

A Lawyer's Guide to
Insuring Clients against Property Law Risk
under a
Home Ownership Protection Policy



FIRST TITLE

Introduction

- *You're a lawyer, not an insurer - but when things go wrong your clients don't see it that way. By providing your clients with an extensive, no fault cover over a wide variety of property law risks, **First Title can help you get on with doing what you do best - providing quality legal services and trusted advice** - without the risk of your clients mistaking you for their insurer.*
 - ***First Title can also help you to help your clients complete their purchases** by insuring over a known risk that you may become aware of when acting for a purchaser.*
-

Relevance to New Zealand

Although new to New Zealand, title insurance has been around for over 110 years in the United States.

Originally designed to cover problems of proving title to land, title insurance has been developed and enhanced over time to provide cover to home-owners and lenders against a wide variety of legal risks associated with owning interests in land.

It is this extended coverage that makes title insurance highly relevant in the New Zealand marketplace.

Many of these risks can't be identified before settlement. Others, only after costly investigations and surveys. If discovered they then require expensive and lengthy action to resolve.

By insuring against these risks:

- the cost and hassle of buying can be reduced; and
- the owner and the lender (and vicariously, the lawyer) is protected against loss from them.

Title insurance does not replace lawyers - it provides added value to the services lawyers offer to their clients and covers risks that no amount of due diligence investigations could ever identify.

Home Ownership Risk Covered, not Commercial or Development Risk

The Home Ownership Protection Policy insures that the purchaser can use the property as his or her home and covers for any actual loss if there is any legal impediment that prevents this or that affects the quality of the enjoyment of the property as a home.

It does not cover commercial uses or protect against any development potential. If a client wants to redevelop, investigations are still required to ensure the development would be permitted.

Insurer

Policies available through First Title are issued by First American Title Insurance Company (Pty) Limited and have the backing of and are re-insured through its parent, First American Title Insurance Company - the largest title insurer internationally. A. M. Best rates *First Title Australia* and *First American*, "A+" (Superior). Standard & Poor's rating of *First American* has recently been confirmed as A-. As one of Standard & Poor's silver circle insurers *First American* has subjected itself to the most rigid rating due diligence.

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Ordering Policies

Premiums (all premiums quoted include GST)

Property Value Up to \$500,000

Home Ownership Protection Policy (for the purchaser) \$225.00

Residential Loan Protection Policy (for the mortgagee)

 As an addition to the owners policy \$50.00
 If ordered on its own \$225.00

Property Value Over \$500,000

\$500,001 to \$1,000,000	\$225.00 plus \$0.70 per \$1,000 over \$500,001
\$1,000,001 to \$1,500,000	\$575.00 plus \$0.65 per \$1,000 over \$1,000,00
\$1,500,001 to \$2,000,000	\$900.00 plus \$0.60 per \$1,000 over \$1,500,000
\$2,000,000 and above	\$1200.00 plus \$0.55 per \$1,000 over \$2,000,000

For example

- if a policy is obtained for both the purchaser and the first mortgagee on a property with a purchase price of less than \$500,000 the total premium payable will be \$275.00.
- if a policy is obtained for the purchaser or the mortgagee only on a property with a purchase price of less than \$500,000 the premium payable will be \$225.00.
- if a policy is obtained for both the purchaser and the first mortgagee on a property with a purchase price of \$579,000 the premium payable will be $\$275.00 + (79,000/1000 * \$0.70) = \$55.30 = \330.30

How to order the policy

There are three easy ways to order policies.

- | | | | |
|----|-------|------------------|------------------|
| 1. | Email | order@1title.net | |
| 2. | Fax | (0800) FAX TITLE | (0800 329 84853) |
| 3. | Phone | (0800) 1 TITLE | (0800 1 84853) |

When to order the policy

You can order policies at any time between receiving a signed Agreement for Sale and Purchase, and settlement. You will need to provide us with a copy of the title search (or if you prefer we can do this for you.) For the Residential Loan Protection Policy you will also need to have received the mortgagee's instructions.

We recommend you wait until the contract is unconditional to avoid the \$30.00 cancellation fee if a policy is cancelled after the Cover Note has been issued.

Requests received by 3.00pm, will be processed on the same day and a response given, in most cases within one hour. Unless the issue of a policy requires some underwriting considerations (for example if we are asked to insure over a known problem) a copy of the policy will be emailed or faxed back to you and the original will follow by post or DX.

