



FIRST AMERICAN TITLE INSURANCE COMPANY OF AUSTRALIA PTY LIMITED

HOME OWNERSHIP PROTECTION POLICY

YOUR DUTY OF DISCLOSURE

Before you enter into a contract of general insurance with an insurer, you have a duty at law to disclose to the insurer every matter that you know, or could reasonably be expected to know, is relevant to the insurer's decision 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 disclosure of 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 its business, ought to know;
- as to which compliance with your duty is waived by the insurer.

NON-DISCLOSURE

If you fail to comply with your duty of disclosure, the insurer may be entitled to reduce its liability under the contract in respect of a claim or may cancel the contract. If your non-disclosure is fraudulent, the insurer may also have the option of avoiding the contract from its beginning.

RATINGS DISCLOSURE

Pursuant to the Insurance Companies (Ratings and Inspections) Act 1994, we disclose to you that we are not required to have a current rating in New Zealand under that Act because:

- we are not providing disaster insurance or general insurance as those terms are defined in that Act; and
- we have elected not to be rated in New Zealand under that Act.

We have been rated outside New Zealand by A.M. Best with a rating of A+ (superior).

1. POLICY BENEFITS

1.1 Insurance For Actual Loss

We insure you against actual loss sustained or incurred in relation to the Insured Risks up to the limit of the Insured Sum.

1.2 Our Duty to Defend

We will defend that part of any proceedings or court case which is based on an Insured Risk. We will also pay the costs, legal fees and expenses we incur in that defence.

1.3 Rental Accommodation

If you cannot use the Land as your home because of circumstances insured under this policy, you may rent a reasonably equivalent home. We will reimburse your rent until the cause of the claim is removed or we settle your claim.

1.4 The Value Of Your Land May Increase

The Insured Sum increases in line with increases in the fair market value of your Land after the Policy Date up to a maximum of 200% of the amount shown in Item 1 of the Policy Schedule.

1.5 Risks Occurring Before Registration

We insure you against the following risks if the circumstances creating or giving rise to these risks existed or occurred before or during the Registration Period.

Your Estate Or Interest In The Land

- (a) The owner of the estate or interest in the Land is different to that described in Item 2 of the Policy Schedule.
- (b) The home with the address described in Item 4 of the Policy Schedule is not located on the Land.
- (c) Someone lodges a dealing after settlement which prevents your interest in the Land from being registered.
- (d) Someone else owns an interest in the Land or has an easement or right of way that affects the title to the Land.
- (e) A document is not properly signed or registered resulting in a defect in the title to the Land.

- (f) Forgery, fraud, duress, incompetency or incapacity results in a defect in the title to the Land.
- (g) There is an encumbrance, writ, charge or lien on the title to the Land because of a mortgage, judgement, unpaid rates, taxes, or sums due to local or public authorities.
- (h) Other persons have rights to the Land arising out of a lease, contract, option, right of possession or access order.
- (i) There is a defect in the title to the Land and, as a result, another person:
 - (i) has the right and does refuse to complete a contract for the purchase of your interest in the Land;
 - (ii) will not grant you a mortgage; or
 - (iii) has the right and does not comply with their obligations under a lease.
- (j) Any other defect exists which affects the title to the Land.

Use Of The Land

- (k) You do not have a legal right of pedestrian and vehicular access to and from the Land.
- (l) You are prevented from using the Land as your home or that use is adversely affected or impaired because it contravenes:
 - (i) a zoning Law; or
 - (ii) any, grant, exception, or reservation registered or otherwise recorded on the title to the Land.
- (m) Other persons, having the legal right to use the surface or sub-surface of the Land for:
 - (i) the extraction or development of minerals, water or other substances; or
 - (ii) the creation or maintenance of sewerage, gas, telecommunication or electricity installations or lines,

cause damage to the Land and fail to remediate or compensate you for that damage.
- (n) You are forced to remove or remediate all or any part of structures on the Land (other than boundary walls or fences) because they were constructed or modified without development or building approvals required by Law. There is a limit to our liability under this clause and an excess applies. This is referred to in clause 5.2.
- (o) Notice of a breach or violation of Laws regarding the use of the Land or any structures on the Land (other than boundary walls or fences) is recorded in Public Records.
- (p) There is a breach of Laws relating to the subdivision under which the Land, as a separate parcel, was created.

