

DUAL Transaction Solutions



Real Estate
offering

DUAL

Using insurance to mitigate risks in real estate transactions

Did you know insurance can help mitigate risks in real estate deals? Our tailored insurance products help protect against financial losses arising in real estate transactions

We offer three broad options/structures (or a combination of) to help mitigate these risks and support seamless transactions.

Option 1 - Warranty & Indemnity (W&I) Insurance

W&I Insurance is a bespoke solution covering the insured from financial losses arising because of a breach of the warranties or indemnities given by the warrantors (usually the seller) under a sale agreement. This policy serves as an additional and alternative tool for transferring the risk to a third party (being the insurer), thereby reducing or removing exposure to financial loss caused by a breach.

Max Limits: A\$ / NZ\$50m of coverage for the full suite of warranties (Primary W&I) with up to US\$150m (or local equivalent) in excess of this limit for title and capacity warranties (T&C Top-up).

Jurisdictional Appetite: Australia, New Zealand, Singapore and Hong Kong. Other APAC jurisdictions can be considered on a case-by-case basis.

Option 2 - Specific risk policy

A Specific risk policy (also referred to as a known risks policy) protects buyers and lenders from financial losses arising from certain legal defects or issues affecting (i) legal title/ownership of real estate and/or (ii) the use of real estate.

These risks are typically identified during due diligence or disclosed by the seller pre-purchase and can delay transactions or derail them entirely. Our specific risk policy can provide a swift solution to manage such risks, offering a viable alternative to lengthy indemnity negotiations and limiting exposure for both the buyer and seller.

Refer to: (i) Appendix A for some common known risks that we insure and (ii) Appendix B for some specific claims examples that demonstrate this form of policy in action.

Maximum Limits: Up to US\$150m (or local equivalent) per property, with flexibility for portfolios and sub-limits per property/risk. If the deal relates to a portfolio of properties, a higher overall policy limit may be available, subject to specified sub-limits applying per property/risk.

Jurisdictional appetite: Australia, New Zealand, Singapore and Hong Kong. Other APAC jurisdictions can be considered on a case-by-case basis

Option 3 - Title to real estate policy

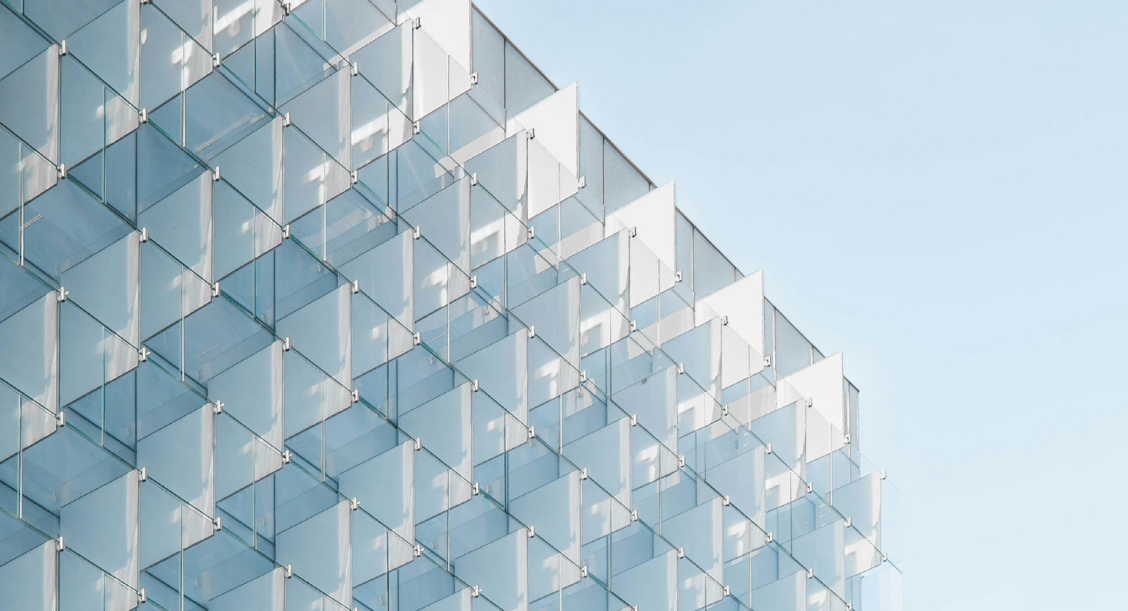
This style of policy indemnifies an insured (typically the buyer) for loss arising out of risks related to legal ownership and use of real estate.

