

Restrictive covenants

Restrictive covenants are conditions imposed by sellers of land (vendors) on purchasers. The covenants are written into the sale document (conveyance) and are usually included to prevent business competition or preserve the character of an area, the value of the vendor’s property or visual amenity.

Examples of typical covenants are:

- not to use the property other than as a private dwelling house;
- the plans and elevations of any building to be approved by the vendor;
- not more than ‘x’ dwelling houses to be erected per acre;
- restrictions on building design or materials used.

With the passage of time some covenants become outdated, for example, where the character of a neighbourhood had changed. In such circumstances it is not unreasonable for the covenants to be breached unknowingly by a new development. Even though some of these covenants are old, many can still be enforced.

The owner has the following options.

- To find out who is able to enforce the covenants and seek modification or release. Even if the owner can trace those persons, there is a risk that they may refuse or charge an exorbitant amount for doing so.
- To apply for a Restrictive Covenant indemnity policy through legal advisers.

Outline of cover

The policy protects the insured (and their mortgagees, successors in title, lessees and their respective mortgagees) against direct financial loss suffered in the event of another party enforcing or attempting to enforce the Restrictive Covenant.

The indemnity covers:

- damages or compensation (including costs and expenses) awarded by a court;
- the cost of alteration or demolition following an injunction;
- loss of market value as a result of the development being prevented;
- abortive capital expenditure; and
- costs and expenses incurred with our consent in connection with court action.

Information required

- An explanatory letter from the proposer’s legal advisers.
- A completed Legal contingency Proposal Form.
- A full copy of the deed imposing the restrictive covenants or, if the property in question is registered, a full copy of the Land Registry entries.
- An Ordnance Survey or Land Registry plan showing the position of the property in relation to the surrounding neighbourhood.

- Site plans and elevations if development is contemplated.
- Copies of Instruction to Counsel and Counsel’s Opinion, if taken.

Note:

The interest of the Land Registry, Registry of Deeds or the Property Registration Authority / State cannot be noted on the policy.

Rights of way

Where access to a property is over an unadopted road, it is necessary for the title documentation to include a legal grant of a right of way from the owner of the road. Without the grant, it is possible that the owner could prevent access to the property.

Outline of cover

The policy protects the insured (and their mortgagees, successors in title, lessees and their respective mortgagees) against the owner of the road preventing or attempting to prevent its use for access to the property.

The indemnity covers:

- damages including costs and expenses awarded by a court;
- costs and expenses incurred with our consent;
- the decrease in market value of the property should access be prevented;
- the cost of obtaining an alternative access; and
- the cost of obtaining a legal grant of a right of way from the owner of the road.

Information required

- An explanatory letter from the proposer’s legal advisers, which should include details of all enquiries made regarding ownership of the road.
- A plan showing the position of the property, the unadopted road and its connection to the adopted highway.
- Proof of an index map search at the Land Registry.
- A statutory declaration confirming from first hand knowledge that the road has been used for access to and from the property as of right, without challenge or objection. You should submit a draft of the proposed declaration to us for approval before it is executed.
- A completed Legal contingency Proposal Form.

Note:

The declarant will normally be the vendor.

In some circumstances, such as for new access to a building plot, more information, for example, surveys, photographs, and results of planning applications, may be required.

Note:

The interest of the Land Registry, Registry of Deeds or the Property Registration Authority / State cannot be noted on the policy.

Services indemnities

Services indemnity policies protect the owners of properties who have no legal grant to use services, such as drainage, which pass through another person’s land. These risks frequently go hand in hand with Rights of way problems, where the ownership of a road beneath which the services run is unknown. For this reason they can be included within a Rights of way policy.

Without a legal grant, the owner of the land beneath which the services pass could prevent them from being used.

Information required

- An explanatory letter from the proposer’s legal advisers.
- A plan showing the position of the property and approximate location of the services.
- A statutory declaration confirming from first hand knowledge the period during which the services to the property have been used as of right without challenge or objection. A draft of the proposed declaration should be submitted to us for approval before being executed.
- A completed Legal contingency Proposal Form.

Note:

The declarant will normally be the vendor.

