

Title Indemnity Insurance - Client Guide

How does it solve problems? | Read the policy | To buy or not to buy..

Insurable risks

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
- Identity theft - this is where a fraudster pretends to be you and sells your home or re-mortgages it without your knowledge.

Fix the problem or insure?

Where the problem relates to the structural stability of a building, gas, safety, electrical or health issues it may be more appropriate to have a suitable technical expert, or consultant, or building surveyor, tell you what needs to be done to resolve the problem.

If you are a buyer, you could then 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.

Title insurance should cover the costs of dealing with any enforcement action by the local council, but cannot be used to pay criminal fines.

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.



How does it solve conveyancing problems?

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, and instead we may suggest title insurance. This might be because everyone wants to move quickly, and resolving the issue might take months. For example, it might be impossible to get to the bottom of the problem because the seller has lost old deeds that could have answered the question. It may be that getting the necessary consents from previous owners or neighbours has been overlooked, and is now difficult or impossible.

Often, in cases like these, title indemnity insurance is one way of dealing with the issue, and unblocking any hold-up on the conveyancing process. Usually lenders and buyers are prepared to lend money or buy properties as long as appropriate title insurance is put in place against the risks we have identified.

Thankfully, claims on title insurance policies are rare, so title insurance is relatively inexpensive to buy. However, 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.

With title insurance, if the potential issue does arise, the insurance company will normally try to resolve the problem first of all. For example, they might negotiate with any neighbour that is raising an objection, and offer them money to settle their claim. If the neighbour accepts this then the problem will be resolved. Similarly, they may pay for getting any planning or other consent that was needed. They may offer to buy any piece of missing land that you thought you owned. They may pay the cost of dealing with notices or legal proceedings served on you requiring you to take action or stop doing something.

If this doesn't work then they 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 you made the claim as soon as you became aware of it, assuming the claim is accepted, and assuming that you have complied with the policy terms and conditions.





Commission and charges

We are allowed to charge for arranging title insurance, but (unlike the normal position where an insurer broker arranges insurance) any commission we receive from the insurer belongs to you.

We will tell you how much we might receive. You can: ask us to set it off against our charges, allow us to keep the commission, or ask us to pay it to you.

Existing Disputes

If there is an existing dispute, the title insurer will be unlikely to offer insurance cover.

Let's assume you know that there is a problem with planning or building regulations, or a restrictive covenant. You may be tempted to contact, for example the local council or the neighbour in question to try and sort it out. However if this fails, you may find that the insurance company may no longer be prepared to give you insurance cover.

This is because once the council or the neighbour know about the problem, they are more likely to take action.

In that case, sometimes it might be better to just buy the insurance and not to raise the issue with the council or the neighbour.

But, if you do this, then the terms of the insurance policy will normally say that you can't then contact the council or neighbour to try and sort out the problem. This is because contacting them might bring about a claim on the policy.

You have to decide what is right for you, but we will try and help you make the right decision.

Will they buy the property off me?

As stated, first of all, the insurance company will generally try and solve the problem. If they can't do this then generally, no, they will not buy the property from you. Instead, the insurance company will pay you the loss in value to your property caused by the problem you insured against. Depending on the extent of the cover under your policy, it might also pay other losses and expenses.

Of course, they always have the right to decide whether to defend or settle any claim as they think best. Rather than get involved in lengthy litigation, they may consider it more cost-effective to accept and settle a claim against you, and then compensate you for the loss in value to your property: especially if your opponent has a good case.

Be aware of the policy terms and conditions

Not all policies are the same and some have important 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 without the insurer's consent.
- 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. Contact the insurer first.

Full disclosure is 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.

If you are the seller then you must tell us everything you know about the problem when we arrange insurance for you, so we can pass the information on to the insurance company to consider. For example, your neighbour may have made verbal complaints about the issue, written letters, or objected to a planning permission - we need to know about this.

If you are the buyer, and we are arranging insurance for you, then 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.

To buy or not to buy...

We can use our experience to tell you whether the particular problem identified is the type of problem that is likely to cause difficulties in the future. However, 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 then having to claim under the insurance policy if it does. If you can't accept this, then it is better to find another property to buy, or see if you can sort out the problem before you buy it.

