



Commercial Lender Policy

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Stewart Title Limited's Commercial Lender Policy will insure you subject to the terms and conditions of the Policy against your actual loss resulting from Covered Title Risks covered under this Policy up to the Policy Amount. Stewart Title Limited also protects you against costs, legal fees and expenses that you incur in defending the Title to the Land and the validity of your Insured Mortgage as an encumbrance against the Land to the extent provided in the Policy.

To be valid, this Policy must include both a Schedule A and a Schedule B and any relevant Endorsement(s) and must be signed by a representative of Stewart Title Limited.

STEWART TITLE LIMITED
ARBN 101 720 101 (United Kingdom)
GPO Box 527
Sydney NSW 2001

NOTICE UNDER THE INSURANCE CONTRACTS ACT 1984

Before you enter into a contract of general insurance with an insurer, you have a duty under the Insurance Contracts Act 1984 to disclose to the insurer every matter that you know, or could reasonably be expected to know, which is relevant to the decision of the insurer whether to accept the risk of the insurance and, if so, on what terms.

You have the same duty to disclose those matters to the insurer before you renew, extend, vary or reinstate a contract of general insurance.

Your duty, however, does not require the disclosure of a matter:

- that diminishes the risk to be undertaken by the insurer;
- that is of common knowledge;
- that your insurer knows or, in the ordinary course of their business as an insurer, ought to know; and
- as to which compliance with your duty is waived by the insurer.

EFFECT OF NON-DISCLOSURE

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce their liability under the contract of insurance in respect of a claim or may cancel the contract.

If your non-disclosure is fraudulent, the insurer may also have the option of voiding the contract from its beginning.

THE POLICY

This Policy contains

- our standard cover;
- our standard exclusions;
- Schedule A, which contains information about your Policy, fees and the Land;
- Schedule B, which contains information about exceptions and affirmative covers which specifically apply to the Land;
- Endorsement(s) that may change some of our standard cover or provide additional cover not provided in our standard Policy.

Please take the time to read the Policy as a whole. Carefully review the Schedules and any Endorsement(s). As you read through the Policy please remember that any comments or provisions in one section of the Policy may be affected by comments in another section, the Schedules or any Endorsement(s).

CUSTOMER SERVICE – OUR PROMISE

If you have any of the following problems, let us know so we can help you:

- any questions about our Policy and its cover;
- any concerns about our service or our staff;
- any questions about a claim; or
- any concerns about the progress of a claim.

Please contact us at 1800 300 440. You will be referred to a manager in the appropriate department who will help you. If the manager is unable to help you, the matter will be referred to the Operations Manager who will review your concerns with you and the manager and you will promptly be advised of his / her decision.

If at any time you are not satisfied, please write to

The General Manager
Stewart Title Limited
GPO Box 527
Sydney NSW 2001

Your concerns will be reviewed and a response in writing provided to you within 10 working days of receipt of your letter.

DEFINED MEANINGS – WHAT WE MEAN

In this Policy, the following words have the meaning described below, unless the context requires a different meaning.

Access means a legal right of ingress and egress to the Land and not the physical condition of the access, nor the adequacy or sufficiency of access.

Authorised Expense(s) means any costs, legal fees and expenses incurred, as a result of a claim payable under this Policy and pre-approved in writing by us.

Consumer Protection Law means any law designed or intended to give protection to a borrower including any laws relating to consumer protection, required disclosure, maximum interest rates, deceptive or misleading advertising or conduct, or contract review.

Covered Title Risks mean the risks we protect you against as specified in clause 2 of this Policy.

Debt means the amount described in and intended by you to be secured by the Insured Mortgage.

Fraud means dishonesty, fraud, deceit or forgery.

Input Tax Credit means an input tax credit available under A New Tax System (Goods and Services Tax) Act 1999.

Insured means the insured named in Schedule A and sometimes referred to as “you” in this Policy. Insured also means the owner of the Insured Mortgage and each successor in ownership of the Insured Mortgage except a successor who is an obligor or guarantor of the Insured Mortgage, subject to all rights and defences as to a successor that we would have against any prior owner of the Insured Mortgage.

