

APPOINTMENTS

Stewart Title is very pleased to announce the following appointments



Paul Watkins as Manager, Legal & Underwriting

We are pleased to announce that Paul Watkins rejoins Stewart Title as Manager, Legal & Underwriting. Paul is responsible for the management and direction of the Underwriting and Legal Departments, including commercial and residential policy development, regulatory compliance, claims and underwriting supervision and general corporate legal matters.

Paul offers extensive underwriting experience having originally worked at Stewart Title as an underwriter from 2004 to 2005. Paul also worked as a lawyer in private practice in both small and medium sized law firms where he gained considerable experience in general insurance, residential and commercial conveyancing, commercial property development, leasing and general property practice.

Paul has been a contributor to a number of Australian legal industry publications and regularly presents to lawyers and lenders on a variety of real estate related issues, including title insurance, title claims and real estate fraud.

Paul holds degrees in Law (Hons) and Social Sciences from the University of Canberra and is admitted as a Solicitor in New South Wales and the Australian Capital Territory.



Joseph D'Addona as Business Development Manager

As Business Development Manager, Joseph D'Addona is responsible for the growth, development, promotion and maintenance of client relationships within the Australian banking and financial services sectors for Stewart Title.

Joseph joined Stewart Title in August 2006 and brought with him 30 years of experience in banking and financial services, 25 of which were in senior managerial positions. He brings a wealth of knowledge, experience and understanding of operational and distribution structures within the banking and financial services sectors.

Prior to joining Stewart Title, Joseph was the Regional Sales Manager for IMB Banking and Financial Services. He was responsible for the growth, development and promotion of IMB's products, sales and service in the Sydney market.

Joseph began his career with GMAC, moved to AMP, and then to Advance Bank, where he worked for 19 years. He also worked in senior positions at HomeLoan Limited and Insurance Group Australia (IGA).

Joseph graduated from the University of New South Wales, having majored in Economics and Economic History.

ON THE MOVE

Please be advised that our Sydney office recently relocated. Below are our new contact details:

Level 29
201 Elizabeth Street
Sydney NSW 2000

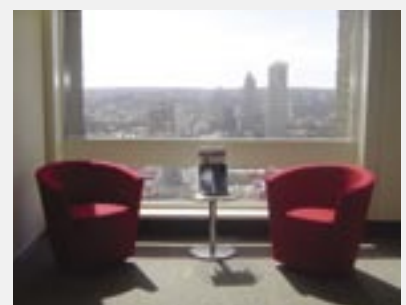
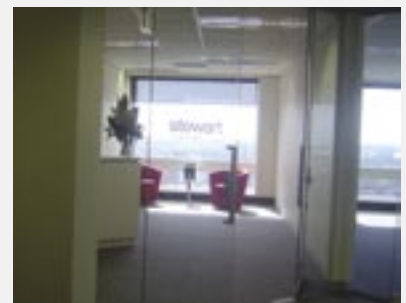
Stewart contact numbers remain unchanged.

Phone

02 9081 6200 or 1800 300 440

Fax

02 9081 6299 or 1300 663 424



UNDERWRITING NEWS

Examples of coverage for 'known risks'

Stewart Title's coverage for 'known risks' represents a distinct benefit to purchasers, lenders, solicitors and conveyancers in circumstances where a defect or risk is identified during the course of a conveyancing transaction. This ability to insure against known risks has not been available in the market prior to the introduction of title insurance.

Here are some recent examples where Stewart Title was able to offer cover for known risks at **no additional premium, allowing the sale to proceed:**

- A letter from Sydney Water

attached to the contract for sale disclosed that the main residence had been erected without a final inspection by Sydney Water having been carried out. This risk threatened the successful sale of the property.

Stewart Title offered full coverage to the purchaser allowing the transaction to proceed to exchange.

- A survey report attached to the contract for sale disclosed that the improvements erected on a property encroached upon a right of carriageway which burdened the land.

Stewart Title offered coverage to the insured against the risk that the adjoining property owner, with the benefit of the right of carriageway, would order that the encroaching

improvements be demolished or demand compensation in order to allow the encroaching improvements to remain.

- A survey report attached to the contract for sale disclosed that a car port erected on a property encroached upon the neighbour's land.