The Policy will be expressed to run from the actual date of settlement provided settlement takes place within two months after the date of the order.

First Title Documents

(copies are attached to this Guide as Annexures)

Order form <i>Annexure A</i>	Further copies can also be downloaded from our website. The email order form comes as a user friendly Excel template. The form prompts for information and a send button enables it to be automatically sent from your desktop when complete.
Policy Schedule - Home Ownership Protection <i>Annexure B</i>	A copy will be emailed or faxed after your order. Originals will follow in the mail.
Policy Schedule - Residential Loan Protection <i>Annexure C</i>	A copy will be emailed or faxed after your order. Originals will follow in the mail.
Invoice <i>Annexure D</i>	A deposit slip will be enclosed with the invoice for your convenience.
Registration Report <i>Annexure E</i>	This report is to be faxed to us (within two months or following registration) to confirm that settlement and registration have occurred.

Cancellation Fee

A \$30.00 cancellation fee is applicable if a policy is cancelled after the Cover Note has been issued.

Renewal Fee

A new search and a \$30.00 renewal fee is applicable if settlement is deferred. The Cover Note will be renewed for a further period of two months.

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How lawyers benefit from arranging title insurance for their clients

Insuring over known risks

The standard ADLS/REINZ Agreement for Sale and Purchase provides a purchaser with 15 days within which to obtain a LIM Report and requisition the vendor for the removal of anything adverse that may have been disclosed on the report. Many real estate agents reduce this period to five working days - in some cases to two days if they provide the purchaser with a LIM report obtained by the vendor.

Many of the issues disclosed in a LIM report are minor but your duty of care to your client requires you to point them out. If the vendor does not wish to remedy the defect (assuming it can be remedied) your client faces a dilemma - should they proceed and take the risk or walk away and lose the home they have spent a lot of time and effort finding.

Alternatively, when acting for a vendor receiving such a requisition, your client faces a similar dilemma - should they comply with the requisition or face losing a sale at a good price that has taken time to arrange. A classic case is the request to reduce the sale price of a cross lease property because a small addition is not shown on the flats plan

In each case, First Title is able to review the defect and if it is within the insurer's underwriting guidelines, issue a policy to cover the purchaser from any actual loss should he or she be required to remedy the defect during their ownership of the property. Insuring over known risks is covered in more detail on page 11.

Waiver of rights of subrogation

One of the tangible benefits for lawyers is that the insurer will agree to waive its rights of subrogation against the lawyer should the client make a claim under the policy. This means that obtaining title insurance for clients purchasing can be part of a lawyer's risk management practices. While this may not translate into lower professional indemnity premiums immediately, some indemnity insurers are reviewing the use of title insurance as a risk management tool that may reduce the incidence of claims under an indemnity policy. Over time, this will have an impact on premiums.

We will send you a letter confirming the waiver of our rights of subrogation with the original policy after settlement. We suggest you retain this on your client's file.

We reserve the right to withdraw this waiver in respect of individual firms at any time. While we reserve the right to do this at any time without explanation, we would expect that we would only exercise this right if the actions of the firm were resulting in a greater number of claims than we would normally expect to receive. If we withdraw the waiver, it will only be in relation to future policies ordered by the firm and will not affect any policies previously issued.

A more efficient and profitable practice

Clients already think the cost of conveyancing is too high. This puts lawyers under increasing pressure to reduce or contain fees. This pressure is more likely to increase than decrease.

Because a Home Ownership Protection Policy now covers risks that could only be found after extensive enquiry (as well as many that couldn't) your clients can now choose to instruct you not to bother. Instead of obtaining and reviewing a lengthy LIM Report, your time can now be spent on other matters. If you have provided a fixed quote to your client, you have a better ability to control the time you spend on the transaction.

More significantly, it will be a more profitable use of your time to concentrate only on any legal issues thrown up by the transaction and let less qualified staff concentrate on the administrative side.

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Title Insurance and the Lawyers role in a purchase

The Lawyers role remains essential to achieving settlement and registration

Usual steps at settlement: As the Purchaser's lawyer you are responsible for undertaking the transaction as you would deem prudent and appropriate and in accordance with the usual solicitor's standard of care.

The presence of a title insurance policy does not mean that you can now adopt sloppy conveyancing habits. While the insurer now assumes many of the risks that you would otherwise have spent time identifying, we expect that that in some areas of the transaction you will not do anything that would increase our exposure to risk.

