

KEY FACTS SHEET –COMMERCIAL EXISTING OWNER POLICY

Thank you for your interest in obtaining a title insurance policy for your commercial property with Stewart Title Limited. This Key Facts Sheet provides you with some general information about the coverage available in 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 commercial existing owner 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 when the policy is ordered or after the Policy Order Confirmation has been issued.
- 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.

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
<p>Actual Loss is a defined term in the Policy and means “<i>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</i>”.</p> <p>In practical terms this assessment of “Actual Loss” requires an appraisal of the difference between:</p> <ul style="list-style-type: none">a. the value of your land <i>unaffected</i> by the Covered Risk - what you <i>actually paid</i> for the property not taking into account that the land was affected by a Covered Risk; andb. the value of the land <i>affected</i> by the Covered Risk - the market value of the land taking into account that the land was affected by the Covered Risk. <p>The difference between a and b above will be your Actual Loss.</p> <p>The relevant timing of the assessment of Actual Loss will as at the Policy Date.</p> <p>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.</p>	

Example 1 – Actual Loss Calculation

You purchase a warehouse with an office extension 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 an Enforcement Order from a Local Authority ordering you to demolish the office extension because it was built by a previous owner without approvals required by law. The unapproved office extension existed prior to the Policy Date.

You make a claim under section 2.1 (j) 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 purchased as a warehouse with an office extension (\$500,000) and the value of the land as a warehouse without an office extension as at the Policy Date.

The valuer determines that the market value of the land as a warehouse without an office extension was \$450,000 as at the Policy Date. As you paid \$500,000 for a warehouse with an office extension, then your Actual Loss resulting from the order to demolish the office extension is \$50,000.

The sum of \$50,000 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 \$450,000.

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
 - building code compliance reports.
- rectification or rebuilding costs, including demolition costs;
- legal fees and other professional fees such as planning, architectural and designer 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.

Example 1 – Rectification Costs

You purchase a warehouse with office extension for \$500,000 being the Policy Amount. At the time of settlement of purchase (the Policy Date) you are not aware of any Covered Risks affecting the property. Six months after settlement, you receive an Enforcement Order from a Local Authority ordering you to rectify the office extension because it was built by a previous owner without approvals required by law and does not comply with Council’s requirements. The unapproved office extension existed prior to the Policy Date.

You make a claim under section 2.1 (j) of the Policy. Quotes are obtained which indicate the rectification costs are \$25,000. How will your claim in respect of the rectification costs be assessed? Stewart Title will pay or reimburse the necessary rectification costs (providing the costs have been pre-approved by Stewart Title in writing) as an Authorised Expense.

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.

Example 2 – Compliance Reports

In the example provided above, it may be appropriate to demonstrate to the Council that the unapproved office extension complies with all building codes and standards and is structurally sound. If Council is satisfied that the unapproved office extension satisfies its requirements, then no rectification costs would be required and there will be no Actual Loss.

In these circumstances, Stewart Title will pay or reimburse the costs of obtaining the reports (providing the costs have been pre-approved by Stewart Title in writing) as an Authorised Expense.

Example 3 – Demolition Costs

In the example provided above, it may be a requirement of Council, after obtaining the necessary expert reports, that the unapproved office extension must be demolished completely if not rectified.

In these circumstances, Stewart Title will pay or reimburse the necessary demolition costs (providing the costs have been pre-approved by Stewart Title in writing) as an Authorised Expense. This would be in addition to the costs of the reports and would also be in addition to the payment of any Actual Loss which is required to be paid under section 1.1 of the Policy.

Defence of Title

Section 1.3 of the Policy

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

“We may 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. If we decide to defend a challenge to your Title we will pay necessary costs, legal fees and expenses incurred in that defence. We will not pay such costs, fees and expenses incurred by you unless they are approved in writing by us before they are incurred. We will not pay for any part of costs, fees and expenses in a matter that does not relate to a Covered Risk or that relates to a matter that is excepted or excluded from Cover under this Policy. We may decide to not defend or continue to defend your Title, and may alternatively exercise one or more of the options outlined in clause 6. We may also end our defence of your Title by exercising one or more 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 may “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. If we decide to defend a challenge to your Title, we will 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. In some circumstances, Stewart may decide not to defend a challenge to your Title. If Stewart decides not to defend a challenge to your Title, Stewart will instead exercise one or more of the options outlined in clause 6 of the Policy. For example, if there are little or no prospects of successfully defending a challenge to your Title, we may negotiate a settlement or take other action that will protect you.

