

KEY FACTS SHEET – VACANT LAND PROPERTY

Thank you for your interest in obtaining a title insurance policy from Stewart Title Limited for your **vacant land property purchase**. This Key Facts Sheet provides you with some general information about the coverage available under our policy.

Title insurance is a unique form of insurance. It protects your ownership interest against losses incurred as a result of undetected or unknown defects that affect your registered interest in the title to your property. With certain exceptions, these covered title defects must exist as of the policy date, but be unknown to you. Title insurance continues to protect your ownership from the day of settlement to the day you sell your property. Should you purchase a policy it will be customised to reflect the details of your particular real estate transaction.

Important features of Stewart Title’s residential title insurance include:

- The policy covers title risk and is not, nor should it be used as a substitute for home buildings/contents insurance.
- The policy insures your ownership interest in your property for as long as you own your property for a one-time premium payable at the time of settlement.
- The coverage will also protect anyone who inherits your property or your spouse or child if you transfer your property to your spouse or child for nominal consideration.
- The amount of insurance will increase as the value of your property increases up to a maximum of 200% of the Policy Amount (excluding cover for non-compliant/approved buildings or modifications). The amount of insurance decreases by any amounts (other than legal fees and associated costs) that we pay to cover a claim.

Important exclusions and conditions relating to Vacant Land properties include:

No Cover for Structures on the Land – See Schedule B of your Policy

- Your Policy includes a Schedule B which details any applicable exceptions and exclusions from Cover. For vacant land properties your Schedule B includes the following specific exclusions:
 - *The coverage in Clauses 2.1 (k) and 2.1 (r) of the Policy which relate to structures (including any dwelling) built on the Land are hereby excluded.*
- This means that any structures which are built on the land, including (but not limited to) dwellings, sheds, garages, carports water tanks, swimming pools, gazebos etc, **will not be covered** under clause 2.1 (k) or 2.1 (r) of the Policy.
- The cover in 2.1 (k) and 2.1 (r) of the Policy would normally apply to structures which are either not located on the land or in respect of which you are issued with an Enforcement Order by a Local Authority which states that the structure (or structures) 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. **This cover is specifically excluded in vacant land policies.**

The policy covers title risk and is not, nor should it be used as a substitute for home buildings/contents insurance.

Your Cover

Subject to the payment of the Policy premium and abiding by the terms and conditions outlined in the Policy and relying upon the information disclosed to us, we will provide the following Cover in relation to the Covered Risks:

Actual Loss

Section 1.1 of the Policy

Actual Loss is a defined term in the Policy and means “*the difference between the value of your Land unaffected by the Covered Risk that is the substance of a claim and the value of the Land affected by the*”

Covered Risk that is the substance of a claim. Any determination of Actual Loss which is required under this Policy shall not take into account any real or perceived loss of opportunity or loss of expectation of future development of the Land”.

In practical terms this assessment of “Actual Loss” requires an appraisal of the difference between:

- a. the value of your land *unaffected* by the Covered Risk - what you *actually paid* for the property not taking into account that the land was affected by a Covered Risk; and
- b. the value of the land *affected* by the Covered Risk - the market value of the land taking into account that the land was affected by the Covered Risk.

The difference between a and b above will be your Actual Loss.

The relevant timing of this assessment of Actual Loss will depend on whether claim is brought in respect of a Covered Risk under Section 2.1 of the Policy or Section 2.2 of the Policy.

As all Covered Risks under Section 2.1 of the Policy relate to risks which existed or occurred prior to or as at the Policy Date then any assessment of Actual Loss which is required under Section 2.1 of the Policy will be assessed as at the Policy Date.

As all Covered Risks under Section 2.2 of the Policy relate to risks which existed or occurred after the Policy Date then any assessment of Actual Loss which is required under Section 2.2 of the Policy will be assessed as at the date you discover the Covered Risk.

To summarise:

- For Covered Risks under Section 2.1 of the Policy your Actual Loss (if relevant) will be assessed as at the Policy Date.
- For Covered Risks under section 2.2 of the Policy your Actual Loss (if relevant) will be assessed as at the date you discover the Covered Risk.

Vacant Land Example 1 – Covered Risk under Section 2.1 of the Policy

You purchase a block of vacant land for \$500,000 being the Policy Amount. At the time of settlement of purchase and entry into the title insurance policy (the Policy Date) you are not aware of any Covered Risks affecting the property. Six months after settlement, you receive a letter from your Local Authority advising you that the previous owner and developer failed to register a right of way over your property for the benefit of the neighbouring property. The Local Authority now requires the right of way to be registered on the title to your land. The right of way will allow your neighbour to build a driveway over your land and will reduce your available land by 20%.

