



Commercial Owners GOLD Policy

V.08.20

© First American Title Insurance Company of Australia Pty Limited 2019

First American Title Insurance Company of Australia Pty Limited (trading as "First Title") ABN 64 075 279 908 | PO Box 132
Chatswood, NSW 2057

p: +61 2 8235 4433 **f:** +61 2 9299 3388 **e:** info@firsttitle.com.au **w:** firsttitle.com.au

1. INTRODUCTION

1.1 IMPORTANT INFORMATION ABOUT YOUR POLICY AND COVER

Commercial Owners GOLD is a comprehensive title insurance policy that insures an owner of commercial property against a range of risks that may affect use and ownership of the property being acquired. Please read the Policy wording carefully to ensure that You understand the coverage provided and the conditions attached to that Cover as well as the exclusions from Cover. The insurance provided by the Policy may be affected if these conditions are not complied with.

This policy is not complete without the Schedule which details Your Cover, the premium payable and any Exclusions that have been applied to Your Policy. If extended Cover has been offered to You this will be by way of Endorsement attached to the Schedule.

This policy insures your ownership and interest in the Land described in the Schedule. Your insurance, as described in the Covered Risks section below, is effective on the Policy Date. Your insurance is limited by the Exclusions and additional matters that may be contained in paragraph 4 of the Schedule, the Conditions, which You should read very carefully; and Your duty of disclosure.

1.2 INFORMATION ABOUT FIRST TITLE

First American Title Insurance Company of Australia Pty Limited (trading as "First Title") is the insurance company that issues the Policy. We refer to the insurer as First Title 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.

1.3 YOUR DUTY OF DISCLOSURE

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, that may affect our decision to insure you and on what terms.

You have this duty until we agree to insure you. You have the same duty before you renew, extend, vary or reinstate an insurance contract. You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both.

If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

Your duty of disclosure continues up to and including the Policy Date. If you become aware of something and you are not sure whether to disclose it to us, simply contact us and we can discuss this with you.

1.4 PRIVACY STATEMENT

We are committed to protecting the privacy of Your personal information. That commitment is reflected in Our compliance with the Australian Privacy Principles.

We have a Privacy Policy which contains information about how You may access the personal information about You that We hold and seek the correction of such information.

Our Privacy Policy also contains information about how You may complain about a breach of the Australian Privacy Principles and how we will deal with such a complaint. Our Privacy Policy is available on Our website at www.firsttitle.com.au.

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 1300 362 178.

Please note that First Title is likely to disclose personal information about You to a related body corporate who is likely to be located in the United States of America, Canada and India.

1.5 DISPUTE RESOLUTION

If you have any concerns or complaints about:

- Our customer service;
- the way We have handled a claim; or
- the insurance coverage We have offered,

please contact Our Manager, Claims by telephone on 1300 362 178. We will strive to ensure that Your enquiries or complaints are resolved fairly and promptly. First Title is a member of the Australian Financial Complaints Authority. If you are not satisfied with Our response You can contact the Australian Financial Complaints Authority, which is a free dispute resolution service for consumers.

2. DEFINITIONS

In this policy, the following terms have the following meanings:

Certificates means, in relation to the Land:

- a certificate from the State Revenue Office in respect of any land tax (and rates and other charges if appropriate) due and payable pursuant to relevant legislation;
- a certificate from the relevant city, municipal or shire council in respect of any outstanding rates, charges and money due and payable pursuant to relevant legislation;
- a certificate from the relevant water supplier in respect of any outstanding water and sewerage rates, charges and money due and payable;
- a certificate in respect of any outstanding money due and payable to an Owners Corporation, Body Corporate or Strata Management Company (as applicable).

Conditions means the terms and conditions on which this policy is issued, which are described in the section called Conditions.

Conveyancing Practitioner means the individual who is retained by You and acts for You in a conveyancing transaction in respect of the purchase of the Land and who is either a solicitor licensed to practice law in the jurisdiction or a licensed conveyancer entitled to practice in the Jurisdiction.

Covenant means a legal promise or obligation to do something.

Cover, Coverage means the protection provided by this Policy.