For example, like your clients, we rely on you to settle the transaction in accordance with prudent professional practice, and thus manage our exposure to risk.

By this we mean that if you settle on fax undertakings (which is the normal method of settlement these days) we ask you to ensure that the form and content of the undertakings is proper and consistent with current practice. We take the risk that the undertaken may not be honoured - either deliberately or for reasons outside the control of the person giving the undertaking.

We also ask that you obtain the standard undertakings from the vendor in respect of the payment of rates and other outgoings.

Adherence to client instructions: We issues policies based on the information you have given us. If this information is wrong, for example if your clients instruct you to take title in joint names but you only prepare a transfer to one and obtain a policy for that one, then you bear this risk.

Compliance with mortgagee requirements: If you obtain a policy for a mortgagee, you still need to comply with its instructions when you prepare the mortgage or other documents. For example if you are instructed not to make any changes to the form without the mortgagees consent we will expect you to adhere to this. We also expect that you will comply with the lenders requirements relating to insurance.

Again, we take the risk that the mortgage is registered and enforceable, that the rates are paid and the mortgagee's interest is noted on the policy. We ask you simply to manage our risk and not do anything knowingly that would expose us to greater risk.

Necessary Steps in a transaction

By taking out a Home Ownership Protection Policy, the number of steps in the transaction required to completely protect your client are reduced.

Most clients have come to assume that because many of the steps lawyers take (and charge for) do not uncover a problem, they are unnecessary. For risks that are covered by the policy, your client will not suffer any actual loss if they agree to allow you to omit the steps that might otherwise have uncovered those risks.

The following are the aspects of the transaction that we would expect lawyers would continue to be responsible for.

Title Search and title advice

We issue the policy based on the information recorded on the Certificate of Title as at the date of application, adjusted to reflect you client's proposed interest after settlement. The Policy does not cover the existence of any restriction on the title. It covers any breach of these restrictions or covenants at the time of settlement.

You will need to search the title in order to advise your client and to complete an order for a policy. We will rely on your search but we also provide a searching service for you if you wish.

The policy insures the title as it currently stands. If there are interests on the title that your client has not agreed to accept, you will still need to requisition the vendor for removal. Whether or not you requisition for removal is a matter between you and your client.

If your order for insurance indicates that interests will be removed on settlement, you must take steps to ensure that you do not settle unless you are satisfied that a title clear of these interests will be transferred.

If you discover a potential on or off title problem you will still need to obtain your clients instructions on how to deal with it. In some cases, your client may be happy to proceed without dealing with the potential problem. In others your client may ask you to requisition for the vendor to remedy the matter. If the vendor is unable or unwilling to remove the defect, it may be able to be insured over (we explain what this means on page 11).

In any event, if you discover a problem you will need to disclose it to us.

Off-title searches for commercial use or development potential

The policy does not cover any commercial use or any development aspirations your clients may have.

If your client is buying with a view to developing the property or making additions, they will still have to satisfy themselves on all zoning and local authority by-laws and building requirements. You will need to ensure that there are no covenants on the title or in any lease that would restrict or prevent your client from doing this.

Any such enquiries should be made before the agreement for sale and purchase is signed or the agreement made conditional on a period of due diligence for this purpose.

Advise client on contract

The title insurance policy relates to matters of title and the land - it does not cover any contractual matters.

You will still need to review the agreement for sale and purchase and advise your client and deal with any contractual terms. You will still need to requisition under the contract for the removal of any adverse interests on the title that your client is not bound to assume.

Apportionment of outgoings

You will need to ensure that all outgoings have been properly apportioned and proper undertakings are obtained relating to the payment of all rates, body corporate levies or other items that are apportioned.

Prepare Transfer and Mortgages

The preparation of the transfer and mortgages and any other documents that your clients require will still need to be attended to by you. You will need to ensure that the transfer and the mortgage reflect the instructions of your purchaser client and your mortgagee client.

Settlement and undertakings

You will need to attend to settlement. This will include ensuring that the property is insured under a fire policy, any mortgagee's interest is noted in accordance with its requirements and any conditions precedent that the mortgagee has are satisfied. If you are settling on undertakings from the vendor's solicitor or any other party, you must ensure that these are proper and appropriate undertakings for the circumstances.

Retention of File

You will still need to retain your file for the appropriate period following settlement.

Optional Steps - Searches and Investigations

Many of the risks we cover are not be able to be identified by a lawyer on a full due diligence investigation of the property being purchased.

