

Commercial Owners GOLD

Purchasers

Policy Wording



V1104

1. INTRODUCTION

1.1 ABOUT COMMERCIAL OWNERS GOLD

Commercial Owners GOLD is a comprehensive title insurance policy that insures an owner of property against a range of risks that may affect use and ownership of the property being acquired. Commercial Owners GOLD is typically used to insure purchasers and owners of commercial property. Please read the Coverage Statement very carefully. The policy also obliges First Title to provide and pay for a legal defence for the insured property owner against insured risks in the event of a claim.

The Commercial Owners GOLD is not an annual policy and coverage protects the insured forever.

1.2 WHO ISSUES COMMERCIAL OWNERS GOLD?

First American Title Insurance Company of Australia Pty Limited (trading as "First Title") is the insurance company that issues the Commercial Owners GOLD. We refer to the insurer as First Title or "the Company" in this document. First Title is authorised by the Australian Prudential Regulation Authority to carry on insurance business in Australia and holds an Australian Financial Services (AFS) Licence, number 263876 issued by the Australian Securities and Investments Commission. The AFS licence authorises First Title to provide general insurance product advice and to deal in general insurance products to retail and wholesale clients. First Title is part of a worldwide insurance group owned by First American Financial Corporation.

For information about First Title or the First American Financial Corporation:

Phone: 1300 362 178

Email: info@firsttitle.com.au

Website: www.firsttitle.com.au

1.3 POLICY CONDITIONS AND EXCLUSIONS FROM COVER

It is important that you read this policy document carefully. It contains various exclusions from cover and conditions. The insurance provided by Commercial Owners GOLD may be affected if these conditions are not complied with.

1.4 YOUR DUTY OF DISCLOSURE

Before a person enters into a contract

of general insurance with an insurer, they have a duty, under the Insurance Contracts Act 1984, to disclose to the insurer every matter that they know, or a reasonable person in the circumstances could be expected to know, which is relevant to the insurer's decision whether to accept the risk of the insurance and, if so, on what terms.

A person has the same duty to disclose those matters to the insurer before they renew, extend, vary or reinstate a contract of general insurance. That duty however does not require disclosure of a matter that diminishes the risk to be undertaken by the insurer; that is of common knowledge; that the insurer knows or, in the ordinary course of business, ought to know; or where the insurer waives compliance with that duty.

With your Commercial Owners GOLD policy, you must disclose any matter that you become aware of prior to the Policy Date that may impact on coverage. If you become aware of something and you are not sure whether to disclose it to us, simply contact us using the telephone number in paragraph 1.2 above and we can discuss this with you.

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

1.5 PRIVACY STATEMENT

We are committed to protecting the privacy of your personal information. That commitment is reflected in our compliance with the National Privacy Principles.

First Title collects personal information about you:

- to assess your request for insurance and to administer your policy;
- to underwrite and price any policy issued by us;
- to investigate, assess and pay any claim made by or against you.

Unless we are required by law to provide personal information to others, your personal information will only be seen or used by:

- our own staff and contracted staff;
- claims adjusters, lawyers and others appointed by us or on behalf of us for claims handling purposes;
- our related entities;
- our reinsurers and reinsurance brokers (which may include persons or entities located outside Australia); and
- any distributors of the policy or authorised representatives appointed by us.

By submitting your information to us either directly, via your Conveyancing Practitioner or a third party, you agree to us using and disclosing it as outlined in this statement.

If you do not provide the information requested, your application for insurance may not be accepted, or we may not be able to administer your policy, or you may breach your Duty of Disclosure, the consequences of which are set out in clause 1.4 above.

You have a right to access any personal information that we hold about you.

For further details of First Title's Privacy Policy or to request access to or correct your personal information, please email privacy@firsttitle.com.au, or call our Privacy Officer on (02) 8235 4433.

