

# Consumer Information & Disclosure Guide

Residential Purchaser Policy (Vacant Land)

*Important Information About Your Policy*



## PURPOSE OF THIS CONSUMER INFORMATION & DISCLOSURE GUIDE

Before you decide to purchase a Residential Purchaser Policy (the Policy) from us, you should read the important information which is contained in this Consumer Information and Disclosure Guide (the Guide) to help you decide whether this Policy is right for you.

We have provided the following information in the Guide to help you make an informed decision:

- About Us
- Our regulatory status
- Key features of your Cover
- Our relationship with Conveyancing Practitioners
- Your Duty of Disclosure
- How we collect and use your Personal Information
- How to Make a Complaint

This Guide also includes references to the following documents which we recommend that you read:

- [Residential Purchaser Policy Vacant Land Key Facts Sheet](#)
- [Residential Purchaser Policy Consumer Guide on Covered Risks](#)
- [Residential Purchaser Policy Consumer Guide on Exclusions](#)
- [Residential Purchaser Policy Consumer Guide on Making a Claim](#)
- [StewartCONNECT Terms & Conditions](#)

These documents and additional information can be found on our website: [www.stewartau.com](http://www.stewartau.com). We recommend you also refer to the Consumer Resources tab which includes a Consumer Library and Regulatory Information.

## CONTACT US

Contact us for more information about Stewart Title or this Guide:

**Phone:** 1800 300 440 (free call)  
**Email:** [enquiry.australia@stewart.com](mailto:enquiry.australia@stewart.com)  
**Post:** GPO Box 527 Sydney NSW 2001  
**Internet:** [www.stewartau.com](http://www.stewartau.com)

## ABOUT US

We are a specialist international insurance company providing protection to property owners against certain risks ("title risks") inherent in real estate transactions. We offer a full range of both residential and commercial title insurance products to purchasers, existing owners and mortgage lenders.

In Australia we are headquartered in Sydney and have offices from coast-to-coast. Our risks are reinsured with our parent company, Stewart Title Guaranty Company.

For more information about us and our international offices please visit our website: [www.stewartau.com](http://www.stewartau.com)

## OUR REGULATORY STATUS

We are a regulated general insurance business. We are:

- authorised as a general insurer to conduct insurance business in Australia by the Australian Prudential Regulation Authority (APRA) under the *Insurance Act 1973* (Cth); and
- registered with the Australian Securities and Investment Commission (ASIC) as a branch of Stewart Title Limited (UK) under Chapter 5B.2 of the *Corporations Act 2001* (Cth)

**Please note:** Our Policies are not 'retail' insurance products. Accordingly, we are exempt from the requirement to hold an Australian Financial Services License (AFSL) as we are an APRA regulated general insurance business and we do not provide retail services. This exemption is provided under s911A(2)(g) of the *Corporations Act 2001* (Cth).

## KEY FEATURES OF COVER

The Policy provides cover for specific risks relating to your ownership and use of your property up to the Policy Amount. With certain exceptions, these covered risks must exist as at the Policy Date but be unknown to you as at the Policy Date.

The Policy is NOT a home building insurance product, a home contents insurance product or a personal and domestic property insurance product and does not provide cover in respect of the destruction or dilapidation of or damage to a building on the land.

We recommend that you download and read the following documents, which can be found on our website: [www.stewartau.com](http://www.stewartau.com) for full details on covered risks, exclusions and other conditions and limitations:

- [Residential Purchaser Policy Vacant Land Key Facts Sheet](#)
- [Residential Purchaser Policy Consumer Guide on Covered Risks](#)
- [Residential Purchaser Policy Consumer Guide on Exclusions](#)
- [Residential Purchaser Sample Policy](#)

We also recommend that you review the Policy wording prior to purchasing the Policy.

### *Important Key Information About Your Cover*

Section 1 of the Policy outlines the cover which is provided in relation to the covered risks. The Policy provides cover for "Actual Loss" (Section 1.1), "Authorised Expenses" (section 1.2), "Defence of Title Costs" (section 1.3) and "Rental Accommodation" (section 1.4).

### *Actual Loss*

It is important for you to be aware of how we assess Actual Loss where applicable. We assess Actual Loss differently to the other heads of cover under the Policy. Actual Loss is a defined term in the Policy and 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"*

### *Timing of Actual Loss Assessment*

- The timing of the assessment of Actual Loss will depend on whether the claim is brought in respect of a Covered Risk under Section 2.1 of the Policy or a Covered Risk under Section 2.2 of the Policy.
- For Covered Risks under Section 2.1 of the Policy, Actual Loss (if relevant) will be assessed as at the **Policy Date**.
- For Covered Risks under section 2.2 of the Policy, Actual Loss (if relevant) will be assessed **as at the date you discover the Covered Risk**.

Your Policy Date is the date when the settlement of your purchase occurs, as outlined in Schedule A which will form part of your Policy.

### *Timing of Authorised Expenses and Defence of Title Costs*

- Unlike Actual Loss the relevant timing for assessment of Authorised Expenses, Defence of Title Costs and Rental Accommodation is at the time the Authorised Expenses, Defence of Title Costs and Rental Accommodation costs are actually incurred.

We recommend that you download and read the following document, which can be found on our website: [www.stewartau.com](http://www.stewartau.com), which provides a more detailed explanation of Actual Loss, including examples and scenarios of how and as at what date Actual Loss is assessed and determined:

- [Residential Purchaser Policy Vacant Land Key Facts Sheet](#)

We also recommend that you review the Policy wording prior to purchasing the Policy. A sample Residential Purchaser Policy can be downloaded [HERE](#).

### *Important Exclusions Relating to Covered Risks 2.1 (k) and 2.1 (r) of the Policy*

It is important for you to be aware that your Policy has been ordered for Vacant Land. On this basis there is **no cover** for any structures on the Land which would otherwise be provided by Covered Risks 2.1 (k) 2.1 (r) of the Policy.

Your Policy includes a Schedule B which details any applicable exceptions and exclusions from Cover. For vacant land properties your Schedule B includes the following specific exclusions:

- *The coverage in Clauses 2.1 (k) and 2.1 (r) of the Policy which relate to structures (including any dwelling) built on the Land are hereby excluded.*

This means that any structures which are built on the land, including (but not limited to) dwellings, sheds, garages, carports water tanks, swimming pools, gazebos etc, **will not be covered** under clause 2.1 (k) or 2.1 (r) of the Policy.

The cover in 2.1 (k) and 2.1 (r) of the Policy would normally apply to structures which are either not located on the land or in respect of which you are issued with an Enforcement Order by a Local Authority which states that the structure (or structures) 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.

**This cover is specifically excluded in vacant land policies.**

We recommend that you download and read the following documents , which can be found on our website: [www.stewartau.com](http://www.stewartau.com), which outline key coverage provisions, conditions and limitations:

- [Residential Purchaser Policy Vacant Land Key Facts Sheet](#)
- [Residential Purchaser Policy Consumer Guide on Exclusions](#)

We also recommend that you review Section 3 of the Policy wording prior to purchasing the Policy. A sample Residential Purchaser Policy can be downloaded [HERE](#).

## YOUR DUTY OF DISCLOSURE

It is important for you to be aware of your obligations to disclose certain information to us before we issue you with a Policy. It is your responsibility, not your Conveyancing Practitioner's responsibility, to comply with your duty of disclosure. Just because a matter is known by your Conveyancing Practitioner does not mean that it is a matter known by Stewart Title or a matter which Stewart Title ought to know in the ordinary course of Stewart Title's business as an insurer.

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.

Examples of title defects or adverse matters which should be disclosed to Stewart Title include (but are not limited to):

- unapproved structures,
- any enforcement action by a Local Authority,
- survey/ boundary defects such as boundary fence encroachments and boundary disputes,
- non-compliance with zoning & development laws,
- non-compliance with easements and covenants,
- lack of legal access,
- lack of a legal right of water supply or drainage, and outstanding rates, charges & taxes that will not be paid or reimbursed on settlement.

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, we may be entitled to reduce our liability under the contract of insurance in respect of a claim or may cancel the contract.

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

## NOT SURE WHETHER SOMETHING SHOULD BE DISCLOSED?

You should contact us directly if you have any questions about your disclosure obligations.

**Phone:** 1800 300 440 (free call)  
**Email:** [enquiry.australia@stewart.com](mailto:enquiry.australia@stewart.com)

## OUR RELATIONSHIP WITH CONVEYANCING PRACTITIONERS

Unlike many retail insurance providers, such as providers of home and contents insurance, travel insurance, motor vehicle insurance, and sickness and accident insurance, we do not market our Policies directly to consumers or have relationships with insurance brokers or financial planners.

Our Policies are recommended or referred to consumers by:

- Australian Legal Practitioners; and
- Licensed Conveyancers (including Settlement Agents in Western Australia);

who represent the consumer in relation to their purchase or sale of real property (hereafter referred to as Conveyancing Practitioners).

We have developed a program called StewartCONNECT which:

- Appoints participating Conveyancing Practitioners as our '*representatives*' strictly for the purpose of authorising them to arrange Policies on behalf of the consumer without the requirement for the Conveyancing Practitioner to obtain their own Australian Financial Services License (AFSL).

**Important Note:** All Conveyancing Practitioners (regardless of whether they are members of StewartCONNECT) are retained and instructed by the consumers and owe professional and fiduciary duties to the consumer client of the Conveyancing Practitioner, including duties of confidentiality and to act in the best interests of the consumer client.



Conveyancing Practitioners do not act for Stewart Title and **are not agents of Stewart Title and therefore are under no obligation to disclose information they know or should have known to us**. It is your responsibility, not your Conveyancing Practitioner's responsibility, to comply with your duty of disclosure.

**Please Note: Your Conveyancing Practitioner**

- is **not authorised** to negotiate cover, negotiate premiums or otherwise bind Stewart Title in any way.
- **is not required** to disclose to Stewart Title any information which they know, or ought to know, may be relevant to Stewart Title's decision to provide insurance to a consumer and if so on what terms.
- **is not required** 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*. This is regardless of whether or not your Conveyancing Practitioner has any knowledge of any such matters. This is because the Conveyancing Practitioner is acting for you in the transaction and is not the agent of Stewart Title.
- may receive a processing fee and other benefits if they are a StewartCONNECT member.

Your Conveyancing Practitioner will disclose to you whether they are a StewartCONNECT member and whether they receive a processing fee from us.

If you are not sure whether your Conveyancing Practitioner is a StewartCONNECT member you should contact your Conveyancing Practitioner or you may contact us.

We recommend that you download and read the following document, which can be found on our website: [www.stewartau.com](http://www.stewartau.com), which provides a more detailed explanation of the StewartCONNECT terms and conditions:

- [StewartCONNECT Terms & Conditions](#)

## YOUR PRIVACY

We seek to provide the best possible service to our customers. We understand how important it is to protect your personal information and to give you confidence that any personal information that you provide to us or that we collect from you will be safeguarded.

We abide by the Australian Privacy Principles for the protection of personal information. These are set out in the Privacy Act 1998.

### *Our Privacy Policy*

We recommend that you review our Privacy Policy which is available on our website: <https://www.stewartau.com/privacy>.

### *Our Privacy Officer*

You may request access to your personal information or request that your personal information be updated or corrected at any time, provided any request for access, updating, or correction is made in writing, together with the appropriate proof of identification, such as a certified copy of your passport or drivers licence or similar identity card.

Stewart will provide you with access to your personal information upon request, subject to any exemptions provided under the Privacy Act.

