



PROPERTY INSURANCE INITIATIVES

Standard Legal Indemnity Risks

a creative and dynamic approach to risk solutions...



Absent Landlord

Cover is required where the property is subject to a covenant to pay ground rent and contains terms which cannot be complied with because the Landlord is missing. Loss can arise where the Insured is compelled to pay any arrears of rent existing at Policy Date should the Landlord reappear.

Adverse Possession

Cover is required where title to an area of Land is not properly vested in the Insured. This is usually small unregistered strips near boundaries, but can include land which is registered to someone else. Loss can arise should the legal owner of the land reclaim it.

Breach of Planning Conditions

Planning permission is required for most structural work undertaken. Unfortunately, especially where the developer has become insolvent, sufficient evidence that all planning conditions have been satisfied may be lacking. The policy protects should the Local Authority take action because planning conditions have been breached.

Breach of Section 106 Agreement

Section 106 agreements are a type of planning obligation designed to ensure a development benefits the wider community. They tend to be separate documents to the planning permission. If a developer of a site becomes insolvent, or does not abide by the agreement, future purchasers may be liable. This policy protects should the council seek to enforce the obligations.

Breach of Section 278 Agreement

Similar to a Section 106 agreement, the 278 refers to an agreement with the council where the developer commits to either pay for, or make alterations or improvements to, the highway. If a developer of a site becomes insolvent, or does not abide by the agreement, future purchasers may be liable. This policy protects should the council seek to enforce the obligations.

Chancel Repair

This refers to an ancient obligation to contribute to the maintenance of the Chancel of the local church. The policy protects against any request for contributions for the upkeep of the Chancel.

Contaminated Land / Environmental

Many new houses are built on 'Brownfield' land. This is land that has previously been used for something else. This land may have previously been used by industry, meaning that it may be contaminated. A search can be carried out to determine if there is suspected contamination. Where no contamination is suspected, the property will receive a Pass.

Alternatively if contamination is suspected a certificate may be withheld, but a warning issued that contamination may be present. This is not a guarantee that contamination is actually present, nor is the issue of a certificate a guarantee that no contamination is at the property.

A Policy can protect against costs arising directly out of a notice of intent to serve a Remediation Notice on the Insured in respect of the Land. There are two main types of policy:

- Contaminated Land - No or 'Passed' Report
- Contaminated Land - 'Failed' or 'Further Action' Report

Where development work is occurring, Environmental Impairment Liability Insurance should be considered.

Contingent Buildings

Properties may lack the ability to enforce covenants which ensure buildings insurance is maintained for the remainder of the building of which the property forms part.

This policy protects against loss arising from one or more of the following:

- Insurance provisions in the lease are absent or defective (because the property and building of which the property forms part are not insured or are under-insured) and you are unable to enforce reinstatement or repair of the property or the building of which the Property forms part;
- The lease does not contain rights enabling/requiring the landlord, management company or owners of the building of which the Property forms part to reinstate the property
- A comprehensive all risks material damage building insurance policy covering the Property and the building of which the Property forms part has been invalidated by the landlord or management company or owner of the building of which the Property forms part
- Planning permission for repair or reinstatement of the Property or building of which the Property forms part cannot be obtained;
- The lease is forfeited because the Property and/or building of which the Property forms part cannot be reinstated with the timescales set out in your lease.

Conservation Area Consent

Certain areas have been granted conservation area status in order to protect their character. Works may have been carried out previously that required consent, but this was never obtained or has been lost. The policy protects against the costs of the local authority taking action because of the lack of consent.

Defective Lease

Leases are complex documents and many contain errors, or terms which were acceptable when they were drafted, but are no longer acceptable to many tenants and lenders. A policy can protect in the following situations:

1. There is no (or inadequate) covenant for the maintenance or repair of the main structure (including the roof and foundations) or common parts; or
2. There is no (or inadequate) mutual enforceability covenant; or
3. There is no (or inadequate) covenant obliging the freeholder to take over the management company's obligations if they are struck off or become insolvent or are not carrying out their obligations; or
4. There is no (or inadequate) right to enter onto an adjoining flat for the purpose of carrying out repairs to the Insured's property; or
5. There is no (or inadequate) rights of support or shelter; or
6. There is no (or inadequate) right of access over common parts.