2 DEFINITIONS

In this policy, unless the context otherwise requires:

- 2.1 "Authorised Expenses" means any costs, legal fees and expenses that First Title is obliged to pay under this policy and has approved in writing.
- 2.2 "Covered Risks" means the risks, matters and circumstances described in paragraph 4 of this policy.
- 2.3 "First Title" means First American Title Insurance Company of Australia Pty Limited ACN 075 279 908.
- 2.4 "Insured" means the insured named in paragraph 1 of the Schedule and also includes the persons or entities described in paragraph 6.2
- 2.5 "Jurisdiction" means the state or territory in which the Land is situated.
- 2.6 "Know, Known or Knowing" means having actual knowledge and not constructive knowledge or notice which may be imparted by matters appearing in the Public Records.

- 2.7 "Land" means the land described in paragraph 3 of the Schedule and structures and improvements constructed on the land which by law are taken to be part of the land.
- 2.8 "Laws" mean, without limitation, all Commonwealth, federal, state, territory or local authority laws (statutory or otherwise), orders, codes, regulations, ordinances and proclamations which have force and effect in the Jurisdiction and "Law" will be considered accordingly.
- 2.9 "Policy Amount" means the amount insured by this policy, specified in the Schedule.
- 2.10 "Policy Date" means the date of this policy specified in the Schedule.
- 2.11 "Public Records" means records established or maintained at the Policy Date, under Laws and which impart constructive notice of matters relating to property (freehold or leasehold) in the Jurisdiction to those acquiring an interest in it for value.
- 2.12 "the Schedule" means the policy schedule attached to and forming part of this policy.
- 2.13 "Unmarketable" means an alleged or apparent defect in the title to the Land which is not excluded from cover under this policy and which allows another person to refuse to perform a lease, complete a contract to purchase or take a mortgage.

3. COVERAGE STATEMENT

Provided that the premium is paid and subject to the terms and conditions of this policy including the Schedule (which forms part of this policy) and relying on the information disclosed to First Title, as the circumstances may require, First Title will do the following:

3.1 ACTUAL LOSS

Indemnify the Insured against actual loss, not exceeding the Policy Amount, sustained or incurred by the Insured in relation to any of the Covered Risks if they exist or occur on or before the Policy Date.

3.2 FIRST TITLE'S DUTY TO DEFEND

In addition to First Title's indemnity liability for the Insured's actual loss, if asked by the Insured under the terms of paragraph 8 of this policy, First Title will defend the title to the Land for the Covered Risks insured by this policy. First Title will also pay any Authorised Expenses that it incurs in that defence. First Title can end this duty to defend the title to the Land by exercising any of the options listed in paragraph 9 of this policy.

4. COVERED RISKS

- 4.1 The Insured is not the owner of the estate or interest in the Land.
- 4.2 Someone other than the Insured owns an interest in the title to the Land.
- 4.3 A document is not properly signed resulting in a defect in the title to the Land.
- 4.4 A document has not been properly registered in the Public Records resulting in a defect in the title to the Land.

- 4.5 Forgery, fraud, duress, incompetency or incapacity results in a defect in the title to the Land.
- 4.6 The title to the Land is Unmarketable.
- 4.7 There is no legal right of access to and from the Land.
- 4.8 There is a charge, lien or encumbrance on the title to the Land because of a mortgage, judgement or unpaid rates or taxes.

5. EXCLUSIONS

First Title will not indemnify the Insured against actual loss, will not have a duty to defend and will not be obliged to pay Authorised Expenses resulting from any of the following risks:

- 5.1 The existence or violation of Laws restricting, regulating, prohibiting or relating to the use or enjoyment of the Land.
- 5.2 Environmental contaminants or hazardous waste on or under the Land.
- 5.3 Rights and interests reserved under a Crown grant or lease or the Law authorising the issue of the Crown grant or lease.
- 5.4 Public or private utility undertakers or a telecommunications utility or company having statutory rights to carry out works affecting the Land.
- 5.5 Any matter which is not shown in the Public Records but which could be ascertained by an inspection of the Land or by reasonable enquiries of the persons in occupation.
- 5.6 The rights of any person in occupation.
- 5.7 Risks which:
- 5.7.1 the Insured creates, allows or agrees to at any time;
- 5.7.2 are Known to the Insured but not to First Title and do not appear in the Public Records on or prior to the Policy Date or when the Insured acquires an interest in the Insured Mortgage;
- 5.7.3 cause the Insured no loss or damage;
- 5.7.4 occur, come into existence or are recorded in Public Records after the Policy Date; or
- 5.7.5 are Known by the Insured's predecessors in title but not First Title (unless the Insured acquired its interest for value without notice).
- 5.8 Any covenants, conditions, restrictions, rights, stipulations, easements, mortgages, charging orders, financial obligations and any other provisions recorded or otherwise noted on the title to the Land in Public Records on the Policy Date. This exclusion does not reduce any additional coverage that may be contained in any endorsement(s) that may be attached to this policy.
- 5.9 Native title claims in relation to the Land.
- 5.10 Any additional exclusions listed in paragraph 4 of the Schedule.

6. CONDITIONS

- 6.1 The coverage of the Covered Risks continues to protect the Insured only for so long as the Insured:
- 6.1.1 owns the title to the Land; or
- 6.1.2 retains an estate or interest in the Land; or

- 6.1.3 has a liability to a purchaser regarding the title to the Land under a contract for the sale of the Land; or
- 6.1.4 holds a debt secured by a mortgage given to the Insured by a purchaser of the Land.
- 6.2 The coverage of the Covered Risks also protects:
- 6.2.1 anyone who receives the Insured's title to the Land because of the death of the Insured;
- 6.2.2 the spouse, legal partner (not including business partners) or child of the Insured who receives the title to the Land because of a transfer by the Insured where the transfer is for nominal consideration only or in settlement of the Insured's obligation under a property settlement;
- 6.2.3 the trustee or successor trustee of a trust, in which the Insured is the settlor, to whom the Insured transfers the title to the Land;
- 6.2.4 the beneficiaries to whom the trustee or successor trustee of a trust, in which the Insured is the settlor, transfers the title to the Land on the death of the Insured under the terms of the trust deed; and
- 6.2.5 a corporation or partnership in which the Insured is the majority owner to which the Insured transfers title to the Land for no or nominal consideration.
- 6.3 The coverage of the Covered Risks does not continue to protect any purchaser of:
- 6.3.1 the Insured's estate or interest in the Land; or
- 6.3.2 a debt secured by a mortgage given to the Insured by a purchaser of the Land.
- 6.4 If an Insured making a claim under this policy is not the party named in paragraph 1 of the Schedule, First Title reserves the right to use against that Insured any rights that First Title had against the Insured's predecessors under this policy, unless that Insured acquired its interest in the Land as a purchaser for value without Knowing of the asserted defect, lien, encumbrance, adverse claim or other matter insured against by this policy.
- 6.5 This policy may not be assigned to any person.

7. NOTIFICATION OF A CLAIM

- 7.1 The Insured must advise First Title in writing as soon as possible after the Insured becomes aware of:
- 7.1.1 litigation commenced or threatened in relation to the title to the Land;
- 7.1.2 any claim which is or may be adverse to the title to the Land;
- 7.1.3 a claim that the title to the Land is Unmarketable; or
- 7.1.4 any circumstance which might otherwise entitle the Insured to make a claim under this policy.
- 7.2 First Title's obligations to the Insured under this policy may be reduced in part or in whole if the Insured:
- 7.2.1 fails to take all normal and reasonable steps to safeguard the Insured's interest in the title to the Land;
- 7.2.2 fails to advise First Title promptly of

7.2.3 any of the circumstances set out in paragraphs 7.1.1 to 7.1.4, above; or refuses to co-operate with First Title; and any action or omission of the Insured in these respects adversely affects First Title's ability to dispute or defend any challenge or claim or to commence any action against other persons.

8. DEFENCE AND PROSECUTION OF ACTION AND THE INSURED'S DUTY TO CO-OPERATE

8.1 If the Insured asks First Title in writing, First Title will, at First Title's cost and without unreasonable delay, defend the Insured in litigation in which a third party asserts a claim adverse to the title to the Land (but only to the extent that the litigation involves a Covered Risk).

