

# COMMERCIAL PURCHASER POLICY

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Sample

## IMPORTANT INFORMATION ABOUT YOUR POLICY AND YOUR COVERAGE

Stewart Title Limited's Commercial Purchaser Policy (the Policy) insures your Title to your Land against Covered Risks which may cause you loss or affect your ownership of your property.

Please read this Policy carefully to ensure that it meets your requirements. The Policy will insure you against your Actual Loss and Authorised Expenses which result from:

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

This Policy contains the following sections:

- Section 1 – Your Cover
- Section 2 – Covered Risks
- Section 3 – Exclusions
- Section 4 – Who is Covered and For How Long
- Section 5 – How to make a Claim
- Section 6 – Our Choices When You Notify Us of a Claim
- Section 7 – Extent of our Liability
- Section 8 – Transfer of your rights – Subrogation
- Section 9 – General Policy Provisions
- Section 10 - Cancellation

To be valid, this Policy must include both a Schedule A and a Schedule B. The Schedule A contains information about your policy, premiums payable and your Land. The Schedule B contains information about exceptions and affirmative cover which specifically apply to your Land.

The Policy may also contain an Endorsement or Endorsements that may change some of our standard Cover or provide additional Cover not provided in our standard Policy.

Please take the time to read the whole Policy and carefully review the Schedules and any Endorsement(s). As you read through the Policy please remember that any provisions in one section of the Policy may be affected by comments in another section, the Schedules or any Endorsement(s).

Your Cover under this Policy is subject to its provisions and is limited by the Exclusions and by any Exceptions detailed in Schedule B or any Endorsement. Your insurance, as described in the Covered Risks, is effective on the Policy Date shown in Schedule A.

**Please note that this Policy does not provide Cover in respect of the destruction of or damage to a building on the Land and is not a home building insurance product, a home contents insurance product or a personal and domestic property insurance product.**

## INFORMATION ABOUT STEWART TITLE LIMITED

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

Please visit our website [www.stewartau.com](http://www.stewartau.com) to find out more about Stewart Title Limited.

## NOTICE UNDER THE INSURANCE CONTRACTS ACT OF 1984

Before you enter into a contract of general insurance with an insurer, you have a duty under the Insurance Contracts Act 1984 to disclose to the insurer every matter that you know, or could reasonably be expected to know, which is relevant to the decision of the insurer whether to accept the risk of the insurance and, if so, on what terms.

You have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance.

Your duty, however, does not require the disclosure of a matter:

- that diminishes the risk to be undertaken by the insurer;
- that is of common knowledge;
- that your insurer knows or, in the ordinary course of their business as an insurer, ought to know; and
- as to which compliance with your duty is waived by the insurer.

## EFFECT OF NON-DISCLOSURE

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce their liability under the contract of insurance in respect of a claim or may cancel the contract.

If your non-disclosure is fraudulent, the insurer may also have the option of voiding the contract from its beginning.

## DUTY OF DISCLOSURE AND YOUR CONVEYANCING PRACTITIONER

It is your responsibility, not your Conveyancing Practitioner's responsibility, to comply with your duty of disclosure. The fact that your Conveyancing Practitioner is aware of a matter does not, of itself, mean that Stewart Title is aware of that matter.

Please note that your Conveyancing Practitioner:

- is **not** the agent of Stewart Title.
- is **not responsible** for compliance with your duty of disclosure.
- **will not disclose** matters to Stewart Title without your specific instructions to do so.
- **is under no obligation to Stewart Title** to disclose to Stewart Title any information which may be relevant to Stewart Title's decision to provide insurance to you and if so on what terms.
- **is under no obligation to Stewart Title** to disclose to Stewart Title any matters which you are required to disclose to Stewart Title in accordance with your obligations under the *Insurance Contracts Act 1984*.

## PRIVACY STATEMENT

We are committed to handling your personal information in accordance with the Privacy Act. We recognise that any personal information we collect, use and disclose about you may only be collected, used and disclosed for the primary and related purposes for which it was collected and where you would reasonably expect us to.

We only collect information from you that is necessary for us to provide you with our services, including, but not limited to, assessing your request for title insurance, assessing any claim you may make under that policy and facilitating the payment or refund of premiums (if applicable).

