



## Attention Conveyancers: Are Your Clients Protected Against the Risk of Non-Compliant Building Work?

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The enforcement powers of Local Authorities to issue building notices and building orders for *unapproved building work* is a risk which is well known among conveyancing practitioners throughout Australia.

However, the issue of *non-compliant building work* also poses significant risk, particularly as purchasers and their conveyancing practitioners may be lulled into a false sense of security if searches and enquiries of a property reveal the existence of approvals. Even where your due diligence shows an approval history, the property as constructed may not comply with the property *as approved*.

The conditions relating to that approval may not have been complied with by previous owners, enabling the Local Authority to issue building notices and building orders to bring the property into compliance. This may cause your clients significant financial loss.

### The Risk of Non-Compliant Building Work

One of the most significant risks associated with non-compliant building work is that it may be difficult for a purchaser to detect whether a house or building complies with all of the conditions imposed by a Local Authority when the building permit is issued.

Most 'due diligence' processes which conveyancing practitioners undertake are focused on whether permits are issued for a dwelling or structure and not whether the conditions clearly falls outside of the scope of the conveyancing practitioner's duty of care to the client.

Accordingly, unless purchasers themselves engage the services of a building expert to conduct a thorough investigation, it is likely that they will proceed to settlement without knowing whether the property complies with all of the conditions of the building permit issued for that property.

Where non-compliance with a building or development permit is discovered after settlement, the purchaser may be faced with the prospect of complying with a building notice or other order issued by a Local Authority requiring the purchaser to bring the property into compliance with the permit. In some cases, the costs associated with rectification or upgrading may be catastrophic.

For strata properties, a Local Authority may issue a notice or order on the Owners Corporation or Body Corporate requiring the building itself to be brought into compliance. This may prompt special levies to be struck to raise the necessary rectification/upgrade funds. The purchaser's liability would be in proportion to their unit entitlement under the relevant strata scheme.

### **Title Insurance Coverage for Unapproved and Non-Compliant Building Work**

Stewart Title's Residential, Strata & Commercial Purchaser\* & Existing Owner Policies provide cover for "Actual Loss" and "Authorised Expenses" up to \$160,000 per claim in the following circumstances:

**Unapproved Building Work** - Enforcement action by a Local Authority in relation to structures which have been built or modified by any previous owner of the property without obtaining building or development approvals; or

**Non-Compliant Building Work** - Enforcement action by a Local Authority in relation to structures which do not comply with building or development approvals issued by the Local Authority, including structures which do not comply with building or development approvals because the structures have not been built in accordance with applicable building codes and standards.

For rural properties, this cover is limited to the main residence, including sheds, carports, garages used for residential purposes and any swimming pool.

For strata policies, cover includes any special levies which are struck by the Owners Corporation or Body Corporate to pay for any upgrading or rectification costs.

**Please note:** Loss or damage arising from non-compliant external cladding is excluded from cover for all Residential Strata Policies and Commercial Purchaser Policies issued for strata title properties.

## Cover in Action: Recent Non-Compliant Building Work Claim

Our insured purchased a \$1.6 million house which had record of a building permit having been issued. Following settlement, the insured then discovered many of the windows and glass doors leaked water when it rained heavily.

Investigations revealed that many of the installed windows and doors did not comply with the requirements of the building permit which required the windows and doors to be of a standard to withstand heavy storms. The Local Authority issued a notice requiring the insured, as the new owner, to bring the property into compliance with the permit.

*Resolution:* Stewart Title paid **over \$96,000** to cover the costs associated with removing the non-compliant windows and doors and replacing them with ones that did comply.

Cover for non-compliant building work is **only available** through a title insurance policy issued by Stewart Title. **Is your client protected?**

Visit [www.stewartau.com](http://www.stewartau.com) or call 1800 300 440 for more information.

\* Commercial Purchaser Policy issued for properties with a purchase price up to \$5 million. Unapproved building work cover for commercial properties with a purchase price over \$5 million is issued by an unapproved building work endorsement which is assessed on a case-by-case basis subject to underwriting criteria.

*“The content of this posting is my own and does not necessarily represent Stewart Title’s positions, strategies or opinions.”*



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