First Title will be entitled to select the lawyer to act (subject to the Insured's right to object for reasonable cause) and First Title will not be liable for and will not pay the fees of any other lawyer.

First Title will not pay any fees, costs or expenses incurred by the Insured in the defence of actions which allege matters not indemnified under this policy.

8.2 First Title has the right, at its cost, to commence and prosecute any action or proceeding or do any other act (including making settlement with third parties) which, in its opinion, may be necessary or desirable to establish the estate or interest in the Land as indemnified or to prevent or reduce loss to the Insured. First Title may take appropriate action under the terms of this policy whether or not First Title is liable under it and by doing so, First Title will not be taken to have conceded any liability or waived any provision of this policy. If First Title exercises its rights under this paragraph it must do so diligently.

8.3 Whenever First Title has brought an action or defended the Insured as required or where permitted by the provisions of this policy, First Title may pursue any litigation (including appeals) to final determination by a court of competent jurisdiction and reserves the right in its sole discretion to appeal any judgement or order.

8.4 In all cases where this policy permits or requires First Title to prosecute or defend any action or proceeding, the Insured must co-operate fully with First Title and give First Title all relevant information in relation to the action or proceeding and any appeal and permit First Title to use, at its option, the Insured's name for this purpose. If requested by First Title the Insured must, at First Title's expense, give First Title all reasonable assistance to:

8.4.1 secure evidence, obtain witnesses, prosecute or defend the action or proceeding or effect a settlement; and

8.4.2 do any other lawful act which, in First Title's opinion, is necessary or desirable. The provisions contained in paragraphs 8.1 to 8.4 are subject to First Title's rights under paragraph 10.

9. PROOF OF LOSS OR DAMAGE

9.1 In addition to the information required under paragraphs 7 and 8, the Insured must give First Title a written statement to prove the Insured's loss. This statement must be given to First Title not later than 90 days after the Insured Knows the facts which will let the Insured establish the amount of the Insured's loss. The statement must contain at least the following:

9.1.1 the Covered Risk which constitutes the basis of the Insured's loss or damage;

9.1.2 the amount of the Insured's loss; and

9.1.3 the method the Insured used to compute that amount.

9.2 First Title may require the Insured to show First Title its records, files and other documents whether created before or after the Policy Date which reasonably relate to the claim for loss or damage. All information that the Insured gives First Title is confidential (except matters of public record) and will not be disclosed by First Title to others unless it becomes necessary during any court proceedings or is required to be disclosed by Law. First Title's obligations to the Insured under this policy could be reduced if the Insured fails or refuses to comply with the Insured's obligations under this paragraph.

10. SETTING CLAIMS AND TERMINATION OF LIABILITY

10.1 If the Insured makes a claim under this policy for which First Title is liable or, in any other way, First Title learns of a matter or circumstance for which it is or may be liable, First Title can do one or more of the following:

10.1.1 pay the Insured the amount of indemnity cover then in effect under this policy together with any Authorised Expenses; or

10.1.2 pay or otherwise settle any claim with other parties for or in the name of the Insured together with any Authorised Expenses; or

10.1.3 pay or otherwise settle with the Insured the loss or damage provided for under this policy together with any Authorised Expenses.

10.2 After First Title has made a payment or otherwise settled a claim in one of these ways, its liability to the Insured:

10.2.1 under this policy if paragraph 10.1.1 applies; or

10.2.2 in relation to that claim if paragraphs 10.1.2 or 10.1.3 apply; will terminate including any obligation to defend, pay costs or prosecute or continue any litigation.

11. DETERMINATION AND EXTENT OF LIABILITY

11.1 This policy is a contract of indemnity against actual monetary loss or damage. Subject to paragraphs 12 and 13, First Title's total liability under this policy (excluding Authorised Expenses) will be the lesser of;

11.1.1 the Policy Amount and;

11.1.2 the difference between the value of the

estate or interest in the Land which is subject of this policy and the value of that interest affected by the substance of the Insured's claim.

