



— TITLE —



Intelligent **R**eal **E**state
Due **D**iligence

PART OF ADLER FAIRWAYS



The availability of Defective Title Insurance in Commercial Property Transactions

- *“the inside knowledge”*

Presenter:



Bisma Halling
Client Executive

About IREDD

Established 2010 – by Robert McNally and Moz Gamble. The business was Acquired by Adler Fairways in 2023.

We are outcomes focused, solutions driven, transaction specific, LI insurance advisory business:

- We secure insurance designed to meet the requirements of key stakeholders undertaking real estate transactions, to enable risk of financial loss to be transferred to a well rated insurer.
- Wherever possible we seek to enhance the value of the insured real estate and of any security taken and improve liquidity.

We do not buy insurance – we sell your risk

Aspects To Consider (1)

- **Know who you are dealing with**
Who does what in the Insurance industry?
Which parties owe duties of care and allegiance?
- **Things that matter**
How do underwriters approach legal indemnity insurance issues?
The information that underwriters seek for may surprise you!
- **Scope of LI coverage**
Policies in this area of insurance can offer (by way of risk transfer) a very broad range of covers and legal risks.
Have regard to:
 - the legal issue
 - the commercial and
 - the insurance, aspects of any transaction when seeking an insurance solution.

Aspects To Consider (2)

Taking out a New Policy

- Why is the policy needed? Who should be taking out the policy?
- What risks is the policy intended to protect?
- How is the risks likely to arise;
- When is the risk of loss likely to be triggered?
- Where does the loss fall?

Limits of Indemnity

- What is appropriate?
- What are the strategies for dealing with a situation where the limit of indemnity might increase?
- Why should an insured be bothered?

Aspects To Consider (3)

The quality of the Insurer

- Does it matter?
- Who is relying on the policy?

Investigating the problem and insurance actually the answer?

- If you identify a problem or defect, what are the options?
- Insurance versus the time and cost available to solve the problem?
- Can insurance provide an effective and suitable remedy?

- **Problems with disclosures of the defect or the existence of the policy**
i.e. sales at auction and or by tender?
- i.e. replies to standard CPSE 1

Tips & Traps

Case studies

i.e. entering into a Deed of Release in respect of a restrictive covenant or other third party right. This can be expensive and time consuming. NEVER assume insurance will not be available. Underwriters are becoming and thinking more commercially. Policies can be drafted in a very bespoke way allowing for approaches to be made whilst insurance sits in the background.

ALWAYS explore the insurance option first!

Questions?





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INTRODUCTION

- In this webinar I intend to consider some of the practical implications of defective title insurance in the context of commercial property transactions and will look to start with at tips when considering or obtaining defective title insurance and then I will look at some of the traps that can be encountered.
- I am very grateful to Bisma Halling Client Executive of Intelligence Real Estate Due Diligence ('IREDD') part of Adler Fairways for sharing her considerable expertise on this subject and would recommend IREDD as a go to broker for commercial defective title enquiries.

TITLE INDEMNITY INSURANCE

- Title indemnity insurance can be used to plug gaps in title of which problems with restrictive covenants are part.
- There are standard policies and bespoke policies to cover most types of risks.
- Specific risks.

TIPS

- Be aware of client objective
- What is the title problem?
- Is defective title the correct solution?
- For the client
- For future land use or development

