



# Commercial Purchaser Policy

Stewart Title Limited's Commercial Purchaser Policy will insure you, subject to the terms and conditions of the Policy, against your actual loss resulting from Covered Risks covered under this Policy, up to the Policy Amount. Stewart Title Limited also protects you against costs, legal fees and expenses that you may incur in defending the Title to the Land, to the extent provided in the Policy.

To be valid, this Policy must include both a Schedule A and a Schedule B and any relevant Endorsement(s).

## 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.

STEWART TITLE LIMITED

ARBN 101 720 101 (United Kingdom)

GPO Box 527

Sydney NSW 2001

## 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.

## THE POLICY

This policy contains:

- our standard cover;
- our standard exclusions;
- Schedule A, which contains information about your policy, fees and your land; and
- Schedule B, which 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. Carefully review the Schedules and any endorsement(s). As you read through the policy please remember that the policy must be read as a whole. This means that any comments or provisions in one section of the policy may be affected by comments in another section, the Schedules or any endorsement(s).

## YOUR PRIVACY

We are committed to handling your personal information in accordance with the *Privacy Act*.

For further details of our Privacy Policy please call our Privacy Officer on 1800 300 440 or visit our website [www.stewartau.com](http://www.stewartau.com)

## CUSTOMER SERVICE – OUR PROMISE

If you should have any of the following problems, let us know so we can help you:

- any questions about our policy and its cover;
- any concerns about our service or our staff;
- any questions about a claim; or
- any concerns about the progress of a claim.

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 Operations Manager who will review your concerns with you and the manager and you will be promptly advised of his/her decision.

If at any time you are not satisfied, please write to

**The General Manager  
Stewart Title Limited  
GPO Box 527  
Sydney NSW 2001**

Your concerns will be reviewed and a response in writing provided to you within 10 working days of receipt of your letter.

## DEFINED MEANINGS – WHAT WE MEAN

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

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

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

**Authorised Expense(s)** means any costs, legal fees and expenses incurred by you as a result of a claim and pre-approved in writing by us.

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

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

**Final Search** means a search of the Title of the Land in the land title registry in the jurisdiction where your Land is located conducted by your Practitioner on the Policy Date.

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

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

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

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

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

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

**Policy Amount** means the policy amount specified in Schedule A, as may be increased or decreased by Endorsement to this Policy, or increased or decreased by Section 6.3 of this Policy.

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

**Practitioner** means a solicitor or conveyancer entitled to practice in the jurisdiction where your Land is located.

**Public Records** means records established and maintained by law, in the jurisdiction where the Land is located, that give constructive notice of matters affecting your Title.

**Registration** means making an entry in the land titles registry in the jurisdiction where your Land is located for the ownership of Land.

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

**Stewart Title Limited, “we”, “us” or “our”** means Stewart Title Limited, ARBN 101 720 101 (United Kingdom) ABN 59 101 720 101.

**Title** means the ownership of your interest in the Land as detailed in Schedule A.

**Unmarketable** means an alleged or apparent matter, not excluded from cover under this Policy, affecting Title to the Land which would allow a purchaser not to perform a contract to purchase or a mortgagee not to perform a contract to make a loan.

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

## INTERPRETATION – WHAT WE MEAN

In this document unless the context otherwise requires:

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

## 1. YOUR COVERAGE

Subject to the payment of the Policy premium and subject to the terms and conditions outlined below, and relying upon the information disclosed to us, we will insure you in the following circumstances.

### 1.1 Actual loss

We insure you against actual loss sustained or incurred in relation to the Covered Risks up to the Policy Amount.

### 1.2 Our duty to defend your Title

We will defend any challenge to your Title, including that part of any proceedings or court case, which is based on a Covered Risk, but only to the extent provided in the Policy. We will also pay necessary costs, legal fees and expenses incurred in that defence. You must contact us prior to incurring these costs, fees or expenses. We may decide not to defend your Title, but may alternatively exercise one or more of the options outlined in clause 5.6. We may also end our duty to defend your Title by exercising any of the options in clause 5.6.

## 2. COVERED RISKS

**2.1** We insure you for actual loss against all of the following Covered Risks if the circumstances creating or giving rise to these risks existed or occurred before the Policy Date.

### Risks affecting your ownership of the Land

- (a) you are not the owner of the estate or interest in the Land detailed in Schedule A;
- (b) someone other than you owns an estate or interest in the Title to the Land;
- (c) someone else claims to have rights affecting your Title because of forgery, fraud, impersonation, duress, mental incompetence or incapacity;
- (d) a document is not properly signed, sealed, delivered, recorded or registered resulting in a defect in the Title to the Land;
- (e) the Title to the Land is Unmarketable;
- (f) there is no legal right of Access to and from the Land;
- (g) there are unpaid council rates, water rates, levies, land taxes or a judgment debt which may result in an encumbrance, charge, lien or writ on the Title to the Land;
- (h) someone else claims to have an easement or right of way that affects the Title to the Land, other than those registered or otherwise recorded on Title on the Policy Date.

### **Risks regarding survey, restrictions and encroachments**

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

### **Risks affecting your use of the Land**

- (j) your Land is Unmarketable, or you are prevented by a public authority from using the Land, or you are forced 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 an existing zoning law;
  - (ii) any portion of the existing structure(s) does not comply with or was built or modified without building or development approvals required by law.

