



# REAL ESTATE LEGAL INDEMNITY INSURANCE

See risk in a different light

Many of the frustrations that emanate within a property transaction, refinancing or development can be insured. Gallagher's Legal Indemnity team help deliver competitive and bespoke domestic or global insurance solutions to mitigate risk, allowing for smooth transactions.

The function of Legal Indemnity insurance is to protect against the risk of third party claims arising from a legal defect or challenge to the ownership or development of assets. These risks are usually discovered during the due diligence process and need comprehensive personalised policies that provide solutions in short timeframes.

## Title Defects

- Restrictive covenants
- Easements:
  - Property rights burdening / over the property e.g. rights of light / mines and minerals rights
  - Property rights benefitting the property e.g. lack of right of way
- Possessory title / adverse possession
- Transfer at an undervalue

## Planning Defects

- Lack of discharge of Section 106 – these requirements pass to future owners and purchasers. If a requirement is still due or where a requirement has been met, evidence of this discharge may be missing and insurance can mitigate this risk
- Lack of Section 104 agreement – Where a property is near or on a sewer, an agreement must be in place with the water authority if there is an issue with the sewer. Insurance can provide a solution if there is no recorded agreement or where the landlord must fund the increased costs associated with the repair
- Lack of planning permission or building regulations

## Lack of or Missing Share Title

In a corporate transaction, missing share title certificates can cause uncertainty about the ownership of the SPV. Insurance can protect against:

- A third party claiming ownership
- The shares not being free from a mortgage / charge / encumbrance
- The seller not having the right to transfer ownership

## Other Defects

- Lease defects – missing particulars, rent, access and repair, insurance provisions
- Judicial Review
- Search indemnities

## Rights of Light

Insurance can be provided when a development infringes the light of neighbouring properties. Policies can be structured in a number of ways:

- Agreed Conduct - policy allows the approach of neighbours to negotiate a settlement to extinguish their rights to light
- Wait and See - affected properties are not approached to negotiate a settlement
- Combination of Agreed Conduct and Wait and See
- Known Risks - if there has been a challenge to the development regarding rights of light, cover may still be available

## Portfolio Title Insurance

We can arrange cover for all unknown risks that property titles may be subject to. This is particularly useful when acquiring or refinancing a large portfolio, often with multiple title deeds and plans. Insurers will accept a sample of due diligence (sometimes none at all or they can undertake their own diligence). Cover can then be provided for identified issues.

## What is covered?

The majority of policies can cover the following\*:



Court costs and out of court settlements



Loss in the market value of the property



Defence costs, legal fees and other expenses



Abortive costs of works and alteration, demolition and reinstatement of a property



Professional fees associated with the above

## Additional covers include:



### Delay costs

The costs associated with the suspension of works pending a court order or resolution of a claim



### Business interruption

Loss of rental income and service charges in the event of an injunction



### Re-location costs

Costs of relocating tenants in the event of an injunction or court order pending resolution



### Interest on loans or fees associated with early termination

Where financing is in place, fees and interest can mount up particularly if there are delays



### Service provider costs

Utilities and other services can be covered by the insurer if there is a delay in a development due to the defect

## Benefits of Legal Indemnity insurance\*

Legal Indemnity insurance can assist with ensuring that a transaction, development or refinancing proceeds by providing comfort that there is recourse against a financially stable insurance company in the event that a claimant comes forward. This enables lenders, purchasers and tenants to mitigate the risks associated with the ownership and use of an asset with a timely and cost effective solution.

Applying to the relevant authorities to eradicate these risks can take a long time and halt a transaction, particularly in a bidding situation. Indemnity insurance can be implemented very quickly, allowing the acquisition / disposal to proceed.

\* Limits and exclusions may apply, please see policy wording for full terms and conditions.

## Why Gallagher?

Gallagher's Legal Indemnity team are experienced with working to tight timescales, delivering complex transactions and developments. Our clients include law firms, property owners and developers. The team understand the complex nature and the significant impact on the future value of a property associated with these risks. Our experience enables us to provide advice and comment on the availability of products, coverage and premium rates to assist you quickly and thoroughly without any unnecessary delay.

The Legal Indemnity team form part of Gallagher's Real Estate division and we have capability across all types of property and transactional insurance, from Property Portfolio insurance to Warranty and Indemnity insurance.

If you would like to discuss any of the above further then please contact:

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