You make a claim under section 2.1 (p) of your Policy. If Actual Loss is relevant, how will Stewart Title assess your “Actual Loss”? As the claim relates to a Covered Risk under Section 2.1 of the Policy your Actual Loss will be assessed as at the Policy Date. Stewart Title will engage a licensed valuer to ascertain the difference between the value of the land as purchased (without the right of way) and the value of the land (with the right of way) as at the Policy Date.

The valuer determines that the market value of the land with the right of way was \$400,000 as at the Policy Date. As you paid \$500,000 for the vacant land, then your Actual Loss resulting from the requirement to register the right of way is \$100,000.

The sum of \$100,000 is the difference between:

- a. the value of your land *unaffected* by the Covered Risk as at the Policy Date - what you *actually paid* for the property not taking into account that the land was affected by a Covered Risk which was \$500,000; and
- b. the value of the land *affected* by the Covered Risk as at the Policy Date - the market value of the land taking into account that the land was affected by the Covered Risk which was \$400,000.

Vacant Land Example 2 – Covered Risk under Section 2.2 of the Policy

The method to determine “Actual Loss” for risks which fall under section 2.2 of the Policy is different to the method to determine “Actual Loss” for risks which fall under section 2.1 of the Policy, because the Covered Risks which fall under Section 2.2 are risks which occur or come into existence after the Policy Date.

The relevant timing of any assessment of “Actual Loss” for claims brought under section 2.2 of the Policy is as at the date you discover the Covered Risk. This is because the purpose of this section of the Policy is *not* to determine the market value of the land affected by the Covered Risk as at the Policy Date. Rather, it is to arrive at a determination of the loss at the time the risk arises and is discovered by you.

For example, you purchase a block of vacant land for \$500,000, being the Policy Amount, as an investment property. At the time of settlement of purchase (the Policy Date) you are not aware of any Covered Risks. In fact, no Covered Risks exist as at the Policy Date.

However, five years after you purchase the property you become the victim of a real estate fraud whereby a fraudster impersonates you and sells your property to an innocent third party. You lose your title to the property.

You make a claim under section 2.2 (a) of the Policy. How will Stewart Title assess your Actual Loss? As the claim relates to a Covered Risk under section 2.2 of the Policy your Actual Loss will be assessed as at the date you discover the Covered Risk. Stewart Title will engage a licensed valuer to ascertain the market value of the land as at the date you discovered you had lost your title due to fraud. The valuer determines that the market value of the property was \$750,000 as at the date you discovered the Covered Risk.

Your Actual Loss is therefore \$750,000. Your Policy Amount is \$500,000. Are you covered for this difference?

Please refer to the section entitled ‘Inflation Cover’.

Authorised Expense

Section 1.2 of the Policy

Authorised Expenses is a defined term in the Policy and means “*any costs, expenses and Legal Fees incurred as a result of a claim payable under this Policy and pre-approved in writing by us and which are incurred prior to our payment or resolution of the claim reduced by any Input Tax Credit to which you are entitled in respect of such costs, expenses and Legal Fees*”.

Section 1.2 of the Policy provides that Stewart Title

‘insures you in respect of Authorised Expenses which are incurred by you or which we agree to pay or are required to pay under the Policy as a result of a Covered Risk up to the Policy Amount’.

Authorised Expenses include, but are not limited to, the following:

- expert reports such as:
 - identification survey reports;
 - structural engineer reports; and
- legal fees and other professional fees;
- Council lodgment fees for plans, development applications and other permits.

Unlike Actual Loss under Section 2.1 of the Policy, which is assessed as at the Policy Date, the relevant timing for assessment of Authorised Expenses is at the time the Authorised Expenses are actually incurred or charged by the relevant provider/authority.

Vacant land Example 1 – Legal Fees

In the vacant land example 1 outlined above, you were required to register a right of way over your title which allowed your neighbour to build a driveway over your land which reduced your available land. by 20%. Your Actual Loss was assessed as being \$100,000 but the Local Authority still requires you to prepare, draft and lodge the right of way documentation at the Land Titles Office at your cost.

You have made a claim under 2.1 (p) of the Policy. You obtain a quote which indicates that the legal fees to prepare and register the right of way document at the Land Titles Office will be \$10,000. How will your claim in respect of these costs be assessed? Stewart Title will pay or reimburse these costs (providing the costs have been pre-approved by Stewart Title in writing) as an Authorised Expense. This will be paid in addition to your Actual Loss of \$100,000.