Outline of cover

The policy protects the insured (and their mortgagees, successors in title, lessees and their respective mortgagees) against the owner of the land through which the services pass preventing or attempting to prevent its use in connection with the property.

The indemnity covers:

- damages including costs and expenses awarded by a court;
- costs and expenses incurred with our consent;
- the decrease in market value of the property should use of the services be prevented;
- the cost of an alternative route for the services; and
- the cost of obtaining a legal easement from the owner of the land through which the services pass.

Note:

The interest of the Land Registry, Registry of Deeds or the Property Registration Authority / State cannot be noted on the policy.

Your other insurance needs

In addition to Contingency Insurances, Aviva has a wealth of experience in many fields of insurance. By providing a wide range of products, Aviva can help you plan for all your requirements, thereby avoiding potential gaps in your cover.

If you would like information or advice on any of the following, please contact your nearest broker or visit www.aviva.ie

- Commercial property insurance
- Earnings insurance
- Legal liabilities insurance
- Travel insurance
- Engineering insurance
- Fidelity insurance
- Home and contents insurance
- Private motor or commercial motor insurance
- Health insurance

Financial Services

To find out more visit www.aviva.ie or contact your nearest Financial Broker. Your Financial Broker can advise you on planning for your retirement, saving and investing, life assurance and business protection.



Legal Contingencies Guide



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Legal contingencies guide

Introduction

Aviva has many years experience of providing insurance solutions for a wide range of legal contingency problems. The Contingency Service was set up to facilitate direct access for solicitors seeking such protection for themselves or their clients.

The service is manned by a team of underwriting specialists who can discuss and consider your problem on a technical level, tell you how Aviva can help, and indicate in many cases the likely cost of an indemnity policy.

We recognise that often behind a legal problem stands a worried client and therefore time is of the essence in most instances. Consequently you can be assured that not only will your queries be treated with the priority that they deserve but also that any necessary documentation will be processed with minimum delay.

Whilst this booklet provides you with an outline of the main risk types, it is by no means exhaustive. As the word contingency suggests, potential problems encountered can be wide ranging and varied. Should an unusual situation arise which does not seem to be dealt with in this guide, please contact the Contingency Service at:

Aviva Insurance Ireland DAC
Building 12, Cherrywood Business Park,
Dublin, Ireland, D18 W2P5.
Phone: 01898 8491 or 01 898 7710
Email: contingencyservices@aviva.com

We provide cover for the following contingencies, each of which is explained in this booklet.

- **Administration bond**
- **Defective titles**
- **Lost title deeds**
- **Lost securities**
- **Missing beneficiaries**
- **Restrictive covenants**
- **Rights of way**
- **Services indemnities**
- **Your other insurance needs**

The descriptions of cover contained within this guide should be regarded purely as an outline. The policy is a legal document and as such defines the insurance in precise terms.

Administration bond

An Administration Bond provides a financial guarantee to the High Court to ensure that a deceased person’s estate is properly administered in accordance with the law. It is usually required in cases where the deceased has died intestate, left a will which is defective or named executors who refuse the appointment.

Outline of cover

The sealed bond provides a financial guarantee to the High Court Probate Office should the Administrator of the deceased person’s estate not properly carry out his or her duties.

Information required

- A completed Administration Bond proposal form.
- A completed Administration Bond.
- A copy of the will if the Deceased died testate.
- A copy of the Inland Revenue Affidavit if the bond penalty amount exceeds €200,000.

Note:

Please make sure that the bond penalty is equal to twice the gross value of the estate.

The Court does not accept bonds of which material parts have been altered. Therefore you should avoid the use of correcting fluid when preparing them.

Defective titles

The term ‘defective title’ covers a wide range of risks from the straightforward to the very complex. It would be impossible to include all of them within this booklet. The most we can reasonably attempt is to give you a ‘flavour’ by including examples of low and high risks.

Low risk defective titles

Low risk defective titles include situations such as use of the incorrect power of attorney or lack of vesting assent. Another example would be where the description of a property to be sold does not fully accord with the deeds of Land Registry records.

Information required

- An explanatory letter from the proposer’s legal advisers.
- A completed Legal Contingency proposal form.
- A copy of the deed of gift, conveyance or transfer.
- Drafts of any statutory declarations in support of the application, which should include confirmation that the proposers have not received any challenge or objection to their title to the property.
- Sight of any other relevant documentation.