Personal information is kept in a combination of paper and electronic format. Paper records, including general business records, are stored in our Australian head office. Access to personal information is restricted to Stewart employees and third party providers who require access for business purposes, such as:

- property valuers
- legal practitioners
- licensed conveyancers
- land surveyors
- building consultants
- other external and independent professional advisors who may be engaged by Stewart in the course of investigating, assessing and settling a claim

We transfer personal information (which may include electronic formats such as emails) for administrative, data back-up, processing (including claims administration) and reinsurance purposes to our head office, Stewart Title Limited United Kingdom, our affiliate, Stewart Title Guaranty Company Canadian Division, and/or our international head office, Stewart Title Guaranty, USA (“Other Jurisdiction Offices”).

Personal information transferred outside of Australia may be accessible to regulatory authorities and enforcement agencies in accordance with the laws of the respective countries in the Other Jurisdiction Offices.

We take all reasonable steps to satisfy ourselves that our Other Jurisdiction Offices and our service providers are committed to complying with this Privacy Policy.

From time to time, certain information about your property, such as information about a known title defect or other adverse circumstances/issues affecting your property (“Known Risks”), may be disclosed to Stewart in the course of Stewart providing you with our services. Disclosure of Known Risks may result in Stewart issuing an exclusion, exception or condition on the cover it would normally provide to you. Such exclusions, exceptions and conditions are normally detailed in the Schedule B which forms part of your title insurance policy.

In the future, a prospective purchaser of your property may request similar services from Stewart. In those circumstances, Stewart may use the information relating to the Known Risks for the purposes of assessing any request for our services by a purchaser of your property. Stewart may for this purpose:

- disclose the existence of the Known Risks to the purchaser and/or their legal or conveyancing representatives
- apply the same exclusion, exception or condition on cover in respect of the Known Risks to any subsequent policy which is issued to a purchaser of your property by Stewart

By visiting our website, applying for any of our services, making a claim or providing us with your personal information, you consent to your personal information being collected, held, used and disclosed as set out in our Privacy Policy.

For a copy of our complete Privacy Policy (which may be amended from time to time), please visit our website at [www.stewartau.com](http://www.stewartau.com) or contact our Privacy Officer at [PrivacyAU@stewart.com](mailto:PrivacyAU@stewart.com)

## **CUSTOMER SERVICE – OUR PROMISE**

If you should have any questions about our Policy and its Cover and Exclusions and Exceptions, let us know so we can help you. Please contact us on 1800 300 440. You will be referred to a manager in the appropriate department who will help you.

If the manager is unable to help you, the matter will be referred to the General Manager who will review your questions with you and the manager.

## **COMPLAINTS & DISPUTE RESOLUTION**

If you have any concerns or complaints about:

- our service or our staff;
- a claim (or the progress of a claim); or
- any other issues relating to your insurance cover;

Please contact us on 1800 300 440. You will be referred to a complaints officer who will assist you with your complaint. Your complaint will be handled promptly and fairly in accordance with our complaints handling & internal dispute procedures which are available on our website [www.stewartau.com](http://www.stewartau.com).

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

Website: [www.afca.org.au](http://www.afca.org.au)

Email: [info@afca.org.au](mailto:info@afca.org.au)

Telephone: 1800 931 678 (free call)

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

## DEFINED MEANINGS – WHAT WE MEAN

In this Policy, the following words have the meaning described below, unless the context requires a different meaning.

**Access** means a legal right of both pedestrian and vehicular ingress and egress to the Land and not the physical condition of the access, or the adequacy or sufficiency of access.

**Actual Loss** means the difference between the value of your Land unaffected by the Covered Risk that is the substance of a claim and the value of the Land affected by the Covered Risk that is the substance of a claim. Any determination of Actual Loss which is required under this Policy shall not take into account any real or perceived loss of opportunity or loss of expectation of future development of the Land.

**Affirmative Cover** means a statement outlined in Schedule B (where applicable) that modifies or extends the Cover provided by this Policy.

**Authorised Expense(s)** means any costs, expenses, and Legal Fees incurred as a result of a claim payable under this Policy and pre-approved in writing by us and which are incurred prior to our payment or resolution of the claim reduced by any Input Tax Credit to which you are entitled in respect of such costs, expenses and Legal Fees.

**Certificate of Title** means an instrument evidencing an interest in the Land, executed by the Registrar of Titles.

**Conveyancing Practitioner** means a person, usually a solicitor, legal practitioner or conveyancer, who acts for you in relation to your purchase of the Land.

