

# Indemnity insurance in conveyancing explained

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. Indemnity insurance is often used as a quick, cost-effective alternative to the work required to correct a defect. It is not suitable for all defects.

The premium for a legal indemnity insurance policy is paid only once, and in most cases is automatically transferred to successors in title. You will likely have to top up the policy when you come to sell; if the property is sold for more than the price you paid for it.

Indemnity insurance will not remedy the defect but instead it may provide financial compensation should a claim be made in the future. In the case of planning permission and building regulation policies you should be aware that they will not protect you against works that have not been carried out correctly.

You should satisfy yourself that the policy is fit for purpose and read through the conditions. All policies will have a condition that the policy (and associated works, if any) must not be disclosed to third parties, otherwise the policy will be invalid.

It is often the case that a seller will pay the premium for an indemnity insurance policy but this is not always agreed in practice. Often there will be a negotiation about who pays the premium or if the premium is to be split between the buyer and seller.

## Most common indemnity policies

**Restrictive Covenant indemnity insurance** – some properties come with conditions within the deeds that limit the use of the property in some way or determines what an owner can or cannot do with the property. These are known as restrictive covenants and often include restrictions against building or extending the property. If the seller has already breached a covenant, an indemnity insurance policy can be taken out. It will provide a degree of protection if the breach causes problems in the future.

If the breach of covenant has existed continuously for over 20 years, an indemnity policy may not be necessary.

**Planning permission indemnity insurance** – if an owner has made alterations to (or extended) the property without obtaining planning permission, an indemnity policy can be taken out. This would cover the risk of the local authority taking enforcement action over the work. Please note this will not be suitable for work done on a listed building without planning permission as there is no time limit for enforcement action.

**Lack of Building Regulations indemnity policy** – this is where building regulation certificates are missing, or never issued, for work done at the property. If this is the case, we would also recommend (if you are buying) that you have a survey done and you tell the surveyor about the issue (if structural work was done) and ask them to make sure the building work is structurally safe.

This policy will also cover lack of building regulations for other works such as the installation of a boiler where there is no certificate available from Gas Safe. You should however, make sure that a recent gas safety check has been done on the boiler and obtain a certificate. Indemnity insurance will not cover the cost of repairing or replacing the boiler.

If you are missing FENSA certificates for windows (or doors with glass) then the policy will also protect against losses if the local authority take enforcement action because the installation does not comply with building regulations.

**Chancel repair indemnity insurance** – this type of policy is purchased during the conveyancing process (usually by the buyer) and protects them from any future claims to repair the local church. Chancel repair liability is a legal obligation on some property owners in England and Wales to pay for certain repairs to the local parish church.

**Absence of Easement indemnity insurance** – this is where you have to cross land (or you have pipes or other services running across land) which does not belong to you. If the necessary easements or right of way has not been granted then indemnity insurance can offer protection if the lack of easement is later challenged.

For at least 12 months before the policy is put on risk, the right must have been exercised unchallenged. It may also be necessary to have a statutory declaration or statement of truth signed by the seller which confirms the position throughout the period of ownership.

**Unknown Easements, Rights and Covenants (or missing document) indemnity insurance** – this indemnity policy might be used where there are documents which are unknown and missing or which are known to contain conditions which affect the title but the documents themselves, or details of their contents, cannot be produced. An indemnity policy cannot prevent enforcement of covenants but it can provide financial compensation.