



# **FIRST AMERICAN TITLE INSURANCE COMPANY OF AUSTRALIA PTY LIMITED**

## **RESIDENTIAL LOAN 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. COVERAGE STATEMENT**

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Subject to the payment of the premium, the terms and conditions of this policy including schedule A (which forms part of this policy) and relying on the information you disclosed to us, we will, as the circumstances may require do the following:

### **1.1 Actual Loss**

Indemnify you against actual loss, not exceeding 125% of the amount of indemnity cover specified in schedule A, sustained or incurred by you in relation to any of the Covered Risks specified in:

- (a) paragraphs 2.1 to 2.5 inclusive if they exist or occur before or during the Registration Period; and
- (b) paragraphs 2.6 and 2.7 if they occur after the Registration Period.

### **1.2 Duty to Defend**

Pursuant to paragraph 7 of this policy, defend either or both the title to the Land and the Insured Mortgage as an encumbrance against the title to the Land and pay the costs, legal fees and expenses we incur in that defence.

### **1.3 Timely Payment**

Pursuant to paragraph 8 of this policy, pay you the instalments of either or both principal and interest secured under the Insured Mortgage that you fail to receive.

## **2. COVERED RISKS**

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### **2.1 The Estate or Interest in Land**

- (a) The owner of the estate or interest in the Land is different to that described in paragraph 3 of schedule A.
- (b) The address of the Land is different to that described in paragraph 5 of schedule A.
- (c) There is a defect in the title to the Land.
- (d) The Insured Mortgage is invalid or unenforceable as an encumbrance against the title to the Land.

### **2.2 Priority and Assignment**

- (a) An encumbrance, charge or lien has priority over the Insured Mortgage.
- (b) If specified in paragraph 4 of schedule A, the assignment or transfer of the Insured Mortgage is invalid or unenforceable or title to the Insured Mortgage does not properly vest in the assignee or transferee free and clear of prior encumbrances.

### **2.3 Marketability and Use**

- (a) The title to the Land is Unmarketable.
- (b) There are no actual rights of pedestrian and vehicular access to and from the Land based on a legal right.

- (c) The use of the Land for residential purposes is not permitted or that use is adversely affected or impaired because it contravenes a zoning Law or any easement, right of way, covenant, restriction, lease, grant, exception or reservation affecting the title to the Land.
- (d) The Land does not contain a residential dwelling or home unit (unless the Insured Mortgage provides for advances to construct a residential dwelling or home unit).
- (e) The right of others to use the surface or sub-surface of the Land for the extraction or development of minerals results in damage to the Land.
- (f) Improvements on the Land were modified or constructed without building approvals required by Law.
- (g) Notice of a breach or violation of Laws is recorded in Public Records regarding the use of the Land or improvements on the Land.
- (h) There is a breach of Laws relating to the subdivision under which the Land, as a discrete parcel of land, was created.
- (i) You are forced to remediate an illegal connection on or from the Land to sewerage lines.

#### **2.4. Restrictions and Encroachments**

- (a) A covenant or restriction affecting the title to the Land has not been complied with or observed.
- (b) Improvements on the Land or on other land interfere with, encroach on or contravene the terms of an easement or a right of way affecting the title to the Land.
- (c) Improvements on the Land encroach onto other land or vice versa.
- (d) There is an adverse circumstance relating to the boundaries of or improvements on the Land that would have been disclosed by an accurate identification survey.

#### **2.5 Adverse Affectations**

The Land is subject to a proposal, instrument or notice by government or a statutory or local authority that is recorded in Public Records.

#### **2.6 Post Policy Modifications and Encroachments**

- (a) Improvements on the Land are modified or constructed without building approvals required by Law.
- (b) Improvements on the Land are modified or constructed in contravention of covenants affecting the title to the Land on the Policy Date.
- (c) Improvements modified or constructed on the Land encroach onto other land and vice versa.

