

Residential Purchaser Policy
Guide to Covered Risks



 **stewart**TM
TITLE

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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 or contact us on 1 800 300 440.

PART 1. COVERED RISKS

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 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. *except where you have delivered the Title to your lender, reasonable steps have been taken to promptly register the transfer of title, any mortgage, discharge of mortgage or withdrawal of caveat.*

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 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 "Our duty to defend your 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 “Our duty to defend your 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 “Our duty to defend your 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 “Our duty to defend your 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 “Our duty to defend your 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 “Our duty to defend your Title”.

- (i) there are unpaid council rates, levies, land taxes or outstanding accounts due to a Local Authority which may result in an encumbrance, charge, lien or writ on the Title to the Land (excluding any land transfer duty or land stamp duty which is payable by you), unless you agreed to pay or were otherwise aware of the existence of the unpaid rates, levies, taxes or accounts.

The Policy provides cover in circumstances where you become liable to pay unpaid rates, levies, 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.

! 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 or vice versa or 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 order, notice of violation or deficiency notice, provided the outstanding order, 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 regulating the subdivision of the Land, as a separate and distinct parcel;

The Policy provides cover in circumstances where there is a breach of subdivision laws relating to the subdivision of your Land 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.

(q) you do not have any legal right of water supply or drainage to and from the Land.

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.

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 which states that a structure (or structures) on the Land, including any part thereof, does not comply with, or was built or modified without obtaining, building or development approvals which were required by the Local Authority at the time the relevant structure(s) were built and as a result of the Enforcement Order:

- i. you are required to rectify or remove all or part of the existing structure(s) on the Land (other than boundary walls or boundary fences); or
- ii. you are prevented by a Local Authority from using the Land as a residence; or
- iii. 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 which states that a structure or structures were built without approval or the structure as built does not comply with an approval 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 (i), (ii) and (iii).

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, charges, taxes and other money due and payable relating to the Land (excluding any land transfer duty or land stamp duty which is payable by you), unless you agreed to pay or were otherwise aware of the existence of the unpaid rates, levies, taxes 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, 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.

! 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 "Our duty to defend your 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

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

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

Other Guides:

- The Guide to Exclusions under the Residential Purchaser Policy
- The Guide to Making a Claim under the Residential Purchaser Policy