If you have any question about our Privacy Policy or if you wish to be provided with access to your personal information, please contact:

**The Privacy Officer**

Stewart Title Limited  
GPO Box 527  
Sydney NSW 2001  
Phone: 02 9081 6200  
Fax: 02 9081 6299  
Email: [PrivacyAU@stewart.com](mailto:PrivacyAU@stewart.com)

## HOW TO MAKE A COMPLAINT

We are committed to providing consumers 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.

### *Complaint Procedure*

It is important for you to be aware that we have a Complaint Procedure. The details of our Complaint Procedure are available on our website: <https://www.stewartau.com/feedback>

### *Our Complaints Officer*

If you have any question about our Complaint Procedure or if you wish to make a complaint, please contact:

**The Complaints Officer**

Stewart Title Limited  
GPO Box 527  
Sydney NSW 2001  
Phone: 02 9081 6200 / 1800 300 440 (free call)  
Fax: 1300 898 175 (free call)  
Email: [complaintsau@stewart.com](mailto:complaintsau@stewart.com)

### *Australian Financial Complaints Authority (AFCA)*

We are a member of the Australian Financial Complaints Authority (AFCA), an independent organisation that provides dispute resolution between consumers and financial service providers.

**The services of AFCA are free to consumers.**

You may contact AFCA via:

**Australian Financial Complaints Authority**

Mail: GPO Box 3, Melbourne VIC 3001  
Phone: 1800 931 678  
Email: [info@afca.org.au](mailto:info@afca.org.au)  
Website: [www.afca.org.au](http://www.afca.org.au)





## RESOURCE | LINKS

*Website:* [stewartau.com](http://stewartau.com)

Consumer Library Page: [www.stewartau.com/consumerlibrary](http://www.stewartau.com/consumerlibrary)  
Regulatory Information Page: [www.stewart.au.com/regulatoryinformation](http://www.stewart.au.com/regulatoryinformation)  
Compliments / Complaints: [www.stewartau.com/feedback](http://www.stewartau.com/feedback)  
StewartCONNECT: [www.stewartau.com/stewartconnect](http://www.stewartau.com/stewartconnect)  
Sample Policies: [www.stewartau.com/sample-policies](http://www.stewartau.com/sample-policies)

*Email:*

General Enquiry: [enquiry.australia@stewart.com](mailto:enquiry.australia@stewart.com)  
Claim Enquiry: [claims.australia@stewart.com](mailto:claims.australia@stewart.com)  
Complaints: [complaintsau@stewart.com](mailto:complaintsau@stewart.com)  
Privacy Officer: [PrivacyAU@stewart.com](mailto:PrivacyAU@stewart.com)

*AFCA:*

Website: [www.afca.org.au](http://www.afca.org.au)  
Email: [info@afca.org.au](mailto:info@afca.org.au)

# Key Facts Sheet

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## KEY FACTS SHEET – VACANT LAND PROPERTY

Thank you for your interest in obtaining a title insurance policy from Stewart Title Limited for your **vacant land property purchase**. This Key Facts Sheet provides you with some general information about the coverage available under our policy.

Title insurance is a unique form of insurance. It protects your ownership interest against losses incurred as a result of undetected or unknown defects that affect your registered interest in the title to your property. With certain exceptions, these covered title defects must exist as of the policy date, but be unknown to you. Title insurance continues to protect your ownership from the day of settlement to the day you sell your property. Should you purchase a policy it will be customised to reflect the details of your particular real estate transaction.

### Important features of Stewart Title’s residential title insurance include:

- The policy covers title risk and is not, nor should it be used as a substitute for home buildings/contents insurance.
- The policy insures your ownership interest in your property for as long as you own your property for a one-time premium payable at the time of settlement.
- The coverage will also protect anyone who inherits your property or your spouse or child if you transfer your property to your spouse or child for nominal consideration.
- The amount of insurance will increase as the value of your property increases up to a maximum of 200% of the Policy Amount (excluding cover for non-compliant/approved buildings or modifications). The amount of insurance decreases by any amounts (other than legal fees and associated costs) that we pay to cover a claim.

### Important exclusions and conditions relating to Vacant Land properties include:

#### No Cover for Structures on the Land – See Schedule B of your Policy

- Your Policy includes a Schedule B which details any applicable exceptions and exclusions from Cover. For vacant land properties your Schedule B includes the following specific exclusions:
  - *The coverage in Clauses 2.1 (k) and 2.1 (r) of the Policy which relate to structures (including any dwelling) built on the Land are hereby excluded.*
- This means that any structures which are built on the land, including (but not limited to) dwellings, sheds, garages, carports water tanks, swimming pools, gazebos etc, **will not be covered** under clause 2.1 (k) or 2.1 (r) of the Policy.
- The cover in 2.1 (k) and 2.1 (r) of the Policy would normally apply to structures which are either not located on the land or in respect of which you are issued with an Enforcement Order by a Local Authority which states that the structure (or structures) did 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. **This cover is specifically excluded in vacant land policies.**

The policy covers title risk and is not, nor should it be used as a substitute for home buildings/contents insurance.

### Your Cover

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

Actual Loss	Section 1.1 of the Policy
<p>Actual Loss is a defined term in the Policy and means “<i>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</i>”</p>	

*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*".

In practical terms this assessment of "Actual Loss" requires an appraisal of the difference between:

- a. the value of your land *unaffected* by the Covered Risk - what you *actually paid* for the property not taking into account that the land was affected by a Covered Risk; and
- b. the value of the land *affected* by the Covered Risk - the market value of the land taking into account that the land was affected by the Covered Risk.

The difference between a and b above will be your Actual Loss.

The relevant timing of this assessment of Actual Loss will depend on whether claim is brought in respect of a Covered Risk under Section 2.1 of the Policy or Section 2.2 of the Policy.

As all Covered Risks under Section 2.1 of the Policy relate to risks which existed or occurred prior to or as at the Policy Date then any assessment of Actual Loss which is required under Section 2.1 of the Policy will be assessed as at the Policy Date.

As all Covered Risks under Section 2.2 of the Policy relate to risks which existed or occurred after the Policy Date then any assessment of Actual Loss which is required under Section 2.2 of the Policy will be assessed as at the date you discover the Covered Risk.

To summarise:

- For Covered Risks under Section 2.1 of the Policy your Actual Loss (if relevant) will be assessed as at the Policy Date.
- For Covered Risks under section 2.2 of the Policy your Actual Loss (if relevant) will be assessed as at the date you discover the Covered Risk.

### **Vacant Land Example 1 – Covered Risk under Section 2.1 of the Policy**

You purchase a block of vacant land for \$500,000 being the Policy Amount. At the time of settlement of purchase and entry into the title insurance policy (the Policy Date) you are not aware of any Covered Risks affecting the property. Six months after settlement, you receive a letter from your Local Authority advising you that the previous owner and developer failed to register a right of way over your property for the benefit of the neighbouring property. The Local Authority now requires the right of way to be registered on the title to your land. The right of way will allow your neighbour to build a driveway over your land and will reduce your available land by 20%.

You make a claim under section 2.1 (p) of your Policy. If Actual Loss is relevant, how will Stewart Title assess your "Actual Loss"? As the claim relates to a Covered Risk under Section 2.1 of the Policy your Actual Loss will be assessed as at the Policy Date. Stewart Title will engage a licensed valuer to ascertain the difference between the value of the land as purchased (without the right of way) and the value of the land (with the right of way) as at the Policy Date.

The valuer determines that the market value of the land with the right of way was \$400,000 as at the Policy Date. As you paid \$500,000 for the vacant land, then your Actual Loss resulting from the requirement to register the right of way is \$100,000.

The sum of \$100,000 is the difference between:

- a. the value of your land *unaffected* by the Covered Risk as at the Policy Date - what you *actually paid* for the property not taking into account that the land was affected by a Covered Risk which was \$500,000; and
- b. the value of the land *affected* by the Covered Risk as at the Policy Date - the market value of the land taking into account that the land was affected by the Covered Risk which was \$400,000.

## Vacant Land Example 2 – Covered Risk under Section 2.2 of the Policy

The method to determine “Actual Loss” for risks which fall under section 2.2 of the Policy is different to the method to determine “Actual Loss” for risks which fall under section 2.1 of the Policy, because the Covered Risks which fall under Section 2.2 are risks which occur or come into existence after the Policy Date.

The relevant timing of any assessment of “Actual Loss” for claims brought under section 2.2 of the Policy is as at the date you discover the Covered Risk. This is because the purpose of this section of the Policy is *not* to determine the market value of the land affected by the Covered Risk as at the Policy Date. Rather, it is to arrive at a determination of the loss at the time the risk arises and is discovered by you.

For example, you purchase a block of vacant land for \$500,000, being the Policy Amount, as an investment property. At the time of settlement of purchase (the Policy Date) you are not aware of any Covered Risks. In fact, no Covered Risks exist as at the Policy Date.

However, five years after you purchase the property you become the victim of a real estate fraud whereby a fraudster impersonates you and sells your property to an innocent third party. You lose your title to the property.

You make a claim under section 2.2 (a) of the Policy. How will Stewart Title assess your Actual Loss? As the claim relates to a Covered Risk under section 2.2 of the Policy your Actual Loss will be assessed as at the date you discover the Covered Risk. Stewart Title will engage a licensed valuer to ascertain the market value of the land as at the date you discovered you had lost your title due to fraud. The valuer determines that the market value of the property was \$750,000 as at the date you discovered the Covered Risk.

Your Actual Loss is therefore \$750,000. Your Policy Amount is \$500,000. Are you covered for this difference?

Please refer to the section entitled ‘Inflation Cover’.

## Authorised Expense

## Section 1.2 of the Policy

Authorised Expenses is a defined term in the Policy and 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*”.

Section 1.2 of the Policy provides that Stewart Title

*“insures 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”.*

Authorised Expenses include, but are not limited to, the following:

- expert reports such as:
  - identification survey reports;
  - structural engineer reports; and
- legal fees and other professional fees;
- Council lodgment fees for plans, development applications and other permits.

Unlike Actual Loss under Section 2.1 of the Policy, which is assessed as at the Policy Date, the relevant timing for assessment of Authorised Expenses is at the time the Authorised Expenses are actually incurred or charged by the relevant provider/authority.

## Vacant land Example 1 – Legal Fees

In the vacant land example 1 outlined above, you were required to register a right of way over your title which allowed your neighbour to build a driveway over your land which reduced your available land. by 20%. Your Actual Loss was assessed as being \$100,000 but the Local Authority still requires you to prepare, draft and lodge the right of way documentation at the Land Titles Office at your cost.

You have made a claim under 2.1 (p) of the Policy. You obtain a quote which indicates that the legal fees to prepare and register the right of way document at the Land Titles Office will be \$10,000. How will your claim in respect of these costs be assessed? Stewart Title will pay or reimburse these costs (providing the costs have been pre-approved by Stewart Title in writing) as an Authorised Expense. This will be paid in addition to your Actual Loss of \$100,000.

If plans or permits are required to be lodged, then the fees charged by the Council for lodging those plans or permits would also be covered as an Authorised Expense.

## Defence of Title

## Section 1.3 of the Policy

Defence of title costs are covered under Section 1.3 of the Policy which provides:

*“We may 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. If we decide to defend a challenge to your Title we will pay necessary costs, legal fees and expenses incurred in that defence. We will not pay such costs, fees and expenses incurred by you unless they are approved in writing by us before they are incurred. We will not pay for any part of costs, fees and expenses in a matter that does not relate to a Covered Risk or that relates to a matter that is excepted or excluded from Cover under this Policy. We may decide to not defend or continue to defend your Title, and may alternatively exercise one or more of the options outlined in clause 6. We may also end our defence of your Title by exercising one or more of the options outlined in clause 6.”*

One of the immediate consequences of a claim being brought under a Covered Risk is that you may be required to respond to a notice, compliance or building order or some other enforcement process initiated by a third party against you. One component of Cover under the Policy which is intended to address this situation is the “defence of title” Cover under section 1.3 of the Policy.