Some risks may only be able to be identified if the purchaser employed another professional, such as a surveyor, to investigate them.

Even after a full investigation, many risks might not be identified - for example a LIM Report may not be complete or correct.

Because risks that would be identified by a full due diligence investigation are now covered by the policy, we do not require you to carry out a full due diligence investigation.

For these reasons, we do not require you to:

- undertake any off-title searches or inspections or surveys;

- search any prior titles to ascertain if all encumbrances have been brought down correctly on the current title;
- take any steps to satisfy yourself that all covenants recorded on the title have been complied with;
- arrange for a survey to identify the physical boundaries to the Land or to inspect the Land for encroachments;
- obtain a LIM Report from the Local Authority or procure any building surveys or inspections to ascertain compliance with building regulations or identify any designations or adverse affectations.

Your clients may still require you to carry out some of these searches and investigations and for this reason we recommend that you provide you client with a terms of engagement letter acknowledging the extent of your role. See the next section on the duty of care.

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The Relationship between Title Insurance and a Lawyer's duty of care

Your duty of care remains

The Home Ownership Protection Policy does not on its own replace or alter the duty or standard of care that you owe to your client. If your client agrees not to obtain a LIM Report, the fact that your client is now insured reduces any liability you might otherwise have for actual loss in respect of any off title problems that a LIM Report might otherwise have disclosed.

If clients makes a claim under the policy to recover their actual loss, that does not prevent them from making a claim for consequential loss (if any) against you. In most cases, it is likely that your clients would prefer to be recompensed for actual loss under a no fault insurance claim than face the uncertainty of commencing court proceedings for consequential loss. But this does not stop them from doing so.

If you failed to advise your client to take out fire insurance when purchasing a home, you would be failing in your duty of care to your client. Now that the Home Ownership Protection Policy is available in New Zealand, it is arguable that a lawyer's duty of care requires that clients be told about property law risks and about the ways that those risks can be ascertained and covered.

Terms of engagement

As part of your own risk management to reduce the risk of a claim for consequential loss, we believe it is important that your clients understand exactly the steps you will or will not be taking in the transaction to protect their interests. We recommend that you provide your clients with a written "Terms of Engagement" setting out the agreed costs and outlining the actions you will take in the title insured transaction. Your clients should be asked to sign and return a copy of these terms and that you retain this confirmation on file.

A suggested draft [Terms of Engagement](#) are attached as Annexure "F". We have included a long form and a short form option. The Word template for these can be downloaded from our website.

Covering Off-Title risk - Options now available to purchasers

The options now available to your purchaser clients to obtain comfort on or cover off-title risk are:

1. * a full due diligence investigation no insurance	To do this properly could involve substantial cost and time - a surveyor should be employed to find the boundaries and ascertain encroachments if the boundary pegs are not easily found - a full LIM Report should be obtained including copies of all building plans - other searches may be required.
2. * a partial due diligence investigation plus insurance	<p>Some properties have special features that your clients will want comfort on before they settle.</p> <p>Examples of these are properties that appear subject to flooding, have land stability problems or have an in ground swimming pool. It may be obvious that an addition not only lacks a building permit but may also be unsafe.</p> <p>In these cases your should advise your client that some additional investigation should be undertaken – most Local Authorities will allow you (or your client) to inspect the building plans and the local maps that record areas of known flooding or unstable ground, for a fee considerably less than the full LIM Report.</p>
3. * no off title investigation plus insurance	If your client does not wish to incur the costs of a full or partial investigation but is happy to rely solely on the cover under the policy.

Even in the first case, it would be prudent to encourage clients to insure. LIM Reports are not perfect and many of the risks covered by the policy – particularly the post settlement risks, are not able to be ascertained from a LIM Report.

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The Relationship between Title Insurance and LIM Reports

A Land Information Memorandum now becomes optional

If there are no special features that would cause your client concern, your client now has the option of deciding whether or not to incur the additional cost of a LIM Report.

If they decide to get a report and it discloses a problem, you may still be able to obtain a policy and insure over the problem. In most cases clients will still want to proceed with the purchase despite a minor defect disclosed in a LIM Report. Now a lawyer can give the comfort of covering the risk if they decide to proceed.

Not all LIM Reports are created equal

LIM Reports can only disclose what the Council knows - not what it doesn't know. Without close investigation it is often hard to determine whether an addition that appears to be the same age as a building permit was included in that permit. Local Authority amalgamations in recent years have made the records of some local authorities less than perfect.