Covered Risks means the risks, matters and circumstances that this policy protects You against. These are described in the section called Covered Risks.

Easement means the right of someone else to use Your Land for a special purpose, including having a right of way.

Exclusions means the matters which limit the protection that this policy provides and the circumstances in which a claim made by You could be denied by Us. These are described in the section called Exclusions.

First Title, Our, We, Us, means First American Title Insurance Company of Australia Pty Limited ACN 075 279 908.

Illegal Building Work means work carried out in respect of any structure on the Land that, where approval is required, has not been approved by the Local Authority in the Jurisdiction.

Insured means the persons or entities named in Paragraph 1 of the Schedule.

Jurisdiction is the state or territory in which the Land is situated.

Land means the land described in the Schedule and any structures on that land and, in the case of Australian Capital Territory, includes Crown Leasehold land.

Laws 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 the Jurisdiction.

Local Authority means the relevant city, municipal or shire council, water supplier, the State Revenue Office or the Owners Corporation, Body Corporate or Strata Management Company which has jurisdiction where the Land is located with respect to matters of building, development and zoning compliance and the collection of rates, levies and taxes.

Mortgage means a mortgage, charge or other document which is meant to secure repayment of a monetary debt.

Policy means this document, the Schedule and any endorsement attached to the Schedule.

Policy Amount means the amount shown in the Schedule which may be increased by inflation, as detailed in paragraph 6.2 of this Policy.

Policy Date means the later of the date specified in the Schedule and the actual date of the settlement of your purchase of the Land.

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.

Restriction or Restrictive Covenant means a legal promise not to do something.

Schedule means the policy schedule attached to and forming part of this Policy. This Policy is not complete without this Schedule.

State Revenue Office means the relevant government body responsible for, amongst other things, revenue administration, including land tax, in the Jurisdiction.

Title means the ownership of Your interest in the Land, as shown in the Schedule.

You, Your means the Insured named in paragraph 1 of the Schedule and those persons described in paragraph 6.1 of this Policy.

3. POLICY COVER

This policy insures your ownership interest in the Land described in the Schedule. Your insurance, as described in the Covered Risks section below, is effective on the Policy Date. Your insurance is limited by the Exclusions and additional matters that may be contained in paragraph 4 of the Schedule, the Conditions, which you should read very carefully; and your duty of disclosure, which is summarised in the Introduction to this Policy.

We insure you against actual loss resulting from the Covered Risks up to the Policy Amount, and any costs, legal fees and expenses we have to pay under this policy. We do not insure you in respect of destruction of or damage to a building on the Land.

This policy is not complete without the Schedule.

4. COVERED RISKS

RISKS OCCURRING ON OR BEFORE THE POLICY DATE

We will provide you with cover against all the following Covered Risks, if the risk existed or occurred on or before to the Policy Date:

Errors and omissions and property inquiry risks

- 4.1** Any errors made by the Local Authority in providing the Certificates in response to a search of the Public Records by You or Your Conveyancing Practitioner to establish whether there are any outstanding rates, charges, land tax and other money due and payable in respect of the Land.
- 4.2** Any errors made by Your Conveyancing Practitioner when reporting to You the amount due for rates, water, land tax or other charges or sums due to the Owners Corporation, Body Corporate or Strata Management Company (if applicable) stated in the Certificates provided by the Local Authority as to any amounts due and payable in respect of the Land.

Encroachments and boundary lines risks

- 4.3** Any violation of Laws, encroachment or adverse circumstances affecting the Land which would have been disclosed by an accurate survey reporting on the position of buildings erected on, and the boundaries of, the Land, if such a survey of the Land had been carried out by a registered surveyor on the Policy Date.

Illegal building works risks

- 4.4** Any loss or damage to the Insured, other than relating to a boundary fence or wall, because under the provisions of the relevant Laws there is Illegal Building Work and:
 - (a) the Insured is ordered to demolish, alter, add to or repair any building, or part thereof, on the Land; and/or

- (b) proceedings are commenced against the Insured for an order or injunction requiring any building, or part thereof, on the Land to be demolished, altered, added to or repaired and this would have been disclosed if an appropriate inquiry had been made on or before the Policy Date.