If plans or permits are required to be lodged, then the fees charged by the Council for lodging those plans or permits would also be covered as an Authorised Expense.

Our Duty to Defend Your Title – Defence of Title Costs Section 1.3 of the Policy

Defence of title costs are covered under Section 1.3 of the Policy which provides:

“We will defend any challenge to your Title, including that part of any proceedings or court case, which is based on a Covered Risk under this Policy. We will also pay necessary costs, legal fees and expenses incurred in that defence. You must contact us prior to incurring these costs, fees or expenses. We may decide not to defend your Title, but may alternatively exercise one or more of the options outlined in clause 6. We may also end our duty to defend your Title as insured by exercising any of the options outlined in clause 6.”

One of the immediate consequences of a claim being brought under a Covered Risk is that you may be required to respond to a notice, compliance or building order or some other enforcement process initiated by a third party against you. One component of Cover under the Policy which is intended to address this situation is the “defence of title” Cover under section 1.3 of the Policy.

Section 1.3 relevantly provides that Stewart Title will “defend any challenge to your Title, including that part of any proceedings or court case, which is based on a Covered Risk under this Policy. We will also pay necessary costs, legal fees and expenses incurred in that defence.”

In some circumstances, the claim may be successfully resolved by the ‘defence of title’ Cover, particularly if the enforcement action has no legal basis or there are other legal issues which are identified which give rise to a withdrawal of the enforcement action by a third party.

Unlike Actual Loss under Section 2.1 of the Policy, which is assessed as at the Policy Date, the relevant timing for assessment of any “defence of title” costs which are incurred under section 1.3 is at the time the defence of title costs are incurred by you.

Example – Defence of Title Costs

You purchase a vacant land property and settlement occurs without incident. At the time of settlement of purchase (the Policy Date) you are not aware of any Covered Risks affecting the property.

Immediately after settlement of your purchase your neighbour issues you with a demand that you transfer a portion of your land to the neighbour because the previous owner of your land made a promise that the neighbour could have the land in question. The neighbour now seeks to enforce that promise against you as the new owner.

You make a claim under section 2.1 (f) and 2.1 (g) of your Policy (which provides cover in circumstances where “someone else claims a right or interest over whole or part of the Land arising out of a lease, contract or an option” and “someone else claims a right of possession over whole or part of the Land who is not on the Title” respectively).

In these circumstances, Stewart Title would obtain independent legal advice in relation to the claims made by your neighbour in relation to the ownership of your land and would pay or reimburse these costs (providing the costs have been pre-approved by Stewart Title in writing) as a Defence of Title cost under section 1.3 of the Policy.

Should it become necessary to defend any proceedings or court case brought against you in relation to the Covered Risk(s), then Stewart Title would cover the costs of such a legal defence, such as legal fees and associated expenses, as a Defence of Title cost.

Maximum Aggregate Amount of Cover**Section 1.4 of the Policy**

For the avoidance of doubt, the maximum aggregate amount of Cover described in clauses 1.1, 1.2 and 1.4 of this Policy shall not exceed the Policy Amount.

This means that if your Policy Amount is \$500,000 and if we have to pay or reimburse you for Actual Loss, Authorised Expenses or Rental Accommodation or any combination of them under the Policy, the maximum total amount for all of these categories of Cover combined is \$500,000. For example, if the Actual Loss is \$400,000, the Authorised Expenses are \$100,000 and the Rent Accommodation is \$50,000 you will not be entitled to more than \$500,000 in respect of these categories of Cover.

Inflation Cover**Section 1.5 of the Policy**

Section 1.5 of the Policy provides an automatic increase of the Policy Amount in line with increases in the fair market value of your land after the Policy Date up to a maximum of 200% of the Policy Amount. Section 1.5 of the Policy states that:

Market conditions and inflation may increase the value of your Land. For the purposes of a claim under Section 2.2 of the Policy only, the maximum amount of your insurance cover increases in line with increases in the fair market value of the Land after the Policy Date, up to a maximum of 200% of the Policy Amount shown in Schedule A of the Policy. This added Cover is provided without additional premium.

If you have made improvements which increase the value of the Land above 200% of the Policy Amount and you wish to increase your Policy Amount for the purposes of a claim under Section 2.2, then provided you do not have any unresolved claims which you have made under the Policy, you may contact our office and an additional premium may apply.