High risk defective titles

High risk defective titles include risks such as adverse possession (squatters title) of land or property. Whilst we are able to consider such risks, we can only assist if the land in question has been adequately fenced and used adverse to the paper title owner for a minimum of 12 years.

Information required

- An explanatory letter from the proposer’s legal advisers.
- A completed Legal Contingency proposal form.
- Statutory declarations giving full details of use and fencing of the land by reference to a plan of Ordnance Survey quality or Land Registry map. You should submit a draft of any proposed declaration to us for approval before it is executed.
- Photographs of the land and all the boundaries together with a plan showing the location or point from which each photograph was taken and the direction of the camera.

Outline of cover

The policy indemnifies the insured (and their mortgagees, successors in title, lessees and their respective mortgagees) against all direct financial loss, costs and expenses incurred should the title be challenged or defeated as a result of the specified defect in title.

Note:

The interest of the Land Registry, Registry of Deeds or the Property Registration Authority / State cannot be noted on the policy.

Lost title deeds

There may be occasions when the title to the property is incomplete because one or more documents have been mislaid, for example, in transit between the relevant parties.

Outline of cover

Although the title to the property is not defective, we use our standard Defective Title policy. This indemnifies the insured (and their mortgagees, successors in title, lessees and their respective mortgagees) against all direct financial loss, costs and expenses which they incur should their title be challenged or defeated resulting from the absence of the relevant documents.

Information required

- An explanatory letter from the proposer’s legal advisers.
- A completed Legal Contingency proposal form.
- A statutory declaration from the proposer outlining the facts, including confirmation that there has been no challenge or objection to their title and that the missing documents have not been lodged as security. A draft of the proposed declaration should be submitted to us for approval before being executed.
- Any additional corroborative declarations available may help to reduce the premium amount.

Note:

The interest of the Land Registry, Registry of Deeds or the Property Registration Authority / State cannot be noted on the policy.

Lost securities

If the registered owner of stocks, shares or debenture bonds loses the certificate of ownership or if it is accidentally destroyed, he or she has to give an undertaking to the issuing company that the certificate has been lost, and not charged or assigned, before the Company Registrar will issue a duplicate.

The undertaking also requires the owner to indemnify the Registrar against any loss arising out of the issue of a duplicate certificate. To minimise the risk to the Registrar, a bank or insurance company is required to join in the undertaking as guarantor.

The undertaking does not relieve the shareowner from their obligation to make good any loss incurred by Aviva as a result of our joining in the indemnity.

Outline of cover

The policy provides an indemnity to enable owners who have lost Certificates of Title to obtain copies. In addition, it covers the share issuing company against any losses incurred as a result of having supplied duplicate certificates.

Information required

- An explanatory letter outlining the general situation.
- A completed Lost Securities proposal form.
- The Indemnity form.
- Proof of identity of proposer i.e. copy of passport or drivers licence.
- Proof of address of proposer i.e. recent utility bill.

Missing beneficiaries

Trustees, executors or administrators winding up a deceased person’s estate may not, despite extensive enquiries, be able to trace all persons entitled to a share of the estate.

The policy protects the trustees, executors or administrators should any missing persons re-appear to claim a share in the estate after its distribution amongst the traced beneficiaries.

Note:

These policies are generally only available if the untraced beneficiary has not been heard of for a considerable time and if adequate steps have been taken in attempting to locate them.

Outline of cover

The policy protects the insured against all direct financial loss, damages, costs and expenses incurred in acting as trustees, executors or administrators should the missing beneficiary or beneficiaries claim a share of the deceased’s estate after distribution.

Information required

- An explanatory letter from the proposer’s legal advisers, which should include details of all enquiries made in order to trace the missing persons, the size of the estate and the proportion to which beneficiary is entitled.
- A completed Missing Beneficiary proposal form.
- A family tree showing the relationship between the deceased, traced and missing beneficiaries.
- Copies of advertisements placed in local and national newspapers.
- Statements from the traced beneficiaries to the effect that they have no knowledge of the whereabouts of the missing beneficiaries.