

Home Owners GOLD Claims Chronicles – May 2011

Illegal / Unapproved Building Works

First Title's Home Owners GOLD covers a range of risks, including loss arising from illegal or unapproved building works as the result of a local council issuing a work order. The following claims examples illustrate how such coverage benefits home owners who discover problems after they have bought and moved in to their new home.

Claim 1. The "Dodgy" Extension

The Insureds purchased their property, buying a title insurance policy at the time. After moving in, they applied to the Council to build a granny flat in the backyard. Council rejected the application for a number of reasons commenting, to the surprise of the Insureds, that the downstairs level of the house had been built by the previous owners without Council approval. Matters got worse as the Council promptly issued a Building Notice ordering the illegal building works be rectified within a strict time frame.

Action

First Title took immediate steps, first contacting the Council to obtain an extension of time to ensure the works could be professionally completed, and then contacting a building inspector and a builder to attend to making the building compliant. **First Title** paid all the costs involved in complying with the Building Notice, which were in excess of \$80,000, saving the Insureds a significant amount of time and money.

The Council subsequently issued a Building Certificate, enabling the Insureds to proceed with their application to construct the granny flat – with peace of mind knowing that their home was now compliant.

Claim 2. The Painful Pergola

Two years after settlement, the Insured decided to rent his property out. In the course of tidying the property up, the Insured discovered that the pergola had not been approved by Council when he received notification from the Council foreshadowing issuing a demolition order.

Action

First Title accepted the claim and obtained quotes to build a new pergola. First Title paid the costs associated with the demolition of the existing pergola and the construction of a new pergola in its place in accordance with Council approvals.

Claim 3. The Wailing Wall

Shortly after moving into their new home the owners found themselves digging trenches every time it rained due to flooding issues from surface run off. They arranged for an engineer to inspect their retaining wall and found that the wall, which had been built approximately 20 years before hand, had been built without Council approval and did not comply with the Building Code. In particular it did not allow for drainage. Council subsequently inspected the wall and issued a notice to demolish and rebuild the retaining wall.

Action

First Title arranged for quotes to be obtained from local builders to carry out the works. First Title then paid for the wall to be demolished and rebuilt. This included obtaining Council approval for the new retaining wall.

Claim 4. The Veritable Veranda

Shortly after moving in to his new home, the local council issued the Insured with a Building Notice requiring him to remove or rectify the veranda on the basis that the veranda was constructed to the rear of the dwelling without a building permit.

Action

First Title worked with the owner to carry out the works on the veranda in order to make it compliant with local council regulations and for the council to withdraw the Building Notice. First Title paid all costs associated with the work required.

Title Problems

No matter how much due diligence is carried out, there may be an issue that the most diligent Conveyancing Practitioner cannot detect. Problems can arise even where off-title searches are carried out, if those search results, for example, do not reveal that there are any problems.

Claim 5. Something doesn't smell right!

The Insured purchased their new home. Sometime after they moved in, work was being carried out on the adjoining property when the Insured experienced problems with their sewer. After making enquiries with Sydney Water, the problem quickly rose to the surface! It was discovered that the plumbing and drainage work carried out on the Insureds' property was completed without inspection and approval by Sydney Water.

When the property was purchased, the property formed part of a larger property that had recently been subdivided. The sewerage diagram attached to the contract did not disclose any issues, although it related to the original property before subdivision. When the property was subdivided, the plumbing work in connecting the sewer to the subdivided property was carried out without inspection and did not meet Sydney Water's requirements.

Action

First Title organised for all the plumbing work necessary to make the sewer line compliant and for Sydney Water to issue a new Sewerage Services Diagram, bearing all costs associated with this.

Boundary Problems/Survey Insurance

There are often time and cost considerations which mean a boundary survey is not obtained. First Title's Home Owners GOLD covers loss arising from anything that a survey would have shown, had it been carried out. The following claims are examples of how this important coverage provides comfort to a home owner.

Claim 6. Pushing The Boundary

A couple purchased a property without needing a mortgage loan. They purchased a Home Owners GOLD Policy to protect their interest in the property instead of obtaining a survey. Because there was no survey undertaken, the couple did not know that the dwelling was constructed without reference to the correct boundaries of the site. As a result, one wall of the dwelling (front with veranda) encroached over the boundary onto a council reserve and as a result an incorrect boundary line was taken by the previous owners.

The couple subsequently applied for finance however the lender required a valuation on the property. The valuer discovered the encroachment and the lender declined the loan application.

Action

Pursuant to the terms of the Policy, First Title accepted the Insureds' claim and instructed its external solicitors to liaise with the Council and obtain a resolution to the problem. First Title's lawyers raised "existing use rights" with the Council and negotiated an easement to ensure the Insureds' interest is protected so the lender could consider the couple's loan application. Under the duty to defend coverage, First Title paid all legal costs in negotiations with the Council to find a resolution.

Claim 7. Neighbourly Love

One afternoon not long after moving into her new home, the Insured's neighbour informed her that the fence dividing their properties encroached onto her property by approximately 3 feet, information that became available to him when he had his property recently surveyed. This was not discovered by the purchaser when she bought the property. The insured wanted the boundary corrected as this would improve access to her property which was critical for maintenance purposes, however, the neighbour claimed that the land was now his.

Action

Pursuant to the terms of the Policy, First Title accepted the Insured's claim carrying out a fresh survey in order to determine accurate boundary lines. First Title instructed a contractor to correct the fence line in terms of the new survey and met all costs in doing so, at the same time negotiating a resolution with the neighbour and avoiding long and protracted proceedings.

Claim 8. Road To Nowhere

The Insureds purchased a rural property as a weekend retreat. During the purchase process, there was nothing to indicate there were any boundary issues or that any third party had any rights over their property. After they bought the property as a weekend retreat, their neighbour asserted that he owned part of their land. He subsequently gained entry to their land and graded a road through their property to one of his blocks of land. He also fenced off part of their property claiming he owned it.

Action

Pursuant to the terms of the Policy, First Title accepted the Insured's claim. First Title retained a local lawyer and resolved the dispute with the neighbour after significant negotiations and threatened proceedings. Under the policy, First Title met all legal costs.

The Insureds were left to enjoy their weekend retreat without the fear of protracted litigation and ongoing disputes with their neighbour.

**For more information, or to make a claim,
please contact *First Title* on 1300 362 178.**