Cover is provided by way of a set list of insured perils, otherwise known as insured events, and indemnifies the insured for loss arising from these. The insured events are designed to correspond with the typical title and capacity warranties given under a sale agreement, along with certain other matters that affect ownership or use of land, such as adverse planning matters or restrictive covenants.

These policies are often taken out when warranties cannot be given under a sale agreement. For example, in a distressed sale a liquidator may be unwilling and/or unable to provide certain warranties – in this scenario the policy acts as a form of 'warranty replacement' tool.

Maximum limits: Up to US\$150m (or local equivalent) per property. If the deal relates to a portfolio of properties, a higher overall policy limit may be available, subject to specified sub-limits applying per property/risk.

Jurisdictional Appetite: Australia, New Zealand, Singapore and Hong Kong. Other APAC jurisdictions can be considered on a case-by-case basis.



Appendix A – Examples of specific risks

- Unapproved/illegal building works
- 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
- 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 issue
- 'Limited as to parcels' risks

Want to learn more?

Let's arrange a joint webinar to explore how these solutions can benefit your clients.

Appendix B – Specific risks (real estate) claims examples

Restrictive covenant

Insured Value: A\$28,500,000

Premium: A\$5,985

Background

The insured had acquired land being used for student accommodation purposes. This use breached a restrictive covenant recorded on title.

At the time of acquisition, the insured purchased a policy from DUAL to protect it if any third party sought to enforce the terms of the covenant.

After completion, a beneficiary of the covenant contacted the insured threatening to enforce the terms of the covenant.

Outcome

The matter was swiftly settled for A\$285,000 in exchange for a full release of the covenant. Operations continued at the property, without disruption.

Incurred loss: A\$322,500

Settlement cost: A\$285,000

Insured's Legal Fees: A\$37,500

Excess: Nil

Access

Insured Value: A\$2,470,000

Premium: A\$3,950

Background

The insured had purchased a plot of regional land that had the benefit of development consent.

Access to the development site required contractors to traverse a portion of land owned by neighbours.

During development, the neighbours raised a claim seeking to prevent access after contractors caused parking issues in the surrounding area, as well as leaving debris all over the road.

Outcome

DUAL engaged with the neighbours and a settlement was reached. An easement was granted in exchange for the developer agreeing to (i) repair any damage caused to the road and (ii) to contribute to a sinking fund for ongoing repair and maintenance of the road.

The settlement costs were covered but the repair costs and sinking fund contribution fell outside the scope of the policy.

DUAL also covered legal fees incurred in preparing the deed of easement and the settlement deed.

Incurred loss: A\$116,000

Settlement cost: A\$114,000

Insured's Legal Fees: A\$2,000

Excess: Nil

Encroachment / adverse possession

Insured Value: A\$399,000

Premium: A\$1,330

Background

The insured had acquired a small industrial warehouse.

A small portion of the physical boundaries of the property encroached onto adjoining land. DUAL provided a policy which protected the insured against claims by the adjoining landowner regarding the encroachment.

The adjoining owner planned to sell their property and the issue was identified by a prospective purchaser, following which a claim was made against the insured.

Outcome

DUAL engaged quickly with the claimant and settled the matter for A\$5,900. DUAL also covered the surveying and legal costs associated with transferring title to the land in question.

Incurred loss: A\$12,000

Settlement cost: A\$5,900

Insured's Legal Fees: A\$6,100

Excess: Nil

Helping you do more

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