**Cover** means the protection provided by this Policy.

**Covered Risks** mean the risks we protect you against as specified in clause 2 of this Policy.

**Endorsement** means a document attached to this Policy (where applicable) that defines the limits of Cover for specific types of risk identified in the Endorsement.

**Enforcement Order** means an order, notice or other form of enforceable directive issued in writing by a Local Authority under the provisions of Laws in the Jurisdiction with respect to building, planning, development or zoning compliance.

**Exception(s)** means the matters and circumstances which are expressly excluded from Cover under this Policy as detailed in Schedule B and for which there is no entitlement for you to make a claim, unless an Affirmative Cover applies.

**Exclusion(s)** means the matters and circumstances which are expressly excluded from Cover under this Policy and for which there is no entitlement for you to make a claim, unless an Affirmative Cover applies. These excluded matters and circumstances are detailed in Clause 3 of this Policy.

**Final Search** means a search of the Title of the Land in the land title registry in the Jurisdiction conducted by your Conveyancing Practitioner on the Policy Date.

**Input tax credit** means an input tax credit available under A New Tax System (Goods and Services Tax) Act 1999 or similar or successor legislation.

**Insured** means the insured named in Schedule A and sometimes referred to as “you” in this Policy.

**Jurisdiction** means the state or territory in which the Land is located.

**Land** means the land or strata unit outlined in Schedule A, including improvements which, by law, are taken to be part of the land, and does not include any land beyond the land specified in Schedule A, nor any right or interest in abutting waterways.

**Laws** means all federal, state, territory or local codes, laws, ordinances, orders, proclamations and regulations which affect real property in the Jurisdiction.

**Legal Fees** means any legal fees and related expenses incurred in defense of any matter insured against by this Policy but only to the extent provided in this Policy.

**Local Authority** means any local government, city, municipal or shire council or consent authority or other statutory body which has jurisdiction where the Land is located with respect to matters of building, development and zoning compliance, or with respect to the collection of Council rates, levies and taxes.

**Local Authority Search** means any search of local government, city, municipal or shire council records or records from any other statutory body pertaining to your Land that a Conveyancing Practitioner would normally conduct in a conveyance transaction in the Jurisdiction.

**Policy** means this document, the Policy Schedules (Schedule A and Schedule B) and any written Endorsement(s) attached to this document.

**Policy Amount** means the policy amount specified in Schedule A, as may be increased or decreased by Endorsement to this Policy, or decreased by Section 7.3 of this Policy.

**Policy Date** means the date when the settlement of your purchase occurs, as outlined in Schedule A.

**Public Records** means records established and maintained by the land titles registry for the registration and/or recording of interests in Title in the Jurisdiction that give notice of matters affecting your Title.

**Registration** means making an entry in the land titles registry in the Jurisdiction for the ownership of Land.

**Registration Period** means the period beginning with the time of the Final Search and ending with the registration of your interest in the Land in the land title registry.

**Rural Zone** means any Land that is classified as rural and/or agricultural by the Local Authority and any Land where the stated zoning objectives are to encourage and/or provide for the use of the Land as primary production or for agricultural activities or to maintain the rural landscape character of the Land.

**Stewart Title Limited, “we”, “us” or “our”** means Stewart Title Limited, ARBN 101 720 101 (United Kingdom).

**Title** means the registered estate or interest in the Land as detailed in Schedule A which is disclosed by the Public Records. Title is not affected by matters relating only to the physical/structural conditions and/or physical/structural defects of any improvement(s) on the Land, unless notice of those matters is registered in the Public Records as of the Policy Date.

**Unmarketable** means another person has the legal right and refuses to complete a contract for the purchase of your interest in the Land, has the legal right and does not comply with their obligations under a lease, or will not grant you a mortgage.

**Unmarketability of Title** means Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease or lend if

there is a contractual condition requiring the delivery of marketable title. Unmarketability of your Title is not created by matters relating only to physical/structural conditions and/or physical/structural defects of the Land, including the improvement(s) located thereon.

“You”, “you” or “Your”, “your” means the person(s) insured under this Policy as named in Schedule A. It also refers to anyone identified in clause 4.1

## INTERPRETATION – WHAT WE MEAN

In this document unless the context otherwise requires:

- a) clause and sub clause headings are for reference purposes only and not intended to be used in interpreting the clause;
- b) all words take their common meaning. Those words are explained above, unless defined somewhere else in this Policy;
- c) the singular includes the plural and vice versa;
- d) words denoting any gender include all genders;
- e) reference to a person includes any other entity recognised by law and vice versa;
- f) an agreement, representation or warranty made by more than one person binds them jointly and severally;
- g) an agreement, representation or warranty made by more than one person is for the benefit of them jointly and severally; and
- h) reference to an item is a reference to an item in a Schedule to this Policy.