Section 1.3 relevantly provides that Stewart Title may “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. If we decide to defend a challenge to your Title, we will pay necessary costs, legal fees and expenses incurred in that defence.”

In some circumstances, the claim may be successfully resolved by the ‘defence of title’ Cover, particularly if the enforcement action has no legal basis or there are other legal issues which are identified which give rise to a withdrawal of the enforcement action by a third party. In some circumstances, Stewart may decide not to defend a challenge to your Title. If Stewart decides not to defend a challenge to your Title, Stewart will instead exercise one or more of the options outlined in clause 6 of the Policy. For example, if there are little or no prospects of successfully defending a challenge to your Title, we may negotiate a settlement or take other action that will protect you.

Unlike Actual Loss under Section 2.1 of the Policy, which is assessed as at the Policy Date, the relevant timing for assessment of any “defence of title” costs which are incurred under section 1.3 is at the time the defence of title costs are incurred by you.

### Example – Defence of Title Costs

You purchase a vacant land property and settlement occurs without incident. At the time of settlement of purchase (the Policy Date) you are not aware of any Covered Risks affecting the property.

Immediately after settlement of your purchase your neighbour issues you with a demand that you transfer a portion of your land to the neighbour because the previous owner of your land made a promise that the neighbour could have the land in question. The neighbour now seeks to enforce that promise against you as the new owner.

You make a claim under section 2.1 (f) and 2.1 (g) of your Policy (which provides cover in circumstances where “someone else claims a right or interest over whole or part of the Land arising out of a lease, contract or an option” and “someone else claims a right of possession over whole or part of the Land who is not on the Title” respectively).

In these circumstances, Stewart Title would obtain independent legal advice in relation to the claims made by your neighbour in relation to the ownership of your land and would pay or reimburse these costs (providing the



costs have been pre-approved by Stewart Title in writing) as a Defence of Title cost under section 1.3 of the Policy.

Should it become necessary to defend any proceedings or court case brought against you in relation to the Covered Risk(s), then Stewart Title would cover the costs of such a legal defence, such as legal fees and associated expenses, as a Defence of Title cost.

### Maximum Aggregate Amount of Cover

### Section 1.4 of the Policy

*For the avoidance of doubt, the maximum aggregate amount of Cover described in clauses 1.1, 1.2 and 1.4 of this Policy shall not exceed the Policy Amount.*

This means that if your Policy Amount is \$500,000 and if we have to pay or reimburse you for Actual Loss, Authorised Expenses or Rental Accommodation or any combination of them under the Policy, the maximum total amount for all of these categories of Cover combined is \$500,000. For example, if the Actual Loss is \$400,000, the Authorised Expenses are \$100,000 and the Rent Accommodation is \$50,000 you will not be entitled to more than \$500,000 in respect of these categories of Cover.

### Inflation Cover

### Section 1.5 of the Policy

Section 1.5 of the Policy provides an automatic increase of the Policy Amount in line with increases in the fair market value of your land after the Policy Date up to a maximum of 200% of the Policy Amount. Section 1.5 of the Policy states that:

*Market conditions and inflation may increase the value of your Land. For the purposes of a claim under Section 2.2 of the Policy only, the maximum amount of your insurance cover increases in line with increases in the fair market value of the Land after the Policy Date, up to a maximum of 200% of the Policy Amount shown in Schedule A of the Policy. This added Cover is provided without additional premium.*

*If you have made improvements which increase the value of the Land above 200% of the Policy Amount and you wish to increase your Policy Amount for the purposes of a claim under Section 2.2, then provided you do not have any unresolved claims which you have made under the Policy, you may contact our office and an additional premium may apply.*

*For the avoidance of doubt, this added Cover affects only the maximum amount of your insurance cover for a claim under Section 2.2 of the Policy. It does not affect any assessment of Actual Loss under clause 2.1 of the Policy. Any assessment of Actual Loss which is required under clause 2.1 will be determined as at the Policy Date. Increases in the fair market value of your Land after the Policy Date will not affect any assessment of Actual Loss under clause 2.1*

Applying this provision to the scenario outlined under Actual Loss Example 2, your Policy Amount has automatically increased in line with market conditions and inflation up to a maximum of 200% of the Policy Amount (which is \$1,000,000 (being 200% of the Policy Amount of \$500,000)). On this basis, even though the Policy Amount is stated as being \$500,000 you are fully covered for the loss of \$750,000 because of the inflation cover provided in section 1.5 of the Policy.

### Key covered risks (policy coverage provisions, conditions and limits) include\*:

**\*You must review your actual policy for full coverage details as the information below is being provided in general terms only.** Your policy may include additional exceptions related to specific issues affecting your property. It may also include additional endorsements.

Event/Cover	Some examples of special conditions, exclusions or limits that apply to the events/covers (see other policy documentation for details)
<p><b>There is a breach of Laws relating to the subdivision of the Land, as a separate and distinct parcel</b></p>	<ul style="list-style-type: none"> <li>▪ This cover does not apply where you initiate, instigate or encourage enforcement action by a Local Authority— refer to Policy exclusions for full details.</li> <li>▪ You are not covered for any breach of Laws which do not specifically relate to the subdivision under which the Land was created as a separate and distinct parcel.</li> </ul>

<b>Registration Gap</b>	<ul style="list-style-type: none"> <li>Only covered for dealings which prevent your interest in the land from being registered or recorded that are lodged during the period between settlement of your property purchase and registration of your interest with the land titles office.</li> </ul>
<b>Fraud, Forgery &amp; Identity Theft which allows an instrument to be registered</b>	<ul style="list-style-type: none"> <li>Covered for loss up to the full insured amount under your policy as adjusted for inflation.</li> </ul>
<b>Boundary &amp; Encroachments</b>	<ul style="list-style-type: none"> <li>This cover does not apply to land where the land area size exceeds 50 acres.</li> <li>This cover does not apply where you initiate, instigate or encourage enforcement action by an adjoining owner of your land – refer to Policy exclusions for full details.</li> </ul>
<b>Outstanding Rates, Taxes and Levies</b>	<ul style="list-style-type: none"> <li>Not covered for any land transfer duty or land stamp duty which is payable by you as the purchaser of the land.</li> <li>Not covered where you agreed to pay the rates, taxes and levies or were aware of their existence.</li> <li>Not covered for foreign buyer duty or foreign investor surcharge.</li> <li>Not covered for any levies or special levies struck after the Policy Date.</li> </ul>
<b>Unpaid Local Infrastructure or Local Improvement Levies</b>	<ul style="list-style-type: none"> <li>Only covered for amounts which had accrued prior to the settlement of your property purchase.</li> <li>Not covered where you agreed to pay the levies or were aware of their existence.</li> </ul>
<b>Lack of Legal Access</b>	<ul style="list-style-type: none"> <li>Not covered for any lack of a right to a secondary access point to the land.</li> </ul>
<b>Lack of legal right of water supply or drainage to and from the land</b>	<ul style="list-style-type: none"> <li>Not covered for any deficiencies or lack of functionality of physical water supplies or drainage, including (but not limited to) broken or damaged pipes, tree root infestation or wear and tear.</li> <li>Not covered for the cost of constructing physical water supply or drainage infrastructure or performing maintenance or otherwise upgrading any water supply or drainage infrastructure.</li> </ul>
<b>Errors, affectations and proposals that would have been disclosed in a Local Authority Search or a search of the Public Records</b>	<ul style="list-style-type: none"> <li>Not covered for environmental contaminants or hazardous waste, mine subsidence or native title claims.</li> </ul>
<b>Supplemental Rates &amp; Land Taxes</b>	<ul style="list-style-type: none"> <li>Only covered for amounts which had accrued prior to settlement of your property purchase.</li> <li>Not covered where you agreed to pay the rates or land taxes or were aware of their existence.</li> </ul>

## **Other Matters to Consider**

### **Standard exclusions include:**

- Environmental matters, including but not limited to: contamination, abandoned oil wells or water quality or quantity.
- Native title claims or claims arising directly or indirectly from legislation with respect to the protection of aboriginal cultural heritage.
- Risks that you created, allowed, were aware of and/or or agreed to.
- Risks that are known to you, but not to Stewart Title, on the Policy Date.
- Matters that first occur after your policy date except for forgery, fraud, mistake by a governmental authority, encroachment onto your Land (excluding boundary walls and fences), or the assessment of supplemental taxes.
- Physical/structural conditions or defects related to poor workmanship, the wear and tear or condition and repair of the property, including infestation and dilapidation.
- Certain risks where you initiate, instigate or encourage enforcement action by the Local Authority and/or an adjoining property owner – refer to Policy exclusions for full details.

### **Cancellation period:**

If, within 14 days of receiving your policy or the settlement of your property purchase (whichever is the latter) and you have not made a claim, you decide you no longer want your policy, you may request cancellation of your

policy. We will refund the premium you paid subject to an administration charge of \$50.00. After this period, you cannot cancel your policy.

If you have obtained this policy by mistake, please let us know as soon as possible.

**For more information:**

Should you have questions about your policy, its cover, and exclusions and exceptions, please contact us on **1800 300 440** or visit our website at [www.stewartau.com](http://www.stewartau.com) so that we may assist you.

**Attention: This Key Facts Sheet highlights some of the conditions, exclusions and limits in respect of our standard Residential Purchaser Policy and is intended only to be a guide. The content in this document is furnished for informational use only and 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 content 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.**

# **Guide to Covered Risks**

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Residential Purchaser Policy  
**Guide to Covered Risks**

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For most people, the largest investment they will ever make will be the purchase of their home. Stewart Title Limited's Residential Purchaser Policy ("the Policy") insures your title to your land against certain covered risks which may cause you loss or affect your ownership of your property.

This Guide is designed to assist you with navigating and understanding the covered risks contained in the Policy. 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 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 the meaning of defined terms. Usually a defined term will be capitalised, such as, 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 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 for loss or damage related to running a commercial business on the land or for any commercial development of the land, including, but not limited to, 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.

**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 content 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](http://www.stewartau.com) or contact us on 1 800 300 440.**

## PART 1. COVERED RISKS

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This part of the Guide provides commentary on the sections of the Policy relating to covered risks.

### Section 2.1 (i) – (ii): Risks occurring before the Policy Date and during the Registration Period

We will provide you with Cover against all of the following Covered Risks, if all of 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 2.1 will be determined as at the Policy Date.

During the Registration Period we will also provide you with Cover for all of the following Covered Risks, where:

- i. you in good faith, have paid or authorised the payment of the premium and have relied upon a written assurance of the insurance of this policy; and
- ii. reasonable steps have been taken to promptly register the transfer of title, any mortgage, discharge of mortgage or withdrawal of caveat or the Title has been delivered to your lender on the understanding your lender will do so.

The Policy only provides cover for the Covered Risks if the circumstances creating or giving rise to the risks existed or occurred **before** the Policy Date or during the Registration Period. You should check Schedule A of the Policy to verify the Policy Date is correct.

### Section 2.1 (a) – (l): Risks affecting your ownership of the Land

(a) you are not the owner of the estate or interest in the Land detailed in the title reference in Schedule A;

The Policy provides cover where you do not own the Land which is insured under the Policy as detailed in Schedule A.

