



Residential Existing Owner Policy

Residential Existing Owner Policy

For most people, the largest investment they will ever make will be the purchase of their home. Stewart Title Limited's Residential Existing Owner Policy has been designed to provide you with peace of mind.

Stewart Title Limited will insure you against your actual loss resulting from property and title risks covered under this policy, up to the policy amount. Stewart Title Limited also protects you against costs, legal fees and expenses that are incurred in defending the title to your land under this policy.

Your coverage under this policy is limited by the Exclusions and by any matters detailed in Schedule B.

This policy is not your "title" nor does it take the place of your certificate of title. Your title is 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 with protection against many additional risks not otherwise covered.

To be valid, this policy must include both a Schedule A and a Schedule B and must be signed by a representative of Stewart Title Limited.

INFORMATION ABOUT STEWART TITLE LIMITED

Stewart Title Limited is a branch of Stewart Title (United Kingdom) which is part of the Stewart Information Services Company (SISCO) group of companies. 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 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 coverage;
- our standard exclusions;
- Schedule A, which contains information about your policy, fees and your land;
- Schedule B, which contains information about exceptions and affirmative coverage which specifically apply to your land.

The policy may also contain an endorsement or endorsements that may change some of our standard coverage or provide additional coverage 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).

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 coverage;
- 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 1 800 300 440. 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

Words often used in this Policy and their meaning are described below, unless the context requires a different meaning.

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

Certificate of Title means an instrument evidencing an interest in the Land, executed by the Registrar of Titles in the jurisdiction where your Land is located.

Cover means the protection provided by this Policy.

Covered Title 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.

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

Insurance Date means the date this Policy was issued by Stewart Title to You.

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 where the Land is located.

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 Practitioner would normally conduct in a conveyance transaction in the jurisdiction where your Land is located.

Policy means this document, your policy Schedules (Schedule A and Schedule B) and any written Endorsement to your Policy.

Policy Amount means the policy amount outlined in Schedule A, as automatically increased as outlined in Clause 1.4.

Policy Date means the date when the settlement of your purchase of the Land took place.

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.

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.

“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 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; and
- (h) reference to an item is a reference to an item in a Schedule to this document.

1. YOUR COVERAGE

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 insure you in the following circumstances.

1.1 Actual loss

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

1.2 Our duty to defend your Title

We will defend that part of any proceedings or court case that is based on a Covered Title Risk relating to your Land. 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.

1.3 Rental accommodation

If you cannot use any of the Land as your home because of circumstances insured under this Policy, you may rent a reasonably equivalent home. We will reimburse your actual rent until the cause of the claim is removed or we settle your claim.

1.4 The value of your Land may increase

Market conditions and inflation may increase the value of your Land. The amount of your insurance cover automatically increases 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 shown in Schedule A of the Policy. This added coverage is provided without additional premium.

If you have made improvements which increase the value of your Land above 200% of the Policy Amount and you wish to increase your Policy Amount, you may contact our office and an additional premium may apply.

2. COVERED TITLE RISKS

2.1 Risks occurring before the Policy Date

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

2.1.1 Risks affecting your ownership of the Land

- (a) someone else has an easement or right of way that affects the Title to the Land, other than those detailed in Schedule B;
- (b) other persons own an interest in or have a lease, contract, option, an access order or rights of possession under the Family Law Act over the Land;
- (c) rights of anyone in possession of whole or part of the Land who is not on the Title;
- (d) any other title defect, lien or encumbrance that affects Title to your Land which is not detailed in Schedule B.

2.1.2 Risks affecting your use of the Land

- (e) you are prevented by a public authority from using the Land as a residence or you are forced to rectify or remove all or part of the existing structure(s) on the Land (other than boundary walls or fences) or another person has the right and refuses to complete a contract to purchase, lease or make a mortgage loan because:
 - (i) it contravenes an existing zoning law;
 - (ii) of any outstanding notice of violation or deficiency notice;
 - (iii) any portion of the existing structure(s) does not comply with or was built or modified without building or development approvals required by law;
 - (iv) someone has the authority or a right to use the surface or subsurface of the Land for developments or extraction of subsurface minerals interfering with the use and enjoyment of the Land and existing improvements as a residence.
- (f) a covenant or restriction on your Title, other than one detailed in Schedule B, limits the use of your Land as a residence;
- (g) a notice of a breach or violations of Laws relating to the use of the Land or any structures, other than boundary walls or fences, is recorded in Public Records;
- (h) there is a breach of Laws regulating the subdivision of the Land, as a separate and distinct parcel.

2.1.3 Risks regarding Encroachments & Survey Defects

- (i) your Land has a title defect which allows another person to refuse to perform a contract to purchase, lease or make a mortgage loan as a result of adverse matters that a survey of the Land would have shown;
- (j) structures on the Land (other than boundary walls or fences) encroach onto your neighbour's land or vice versa and as a result, another person has the right and refuses to complete a contract for the purchase of your interest in the Land or will not grant you a mortgage;
- (k) you cannot use the existing structure as a residence or you are forced to remove all or part of the existing structure(s) on the Land (other than boundary walls or fences) because they encroach on to:
 - (i) your neighbour's land; or
 - (ii) an easement or right of way on your Land.