Requesting a LIM Report can create problems

In some areas, a conscientious Council on receiving a request for a LIM Report will visit the property and check for unauthorised additions and encroachments into side yard set backs. If the vendor refuses to fix the problem but the purchaser wishes to proceed, the effect may be to increase the costs of buying.

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How we can insure over known risks

The most significant difference between conveyancing with title insurance and without title insurance is the approach to risk.

As a lawyer, you are trained to be risk averse. It is not your business to take risk.

Insurers, by contrast are in the business of taking risk.

Just because you or your client discovers something adverse on or off title prior to settlement, doesn't mean the only options are for your client to take the risk or rescind the contract. They now have another option. It may be possible to insure over that risk.

The corollary is that if you or your client identifies a risk and fails to disclose this to the insurer, the defect will be excluded from the cover provided by the policy.

Examples of known risks

Discovering title or off title defects can be annoying because while they present the potential for loss, it is just that, potential and not real or immediate loss. If we decide to accept the risk then we will issue a policy that "insures over" the defect and covers the purchaser from any actual loss including loss from the apparent defect.

In some cases we may limit the cover provided for the specific risk identified.

For example, we may be prepared to accept the risk of forced removal for failure to adhere to covenants or obtain building consents but we may not accept the risk that as a result of the problem the title may become unmarketable. A title becomes unmarketable if a subsequent purchaser endeavours to use the presence of the problem to negotiate a better deal or cancel the contract. If we exclude marketability, we will still confirm that we will offer the same policy with the same exclusion to the next purchaser. If you refuse to or unable to rectify the defect, the purchaser may be satisfied with insuring over the risk.

Decks not shown on flats plans

The classic example of a known risk is the addition of a deck or a garage to a cross lease property that is not shown on the title. Because this is such a common problem in New Zealand, this risk is specifically excluded from the policy coverage as a matter of course.

This doesn't mean we won't provide cover for it, simply that we need to review each case and decide if it is a risk we will underwrite. For example, if the addition is in an exclusive use area, its absence from the title may be no real impediment to its use by the purchaser.

In some cases, there may be conditions applying to this insurance cover – for example in the case of a cross lease, it may require the written consent of the neighbour to be obtained. In other cases, the insurer may exclude the risk from cover.

Covenants not complied with

We recently reviewed a right of way easement that had conditions attached to it that had arguably been broken. We looked at the nature of the conditions, the circumstances in which they were imposed and by whom, the current circumstances, 75 years after the creation of the right of way, and concluded that the apparent breach would be unlikely to result in a financial penalty to the owner. We also concluded that the breach would not have permitted anyone to prevent the owner from using the right of way.

If you discover any adverse issue, contact us by email or phone (0800) 1 TITLE (0800 1 84853) and give us full details of the issue. We will review the problem and advise you whether it can be insured over, and if so, at what cost.

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FIRST TITLE POLICY ORDER

Law Firm Information

Solicitor Acting	<input type="text"/>	Contact	<input type="text"/>
Firm Acting	<input type="text"/>		
Address	<input type="text"/>		
Telephone	<input type="text"/>	Fax	<input type="text"/>

Transaction Information

Purchase Price	\$ <input type="text"/>	Settlement Date	<input type="text"/>
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Property Information

<input type="checkbox"/> Single Dwelling house	<input type="checkbox"/> Owner Occupied	<input type="checkbox"/> Fee Simple	
<input type="checkbox"/> Single Level Unit / Town house	<input type="checkbox"/> Investment / Rental	<input type="checkbox"/> Leasehold	
<input type="checkbox"/> Multi Level Unit / Apartment	<input type="checkbox"/> Holiday Home	<input type="checkbox"/> Unit Title	
<input type="checkbox"/> New Home / Under construction		<input type="checkbox"/> Cross Lease	
		<input type="checkbox"/> New title to issue	
Registry	<input type="text"/>	Certificate of Title	<input type="text"/>
Legal Description (Lot, DP)	<input type="text"/>		
Street Address	<input type="text"/>		
Mortgagor	<input type="text"/>		

Mortgagee Information

Mortgagee	<input type="text"/>		
Address	<input type="text"/>		
Telephone	<input type="text"/>	Fax	<input type="text"/>
Contact	<input type="text"/>	Loan Ref.	<input type="text"/>
Mortgage	\$ <input type="text"/>	Priority	<input type="checkbox"/> 1 st <input type="checkbox"/> 2 nd <input type="checkbox"/> 3 rd

Title Search Information

Please obtain a search of the Certificate of Title. I undertake to pay the search and agency fees.

