

Commercial Purchaser Policy
Guide to Covered Risks



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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 Purchaser 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. COVERED RISKS

This part of the Guide provides commentary on the sections of the Policy relating to covered risks.

Section 2.1: Risks occurring before the Policy Date

“We will provide you with Cover against all of the following Covered Risks if all of 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 will be determined as at the Policy Date.”

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) – (h): Risks affecting your ownership of the Land

(a) *you are not the owner of the estate or interest in the Land detailed in the title reference 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) *someone other than you owns an estate or interest in the Title to the Land;*

The Policy provides cover in circumstances where somebody else claims to own an interest or estate in the Title to the Land.

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”.

(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) *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.

- (e) *Unmarketability of your Title;*

Unmarketability of Title means your legal title is affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the title or lender on the title to be released from the obligation to purchase, lease or lend if there is a contractual condition requiring the delivery of marketable title.

! Unmarketability of your Title is not created by matters relating only to physical/structural conditions and/or physical/structural defects of the Land, including the improvement(s) located thereon.

- (f) *there is no 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.

- (g) *there are unpaid council rates, levies (including any levies or special levies struck before the Policy Date but excluding any levies or special levies struck after the Policy Date), 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, land stamp duty, foreign buyer duty or foreign investor surcharge), 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 (including any levies or special levies struck before the Policy Date but excluding any levies or special levies struck after the Policy Date), 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 nor does it include any foreign buyer duty or foreign investor surcharge liability.

! 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.

- (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".

Section 2.1 (i): Risks regarding boundaries and encroachments

- (i) *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;*
- iii. structures on your neighbour's land which encroaches onto your Land; or*
- iv. structures on your neighbour's land which 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** to boundary walls and boundary fences and **does not apply at all** to any properties where the area of the land exceeds 50 acres.

Section 2.1 (j): Risks affecting your use of the Land

- (j) *your Land is Unmarketable, or you are prevented by a Local Authority from using the Land, 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.*

The Policy provides cover in circumstances where your Land is "Unmarketable" or the Local Authority prevents you from using your property or forces you to remove or rectify structures on the land for the reasons described in sub-clause (i).

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.

! See 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.

Section 2.1 (k): Risks of Enforcement Orders affecting structures on the Land

(k) You are issued with an Enforcement Order by a Local Authority, or you are liable to comply with an outstanding Enforcement Order issued by a Local Authority to a previous owner, which states that a structure or structure(s) (other than boundary walls or boundary fences) on the Land, including any part thereof:

- i. 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 or modified; or
- ii. did not comply with building or development approvals which were issued by the Local Authority at the time the relevant structure(s) were built:

and as a result of the Enforcement Order:

- iii. you are required to rectify or remove all or part of the existing structure(s) on the Land; or
- iv. you are prevented by a Local Authority from using the Land as a residence; or
- v. the Land is Unmarketable

For the avoidance of doubt, the Cover under clauses 2.1 (j) and 2.1 (k) 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, or you are liable to comply with an outstanding Enforcement Order issued by a Local Authority to a previous owner, which states that a structure(s) was built without building or development approval or the structure did not comply with a building or development approval at the time the structure was built 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 (ii), (iv) and (v).

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 2.2: Registration Period

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

- i. you, in good faith, have paid or authorised the payment of the premium and have relied upon a written assurance of the issuance of this policy; and
- ii. reasonable steps have been taken to promptly register the transfer of title, any mortgage, discharge of mortgage or withdrawal of caveat or the Title has been delivered to your lender on the understanding your lender will do so.

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”.

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 Commercial Purchaser Policy
- The Guide to Making a Claim under the Commercial Purchaser Policy