Ownership risks

- 4.5** The owner of the estate or interest in the Land is different to that described in paragraph 1 of the Schedule.
- 4.6** Someone else owns an interest in or has other rights to the Land arising from a matrimonial dispute, Mortgage, Easement, lease, contract, option, right of possession or access order, other than those interests registered or otherwise recorded on Your Title on the Policy Date.
- 4.7** Someone lodges a dealing preventing Your interest in the Land from being registered.
- 4.8** Your Title is unmarketable, which allows another person to refuse to perform a contract to purchase, take a lease or make a loan secured by a Mortgage.
- 4.9** Forgery, fraud, duress, incompetency, incapacity or impersonation which results in a defect in the title to the Land.

Registration risks

- 4.10** A document is not properly signed.
- 4.11** Defective registration of any document.

Access risks

- 4.12** You do not have any legal right of access either on foot or by vehicle to and from the Land.

Zoning Laws risks

- 4.13** Because a structure on the Land contravenes zoning Laws and this would have been disclosed if appropriate inquiries had been made on the Policy Date by the Insured.

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 any 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 or covenants, conditions and restrictions for environmental protection or the effect of any laws regulating those contaminants or wastes.

- 5.3** Rights and interests reserved under a Crown grant or Crown lease or the Law authorising the issue of the Crown grant or Crown 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:
- (a) the Insured creates, allows or agrees to at any time
 - (b) 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
 - (c) cause the Insured no loss or damage
 - (d) occur, come into existence or are recorded in Public Records after the Policy Date
 - (e) 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.
- 5.9** Native title claims in relation to the Land.
- 5.10** The cover described in Clause 4.3 will not apply to Land where the Land area exceeds 50 acres.
- 5.11** Any claim by reason of bankruptcy insolvency or similar creditors' rights laws that the transaction creating the line of the your interest is:
- (a) a fraudulent conveyance;
 - (b) a fraudulent transfer; or
 - (c) a preferential transfer.
- 5.12** Any additional exclusions listed in paragraph 4 of the Schedule.
- 5.13** Any claims, loss or damage relating to the condition and repair of any structures erected on the Land, or the infestation or dilapidation of those structure.
- 5.14** Any claims, loss or damage relating to Structures or improvements on the property which have not been built in accordance with applicable building codes and standards or the requirements of any development application. This Exclusion does not limit the coverage provided by Covered Risk 4.4 if

notice of the non-compliance appears in Public Records as at the Policy Date or if the existence of the non-compliance would have been disclosed by a Local Authority Search of your Land as at the Policy Date.

- 5.15** Any claims, loss or damage by reason of any adverse matters that are disclosed in any written report/documentation obtained by you or in your possession of prior to the Policy Date relating to the physical condition of the improvements on the Land, including without limitation any agreement of purchase and sale/contract of sale/purchase contract, valuation report, building inspection report or survey report.
- 5.16** Any claims for which there is protection under building insurance or builders warranty insurance.
- 5.17** Any claim loss or damage relating to building and fire safety non-compliance with requirements required by Laws.
- 5.18** Any claim loss or damage relating to or caused by the external cladding of the building which forms part of your Land, including but not limited to, where:
- (a) liability arises from periodic or special levies as stated in Certificates which come into existence prior to or after the Policy Date; and/or
 - (b) there is any loss or damage to you because under the provisions of the relevant Laws you, the Owners Corporation, Body Corporate or Strata Management Company are ordered to rectify, alter, add to or repair all, or part of, the external cladding.

6. CONDITIONS

6.1 Who is covered and for how long

This policy protects You whilst you own Your Title. This policy You cannot assign this policy to anyone else. This policy also protects:

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

We maintain any rights and defences which we would have had against You against these other people. This policy does not protect anyone purchasing the Land from You.

6.2 HOW TO MAKE A CLAIM

(a) Notice of your claim

If You have a claim under this policy, You must notify Us promptly in writing including the Policy number of address of the Land. Send the notice to:

Claims Department
First American Title Insurance Company of Australia Pty Limited
PO Box 132 Chatswood NSW 2057

Our obligation to You will be reduced if You fail to give us prompt notice of Your claim and this affects Our ability to dispose of a claim, or to defend You against the challenge to Your Title.