**For example**, this situation may arise where a mistake is made as to the identity of the Land being sold or if there is a complete failure to obtain Title to the Land due to an error or flaw in the title registration process.

(b) you do not have any legal right of Access to and from the Land;

The Policy provides cover in circumstances where you are 'landlocked', which means you have no legal right of access to or from the Land insured under the Policy as detailed in Schedule A.

**!** This cover **does not** extend to any lack of a right to a secondary access point to the Land, or a preferred access route such as a rear entrance, where access to the Land is already legally obtained through another access point.

(c) someone else claims to have rights affecting your Title because of forgery, fraud, impersonation, duress, mental incompetence or incapacity;

The Policy provides cover in the event that your Title is challenged or somebody else claims to have rights over your Title because of forgery, impersonation, duress, mental incompetence or incapacity.

**For example**, if the person who sold you the Land turns out to be a fraudster, or lacks mental capacity, or sold the Land to you under the duress of a third party, then a challenge may be made to your Title. Please refer to section 1.3 of the Policy under the heading "Defence of Title".

(d) *someone else lodges a dealing which prevents your interest in the Land from being registered or recorded;*

The Policy provides cover in circumstances where somebody else lodges dealing, such as a caveat or writ, on your Title before your interest in the Land is registered which has the effect of preventing you from becoming registered as the owner of the Land.

This is often referred to as “registration gap” cover and is highlighted by the decision of the High Court of Australia in the case of *Black v Garnock [2007] HCA 31*. Please refer to section 1.3 of the Policy under the heading “Defence of Title”.

(e) *someone else claims an interest in the Land under the Family Law Act;*

The Policy provides cover in circumstances where somebody else claims to have a right over your Title as a result of orders being made under the Family Law Act.

**For example**, if the person who sold you the land did so contrary to Family Court orders, then a challenge may be made to your title. Please refer to section 1.3 of the Policy under the heading “Defence of Title”.

(f) *someone else claims a right or interest over whole or part of the Land arising out of a lease, contract or an option;*

The Policy provides cover in circumstances where somebody else claims to have rights over your Title because of a lease, contract or an option agreement.

**For example**, the person who sold you the Land may have entered into agreements with other people in relation to the use or ownership of part or all of the Land and those people seek to enforce those agreements against you as the new owner of the Land. Please refer to section 1.3 of the Policy under the heading “Defence of Title”.

(g) *someone else claims a right of possession over whole or part of the Land who is not on the Title;*

The Policy provides cover in circumstances where somebody else claims to have rights over your Land because they have possessed part or all of the Land for a period of time.

**For example**, if the boundary fence between your property and your neighbour’s property is not located on the legal boundary, then part of your Land may be in the physical possession of your neighbour. This physical possession may give your neighbour rights to part of your Land. Please refer to section 1.3 of the Policy under the heading “Defence of Title”.

(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;*

The Policy provides cover in circumstances where somebody else claims to have specific rights over your Land even though those rights might not be recorded or registered on title.

**For example**, a neighbour may claim to enjoy a right to access your property, either by prior agreement with the person who sold you the land, or by an access order issued by a court. Please refer to section 1.3 of the Policy under the heading “Defence of Title”.

- (i) *there are unpaid council rates, levies (including any levies or special levies struck before the Policy Date but excluding any levies or special levies struck after the Policy Date), 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, land stamp duty, foreign buyer duty or foreign investor surcharge), unless you agreed to pay or were otherwise aware of the existence of the unpaid rates, levies, taxes or accounts.*

The Policy provides cover in circumstances where you become liable to pay unpaid rates, levies (including any levies or special levies struck before the Policy Date but excluding any levies or special levies struck after the Policy Date), land taxes and other outstanding accounts to a Local Authority which should have been paid by the person who sold the Land to you as at the Policy Date.

! This cover **does not** include any land transfer duty or land stamp duty which is payable by you as the purchaser of the Land, including any shortfalls or miscalculations of rebate entitlements of land transfer duty or land stamp duty nor does it include any foreign buyer duty or foreign investor surcharge liability.

! This cover **does not** include any unpaid rates, levies, taxes or other moneys due and payable which **you agreed to pay** (for example, under the provisions of a contract) or in circumstances where **you were aware of the existence** of the unpaid rates, levies, taxes or other moneys due and payable.

- (j) *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;*

The Policy provides cover in the event that your Title is challenged or there is a defect in the Title to your Land because of errors in the documentation relating to the sale of the Land or because of an error by a land title registry.

- (k) *the home with the address described in Schedule A is not located on the Land;*

The Policy provides cover in the event that the home or dwelling which you believed to be located on the Land with the address described in Schedule A is actually not located on the Land.

This situation may arise where a mistake is made as to the identity of the land being sold leaving you with no home or dwelling.

- (l) *any other title defect or lien or encumbrance that affects Title to your Land which is not registered or otherwise recorded on Title on the Policy Date.*

The Policy provides cover for defects in title, or liens or other encumbrances that affect Title, but which were not registered or recorded on Title on the Policy Date.

## **Section 2.1 (m): Risks regarding boundaries and encroachments**

- (m) *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 which encroach onto your neighbour's land;*
- iii. structures on your neighbour's land which encroaches onto your Land; or*
- iv. structures on your neighbour's land which encroach onto an easement or right of way on your Land.*

The Policy provides cover in circumstances where you elect not to obtain a boundary survey of the land when you purchase the property and you discover after the Policy Date that there are adverse matters or defects affecting title which would have been disclosed by a survey report.

Such adverse matters or defects include (but are not limited to) non-compliance with an easement or covenant on title, such as a structure which has been built over an easement or a right of way, or structures on your land which encroach upon your neighbour's land or vice versa.

! This cover **does not apply at all** to any properties where the area of the land exceeds 50 acres.

## Section 2.1 (n) – (q): Risks affecting your use of the Land

(n) *your Land is Unmarketable, or you are prevented by a Local Authority from using the Land as a residence, 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;*
- ii. *of any outstanding notice of violation or deficiency notice, provided the outstanding notice of violation or deficiency notice relates to a Covered Risk under the Policy and you did not agree to be responsible for them; or*
- iii. *someone has the authority or a right to use the surface or subsurface of the Land for developments or extraction of subsurface minerals.*

The Policy provides cover in circumstances where your property is “Unmarketable” or the Local Authority prevents you from using your property as a residence or forces you to remove or rectify structures on the land for the reasons described in sub-clauses (i), (ii) and (iii).

**For example**, you may be forced by a Local Authority (such as your local Council) to cease using your property as a residence because the present use contravenes existing planning or zoning laws.

! This cover **does not apply** to boundary walls or boundary fences. See also the exclusion 3.3 under the heading “**Workmanship, Damage, Infestation and Dilapidation**” as this exclusion may limit the amount we are required to pay you in the event of a claim.

(o) *there is a covenant or restriction affecting your Title, other than one registered or otherwise recorded on Title on the Policy Date, which limits the use of your Land as a residence;*

The Policy provides cover in circumstances where you are unable to use your home as a residence because of a restriction or a covenant which restricts the use of your Land.

! This cover **does not apply** to a covenant or restriction which is registered or recorded on title as at the Policy Date.

- (p) *there is a breach of Laws relating to the subdivision of the Land as a separate and distinct parcel. You are not covered for any breach of Laws which do not specifically relate to the subdivision under which the Land was created as a separate and distinct parcel;*

The Policy provides cover in circumstances where there is a breach of subdivision laws relating specifically to the subdivision of your Land as separate and distinct parcel and you become liable for the breach as the new owner.

**For example**, the previous owner may have been a developer and the developer was required to comply with conditions imposed by the Local Authority in order for the land to be subdivided (such as the registration of a drainage easement over your land). If the developer failed to comply with all of the conditions, you may become liable to comply as the new owner.

**!** This cover **does not apply** to any breach of Laws which do not specifically relate to the subdivision approval under which the Land was created as separate and distinct parcel.

- (q) *you do not have any legal right of water supply or drainage to and from the Land. You are not covered for the cost of constructing physical water supply or drainage infrastructure or performing maintenance or otherwise upgrading any water supply or drainage infrastructure.*

The Policy provides cover in circumstances where your physical water supply or drainage, such as water pipes or drainage pipes which service the land, is not supported by a legal right and somebody else becomes entitled to interfere with your water supply or drainage, leaving you with no legal right of water supply or drainage.

**!** This cover **does not apply** to any deficiencies or lack of functionality of physical water supplies or drainage, including (but not limited to) broken or damaged pipes, tree root infestation or wear and tear or the cost of constructing physical water supply or drainage infrastructure or performing maintenance or otherwise upgrading any water supply or drainage infrastructure.

## **Section 2.1 (r): Risks of Enforcement Orders affecting structures on the Land**

- (r) *You are issued with an Enforcement Order by a Local Authority, or you are liable to comply with an outstanding Enforcement Order issued by a Local Authority to a previous owner, which states that a structure or structure(s) (other than boundary walls or boundary fences) on the Land, including any part thereof:*

- i. 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 or modified; or*
- ii. did not comply with building or development approvals which were issued by the Local Authority at the time the relevant structure(s) were built:*

*and as a result of the Enforcement Order:*

- iii. you are required to rectify or remove all or part of the existing structure(s) on the Land; or*
- iv. you are prevented by a Local Authority from using the Land as a residence; or*
- v. the Land is Unmarketable.*

*For the avoidance of doubt, the Cover under clauses 2.1 (n) and 2.1 (r) 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.*



The Policy provides cover in circumstances where you are issued with an Enforcement Order, or you are liable to comply with an outstanding Enforcement Order issued by a Local Authority to a previous owner, which states that a structure(s) was built without building or development approval or the structure did not comply with a building or development approval at the time the structure was built and as a result of the Enforcement Order your property is “Unmarketable” or the Local Authority prevents you from using your property as a residence or forces you to remove or rectify structures on the land for the reasons described in sub-clauses (ii), (iv) and (v).

**For example**, you are issued with an Enforcement Order which states that part of the dwelling (such as an extension) was built without Council approval. The Enforcement Order requires you to demolish or rectify the unapproved extension.

**!** This cover **does not apply** to boundary walls or boundary fences and cover **is capped at \$160,000** (see clause 7.1 under the heading “Our liability for claims”. See also the exclusion 3.3 under the heading “**Workmanship, Damage, Infestation and Dilapidation**” as this exclusion may limit the amount we are required to pay you in the event of a claim. Enforcement Notice is defined in the policy (see Defined Meanings for more information).

## Section 2.1 (s) – (x): Risks of errors, affectations and proposals

(s) *any affectation, proposal or adverse matter affecting Title to the Land that a Local Authority Search completed on or before the Policy Date would have disclosed;*

The Policy provides cover in circumstances where your land is subject to an affectation, proposal or other adverse matter affecting Title which would have been disclosed had you obtained a Local Authority Search on or before the Policy Date.

**For example**, your land may be subject to a local Council road widening proposal or a government resumption notice and you were not aware of this when you purchased the property because you elected not to obtain, or were prevented from obtaining, a Local Authority Search.

(t) *any error or omission by the Local Authority in providing the results of a Local Authority Search indicating that there are no affectations, proposals or adverse matters affecting Title to the Land, if the Local Authority search was completed on or before the Policy Date;*

The Policy provides cover in circumstances where you obtained a Local Authority Search but the results were wrong and you discover that your Land is subject to an affectation, proposal or other adverse matter affecting Title.

(u) *any affectation, proposal or adverse matter affecting Title to the Land which would have been disclosed by searches of the Public Records relating to the Land on or before at the Policy Date;*

The Policy provides cover in circumstances where your Land is subject to an affectation, proposal or other adverse matter affecting title which would have been disclosed had you searched Public Records on or before the Policy Date.