Insured Mortgage means the mortgage detailed in Schedule A.

Jurisdiction means the state or territory in which the Land is located.

Land means the land or strata unit specified in Schedule A, including any improvements which, by law, are taken to be part of the land, and does not include any land beyond the land specified in Schedule A, nor any right or interest in abutting waterways.

Laws means all federal, state, territory or local codes, laws, ordinances, orders, proclamations and regulations which affect real property in the jurisdiction where the Land is located.

Mortgagor means the mortgagor shown in the Insured Mortgage.

Policy means this document, the Policy Schedules (Schedule A and Schedule B) and any written Endorsement(s) to this document.

Policy Amount means the policy amount specified in Schedule A.

Policy Date means the date when the settlement of the Insured Mortgage occurs, as specified in Schedule A.

Public Records means records established and maintained by law in the Jurisdiction where the Land is located, that give constructive notice of matters affecting real property.

Registration means the making of an entry in the land titles register for the ownership of land or interests in land.

Registration Period means the period beginning with the settlement of the Insured Mortgage and ending with the registration of your interest in the Land in the title registry.

Stewart Title Limited, “we”, “us” or “our” means Stewart Title Limited, ARBN 101 720 101 (United Kingdom) ABN #59 101 720 101.

Title means the ownership of your interest in the Land as detailed in Schedule A.

Unmarketable means an alleged or apparent matter, not excluded from cover under this Policy, affecting Title to the Land which would allow a purchaser not to perform a contract to purchase or a mortgagee not to perform a contract to make a loan.

You or Your means the person(s) insured under this Policy named in Schedule A. It also refers to anyone identified in clause 4.1.

INTERPRETATION – WHAT WE MEAN

In this document unless the context otherwise requires:

- (a) clause and sub-clause headings are for reference purposes only and not intended to be used in interpreting the clause;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;

- (e) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (f) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (g) all words take their common meaning. Those words are explained above, unless defined elsewhere in this Policy; and
- (h) reference to an item is a reference to an item in a Schedule to this Policy.

1. YOUR COVER

Subject to the payment of the Policy premium and subject to the terms and conditions outlined below and relying on the information disclosed to us, we will insure you in the following circumstances.

1.1 Actual loss

We insure you against actual loss sustained or incurred in relation to the Covered Title Risks up to the Policy Amount.

1.2 Our duty to defend

We will defend that part of any proceedings or court case that is based on a Covered Title Risk relating to the Land as insured. We will defend the validity of the Insured Mortgage as an encumbrance against the Land for the Debt. 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 7 hereof. We may also end our duty to defend your title by exercising any of the options in clause 7.

2. COVERED TITLE RISKS

We insure you for actual loss against the following risks affecting your estate or interest in the Land if the circumstances creating or giving rise to these risks existed or occurred before the Policy Date.

2.1 Risks affecting the Mortgagor’s estate or your interest in the Land

- (a) The Mortgagor is not the owner of the estate or interest detailed in Schedule A in respect of the Land.
- (b) Someone other than the Mortgagor owns an estate or interest in the Land.
- (c) Any other title defect or lien or encumbrance that affects the Title to the Land which is not detailed in Schedule B.
- (d) The Title to the Land is unmarketable.
- (e) There is no legal right of access to and from the Land.
- (f) A document is not properly signed which results in a defect in the Title to the Land.
- (g) A document has not been properly registered in the Public records which results in a defect in the Title to the Land.
- (h) Other persons have rights to the Land arising out of a lease, contract, option or an access order.
- (i) Fraud, forgery, duress, incompetence or incapacity causes a defect in Title to the Land.
- (j) A covenant or restriction detailed in Schedule B has not been complied with or observed.
- (k) Any defect in Title that would be revealed by an up to date survey, including the encroachment of improvements onto an easement or adjoining property or encroachment of improvements onto the Land.

