

Indemnity Insurance – what do I need to know?

We are often asked by clients and fellow property professionals about indemnity insurance to cover certain issues that can arise during a property transaction. This note is designed to provide some further information about these policies and in particular “no search indemnity insurance”.

Legal titles can be complex, both freehold and leasehold, and over time certain covenants may be breached, easements extinguished or created, landlords may become absent or indeed planning permission/building regulations may not have been obtained. Due to the potential for benefiting parties to enforce these breaches, and penalties arising, an industry has evolved providing insurance for these issues.

These policies are normally a self issue policy with the premium payable dependent on the value of the property and are subject, as all insurance policies are, to certain standard criteria being fulfilled. For example you would not be able to get a standard policy where a right of way (easement) has been created but not backed up with a statutory declaration attesting to its use.

If you do not have a mortgage lender to satisfy, it is down to you as a buyer having taken the advice of your solicitor as to whether or not you feel prepared to take the risk of enforcement action or if you feel you should insure against it.

If, however, you have a mortgage lender, they have much more stringent rules to satisfy and this can result in your solicitor advising that you have to have such a policy (which may or may not be paid for by the seller) even though you yourself would not consider it necessary to take one out. This is because the solicitor is acting for both you and your lender and owes a duty to both parties.

In the event of any claim, the insurer would in theory cover any financial losses as a result of the action taken. Please be aware the policy will only pay for the difference in value between the property without and with the particular defect. It doesn't mean you will not have to be involved in the enforcement action itself!

Please note – in certain circumstances contacting the benefiting party (for example the local planning authority) will mean you cannot take out a standard policy due to the increased risk to the insurance company.

In West Dorset we are currently experiencing severe delays when it comes to local searches, in some cases upwards of 10-12 weeks as at the time of writing. You may ask what a local search would reveal in any event, and they reveal (amongst other matters):

- If roads and footpaths adjoining the property are publicly maintained
- If there are plans for any major and/or minor road schemes close to or abutting the property.
- A list of planning decisions affecting the property.
- State whether the property is on contaminated land.
- State Is the property situated in a conservation area or a listed building.
- Provide a list of building regulations affecting the property.
- Reveal any enforcement notices for violation of planning permissions against the property.

So as you can see a great deal of important information is revealed and essential to know as a solicitor acting on a purchase when you owe a duty to your client and possibly a lender.

In the same vein as the policies noted above insurance companies also offer what is known as “no search indemnity insurance” or “search delay indemnity insurance” and the fees can be below the cost of the search itself and provides immediate cover.

Therefore, this can be seen as a tempting alternative however there are certain pitfalls you should be aware of when considering such a policy.

If you are purchasing a property that you believe has recently had works carried out it is imperative that you obtain confirmation that works either did not need any statutory consents (planning permission/building regulations/listed building consent/conservation area consent) or if they did that you have had sight of such permissions or consents in order that any conditions are adhered to.

For example planning permission may have been granted for an extension but as part of that permission it provided a condition that no further extensions could be carried out without their consent, thereby limiting permitted development.

Another issue is that of safety. If for example a boiler has recently been installed by the seller who advises that “it complies with building regulations” without that competent persons scheme certification such as a GasSafe certificate you do not know for certain that the boiler is safe. That would be revealed on a local search.

Search delay insurance can be tailored to new builds or existing and will cover scenarios where you have applied for your search but not received the same, and provides cover for any reduction in value of the property or for any financial charges registered against the property, as a result of any adverse entry.

Certain mortgage lenders accept the above policies, but each is different and you can check using the CML Handbook online.

Please bear in mind that if you have the benefit of a policy on which you have to make a claim, you will be dealing with a claim through an insurance company, with the stress and anxiety that can cause.

Each case is specific to its requirements and therefore please seek advice before entering into any agreement with an insurer based on the information above.

For further details on the above or property matters in general please contact Matt Rimmer or any member of the property team at Pengillys

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