

Zurich Mortgage Collateral Protection

Financial Institutions – Policy Wording



Important

Statutory Notice – Section 40 Insurance Contracts Act 1984 (Cth)

This notice is provided in connection with but does not form part of the policy.

This policy is a 'Claims Made' liability insurance policy. It only provides cover if:

A claim is made against an *insured*, by some other person, during the period when the policy is in force; and

The claim arises out of circumstances committed, attempted or alleged to have been committed or attempted after the *continuity date* stipulated in the *schedule*.

Section 40(3) of the Insurance Contracts Act 1984 (Cth) applies to this type of policy. That sub-section provides that if an insured becomes aware, during the period when the policy is in force, of any occurrence or fact which might give rise to a claim against them by some other person, then provided that the insured notifies Zurich of the matter before this policy expires, Zurich may not refuse to indemnify merely because a claim resulting from the matter is not made against the insured while the policy is in force.

If an *insured*, inadvertently or otherwise, does not notify the relevant occurrence or facts to Zurich before the expiry of the policy, the *insured* will not have the benefit of section 40(3) and Zurich may refuse to pay any subsequent claim, notwithstanding that the events giving rise to it or the circumstances alleged in it may have taken place during the *policy period*.

If a claim is actually made against the *insured* by some other person during the *policy period* but is not notified to Zurich until after the policy has expired, Zurich may refuse to pay or may reduce its payment under the policy if it has suffered any financial prejudice as a result of the late notification.

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Welcome to Zurich

About Zurich

The insurer of this product is Zurich Australian Insurance Limited (ZAIL), ABN 13 000 296 640, AFS Licence Number 232507. In this document, ZAIL may also be expressed as 'Zurich', 'we', 'us' or 'our'.

ZAIL is part of the Zurich Insurance Group, a leading multi-line insurance provider with a global network of subsidiaries and offices. With about 55,000 employees, the Zurich Insurance Group delivers a wide range of general insurance and life insurance products and services for individuals, small businesses, and mid-sized and large companies, including multinational corporations, in more than 170 countries.

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, 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 something

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.

Our contract with you

Your policy is a contract of insurance between you and Zurich and contains all the details of the cover that we provide.

Your policy is made up of:

- the policy wording. It tells you what is covered, sets out the claims procedure, exclusions and other terms and conditions of cover;
- the *proposal*, which is the information you provide to us when applying for insurance cover;
- your most current policy *schedule* issued by us. The policy *schedule* is a separate document unique to you, which shows the insurance details relevant to you. It includes any changes, exclusions, terms and conditions made to suit your individual circumstances and may amend the policy; and
- any other written change otherwise advised by us in writing (such as an endorsement). These written changes vary or modify the above documents.

Please note, only those covers shown in your policy *schedule* are insured.

This document is used for any offer of renewal we may make, unless we tell you otherwise. Please keep your policy in a safe place. We reserve the right to change the terms of this product where permitted to do so by law.

Please note, only those covers shown in the policy *schedule* are insured. Please keep this policy in a safe place. We reserve the right to change the terms of this product where permitted to do so by law.

Zurich Mortgage Collateral Protection

Subject to payment of the premium set out in the *schedule*, we agree to provide insurance on the terms set out in this policy.

Insuring Clauses

We will indemnify the *insured* for their *loss* sustained by the *insured* following sale of the *mortgaged property* by or on behalf of the *insured*, provided that:

- (a) the mortgagor has defaulted on the *mortgage* payments after the *mortgaged property* has been damaged or destroyed;
- (b) *loss* results from a *covered cause of loss* and an insurer has refused in writing to meet a claim for such damage or destruction to the *mortgaged property*;
- (c) *loss* results from:
 - (i) the failure of the mortgagor to obtain a *policy of insurance*; or
 - (ii) the refusal or inability of an insurer, for any reason including fraud or misrepresenting by the mortgagor, to meet any claim under a *policy of insurance*; or
 - (iii) the refusal or inability of an insurer pursuant to any *concessions agreement* with the *insured* for any reason including fraud or misrepresentation, to meet any claim under the *concessions agreement*; or
 - (iv) an accidental error by the *insured* of the *insured's* representative or employee in procuring and maintaining a *policy of insurance* over the *mortgaged property* where the *insured* obtains, retains and/or makes the premium payment on the *policy of insurance*; and
- (d) *loss* arises notwithstanding the implementation by the *insured* of the *mortgaged property* procedure; and
- (e) The *insured* discovers the *loss* and notifies the *loss* to us during the *policy period*; and

The Insuring Clause shall only apply to *loss* where:

- (1) the mortgagor advises the *insured* that there is no valid *policy of insurance* after the damage or destruction to the *mortgaged property*; or
- (2) the *insured* discovers it has not arranged a *policy of insurance* in accordance with clause 1 (c) (iii) after damage or destruction to the *mortgaged property*.