2.2 Risks affecting the Insured Mortgage

- (a) The Insured Mortgage is not valid and enforceable as an encumbrance against the Title to the Land for the Debt.
- (b) There is an encumbrance, charge or lien having priority over the Insured Mortgage, including a lien for the supply of services, labour or material to the Land.
- (c) The invalidity or unenforceability of any assignment of the Insured Mortgage, detailed in Schedule A, or the failure of the assigned mortgage to properly vest Title to the Insured Mortgage in favour of the named assignee, free and clear of all encumbrances.

2.3 Registration Period

During the Registration Period, we will provide you with cover for all Covered Title Risks described in clauses 2.1 and 2.2 above where:

- (a) You, in good faith and relying upon a written assurance of the issuance of the Policy, have made advances pursuant to the terms of the Insured Mortgage; and
- (b) Reasonable steps have been taken to promptly register the Insured Mortgage.

3. EXCLUSIONS – RISKS WE DO NOT COVER

You are not covered for any loss or damage of the type(s) listed in clauses 3.1, 3.2 and 3.3 below or caused by any matter(s) listed in Schedule B except to the extent that specific affirmative cover is given. We will not pay any loss for these matters. Also, we are not obliged to pay costs, legal fees or expenses for these matters.

3.1 General risks we do not cover

Risks which:

- (a) you at any time create, allow, assume or agree to;
- (b) are not registered in the Public Records but are known to you, or your agents, but not to us on or prior to the Policy Date or when you acquire your interest under the Insured Mortgage;
- (c) are known to you or your predecessors in Title but not us (unless you acquired your interest for value without knowledge of such risks);
- (d) cause you no loss or damage;
- (e) occur, come into existence or are registered in the Public Records after the Policy Date except to the extent that this Policy insures the priority of the Insured Mortgage over any statutory lien for services, labour or material;
- (f) result in a loss because, as an assignee or transferee, you pay more for the Insured Mortgage than the Debt;
- (g) result in any loss of priority of the Insured Mortgage because you make further advances despite knowing of the existence of a subsequent encumbrance, charge or lien;
- (h) any statutory lien for services, labour or materials (or the claim of priority of any statutory lien for services, labour or materials over the Insured Mortgage) arising from improvements or work on the Land which were contracted for and commenced after the Policy Date, and is not financed in whole or in part by proceeds of a debt secured by the Insured Mortgage, which the insured has advanced or is obligated to advance as at the Policy Date;
- (i) become an encumbrance on the Land after the Policy Date for unpaid taxes and assessments.

3.2 Non Compliance with Consumer Credit and Other Laws Excluded

- (a) The Insured Mortgage is or is claimed to be invalid or unenforceable or is adversely affected by an order or declaration of a court or tribunal because you failed to comply with or you breached Consumer Protection Laws or laws relating to the doing of business and the providing of credit.
- (b) You pay or are liable to pay damages, compensation, fines and penalties to any person because you failed to comply with or breached any of the laws referred to in sub-clause (a).
- (c) You are unable to enforce the Insured Mortgage because you breached applicable laws of the Jurisdiction.
- (d) Any claim which arises out of the transaction creating the interest of the mortgagee insured by this Policy, by reason of the operation of bankruptcy, insolvency or similar creditor's rights or equitable laws that deem the transaction fraudulent or preferential, or subordinate to the interest of another person or entity.

3.3 Laws, contamination, claims and interests against the Land

- (a) Matters which are registered or otherwise recorded on Title on the Policy Date. This does not however limit the benefits described in sub-clauses 2.1(k).
- (b) The existence of laws restricting, regulating, prohibiting or relating to the use or enjoyment of the Land or any violation or breach of those laws.
- (c) Environmental contaminants or hazardous waste on or under the Land or covenants, conditions and restrictions for environmental protection or the effect of any laws regulating those contaminants or waste.
- (d) The exercise of any governmental power, except to the extent any notice of the exercise of such power has been registered in the Public Records as of the Policy Date, but only to the extent of the enforcement referred to in that notice.
- (e) The forfeiture of the Title as a result of any governmental action, or the resumption of the Land.
- (f) Native title claims in relation to the Land.
- (g) Rights and interests, including riparian rights, reserved under a crown grant or crown lease or the law authorising the issue of the crown grant or crown lease.
- (h) Matters which are not recorded on Title on the Policy Date, but would be discoverable by an inspection of the Land or by enquiries of persons in occupation of the Land.
- (i) Rights and interests of any person in occupation of the Land.
- (j) Public or private utility undertakers of a telecommunications utility company having a statutory right to carry out works affecting the Land.