**For example**, your land may be subject to a local Council road widening proposal or a government resumption notice and you were not aware of this when you purchased the property because you elected not to search Public Records.

- (v) *any error or omission by the Local Authority in providing the results of searches of the Public Records indicating that there are no affectations, proposals or adverse matters affecting Title to the Land if the searches were completed on or before the Policy Date;*

The Policy provides cover in circumstances where you searched Public Records and you subsequently discover that your Land is subject to an affectation, proposal or other adverse matter affecting title that the Local Authority failed to disclose in its original report to you.

- (w) *an error is made by your Conveyancing Practitioner or by the relevant Local Authority in respect of outstanding rates, levies (including any levies or special levies struck before the Policy Date but excluding any levies or special levies struck after the Policy Date), charges, taxes and other money due and payable relating to the Land (excluding any land transfer duty, land stamp duty, foreign buyer duty or foreign investor surcharge), unless you agreed to pay or were otherwise aware of the existence of the unpaid rates, levies, taxes and other money due and payable relating to the Land;*

The Policy provides cover in circumstances where you become liable to pay unpaid rates, levies (including any levies or special levies struck before the Policy Date but excluding any levies or special levies struck after the Policy Date), land taxes and other outstanding accounts to a Local Authority and those rates, levies, charges or taxes are unpaid because of an error by your Conveyancing Practitioner.

! This cover **does not** include any land transfer duty or land stamp duty which is payable by you as the purchaser of the land, including any shortfalls or miscalculations of rebate entitlements of land transfer duty or land stamp duty nor does it cover any foreign buyer duty or foreign investor surcharge liability.

! This cover **does not** include any unpaid rates, levies, taxes or other moneys due and payable which **you agreed to pay** (for example, under the provisions of a contract) or in circumstances where **you were aware of the existence** of the unpaid rates, levies, taxes or other moneys due and payable.

- (x) *an error is made by your Conveyancing Practitioner or by the relevant Local Authority in respect of unpaid local infrastructure or local improvement levies or charges due to a Local Authority which may result in an encumbrance, charge or lien or writ on the Title to the Land, unless you agreed to pay or were otherwise aware of the existence of the unpaid local infrastructure or local improvement levies or charges. We will only indemnify you for that portion of the total amount of the unpaid local infrastructure or local improvement levies or charges which had accrued prior to the Policy Date.*

The Policy provides cover in circumstances where you become liable to pay unpaid local infrastructure or local improvement levies or charges due to a Local Authority because of an error by your Conveyancing Practitioner or a Local Authority.

! This cover **does not** include any land transfer duty or land stamp duty which is payable by you as the purchaser of the Land, including any shortfalls or miscalculations of rebate entitlements of land transfer duty or land stamp duty.

! You are **only covered** for amounts which had accrued prior to the Policy Date. You will be liable for any amounts which accrued after the Policy Date. You should check Schedule A of the Policy to verify the Policy Date is correct.

## Section 2.2: Risks occurring after the Policy Date

We insure you against the following Covered Risks only if the circumstances creating or giving rise to these risks occur after the Policy Date. Any assessment of Actual Loss which is required under Section 2.2 of the Policy will be determined as at the date you discover the Covered Risk.

The Policy provides cover for certain covered risks as itemised in section 2.2, if the circumstances creating or giving rise to those particular risks existed or occurred **after** the Policy Date. You should check Schedule A of the Policy to verify the Policy Date is correct.

### Forgery, fraud and mistake

- (a) *an instrument is registered or otherwise recorded in the Public Records by which someone else claims to have an interest in or an encumbrance, charge or lien on the Title to your Land because of:*
- i. an act of forgery, fraud or misrepresentation; or*
  - ii. a mistake by a land titles registry or a governmental or Local Authority.*

The Policy provides cover in circumstances where your Title is adversely affected by real estate or mortgage fraud or by a mistake by the land title registry resulting in loss of ownership or an encumbrance (such as a mortgage) lien or charge being recorded on your Title.

**For example**, you may become the victim of an identity fraud whereby a fraudster impersonates you and sells or mortgages your home without your knowledge.

**!** Note you are covered for this risk up to the Policy Amount plus Legal Fees.

### Encroachments

- (b) *someone else builds a structure, other than boundary walls or fences, which encroaches onto your Land.*

The Policy provides cover in circumstances where somebody else (such as a neighbour) builds a structure, other than a boundary wall or boundary fence, which encroaches onto your land.

**For example**, your neighbour may erect a structure, such as a garage or carport, without knowing the location of the legal boundary between your property and their property. As a result, the structure may in fact be erected on part of your Land. Please refer to section 1.3 of the Policy under the heading "Defence of Title".

**!** This cover **does not** include boundary fences or boundary walls. If somebody else (such as a neighbour) builds a boundary wall or a boundary fence which encroaches onto your Land then you will not be entitled to make a claim under the Policy.

### Supplemental rates & land taxes

(c) *a Local Authority assesses supplemental rates or taxes not previously assessed against your Land for any period prior to the Policy Date, unless you agreed to pay the supplemental rates or taxes. We will only indemnify you for that portion of the total amount of the supplemental rates or taxes which relates to a period prior to the Policy Date.*

The Policy provides cover in circumstances where a Local Authority issues you with a supplemental assessment of rates or taxes for any period prior to the Policy Date for which you become liable to pay but which were not previously assessed by the Local Authority as at the Policy Date.

! You are **only covered** for amounts which had accrued prior to the Policy Date. You will be liable for any amounts which accrued after the Policy Date. You should check Schedule A of the Policy to verify the Policy Date is correct.

! This cover **does not** include any supplemental rates or taxes which **you agreed to pay** (for example, under the provisions of a contract) or in circumstances where **you were aware of the existence** of the supplemental rates and taxes as at the Policy Date.

## **PART 2. FOR FURTHER INFORMATION**

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For further information about the Policy or about this Guide, please contact us on 1800 300 440 or visit our website [www.stewartau.com](http://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 Exclusions under the Residential Purchaser Policy
- The Guide to Making a Claim under the Residential Purchaser Policy

Residential Purchaser Policy  
**Guide to Exclusions**

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Like most insurance policies, the Stewart Title Residential Purchaser Policy (“the Policy”) contains exclusions from cover. This Guide is designed to assist you with navigating and understanding the exclusions contained in the Policy. 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 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 the meaning of defined terms. Usually a defined term will be capitalised, such as, 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 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 for loss or damage related to running a commercial business on the land or for any commercial development of the land, including, but not limited to, 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 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 content 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](http://www.stewartau.com) or contact us on 1800 300 440.**

## PART 1. EXCLUSIONS

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This part of the Guide provides commentary on the sections of the Policy relating to risks we do not cover.

### Section 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 cause 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.”*

The Policy does not provide cover for any loss or damage, costs or legal fees arising from a matter excluded under the Policy.

! The term “Exclusion” is defined in the Policy to mean *“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”*. These excluded matters and circumstances are detailed in section 3 of this Policy.” You should read the Exclusions carefully.

#### Section 3.1: General risks

(a) *that cause you no loss or damage;*

The Policy provides cover in relation to certain loss or damage arising from a Covered Risk. If there is no loss or damage, even if a Covered Risk presents itself, then you will not be entitled to make a claim. The obligation is on you to prove your loss – see section 5.3 of the Policy under the heading “Proving your loss”.

(b) *that you create, allow, assume or agree to at any time;*

Risks that are created by you will not be covered. Similarly, risks which you assume or agree to will also not be covered under the Policy, unless you have disclosed the existence of those risks to us and we have agreed to provide Affirmative Cover.

Any applicable Exceptions and Affirmative Cover will be detailed in Schedule B of the Policy.

(c) *that arise because you did not pay full value for the Land;*

If you did not pay the full value of the property, then any claims by third parties relating to outstanding amounts payable or any other loss arising from that situation will be excluded from cover, including, but not limited to, any caveats or writs recorded on Title.

(d) *that are known to you, but not to us as at the Policy Date;*

The Policy does not cover risks which you were aware of as at the Policy Date but which had not been disclosed to Stewart Title. If you are aware of risks prior to us issuing you with a Policy, you have an obligation to disclose those risks to us as they may affect Policy coverage.

! Please refer to the Notice under the *Insurance Contracts Act 1984* set out on page 1 of the Policy.

- (e) *that occur, come into existence or appear in Public Records after the Policy Date, other than those risks insured under Clause 2.2;*

Risks that occur after the Policy Date are excluded from Policy cover unless they relate to Forgery, Fraud and Mistake, Encroachments, or Supplemental Rates & Land Taxes as set out in Clause 2.2 of the Policy.

- (f) *that arise out of or relate to any use of the Land for business or commercial activities, including, but not limited to, any loss of rental income or loss of business revenue”.*

The Policy does not cover losses that arise out of business or commercial activities. These losses do not relate to the Title or the residential use of the Land and are therefore excluded. Any loss in rental income or business revenue will not be covered under the Policy and cannot form part of any claim.

### **Section 3.2: Laws, contamination, claims and interests against the Land**

- (a) *existing or future Laws which restrict, regulate, prohibit or relate to use or ownership of the Land or the violation or breach of those Laws – this does not however limit the Cover described in Clause 2.1 (n)(ii);*

The Policy does not cover any existing or future Laws that regulate the use or ownership of the Land unless the situation falls under Clause 2.1 (n)(ii).

Clause 2.1 (n)(ii) provides cover for the situation where you are prevented from using the Land as a residence because of any outstanding order, notice of violation or deficiency notice related to a Covered Risk.

- (b) *the right to take the Land by compulsory acquisition unless:*

- i. a notice of the right being exercised appears in the Public Records on the Policy Date; or*
- ii. the compulsory acquisition happened before the Policy Date and is binding on you if you bought the Land without knowing about the compulsory acquisition;*

The Policy only covers the situation where your Land is compulsorily acquired where a notice of the right to take compulsory acquisition would have been disclosed in a search of the Public Records on the Policy Date **or** if the compulsory acquisition was binding on the Policy Date and you were not aware of the existence of the compulsory acquisition.

- (c) *matters which are registered or otherwise recorded on Title on the Policy Date. This does not however limit the Cover described in sub-clauses 2.1 (m)(i), (n)(ii) and (o) and any Affirmative Cover noted on Schedule B;*

Matters that are registered or recorded on your Title on the Policy Date (for instance, dealings, mortgages, caveats, easements etc.) are excluded from cover. You are not entitled to make a claim in relation to the existence of those dealings on your Title.

**!** However, if the matter registered or recorded on Title falls under a Covered Risk (such as Clause 2.1 (m)(i), (n)(ii) or (o)), then it would be covered under the Policy or under an Affirmative Cover noted on Schedule B. For example, if a restriction, easement or covenant was registered on Title you will not be entitled to make a claim in relation to the existence of these matters, however, you may be entitled to claim should there be any non-compliance with the terms of the restriction, easement or covenant, and you were not aware of the non-compliance as at the Policy Date.

- (d) *environmental contaminants or hazardous wastes or covenants, conditions and restrictions for environmental protection or any environmental matters, including but not limited to, legislation with respect to environmental protection, legislation with respect to underground fuel storage tanks, abandoned oil wells, water quality and water quantity;*

The Policy does not cover environmental issues or contamination of any kind as these matters are not related to the Title of the Land. For example, any loss arising from structures on the property which contain asbestos are excluded from cover as asbestos is an environmental contaminant.