Restrictions And Encroachments

- (q) A covenant, restriction, easement or right of way registered or otherwise recorded on the title to the Land has not been complied with or observed.
- (r) Structures on the Land (other than boundary walls or fences) encroach onto your neighbour's land or vice versa and as a result, another person:
 - (i) has the right and does refuse to complete a contract for the purchase of your interest in the Land;
 - (ii) will not grant you a mortgage; or
 - (iii) has the right and does not comply with their obligations under a lease.
- (s) You are forced to remove all or any part of structures on the Land (other than boundary walls or fences) because they encroach onto:
 - (i) your neighbour's land; or
 - (ii) an easement or right of way registered or otherwise recorded on the title to the Land.
- (t) Any adverse circumstance affects the Land which would have been disclosed by an up-to-date survey of the Land.

Affectations And Proposals

- (u) Any circumstance affects the Land which would have been disclosed by a LIM Report provided by the local authority in whose district the Land is situated at the Policy Date or the Land is otherwise subject to an affectation, proposal, instrument or notice relating to the Land by Government or by a statutory or local authority which is recorded in Public Records.

1.6 Risks Occurring After The Registration Period

We insure you against the following risks if the circumstances creating or giving rise to these risks occur after the Registration Period.

Structures And Encroachments

- (a) Structures, (other than boundary walls or fences), constructed on your neighbour's land encroach onto the Land.

Forgery Fraud And Mistake

- (b) Someone else claims to have an interest in or an encumbrance, charge or lien on the title to the Land because of:
 - (i) an act of forgery or fraud; or
 - (ii) a mistake by a title registry or a governmental or local authority.

Rights Of Temporary Access

- (c) Other persons obtaining rights of temporary access to your Land do not comply with their legal obligation to remediate or compensate you for any damage to the Land.

2. POLICY EXCLUSIONS

2.1 Exclusions

You are not insured against actual loss, we have no duty to defend and we are not obliged to pay costs, legal fees and expenses for the risks and matters specified in clauses 2.2 and 2.3.

2.2 General Risks

Risks which:

- (a) you create, allow or agree to at any time;
- (b) are disclosed to you in the contract for the purchase of your interest in the Land;
- (c) are known by you, but not us, unless they appear in Public Records on the Policy Date;
- (d) cause you no loss or damage;
- (e) occur, come into existence or appear in Public Records after the Registration Period other than the risks insured under clause 1.6; or
- (f) arise out of any business activity other than the business of letting all or any part of the structures on the Land for residential purposes only.

2.3 Matters Relating To The Land

The following risks or circumstances relating to the Land:

- (a) matters which are registered or otherwise recorded on the certificate of title to the Land on the Policy Date such as covenants, easements, encumbrances, restrictions, rights of way and rights and interests reserved to the Crown - this does not however limit the benefits described in sub-clauses 1.5(l), 1.5(m) and 1.5(q);
- (b) existing or future Laws which restrict, regulate, prohibit or relate to use or ownership or the violation or breach of those Laws - this does not however limit the benefits described in sub-clauses 1.5(l), 1.5(n), 1.5(o), 1.5(p) and 1.5(u);
- (c) structures which have not been built in accordance with applicable building codes and standards or the infestation or dilapidation of those structures - this does not however limit the benefits described in sub-clauses 1.5(n), 1.5(o) and 1.5(u);
- (d) environmental contaminants or hazardous waste - this does not however limit the benefit described in sub-clause 1.5(u);
- (e) native title claims in relation to the Land and, if the Land is Maori Land as defined in Te Ture Whenua Maori Act (the Maori Land Act)
 - (i) the provisions of that Act
 - (ii) the failure to obtain the consent of the Maori Land Court to the transfer of title to the Land; and

- (f) additional exclusions listed in Item 5 of the Policy Schedule.

3. WHO IS COVERED AND FOR HOW LONG

3.1 Who Is Covered?

This policy insures:

- (a) you;
- (b) your spouse or legal partner who receives the title to the Land for nominal consideration;
- (c) any beneficiary of a trust of which you are the trustee, to whom you transfer the title to the Land;
- (d) the trustee of a trust of which you are the settlor, to whom you transfer the title to the Land; or
- (e) anyone who receives the title to the Land because of your death.

