



Commercial Purchaser & Existing Owner Title Insurance Cover Explained

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Ciaran Westland
General Manager at Stewart Title Limited,
Australia ✓
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Whilst most conveyancing practitioners are aware of the benefits of title insurance as a risk management tool for clients buying or selling residential properties, Stewart Title also provides title insurance coverage for buyers, sellers and existing owners of commercial property.

Buying a commercial property can be a risky proposition. Whether the property is zoned commercial, industrial or business, most of the same risks which apply to residential property also apply to commercial properties:

- Have all of the improvements on the land been constructed with Council approval?
- Are the physical boundaries in line with the legal boundaries?
- Are there any encroachments?
- Have all of the conditions of the original development consent relating to the property been complied with?
- Are there any unregistered interests in the land, such as easements, covenants, or rights of way?
- Does the property comply with the zoning?

The consequences of non-compliance with planning, building or development laws and regulations, or encroachments or claims by third parties in relation to alleged interests in the land can be catastrophic for a commercial purchaser.

How can commercial buyers effectively manage these risks?

Conveyancers should be aware that their clients can obtain protection by obtaining a Stewart Title Commercial Purchaser Policy or Commercial Existing Owner Policy.

Title Insurance Coverage for Commercial Properties

Stewart Title offers a Comprehensive Commercial Purchaser Policy which provides cover for losses in relation to a broad range of risks, including the following covered risks:

- **Unapproved Building Work:** enforcement action by a Local Authority in relation to structures which have been built without the required Council permits or which do not comply with those permits (for farming/agricultural properties this cover only applies to the primary residence and not to other structures on the property). Cover is capped at \$160,000.
- **Survey/Boundary Defects:** any adverse matters that would have been revealed in an up-to-date survey report (excluding boundary walls and fences). This cover is not available where the land area exceeds 50 acres.
- **Registration Gap:** someone else lodges a dealing which prevents your interest from being registered or recorded (not available for existing owner policies).
- **Fraud, Forgery & Identity Theft:** loss due to fraud, forgery or identity theft which affects your ownership at the time of purchase (cover is provided during the registration gap– not available for future fraud risks or existing owner policies).
- **Planning & Title Defects:** loss due to non compliance with zoning laws, unregistered easements & covenants, lack of legal access, defects in title to the land.
- **Unmarketability:** loss on resale of the property because of the existence of a covered title risk.
- **Outstanding Rates and Taxes:** outstanding rates and taxes on the property which you are now liable for as the current owner of the property (not available for existing owner policies).

Defence of Title

In addition to indemnifying the insured from actual loss arising from a risk covered in the Commercial Purchaser or Commercial Existing Owner Policy, Stewart Title will also cover the costs, legal fees and expenses associated with defending the insured's title against litigation arising from covered title risks.

We call this our Defence of Title cover. Such costs are in addition to any liability the insurer may have in respect of the indemnity amount contained in the Policy.

This defence of title is extremely valuable cover for buyers or existing owners who may find themselves in a position of having to defend a claim brought by a third party, such as a neighbouring property owner alleging an interest in the insured property. Defending such claims can be very expensive.

The defence of title cover provided is effectively a “fighting fund” for the insured against legal costs which may be incurred in relation to defending any legal proceedings commenced against the insured relating to a covered risk.

The ‘Comprehensive Commercial Purchaser Policy’ is available for commercial properties with a purchase price of up to and including \$5,000,000AUD (excluding GST).

Custom Commercial Policy

Stewart Title is also able to provide custom coverage for commercial properties with a purchase price of over \$5,000,000AUD (exclusive of GST) which may be tailored to suit your client’s risk management needs.

This means that a buyer may select the coverage which is best suited to the needs of the transaction. Premiums are based on a cents per thousand basis. Coverage and premiums are on application only.

Stewart Title’s Underwriting Team has extensive experience with underwriting commercial transactions and providing risk management solutions to a range of commercial buyers and investors, from small family businesses to multi-national global corporations and equity funds.

Title Insurance in Action – A Story From our Files

Our insured purchased a commercial bed & breakfast property for over \$1,000,000. The insured purchased the property for the purposes of refurbishment and further development. The property had been operated as a successful bed & breakfast enterprise for many years.

Following settlement, the insured lodged the plans with Council. Council responded by issuing a Building Notice on the property as its records indicated that no approval had ever been issued for the use of the property as a bed and breakfast. The current approval only authorised the use of the property as a tea room/art gallery. The conversion of the property to bed and breakfast accommodation, including the construction of rooms, was unauthorised.

Council required the insured to either restore the property back to its lawful use as a tea room/art gallery or lodge a development application and substantially upgrade the property so that it complied with current building regulations for use as a “guest house” or “bed and breakfast accommodation”.

The Resolution

The insured lodged a claim with Stewart Title and the claim was accepted on the basis that the conversion of use of the property and associated building works had been carried out without approval in circumstances where approval was required.

Stewart Title engaged a planning expert to liaise with the insured's architect in order to lodge a development application to 'regularise' the use as a bed and breakfast. Substantial upgrading works were required to be undertaken to bring the property into compliance with the relevant building regulations.

Stewart Title was successful in obtaining development approval for the use of the property as a bed and breakfast accommodation following the completion of the upgrading works.

Stewart Title paid over **\$200,000. The insured paid no excess on the claim.**

Is your client protected?

Visit www.stewartau.com or call 1800 300 440 for more information.

Please note that this information is provided solely for general information purposes only and does not relate to your client's personal circumstances. It is not intended to be a complete description of all the terms, conditions, exclusions applicable to the title insurance product and does not constitute legal advice. You should contact the title insurer directly for specific advice in relation to the title insurance product and for a copy of a sample policy.



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