Guide to: Indemnity Insurance Policies

Indemnity insurance is often used in property transactions to protect a property owner, tenant, or lender against actual or perceived title defects.

Defects are discovered by checking the title and search results carried out as part of the standard conveyancing procedure. The purpose of a policy is to cover the following costs and expenses:

- the costs involved in defending any claims to enforce the defect;
- the cost of remedying the defect in the event of enforcement action being taken; and
- any loss in the value of a property due to the enforcement action.

Why should I go for indemnity insurance?

Obtaining an indemnity insurance policy is usually a quicker and more cost-effective solution than remedying the legal defect. Many conveyancing transactions are time sensitive, therefore sellers and buyers often go down the route of obtaining an indemnity insurance policy rather than carrying out the remediation works to move forward to completion. However, it is worth remembering that insurance does not actually remedy the defect and simply provides financial payment if the defect results in a loss.

What types of indemnity insurance policies are available?

There are many policies available, including bespoke policies which the insurer will specifically tailor to your requirements. Some of the more common types of policy are considered below:

- **Contaminated Land** – where any part of a property is designated as contaminated land under the Environmental Protection Act 1990 and the local authority decide to take enforcement action, the indemnity policy will cover the costs of complying with the enforcement action and any remediation costs.
- **Defective Title/ Restrictive Covenant** – a title to a property can be considered defective, where a third party could enforce an adverse interest. A policy would cover the costs of any legal proceedings, damages awarded by a Court and any reduction in the market value of the property due to the enforcement action.
- **Lack of Building Regulations/ Lack of Planning Permission** - where alterations have been made without obtaining local authority or building control approval, the indemnity policy will cover the costs associated with local authority enforcement action, including the expense of demolishing, altering, or reinstating any part of the property to comply with the appropriate regulations. The policy will not cover defective works when no enforcement action is taken, and so it is important to obtain a full survey where there are concerns about defective works.
- **No Searches** – where searches are not obtained on the purchase or mortgage of a property, the indemnity policy would cover the cost of remedying or removing any adverse entries which would have been revealed if searches had been obtained and where such entries result in loss. This is more commonly used to protect lenders on a mortgage or refinance transaction.

What are the key matters to consider when obtaining indemnity insurance?

- The existence of the defect or the policy must not be disclosed to a third party, other than to genuine potential purchasers, lenders, and their legal advisors. This includes not making any investigations or enquiries in respect of the defect, as this will be perceived as 'tipping off' parties, as they will become aware of the risk, and this will invalidate the insurance policy or prevent cover from being available.
- The potential use of a property can affect the validity and/ or cost of a policy, therefore, it is important to notify the insurance provider of any recent or proposed works.
- Indemnity policies include a list of assumptions, and these are statements upon which the policy is based. For the indemnity policy to be valid, the assumptions must always be correct and so these should be considered carefully.
- If an existing indemnity policy is provided by a seller, then it is important to check any correspondence with the insurer, which could affect the terms of the policy and therefore, the validity. Enquiries should also be made into whether the policy has been subject to any claims.
- Read the whole policy! The terms of each indemnity policy will differ; consequently, it is very important to understand which risks the policy will be covering, and which risks are excluded. This will establish the weight of the risk involved and any potential future costs you may be liable for. As with all insurance policies, payment in the event of a claim is subject to the policy terms and conditions.

What is the average cost of an indemnity insurance policy?

There is no set cost for indemnity insurance policies and generally the cost widely differs depending on the type of risk to be covered, the likelihood of a claim and the value of the property.

Policies attract a one-off payment and generally, the benefit will pass onto subsequent owners of the property.

A key point to remember, is that the value of a property will increase over time, and as a result, the policy limit may need to be increased to ensure the level of cover is sufficient. The insurer will charge a fee in respect of any amendments to the policy.

Which party pays for an indemnity policy?

Generally, the cost of an indemnity policy is borne by the seller, as typically the defect in the property will be because of the actions of the seller or their predecessor. At times, sellers will refuse to pay for an indemnity policy because either they believe it is not necessary or they simply do not wish to pay.

In such a situation, if there is a lender involved, the buyer will need to pay for the policy to proceed to completion. Alternatively, the buyer will need to weigh up the risks of proceeding without the policy and whether it is more beneficial for them to pay for the policy themselves or to withdraw from the transaction.

Conclusion

Indemnity insurance will not make up for the worry of a claim being made but should – subject to its terms and conditions – provide a cost-effective method of dealing with a title defect. It is extremely important to read through all the terms and conditions to ensure that the policy is valid, and cover is sufficient. It is also essential to ensure that the assumptions upon which the policy is based are accurate and valid. In doing so, the risk of the indemnity policy being invalid in the event you wish to make a claim to the insurance provider is reduced.

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