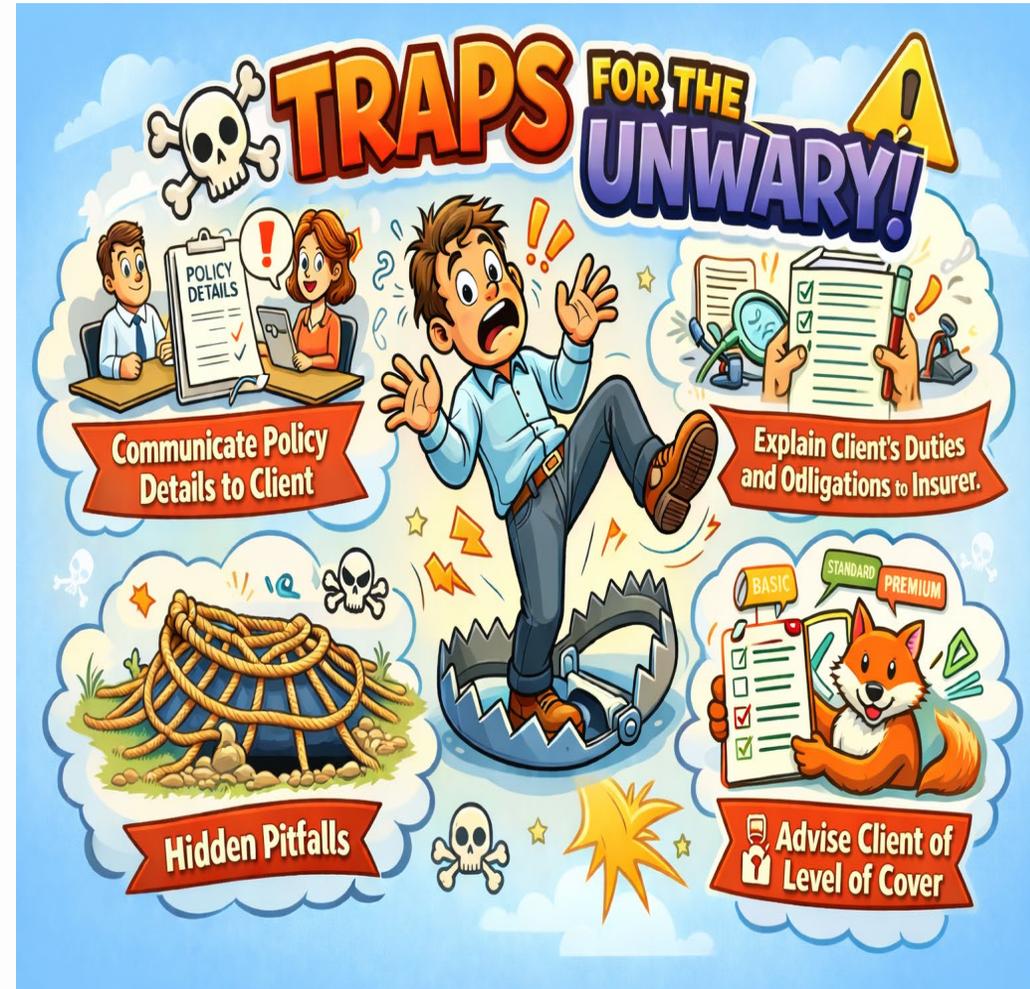


TIPS

- Does the client understand the defect?
- Is there an off the shelf policy?
- Does it need to be bespoke?
- Can the policy be assigned?
- Can the level of cover be topped up?

TRAPS

- Ensure the client is aware of the cover provided.
- Is the extent of the financial cover sufficient
- Have you explained the duties and obligations owed to the insurer?
- AND that those duties and obligations are ongoing!!!



TRAPS

- Should an investigation of the defect in title be investigated?
- YES – to see what solutions might be available.
- Yes – so that sufficient information can be provided to the insurer to obtain cover.
- Yes – to see if there are factors that might drive down the premium.

TRAPS

- Should an investigation of the defect in title be investigated?
- NO – there is a risk that investigation creates a disclosure issue to third parties making it impossible to insure and which invalidates cover if obtained.
- CHECK WITH THE INSURER BEFORE UNDERTAKING INVESTIGATIONS WHICH RISK DISCLOSURE
- IF IN DOUBT DON'T INVESTIGATE

WHAT DO POLICIES COVER?

- Damages or compensation
- The cost of demolition or alteration of the property
- The loss in value between the market value of the covenant and the open market price at the time of insurance.
- Costs associated with defending or bringing proceedings .
- Policies concerning restrictive covenants – applications to Land Tribunal under Section 84 Law of Property Act 1925.

PRACTICAL ISSUES

- Who should take out the policy – seller or buyer?
- Is there any existing cover that the defective title policy may duplicate?
- Does the client know what the policy covers?
- On closing the transaction file do you remind the client of their duties and obligations.

PRACTICAL ISSUES

- Be careful with auction sales particularly online auctions and auction packs.
- Be careful with existing defective title insurance policies that are being assigned to the buyer client.
- Be careful if the seller is taking out the policy.

DO YOU HAVE ANY QUESTIONS?

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