Stewart Title offered coverage to the insured against the risk that the adjoining property owner order that the encroaching car port be demolished or demand compensation in order to allow the encroaching car port to remain.

Conveyancers and solicitors are encouraged to contact Stewart Title's Underwriting Department on **1800 300 440** to discuss how Stewart Title can you help you settle your next transaction.



Stephanie Hage from Stewart Title at the Law Institute of Victoria Annual Property Law Day



Stephanie congratulates Joseph DeMarco, winner of Stewart Title's lucky door prize



EVENTS

Stewart Title was a proud sponsor of the recent Australian Institute of Conveyancers (NSW Division) State Conference. The conference was held at Wyndham Estate Winery in the Hunter Valley on Saturday 23 September 2006.

Anna Macdonald, Peter Cutajar & Charlotte Kildea of Stewart Title were in attendance at the conference. It was a great opportunity to be able to catch up with old faces and to meet some new faces.

It was a pleasure for us to be a part of such an extremely enjoyable and educational day, and to speak with the large number of attendees that visited our booth.

Our Stewart money boxes were also extremely popular! We would like to congratulate Angela Spithill of Conveyancing Wise who was the lucky winner of Stewart Title's hamper that we gave away on the day.

We are looking forward to seeing you all at the Annual Conference in March 2007.

Lesson for Lenders – Recent Court Cases Illustrate Examples of Unjust Contract

Permanent Mortgages Pty Ltd v. Cook [2006] NSWSC 1104

Case Summary

- Mr. & Mrs. Cook had a long history of loan default.
- In 2002 Mr. and Mrs. Cook refinanced part of their existing loans through a mortgage lender.
- Mr. and Mrs. Cook defaulted on the loans and the lender commenced action for possession of the security property.
- The Cooks claimed that the lender was not entitled to repossess the property as they had not complied with Section 80

of the Uniform Consumer Credit Code (UCCC) which required the lender to provide the borrowers with a Notice of Default.

The Court held that the loan was regulated by the UCCC and declared the Contract unjust pursuant to Section 70 of the UCCC. In coming to this decision the Court took the following matters into account:

- the lender was aware that the loan was to refinance a mortgage in default over the borrowers' home;
- certain procedures in the Lending Procedure Manual of the lender had not been complied with;
- the lender was aware or should have been aware of the Cooks inability to service the loan and the likelihood of default and higher interest rates applying as a result; and

- the decision of Perpetual Trustee Co. Ltd v. Khoshaba was cited as authority for the requirement that there be "something more" than the foolishness of the borrower for the contract to be deemed unjust. The Court found that there was 'something more' in that the lender should have known of the borrowers' 'foolishness' and they "encouraged it".

To avoid the consequences of this case it is important that:

- lenders consider the borrowers capacity to service the loan as this may result in the loan being overturned by the Court.
- lenders use documents which comply with the UCCC guidelines.
- where a lender provides for higher interest rates or high default fees this may support a finding that the lender has engaged in conduct which is unjust.

Perpetual Trustee Company Limited v Albert and Rose Khoshaba [2006] NSWCA 41:

Case Summary

Albert and Rose Khoshaba, who were pensioners, obtained finance from Perpetual in order to invest in a trolley collecting business. This business turned out to be a pyramid investment scheme that subsequently failed.

The loan was secured by way of a first registered mortgage over the home of Mr. and Mrs. Khoshaba. Mr. Khoshaba was fraudulently shown as earning a salary of \$43,000 per annum. Mrs. Khoshaba was added to the loan application after it had been initially submitted and it was found that her signature had been forged. Mr. Khoshaba claimed to have no knowledge of this fraud.

The agent for Perpetual Trustee Company Limited was responsible for assessing the loan application and had failed to follow the lending guidelines set by Perpetual Trustee Company Limited, in that it did not make enquiries to confirm the purpose of the loan and the income and employment details of the parties to the loan.



The Court held in favour of Mr. and Mrs. Khoshaba and granted relief under Section 7(1) of the Contracts Review Act in that the contract was unjust in relation to the way in which the contract was made. The total disregard for the ability to service the loan was critical to the decision. The Court found that where the primary residence of the borrowers is provided as security, there is public interest in treating the contract as unjust where the lender has been content to lend on the security alone and the borrower has demonstrated

an inability to protect their own interests (as was the case here).