#### **2.7 Invalidity, Loss of Priority and Forgery**

- (a) The Insured Mortgage:
  - (i) becomes invalid or unenforceable as an encumbrance against the title to the Land; or
  - (ii) loses its priority to another encumbrance, charge or lien,

because:

- (iii) the terms of the Insured Mortgage provide for redraws or a come and go facility or for the variation of the interest rate and you make advances or vary the interest rate (or both) pursuant to those terms;
  - (iv) you amend the terms of the Insured Mortgage to facilitate a change in the type of loan which is secured: or
  - (v) you make further advances which are secured under the Insured Mortgage by law or by its terms.
- (b) An act of forgery either or both:
- (i) discharges, varies or adversely affects the Insured Mortgage; and
  - (ii) causes the Insured Mortgage to lose its priority to another encumbrance, charge or lien.

### **3. EXCLUSIONS**

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We will not indemnify you against actual loss, we have no duty to defend and we are not obliged to make timely payments or pay costs, legal fees and expenses resulting from any of the following risks:

#### **3.1 Laws, Contamination, Claims and Interests**

- (a) Covenants, easements, restrictions and rights of way that are recorded or otherwise noted on the title to the Land on the Policy Date. This does not limit the cover described in paragraphs 2.3(c), 2.4(a), (b) and (c) and 2.6(b) of the Covered Risks.
- (b) The existence of Laws restricting, regulating, prohibiting or relating to the use or enjoyment of the Land or the violation or breach of those Laws. This does not limit the cover described in paragraphs 2.3(c), (f), (g), (h), 2.5 and 2.6(a) of the Covered Risks.
- (c) Environmental contaminants or hazardous waste on or under the Land. This does not limit the cover described in paragraph 2.5 of the Covered Risks.
- (d) Native title claims in relation to the Land or any loss arising because the Land is Maori land.
- (e) Rights and interests reserved under a Crown grant or lease or the Law authorising the issue of the Crown grant or lease. This does not limit the cover described in paragraphs 2.3(c) or 2.3(e) of the Covered Risks.

#### **3.2. Risks**

Risks which:

- (a) you at any time create, allow or agree to;
- (b) are known to you but not us on or prior to the Policy Date or when you acquire your interest in the Insured Mortgage;
- (c) are known by your predecessors in title but not us (unless you acquired your interest for value without notice);
- (d) cause you no loss;

- (e) occur, come into existence or are recorded in Public Records after the Registration Period except those described in paragraphs 2.6 and 2.7 of the Covered Risks;
- (f) only result in a loss because as an assignee or transferee, you pay more for the Insured Mortgage than the debt then secured under it; or
- (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.

### 3.3 Credit and Consumer Laws

- (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 subparagraph (a).

### 3.4. Additional Exclusions

Any additional exclusions listed in paragraph 6 of schedule A.

## 4. DEFINITIONS

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In this policy, unless the context otherwise requires:

<b>"Authorised Expenses"</b>	means any costs, legal fees and expenses that we are obliged to pay under this policy.
<b>"Consumer Protection Law"</b>	means, without limitation, any Law regulating the provision of credit or giving protection to credit consumers including Laws relating to contract review and deceptive and misleading conduct.
<b>"Covered Risks"</b>	means the risks, matters and circumstances described in paragraph 2.
<b>"Insured Mortgage"</b>	means the mortgage described in paragraph 4 of schedule A.
<b>"know"</b>	means having actual knowledge and not constructive knowledge or notice which may be imparted by matters appearing in Public Records and " <b>known</b> " and " <b>knowing</b> " will be construed accordingly.
<b>"Land"</b>	means the land described in paragraph 5 of schedule A, including objects and improvements which, by Law, are taken to be part of the Land.
<b>"Laws"</b>	means, without limitation, all federal, state, territory or local authority laws (statutory or otherwise) orders, codes, regulations, ordinances and proclamations which have force and effect in New Zealand and " <b>Law</b> " will be construed accordingly.

<b>"Registration Period"</b>	means the period commencing on the Policy Date and ending on the date the Insured Mortgage is registered as an encumbrance against the title to the Land.
<b>"Policy Date"</b>	means the date of this policy of indemnity specified in schedule A.
<b>"Public Records"</b>	means 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.
<b>"Unmarketable"</b>	means an alleged or apparent defect in the title to the Land which is not excluded from cover under this policy and which would entitle a purchaser of the Land to be released from an obligation to purchase because good and proper title cannot be delivered.
<b>"we/our/us"</b>	means First American Title Insurance Company of Australia Pty Limited ACN 075 279 908.
<b>"you/your"</b>	means the insured lender named in schedule A and also includes any subsequent owner of the Insured Mortgage reserving however all rights and defences as to a subsequent owner that we would have against any previous owner.