It is a condition precedent to cover under this policy that the *insured* implement a *mortgaged property procedure*.

Limit of Liability

The *limit of liability* as stated in the *schedule* shall be our maximum liability payable under this policy for *loss* discovered by the *insured* discovered and reported to us during the *policy period*. The *limit of liability* shall apply over and above the applicable excess.

All indemnification provided by the Extensions of Cover of this policy shall be part of, and not in addition to the *limit of liability*, unless expressly stated otherwise.

Our aggregate liability for all *losses* sustained by the *insured* shall not exceed the amount as stated in the *schedule* for all *losses* sustained by the *insured* discovered and reported during the *policy period*.

Excess

We shall be liable only for the amount of any *loss* that exceeds the applicable excess specified in the *schedule* and such excess amount shall be borne by the *insured* uninsured and at the *insured's* own risk. The excess shall apply to each *loss* irrespective of the number of *losses* during the *policy period*. In the event of a *loss* occurring in respect of more than one *mortgaged property* the excess shall apply to each and every *mortgaged property* forming part of such *loss*. The excess is not part of our liability for any *loss*.

Where we make a payment in relation to a claim which includes payment of part or all of the excess, the *insured* shall within 30 days of being notified from us, reimburse us the amount of the excess we paid.

Definitions

Concessions agreement

concessions agreement means an agreement between the *insured* and an insurer which requires the insurer to notify the *insured* in the event that a *policy of insurance* is not effected or renewed by, or has been allowed to lapse by, the mortgagor or otherwise becomes invalid.

Covered cause of loss

covered cause of loss means:

- (a) those perils specified in the *policy of insurance* arranged by the mortgagor in accordance with the requirements of the *mortgage*, excluding any legal liability; or
- (b) if no *policy of insurance* has been arranged by the mortgagor or if such *policy of insurance* that has been arranged does not fulfil the requirements of the *mortgage*, then the perils specified in Division 2, Home Buildings Insurance of the Insurance Contracts Regulations, as they may be amended from time to time, excluding any legal liability coverage; or
- (c) those perils specified in the *policy of insurance* arranged by the mortgagor that has been allowed to lapse or has been cancelled without the *insured's* consent, excluding any legal liability coverage.

Excess

excess means the Excess amount stated in the *schedule*.

Insured

insured means the entity named in the *schedule* including any subsidiary.

'You' and 'Your' is also used in this policy to mean the *insured*.

Limit of liability

limit of liability means the limit as stated in the *schedule*.

Loss

loss means the unpaid principal of the *secured amount* that is outstanding and any accrued interest on that amount, not including late charges or penalty interest, calculated at the time the destruction of or damage to the *mortgaged property* is discovered less any amounts realised from the sale of the *mortgaged property* or from any insurer pursuant to a *concessions agreement* and any other amount payable to the *insured* from any other source in reduction of the *secured amount* after the mortgagor ceases to make payments as required by the *mortgage*.

Mortgage

mortgage means the mortgage document or security interest in writing, which is registered or capable of registration with the Land Titles Office or equivalent including any written loan agreement.

Mortgaged property

mortgaged property means the real property, which is or is required to be, secured by a *mortgage* in respect of the *secured amount* where the *insured* is the mortgagee.