Please obtain a search of the Certificate of Title *and* copies of all encumbrances easements and caveats (other than mortgages)

or

I attach with my order a copy of the Certificate of Title and have completed the results on the following page.

Title Search Results

All Existing Mortgages /Caveats /interests will be discharged on settlement

The following Existing Mortgage(s) will remaining on title
(to be completed when requesting insurance for a 2nd, 3rd, 4th mortgage, etc)

Mortgagee

Date registered Registered No.

Original Principal \$ Priority 1st 2nd 3rd

Details of all memorials relating to registered instruments and interests that are noted on the title that will remain after settlement are as follows

I am aware of the following potential risks (if in doubt disclose - they may be able to be insured over)

In submitting this order, I confirm that I:

- have acted and at all times will act in accordance with my client's instructions;
- have or prior to settlement will have obtained undertakings from the vendors solicitor and such other persons as I deem appropriate in the circumstances and in accordance with standard conveyancing practice; and
- other than the potential risks identified above, I am not aware of any other circumstance relating to the property or the transaction that would increase the likelihood of any insured risk occurring.

Signed

Thank you for your order, you should receive confirmation
within one business hour.

Once completed please either:

email us at orders@1title.net

fax us at 0800 FAX TITLE (0800 329 84853)

or phone us at 0800 1 TITLE (0800 1 84853)

ANNEXURE B: POLICY SCHEDULE – HOME OWNERSHIP PROTECTION

>> POLICY NUMBER 0001-17/7HO

>> POLICY PREMIUM \$225.00

>> COVER NOTE DATE 2 August 2002

>> POLICY DATE 14 August 2002

Item 1. The Insured Sum is \$375,000

Item 2. The name of the insured is Iva Policynow

Item 3. The estate or interest in the Land which is covered
by this policy is Fee Simple

Item 4. The Land:
Street Address is 123 First Street, Titleville
Legal Description is All the land in CT123/TV being 923 square metres, Lot 1 DP23

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. A123456.7 transfer creating easements

ANNEXURE C: POLICY SCHEDULE – RESIDENTIAL LOAN PROTECTION



FIRST AMERICAN TITLE INSURANCE COMPANY OF AUSTRALIA PTY LIMITED

ACN 075 279 908

Schedule A

Amount of Indemnity cover: \$

Policy No:

Issue Date:

Premium:

\$

Policy Date:

1. The Insured Lender Mortgage Holding Trust Company Limited

2. The estate or interest in the Land:

(as set out in the table under the heading The Land)

3. The owner of the estate or interest in the Land

(as set out in the table under the heading The Land)

4. The Insured Mortgage (or, if applicable, the assignment of the Insured Mortgage)

A first mortgage in favour of the Insured Lender over the Land securing obligations of the owner of the estate or interest.

5. The Land

Address:	
Legal Description:	
The estate or interest in the Land:	
The owner of the estate or interest in the Land:	
Additional exclusions for the Land:	

6. Additional Exclusions

(as set out in the table under the heading The Land)

This Schedule A contains the individual details of your policy and, together with any endorsements and our Residential Loan Protection Policy NZRLP0700, forms your contract of indemnity insurance with us.

>> **INVOICE**

GST Number ***

DATE 2 August 2002

>> INVOICE NUMBER **I0001-17/7HO**

Lawyer
Firm Name
Address1
Address2
Address3

>> POLICY TYPE Home Ownership Protection Policy
>> INSURED **Iva Policynow**
>> STREET ADDRESS 123 First Street, Titleville
>> POLICY NUMBER **0001-17/7HP**

POLICY PREMIUM **\$225.00**

Payment can be made by either of the methods below.

Online Direct Credit to
First Title Pacific Limited
BNZ Account 02 0100 0814482 00
Particulars Policynow, I
Reference 0001-17/7HP

or

Cheque made payable to
First Title Pacific Limited
Please return with the remittance
advice below

----- ✂ ----- ✂ ----- ✂ -----
Please detach and return this Remittance Advice with your cheque, thank you.