## 1. YOUR COVER

Subject to the payment of the Policy premium and abiding by the terms and conditions outlined below and relying upon the information disclosed to us, we will provide you with the following Cover in relation to the Covered Risks:

### 1.1 Actual Loss

We insure you against actual loss sustained or incurred in relation to the Covered Risks up to the Policy Amount. Any assessment of Actual Loss which is required under Section 2 of the Policy will be determined as at the Policy Date.

### 1.2 Authorised Expenses

We insure you in respect of Authorised Expenses which are incurred by you or which we agree to pay or are required to pay under the Policy as a result of a Covered Risk up to the Policy Amount.

For the avoidance of doubt, the maximum aggregate amount of Cover described in clauses 1.1 and 1.2 of this Policy shall not exceed the Policy Amount.

### 1.3 Our duty to defend your Title

We will defend any challenge to your Title, including that part of any proceedings or court case, which is based on a Covered Risk under this Policy. We will also pay necessary costs, legal fees and expenses incurred in that defence. You must contact us prior to incurring these costs, fees or expenses. We may decide not to defend your Title, but may alternatively exercise one or more of the options outlined in clause 6. We may also end our duty to defend your Title as insured by exercising any of the options in clause 6.

## 2. COVERED RISKS

### 2.1 Risks occurring before the Policy Date

We will provide you with Cover against all of the following Covered Risks if the circumstances creating or giving rise to these risks existed or occurred before the Policy Date. Any assessment of Actual Loss which is required under this Section 2 will be determined as at the Policy Date.

#### Risks affecting your ownership of the Land

- a) you are not the owner of the estate or interest in the Land detailed in Schedule A;
- b) someone other than you owns an estate or interest in the Title to the Land;



- c) someone else claims to have rights affecting your Title because of forgery, fraud, impersonation, duress, mental incompetence or incapacity;
- d) a document is not properly signed, sealed or delivered, or is not properly recorded or registered in the Public Records resulting in a defect in the Title to the Land;
- e) unmarketability of your Title;
- f) there is no legal right of Access to and from the Land;
- g) there are unpaid council rates, water rates, levies, land taxes or outstanding accounts due to a Local Authority which may result in an encumbrance, charge, lien or writ on the Title to the Land (excluding any land transfer duty or land stamp duty which is payable by you), unless you agreed to pay or were otherwise aware of the existence of the unpaid rates, levies, taxes or accounts;
- h) someone else claims to have an easement, an access order, an access right, or a right of way that affects the Title to the Land, other than those registered or otherwise recorded on Title on the Policy Date.

**Risks regarding boundaries and encroachments**

- i) Any defect or adverse matter affecting the Title to your Land which a current survey report would have disclosed on the Policy Date, including but not limited to:
  - i. non-compliance with an easement, restriction, right of way or covenant registered or otherwise recorded on the title of the Land;
  - ii. structures on the Land (other than boundary walls or boundary fences) which encroach onto your neighbour's land or vice versa or encroach onto an easement or right of way on your Land.

**Risks affecting your use of the Land**

- j) your Land is Unmarketable, or you are prevented by a Local Authority from using the Land, or you are forced by a Local Authority to rectify or remove all or part of the existing structure(s) on the Land (other than boundary walls or boundary fences) because:
  - i. the present use contravenes existing planning or zoning Laws;

**Risks of Enforcement Orders affecting structures on the Land**

- k) You are issued with an Enforcement Order by a Local Authority which states that a structure (or structures) on the Land, including any part thereof, does not comply with, or was built or modified without obtaining, building or development approvals which were required by the Local Authority at the time the relevant structure(s) were built and as a result of the Enforcement Order:
  - i. you are required to rectify or remove all or part of the existing structure(s) on the Land (other than boundary walls or boundary fences); or
  - ii. you are prevented by a Local Authority from using the Land; or
  - iii. the Land is Unmarketable.

For the avoidance of doubt, the Cover under clauses 2.1 (j) and 2.1 (k) does not apply to boundary walls or boundary fences or to the cost of any rectification, removal or replacement relating to the condition and repair of any structure(s) on the Land, or the infestation or dilapidation of any structure(s) on the Land, including any failure of any electrical or plumbing fittings/items such as hot water systems, air conditioning systems, electric doors, internal plumbing and electrical wiring.