Example – Defence of Title Costs

You purchase a 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 moving in the council issues you with a notice because the present use of the Land contravenes existing zoning laws.

You make a claim under section 2.1 (i)(i) of your Policy (which provides cover in circumstances where you are prevented by a Local Authority from using the Land because “the present use contravenes existing planning or zoning laws”).

In these circumstances, Stewart Title would obtain independent legal advice in relation to the claims made by the council in relation to the alleged contravention of the zoning laws 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 1.3 of the Policy

For the avoidance of doubt, the maximum aggregate amount of Cover described in clauses 1.1 and 1.2 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 or Authorised Expenses 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 \$450,000 and the Authorised Expenses are \$200,000 you will not be entitled to more than \$500,000 in respect of these categories of Cover.

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)
Enforcement Order issued by a Local Authority in relation to Unapproved Building Work	<ul style="list-style-type: none">▪ Cover is capped at \$160,000 per claim.▪ Not covered for unapproved boundary walls or boundary fences.▪ For rural properties, cover is limited to the main residence, including sheds, carports, garages used for residential purposes and any swimming pool.▪ For claims under \$25,000, we will pay the costs of removing, upgrading, rectifying or rebuilding the structure (or part of the structure) as an Authorised Expense.▪ For claims greater than \$25,000, we have the option of removing the structures and paying you your Actual Loss.▪ Not covered for poor workmanship, structural condition, dilapidation or infestation of the property. The policy also does not cover any damage relating to non-compliance with laws, regulations and orders relating to fire safety.▪ Not covered for external cladding on strata buildings which does not comply with building or development approvals and/or applicable building codes or standards (if applicable).▪ This cover does not apply where you initiate, instigate or encourage enforcement action by the Local Authority – refer to Policy exclusions for full details.

	<ul style="list-style-type: none"> ▪ Enforcement Order is defined in the Policy – please refer to the Policy for more information.
Boundary & Survey	<ul style="list-style-type: none"> ▪ This cover does not apply to land where the land area size exceeds 50 acres. ▪ Not covered for boundary walls or boundary fences. ▪ 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.
Planning & Zoning Breach	<ul style="list-style-type: none"> ▪ Covered for loss due to non-compliance with existing planning and zoning laws, unregistered easements and covenants, access orders, access rights or a right of way.
Unmarketability	<ul style="list-style-type: none"> ▪ Only covered for loss on resale of the property arising from the existence of a covered title risk.
Fraud, Forgery & Identity Theft	<ul style="list-style-type: none"> ▪ Covered for loss due to fraud, forgery or identity theft which affects your ownership at the time of purchase.

Other Matters to Consider

Standard exclusions include:

- Environmental matters, including but not limited to, mould, asbestos, termites, infestation, contamination, abandoned oil wells, water leakage, water quality or quantity.
- Native claims or claims arising directly or indirectly from legislation with respect to the protection of aboriginal cultural heritage.
- Risks that you created, allowed 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.
- Physical/structural conditions or defects related to poor workmanship, the wear and tear or condition and repair of the property, including infestation and dilapidation.
- Non-compliance with laws, regulations and orders relating to fire safety.
- Non-compliance with applicable building codes or standards*.
- Non-compliant external cladding on strata buildings (if applicable).
- 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 the Insurance Date or the date the Policy is received by you (whichever is the latter), you have not made a claim and you decide you no longer want your policy, you may request cancellation of your policy. We will refund all premium paid for cover under the policy less 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 Commercial Existing Owner 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.

Please Note: the exclusion relating to non-compliance with building codes and standards does not apply if notice of the non-compliance appears in Public Records as at the Policy Date or if the existence of the non-compliance would have been disclosed by a Local Authority Search of your Land as at the Policy Date. Please refer to the Policy exclusions for more information.