Easement - Drainage/Service Media/Water Supply

Cover is required where there is no legal grant of a rights to use services under the land, or construct new ones. Loss can occur if the legal owner of the land, under which the services run, tries to prevent it being exercised

Easement - Vehicular and/or Pedestrian Access

Inaccurate mapping can lead to situations where there are gaps between properties and the adopted highway. These properties will usually lack a right to give or walk across what is technically 3rd party land. The policy protects should the owner of this land try to prevent the insured from accessing the property

Exclusive use of roof space

Some properties share a roofspace. This policy will protect the insured if another owner challenges your use of the roof and/or the roofspace.

Flying/Creeping Freehold

Properties, particularly older properties, can often have parts built over or under someone else's property. Usually these will have provisions in the title deeds for necessary rights of support, protection and entry for repairs well as an enforceable scheme of covenants which imposes them on future purchasers. The policy protects properties which lack these and in particular where they are unable to enforce these rights.

Forced Removal/Obstruction of a Right of Way

Old rights of way, or rights granted historically over land can be very hard to extinguish. This means they can still affect properties even if they have been abandoned for many years. As they are historic, some properties are built over these rights of way. This policy will protect the insured from loss arising because the right of way has to be reinstated, which can mean the demolition of part, or all of the property.

Forced Removal/Public Sewer (Mortgage Lender only)

Many properties, particularly since the adoption of private sewers, are built within three metres of or over a public sewer. If the sewer requires repair, the water authority may demolish or damage the property in order to reach the sewer. The policy would protect the owner from loss suffered because of this. This particularly affects extensions and conservatories.

Good Leasehold

Land can be registered with good leasehold title if there is insufficient evidence of the freehold title being produced on registration, for example, where the freeholder is unknown or documents have been lost. The policy protects should someone challenge the title.

Insolvency

A Transfer of land may be subject to the terms of Sections 339-342 of the Insolvency Act 1986 as amended by The Insolvency (No.2) Act 1994. There are three main types of policy which may be obtained:

Insolvency Act - New Transfer (Lender only)

A new transfer is being completed that might be affected by the provisions of the Insolvency Act. This may cause the mortgage or charge on the Property to be rendered invalid and unenforceable

Insolvency Act - Purchase at Value

A third party tries to retake the land, because in the past it was transferred by a previous owner at an undervalue in order to avoid paying their creditors.

Insolvency Act - Gifted Deposit

The mortgage on the Property can be held invalid and unenforceable because the Property was purchased with a gifted deposit which the donor gave in order to avoid creditors.

Lack of Building Regulations / FENSA Certificate / Gas Certificates / Electrical Certificates

Many works carried out to properties require certain approvals. These records are often incomplete or lost. If they were not obtained the local authority may take action and require the property to be reinstated or have extra work carried out to ensure compliance. The policy protects against costs associated with this.

Lack of Planning Permission

Planning permission may be required for some alterations to property. This can easily become lost as records are often incomplete. The policy would protect against loss should the local authority take enforcement action due to alterations made to the property without planning permission

Lack of Planning Permission - Localism Act Enforcement - Concealment Risk

Section 124 of the Localism Act 2011 introduced new legislation allowing local authorities to enforce breaches of planning permission outside of the usual limitation periods if the changes had been deliberately concealed. Unfortunately, deliberate concealment has not been defined, so the law is unclear. This policy protects the insured if the local authority attempt to take enforcement action outside the usual limitation periods under this legislation.

Limited / No Title Guarantee

It is normal practice for the seller to provide covenants for title by selling with full title guarantee. This allows the buyer to sue the seller for breach of the title guarantee. The seller will normally give full title guarantee, unless the seller is a trustee, personal representative or mortgagee, in which case they will sell the property with limited title guarantee. A liquidator selling a property, or a seller who cannot prove good title to his property, may sell with no title guarantee. This means there is no ability for the buyer to sue the seller.

This policy essentially has the insurer give the guarantees, so should they be breached, the insurer will compensate the insured for loss rather than the seller.