## **2.2 Registration Period**

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

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

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

You are not covered for any loss or damage of the type(s) listed in clauses 3.1 and 3.2 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 General risks which are excluded**

Risks which:

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

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

The following risks or circumstances relating to the Land are specifically excluded from cover:

- (a) the existence of laws which restrict, regulate, prohibit or relate to use or ownership of the Land or the violation or breach of those laws;
- (b) matters which are registered or otherwise recorded on Title after the Policy Date;

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

### **3.3 Rural Zoned Land**

- (a) For rural zoned Land, cover under Clause 2.1 (j) (i) & (ii) extends only to the primary residence and not to any other buildings or structures erected on the Land.

### **3.4 Additional exception(s) specifically affecting the Land**

- (a) additional exceptions listed in Schedule B of the Policy unless an Affirmative Cover applies.
- (b) lack of a right to any land outside the area specifically described and referred to in Schedule A, or in streets, lanes, or waterways that touch your Land.

## **4. WHO IS COVERED AND FOR HOW LONG**

### **4.1 Who is covered?**

This Policy insures you, the Insured named in Schedule A.

The term "Insured" also includes:

- (a) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
- (b) successors to an Insured by change of name, dissolution, amalgamation, plan of arrangement, merger, consolidation, distribution, or reorganisation;
- (c) successors to an Insured by its conversion to another kind of entity;
- (d) partners in the Insured or any entity in which any partner(s) is a participant, joint venturer or shareholder if such transfer is without valuable consideration;
- (e) shareholders of a corporation which is a partner(s) in the Insured in the event that such partners distribute the Land to such shareholders;
- (f) a grantee of an Insured under a transfer/deed delivered without payment of actual valuable consideration conveying the Title:
  - (i) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured;
  - (ii) if the grantee wholly owns the named Insured;
  - (iii) if the grantee is wholly-owned by an affiliated entity of the named Insured, provided the affiliated entity and the named Insured are both wholly-owned by the same person or entity; or
  - (iv) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.

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

## 4.2 Length of cover

The Policy protects you while:

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

## 4.3 No policy cover on sale or assignment

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

# 5. HOW TO MAKE A CLAIM

## 5.1 Claims are subject to this policy

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

## 5.2 You must give us notice of your claim

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

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

All notices should be sent to:

Claims Department  
Stewart Title Limited  
GPO Box 527  
Sydney NSW 2001

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

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

## 5.3 Proving your loss

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

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

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

## 5.4 Our obligation to you could be reduced or cancelled

Our obligation to you could be reduced or cancelled if you fail to:

- (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 Practitioner's possession which reasonably pertain to the loss or damage;
- (b) take all reasonable precautions to prevent any further damages or claims;
- (c) give us the opportunity to inspect your Land before any actions are taken to protect you from any Covered Risk;
- (d) assist us in all our endeavours to negotiate, defend or settle any claim under this Policy and to exercise for our benefit your legal right of recovery against any other party;

(e) answer questions relating to the claim under oath.

and that failure adversely affects our ability to dispute or defend any claim or to timely commence any claim against other persons.

## **5.5 Legal Action – your duty to co-operate**

### **5.5.1 Defence of litigation**

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

### **5.5.2 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.

### **5.5.3 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.

### **5.5.4 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 Our choices when you notify us of a claim**

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

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

## **6. LIMITATION OF OUR LIABILITY**

### **6.1 Our liability for Claims**

This Policy is a contract of indemnity against actual loss or damage. Subject to this clause, our total liability under this Policy (excluding Authorised Expenses) will be the lesser of:

- (a) the Policy Amount stated in Schedule A; or
- (b) the difference between:
  - (i) the value of your interest in the Land as insured unaffected by the substance of a claim insured against by this Policy; and
  - (ii) the value of that interest affected by the substance of a claim insured against by this Policy.

## 6.2 Liability for Legal Fees, Costs and Expenses

We will pay all Authorised Expenses incurred in the defence or prosecution of any legal proceeding affecting Title to the Land as insured. These payments will be in addition to any payments owing under clause 6.1.

## 6.3 Reduction of Cover

The amount of indemnity 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 costs, legal fees and expenses;
- (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.

## 6.4 Limitations on our liability

We are not liable to indemnify you:

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

## 6.5 Payment of Loss

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

## 7. TRANSFER OF YOUR RIGHTS - SUBROGATION

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

## 8. 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.
- (c) Each Endorsement to this Policy issued at any time is made a part of this Policy and is subject to all of its terms and provisions. Except as the Endorsement expressly states, it does not (i) modify any of the terms and provisions of the Policy, (ii) modify any prior Endorsement, (iii) extend the Policy Date, or (iv) increase the Policy Amount.
- (d) The premium for this Policy becomes due and payable on the Policy Date. If we do not receive the premium within 14 days of the Policy Date, we will not provide any Cover under this Policy and the Policy will be deemed not to have existed.
- (e) If we fail to enforce a provision or right under this Policy, or if we grant you time or an indulgence, we will not be deemed to have given up that right.
- (f) Any dispute relating to this Policy shall be subject to the law of the jurisdiction where the Land is located. 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.

## 9. CANCELLATION

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