>> First Title
P O Box 856
DX CP20517
AUCKLAND

>> POLICY NUMBER **0001-17/7HP**
INSURED **Iva Policynow**
PREMIUM ATTACHED **\$225.00**

FACSIMILE

To	First Title	From	Lawyer
Fax	0800 FAX TITLE (0800 329 84853)	Fax	00 123 4567
Date	16 August 2002	Telephone	0800 LAWYER

REGISTRATION REPORT

>> **Policy Number 0001-17/7HP**

Type Home Ownership Protection

Insured	Iva Policynow
Property address	123 First Street, Titleville
CT	CT123/TV
Settlement Date	1 August 2002
Registration Date	14 August 2002

I confirm that the settlement of the purchase of the above property by the above took place on the settlement date specified above.

I confirm that the transfer to the insured was registered on the registration date specified above.

>> **Policy Number *option not selected on this loan***

Type Residential Loan Protection

Mortgagee
Mortgage Amount
Registration Number

I confirm that the above mortgage was registered under the above number on the above registration date.

Yours Faithfully

Partner, Law Firm

ANNEXURE F: DRAFT TERMS OF ENGAGEMENT (Long Form)

Dear

Completing your Purchase for [].

Thank you for instructing us to provide you with the legal advice and services you require to help you complete your purchase. Before we undertake these services for you it is important to us that you understand the nature and extent of our role and the basis on which we will charge for our services.

We would also ask that you indicate the extent of the searches and investigations you wish us to undertake on your behalf. Please consider the information on the following pages then complete, sign and return us the attached instruction sheet. Our costs will depend on the extent of your instructions to us.

Contractual advice and settlement

Our primary role is to help you complete your contractual obligations under the agreement for sale and purchase and acquire the legal title to the property.

Property Investigations

An equally important role is to investigate the legal records relating to the property and advise you on whether there are likely to be any legal problems that may affect your enjoyment of the property as your home. The purpose of these investigations is to assure you as much as is possible that following the settlement of the purchase you are not at risk and will not suffer loss as a result of anything that may adversely affect your legal ownership or enjoyment of the property. We can, however, only advise on what we find. Many risks may not be disclosed to us.

Depending upon the terms of your agreement for sale and purchase and on the nature of any problem uncovered, you may still be required to complete the purchase and may not have any rights to compensation from the vendor despite the presence of a potential problem.

Some of the risks that our investigations might uncover can now be insured against. This insurance may be arranged even though a problem is uncovered but the extent of the insurance may be limited in respect of any known problems.

For this reason, we recommend that you take time to consider what you would like us to do for you and instruct us accordingly.

There may be some things about the property that regardless of the presence of insurance you will still wish to investigate. For example:

- the property may appear to have a greater than usual risk of flooding (you can see water damage on the property);
- you may be concerned about ground stability (property may be built on a cliff); or
- you may be buying the property with the intention of carrying out further development in the future.

In these (and other similar cases) we would recommend further investigations (such as specific requests at the local council for flood risk or ground stability) as an additional safeguard to arranging insurance to cover other risks.

Yours Sincerely

To: []

Re: Purchase of _____

I/We: _____

Confirm that we have read your letter of _____ explaining the nature and extent of your role.

We hereby authorise and instruct you to undertake or arrange the following on our behalf:

- | | | | |
|----|--------------------------|--|-------------------------------------|
| 1. | Report on Title | Search the title and advise us on the type of title we are purchasing and explain any restrictions, covenants or easements that will be binding on us. | <input checked="" type="checkbox"/> |
| 2. | Boundary Survey | Instruct a surveyor to check determine boundaries and check for any encroachments or breaches of height restrictions (if any). | <input type="checkbox"/> |
| 3. | LIM Report | Obtain a Land Information Memorandum Report, review the report and advise us on any thing in the report that may adversely affect the property. | <input type="checkbox"/> |
| 4. | Building Plans | Obtain copies of all building plans held by the local authority. | <input type="checkbox"/> |
| 5. | Other Statutory searches | Undertake other searches and enquiries as you consider appropriate to confirm nothing adverse to the property exists on any other public records. | <input type="checkbox"/> |
| 6. | Zoning | advise on the zoning of the property and adjoining properties. | <input type="checkbox"/> |
| 7. | Special Concerns | I/We are concerned about the following special features and would ask that you obtain such information concerning the issue as is publicly available. | <input type="checkbox"/> |
| | | _____

_____ | |
| 8. | Title Insurance | Obtain a Home Ownership Protection Policy from First Title. | <input type="checkbox"/> |

Signed: _____

Dated _____

Investigations of Property Matters

Assurance on title matters (legal ownership)

In New Zealand, legal interests in land are noted on the Land Titles Register. The Government guarantees that the person whose name is registered as the holder of the interest in land has good legal title to that interest.

