

Title Insurance FAQs



DUAL

What is Title Insurance?

Title Insurance is a great way to protect your commercial real estate investment*. It safeguards you against potential losses resulting from legal challenges related to property ownership and/or use.

While title insurance has traditionally been underutilised in Australia and New Zealand compared to other countries, its valuable benefits are now gaining the recognition they deserve.

Cover includes risks relating to ownership disputes, title defects, fraud and forgery, boundary disputes, solvency or authority matters affecting a seller, illegal building works, certain planning or building permit issues and various other matters affecting ownership and/or use.

What limits are available?

Up to USD \$150 million of cover is available per asset/transaction. However, if the deal involves a portfolio of assets, higher overall limits can be provided, subject to specified sub-limits.

Does the policy only protect buyers?

Traditionally, title insurance has been taken out by buyers to secure their financial investment when buying a property. However, this bespoke insurance policy can be tailored to suit your needs. Coverage can also be expanded to protect others with an interest in the property, such as your financiers or tenants.

Title insurance isn't just about buyers though. Sellers can harness its potential. A sell-side policy can protect a seller after the ink dries. It's a safety net that can help shield a seller from post-transaction liabilities, facilitating a clean exit and also reducing (or altogether removing) the need for escrow arrangements or indemnities.

Can you explain a bit more about the different policy forms available?

Our policies provide cover in two ways. First, our policies contain a list of insured events which will respond to matters that existed at completion, but that weren't discovered during the due diligence/pre-acquisition phase. Second, a seller may disclose, or a buyer may identify, a specific risk or issue.

You can purchase a policy covering:

- only the unknown matters
- only the identified risk(s) (known as specific risk coverage)
- both unknown matters and specific risks

Can you only insure property/asset sales?

No. Our title insurance offerings can be used in a multitude of ways, depending on the transaction structure. We can insure:

- Direct real estate transactions: Under this structure, our real estate ownership coverage will help provide the peace of mind you seek regarding key risks affecting title to, and use of, real estate
- Indirect transfers: This innovative solution comes into play when real estate is transacted through the sale of securities in a property-owning company or trust. The policy will safeguard fundamental aspects of the transaction, including legal challenges to the title of shares or units. Under this policy form, you benefit from our innovative "securities ownership coverage", in addition to "real estate ownership coverage"

Regardless of the transaction structure, the ability to cover identified risks remains available.



What if I'm purchasing a company or unit trust that doesn't own real estate?

We can still provide cover. Under this structure, you'll be protected by our securities ownership coverage on a standalone basis, helping to provide peace of mind regarding risks affecting title to the shares or units acquired.

How much does it cost?

Pricing for the unknown matters style policy typically falls between a pricing range of 0.15% and 0.5% of the overall asset/enterprise value.

As cover for known risks requires bespoke underwriting, pricing for such risks is assessed on a case-by-case basis. However, if the risk is graded low, pricing will typically fall within a similar range to that outlined above.

What type of known risks/specific risks can you cover?

The list of risks we can cover isn't definitive. If the risk relates to ownership of shares in a company (or comparable securities) or if it relates to the ownership or use of real estate, we can consider the risk.

Please see annexures A and B for a list of common risks we insure.

Annexure A – Examples of known risks (real estate)

- Access issues (pedestrian and/or vehicular)
- Actual or potential breaches of easements, covenants and rights or restrictions contained in title deeds/documents
- Lack of necessary rights to use or access the property, including for services
- General title defects (actual or potential), including missing title documents/deeds, inability to verify the chain of title, encumbrances and charges
- Breaches of, or unfulfilled, planning obligations/conditions
- Zoning issues/defects
- Actual or potential third-party rights affecting title to and/or use of, the property
- No search/search validation
- Transactions at undervalue
- General issues regarding capacity and/or authority
- Actual or potential restrictions on transferability of real estate
- 'Limited as to parcels' risks
- Unapproved/illegal building works
- Issues with (or missing) building permits/approved documents, planning permits, occupancy permits and/or building classification certificates
- Boundary issues/encroachments (actual or potential)
- Lease forfeiture risks (registered leases)
- Uncertainty regarding whether third-party consents are required/ relevant under title or associated documents and/or inability to obtain such consents, where required
- Adverse possession
- Mining/mineral reservations
- Limited title/qualified title
- Defects in title plans
- Discrepancies between title documents
- Lender specific coverages related to the issues outlined above
- Cross-lease issues

Annexure B – Examples of known risks (securities)

- General title defects (actual or potential), including missing title documents/deeds, inability to verify the chain of title, encumbrances and charges
- Actual or potential third-party rights affecting title to the shares/units
- Missing or unknown shareholders/unitholders
- General issues regarding capacity and/or authority
- Actual or potential restrictions on the transferability of shares/units
- Defective share/unit buy-backs
- Actual or potential share-capital discrepancies
- Technical legal risks affecting legal existence of companies, good standing and/or validity of historical decisions/transactions
- Transactions at undervalue
- Lender specific coverages related to the issues outlined above

Questions?

For further details on our Title Insurance, please contact your local DUAL underwriter.

Helping you do more

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