## 5. WHO IS COVERED AND FOR HOW LONG?

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- (a) This policy protects:
- (i) you if you acquire all or any part of the estate or interest in the Land by foreclosure or any other legal manner which discharges the Insured Mortgage;
  - (ii) a successor who acquires an interest in the Insured Mortgage; or
  - (iii) a successor who acquires the Insured Mortgage or the estate or interest in the Land by operation of law and not purchase.
- (b) This policy only protects you while:
- (i) you own the Insured Mortgage;
  - (ii) you retain an estate or interest in the Insured Mortgage or the Land in the circumstances referred to in sub-paragraphs (a)(i), (ii) and (iii) above; or
  - (iii) as a mortgagee exercising a power of sale:
    - (A) you have a liability to a purchaser regarding the title to the Land under a contract for the sale of the Land; or
    - (B) you hold a debt secured by a mortgage given to you by a purchaser of the Land.
- (c) This policy will not protect any purchaser from you of either:
- (i) the estate or interest in the Land; or
  - (ii) a debt secured by a mortgage given to you by a purchaser of the Land from you.

## **6. NOTIFICATION OF CLAIM**

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

- (a) litigation commenced or threatened in relation to the Insured Mortgage or the title to the Land;
- (b) any claim which is or may be adverse to the Insured Mortgage or the title to the Land;
- (c) a claim that the title to the Land is Unmarketable; or
- (d) any circumstance which might otherwise entitle you to make a claim under this policy.

Our obligation to you under this policy may be reduced in part or in whole if you fail to promptly advise us and that failure adversely affects our ability to dispute or defend any claim or to commence any claim against other persons.

## **7. DEFENCE AND PROSECUTION OF ACTIONS AND YOUR DUTY TO CO-OPERATE**

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The following provisions are subject to our rights under paragraph 10 of this policy:

- (a) If you ask us in writing we will, at our cost and without unreasonable delay, defend you in litigation in which a third party asserts a claim adverse to the title to the Land or your interest in the Insured Mortgage (but only to the extent of the matters indemnified under this policy). We will be entitled to select the lawyer to act (subject to your right to object for reasonable cause) and we will not be liable for and will not pay the fees of any other lawyer. We will not pay any fees, costs or expenses incurred by you in the defence of actions, which allege matters not indemnified under this policy.
- (b) We have the right, at our cost, to institute and prosecute any action or proceeding or do any other act which, in our opinion, may be necessary or desirable to establish the estate or interest in the Land as indemnified or the validity of the Insured Mortgage or to prevent or reduce loss to you. We may take appropriate action under the terms of this policy whether or not we are liable under it and by doing so, we will not be taken to have conceded any liability or waived any provision of this policy. If we exercise our rights under this sub-paragraph we must do so diligently.
- (c) 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 final determination by a Court of competent jurisdiction and reserve the right in our sole discretion to appeal any judgment or order.
- (d) In all cases where this policy permits or requires us to prosecute or defend any action or proceeding, you must fully co-operate with us and give us all relevant information in relation to the action or proceeding and any appeal and permit us to use, at our option, your name for this purpose. If requested by us you must, at our expense, give us all reasonable assistance to:
  - (i) secure evidence, obtain witnesses, prosecute or defend the action or proceeding or effect a settlement; and
  - (ii) do any other lawful act which, in our opinion, is necessary or desirable.

## **8. TIMELY PAYMENT**

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The following provisions are subject to our rights under paragraph 10 of this policy.

- (a) If you make a claim under this policy for which we are liable and within 90 days we have not, as the circumstances may require:

- (i) established good and marketable title to the Land as insured;
- (ii) established the validity and enforceability of the Insured Mortgage;
- (iii) removed or cured the alleged defect, encumbrance, lien or charge; or
- (iv) removed or cured any other matter or thing giving rise to the claim,

we will pay you all arrears of either or both principal and interest secured and payable under the Insured Mortgage and continue to make those payments as and when due as if no default had occurred.