4. WHO IS COVERED AND FOR HOW LONG

4.1 Who is covered?

This Policy insures:

- (a) you, the person or company detailed in Schedule A of this Policy;
- (b) a successor or assignee other than another insurer or a guarantor or obligor under the Insured Mortgage who purchases or acquires an interest in the Insured Mortgage;
- (c) a successor or assignee who acquires the Insured Mortgage or an interest in the Land by operation of law and not by purchase, where the successor or transferee is your parent or wholly owned subsidiary; and
- (d) any entity having an interest in the Insured Mortgage from time to time including, without limitation, warehouse providers, bondholders, sub-trusts and other interests created through the process generally described as securitisation.

4.2 Length of cover

This Policy protects you while:

- (a) you have, or a person of the kind described in clause 4.1 has, an estate or interest in the Insured Mortgage and the Debt has not been repaid in full;
- (b) there has been no Deed of Release in respect of the Policy entered between us and you; or
- (d) you have an estate or interest in the Land by foreclosure or any other legal manner which discharges the Insured Mortgage or have liability to a purchaser regarding Title to the Land under a contract for the sale of the Land following foreclosure, or you hold a debt secured by a mortgage given to you by a person who purchases Title to the Land from you.

4.3 Sale of Land

This Policy does not provide any cover to anyone who purchases the Land from you, from the Mortgagor, or otherwise.

4.4 Non-Imputation of Knowledge

Where the Insured making a claim under this Policy is not the Insured named in Schedule A, we reserve the right to use any rights we had against the Insured's predecessors under this Policy, unless that Insured acquired its interest in the Insured Mortgage as a purchaser for value without knowing of the asserted defect, lien or encumbrance.

5. MAKING A CLAIM

5.1 Claims are subject to this Policy

Any claim you make against us must be made under this Policy and is subject to its terms.

5.2 When you must notify us

You must advise us in writing as soon as possible after you become aware of:

- (a) legal proceedings, whether commenced or threatened, in relation to the Insured Mortgage or the Title to the Land to the extent it affects validity, priority or enforceability of the Insured Mortgage to secure the Debt;
- (b) any information or claim which is or may be adverse to the Insured Mortgage or to the Title to the Land or to the use of the Land;
- (c) any information or claim that the Title to the Land is Unmarketable; or
- (d) any information or circumstance that might entitle you to make a claim under this Policy.

5.3 How to make a claim

You can make a claim in respect of a Covered Title Risk at any time after the Policy Date. When making a claim, please contact our office and include the Policy number and your postal address. We will then send you a claim form for completion and return.

5.4 Proving your loss

You must provide us with a written statement to prove your loss. This statement is to be given to us as soon as the circumstances permit, but no later than 90 days after you know the facts that will permit you to establish the amount of your loss. The following must be included in the statement:

- (a) details of the Covered Title Risk which constitutes the basis of your loss;
- (b) the amount of your loss;

- (c) the method you used to compute that amount, or an assessment prepared by an expert, and
- (d) whether you are entitled to an Input Tax Credit for the premium paid and the extent of the Input Tax Credit in relation to the period during which the event giving rise to the claim happened.

If you are not in a position to calculate the amount of your loss when completing the claim form, you must inform us. Thereafter, you must notify us of the amount of your loss in a written statement promptly after your loss can be established. You must also explain how you calculated that amount or provide us with an assessment prepared by an expert.

5.5 Further information

We may require you to provide us with copies of your records including those held electronically and any documents held by your lawyer that relate to the Insured Mortgage, to your interest in the Land or to your claim. We may make copies of those records and retrieve any that are stored electronically. We may also require you to answer questions under oath.