12. LIMITATION OF FIRST TITLE'S LIABILITY

12.1 First Title will not be liable to indemnify the Insured:

12.1.1 if First Title establishes good and marketable title to the Land, removes the alleged defect, lien, charge, or encumbrance or cures any other matter of thing giving rise to the claim under this policy in a reasonably diligent manner by any method including litigation;

12.1.2 if First Title makes a settlement with a third party;

12.1.3 until litigation, including appeals, in relation to a claim conducted by First Title (or by the Insured with First Title's authorisation) has been finally determined by a court of competent jurisdiction; or

12.1.4 for liability voluntarily assumed by the Insured in negotiating or settling any claim or litigation without First Title's prior written consent.

13. REDUCTION OF INDEMNITY AND REDUCTION OR TERMINATION OF FIRST TITLE'S LIABILITY

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

13.1.1 All payments under this policy except for Authorised Expenses;

13.1.2 The amount by which the Insured's acts or omissions have increased First Title's liability or reduced First Title's ability to recover amounts from third parties; and

13.1.3 Anything the Insured does or omits to do which adversely affects any right of recovery from third parties or reduces First Title's ability to mitigate loss or damage.

14. LIABILITY NON-CUMULATIVE

If First Title has paid an amount under a policy insuring a mortgage on the Land either excluded by paragraph 5.8 or shown as an additional exclusion in paragraph 4 of the Schedule, or a later mortgage created by the Insured, the amount paid by First Title 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

First Title shall not be obliged to make any payment under this policy unless this policy is produced to it for endorsement. If the policy has been lost or destroyed the Insured must give First Title proof of loss or destruction to First Title's reasonable satisfaction. When the extent of the Insured's loss and First Title's liability under this policy has been finally determined, First Title will pay that amount to the Insured within 30 days of that determination.

16. SUBROGATION

If First Title agrees to indemnify or defend the Insured under this policy in respect of any claim, then regardless of whether or not actual payment has been made First Title will immediately be subrogated to any rights, contractual or otherwise, which the Insured may have in connection with that claim or the Land. If First Title asks, the Insured must transfer to First Title all of the Insured's rights and remedies against any person or property that, in First Title's opinion, might be necessary to perfect this right of subrogation.

17. LIABILITY LIMITED TO THIS POLICY

This policy and any endorsements to it given in writing by First Title shall be the entire contract between the Insured and First Title. Any claim that the Insured makes against First Title must be made under this policy and is subject to its terms.

18. SEVERABILITY

If any provision of this policy is held to be invalid or unenforceable under any Law, that provision may be severed from and will not be taken to have affected the remaining provisions.

19. NON WAIVER

If First Title grants the Insured any time or indulgence or if First Title fails to enforce any provision of this policy or any of First Title's rights under it, First Title will not be taken to have waived its right to enforce the provisions of this policy or its rights under it.

20. VARIATIONS AND ENDORSEMENTS

No variation of, or endorsement to this policy will be of any effect unless it is made in writing and is signed by First Title. Any variation of, or endorsement to this policy will be subject to the terms and conditions of this policy and will not, unless specified by First Title in writing, modify the terms and conditions of this policy or alter the Policy Date or increase the Policy Amount.

21. NOTICES

All notices required to be served on or given to First Title under this policy must include a reference to the policy number and the property address and be delivered to:

Claims Department, First American Title Insurance Company of Australia Pty Limited, PO Box Q1465, QVB Post Office, Sydney NSW 1230, Australia.

22. PRIVACY STATEMENT

We are committed to protecting the privacy of your personal information. This commitment is reflected in our compliance with the National Privacy Principles. For further information please visit our website www.firsttitle.com.au or call us on 1300 362 178 for a copy of our Privacy Statement.

YOUR DUTY OF DISCLOSURE

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Your duty however does not require disclosure of a matter:

- that diminishes the risk to be undertaken by the insurer;
- that is of common knowledge;
- that your insurer knows or, in the ordinary course of business, ought to know;
- where 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.

www.firsttitle.com.au

1300 362 178