(b) our obligations under sub-paragraph (a) are subject to the following conditions:

- (i) A default must have occurred and continue in the payment of either or both principal and interest as regularly scheduled under the terms of the Insured Mortgage.
- (ii) Any insurer that has issued a policy of mortgage insurance in respect of the Insured Mortgage must have denied liability under its policy and ceased making any payments to you.
- (iii) We are not obliged to make any payment based solely on an accelerated payment provision in the Insured Mortgage.
- (iv) We are not obliged to make interest payments at default or higher rates specified in the Insured Mortgage.
- (v) We are not obliged to make any other payments related to the default such as late payment fees, charges, penalties and your legal expenses.

## **9. PROOF OF LOSS**

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In addition to the information required under paragraph 6, you must give us a written statement to prove your loss. This statement must be given to us not later than 90 days after you know the facts that will let you establish the amount of your loss. The statement must contain at least the following:

- (a) the Covered Risk which constitutes the basis of your loss ;
- (b) the amount of your loss; and
- (c) the method you used to compute that amount.

We may require you to show us your records, files and other documents whether created before or after the Policy Date which reasonably relate to your claim for loss. All information that you give us is confidential and will not be disclosed by us to others unless it becomes necessary during any court proceedings or is required to be disclosed by Law. Our obligations to you under this policy could be reduced if you fail or refuse to comply with your obligations under this paragraph.

## **10. SETTLING CLAIMS AND TERMINATION OF LIABILITY**

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If you make a claim under this policy for which we are liable or in any other way we learn of a matter or circumstance for which we are or may be liable, we can do one or more of the following:

- (a) Pay you 125% of the amount of indemnity cover then in effect under this policy together with any Authorised Expenses.
- (b) Purchase the debt secured by the Insured Mortgage from you for the amount owed under it together with any Authorised Expenses. In those circumstances, you must transfer or assign the Insured Mortgage and any collateral securities and credit enhancements to us and give all necessary written notices of that transfer or assignment.
- (c) Pay or otherwise settle any claim with other parties for or in your name together with any Authorised Expenses.
- (d) Pay or otherwise settle with you the loss provided for under this policy together with any Authorised Expenses.

After we make a payment or otherwise settle a claim, in one of these ways, our liability to you,

- (e) Under this policy if sub-paragraphs (a) or (b) apply; or
- (f) In relation to your claim if sub-paragraphs (c) or (d) apply,

will terminate including any obligation to defend, pay costs, make timely payments or prosecute or continue any litigation.

## **11. DETERMINATION AND EXTENT OF LIABILITY**

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This policy is a contract of indemnity against actual monetary loss. Subject to paragraphs 12 and 13, our total liability under this policy (excluding Authorised Expenses) will be the lesser of:

- (a) 125% of the amount of indemnity cover specified in schedule A;
- (b) the amount of the debt secured under the Insured Mortgage together with interest, costs, break costs, charges and expenses which are owing and can be recovered under the Insured Mortgage at the time of loss; or
- (c) the difference between the value of the estate or interest in the Land which is the subject of this policy and the value of that interest affected by the substance of your claim. This sub-paragraph (c) does not apply however if the defect or affectation prevents the Insured Mortgage from becoming an encumbrance against the title to the Land.

## **12. LIMITATION OF OUR LIABILITY**

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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) until litigation, including appeals, in relation to a claim conducted by us (or you with our authorisation) has been finally determined by a court of competent jurisdiction;
- (c) for liability voluntarily assumed by you in negotiating or settling any claim or litigation without our prior written consent;
- (d) if you have made further advances under the Insured Mortgage after the Policy Date except for advances covered under sub-paragraphs 2.7(a)(iii) and (iv) of the Covered Risks, advances made to protect your interest under the Insured Mortgage and reasonable amounts expended to prevent deterioration of the Land; or

- (e) if you have made construction loan advances under the Insured Mortgage after the Policy Date except construction loan advances for the purpose of financing in whole or in part the construction of improvements on the Land which, on the Policy Date, were secured by the Insured Mortgage and which you were and continued to be obliged to advance.

