



## [Conveyancing Marketing Services Ltd](#)

### **What is legal indemnity insurance?**

**Legal indemnity insurance** is obtained in order to offer protection to a buyer (and a lender) where there is a defect in the title which cannot be resolved. In theory **legal indemnity insurance** should only be used as a last resort, however in practice it often provides a quick and low cost alternative to the work required to correct a defect (varying a lease for example will usually cost several hundred pounds in legal fees and will take several weeks).

Unlike a conventional insurance policy the premium for a legal indemnity insurance policy is paid only once, and in most cases is automatically transferred to successors in title and lasts for the life of the property, save that the limit of the cover will be the purchase price of the property and since the indemnity policy will not be index linked, a premium will usually need to be paid by the insured when they come to sell to increase the limit of cover (assuming that the property is sold for a profit).

It should be remembered, and be pointed out to clients, that legal indemnity insurance does not remedy the insured defect, but merely offers financial compensation. You should also check each policy individually to see what actions might invalidate the cover. For all legal indemnity policies however, it is a condition that their existence must not be revealed to third parties.

### **How much will a legal indemnity insurance policy cost?**

The premiums for legal indemnity insurance policies are charged on a sliding scale, depending on the value of the property, and they also vary depending on the risk insured. The cost will range from as little as £20 to as much as £300, or occasionally more for a non-standard policy. In addition some firms will charge a fee for arranging the cover.

### **What will a legal indemnity insurance policy cover?**

The answer to this question depends on the particular risk you are intending to insure, but basically indemnity insurance covers loss of value to the property and legal costs. How is an indemnity insurance policy arranged? Indemnity policies are arranged either online or via the post, depending on the insurer, though to arrange policies online you will need to have an account with the insurance company, so for individuals dealing with their own conveyancing it would have to be done through the post. Alternatively, you might ask the seller/buyer (assuming he has legal representation) to arrange the cover and agree to add the premium to, or deduct it from, the purchase price, as appropriate.

### **What risks can be covered by Legal Indemnity Insurance?**

Most title defects, along some other issues, can be covered by indemnity insurance. What follows is a list of the more common types of policy, together with a brief description.

**Absence of Easement Indemnity Insurance (Lack of Rights)** This policy is used where some part of the property is accessed over private land (as opposed to a public highway or public footpath) but there is no legal right to do so, or where the property is served by services (drains, cables etc) which are private or cross private land. When supported by a statutory declaration it is a requirement that the right has been exercised unchallenged for at least 12 months. Without a declaration it must have been exercised for 5 years or more. It will provide compensation for any financial losses suffered in the event that the use of the right is challenged. This would include legal costs in defending the challenge and loss of value to the property in the event that the challenge is successful.

**Adverse Possession Indemnity Insurance** Adverse possession means that the owner of the property has only possessory title. This means that they have claimed ownership of some land but did not have necessary evidence to satisfy the land registry that they were the true owners. To receive possessory title they must have occupied the land for at least the last 12 years but until a further 12 years have elapsed it is possible someone with a better claim could take the land from them. This is why indemnity insurance is necessary for anyone purchasing the land. It will cover the purchaser against any financial losses suffered in the event that someone attempts to claim the land from them, including the costs involved in defending a claim.

### **Flying Freehold Indemnity Insurance**

A flying freehold occurs where part of one property overhangs a neighbouring property. A common example is where there is a passageway at ground floor level between properties which is owned by property A and the first floor of property B extends over the passageway. Property B should have a right to be supported by

property A, a right to enter property A to carry out repairs and should have the benefit of a covenant by property A to maintain the land below the flying freehold so as to ensure support. If these rights and covenants are not in place the title to property B is deemed defective and indemnity insurance can be obtained to protect against loss in the event that, for example, property B is not adequately supported.

It will be a condition of cover that the valuer has made no adverse comments as to the condition of the part of the property which is subject to the flying freehold or the land below. Good Leasehold Title Indemnity Insurance A property will be registered with good leasehold title if sufficient evidence of the superior title (and therefore the landlord's right to grant the lease) has not been produced to the land registry. If no such evidence can be found then indemnity insurance is required to offer compensation in the event that the landlord's claim to the superior title is successfully challenged and that person then goes on to challenge the legality of the lease. If the challenge were to be successful the compensation would cover the full market value of the property (up to limit of indemnity) and if it were not, it would cover any legal costs involved in defending the challenge. The cover will be conditional on no challenge having been made at the time the indemnity policy is taken out.

### **Lack of Planning Permission/Building Regulations Approval Legal Indemnity Insurance**

Indemnity insurance can be obtained where a property has been built, altered or extended without the benefit of planning permission and/or building regulations approval. As a rule an insurer will provide cover only for work that was carried out at least 12 months ago (or four years in the case of the construction of a new property).

The policy would cover financial losses suffered by the owner of the property (or his mortgagee) in the event that the local authority took action for breach of planning or building regulations. The losses covered would include legal costs and also invoices for any work ordered to be carried out. Alternative accommodation costs and loss of earning through time taken of work to deal with the problem would not necessarily be covered. For the policy to remain valid it is vital that the following conditions are met:-

- The local authority must not have been given notice of the works prior to the inception of the cover, and neither the owner, the mortgagee nor anyone acting on their behalf must give the local authority notice following the policy start date.
- The work must have been carried out at least 12 months ago (4 years in the case of a newly built property where

the cover is for its construction) •The property must have been used as a residential dwelling for the last 12 months and must continue to be so used. •In the case of building regulations cover, a survey or valuation report must have been carried out and must not make any adverse comments in respect of the work to be insured

The legal indemnity insurance does not provide cover for works carried out of the owner's own free will because he discovers that the standard of work which is insured is not sufficient, and any attempt to get the local authority involved in the hope that they will take action would invalidate the policy.

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