2.1.4 Risks of errors, affectations and proposals

- (l) any adverse matter affecting Title to the Land that a Local Authority Search completed on the Policy Date would have shown; or any adverse circumstance which affects the Land which would have been disclosed by searches of the Public Records relating to the Land as at the Policy Date;
- (m) an error is made by your Practitioner or by the relevant local government, city, municipal or shire council, water supplier or any other statutory body in respect of outstanding rates, charges, taxes and other money due and payable relating to the Land.

2.2 Risks occurring after the Policy Date

We insure you against the following Covered Title Risks only if the circumstances creating or giving rise to these risks occur after the Policy Date and the Covered Title Risks are not known to You on the Insurance Date.

2.2.1 Risks regarding Fraud & Forgery

- (a) an instrument is registered or otherwise recorded by which someone else claims to have an interest in or a mortgage, charge or lien on the Title to your Land because of an act of fraud and/or forgery;

2.2.2 Risks regarding Encroachments

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

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. 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) cause you no loss or damage;
- (b) you create, allow, assume or agree to at any time;
- (c) were disclosed in the contract for the purchase of your interest in the Land;
- (d) arise because you did not pay full value for the Land;
- (e) are known to you, but not to us on the Insurance Date;
- (f) occur, come into existence or appear in Public Records after the Policy Date, other than those risks insured under Clause 2.2;
- (g) arise out of any business activity;
- (h) claims under the Home Building Act 1989 (NSW) or any legislation relating to home building insurance.

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) 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 benefits described in Clauses 2.1 (g);
- (b) matters which are registered or otherwise recorded on Title on the Policy Date. This does not however limit the benefits described in sub-clauses 2.1.1 (a), 2.1.2 (f) and (h) and any Affirmative Coverage noted on Schedule B;
- (c) structures which have not been built in accordance with applicable building codes and standards or the infestation or dilapidation of those structures – this does not however limit the benefits described in sub-clauses 2.1.2 (e)(ii);
- (d) environmental contaminants or hazardous wastes or covenants, conditions and restrictions for environmental protection or any environmental matters.

3.3 Additional exception(s) specifically affecting the land

- (e) additional exceptions listed in Schedule B of the policy.

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; and

- (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 coverage that was offered to you to a prospective purchaser, upon payment of the applicable premium at the time of sale.

5. MAKING A CLAIM

5.1 Claims are subject to this policy

Any claim you make against us must be made under this Policy and is subject to its terms.

5.2 When you must notify us

You must advise us 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.

Our obligation to you under this Policy may be reduced in part or in whole if you fail to promptly advise 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 How you make a claim

You can make a claim in respect of a Covered Title Risk at any time after the Insurance Date. When making a claim please contact our office and include the Policy number and your postal address. We will then send you a claim form for completion and return.

5.4 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 Title Risk which constitutes the basis of your loss;
- (b) the amount of your loss; and
- (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; and
- (e) documentation relating to Your purchase of the Land.

If you are not in a position to calculate the amount of your loss when completing the claim form, 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 a valuation prepared by an expert.

5.5 Further Information

We may require you to provide us with those records, cheques, letters, documents, and other papers, including those held electronically, (including any which are held by your Practitioner) that relate to your interest in the Land and your claim. You may make copies of these documents. We may also require you to answer questions under oath. All information provided to us is confidential and will not be disclosed by us to others unless required by law.

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

5.6 Legal Action – your duty to co-operate

5.6.1 Defence of litigation

If you ask us in writing, we will, at our sole cost and without unreasonable delay, cover the cost of you defending any claim adverse to the Title and your interest in the Land, but only to those risks which are covered under this Policy. 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.

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.

5.7 Our choices when you notify us of a claim

If you make a claim under this Policy for which we are liable we must do one 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.

5.8 How to help us resolve a claim promptly

Following an event which may result in a claim, you must:

- (a) tell us promptly of all facts involving the event;
- (b) provide us with any information about the claim that we may request and promptly deliver to us any relevant letters, documents or notices which come into your possession;
- (c) take all reasonable precautions to prevent any further damages or claims;
- (d) give us the opportunity to inspect your Land before any actions are taken to protect you from any Covered Title Risk;
- (e) 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.

If you fail or refuse to meet these obligations, and as a result it affects our ability to:

- dispose of your claim;
- discharge our duty;
- defend any action from third parties; or
- take action against third parties

then our obligations to you may be reduced or cancelled.

6. LIMITATION OF OUR LIABILITY

- (a) our liability under this Policy will be limited to the lesser of:
 - (i) your actual loss; or
 - (ii) the Policy Amount when the claim is made;

plus any legal fees, costs and expenses.

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.

- (b) the Policy Amount will be reduced by all payments made under this Policy. The Policy Amount will not be reduced for costs, legal fees and expenses.
- (c) the Policy Amount will be reduced by any amount we pay to the holder of any mortgage shown in this policy or a later mortgage given by you.
- (d) if you do anything to affect any right of recovery you may have, we can subtract from our liability the amount by which you reduced the value of that right.

7. 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 and signed by us.
- (c) the premium for this Policy becomes due and payable on the Insurance Date. If we do not receive the premium within 14 days of the Insurance 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.