Mortgaged property procedure

mortgaged property procedure means the following procedures that are required to be implemented by the *insured* in respect of the *mortgaged property*:

- (a) a requirement in each *mortgage* over rural or agricultural properties that the minimum insurance cover to be maintained by the mortgagor is a fire and extended insurance policy for the lessor of the *secured amount* or the replacement value of the buildings on the *mortgaged property*;
- (b) a requirement in each *mortgage* over residential properties that the minimum insurance cover to be maintained by the mortgagors is a home building insurance policy for the lessor of the *secured amount* or the replacement value of the buildings on the *mortgaged property*;

- (c) the *insured's* must be named in the *policy of insurance* as the mortgagee for the amount of the *secured amount* or the amount accepted by the *insured* as the full insurable value of the *mortgaged property*, whichever is the lesser;
- (d) the *insured's* must verify at the inception of the *mortgage* the existence and validity of the *policy of insurance* and record the sum insured, the name of the insurer, the policy number and the expiry date of the *policy of insurance*. The *insured* must also verify on execution of the *mortgage* or on the date of the advance of the *secured amount*, whichever is the earlier, that the *policy of insurance* includes the *insured's* interest as an additional named *insured*;
- (e) the *insured* must not terminate or change the requirements for mortgagors to maintain a *policy of insurance* without our prior notification and acceptance;
- (f) expect where the *insured* effects and maintains the *policy of insurance*, the *insured* will issue written reminders to mortgagors of their obligation to maintain the *policy of insurance* in force;
- (g) upon learning that a mortgagor's *policy of insurance* is likely to lapse, terminate or be cancelled or has in fact lapsed, terminated or been cancelled, the *insured* must, within 30 days, procure another *policy of insurance* for the account of the mortgagor for at least the minimum requirements of the loan and pay the premium to prevent such *policy of insurance* from lapsing, terminating or being cancelled.

Policy period

policy period means the period of time shown in the *schedule*.

Policy of insurance

policy of insurance means the contract of insurance covering the *mortgaged property* prescribed in the *mortgaged property procedure* or otherwise a policy of home buildings insurance.

Schedule

schedule means the Schedule attaching to and forming part of the policy, including any *schedule* substituted for the original *schedule*.

Secured amount

secured amount means the amount loaned by the *insured* to the mortgagor which is secured by a *mortgage* over the *mortgaged property*.

Submission

submission means:

- (a) any information and/or statements or materials;
- (b) any proposal form completed and signed by the *insured* (including any attachments thereto, information included therewith or incorporated therein);
- (c) the financial statements and annual reports of any *insured*, requested by or supplied to us by or on behalf of the *insured* in connection with this policy.

Subsidiary

subsidiary means any entity in which the *insured* on or before the inception date of this policy:

- (a) controls the composition of the board of directors (or equivalent in any other country);
- (b) controls directly or indirectly more than fifty (50%) of the shareholder or equity voting rights; or
- (c) holds more than fifty per-cent (50%) of the issued share capital or equity,

and shall in any event include any company or legal entity whose financial accounts are required to be consolidated with those of the named *insured* pursuant to the Corporations Law or the applicable Australian accounting standard.

Terrorism

terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), which from its nature or context is done for, or in connection with, political, religious, ideological or similar purposes or reasons, including the intention to influence any government and/or to put the public, or any section of the public, in fear.

Exclusions

We will not indemnify the *insured* in respect of any loss directly or indirectly attributable to or in consequence of:

1. circumstances which the *insured* knew, or a reasonable person in the circumstances of the *insured* could be expected to know prior to the *policy period* to be circumstances likely to give rise to a claim under this policy.
2. a failure by the *insured* to foreclose on the *mortgaged property* in accordance with the terms of the *mortgage* after the mortgagor ceases to make payments as required by the *mortgage* consequent upon destruction of or damage arising from a *covered caused of loss*.
3. the failure of the *insured* to act as a prudent person in business would, in pursuing and enforcing the *insured's* rights in relation to and recovery under:
 - (a) the *mortgage* in relation to the *mortgaged property*; or
 - (b) any *policy of insurance*; or
 - (c) any *concessions agreement*.
4.
 - (a) an intentional contravention by the *insured* or its employees of the *insured's* established operating procedure in the preparation, registration or discharge of the *insured's mortgage* over the *mortgaged property*; or
 - (b) the *insured's* failure or the failure of the *insured's* board of directors to establish, or enforce an operating procedure relating to the preparation, registration or discharge of *mortgages*.
5. loss of interest in excess of the amount of interest then due and payable pursuant to a *mortgage* as at the date of the destruction of or damaged to the *mortgaged property* by a *covered caused of loss*.
6. a defect in title, which existed prior to the date of the advance of the *secured amount*.
7. any forgery whatsoever.
8. the mortgagor not owning or purchasing the *mortgaged property* or otherwise not having the legal capacity to enter into the *mortgage*.
9. loans or *mortgages* the *insured* purchased from another person.
10. any *loss* the *insured* would have incurred in any event had there been no error or accidental omission in the preparation, registration or discharge of the *mortgage*.
11. a reduction in the market value of the *mortgaged property*.
12. a failure to value and properly and sufficiently value the *mortgaged property* either prior to or after advancing the *secured amount*.
13. a legal obligation or alleged legal obligation to others assumed by the *insured* under any written, oral, express or implied contract or agreement.
14. legal fees, costs and expenses whether related to any legal proceedings or otherwise in relation to the *mortgaged property*.
15. the bankruptcy or insolvency of any insurer.
16. the acts, errors or omissions of any person, against whom the *insured* has a cause of action to recover the *loss*.
17. the *mortgaged property* being located outside the Commonwealth of Australia, its territories and protectorates.
18. risks and perils covered by title, life or accident and health insurance or by a policy covering a mortgagor's legal liability.