(b) Proof of Your loss

You must give Us a written statement to prove Your claim of loss. This statement must be given to Us as soon as reasonably practical after You know the facts which will let You establish the amount of Your loss.

The statement must contain the following facts:

- (i) the Covered Risk which resulted in Your loss;
- (ii) the monetary amount of Your loss;
- (iii) the method You used to compute the amount of Your loss.

We may require You to provide Us with an appraisal of Your loss by a professional valuer as part of Your statement of loss.

We may require You to show Us Your records, cheques, letters, contracts and other papers which relate to Your claim of loss. We may make copies of these papers and retrieve any that are stored electronically. We may require You to answer questions under oath.

(c) Your obligations/duty

Once the claim has been submitted You have a duty to co-operate by:

- (i) Providing Us with all records in Your possession or Your Conveyancing Practitioner's possession which relate to the loss;
- (ii) Assist when requested by Us with sourcing evidence, obtaining witness statements, executing documentation etc;
- (iii) take steps to avoid any further loss or claims occurring;
- (iv) provide Us or Our agents with an opportunity to inspect the Land before and after finalising a claims decision;
- (v) assist Us as required to settle, negotiate or otherwise resolve the claim; and
- (vi) If in the course of resolving an accepted claim, We commence legal proceedings or defend You in legal proceedings against Your Title:
 - (a) You must co-operate with Us in handling any claim and give Us all relevant information including any witness statements or other legal documentation;
 - (b) We have the right to choose the lawyer and We will be responsible for those fees. We will not be responsible for any other fees, expenses or settlement that have not been approved by Us;
 - (c) We can appeal any decision to the highest court. We do not have to pay Your claim until Your case is finally decided.
- (vii) answer questions truthfully.

Your failure or refusal will affect Our ability to dispose of or to defend You against the challenge to Your Title and may result in our liability to You being reduced.

6.3 OUR CHOICES WHEN YOU NOTIFY US OF A CLAIM

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

- (a) pay the claim against Your Title;
- (b) negotiate a settlement;
- (c) prosecute or defend a court case related to the claim;
- (d) pay You the amount required by this Policy;
- (e) take other action which will protect You;
- (f) cancel the coverage described in paragraph 4.1, 4.2 and/or 4.4 of the Covered Risks by paying the amount of insurance specified in paragraphs 6.4(a)(iii) for paragraphs 4.1 and 4.2, and paragraph 6.4(a)(iv) for paragraph 4.4 (as may be applicable) as the limit for that Covered Risk and only those costs, legal fees and expenses incurred up to that time which we are obliged to pay;
- (g) or cancel Your Policy by paying the Policy Amount, then in force, and only those costs, legal fees and expenses incurred up to that time which We are obliged to pay.

If You have a mortgage registered against Your Title on the date that You make a claim; the consent of Your mortgagee may be required before Your claim can be settled.

6.4 LIMITATION OF THE COMPANY'S LIABILITY

(a) Our liability for claims

We will pay the least of:

- (i) Your actual loss;
- (ii) the Policy Amount in force when the claim is made;
- (iii) \$1,500,000 if the claim is based on the coverage given in paragraphs 4.1 and/or 4.2; or
- (iv) \$160,000 if the claim is based on the coverage given in paragraph 4.4 of the Covered Risks.

In the event that Your claim is based on paragraphs 4.1 and/or 4.2 or 4.4 of the Covered Risks, We will be deemed to have settled Your claim by paying the lesser of the Policy Amount (subject to any inflation adjustments) or the maximum amount specified in paragraphs 4.1 and/or 4.2 or 4.4 and We will also have satisfied our obligation to pay Your rent under these paragraphs.

If we remove the claim against Your Title within a reasonable time after receiving notice of it, we will have no further liability for it.

(b) Reduction in liability

- (i) The Policy Amount will be reduced by all payments under this policy – except for costs, legal fees and expenses.