Our obligation to you under this Policy may be reduced in part or in whole if you fail to promptly advise us about a commenced or threatened claim or provide us with requested records and documentation, and that failure adversely affects our ability to dispute or defend any claim or to timely commence any claim against other persons.

6. LEGAL ACTION - YOUR DUTY TO CO-OPERATE

6.1 Defence of litigation

Subject to our ability to end our duty to defend your Title, we will, at our sole cost and without unreasonable delay, cover the cost of you defending any claim adverse to the Title and your interest in the Land or the Insured Mortgage, but only in respect of those risks which are covered under this Policy. We have the right to select the lawyer to handle such defence (subject to your right to object for reasonable cause) and we will not be responsible for or pay the fees of any other lawyer. We will not be liable for any fees, costs or expenses incurred by you in the defence of those stated claims which allege matters not covered under this Policy.

6.2 Right to prosecute any action

We have the right, at our sole cost, to commence and prosecute any action or proceeding or to do anything else which in our opinion may be necessary or desirable to establish the estate or interest in the Land as insured or the validity of the Insured Mortgage, or to prevent or reduce your loss or damage. We may take any appropriate action under the terms of this Policy, whether or not we are liable hereunder, and by doing so we shall not be taken to have conceded any liability or waived any provision of this Policy. If we exercise our rights under this paragraph, we will do so diligently.

6.3 Final court determination

Whenever we have brought an action or filed a defence as required or permitted by the provisions of this Policy, we may pursue any litigation to a final determination by a court of competent Jurisdiction and we expressly reserve the right, in our sole discretion, to appeal against any judgment or order.

6.4 Your co-operation

In all cases where this Policy permits or requires us to prosecute or cover the cost of any defence of any action or proceeding, you give us the right to participate in such action, proceeding or appeal and allow us, at our sole option, to use your name for this purpose. If we request, you must, at our expense, give us all reasonable assistance and help us in:

- (a) securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding or effecting a settlement; and
- (b) any other lawful act which in our opinion may be necessary or desirable to establish Title to the estate or interest in the Land or the validity of the Insured Mortgage as insured.

7. OUR CHOICES WHEN YOU NOTIFY US OF A CLAIM

If you make a claim under this Policy for which we are liable we must do one of the following:

- (a) purchase the Insured Mortgage for the Debt (including any Authorised Expenses incurred prior to that purchase). Upon payment, you must transfer and assign to us the Debt and the Insured Mortgage and any collateral security and give all necessary written notices of that assignment or transfer;
- (b) pay or otherwise settle with other parties, on your behalf or in your name, any claim insured under this Policy together with any Authorised Expenses incurred to the date of that payment;
- (d) pay or otherwise settle with you the loss or damage provided for under this Policy, together with any Authorised Expenses incurred to the date of that payment;
- (e) prosecute or defend a court case related to the claim;

- (f) take other action which will protect you;
- (g) pay the Policy Amount and costs, legal fees and expenses incurred up to the time of payment which we are obligated to pay. Upon payment of the Policy Amount, the Policy will be cancelled.

7.2 Obligation to Co-operate

Following an event which may result in a claim, you must:

- (a) tell us promptly of all facts related to the claim;
- (b) provide us with any information about the claim that we may request and promptly deliver to us any relevant letters, documents, or notices which are in your possession or come into your possession;
- (c) take all reasonable precautions to prevent further damages or claims;
- (d) give us the opportunity to inspect the Land before any action is taken to protect you; and
- (e) assist us in all our endeavours to negotiate, defend or settle any claim under this Policy and to exercise for our benefit your legal right of recovery against any other party.

If you fail or refuse to meet these obligations, and as a result it affects our ability to dispose of your claim, discharge our duty under the Policy or defend or take any action against third parties, then our obligations to you may be reduced or cancelled.

8. EXTENT OF OUR LIABILITY

8.1 Our liability for claims

This Policy is a contract of indemnity against actual loss or damage. Subject to this clause, our total liability under this Policy (excluding Authorised Expenses) will be the lesser of:

- (a) the Policy amount stated in Schedule A; or
- (b) the difference between:
 - (i) the value of your interest in the Land as insured unaffected by the substance of a claim insured against by this Policy; and
 - (ii) the value of that interest affected by the substance of a claim insured against by this Policy.