19. any act of *terrorism* regardless of any other cause or event contributing concurrently or in any other sequence thereto, or any action taken in controlling, preventing, suppressing or in any way relating to any act of *terrorism*.
20. physical loss, destruction or damage directly or indirectly caused by or arising from or in consequence of or contributed by:
 - (a) incorrect siting of building; or
 - (b) demolition ordered by Government or Public or Local Authorities due to failure on the *insured's* part or that of the *insured's* agents to obtain the necessary permits required.
21. or in connection with:
 - (a) ionising radiation or contamination by radioactivity from any nuclear fuel or nuclear waste from the combustion of nuclear fuel or the radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or component thereof;
 - (b) seepage, pollution or contamination of whatever nature and however occurring;
 - (c) war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, or military or usurped power or confiscation, nationalisation, requisition, destruction of or damage to property by or under the order of any government, public or local authority;
 - (d) any bushfire; or
 - (e) any named cyclone.
22. directly or indirectly by or contributed to or arising from:
 - (a) waves, tidal water or tidal waves, or the rising, overflowing or breaking of any boundary of natural or man-made lakes, reservoirs, rivers, ponds, brooks, streams, harbour, oceans or other body of water or watercourse, whether driven by wind or not;
 - (b) mud slide or mudflow;
 - (c) water that backs up from a sewer or drain; or
 - (d) water under the ground surface pressing on or flowing or seeping through:
 - (i) foundations, walls, floors or paved surfaces;
 - (ii) basements whether paved or not; or
 - (iii) doors, windows or other opening,but if destruction of or damage to is caused by fire or explosion results, we will pay for that resulting loss.
23. continuous or repeated seepage or leakage of water that occurs over a period of 14 days or more.
24. any direct or indirect loss or damage caused by, resulting from, contributed to or made worse by acts or decisions of planning, design material or maintenance.
25. or arising from:
 - (a) any earth movement, such as an earthquake, landslide, mine subsidence, sinkhole collapse or earth sinking, rising or shifting;
 - (b) volcanic eruption, explosion or effusion,but if destruction of or damage to is caused by fire or explosion results, we will pay for that resulting loss.
26. any claim alleging a negligent act or error or omission by the *insured* including but not limited to:
 - (a) advising, inspecting, reporting or making recommendations in the *insured's* capacity as an insurance company, mortgage, servicing agent, bank or lending institution, financial advisor, consultant, broker, agent or representative; or
 - (b) performing any claims investigation, adjustment, engineering, inspection, survey or appraisal service.

General Conditions

1. Alteration to risk

The *insured* shall give to us notice in writing as soon as practicable of any material alteration to the risk during the period of cover. A material alteration to the risk includes, without limitation:

- (a) activities that are materially different from those declared in the *submission*;
- (b) activities outside the normal activities of the *insured*;
- (c) *insolvency* in relation to any *insured*;
- (d) any loss of or conditions imposed upon any licence or other authority required by the *insured* to operate.

2. Assignment

This policy and any rights under it shall not be assigned without prior written consent from us.

3. Cancellation

- (a) The *insured* may cancel this policy at any time by giving notice in writing to us;
- (b) We may cancel this policy in any of the relevant circumstances set out in the Insurance Contracts Act 1984 (Cth), such cancellation to take effect within 30 days from the time of notification received by the *insured*;
- (c) Upon cancellation by the *insured* a refund of premium will be allowed pro rata of 80% of the premium for the unexpired *policy period*;
- (d) Upon cancellation by us a refund of premium will be allowed pro rata for the unexpired *policy period*.