We may assert the rights and defences we have against any person previously insured under this policy against any of the above persons.

3.2 How Long Does This Policy Last?

The benefits under this policy continue as long as you:

- (a) own the title to the Land;
- (b) retain an estate or interest in the Land;
- (c) take back a mortgage from anyone who buys the Land; or
- (d) are liable for any covenants concerning title given by you to a purchaser of the Land.

3.3 Sale Or Assignment

This policy does not insure anyone who purchases the Land from you and it cannot be assigned.

4. CLAIMS

4.1 Claims Are Subject To This Policy

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

4.2 How To Make A Claim

You can make a claim in respect of an Insured Risk at any time after the Policy Date. If you have a claim, you must promptly notify our registered office at Level 16, 151 Queen Street, Auckland, or the office which issued this policy and include the policy number and the full postal address of the Land. We will then send you a claim form for completion and return.

4.3 Proving Your Loss

If you are not in a position to calculate the amount of your loss when completing the claim form, you must do so in a written statement no later than 90 days 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.

4.4 Further Information

The contract for the purchase of your interest in the Land is an important document and you should retain a full copy. We may require you to show it to us and also those records, cheques, letters, documents, and other papers (including any which are held by your lawyer) that relate to your interest in the Land and your claim. We may make copies of those documents and retrieve any that are stored electronically. We may also require you to answer questions under oath.

4.5 Handling A Claim

You must co-operate with us in handling any claim, court case or other proceeding and give us all relevant information. We are only required to pay you those settlement costs, legal fees and expenses that we approve in advance. When we defend a claim made against the title to your Land, we have the right to choose the lawyer. We can appeal any decision to the highest court and we do not have to pay your claim until your case is finally decided.

4.6 Our Choices When You Notify Us Of A Claim

After we receive your claim or in any other way learn of a matter for which we may be liable, we can do one or more of the following:

- (a) pay the claim against the title to your Land;
- (b) negotiate a settlement;
- (c) prosecute or defend a court case or other proceeding related to the claim;
- (d) pay you the amount required by this policy;
- (e) take other action that will protect you;
- (f) cancel the insurance described in sub-clause 1.5(n) by paying the amount specified in clause 5.2 and only those costs, legal fees and expenses incurred up to that time which we are obliged to pay; or

- (g) cancel this policy by paying the Insured Sum together with those costs, legal fees and expenses incurred up to that time which we are obliged to pay.

By doing one or more of these things, we will have also satisfied our obligation to defend you under clause 1.2.

4.7 Your Actions May Affect A Claim

Our obligations to you will be reduced if you fail or refuse to:

- (a) give us prompt notice of your claim;
- (b) provide a statement of your loss;
- (c) answer our questions truthfully; or
- (d) show us the documents and papers we request,

and your failure or refusal affects our ability to dispose of your claim, discharge our duty to defend or to take action against third parties.

4.8 Transfer Of Your Rights

When we settle a claim, we have all the rights you had against any person or property relating to the claim. You must transfer these rights to us when we ask, and you must not do anything to affect these rights. You must let us use your name in enforcing these rights. We will not be liable to you if we do not pursue these rights or if we do not recover any amount that might be recoverable. With the money we recover from enforcing these rights, we will pay whatever part of your loss we have not paid and we can keep what is left.

5. LIMITATIONS AND EXCLUSIONS

5.1 The Limit Of Our Liability Under This Policy

Our liability under this policy (other than for costs, legal fees and expenses) will not exceed the Insured Sum. Unless your claim is based on sub-clause 1.5(n) we will pay you the lesser of:

- (a) your actual loss; and
- (b) the Insured Sum when the claim is made.

We will have no further liability for a claim against the title to your Land if, after being notified, we remove it within a reasonable time .

5.2 Claims For Forced Removal

If your claim is based on sub-clause 1.5(n), we will pay you the lesser of:

- (a) the balance of your actual loss; and
- (b) \$50,000.00.

When we settle this claim, we will have also satisfied our obligation to pay your rent under clause 1.3.

5.3 Things That Reduce Our Liability

The Insured Sum will be reduced by all payments we make under this policy (other than payments for costs, legal fees and expenses) including any amount we pay to the mortgagee of any mortgage given by you. We will only make a payment to a mortgagee if you ask us to or we have issued an insurance policy to that mortgagee.

