complaint Officer's most important task is to review the details of any complaint objectively and impartially.
- B) Within 45 calendar days of receiving your enquiry, we will by letter or phone call, advise you on the resolution of your complaint and the action Stewart Title has taken, or in complex cases, the status of your complaint and an expected time of resolution. If we are unable to provide a final response within 45 calendar days, we will notify you about the reason for the delay as well as your right to refer the complaint to an external dispute resolution scheme.
- C) Stewart Title will send you a final notice on the resolution of your complaint or the plan implemented to resolve your complaint.

Stewart Title is committed to making the best efforts to resolve your complaint to your satisfaction. However, should you remain unsatisfied with the Company's final position, you may contact the Australian Financial Complaints Authority (AFCA).

Australian Financial Complaints Authority (AFCA)

If an issue has not been resolved to your satisfaction, you can lodge a complaint with AFCA. AFCA provides fair and independent financial services complaint resolution that is free to consumers.

Website: www.afca.org.au

Email: info@afca.org.au

Telephone: 1800 931 678 (free call)

In writing to: Australian Financial Complaints Authority, GPO Box 3, Melbourne VIC 3001

PART 3. FOR FURTHER INFORMATION

For further information about the Policy or about this Guide, please contact us on 1800 300 440 or visit our website www.stewartau.com.

Stewart Title Limited is wholly owned by Stewart Title Guaranty Company, the primary underwriter for Stewart Information Services Corporation. Stewart Title Limited is authorised to operate in all Australian states and territories and is regulated by the Australian Prudential Regulation Authority (APRA).

Other Guides:

- The Guide to Covered Risks under the Commercial Existing Owner Policy
- The Guide to Exclusions under the Commercial Existing Owner Policy