- (ii) All payments made under this policy for claims based on paragraphs 4.1 and/or 4.2 or 4.4 of the Covered Risks will also reduce the maximum amount specified in paragraphs 4.1 and/or 4.2 or 4.4.
- (iii) The Policy Amount will also be reduced by any amount We pay to the holder of any Mortgage shown in this policy insured by Us or a later Mortgage given by You.
- (iv) If You do anything to affect any right of recovery You or We may have, We can subtract from Our liability the amount by which You reduced the value of that right.

6.5 TRANSFER OF YOUR RIGHTS

When We settle a claim, We have all the rights You had against any person or property related to the claim. You must transfer these rights to Us when We ask, and You must not do anything to affect these rights. You must let Us use Your name in enforcing these rights.

We will not be liable to You if We do not pursue these rights or if We do not recover any amount that might be recoverable.

With the money We recover from enforcing these rights, We will pay whatever part of Your loss We have not paid. We have a right to keep what is left.

6.6 OUR LIABILITY IS LIMITED TO THIS POLICY

This policy, plus any endorsements, is the entire contract between You and the Company. Any claim You make against Us must be made under this policy and is subject to its terms.

7. GENERAL POLICY PROVISIONS

- (a) Any dispute concerning the interpretation of this Policy will be dealt with in accordance with the laws of New South Wales.
- (b) If any provision in this Policy is deemed to be invalid or unenforceable by Laws or by a court of competent jurisdiction, the Policy will be deemed to omit that paragraph and all other provisions will remain in full force and effect.
- (c) Any variation to the Policy or Endorsement will not be effective unless it has been made by Us in writing and attached to the Schedule.
- (d) The premium for this Policy is due and payable within 14 days of the Policy Date. We reserve the right to reject any payment received after this date in which case the Policy will be deemed not to exist.
- (e) If We do not enforce a provision or right under this Policy, or if We grant You time or an indulgence, We will not be deemed to have given up that right.

TRADE SANCTION ADVISORY REGARDING THE ENFORCEMENT OF ECONOMIC EMBARGOES AND TRADE SANCTIONS

This Trade Sanction Advisory is part of the First American Title Insurance Company of Australia Pty Limited (First Title) compliance with First American Financial Corporation's compliance with the Federal Reserve Board's request from the Office of Foreign Assets Control (OFAC). OFAC administers and controls economic and trade sanctions against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destructions and other threats to the national security, foreign policy and economy of the United States. Similar economic and trade sanctions are applied by the United Nations Security Council which operate in Australia.

Your rights as a policyholder and payments to You, the insured or claimant, for loss under the policy may be affected by the administration and enforcement of economic embargoes or trade sanctions applicable to You, Your company or the country You are domicile in. The application of sanctions could necessitate the seizure or freezing of property, including but not limited to withholding payment of a claim.

Depending upon the identity, domicile, place of incorporation or nationality of the policyholder, insured, claimant, insurer or parent company and ultimate controlling entity of the policy holder, trade sanctions of other countries (including the United States) may be applicable.

Existing trade sanctions can be amended and new trade sanctions can be imposed, at any time.

OBLIGATIONS PLACED ON US AS A RESULT OF TRADE SANCTIONS

If we determine that You or any insured, additional insured, loss payee or claimant are on a prohibited list or are connected to a sanctioned country, entity or individual, or a prohibited activity, as designated by the relevant trade sanction, we may be required to comply with the particular trade sanction. This may include blocking or freezing property and payment of any funds and the reporting of such occurrences to the relevant authorities within the prescribed time periods, if any.

POTENTIAL ACTIONS BY US

Depending upon the requirements of the trade sanction:

1. We may be required to immediately cancel Your coverage effective from the date we determine that we have transacted with an individual or entity (associated with Your policy), who/which is on a prohibited listed or connected to a sanctioned country as described in the relevant trade sanction.
2. If we cancel Your coverage, You may not receive a return premium unless permitted pursuant to the relevant trade sanction.
3. We may not pay a claim, accept premium or exchange monies or assets of any kind to or with individuals, entities or companies (including a bank) on a prohibited list or connected to, or carrying on business in, a sanctioned country as designated by the relevant trade sanction. Furthermore, we may not defend or provide any other benefit under Your policy to individuals, entities or companies on a prohibited list or connected to, or carrying on business in, a sanctioned country as designated by the relevant trade sanction.