For the avoidance of doubt, this added Cover affects only the maximum amount of your insurance cover for a claim under Section 2.2 of the Policy. It does not affect any assessment of Actual Loss under clause 2.1 of the Policy. Any assessment of Actual Loss which is required under clause 2.1 will be determined as at the Policy Date. Increases in the fair market value of your Land after the Policy Date will not affect any assessment of Actual Loss under clause 2.1

Applying this provision to the scenario outlined under Actual Loss Example 2, your Policy Amount has automatically increased in line with market conditions and inflation up to a maximum of 200% of the Policy Amount (which is \$1,000,000 (being 200% of the Policy Amount of \$500,000)). On this basis, even though the Policy Amount is stated as being \$500,000 you are fully covered for the loss of \$750,000 because of the inflation cover provided in section 1.5 of the Policy.

Key covered risks (policy coverage provisions, conditions and limits) include*:

***You must review your actual policy for full coverage details as the information below is being provided in general terms only.** Your policy may include additional exceptions related to specific issues affecting your property. It may also include additional endorsements.

Event/Cover	Some examples of special conditions, exclusions or limits that apply to the events/covers (see other policy documentation for details)
There is a breach of Laws regulating the subdivision of the Land, as a separate and distinct parcel	<ul style="list-style-type: none"> ▪ This cover does not apply where you initiate, instigate or encourage enforcement action by a Local Authority– refer to Policy exclusions for full details.
Registration Gap	<ul style="list-style-type: none"> ▪ Only covered for dealings which prevent your interest in the land from being registered or recorded that are lodged during the period between settlement of your property purchase and registration of your interest with the land titles office.
Fraud, Forgery & Identity Theft which allows an instrument to be registered	<ul style="list-style-type: none"> ▪ Covered for loss up to the full insured amount under your policy as adjusted for inflation.

Boundary & Encroachments	<ul style="list-style-type: none"> ▪ This cover does not apply to land where the land area size exceeds 50 acres. ▪ This cover does not apply where you initiate, instigate or encourage enforcement action by an adjoining owner of your land – refer to Policy exclusions for full details.
Outstanding Rates, Taxes and Levies	<ul style="list-style-type: none"> ▪ Not covered for any land transfer duty or land stamp duty which is payable by you as the purchaser of the land. Not covered where you agreed to pay the rates, taxes and levies or were aware of their existence.
Unpaid Local Infrastructure or Local Improvement Levies	<ul style="list-style-type: none"> ▪ Only covered for amounts which had accrued prior to the settlement of your property purchase. Not covered where you agreed to pay the levies or were aware of their existence.
Lack of Legal Access	<ul style="list-style-type: none"> ▪ Not covered for any lack of a right to a secondary access point to the land.
Lack of legal right of water supply or drainage to and from the land	<ul style="list-style-type: none"> ▪ Not covered for 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.
Errors, affectations and proposals that would have been disclosed in a Local Authority Search or a search of the Public Records	<ul style="list-style-type: none"> ▪ Not covered for environmental contaminants or hazardous waste, mine subsidence or native title claims.
Supplemental Rates & Land Taxes	<ul style="list-style-type: none"> ▪ Only covered for amounts which had accrued prior to settlement of your property purchase. Not covered where you agreed to pay the rates or land taxes or were aware of their existence.

Other Matters to Consider

Standard exclusions include:

- Environmental matters, including but not limited to: contamination, abandoned oil wells or water quality or quantity.
- Native title claims.
- Risks that you created, allowed, were aware of and/or agreed to.
- Risks that are known to you, but not to Stewart Title, on the Policy Date.
- Matters that first occur after your policy date except for forgery, fraud, mistake by a governmental authority, encroachment onto your Land (excluding boundary walls and fences), or the assessment of supplemental taxes.
- Physical/structural conditions or defects related to the wear and tear or condition and repair of the property, including infestation and dilapidation.
- Certain risks where you initiate, instigate or encourage enforcement action by the Local Authority and/or an adjoining property owner – refer to Policy exclusions for full details.

Cancellation period:

If, within 14 days of receiving your policy or the settlement of your property purchase (whichever is the latter) and you have not made a claim, you decide you no longer want your policy, you may request cancellation of your policy. We will refund the premium you paid subject to an administration charge of \$50.00. After this period, you cannot cancel your policy.

If you have obtained this policy by mistake, please let us know as soon as possible.

For more information:

Should you have questions about your policy, its cover, and exclusions and exceptions, please contact us on **1800 300 440** or visit our website at www.stewartau.com so that we may assist you.

Attention: This Key Facts Sheet highlights some of the conditions, exclusions and limits in respect of our standard Residential Purchaser Policy and is intended only to be a guide. The content in this document is furnished for informational use only and 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.