Listed Building Consent (Mortgage Lender Only)

Some properties are of special architectural or historic interest. This can lead to them becoming listed by the local authority. It is illegal to carry out works to a listed building without consent from the local authority. Past works may lack the proper approvals, or the approval may have been lost. If the local authority takes action to undo the works (because approval was never obtained), the policy protects against the associated costs.

No Local Authority Search / Search Validation

When buying a property, it is typical to carry out searches. These are usually the Form LLC1 and Forms CON29R/29DW/29M (although other searches can be carried out as well). These will give a detailed overview of the property and flag issues which the seller may be unaware of, or failed to disclose.

Many of these searches, however, take a long time to return. In order to prevent the transaction occurring, search insurance may be taken out to protect against loss that would have been revealed by the search.

Insurance can also be obtained where the searches are older than three months. Preventing further delays.

Lost Title Deed(s)

In some cases, all or some title deeds can be missing or have been destroyed. This policy protects should someone challenge your ownership of the land.

Maisonette/Flat Indemnity

Policy protects against loss because the lease of the Property contains no or ineffective covenants, rights, provisions and/or arrangements:-

1. for the maintenance and repair of the main structure of the building, foundations, main walls, roof, common parts, common services and/or grounds
2. enabling you, the landlord and/or management company to enforce covenants against other tenants and/or to contribute towards maintenance or repair
3. requiring the landlord to take over the responsibilities of the management company where the management company becomes insolvent or is struck off or is not conducting its duties
4. to enter an adjoining Property to carry out repairs to the Property
5. for support, shelter and protection of the Property
6. for access over the common parts
7. to ensure all leases of other flats in the building are in, or will be granted in, substantially similar form.

Manorial Rights

Manorial rights are certain rights which were retained by lords of the manor in England and Wales when land became freehold in the early 20th century. They can include rights to mines and some minerals, sporting rights such as hunting, shooting and fishing, and rights to hold fairs and markets.

In the past such rights were not required to be detailed on the register of title, but they remained overriding in that they bound the owner of the affected land even though they may not have known about the rights. Changes made through the Land Registration Act 2002 required that they be registered and removed their overriding status. This Act specified a deadline (October 2013) by which such rights should be registered to ensure they could not be lost. As this deadline has now passed, any future purchaser will buy free of these rights. However, many Lords of the Manor have already registered these interests, meaning land will be still be affected by them.

Mines and Minerals is the exception to this, in that, because they are excepted and not overriding, they will continue to affect future purchasers regardless of registration.

The policy protects should someone seek to enforce their historical manorial rights over the property

Mines and Minerals

In the past it was considered that an owner of land owned everything 'under the sky down to the centre of the earth'. This has been amended to allow for aircraft, but still holds true for what is beneath the soil. This is a rebuttable presumption and land is often sold with the mines and minerals excepted from the title.

The risk with such a reservation is that if any development occurs on the land, the minerals owner may claim that the foundations have caused a trespass and interfered with their minerals.

For the developer, there are several possible losses to consider:

- an injunction may be granted in order to prevent a trespass into the mineral strata.
- substantial damages may have to be paid where a trespass has occurred.
- the owner of the mineral title could seek compensation payment. This is derived from the rule in *Stokes v. Cambridge* and can be as much as 33% of the developers profit.

Plot purchasers may also be concerned about the risk of the minerals being worked in the future and possible subsidence. This can drive down the value of potential plot sales, even if there is no ability in the registration to actually work the minerals.

Missing Deed

Over time, many deeds and documents relating to the land may become lost. These can often contain covenants or rights, but without the original document, it can be impossible to tell whether they still have any effect. This policy protects against a third party attempting to enforce any covenants, rights and/or easements contained in that deed.

NHBC and other Building Standards Schemes - (Lender only)

Lack of evidence of valid NHBC or other building standards indemnity scheme acceptable to a lender can cause problems with getting a mortgage on the land. The policy will protect the insured from loss in the event you exercise your rights under your mortgage or charge, directly attributable to the absence of evidence of an acceptable Building Standards Indemnity Scheme for the construction or conversion of the Property.

