

Are your Clients protected against the risk of Non-Compliant Building Work?

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Introduction

The enforcement powers of Local Authorities to issue building notices and building orders for *unapproved building work* is a risk which is well known among settlement agents in Western Australia.

However, the issue of *non-compliant building work* also poses a significant risk, particularly as purchasers and their settlements agents may be lulled into a false sense of security if the Orders & Requisitions search discloses particulars of building permits issued for the property.

Even where your due diligence shows an approval history, the property as constructed may not comply with the property *as approved*. Similarly, some or all of the conditions relating to that approval may not have not been satisfied or complied with by the original owner/builder.

In this regard, much reliance is placed upon the role of the private registered building surveyor in issuing permits and final certifications for a property.

In circumstances where the conditions of a building permit have not been satisfied or complied with, the Local Authority will be entitled to enforcement notices and building orders to bring the property into compliance with the approvals. This may cause your clients significant financial loss.

The Risk of Non-Compliant Building Work

One of the most significant risks associated with non-compliant building work is that it may be very difficult for a purchaser to detect whether a house or building complies with all of the conditions imposed by a Local Authority when the building permit is issued. Most, if not all, 'due diligence' processes which settlement agents undertake on behalf of their clients are focused on whether permits are issued for a dwelling or a structure, rather than whether all of the conditions imposed by the building permit are actually complied with.

In fact, this is an area of due diligence which very much falls outside of the scope of the settlement agent's duty of care to the client. Put simply, settlement agents are not building experts nor should they expected to be.

Accordingly, unless purchasers themselves engage the services of a building expert to conduct a thorough investigation prior to entering into a contract, it is likely that they will proceed to settlement without knowing whether the property complies with all of the conditions of the building permit issued for that property.

Where non-compliance with a building or development permit is discovered after settlement, the purchaser may be faced with the prospect of complying with a building notice or other order issued by a Local Authority requiring the purchaser to bring the property into compliance with the permit. In some cases, the costs associated with rectification or upgrading may be catastrophic.

For strata properties, a Local Authority may issue a notice or order on the Owners Corporation or Body Corporate requiring the building itself to be brought into compliance. This may prompt special levies to be struck to raise the necessary rectification/upgrade funds. The purchaser's liability would be in proportion to their unit entitlement under the relevant strata scheme.

Title Insurance Coverage for Unapproved and Non-Compliant Building Work

Stewart Title's Residential, Strata & Commercial Purchaser* & Existing Owner Policies provide cover for "Actual Loss" and "Authorised Expenses" up to \$160,000 per claim as a result of the following circumstances:

- **Unapproved Building Work** - enforcement action by a Local Authority in relation to structures which have been built or modified by a previous owner of the property without obtaining building or development approvals; or
- **Non-Compliant Building Work** - enforcement action by a Local Authority in relation to structures which do not comply with building or development approvals issued by the Local Authority, including structures which do not comply with building or development approvals because the structures have not been built in accordance with applicable building codes and standards.

For rural properties, this cover is limited to the main residence, including sheds, carports, garages used for residential purposes and any swimming pool.

For strata policies, the cover would include any special levies which are struck by the Owners Corporation or Body Corporate to pay for any upgrading or rectification costs.

Please note that loss or damage arising from non-compliant external cladding is excluded from cover for all Residential Strata Policies and Commercial Purchaser Policies issued for strata title properties.

Cover in Action: Recent Non-Compliant Building Work Claim in Western Australia

Our insured purchased a \$1million house in Beaconsfield, WA which had been recently constructed and had a record of a building permit being issued for the property as disclosed in the Orders & Requisitions search. Following settlement, the Local Authority received complaints from neighbouring properties regarding an apparent lack of privacy given much of the insured's house was constructed of large windows which faced onto neighbouring properties..

Investigations revealed that the building permit issued for the property, including the approved plans, specified that privacy louvres should have been installed on two of the large windows which faced onto neighbouring properties. However, the builder/developer had overlooked this requirement and it was never satisfied. Notwithstanding this oversight, the property was certified by a private building certifier.

Once the Local Authority was alerted to the non-compliance, it issued a Building Notice on the property requiring our insured, as the new owner, to bring the property into compliance with the building permit.

Resolution: Our insured lodged a claim and we paid for the costs associated with installing the privacy louvres in accordance with the building permit and approved plans.

Stewart Title paid over **\$44,000** to cover the costs associated with bringing the house into compliance, without payment of any excess.

The Benefits of a Stewart Title Policy

Cover for non-compliant building work (that is, where the property has been approved and all final/occupation certificates are issued but the property as constructed does not comply with the approval) is **only available** through a title insurance policy issued by Stewart Title.

Don't expose your client to potential loss arising from the risk of non-compliant building work.

Please note that this information is provided solely for general information purposes only and does not relate to your client's personal circumstances. It is not intended to be a complete description of all the terms, conditions, exclusions applicable to the title insurance product and does not constitute legal advice. You should contact Stewart Title directly for specific advice in relation to the title insurance product and for a copy of a sample policy.

* Commercial Purchaser Policy issued for properties with a purchase price up to \$5 million. Unapproved building work cover for commercial properties with a purchase price over \$5 million is issued by an unapproved building work endorsement which is assessed on a case by case basis subject to underwriting criteria.