Significance of the decision in Khoshaba to our lender clients:

The judgment in this case will cause concern to lenders, particularly where they engage in the provision of "low doc" or "no doc" loans.

In order to avoid the consequences of this case, lenders should ensure that the purpose of the loan is disclosed by the borrower on their loan application.



Title Insurance Coverage for Swimming Pools and Swimming Pool Fences

Whilst a swimming pool can often be the main selling feature of a home, purchasers are often confronted with problems following settlement in circumstances where the swimming pool is constructed without final Council approval. Where there is no building certificate issued in respect of a swimming pool the subject of a contract for sale, the purchaser cannot be sure whether the swimming pool has been constructed and completed in accordance with Council approval, or will require future rectification to comply with relevant statutory safety standards and development consents.

It is the responsibility of each local council to ensure that swimming pools comply with the requirements of the Swimming Pools Act 1992 (NSW) (or equivalent State legislation) and various Australian Standards.

The Stewart Title policy provides an indemnity in respect of “actual loss” suffered by the insured in circumstances where following settlement, the insured is ordered to remove or rectify a swimming pool due to non-compliance with or the absence of relevant building/or development consents required by law.

Where an insured is notified by Council that the swimming pool was constructed by a previous owner without obtaining the required approvals, then Stewart Title will pay for the insured’s loss associated with complying with the Council notice.

The exception relating to boundary walls or fences does not apply to swimming pool fences which are covered by our policy.

Further, Stewart Title will provide cover to an insured where a swimming pool and/or swimming pool fence was built with the required Council approvals, but does not comply with the conditions of those approvals. Where Council issues a notice requiring works to be conducted in order for the swimming pool and/or swimming pool fence to comply, Stewart Title will cover the insured’s associated costs.

Should you have any queries in relation to our coverage, please email us at e.underwriting@stewart.com or contact our Underwriting Department on **1800 300 440**.

CLAIMS NEWS

Recent Claims Paid



Claim 1 – Misdescription - House Located on Wrong Property

In 2006, our insureds entered into a contract to purchase a residential property in rural NSW. The property described in the contract comprised a small fibro cottage on three adjoining titles.

Following settlement, our insureds became aware that the house and lots that they had been occupying were actually owned by someone else and that the lots they had in fact purchased were vacant land. As a result, our insureds were forced to vacate the residence and find alternative rental accommodation.

Our insureds were not aware of this 'error' at the time of settlement.

The Resolution

The claim was covered under the Residential Purchaser Policy which provides coverage for a defect, lien or encumbrance that affects title to the insured land.

Our insureds retained the vacant land which they actually purchased and received compensation for an amount which represented:

- (a) the difference between the value of the residence and the three vacant lots;

- (b) legal fees associated with the purchase of a new home;
- (c) stamp duty associated with the purchase of a new home; and
- (d) reimbursement of rental for alternative accommodation.

With **no excess payable**, our insureds were compensated for the full value of their loss.

Claim 2 – Illegal Garage

Following settlement, our insured received a letter from their local council advising that Council proposed to issue an Order for the demolition of the garage situated on the insured property. The garage had been constructed by the previous owners without obtaining appropriate council approvals. Our insured advised Council that they wished to retain the garage. Council subsequently inspected the garage and following that inspection, notified our insured that they were required to obtain various expert reports and submit them to Council together with an Application for a Building Certificate. Council carried out a further inspection of the garage and required that certain works be undertaken to the garage to make it comply with Council's requirements.

The Resolution

The claim was covered under the Residential Purchaser Policy. Stewart Title paid for the expert reports, the application for Building Certificate and the costs associated with the rectification of the garage.

With **no excess payable**, our insureds were compensated for the full value of their loss.

Claim 3 – Unpaid Rates

Following settlement, our insured received notification from Council that there were water/sewerage rates outstanding in relation to the insured property.

An error was made by the purchaser's conveyancer in the adjustment of rates on settlement.

The Resolution

The claim was covered under the Residential Purchaser Policy. Stewart Title paid the outstanding rates plus interest that had accrued thereon. Stewart Title waived its rights of subrogation against the conveyancer and did not take subsequent action to recover the outstanding rates from the conveyancer.

With no excess payable, our insured was compensated for the full value of the loss.

To make a claim or enquire about a claim related issue, please contact our Claims Department on 1800 300 440 or by fax on 1300 881 432.