4. Claims and conditions

- (a) The *insured* shall, as a condition precedent to payment under this policy, give us immediate notice in writing during the *policy period* of:
 - (i) any claim on a *policy of insurance* consequent upon the destruction of or damage to *mortgage property* as a result of a *covered caused of loss*;
 - (ii) any shortfall from the *secured amount* after payment to the *insured* of the sum insured under a *policy of insurance* or *concessions agreement*;
 - (iii) commencement of recovery proceedings whether pursuant to the *insured's mortgage*, or any other security, indemnity or guarantee consequent upon the destruction of or damage to *mortgaged property* as a result of a *covered caused of loss*.
- (b) It shall be the duty of the *insured's* right to make a claim under this policy for the *insured* to provide us with:
 - (i) copies of the following documents in relation to the *mortgaged property* and *mortgage*:
 - (1) documents evidencing the *mortgage*;
 - (2) title deeds;
 - (3) any contract of sale;
 - (4) the *policy of insurance*;
 - (5) any *concessions agreement*;
 - (6) any other security document with respect to the *mortgaged property*;
 - (ii) access to all other documents and information in the *insured's* possession or control in relation to the *mortgaged property* that we may reasonably require;
 - (iii) documents establishing that there is no valid and collectable *policy of insurance*.
- (c) The *insured* shall also give us and any of our appointed investigators or solicitors, all information they may reasonably require and full cooperation and assistance in the conduct of the investigation or settlement of any claim under this policy.

- (d) We shall be entitled at any time to take over and conduct, in the *insured's* name any proceedings arising out of the destruction of or damage to *mortgaged property* as a result of a *covered caused of loss* where we believe the shortfall may constitute a *loss* and result in a claim under this policy.
- (e) If any payment is made by us in respect of a claim under this policy, we shall be subrogated to all the *insured's* rights of recovery in relation thereto.

5. Fraudulent claims

If the *insured* shall give notice of any claim or *loss* knowing same to be false or fraudulent, as regards amount or otherwise, such claim shall be excluded from the policy and we reserve the right to void this policy in its entirety and in such case, all claims shall be forfeited.

6. Notice

Any notice under or in connection with this policy that relates to a *covered caused of loss* or circumstances shall be given to the appropriate Zurich branch office, addressed as follows:

The Financial Lines Claims Manager
Zurich Australian Insurance Limited
PO Box 677 North Sydney 2059

Or by email to:

The Financial Lines Claims Manager
fl.claims@zurich.com.au

Any notification, sent by post or email, will be effective from the date received by Zurich.

7. Plurals and Titles

The *submission*, this policy, its *schedule* and any endorsements are one contract in which, unless the context otherwise requires:

- (a) headings are descriptive only, not an aid to interpretation;
- (b) singular includes the plural, and vice versa; and
- (c) the male includes the female and neuter.

8. Policy interpretation

It is agreed that the proper law of this policy is the law of the Commonwealth of Australia and of the Australian State or Territory in which the policy is issued by us. Zurich and the *insured* agree to the exclusive jurisdiction of the appropriate Australian Court, in relation to all matters arising under or in connection with it.

9. Reasonable precautions

The *insured* shall take all reasonably practical steps and precautions to avoid or minimise any liability or loss, which may be or is the subject of a claim under this policy.

10. Sanctions regulation

Notwithstanding any other terms or conditions under this policy, Zurich shall not be deemed to provide coverage and will not make any payments nor provide any service or benefit to the *insured* or any other party to the extent that such cover, payment, service, benefit and/or any business or activity of the *insured* which would violate any applicable trade or economic sanctions, law or regulation.

12. Subrogation

Upon payment of any *loss* we shall be subrogated to all rights and remedies of the *insured* in respect of such *loss* and the *insured* shall do nothing to prejudice those rights.

We shall be entitled to pursue and enforce such rights in the name of the *insured* who shall provide us with all reasonable assistance and co-operation, including the execution of all papers required and shall do everything that may be necessary to secure any rights and including the execution of any documents necessary to enable us effectively to bring suit in the name of the *insured*, whether such acts shall be or become necessary before or after payment by us.

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