- (e) *any claims for which there is protection under home and buildings insurance or builders warranty insurance;*

The Policy does not provide cover in respect of the destruction of or damage to a building on the Land; such as the destruction or damage to a home building or any loss or damage to the contents of a residential building. Protection for this kind of loss is provided by home and buildings insurance or builders warranty insurance. The Policy is NOT a home building insurance product, a home contents insurance product or a personal and domestic property insurance product.

- (f) *any claims arising directly or indirectly from mine subsidence;*

The Policy does not provide cover for any loss or damage arising from mine subsidence as this issue does not relate to the Title of the Land.

- (g) *any native title claims or claims arising directly or indirectly from Legislation with respect to the protection of aboriginal cultural heritage.*

Any loss or damage, costs or legal expenses associated with any native title claims or claims arising directly or indirectly from legislation (as amended from time to time) with respect to the protection of aboriginal cultural heritage which may affect your Land are expressly excluded under the Policy. Any such loss, or damage, costs or legal expenses cannot form any part of a claim.

### Section 3.3: Workmanship, damage, Infestation and dilapidation

- (a) *any claims, loss or damage relating to poor workmanship, 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 electrical or plumbing fittings/items such as hot water systems, air conditioning systems, electric doors, internal plumbing and electrical wiring;*

Any claims, loss or damage relating to poor workmanship, the condition and repair, infestation or dilapidation of structures on the Land and electrical or plumbing fittings/items (including failure) are not covered. For example, a structure that is infested with termites or other insects, or is dilapidated, or is in need of repair because it is in poor condition, including (but not limited to) cracked tiles, wood rot, loose roof tiles, rising damp, damaged pipes, wiring, plumbing fixtures will not be covered under the policy.

**!** You are **not covered** for claims, loss or damage relating to the wear and tear or functionality of items which service your dwelling, including (but not limited to): smoke alarms, residual current devices, septic systems, hot water systems, irrigation systems, solar panels, solar heating, air-conditioning systems, electrical and/or gas heaters, televisions aerials and internet/pay television/streaming services connections will not be covered under the Policy.

(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 that the structure(s), including any part thereof, which are the subject of the Enforcement Order, 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.*

The Policy **will not cover** the costs of bringing structures into compliance with current building codes and standards unless the non-compliance with applicable building codes and standards is a breach of a building or development approval(s) at the time the structure was built or the structure has been built without obtaining building or development approval(s) and the conditions under clauses 2.1 (n) and 2.1 (r) of the Policy are satisfied.

This means that if the dwelling or structure on the Land has been built with building or development approval but has been built in such a way that it does not comply with applicable building codes or standards then you will not be covered for any costs associated with bringing the dwelling or structure into compliance.

**!** However, this exclusion does not apply in circumstances where the non-compliance with building codes and standards would have been disclosed in a Local Authority Search or appears in Public Records on the Policy Date or where you are being forced by a Local Authority to rectify or remove structures on the Land because the non-compliance with building codes and standards is a breach of a building or development approval issued by a Local Authority at the time the structure was built.

(d) any claims, loss or damage relating to matters disclosed in the contract for sale for the purchase of your interest in the Land and any documentation associated with that purchase obtained prior to the Policy Date, including, but not limited to, any survey report, building inspection report or home inspection report;

The Policy will not cover any claims, loss or damage in relation to building defects or other matters which are disclosed in the contract for sale and associated documentation for the purchase of the Land (such as a survey report), or a building inspection report or home inspection report that you obtain before the Policy Date.

Building inspection reports typically disclose issues related to the condition and repair of the structures on the Land, including wear and tear of the property, infestation and dilapidation issues which are also excluded under clause 3.3 (a) of the Policy.

(e) 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 struck at any time that relate to non-compliant cladding of the building, and



- ii. *any enforcement action issued by a Local Authority requiring rectification, alteration, replacement or removal of 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.*

The Policy will not cover any claims, loss or damage in relation to non-compliant cladding of the building which is built upon and forms part of your Land, including external and internal cladding and cladding which does not comply with building codes and standards and cladding that it is flammable and poses a danger to the occupants of the building.

### **Section 3.4: Rural zoned land**

- (a) *for Land within a Rural Zone, Cover under Clause 2.1 (r) extends only to the primary residence, including sheds, carports and garages used for residential purposes, and any swimming pool erected on the Land and not to any other buildings or structures erected on the Land.*

If your Land is located in a rural zone, then the cover under clause 2.1 (r) only extends to the primary residence and any sheds, carports, garages and swimming pool used for residential purposes.

This means that any secondary cottages or dwellings, any storage barns, stables or farm sheds will not be covered under the Policy. You should check the zoning of the property before you order a Policy.

### **Section 3.5: Land area over 50 acres**

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

If your Land is over 50 acres then the cover provided under clause 2.1 (m) of the Policy will not apply. This means any defect or adverse matter affecting Title to your Land, including (but not limited to) non-compliance with an easement, restriction, right of way or covenant registered or recorded on your Title, or any boundary discrepancies or any encroachments by structures (such as fences and walls) on your Land, that would have been disclosed in a survey report obtained as at the Policy Date will not be covered under the Policy.

### **Section 3.6: Exception(s) specifically affecting the Land**

- (a) *exceptions listed in Schedule B of the Policy unless an Affirmative Cover applies;*

Apart from the exclusions referenced in Section 3 of the Policy, further exceptions may apply to the Policy by way of underwriting in Schedule B of the Policy.

Schedule B provides exceptions from cover as well as any Affirmative Cover (if applicable) specific to your Land. You must review Schedule A and Schedule B carefully.

- (b) *lack of a right to any land outside the area specifically described and referred to in the title reference 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 (b) and 2.1 (m)(ii).*



The Policy does not cover the lack of any rights to any Land outside the property being insured under the Policy unless the situation falls under clauses 2.1 (b) or 2.1 (m)(ii) of the Policy.

Clause 2.1 (b) covers the situation where you do not have any legal right of access to and from the Land in circumstances where you were not aware of an access issue as at the Policy Date.

Clause 2.1 (m)(ii) covers the situation where there are structures on your Land which encroaches onto the neighbour's Land or vice versa, or where there are structures onto an easement or right of way on your Land.

### 3.7 Initiation of enforcement action

a) *the Cover provided in Clauses 2.1 (m)(i) and (ii) and 2.1 (n)(i) and 2.1 (r) 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 did 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.*

The Policy **will not** cover any claims brought under Clause 2.1 (m) and 2.1 (n)(i) and 2.1 (r) (refer to the Guide to Covered Risks for details) in circumstances where you, or somebody else acting on your behalf, have **taken action which has initiated, instigated and/or encouraged** any enforcement action by or on behalf of a Local Authority or by or on behalf of an adjoining property owner against your Land.

Such 'action' includes (but is not limited to) inviting the Local Authority to inspect your Land **for the purposes of** the Local Authority assessing whether any structure on the Land did not comply with or was built or modified without obtaining building and development approvals required by law. The same applies to taking 'action' by inviting an adjoining owner to inspect the Land **for the purposes of** assessing whether any structures on your Land (including boundary fences) encroach on any other land.

**!** However, this exclusion does not apply in circumstances where, after settlement of your purchase, you subsequently lodge a building permit application to carry out further development works on the Land and the Local Authority discovers an unapproved structure during the course of the building permit approval process or in circumstances where you are required by law to verify that structures on your Land comply with or have been built with building and development approvals required by law.

## **PART 2. FOR FURTHER INFORMATION**

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For further information about the Policy or about this Guide, please contact us on 1800 300 440 or visit our website [www.stewartau.com](http://www.stewartau.com).

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### **Other Guides:**

- The Guide to Covered Risks under the Residential purchaser Policy
- The Guide to Making a Claim under the Residential Purchaser Policy

Residential Purchaser Policy  
**Guide to Making a Claim**

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For most people, the largest investment they will ever make will be the purchase of their home. Stewart Title Limited's Residential Purchaser Policy ("the Policy") insures your title to your land against certain covered risks which may cause you loss or affect your ownership of your property.

This Guide is designed to assist you with making a claim under 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 for loss or damage related to running a commercial business on the land or for any commercial development of the land, including, but not limited to, 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.

**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](http://www.stewartau.com) or contact us on 1 800 300 440.**

## PART 1. MAKING A CLAIM

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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 land.

**!** 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 in respect of 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 claims or parts of 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

**6.1** *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 (r), 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 (r) of the Policy (See **Section 2.1 (r) - 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 did 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.*

- h) *for a claim under Clauses 2.1 (m) or 2.2 (b) we have the following options:*

- i. *subject to any applicable Exclusions or Exceptions from Cover, we may pay any necessary costs, legal fees and expenses incurred in either defending any challenge or legal proceedings which are related to the claim or prosecuting any action or proceedings which in our opinion may be necessary or desirable to resolve the claim; or*
- ii. *subject to any applicable Exclusions or Exceptions from Cover, we may end the coverage for the claim by 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. The appraiser will be selected and instructed by us. We will pay the appraiser's fees and expenses.*

**6.2** *In the event that a dispute arises between you and us regarding the amount of any Actual Loss which we have agreed to pay you or which we are required to pay you, the amount 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, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.*

For claims made under clause 2.1 (r) of the Policy (See **Section 2.1 (r)- 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.

For claims made under clause 2.1 (m) or 2.2 (b) of the Policy we may pay any necessary costs, legal fees and expenses incurred in either defending any challenge or legal proceedings which are related to the claim or prosecuting any action or proceedings which in our opinion may be necessary or desirable to resolve the claim. or we may end the coverage for the claim by 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. The appraiser will be selected and instructed by us. We will pay the appraiser's fees and expenses.

If there is a dispute arises between you and us regarding the amount of any Actual Loss which we have agreed to pay you or which we are required to pay you, the amount 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.

## PART 2. COMPLAINTS AND DISPUTE RESOLUTION PROCEDURES

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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:

<b>Telephone</b>	(02) 9081 6200 Toll Free : 1800 300 440
<b>Fax</b>	Toll Free : 1300 898 175
<b>E-mail</b>	<a href="mailto:complaintsau@stewart.com">complaintsau@stewart.com</a>
<b>Mail</b>	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](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

## PART 3. FOR FURTHER INFORMATION

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For further information about the Policy or about this Guide, please contact us on 1800 300 440 or visit our website [www.stewartau.com](http://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 Residential Purchaser Policy
- The Guide to Exclusions under the Residential Purchaser Policy

# StewartCONNECT Terms & Conditions

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These terms and conditions govern the relationship between you, a StewartCONNECT Member (Member), and Stewart Title Limited (Stewart Title).

## 1. Distribution of Stewart Title Insurance Products

- 1.1. Stewart Title insurance products are designed to be distributed by solicitors, conveyancers and settlement agents ("Conveyancing Practitioners") who act on behalf of their clients in relation to their clients' purchase of real estate, including strata title (Real Estate Transaction).
- 1.2. StewartCONNECT® is a program which enables Conveyancing Practitioners to arrange Stewart Title insurance products on behalf of the client in relation to a Real Estate Transaction without the Conveyancing Practitioner being required to hold an Australian Financial Services Licence (AFSL).

## 2. Membership of StewartCONNECT

- 2.1. Membership of StewartCONNECT is available to available to Conveyancing Practitioners who practice in Australia.
- 2.2. Members warrant that they hold professional indemnity insurance required to practice as a Conveyancing Practitioner (as appropriate) in the State(s) or Territory(ies) in which the Member practices.