### **13. REDUCTION OF INDEMNITY AND REDUCTION OR TERMINATION OF OUR LIABILITY**

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The amount of indemnity cover payable by us under this policy will be reduced or terminated (as the case may be) by any or all of the following:

- (a) All payments under this policy except for Authorised Expenses. Despite this, any payments made prior to the acquisition of the estate or interest under sub-paragraph 5(a) will not reduce the amount of indemnity cover under this policy unless those payments 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. Despite this, in the case of a partial payment satisfaction or release, the amount of indemnity cover will be increased by accruing interest and advances made pursuant to the terms of the Insured Mortgage up to but not exceeding 125% of the amount of indemnity cover specified in schedule A.
- (c) The amount by which your acts or omissions have increased our liability or reduced our ability to recover amounts from third parties.
- (d) If you do anything to adversely affect any right of recovery you may have under the Insured Mortgage or other collateral security or your non-compliance with your obligations under this policy affects our ability to mitigate your loss.

### **14. LIABILITY NON CUMULATIVE**

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If you acquire title to the estate or interest in the Land in satisfaction of the debt secured under the Insured Mortgage or any part of it and we have paid an amount under a policy indemnifying another mortgage shown as an additional exclusion in paragraph 6 of schedule A, the amount paid by us will be taken to be a payment under this policy and the amount of indemnity cover will be reduced by a corresponding amount.

### **15. PAYMENT OF LOSS**

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We are not obliged to make any payment under this policy unless this policy is produced to us for endorsement. If the policy has been lost or destroyed you must give us proof of loss or destruction to our reasonable satisfaction. When the extent of your loss and our liability under this policy has been finally determined, we will pay that amount to you within 30 days of that determination.

### **16. SUBROGATION**

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If we agree to indemnify or defend you under this policy in respect of any claim, then regardless of whether or not actual payment has been made we will immediately be subrogated to any rights, contractual or otherwise, which you may have in connection with that claim, the Insured Mortgage 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.

## **17. LIABILITY LIMITED TO THIS POLICY**

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This policy and any endorsements to it given in writing by us is the entire contract between you and us. Any claim that you make against us must be made under this policy and is subject to its terms.

## **18. SEVERABILITY**

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In the event that any provision of this policy is held to be invalid or unenforceable under any Law, that provision may be severed and will not be taken to have affected the remaining provisions. This policy will be construed according to the Laws of New Zealand and both of us consent to the non-exclusive jurisdiction of the New Zealand courts.

## **19. NON WAIVER**

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We are not to be taken to have waived any provision of this policy or any of our rights under it if we fail to enforce a provision or right or we grant you time or indulgence.

## **20. VARIATIONS AND ENDORSEMENTS**

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

## **21. NOTICES**

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All notices or advices required to be served on or given to us under this policy must include a reference to the policy number and be delivered to:

Claims Department  
First Title Pacific Limited  
Level 16  
151 Queen Street  
Auckland

or to the office which issued this policy.



**FIRST AMERICAN TITLE INSURANCE COMPANY OF AUSTRALIA PTY LIMITED**  
ACN 075 279 908

## Schedule A

**Amount of Indemnity Cover:** \$«TotalLoanAmount»      **Policy No:**      «LenderDealCode»  
**Issue Date:**      <date of issue>      **Premium:**      \$ «FASTPremium»  
**Policy Date:**      the date that the mortgage funds are  
first drawn down

**1. The Insured Lender:**

**2. The estate or interest in the Land:**  
(as set out in the table below under the heading The Land)

**3. The Owner of the estate or interest in the Land**  
(as set out in the table below 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 in the Land to the Insured Lender.

**5. The Land**

Address:	«NewProperty1_Street» «NewProperty1_Suburb» «NewProperty1_City»
Legal Description:	All the land in Certificate of Title «NewProperty1_CertificateOfTitle» being «NewProperty1_LegalDescription»
The estate or interest in the Land:	«NewProperty1_EstateType»
The owner of the estate or interest in the Land:	«NewProperty1_Mortgagor»
Additional exclusions for the Land:	«NewProperty1_AdditionalExclusions»

**6. Additional Exclusions**  
(as set out in the table above 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 NZRLPP 0700, forms your contract of indemnity insurance with us.**