**2.2 Registration Period**

During the Registration Period, we will provide you with Cover by reason of someone else lodging a dealing which prevents your interest in the Land from being registered or recorded (including but not limited to a writ or a caveat), where:

- i. you, in good faith, have accepted a transfer of the Land, and have paid or authorised the payment of the premium and have relied upon a written assurance of the issuance of the Policy; and
- ii. except where you have delivered the title to your lender, your interest in the Title is lodged for registration at the land title registry in the Jurisdiction within 5 business days after the Policy Date.



### 3. EXCLUSIONS – RISKS WE DO NOT COVER

The following risks or circumstances relating to the Land are specifically excluded from Cover. We do not provide any Cover for any loss or damage of the type(s) listed in clauses below or caused by any matter(s) listed in Schedule B, except to the extent that specific Affirmative Cover is given. We will not pay any loss for these matters. Also, we are not obliged to pay costs, legal fees or expenses for these matters.

#### 3.1 Risks:

- a) that you at any time create, allow, assume or agree to;
- b) that are known to you, but not us;
- c) that are known to your predecessors in Title, but not to us, unless you acquired your interest in the Land for value without notice of the risk;
- d) that cause you no loss or damage;
- e) that occur, come into existence or appear in Public Records after the Policy Date, other than those risks insured under Clause 2.2;
- f) that are disclosed in the agreement of purchase and sale/purchase contract and/or any written report/documentation obtained by the Insured prior to the Policy Date relating to the physical condition of the improvements on the Land;
- g) that arise because you did not pay full value for the Land;
- h) that are noted on Title to the Land on the Policy Date, including: covenants, conditions, restrictions, rights, stipulations, mortgages, caveats, easements or other interest.

#### 3.2 Laws, contamination, claims and interests against the Land

- a) the existence of laws which restrict, regulate, prohibit or relate to use or ownership of the Land or the violation or breach of those laws;
- b) matters which are registered or otherwise recorded on Title after the Policy Date;
- c) environmental contaminants or hazardous wastes on or under the Land or covenants, conditions and restrictions for environmental protection or the effect of any laws regulating those contaminants or wastes;
- d) the exercise of any governmental power, including forfeiture of Title, except to the extent any notice of the exercise of such power has been registered in the Public Records as of the Policy Date, but only to the extent of the enforcement referred to in that notice;
- e) the forfeiture of the Title as a result of any governmental action, or the resumption of the Land;
- f) native title claims in relation to the Land;
- g) rights and interests, including riparian rights, reserved under a crown grant or crown lease or the law authorising the issue of the crown grant or crown lease;
- h) matters which are not recorded on Title on the Policy Date, but would be discoverable by an inspection of the Land or by enquiries of persons in occupation of the Land;
- i) rights and interests of any person in occupation of the Land;
- j) public or private utility undertakers or a telecommunications utility company having a statutory right to carry out works affecting the Land;
- k) any claim which arises out of the transaction vesting in the Insured the estate or interest insured by this Policy by reason of the operation of bankruptcy, insolvency, or other creditors' rights laws, that deem the transaction fraudulent or preferential, or subordinate to the interest of another person or entity;
- l) any loss or damage arising from non-compliance with laws, regulations or orders relating to fire safety.

#### 3.3 Workmanship, Damage, Infestation and Dilapidation

- a) any claims, loss or damage relating to the condition and repair of any structures erected on the Land, or the infestation or dilapidation of those structure(s);
- b) any claims, loss or damage relating to the condition and repair (including any failure) of any electrical or plumbing fittings/items such as hot water systems, air conditioning systems, electric doors, internal plumbing and electrical wiring;
- c) any claims, loss or damage relating to the failure of any structure(s) on the Land, including the external and internal components thereof, to comply with applicable building codes and building standards, including any claims, loss or damage relating to any Enforcement Order issued by a Local Authority which states that a structure (or structures) on the Land, including the external and internal components thereof, fail to comply with applicable building codes and building standards, however this exclusion does not apply if:
  - i. notice of the non-compliance with applicable building codes and building standards appeared in Public Records as at the Policy Date or if the existence of the non-compliance with building codes and building

standards would have been disclosed by a Local Authority Search of the Land as at the Policy Date provided that you were not aware of non-compliance as at the Policy Date; or,

- ii. the Enforcement Order issued by the Local Authority in relation to the structure(s) also states that the structure(s), including any part thereof, which are the subject of the Enforcement Order, does not comply with, or was built or modified without obtaining, the building or development approvals which were required by the relevant Local Authority at the time of construction of the relevant structure(s).

