

Residential Existing Owner Policy **Guide to Exclusions**



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Like most insurance policies, the Stewart Title Residential Existing Owner Policy (“the Policy”) contains exclusions from cover. This Guide is designed to assist you with navigating and understanding the exclusions contained in the Policy. This Guide is general in nature and is for information only. It should be read in conjunction with your Policy wording (including Schedule A, Schedule B and any applicable Endorsement(s)). Stewart Title has issued other guides relating to the Policy that you may find of assistance, these are listed at the end of this document.

Please refer to the definition section on page 1 of the Policy for the meaning of defined terms. Usually a defined term will be capitalised, such as, for example, the terms Cover, Title and Actual Loss to name a few.

IMPORTANT INFORMATION ABOUT YOUR POLICY AND YOUR COVERAGE

The Policy provides cover for specific risks relating to your ownership and use of your property. The Policy will insure you against your Actual Loss and Authorised Expenses which result from:

- (a) the Covered Risks described in the Policy up to the Policy Amount; and
- (b) costs, legal fees and expenses that we have to pay in defending the Title to your Land under this Policy.

The Policy is not your “title” nor does it take the place of your certificate of title. Your title will be recorded on a certificate of title held at a land titles office. Your certificate of title gives you certain protection. This Policy is intended to provide you protection against many of the additional risks not otherwise covered under the title registration system which exists in the jurisdiction where your land is located.

The Policy is NOT a home building insurance product, a home contents insurance product or a personal and domestic property insurance product.

The Policy does not provide cover in respect of the destruction of or damage to a building on the land. The Policy therefore **does not provide** insurance for loss or damage as a result of the typical kinds of risks covered under such policies, including, but not limited to:

- (a) fire;
- (b) flood;
- (c) earthquakes;
- (d) storm;
- (e) land slip;
- (f) mine subsidence;
- (g) theft of possessions; or
- (h) mechanical breakdown

The Policy also does not provide insurance for loss or damage related to running a commercial business on the land or for any commercial development of the land, including, but not limited to, any loss of rental income or loss of business revenue. Except as provided in the Policy itself, you are insured in relation to risks which exist at the date that settlement of your purchase occurs and as such, you are not insured for any inability to use the land in future for any particular desired use or purpose.

We recommend you consult a legal practitioner and consider other forms of insurance to offer protection against these kinds of issues.

Attention: This document is intended only to be a guide and is furnished for informational use only. It should not be construed as a commitment by Stewart Title. It does not form part of your Policy or insurance contract with us. Changes are periodically made to the information in this document; these changes will be incorporated in new editions of this publication and Stewart Title may make modifications to the content as described in this document at any time. Stewart Title assumes no responsibility or liability for any errors or inaccuracies that may appear in the content of this document. You must carefully review your actual Policy and any Endorsements, Schedules and other policy documentation for all the conditions, exclusions and limitations that will specifically limit or exclude cover under your policy. Should you have any questions about the Policy, please visit our website at www.stewartau.com or contact us on 1800 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 cause by any matter(s) listed in Schedule B, except to the extent that specific Affirmative Cover is given. We will not pay any loss for these matters. Also, we are not obliged to pay costs, legal fees or expenses for these matters.”

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

! The term “Exclusion” is defined in the Policy to mean *“the matters and circumstances which are expressly excluded from Cover under this Policy and for which there is no entitlement for you to make a claim”*. These excluded matters and circumstances are detailed in section 3 of this Policy.” You should read the Exclusions carefully.

Section 3.1: General risks

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

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

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

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

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

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

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

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

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, you have an obligation to disclose those risks to us as they may affect Policy coverage.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 3.3: Workmanship, damage, Infestation and dilapidation

- (a) *any claims, loss or damage relating to poor workmanship, the condition and repair of any structures erected on the Land, or the infestation or dilapidation of those structure(s);*
- (b) *any claims, loss or damage relating to the condition and repair (including any failure) of electrical or plumbing fittings/items such as hot water systems, air conditioning systems, electric doors, internal plumbing and electrical wiring.*

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

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

- (c) *any claims, loss or damage relating to the failure of any structure(s) on the Land, including the external and internal components thereof, to comply with applicable building codes and building standards, including any claims, loss or damage relating to any Enforcement Order issued by a Local Authority which states that a structure (or structures) on the Land, including the external and internal components thereof, fail to comply with applicable building codes and building standards, however this exclusion does not apply if:*
- i. *notice of the non-compliance with applicable building codes and building standards appeared in Public Records as at the Policy Date or if the existence of the non-compliance with building codes and building standards would have been disclosed by a Local Authority Search of the Land as at the Policy Date provided that you were not aware of non-compliance as at the Policy Date; or*
 - ii. *the Enforcement Order issued by the Local Authority in relation to the structure(s) also states that that the structure(s), including any part thereof, which are the subject of the Enforcement Order, was built or modified without obtaining the building or development approvals which were required by the relevant Local Authority at the time of construction of the relevant structure(s),*

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

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

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

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

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

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

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

- (e) *any claims, loss or damage arising from any non-compliant cladding of the building which forms part of your Land, including but not limited to:*
- i. *any liability arising from any periodic or special levies struck at any time that relate to non-compliant cladding of the building, and*
 - ii. *any enforcement action issued by a Local Authority requiring rectification, alteration, replacement or removal of the non-compliant cladding of the building, because the cladding does not comply with building or developments approvals from the relevant Local Authority which were granted at the time the building was constructed.*

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

Section 3.4: Rural zoned land

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

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

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

Section 3.5: Land area over 50 acres

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

Section 3.6: Exception(s) specifically affecting the Land

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

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

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

- (b) *lack of a right to any land outside the area specifically described and referred to in the title reference in Schedule A, or in streets, lanes, or waterways that touch your Land – this does not however limit the Cover described in Clauses 2.1 (b) and 2.1 (k)(ii).*

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

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

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

3.7 Initiation of enforcement action

- a) *the Cover provided in Clauses 2.1 (k)(i) and (ii) and 2.1 (l)(i) and 2.1 (p) 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 (k) and 2.1 (l)(i) and 2.1 (p) (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 (including boundary fences) encroach on any other land.

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

PART 2. FOR FURTHER INFORMATION

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

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Other Guides:

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