If you do anything which adversely affects any right of recovery you or we may have against other persons, we can subtract the amount by which you reduced the value of that right from our liability.

6. GENERAL POLICY CONDITIONS

6.1 This Policy Is A Contract

Your Home Ownership Protection Policy ("policy") is a contract between us that consists of:

- (a) any document in which you have applied for this policy;
- (b) any other documents you have signed for the purposes of this policy;
- (c) this policy document;
- (d) the latest Policy Schedule we have issued; and
- (e) any variation or endorsement to this policy.

6.2 The Policy Schedule

The "Policy Schedule", a sample of which appears at the end of this document, contains the individual details of your policy and must be read in conjunction with this document.

6.3 The Premium

The premium for this policy is payable on or before the Policy Date. If we have not received all of the premium within 30 days of the Policy Date, this policy will be taken never to have existed and you will not be covered in the event of a claim.

6.4 Invalid Provisions

If any part of this policy is held to be invalid or unenforceable under any Law, that part may be removed without affecting the remaining parts.

6.5 Variations and Endorsements

A variation or endorsement to this policy will be of no effect unless made in writing and signed by us.

6.6 Disputes

Any dispute concerning the interpretation of this policy will be dealt with in the courts of New Zealand.

6.7 Headings And Definitions

Headings in this document are only included for convenience and are not intended to affect the interpretation of the policy. Certain words appear in bold type. Unless explained elsewhere, these words are defined in clause 7.

7. DEFINITIONS

In this policy, unless the context otherwise requires:

“Insured Risks”	are the risks specified in clauses 1.5 and 1.6.
“Insured Sum”	is the amount shown in Item 1 of the Policy Schedule unless increased or reduced by any adjustments made in accordance with the terms of this policy.
“know or knew”	means actual knowledge. It does not include constructive knowledge or knowledge which may be imparted by matters appearing in Public Records.
“Land”	is the land described in Item 4 of the Policy Schedule, and includes structures, which by Law, are taken to be part of land.
“Law or Laws”	means, without limitation, all Acts of Parliament, Orders in Council, regulations or local authority laws (statutory or otherwise), orders, codes, regulations, ordinances and proclamations which have force and effect in New Zealand.
“LIM Report”	means a Land Information Memorandum as defined in the Local Government Official Information and Meetings Act 1987.
“Policy Date”	is the day your purchase of the Land is settled. This date is specified in the Policy Schedule.
“Public Records”	are records established or maintained at the Policy Date, under or pursuant to Laws and which impart constructive notice of matters relating to real property in New Zealand to those acquiring an interest in it for value.
“Registration Period”	means the period commencing on the Policy Date and ending when the transfer of your estate or interest in the Land is registered under the Land Transfer Act 1952 in the district land title registry.
“we/our/us”	means First American Title Insurance Company of Australia Pty Limited ABN 64 075 279 908
“you/your”	means the person or persons named in Item 2 of the Policy Schedule or those identified in clause 3.1.



FIRST AMERICAN TITLE INSURANCE COMPANY OF AUSTRALIA PTY LIMITED

ABN 64 075 279 908

POLICY SCHEDULE

SAMPLE ONLY

Policy No: **#1234/2001**

Policy No: **#1234/2001**

Cover Note Date: **[Date Cover Note issued]#1234/2001**

Premium: \$

Policy Date: **[Settlement Date]**

Item 1. The Insured Sum is \$ **[Purchase Price Of The Land]**

Item 2. The name of the insured is: **[Full Name(s) Of Purchaser(s)]**

Item 3. The estate or interest in the Land which is covered by this policy is: **[e.g. Freehold Or Leasehold]**

Item 4. The Land is:

Street Address: **[Full Street Address]**

Legal Description: **[Full Title Reference]**

Item 5. Additional exclusions are:

1. Any mortgage given by you to assist in the purchase of the Land.
2. In the case of a cross lease title, any loss arising because,
 - (a) any alteration to the external dimension of any leased structure is not included in the lease described in the certificate of title for the Land, or
 - (b) others have the legal right to use any building or structure on any part of the Land that is not subject to a restricted user covenant in your favour, or
 - (c) a previous owner has failed to comply with the terms and conditions of the lease.
3. [List Any Further Exclusions]