

Title Indemnity Insurance - Client Guide

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Why title insurance?

In recent years, the use of title insurance has increased considerably. There are many reasons for this. For example, most people have lost their original title deeds or their banks have lost or destroyed them. In addition, the information kept by Land Registry is limited and their records may not that accurate or complete.

Banks have also become very risk-averse and want to be sure that if they have to repossess a property they can sell it, even if there is a title problem. They will insist on title insurance where there is any query over the title.

As conveyancer's fees are the lowest they have ever been there is no budget available to investigate or negotiate problem issues with adjoining owners without an increase in costs to you.

In any case, it is often impossible to give a definitive legal view as often there is simply not enough information available.

Also if there is a risk, why not insure against the financial consequences of it occurring? Especially if doing so allows you to get your mortgage and buy the property, while knowing and accepting the risks.



How does it solve problems?

Unfortunately, for many reasons it is sometimes not practicable to try and resolve title or other problems discovered as part of our searches and enquiries on the property you want to buy.

This might be because everyone wants to move quickly and resolving the issue might take months. It might be that the seller has lost old deeds that could have answered the question, or consents from planning authorities or previous owners or neighbours have been overlooked. It could be necessary because lenders are not prepared to take any risk that something might not be 100% right. Often, in cases like these, we may suggest obtaining title indemnity insurance as one way of dealing with the issue and so unblocking the hold-up on the conveyancing process. Usually lenders and buyers are prepared to proceed to lend money or buy properties as long as appropriate title insurance is put in place against the risk identified.

It is important to realise that getting a title insurance policy does not remove the issue you have insured against. The issue is still there and may still eventually cause you a problem. After all, getting car insurance doesn't stop you having a car crash, does it?

However, if the potential issue does arise, the insurance company will generally compensate you for any reduction in the value of the property caused by the problem - within the limits of each particular policy : assuming the claim is accepted and you have complied with the policy conditions.





Insure or remedy?

Where the problem relates to the structure of the building, safety or health issues it may be more appropriate to have a suitable expert tell you what needs to be done to resolve the problem.

You could have the seller do the work, or negotiate a reduction in the price to cover the cost of the work after you have bought the property.

After all, having a title policy dealing with lack of building regulations won't prevent the building falling down or catching fire - but it should cover the costs of dealing with any enforcement action by the local council.

Title insurance would not normally cover the costs of works you decide to do voluntarily to avoid the risk of enforcement action, injury or damage. So, although getting title insurance may allow you to move house more quickly, you might later regret not investigating the problem fully at the start.

Nothing in it for us...

Conveyancers get no commission or payment at all from any of the insurance companies or intermediaries that they arrange title insurance with.

So there is no hidden benefit for us in suggesting title insurance as a way of tackling a problem.

Will the insurance company buy the property off me if there is a problem?

Generally not, they will just pay you the loss in value caused by the problem you insured against. Also, they usually have the right to whether to defend or settle any claim as they think best. They may consider it more cost-effective to settle a claim than get involved in lengthy litigation: especially if your opponent has a good case.

For example, assume that there is an extension built on the property you want to buy, but the extension has been built in breach of a 'restrictive covenant' that the neighbour could enforce. So you take out title insurance against this risk, and proceed to buy the property anyway. Some months or years later the neighbour then threatens court action if you don't demolish the extension. So you notify your title insurance company. The insurance company may try and buy off the neighbour by offering him a substantial amount of money to drop the case and consent to your extension remaining in place.

However the neighbour might be unreasonable, and refuse to drop their case. If the insurance company reluctantly decides that your neighbour has a good case and agrees that your extension should be knocked down, they should then compensate you for the reduction in value to your property on the open market. This may be more or less than the cost of building the extension, or its value to you. On the other hand, the insurer may decide to defend the case in court. If they lose, then you should be compensated for your financial loss if the extension has to be demolished.

It is important to realise that it is generally up to the insurance company to decide how best to deal with claims made under the policy.

Be aware of the policy terms

Not all policies are the same and some have surprising exclusions. We will advise you if there are any unusual terms. Key points to look for are:

- Time limits for making claims. Most insurers require you to notify them as soon as you think there might be a claim, and not wait until you receive formal letters or notices of court action.
- Restrictions on the use of the property or the ability to alter it. Many policies will not cover claims if you make alterations to or change the use of the property.
- Keep it secret. Many policies say you must not disclose the existence of the policy to anyone who might potentially claim against you.
- Policies generally only cover the specific risk you have insured against and not things like fraud or identity theft - but you could get separate insurance against such risks if this is a concern to you.
- If the problem that you have insured against arises, don't try and sort it out yourself - you are likely to invalidate the policy.





Disclosure - it's vital

Like all insurance, it is vital that all relevant information is disclosed to the title insurer before you take out a policy. Insurance law is very strict and failure to disclose any important factors may mean the insurance company can declare the policy void and worthless. In the case of insurance policies issued to consumers, the law has been made a little less harsh recently; but keeping quiet about known issues is false economy. You could find that you have no insurance cover when the insurance company investigates your claim and discovers that there were undisclosed factors or a history of problems that you failed to tell them about.

Some statistics

A leading title insurer has stated:

- Most claims against policies are settled within 6-9 months of the policy holder making a claim.,
- About 10% of claims by policy holders are refused leaving the policy holder to deal with the issue themselves.
- 60-70% of claims made by policy holders on policies arise within the first three years of a title policy being issued, and 95% within 5 years.

You must tell us everything you know about the problem when we arrange insurance so we can pass the information on to the insurance company to consider. For example, the seller's neighbour may have made verbal complaints about the issue, written letters, or objected to a planning permission - we need to know about this. We will ask the seller's conveyancers about such things, but you also need to tell us anything you have learned about the situation from the seller. The same considerations apply if we are arranging insurance for you as the seller. You must tell us everything that might be relevant.



What type of risks can you insure against?

There are dozens of different types of policies but common ones are:

- Lost deeds and title documents
- Restrictive covenants against a particular use, or any building works on the land
- Lack of access rights from the highway or claims by highways authority for maintenance costs
- Failure to get a planning or buildings regulation consent
- Chancel repair liabilities
- Lack of drainage or water easements
- Home Owner's Protection Policy (HOPP) - comprehensive 'all risks' cover. Worth considering, as it includes the growing threat of fraud and identity theft.

To buy or not to buy...

We can use our experience to tell you whether the particular problem identified is the sort of problem is likely to cause difficulties in the future but there can be no guarantees that unlikely events aren't going to happen.

Ultimately, you have to decide whether you are prepared to accept the risk of the problem arising and having to claim under the insurance policy if it does. In most cases insurance companies will settle any claim that might arise, though this will take at least several months to resolve.

However, you have to be prepared to accept the possibility that the insurance company will fail to resolve the problem and that you will have to accept financial compensation normally equalling the reduction in value of your property.

There will be some cases where it is better to get the seller to resolve the problem before you buy: such as problems relating to the fire safety or structural safety of the building. It may be appropriate to seek a price reduction to pay for the cost of any work that might be needed. In the worst case it may even be better to buy another property instead.

