

What is a title indemnity policy?



The title of a property will usually be investigated when the property is either being sold or leased out. The buyer or prospective tenant under a lease will want to establish whether the seller is legally able to transfer the title to the property that the seller has contracted to sell and that there are no defects in that title that would adversely affect the buyer's interests.

A seller or landlord needs to establish whether there are any title defects which need to be resolved or disclosed to the buyer.

A lender taking security over the property needs to establish that there are no defects in title that might adversely affect the value of the property or the ability of the lender to sell the property to realise its security.

What is a title defect?

A title defect is an aspect that is missing, or negatively affects the land. Examples of common defects include:

- Not being able to provide sufficient planning permission or building regulations consent for the property, for example, lack of a Completion Certificate
- Title documents not being made available where these may contain covenants or easements affecting the property
- Easements or rights benefiting the property which are not in the title for the property, for example absence of rights of way, lack of rights to use utilities or no right to enter onto land owned by a third party to repair utilities serving the property
- A title condition which has been breached, for instance if the property is subject to a restrictive covenant preventing a specified use, or preventing development which has been carried out on the property.

A title indemnity policy also known as legal indemnity cover may be available in respect of a title defect to protect the owner of the property from loss which might arise from the defect, for example, reduction in value of the property or paying compensation or damages.

What does title indemnity cover do?

A title indemnity policy will not remedy the title defect – instead it provides financial compensation in the event of the defect causing actual loss, subject to the limit of indemnity stated on the policy. This amount is usually the value of the property in question, the amount of the mortgage being obtained, or the gross development value of a site that is to be developed.

What is needed to put a title policy in place?

Where a title indemnity policy is required it is not uncommon for the insurer to require replies from the property owner to a number of enquiries relating to the defect that has been identified and for certain documents to be provided as evidence to assist in assessing the risk posed by the defect. For example, the seller may be required to provide planning documents, a statutory declaration confirming the use of the property or land over which rights are exercised, and copies of the titles affected by the defect.

If you are buying or selling a property and you believe that there is a title defect, or if you would like assistance with any other land or property transaction please do not hesitate to contact our Real Estate department who will be happy to help. Either visit <https://www.herrington-carmichael.com/contact/>, email your query to realestate@herrington-carmichael.com or call 01276 686222.



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