

Indemnity for Portfolio Transactions...



Portfolio 'Good & Marketable Title' Insurance and search indemnity can be a useful tool, streamlining the due diligence process, reducing costs and speeding up the acquisition, disposal or refinancing of multiple assets.

Established in 1988, Mason Owen Financial Services (MOFS) was one of the first 30 brokers in the country to be awarded "Chartered" status by the CII (Chartered Insurance Institute). We continue to retain this title and therefore place a great deal of emphasis on providing the best quality advice.

Our ownership is independent from the insurers with whom we trade, so you can rest assured that as we act as the agent of the client, when we recommend an insurer, we will always put your needs first.

At MOFS we have a team of brokers specifically dealing with legal indemnity enquiries, one of the largest teams in the UK dealing with this niche area of business. Our team includes two property solicitors each with over twenty years' experience and a number of former underwriters.

Testament to our service is that we work with individuals from around 60% of the top 100 UK law firms, a number of the national housebuilders, developers and lenders.

We provide a comprehensive title indemnity insurance procurement service which assists the legal representative in ensuring compliance with FCA rules whilst providing the

most suitable terms for the client.

Our years of experience in this niche area of business and the amount of premium we place in the market, along with the relationships we have with the main insurers, gives us flexibility of terms and competitive premiums - benefits we can then pass onto our clients.

Portfolio Insurance is one such area of expertise and the following information helps explain its use and the process for obtaining cover.

Good & Marketable Title & Lack of Search

Policies of this nature provide protection against unknown title risks and unexpected third party challenges to title and legal ownership issues.

The policies can significantly speed up the disposal, acquisition or re-finance of multiple property assets, and are particularly useful for sizeable portfolios where full due diligence cannot be undertaken due to time restrictions, lack of seller information (for example in the case of distressed assets), excessive workload or simply to keep



costs down.

The use of 'Good and Marketable Title' indemnity policies to aid property portfolio transactions has been around for a long time. Originally based on the concept of providing blanket insurance for *any* defects in title as a non-fault cover to back up due diligence, rather than only insuring for specific identified known risks, they have evolved considerably in recent years.

American-owned insurers brought this type of cover into the UK over forty years ago. As senior underwriters in the industry moved and obtained capacity with European insurers, they simultaneously developed similar products.

The use of these policies saw a sharp increase around ten years ago during the tail end of the recession, largely because they are particularly useful for distressed asset sales. At the time, we saw a number of auction sales where an administrator was involved and no title warranties given.

To help further, we arranged a policy structure allowing payment to be staged but guaranteeing cover early within the transaction, protecting both vendor and buyer. We have subsequently helped to arrange cover for many portfolios totaling tens of billions of pounds.

Policies are incredibly flexible: they can replace the need to carry out any due diligence on the title of the properties entirely or simply allow you to report on a limited number of assets, dealing with identified defects and underpinning the remaining properties with the full title indemnity protection. Helpfully, policies also protect against problems which may not be identifiable during normal due diligence such as fraud, forgery, incapacity by prior owners or boundary issues.

Underwriting Process

Insurers will normally want to do a limited amount of their own due diligence. It is different to what the legal representative would normally conduct; they do not list any identified risks or detail encumbrances - the exercise is purely to assist with pricing the policy.

Underwriters review a small portion of the titles provided and, amongst other aspects, consider the proportion of assets which have known defects, the nature of any issue(s), the age of the entries and how long the current owner has been in occupation.

In recent years the use of technology has played an important role with a number of companies offering a service where Land Registry title information and local authority search data is manipulated and reports can be produced giving an overview on large portfolios very quickly. These can identify immediate areas of concern such as outstanding financial charges, ownership issues, and list potential title defects.

Some insurers work in conjunction with these data providers to help speed up the insurance procurement

process further, and reduce premiums.

Structure

Cover is divided into two main aspects, Title cover and No Search indemnity. Usually these are taken together but we can separate them into two policies if required; sometimes there is a preference to arrange the Title aspect as soon as possible, as it offers protection against a future event, whereas the Search element covers any adverse entry which would have been revealed by a search up to the point of policy inception, so waiting until nearer completion before incepting this element of cover could offer additional protection.

Alternatively, if there is over three months (the time period over which searches would normally 'expire') between Exchange and Completion, both aspects could be incepted at Exchange. The Search element could then be 'validated' at a later date for no additional cost, covering the period in-between the original inception date and Completion.

Policies are usually placed for the benefit of the Purchaser of the assets only, but sometimes we can arrange a 'First Insured' and 'Second Insured' structure if we are placing cover for a seller who is putting the portfolio to auction, or simply wants the benefit of cover to pass to successors.

Bespoke Wording

We have a considerable amount of experience placing portfolio policies of this nature and have negotiated some of the most comprehensive cover available in the market. We have bespoke wording from some insurers which is only available exclusively through us.

Process and Information Required

We can provide a rough indication of premium upon receipt of the number of assets, geographical spread and overall value. To enable us to approach the market and provide quotations we would need a list of individual properties, their values, addresses and ideally Title Numbers. We also need the client details for our own compliance purposes, but for the purposes of an initial indication we are under no obligation to inform insurers if the client wants to remain confidential.

All information provided to MOFS and the insurers we work with is treated as confidential, however we fully appreciate the nature of some enquiries and we are happy to sign an NDA if required. Please inform us if you would like a copy of our standard NDA and Joinder with insurers.

An Excel spreadsheet is the most useful format on which to provide the property schedule, as it allows for simple identification of the higher value assets and calculation of the total amount.



Underwriters will need to see title documentation, so providing them - and us - with access to a data-room is the easiest method; they can then simply assess what they need to without lots of backwards-and-forwards with copies of specific files.

If there's no data-room available, or the client is reluctant to grant insurers access to the whole thing, we do have our own secure online portal to which data can be uploaded by you, and accessed by insurers.

On some occasions, insurers may only ask for a few title documents for their sampling exercise, and so we would just need you to send those to us in the usual way.

We only deal with insurers who are at least A-Rated with the main Credit Rating agencies.

Residential or Ground Rent Portfolios

Insurance is based on the indemnity level rather than the number of individual assets. For portfolios of numerous small-value assets, insurance can often provide a substantial cost-saving when compared to traditional Due Diligence exercises and commissioning Searches for multiple assets.

We have extensive experience arranging cover for a diverse range of asset classes, many of which have risks which can be specific to a particular asset class, for example care homes or industrial units. Our previous experience and knowledge of the market means we can place the most appropriate cover with the most suitable insurer on each occasion.

Key Takeaways

- Insurance is significantly quicker than the 'traditional' Due Diligence process, and can therefore speed up the acquisition/sale process
- Combining this with Search cover can offer cost savings compared to commissioning a full suite of searches
- Cover can facilitate a clean exit strategy by allowing you to sell with the benefit of a title guarantee and avoid any title-related contingent liabilities on the sale
- Policies can be arranged to extend cover to the first or second purchaser within an agreed timescale to assist in a future onward sale by replacing onward seller representations and warranties
- If full due diligence is conducted in future (often when the insured subsequently sells) and a defect is identified, the insurance protects the original insured party and successor as appropriate by resolving the problem or providing cover for the known defect

Should you require advice on any of the above points please contact us:

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