Outstanding Land Charge

Cover is required where the land is subject to outstanding Land Charge. These are usually C (i), (iii) or (iv). Should a third party attempt to enforce the Land Charge, the insured may suffer loss. The most common example is the enforcement of a right of pre-emption under a C (iv) Estate Contract.

Overhang

Some properties may overhang land which you do not own. The policy protects against loss should the owner of the land seek to have the overhanging area removed.

Overhang - Lack of Section 177 Licence

If a property overhangs the adopted highway, it requires a Section 177 Licence. These can be easily lost, or the property may have been constructed before the highway was adopted. The policy will protect against any enforcement action brought by the local authority because there is no valid licence.

Prescriptive Rights

If a third party exercises a right over your land without permission for 20 years, they can acquire an easement under the Prescription Act 1832. If this right is upheld, it will permanently affect the land. The policy protects the insured from any loss arising from these prescriptive right.

Possessory Title

If deeds have been lost, or the land has been acquired by adverse possession, the land will likely only be registered with possessory title. This title can be challenged if a third party can show a greater claim to ownership.

Rights to Park

The status of a right to park as an easement is debatable. The freeholder could in the future withdraw that right, particularly if there is a change in freeholder since the right was granted in the lease. The policy would protect in instances where this right was withdrawn, or the prescriptive easement is held to be invalid.

Rights of Reverter

The School Sites Acts of 1841, 1844, 1849 and 1852 were enacted to encourage large landowners to donate land for public or charitable purposes, such as for schools or places of worship. The Acts allowed for the sites to revert to the donor, if the land ceased to be required or used for the relevant purpose. The policy protects the insured from loss arising from this being enforced.

Rights of Turbary

This is a right to cut peat from the earth for fuel and can affect areas of bogland. It is particularly prevalent in Ireland and Scotland. The policy protects against anyone attempting to enforce their right of Turbary over the land.

Riparian, Water and Fishing Rights

Riparian rights are rights that include extracting reasonable amounts of water for domestic purposes, fishing and protecting the land from flooding and erosion. This is granted to the owners of land which adjoins non-tidal flowing water. It also grants ownership up to the centre of the watercourse. These rights can be sold on or leased, which can affect the value of the land. The policy protects against any loss of value if third parties claim the benefit of the rights.

Rent Charge

Rent charges were created in order to free up land for development. The original landowner/estate would be entitled to collect rent on this land, despite it not being leasehold. Many of these still exist, but the owner is often unknown. The policy protects should anyone attempt to claim unpaid rent.

Restrictive Covenant

A restrictive covenant is a promise not to do something on land for the benefit of other land. They are usually imposed to regulate the use of land being sold. They are extremely common and can date back many years. A breach of covenant can lead to injunctive relief and damages. The policy protects against this and any loss in value due to the covenant being found to be enforceable.

Title Subject to a Lease

Freehold titles can be subject to a possible prior interest arising from a lease. Loss can occur if the lessee attempts to re-enter or occupy the property under the terms of the lease. The policy protects against this claim. It is often the case that the original lease is missing.

Title Subject to a Leasehold Enlargement

This is the process by which the tenant's leasehold is transformed, or "enlarged", into a freehold. The tenant "ousts" his landlord, and becomes the freeholder.

Cover is typically required if the original lease has been lost, mislaid or destroyed. The insured is protected from loss sustained because the owner of a superior interest attempts to take back the land when the lease expires or attempts to enforce any provision within the lease.

Title Subject To Reserved Rights

Land may have had rights granted over it to a third party. Many of these have been abandoned. The policy protects should a third party try to enforce their rights over your land.

Unknown Freehold Restrictive Covenants

Properties can be affected by covenants, but often, details of the covenants and the document which imposes them may be lost. This policy protects should anyone try and enforce these unknown covenants.

Visibility Splay

When developing land, often a new access needs to be created. Frequently this involves the creation of a visibility splay. Boundaries can be uncertain, so these splays often require the use of unregistered land of which no owner can be found. The policy protects the insured if the owner of the land prevents them from constructing and using the visibility splay.



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