We will obtain a search of the certificate of title to the land and provide you with a title report explaining:

- the nature of the interest in the land that you are purchasing (for example whether the land is freehold or leasehold) and
- the nature and effect of any easements or restrictions recorded on the title (for example any rights of way or covenants on the title that may affect how you can use the land).

Assurance on off-title matters (quality of enjoyment)

There are numerous other legal issues that could affect your enjoyment of the property. For example:

Boundary encroachments This occurs when a building is not entirely on one parcel of land and part of it sits on the adjoining property. If you are unable to locate the boundary pegs, then (except where a new title is issuing) then it is your responsibility, not the vendors, to satisfy yourself as to the location of the boundaries. This can be done by instructing a surveyor to prepare a simple plan for you showing the location of the boundaries and the buildings on the property;

Zoning Your property should be zoned for residential use - how other properties nearby are zoned may affect you should the zoning differ from your property. We can obtain information about your property zoning and that of adjoining properties from the local authority;

Matters on public records The local authority holds a number of records that are available to the public regarding the property. We can obtain a Land Information Memorandum from the local authority giving us this information. The cost for a LIM report is set out in our fee estimate;

Building permits The LIM report will indicate the details of all building permits and code compliance certificates issued for the property. Code Compliance Certificates were not issued prior to 1992 and if you wanted to obtain comfort that buildings older than this date complied, you would need to ask the local authority to undertake a special inspection. Some Councils will not do this and you may need to instruct a private building inspector to do this. The LIM report does not, as a matter of course, include copies of the building plans for the property. If you would like to review these then you will need to attend at the relevant Council offices and inspect the records over the counter. The Council may have an additional charge for this service. In some cases, it may be difficult to ascertain whether any part of the building has been changed without comparing the current structure to that shown on the original plans;

Existing breach of covenants on title If there are covenants on the title (such as building height restrictions for example) you may need to engage an engineer or another professional to inspect the property and confirm that the covenants have been complied with;

Other public records... There may be designations on the records of other public authorities that may have an impact on your property, either now or in the future. There are a number of other statutory bodies who have the right to make designations in respect of land, such as classification of historic buildings, properties that may be required for public works such as roads, motorways, rail or schools. In most cases this information should have been notified to the local authority and disclosed in a LIM report. Local Authorities however take no responsibility for failing to disclose what they have not been told. If you would like to be completely certain that there is nothing else adverse on public records then we could write to other relevant bodies and

Ways to obtain assurance on off-title issues

Despite full and extensive searches, it is unlikely you will ever be able to obtain complete assurance that your enjoyment of your property will not be affected by any of the off-title issues.

It is now possible to obtain insurance against suffering loss from many of these off-title issues, in much the same way as you insure against loss from physical damage through fire and other perils. A brief outline of this insurance is attached.

The options open to you are as follows:

1. a full due diligence investigation no insurance	You would select this if the costs of purchase are not an issue, or if you were intending to develop the property, or if it is important to you to know everything there is to know about the property. If you would like us to undertake this, please indicate the extent required on the attached instruction sheet.
2. a partial due diligence investigation plus insurance	You would select this if the property has special features, or if you have specific concerns that you would like us to investigate. Examples of these are properties that appear subject to flooding, have land stability problems or have an in ground swimming pool. It may be obvious that an addition not only lacks a building permit but may also be unsafe.
3. no off title investigation plus insurance	You would select this if you are satisfied that there are no special features or issues that you would like investigated and you wish to avoid incurring the costs of a full or partial investigation.

We would also recommend that even in the first instance you should consider insurance.

Fee Estimate

We estimate our costs and disbursements for the purchase as follows:

Fees:

\$

Base fee: - Advice on agreement, search and report on title, preparation of transfer, settlement of purchase and registration

Obtaining and reviewing LIM report

In respect of all work other than that detailed above, we will charge for our time at the following hourly rates:

Disbursement:

Initial Title Search costs

Guaranteed Search costs

Land Information Memorandum

Registration Fees

Office disbursements (tolls, photocopies, fax charges etc.) (estimate)

All external consultants charges are payable direct to the Consultant.

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