

Commercial Existing Owner Policy
Guide to Exclusions



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This Guide is designed to assist you with navigating and understanding the covered risks contained in Stewart Title Limited's Commercial Existing Owner 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 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. EXCLUSIONS

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 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.”

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 you at any time 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.

(b) *that are known to you, but not to us;*

The Policy does not cover risks which you were aware of but which had not been disclosed to Stewart Title. If you are aware of risks prior to us issuing you with a Policy Date, 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 i of the Policy.

(c) *that are known to your predecessors in Title, but not to us, unless you acquired your interest in the Land for value without notice of the risk;*

The Policy does not cover risks which your predecessors in title were aware of but which had not been disclosed to Stewart Title, unless you acquired the property for value without notice of the risk. If you are aware of risks prior to us issuing you with a Policy Date, 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 i of the Policy.

(d) *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”.

(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 a risk covered during the Registration Period as set out in Clause 2.2 of the Policy.

“Registration Period” is defined as 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

(f) *that are disclosed in the agreement of purchase and sale/purchase contract and/or written report/documentation obtained by the Insured prior to the Policy Date relating to the physical condition of the improvements on the Land;*

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, 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.

(g) *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

(h) *that are noted on the Title to the Land on the Policy Date, including: covenants, conditions, restrictions, rights, stipulations, mortgages, caveats, easements of other interest.*

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.

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

“(a) the existence of laws which restrict, regulate, prohibit or relate to use or ownership of the Land or the violation or breach of those Laws;

The Policy does not cover any existing or future Laws that regulate the use or ownership of the Land or the breach of those laws.

- (b) *matters which are registered or otherwise recorded on Title on the Policy Date or the violation or breach of those laws.*

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 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. You should check your Affirmative Coverage in your Schedule B for specific details.

- (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;*

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.

! You should conduct your own searches and enquiries or contact your Conveyancing Practitioner to verify whether the Land has environmental contamination or other environmental hazards.

- (d) *the exercise of any government power, including forfeiture of Title, except to the extent that any notice of the exercise of such power had 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;;*

The Policy does not cover the situation where your Land is compulsorily acquired or resumed by the government or where the Title is forfeited as a result of government action.

! You should conduct your own searches and enquiries or contact your Conveyancing Practitioner to establish whether the Land is affected by any government resumptions, acquisitions or action relating to forfeiture of the Title.

- (f) *native title claims in relation to the Land;*

Any loss or damage, costs or legal expenses associated with any native title claims 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.

- (g) *rights and interests, including riparian rights, reserved under a crown grant or crown lease or the law authorizing the issue of the crown grant or crown lease;*

The Policy does not cover rights and interests in the Land which are reserved or created under a crown lease or a crown grant or which are created by laws which authorise the issue of the crown grant or crown lease which affects the Land.

! You should conduct your own searches and enquiries or contact your Conveyancing Practitioner to verify any rights and interests which affect the Land because of a 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;*

The Policy does not cover 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.

! You should inspect the Land or make enquiries of persons in occupation of the Land to establish whether there are any such matters, such as public utilities, drainage or other infrastructure.

- (i) *rights and interests of any person in occupation of the Land;*

The Policy does not cover any claims, loss or damage relating to rights and interests of any persons in occupation of the Land.

! You should inspect the Land to ensure that the Land is not occupied if the Land is being purchased with vacant possession.

- (j) *public or private utility undertakers or a telecommunications utility company having a statutory right to carry out works affecting the Land;*

The Policy does not cover the situation where a public or private utility company or entity or a communications utility company or entity has the statutory right to enter upon and carry out works on the Land or the Land contains public or private infrastructure or has telecommunications infrastructure erected upon or below the ground and this gives the owner of the infrastructure the 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 creditor's rights laws that deem the transaction fraudulent or preferential, or subordinate to the interest of another person or entity;*

The Policy does not provide cover for the situation that the estate or interest in the Land which is insured by the Policy is deemed to be fraudulent or preferential, or is subordinated to the interest of another person or entity because of the operation of bankruptcy, insolvency or other creditor's rights laws.

- (l) *any loss or damage arising from non-compliance with laws, regulations or orders relating to fire safety.*

Any claims, loss or damage relating to non-compliance with laws, regulations or orders relating to fire safety. For example, a structure that is in need of repair, upgrading or removal, including, but not limited to, the installation of fire sprinklers and other fire safety equipment, or the construction fire rated walls and ceilings and other building works, because it breaches fire safety requirements or standards will not be covered under the policy.

Section 3.3: Workmanship, damage, infestation and dilapidation

- (a) *any claims, loss or damage relating to the condition and repair of any structures erected on the Land, or the infestation or dilapidation of those structure(s);*

- (b) *any claims, loss or damage relating to the condition and repair (including any failure) of 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 the condition and repair, infestation or dilapidation of structures on the Land 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 the structures erected on the Land, 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, does not comply with, or was built or modified without obtaining, the building or development approvals which were required by the relevant Local Authority at the time of construction of the relevant structure(s),*

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

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) or the structure has been built without obtaining building or development approval(s) and the conditions under clauses 2.1 (i) and 2.1(j) of the Policy are satisfied.

This means that if the 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 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 a Public Records Search 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 the structure was built.

- (d) any claims, loss or damage arising from any non-compliant cladding of the building which forms part of your Land, including but not limited to:
- i. any liability arising from any periodic or special levies which are struck prior to or after the Policy Date that relate to non-compliant cladding of the building, and
 - ii. any enforcement action issued by a Local Authority requiring you to rectify, alter or replace the non-compliant cladding of the building, because the cladding does not comply with building or development 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: Farming/agricultural use of Land in rural zone

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

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

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(h) 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(h) 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 Schedule A, or in streets, lanes, or waterways that touch your Land – this does not however limit the Cover described in Clauses 2.1 (f) and 2.1 (h)(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(f) or 2.1(h) (ii) of the Policy.

Clause 2.1(f) 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(h)(ii) covers the situation where there are structures on your Land (**other than boundary walls or boundary fences**) which encroaches onto the neighbour's Land or vice versa, or where there are structures on your Land (**other than boundary walls or boundary fences**) which onto an easement or right of way on your Land

3.7 Initiation of enforcement action

- a) *the Cover provided in Clauses 2.1 (h) (i) and (ii), 2.1 (i) and 2.1(j) will not apply in circumstances where the Insured, or a party acting on behalf of the Insured, by conduct or communication, including communication which is verbal or partly verbal or written or partly written, takes action which initiates, instigates and/or encourages any enforcement action by or on behalf of a Local Authority and/or by or on behalf of an adjoining property owner in relation to the Land, including, but not limited to, inviting a Local Authority and/or an adjoining property owner to inspect the Land (including by physical inspection and/or by inspection of plans and records) for the purposes of a Local Authority and/or an adjoining property owner:*

- i. *assessing whether any structure on the Land does not comply with, or was built or modified without obtaining building and development approvals required by the relevant Local Authority; and/or*
- ii. *assessing whether any structure on the Land encroaches on any other land.; and/or*
- iii. *assessing whether in respect of the Land there is any non-compliance with any easement, restriction, right of way or covenant.*

The Policy **will not** cover any claims brought under Clause 2.1 (h) (i) and (ii), 2.1 (i) and 2.1(j) (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 does 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 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 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

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 Covered Risks under the Commercial Existing Owner Policy
- The Guide to Making a Claim under the Commercial Existing Owner Policy