## 3. Appointment as a StewartCONNECT Member

- 3.1. By submitting an order for a Stewart Title insurance product on behalf of a client, the Conveyancing Practitioner and the firm or practice for which the solicitor or conveyancer is working when the order is submitted, will be appointed as a Member of StewartCONNECT. The appointment will take effect on the date the first policy order is submitted and will continue until the appointment is terminated by either party giving notice in writing to the other party.

## 4. StewartCONNECT Member Authorisation

- 4.1. In the course of acting for their client in relation to a Real Estate Transaction, Members are authorised on a non-exclusive and no obligation basis by Stewart Title to:
  - 4.1.1. recommend Stewart Title insurance products to their client;
  - 4.1.2. give advice about Stewart Title insurance products to their clients;
  - 4.1.3. distribute marketing material issued by Stewart Title to their clients;
  - 4.1.4. arrange title insurance for their clients by completing and submitting a Policy Order Form to Stewart Title on behalf of their clients, (together, 'Member's Activities').

## 5. Exemption from AFSL Requirement

- 5.1. In respect of the provision of title insurance, Stewart Title is exempt from the requirement to hold an AFSL under section 911A(2)(g) of the Corporations Act 2001 (Cth) (the Licensing Exemption).
- 5.2. Under section 911A(2)(a)(ii) of the Corporations Act 2001 (Cth) a representative of Stewart Title is also exempt from the requirement to hold an AFSL in respect of the provision of title insurance (the Representative Licensing Exemption).
- 5.3. Each Members is appointed as a representative of Stewart Title for the sole purpose of the Representative Licensing Exemption.

## 6. No Agency Relationship

- 6.1. Each Member of StewartCONNECT is authorised to carry out the Member's Activities but is not appointed as agent of Stewart Title. Each Member acts on behalf of their client(s) in relation to the Real Estate Transaction and is appointed as a representative of Stewart Title for the sole purpose of the Representative Licensing Exemption.
- 6.2. Each Member undertakes that they will not, at any time, hold themselves out to be an agent of Stewart Title or as having any authority to commit or bind Stewart Title as agent of Stewart Title in any way.
- 6.3. Each Member acknowledges and agrees that they are not authorised to, and will not, on behalf of Stewart Title, extend any cover, waive any exclusion or exception or vary any term of insurance ordered from and/or provided by Stewart Title.

## 7. Membership Benefits

- 7.1. Processing Fee
  - 7.1.1. A Member may elect to receive a processing fee for each title insurance policy issued by Stewart Title ordered by the Member for a client of the Member. This fee is paid in recognition of time spent by the Member in ordering a policy. The amount of the processing fee to be paid will be determined by Stewart Title from time to time. The processing fee will only be payable if a policy is issued by Stewart Title and the policy is not cancelled by the insured within the cancellation period.
  - 7.1.2. Payment of fees will be made once per month and will be for the total number of policies issued in the preceding month. Payment will be made into the nominated bank account of the Member.
  - 7.1.3. In the event a policy is validly cancelled after it has been issued by Stewart Title, an adjustment will be made in the following month in respect of any processing fee paid to the Member in relation to that cancelled policy.
  - 7.1.4. Stewart Title will issue a Recipient Created Tax Invoice to the Member each month in respect of the monthly processing fees paid by Stewart Title to the Member including any adjustments.
  - 7.1.5. The Member must not issue its own Tax Invoice in respect of the monthly processing fees paid by Stewart Title to the Member.
  - 7.1.6. The Member acknowledges that it is registered for GST and agrees to notify Stewart Title if it ceases to be registered for GST.
  - 7.1.7. Stewart Title acknowledges that it is registered for GST and agrees to notify the Member if it ceases to be registered for GST.
- 7.2. Waiver and Indemnity
  - 7.2.1. Stewart Title will waive any rights and remedies or relief to which it becomes entitled by way of subrogation against a Member where a claim arises as a result of the Member's negligence while acting for the insured in relation to an insured transaction under the Stewart Title policy.
  - 7.2.2. Stewart Title also agrees to indemnify the Member where the Member's client brings a claim against the Member with respect to a matter which would be covered under a title insurance policy issued by Stewart Title if the claim were brought under that policy.

7.2.3. This waiver and indemnity will not apply where the Member's conduct is fraudulent or criminal, or the Member conspires with others who are engaged in fraudulent or criminal conduct, or is otherwise conduct that would amount to professional misconduct as defined in the relevant professional conduct rules which are applicable in the Member's State or Territory.

7.2.4. The indemnity will be limited to reasonable out of pocket expenses incurred by the Member, such as payment of any excess or deductible payable under the Member's professional indemnity insurance policy and associated file retrieval/copying costs and will not exceed the amount of cover provided by Stewart Title under the policy.

## 7.3. Excess Layer Professional Indemnity Insurance

7.3.1. Subject to clauses 7.3.2 to 7.3.7, each Member will have the benefit of being covered on an excess layer basis by a professional indemnity policy issued to Stewart Title by an Australian authorised general insurer ("PI Insurer") selected by Stewart Title in relation to the Member's Activities (the StewartCONNECT Professional Indemnity Policy).

7.3.2. The Member acknowledges and agrees that the Member remains obligated to maintain any other relevant professional indemnity insurance required in the Member's State or Territory in accordance with the warranty provided in clause 2.2.

7.3.3. The Member acknowledges and agrees that the StewartCONNECT Professional Indemnity Policy only covers the Member for amounts in addition to the cover provided by any other insurance cover (including any excesses or deductibles) applicable to the Member's Activities (including but not limited to the insurance described in the warranty provided in clause 2.2) and that the StewartCONNECT Professional Indemnity Policy will only cover the Member on a primary layer basis where no such other cover is in place.

7.3.4. Stewart Title will pay the premium for the StewartCONNECT Professional Indemnity Policy as it falls due and will also pay any excess payable under the StewartCONNECT Professional Indemnity Policy on behalf of the Member should a claim be made by the Member. Members may be provided with a certificate of currency of insurance issued by the PI Insurer or the broker (as the case may be) upon request to Stewart Title.

7.3.5. Members must comply with all terms and conditions of the StewartCONNECT Professional Indemnity Policy and provide all reasonable co-operation, information and assistance requested by Stewart Title and/or the PI Insurer in relation to the policy.

7.3.6. Members must notify Stewart Title of any claim or circumstances that may lead to a claim under the StewartCONNECT Professional Indemnity Policy in a form, which may be modified from time to time, as requested by Stewart Title. If at the time of such notification there is any other insurance in force applicable to the Member's Activities, the Member shall promptly give to Stewart Title full details of such other insurance, including the identity of the insurer and the policy number, and such further information as Stewart Title and/or the PI Insurer may reasonably require.

7.3.7. The liability of the PI Insurer under the StewartCONNECT Professional Indemnity Policy is limited to \$15 million in total each year for all claims by all Members in that year (Year Maximum), and \$5 million for any one claim each year. The Year Maximum limit is shared between all Members of StewartCONNECT which means that any Member's Activities will not be covered under the StewartCONNECT Professional Indemnity Policy once the Year Maximum is reached in a particular year of cover.

## 8. Cancellation

- 8.1. A Member may, at any time, cancel their membership by providing written notice to Stewart Title.

## 9. Termination

- 9.1. Stewart Title may, at any time without prior notice, terminate a Member's membership of StewartCONNECT. Termination will take effect immediately on notice being given but will not affect the rights, obligations, duties and liabilities of the Member under these terms and conditions which have accrued at the date of termination.

## 10. Effect of Cancellation or Termination

- 10.1. Upon termination or cancellation of membership:
  - 10.1.1. The authorisation granted to the Member under clause 4 is revoked and the Representative Licensing Exemption ceases.
  - 10.1.2. The Member must return to Stewart Title all documents and any materials prepared by Stewart Title which are in the possession or control of the Member (or, if agreed to by Stewart Title, destroy such documents and materials).
  - 10.1.3. The Member ceases to be a member of StewartCONNECT and must no longer promote or carry on any of the activities in clause 4.1 or hold out that it represents Stewart Title for any purpose.
- 10.2. This clause survives termination of membership.

## 11. Variation

- 11.1. Stewart Title may, in its absolute discretion, vary these terms and conditions from time to time. Members will be notified of any such variations.

## 12. Collection of Premiums

- 12.1. If Members elect to collect premiums due in respect of title insurance policies arranged by the Member in accordance with the authorisation granted to Members under clause 4.1 for remittance to Stewart Title, then the Member must immediately remit all premiums received from clients to Stewart Title without deduction or set-off.
- 12.2. Stewart Title only accepts payment of premium by electronic funds transfer into Stewart Title's nominated bank account or by cheque payable to Stewart Title.

# Sample Policy

# RESIDENTIAL PURCHASER POLICY

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## IMPORTANT INFORMATION ABOUT YOUR POLICY AND YOUR COVERAGE

For most people, the largest investment they will ever make will be the purchase of their home. Stewart Title Limited's Residential 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

Words often used in this Policy and their meaning are 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 Expenses** 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 in the Jurisdiction.

**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.

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

**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.

**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, your policy Schedules (Schedule A and Schedule B) and any written Endorsement(s) to your Policy.

**Policy Amount** means the policy amount outlined in Schedule A, as automatically increased as outlined in Clause 1.5.

**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 settlement of your purchase and ending with the registration of your interest in the Land in the land titles 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 in the Land as detailed in Schedule A which is disclosed by the Public Records.

**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.

**“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 on the part of two or more persons binds them jointly and severally;
- g) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- h) a reference to a statute, regulation or other instrument (“Legislation”) is a reference to that Legislation as amended from time to time and to any Legislation which replaces or supersedes that Legislation as amended from time to time; and
- i) reference to an item is a reference to an item in a Schedule to this document.

## 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 2.1 of the Policy will be determined as at the Policy Date. Any assessment of Actual Loss which is required under Section 2.2 of the Policy will be determined as at the date you discover the Covered Risk.

### 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.

### 1.3 Defence of Title

We may 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. If we decide to defend a challenge to your Title we will pay necessary costs, legal fees and expenses incurred in that defence. We will not pay such costs, fees and expenses incurred by you unless they are approved in writing by us before they are incurred. We will not pay for any part of costs, fees and expenses in a matter that does not relate to a Covered Risk or that relates to a matter that is excepted or excluded from Cover under this Policy. We may decide to not defend or continue to defend your Title, and may alternatively exercise one or more of the options outlined in clause 6. We may also end our defence of your Title by exercising one or more of the options outlined in clause 6.

### 1.4 Rental accommodation

If you cannot use the Land as your principal place of residence because of circumstances insured under this Policy and we have agreed to indemnify you under the terms of the Policy, you may rent a reasonably equivalent home. We will reimburse your actual rent until you are able to resume the use of the Land as your principal place of residence or until we settle your claim in accordance with our choices under the Policy (whichever is the earlier), provided that we will only reimburse you in respect of your actual rent which we consider to be necessarily and reasonably incurred by you.

For the avoidance of doubt, the maximum aggregate amount of Cover described in clauses 1.1, 1.2 and 1.4 of this Policy shall not exceed the Policy Amount.

### 1.5 The value of your Land may increase

Market conditions and inflation may increase the value of your Land. For the purposes of a claim under Section 2.2 of the Policy only, the maximum amount of your insurance cover increases in line with increases in the fair market value of the Land after the Policy Date, up to a maximum of 200% of the Policy Amount shown in Schedule A of the Policy. This added Cover is provided without additional premium.

If you have made improvements which increase the value of the Land above 200% of the Policy Amount and you wish to increase your Policy Amount for the purposes of a claim under Section 2.2, then provided there are no circumstances of which you are aware that could give rise to a claim and you do not have any unresolved claims which you have made under the Policy, you may request to increase the Policy Amount although an additional premium may apply.