\*Note: Sub-clauses 3.3(c)(i) and 3.3(c)(ii) only affect the operation of sub-clause 3.3(c) and do not affect the operation of any other exclusion in this Policy.

- d) any claims, loss or damage arising from any non-compliant cladding of the building which forms part of your Land, including but not limited to:
  - i. any liability arising from any periodic or special levies which are struck prior to or after the Policy Date that relate to non-compliant cladding of the building, and
  - ii. any enforcement action issued by a Local Authority requiring you to rectify, alter or replace the non-compliant cladding of the building, because the cladding does not comply with building or developments approvals from the relevant Local Authority which were granted at the time the building was constructed.

### 3.4 Farming/Agricultural Use of Land in Rural Zone

- a) for Land within a Rural Zone that is used for farming or agriculture, cover under Clauses 2.1(j) and 2.1(k) extends only to the primary residence erected on the Land, including sheds, carports and garages used for residential purposes, and any swimming pools erected on the Land and not to any other buildings or structures erected on the Land.

### 3.5 Land Area Over 50 Acres

- a) the Cover described in Clause 2.1 (i) will not apply to Land where the land area exceeds 50 acres.

### 3.6 Exception(s) specifically affecting the Land

- a) exceptions listed in Schedule B of the Policy unless an Affirmative Cover applies;
- b) lack of a right to any land outside the area specifically described and referred to in Schedule A, or in streets, lanes, or waterways that touch your Land – this does not however limit the Cover described in Clauses 2.1(f) and 2.1(i)(ii).

### 3.7 Initiation of enforcement action

- a) the Cover provided in Clauses 2.1 (i) (i) and (ii), 2.1 (j) and 2.1 (k) will not apply in circumstances where the Insured, or a party acting on behalf of the Insured, by conduct or communication, including communication which is verbal or partly verbal or written or partly written, takes action which initiates, instigates and/or encourages any enforcement action by or on behalf of a Local Authority and/or by or on behalf of an adjoining property owner in relation to the Land, including, but not limited to, inviting a Local Authority and/or an adjoining property owner to inspect the Land (including by physical inspection and/or by inspection of plans and records) for the purposes of a Local Authority and/or an adjoining property owner:
  - i. assessing whether any structure on the Land does not comply with, or was built or modified without obtaining building and development approvals required by the relevant Local Authority; and/or
  - ii. assessing whether any structure on the Land encroaches on any other land.; and/or
  - iii. assessing whether in respect of the Land there is any non-compliance with any easement, restriction, right of way or covenant.

## 4. WHO IS COVERED AND FOR HOW LONG

### 4.1 Who is covered?

This Policy insures you, the Insured named in Schedule A. The term “Insured” also includes:

- a) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
- b) successors to an Insured by change of name, dissolution, amalgamation, plan of arrangement, merger, consolidation, distribution, or reorganisation;
- c) successors to an Insured by its conversion to another kind of entity;
- d) partners in the Insured or any entity in which any partner(s) is a participant, joint venturer or shareholder if such transfer is without valuable consideration;

- e) shareholders of a corporation which is a partner(s) in the Insured in the event that such partners distribute the Land to such shareholders;
- f) a grantee of an Insured under a transfer/deed delivered without payment of actual valuable consideration conveying the Title:
  - i. if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured;
  - ii. if the grantee wholly owns the named Insured;
  - iii. if the grantee is wholly-owned by an affiliated entity of the named Insured, provided the affiliated entity and the named Insured are both wholly-owned by the same person or entity; or
  - iv. if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.

with regard to (a), (b), (c), (d), (e), and (f) reserving, however, all rights and defences as to any successor that we would have had against any predecessor Insured.

#### 4.2 Length of cover

The Policy protects you while:

- a) you have or a person described in clause 4.1 has an estate or interest in the Land;
- b) there has been no Deed of Release in respect of the Policy entered into between us and you;
- c) you hold a debt secured by a mortgage given to you by a person who purchases Title to the Land from you; or
- d) you have a liability as a result of warranties made by you to a subsequent owner.

