

Title Insurance

MAKING CONVEYANCING SIMPLER

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The Government’s stated intention to develop eConveyancing as a means of streamlining property transactions has served to ramp up the pressure on all parts of the service chain to make the home buying and selling process more transparent, more secure and certainly faster.

Title insurance offers an immediate solution to today’s slow, stressful process but despite the fact that it has been available in Ireland for over 10 years, it is a product that is at best vaguely understood and more often received with blank stares – particularly from the customer. What is title insurance? Who is insured? Why is it appropriate? What are the benefits?

What is title insurance?

In simple terms, title insurance protects the lender and/or borrower against loss arising from disputes over the ownership or legal title of a property, and normally eliminates the need for a solicitor to carry out some aspects of the house buying or remortgage process.

While title insurance offers security to the lender and borrower, it can also contribute to a dramatic reduction in time to completion. Naturally the benefits of a speedier turnaround for

the borrower are clear - but for the lender, title insurance has introduced improved efficiency and profitability by reducing acquisition costs due to a lower rate of drop-outs, increased earnings as mortgages are advanced faster, and generally increased the level of borrower satisfaction.

What types of title problems occur?

These are many and varied and include problems like:

- undocumented rights of access to your property
- breaches of restrictive covenants
- buildings constructed without the appropriate planning consent
- failure to obtain necessary building regulations approvals
- transfers of property at undervalue
- lack of documented title (e.g. where a house has been passed down through generations)

Title problems can lay undiscovered or “inactive” for years – particularly on older properties – and then rear their head when the property is subject to the conveyancing process, be it a remortgage or the sale of the property. The discovery of such problems can affect an owner’s or potential purchaser’s ability to raise a mortgage

on the property or cast a shadow in the mind of a purchaser over whether to proceed at all.

Take a home that is situated on an unadopted country lane. The Council has lost the map from 1835 that determines whether the lane has rights of vehicular access to the house. When it comes to the crunch, the lender is not prepared to advance the mortgage. What’s more, there is a concern about the effect on the value of the property if its rights of access are denied. No matter how good the solicitor, they can’t resolve this situation!

Defective Title Indemnity Policy

In this instance, Defective Title Indemnity Insurance comes in to play. If the problem is “inactive”, (meaning there is potential for a problem should the map ever be found and vehicle access denied), then a Defective Title Indemnity policy will act as a fast, effective “Band Aid” using insurance to repair the problem with the property’s title. If in the future the problem becomes “active” - the Council finds the map and discovers the homeowner can no longer gain vehicle access to the house - then the policy will reimburse the owner for any resulting drop in value of the property. If it becomes

worthless as a result, then this money is used to repay the outstanding balance on the mortgage and recover the “lost equity” in the property.

Defective Title Indemnity might cover known unknowns and known knowns, but as Donald Rumsfeld said in February 2002 on the hunt for Iraq’s alleged weapons of mass destruction: “... as we know, there are known knowns; there are things we know we know. We also know there are known unknowns; that is to say we know there are some things we do not know. But there are also unknown unknowns - the ones we don’t know we don’t know.”

To put that into plain English, what happens if the title defect was “active” and discoverable at the time of the conveyance but not found? Assuming a stomach for a fight, plenty of free time plus funds to support litigation, the homeowner could try to sue the solicitor concerned to recover the loss of value in property under the solicitor’s professional indemnity insurance policy.

However, a professional indemnity claim can take years to reach settlement and there is no guarantee of success. In this circumstance, an “Owners’ All Inclusive policy” would help rectify the problem.

Owners’ All Inclusive Policy

This policy quite simply provides cover for problems that existed but which the conveyancing solicitor could not have discovered – in other words, the unknown unknowns.

Take the example of a boundary dispute: the conveyancing solicitor is

only required to investigate the title of the property being purchased or mortgaged.

However, it may be that the title deeds of neighbouring properties are inconsistent with the deeds of this particular property and this only comes to light further down the line - potentially years after the conveyance has been completed. If such a problem arises and results in a loss of value of the property, without an Owner’s All Inclusive policy the owner suffers the loss. The solicitor has done their job properly as they could not have been expected to discover the problem, and the owner has no right to redress.

If a property is covered by an Owners’ All Inclusive policy and an “active” title problem is discovered, the title insurer will fund the investigation of the problem. If rectification is not possible, the title insurer will reimburse the property owner for the loss of value suffered as a result of that title problem.

Lenders’ All Inclusive Policy

For lenders, the problems of a defective title usually only come to light when a borrower stops making mortgage payments and the lender commences possession proceedings. At this stage the discovery of a title problem can reduce the property’s value and the lender is left with insufficient funds to cover the outstanding balance on the mortgage. Depending on whether the problem was discoverable or undiscoverable at the time of advancing the mortgage, the lender may be able to sue the solicitor or surveyor – another time consuming and an uncertain

process – and this is where the Lender’s All Inclusive policy comes into play.

However, the cover provided here goes beyond purely legal title problems. This policy guarantees to a lender that a mortgage is:

- valid
- enforceable
- secured on a good and marketable title
- in the correct priority

Fraud also comes under the umbrella of this policy. Consider the situation where the second signatory to a joint mortgage application claims their signature is a forgery, potentially rendering the mortgage unenforceable. A lender may pursue the fraudulent borrower, but they are normally “men of straw” and recovery is highly unlikely. However, this could give rise to a valid claim under a Lenders’ All Inclusive policy resulting in the lender’s outstanding mortgage being repaid.

Streamlining the process

But perhaps the greatest benefit of this policy is the contribution it can make to streamline the conveyancing process – particularly when combined with a panel management solution – and dramatically reduce the time from offer to completion. This has been felt most in the re-mortgage arena, cutting the turnaround time from weeks to just DAYS. Accelerating the process reduces cancellations - cutting out hours of wasted work - and results in the intermediary receiving their fee more quickly and the consumer getting the key to the door or money in the bank faster. A win-win situation for all. ■