For the avoidance of doubt, this added Cover affects only the maximum amount of your insurance cover for a claim under Section 2.2 of the Policy. It does not affect any assessment of Actual Loss under clause 2.1 of the Policy. Any assessment of Actual Loss which is required under clause 2.1 will be determined as at the Policy Date. Increases in the fair market value of your Land after the Policy Date will not affect any assessment of Actual Loss under clause 2.1.

## 2. COVERED RISKS

### 2.1 Risks occurring before the Policy Date and during the Registration Period

We will provide you with Cover against all of the following Covered Risks, if all of the circumstances creating or giving rise to the risk existed or occurred before the Policy Date. Any assessment of Actual Loss which is required under this Section 2.1 will be determined as at the Policy Date.

During the Registration Period we will also provide you with Cover for all of the following Covered Risks, where:

- i. you, in good faith, have paid or authorised the payment of the premium and have relied upon a written assurance of the issuance of this policy; and
- ii. reasonable steps have been taken to promptly register the transfer of title, any mortgage, discharge of mortgage or withdrawal of caveat or the Title has been delivered to your lender on the understanding your lender will do so.

#### Risks affecting your ownership of the Land

- a) you are not the owner of the estate or interest in the Land detailed in the title reference in Schedule A;
- b) you do not have any legal right of Access to and from the Land;
- c) someone else claims to have rights affecting your Title because of forgery, fraud, impersonation, duress, mental incompetence or incapacity;
- d) someone else lodges a dealing which prevents your interest in the Land from being registered or recorded;
- e) someone else claims an interest in the Land under the Family Law Act;
- f) someone else claims a right or interest over whole or part of the Land arising out of a lease, contract or an option;
- g) someone else claims a right of possession over whole or part of the Land who is not on the Title;
- 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;
- i) there are unpaid council rates, levies (including any levies or special levies struck before the Policy Date but excluding any levies or special levies struck after the Policy Date), 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, land stamp duty, foreign buyer duty or foreign investor surcharge), unless you agreed to pay or were otherwise aware of the existence of the unpaid rates, levies, taxes or accounts.
- j) 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;
- k) the home with the address described in Schedule A is not located on the Land;
- l) any other title defect or lien or encumbrance that affects Title to your Land which is not registered or otherwise recorded on Title on the Policy Date.

#### Risks regarding boundaries and encroachments

- m) 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 which encroach onto your neighbour's land;
  - iii. structures on your neighbour's land which encroach onto your Land; or
  - iv. structures on your neighbour's land which encroach onto an easement or right of way on your Land.

#### Risks affecting your use of the Land

- n) your Land is Unmarketable, or you are prevented by a Local Authority from using the Land as a residence, 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; or
  - ii. of any outstanding notice of violation or deficiency notice, provided the outstanding notice of violation or deficiency notice relates to a Covered Risk under the Policy and you did not agree to be responsible for them; or
  - iii. someone has the authority or a right to use the surface or subsurface of the Land for developments or extraction of subsurface minerals;
- o) there is a covenant or restriction affecting your Title, other than one registered or otherwise recorded on Title on the Policy Date, which limits the use of your Land as a residence;

- p) there is a breach of Laws relating to the subdivision of the Land as a separate and distinct parcel. You are not covered for any breach of Laws which do not specifically relate to the subdivision under which the Land was created as a separate and distinct parcel;
- q) you do not have any legal right of water supply or drainage to and from the Land. You are not covered for the cost of constructing physical water supply or drainage infrastructure or performing maintenance or otherwise upgrading any water supply or drainage infrastructure.

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

- r) You are issued with an Enforcement Order by a Local Authority, or you are liable to comply with an outstanding Enforcement Order issued by a Local Authority to a previous owner, which states that a structure or structure(s) (other than boundary walls or boundary fences) on the Land, including any part thereof:
  - i. 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 or modified; or
  - ii. did not comply with building or development approvals which were issued by the Local Authority at the time the relevant structure(s) were built:  
and as a result of the Enforcement Order:
    - iii. you are required to rectify or remove all or part of the existing structure(s) on the Land; or
    - iv. you are prevented by a Local Authority from using the Land as a residence; or
    - v. the Land is Unmarketable.

For the avoidance of doubt, the Cover under clauses 2.1 (n) and 2.1 (r) 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.

**Risks of errors, affectations and proposals**

- s) any affectation, proposal or adverse matter affecting Title to the Land that a Local Authority Search completed on or before the Policy Date would have disclosed;
- t) any error or omission by the Local Authority in providing the results of a Local Authority Search indicating that there are no affectations, proposals or adverse matters affecting Title to the Land, if the Local Authority search was completed on or before the Policy Date;
- u) any affectation, proposal or adverse matter affecting Title to the Land which would have been disclosed by searches of the Public Records relating to the Land on or before the Policy Date;
- v) any error or omission by the Local Authority in providing the results of searches of the Public Records indicating that there are no affectations, proposals or adverse matters affecting Title to the Land if the searches were completed on or before the Policy Date;
- w) an error is made by your Conveyancing Practitioner or by the relevant Local Authority in respect of outstanding rates, levies (including any levies or special levies struck before the Policy Date but excluding any levies or special levies struck after the Policy Date), charges, taxes and other money due and payable relating to the Land (excluding any land transfer duty, land stamp duty, foreign buyer duty or foreign investor surcharge), unless you agreed to pay or were otherwise aware of the existence of the unpaid rates, levies, taxes and other money due and payable relating to the Land;
- x) an error is made by your Conveyancing Practitioner or by the relevant Local Authority in respect of unpaid local infrastructure or local improvement levies or charges due to a Local Authority which may result in an encumbrance, charge or lien or writ on the Title to the Land, unless you agreed to pay or were otherwise aware of the existence of the unpaid local infrastructure or local improvement levies or charges. We will only indemnify you for that portion of the total amount of the unpaid local infrastructure or local improvement levies or charges which had accrued prior to the Policy Date.

**2.2 Risks occurring after the Policy Date**

We insure you against the following Covered Risks only if the circumstances creating or giving rise to these risks occur after the Policy Date. Any assessment of Actual Loss which is required under Section 2.2 of the Policy will be determined as at the date you discover the Covered Risk.

**Forgery, fraud and mistake**

- a) an instrument is registered or otherwise recorded in the Public Records by which someone else claims to have an interest in or an encumbrance, charge or lien on the Title to your Land because of:
  - i. an act of forgery, fraud or misrepresentation; or

- ii. a mistake by a land titles registry or a governmental or Local Authority.

**Encroachments**

- b) someone else builds a structure, other than a boundary wall or fence, which encroaches onto your Land.

**Supplemental Rates & Land Taxes**

- c) a Local Authority assesses supplemental rates or taxes not previously assessed against your Land for any period prior to the Policy Date, unless you agreed to pay the supplemental rates or taxes. We will only indemnify you for that portion of the total amount of the supplemental rates or taxes which relates to a period prior to 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 cause you no loss or damage;
- b) that you create, allow, assume or agree to at any time;
- c) that arise because you did not pay full value for the Land;
- d) that are known to you, but not to us as at the Policy Date;
- 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 arise out of or relate to any use of the Land for business or commercial activities, including, but not limited to, any loss of rental income or loss of business revenue.

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

- a) existing or future Laws which restrict, regulate, prohibit or relate to use or ownership of the Land or the violation or breach of those Laws – this does not however limit the Cover described in clause 2.1 (n)(ii);
- b) the right to take the Land by compulsory acquisition unless:
  - i. a notice of the right being exercised appears in the Public Records on the Policy Date; or
  - ii. the compulsory acquisition happened before the Policy Date and is binding on you if you bought the Land without knowing about the compulsory acquisition;
- c) matters which are registered or otherwise recorded on Title on the Policy Date. This does not however limit the Cover described in sub-clauses 2.1 (m)(i), (n)(ii) and (o) and any Affirmative Cover noted in Schedule B;
- d) environmental contaminants or hazardous wastes or covenants, conditions and restrictions for environmental protection or any environmental matters, including but not limited to, legislation with respect to environmental protection, legislation with respect to underground fuel storage tanks, abandoned oil wells, water quality and water quantity;
- e) any claims for which there is protection under home and buildings insurance or builders warranty insurance;
- f) any claims arising directly or indirectly from mine subsidence;
- g) any native title claims or claims arising directly or indirectly from Legislation with respect to the protection of aboriginal cultural heritage.

**3.3 Workmanship, Damage, Infestation and Dilapidation**

- a) any claims, loss or damage relating to poor workmanship, or 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, was built or modified without obtaining 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 relating to matters disclosed in the contract for sale for the purchase of your interest in the Land and any documentation associated with that purchase obtained prior to the Policy Date, including, but not limited to, any survey report, building inspection report or home inspection report.
- e) 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 struck at any time that relate to non-compliant cladding of the building, and
  - ii. any enforcement action issued by a Local Authority requiring rectification, alteration, replacement or removal of 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 Rural Zoned Land

- a) For Land within a Rural Zone, Cover under Clause 2.1 (r) extends only to the primary residence, including sheds, carports and garages used for residential purposes, and any swimming pool 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 (m) will not apply to Land where the land area exceeds 50 acres.

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

- a) The exceptions listed in Schedule B of the Policy unless an Affirmative Cover applies;
- b) The lack of a right to any land outside the area specifically described and referred to in the title reference 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 (b) and 2.1 (m)(ii).

### 3.7 Initiation of enforcement action

- a) The Cover provided in Clauses 2.1 (m)(i) and (ii) and 2.1 (n)(i) and 2.1 (r) 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 did 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 and protects you, the Insured named in Schedule A of this Policy, forever. This Policy also insures and protects:

- a) anyone who receives your Title because of your death;
- b) the trustee, or successor trustee, of a trust of which you are a settlor, to whom you transfer your Title after the Policy Date;
- c) your spouse, legal partner or child who receives your Title for nominal consideration or in settlement of your obligations under the Family Law Act;

- d) the beneficiary of a trust of which you are the trustee, to whom Title to the Land is transferred under the terms of the trust; and
- e) any successor or assignee of a mortgage you took back from anyone who purchased your interest in the Land. We may assert any rights and defences we have against any person previously insured under this Policy against any of the above persons.

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

This Policy cannot be assigned. The Policy will not protect anyone who purchases the Land from you. However upon resale of the Land, we will consider offering the same Cover that was offered to you to a prospective purchaser, upon payment of the applicable premium at the time of sale.

### 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 the 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 in respect of 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 claims or parts of 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

6.1 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 (r) 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 did 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 did 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 did 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.
- h) for a claim under Clauses 2.1 (m) or 2.2 (b) we have the following options:
  - i. subject to any applicable Exclusions or Exceptions from Cover, we may pay any necessary costs, legal fees and expenses incurred in either defending any challenge or legal proceedings which are related to the claim or prosecuting any action or proceedings which in our opinion may be necessary or desirable to resolve the claim; or
  - ii. subject to any applicable Exclusions or Exceptions from Cover, we may end the coverage for the claim by 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. The appraiser will be selected and instructed by us. We will pay the appraiser's fees and expenses.

**6.2** In the event that a dispute arises between you and us regarding the amount of any Actual Loss which we have agreed to pay you or which we are required to pay you, the amount 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, 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 Risk 2.1 (r) 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 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.

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

When we pay 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) The premium for this Policy becomes due and payable on the Policy Date. Subject to Clause 2.1, 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.
- d) 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 deemed to have given up that right.
- e) Any dispute relating to this Policy shall be subject to the law of the Jurisdiction.
- f) 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 less an administration charge of \$50.00.

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