8.2 Our liability for Authorised Expenses

We will pay all Authorised Expenses incurred in the defence or prosecution of any legal proceeding affecting Title to the Land or the validity or priority of the Insured Mortgage as insured. These payments will be in addition to any payments owing to you under sub-clause 8.1 above.

8.3 Reduction of insurance cover

The amount of indemnity cover payable by us under this Policy will be reduced or terminated by any or all of the following:

- (a) all payments under this Policy which reduce the amount of the principal sum secured by the Insured Mortgage;
- (b) the payment by any person of all or part of the Debt or any other obligation secured by the Insured Mortgage or any voluntary, partial or full satisfaction or release of the Insured Mortgage to the extent of the satisfaction or release;
- (c) the amount by which your acts or omissions increase our liability or reduce our ability to recover amounts from third parties other than the failure to conduct any searches or inquiries in accordance with the arrangements between us;
- (d) the amount by which our right of recovery or mitigation of loss is reduced, if you do anything to adversely affect any right of recovery you may have under the Insured Mortgage or other collateral security or if your non compliance with your obligations under this Policy affects our ability to mitigate your loss.

8.4 Liability is not cumulative

If we pay an amount to satisfy a claim under this Policy (e.g. to remove a title defect or to pay out a prior ranking security interest), the remaining cover provided by this Policy will be reduced by the amount of that payment.

8.5 Limitations on our liability

We are not liable to indemnify you:

- (a) if we establish good and marketable Title to the Land, remove the alleged defect, lien, charge or encumbrance or cure any other matter or thing giving rise to the claim under this Policy in a reasonably diligent manner by any method including litigation;
- (b) if we decide to undertake proceedings to determine the enforceability of the Insured Mortgage or to determine other

matters relating to the risks insured under this Policy, until litigation, including any appeals, in relation to a claim conducted by us (or you with our authorisation) has been finally determined by a court of competent Jurisdiction with a result which is adverse to the Title or to the enforceability or priority of the Insured Mortgage, as insured or until we abandon that litigation;

- (c) for liability voluntarily assumed by you in negotiating or settling any claim or litigation without our prior written consent;
- (d) if you make any loan advances in respect of the Insured Mortgage in excess of the Policy Amount specified in Schedule A.

8.6 Payment of Loss

We shall not be obliged to make any payment under this Policy, unless the Policy is provided to us for endorsement. If the Policy has been lost or destroyed, you must give us proof of its loss or destruction to our reasonable satisfaction. When the extent of our liability under this Policy has been fully determined, we will pay that amount within 30 days.

9. SUBROGATION

If we indemnify you for any claim under this Policy we will immediately be subrogated to any rights, contractual or otherwise, which you may have in connection with that claim, the Insured Mortgage, the Debt, or the Land. If we ask, you must transfer to us all of your rights and remedies against any person or property that might be, in our opinion, necessary to perfect this right of subrogation. You agree to sign any documents reasonably required by us to perfect this right of subrogation.

10. SEVERABILITY

If any provision of this Policy is determined to be invalid or unenforceable under any applicable law or by any court of competent Jurisdiction, the Policy will be deemed to omit that provision and all other provisions will remain in full force and effect.

11. NON WAIVER

If we fail to enforce a provision of right under the Policy, or if we grant you time or an indulgence, we will not be deemed to have waived any provision or given up any rights we may have to subsequently enforce any provision or right under this Policy.

12. NOTICES

All notices which are to be given to us and any statements required to be provided to us in writing must include the number of this Policy and be delivered to us at our registered office or addressed to us at the following address:

Claims Department
Stewart Title Limited
GPO Box 527
SYDNEY NSW 2001.

13. VARIATIONS AND ENDORSEMENTS

A variation or endorsement to this Policy will be of no effect unless made in writing and signed by us. Any Endorsement to or Affirmative Cover in this Policy is subject to and, unless otherwise indicated, does not modify the terms and conditions of this Policy, extend the Policy Date or increase the amount of indemnity cover.