#### 4.3 No policy cover on sale or assignment

This Policy cannot be assigned. The Policy will not protect anyone who purchases the Land from you.

### 5. HOW TO MAKE A CLAIM

#### 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.

#### 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.

#### 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.

#### 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.

#### 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.

#### 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.

##### 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.

##### 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.

##### 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.

### 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.

## 6. OUR CHOICES WHEN YOU NOTIFY US OF A CLAIM

If you make a claim under this Policy for which we are liable, we 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.
- g) for a claim under Clause 2.1 (k), 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;
  - 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.

## 7. EXTENT OF OUR LIABILITY

### 7.1 Our liability for Claims

Our total liability under this Policy (excluding Legal Fees) will be the lesser of:

- i. your Actual Loss; or
- ii. the Policy Amount when the claim is made; or
- iii. \$160,000 if the claim is made under Covered Title Risk 2.1(k) of the Policy.

If we are notified of a liability for a claim against your Title, and we remove it within a reasonable period of time, we will have no further liability for the claim.

### 7.2 Liability for Legal Fees

We will pay all Legal Fees incurred in the defence or prosecution of any legal proceeding affecting Title to the Land as insured. These payments will be in addition to any payments owing under clause 7.1.



### **7.3 Reduction of Cover**

The amount of Cover payable by us under this Policy will be reduced or terminated by any or all of the following:

- a) all payments made under this Policy. However, the Policy Amount will not be reduced for Legal Fees;
- b) any amount we pay to the holder of any mortgage shown in this Policy or a later mortgage given by you;
- c) if you do anything to affect any right of recovery you may have, we can subtract from our liability the amount by which you reduced the value of that right.

### **7.4 Limitations on our liability**

We are not liable to indemnify you:

- a) if we establish good and marketable Title to the Land, remove the alleged defect, lien, charge or encumbrance or cure any other matter or thing giving rise to the claim under this Policy in a reasonably diligent manner by any method including litigation;
- b) if we decide to undertake proceedings to determine matters relating to the Covered Title Risks insured under this Policy, until litigation, including any appeals, in relation to a claim conducted by us (or you with our authorisation) has been finally determined by a court of competent jurisdiction with a result which is adverse to the Title, as insured or until we abandon that litigation; or
- c) for liability voluntarily assumed by you in negotiating or settling any claim or litigation without our prior written consent.

### **7.5 Payment of Loss**

We shall not be obliged to make any payment under this Policy, unless the Policy is provided to us for endorsement. If the Policy has been lost or destroyed, you must give us proof of its loss or destruction to our reasonable satisfaction. When the extent of our liability under this Policy has been fully determined, we will pay that amount within 30 days.

## **8. TRANSFER OF YOUR RIGHTS - SUBROGATION**

When we settle a claim, we have all the rights you had against any person or property related to the claim. You must transfer these rights to us when we ask, and you must not do anything to affect these rights. You must let us use your name in enforcing these rights.

## **9. GENERAL POLICY PROVISIONS**

- a) If any provision of this Policy is determined to be invalid or unenforceable under any Law or by any court of competent jurisdiction, the Policy will be deemed to omit that provision and all other provisions will remain in full force and effect.
- b) Any variation or Endorsement to this Policy will have no effect unless made in writing by us.
- c) Each Endorsement to this Policy issued at any time is made a part of this Policy and is subject to all of its terms and provisions. Except as the Endorsement expressly states, it does not (i) modify any of the terms and provisions of the Policy, (ii) modify any prior Endorsement, (iii) extend the Policy Date, or (iv) increase the Policy Amount.
- d) The premium for this Policy becomes due and payable on the Policy Date. Subject to Clause 2.2, if we do not receive the premium within 14 days of the Policy Date, we will not provide any Cover under this Policy and the Policy will be deemed not to have existed.
- e) If we fail to enforce a provision or right under this Policy, or if we grant you time or an indulgence, we will not be not to have deemed to have given up that right.
- f) Any dispute relating to this Policy shall be subject to the law of the Jurisdiction.
- g) Any litigation or other proceeding brought by you against us must be filed only in a State or Federal court within Australia having appropriate jurisdiction.

## **10. CANCELLATION**

You may request cancellation of the Policy within 14 days of the Policy Date or the date the Policy is received by you (whichever is the later). To do this, you must advise us in writing. We will refund all premium paid for Cover under the Policy subject to a minimum administration charge of \$50.00