



The value of Latent Defects Insurance

Latent Defects – what are they?

Faults and defects caused by failures in design, workmanship or materials

Cover Summary

Protection against the risk of damage resulting from a defect in design, plan specification, workmanship or material which was uncovered after the date of issue of a practical completion certificate.

Typically indemnifies the Insured against Damage to the Premises consequent upon a Latent Defect discovered and notified during the Period of Insurance.

Key Highlights:

- Single policy for a period of 10 or 12 years providing certainty of cover
- Latent defects cover is a “first party” policy. Fault or liability does not need to be proven, sparing the company from costly and time-consuming legislation.

This avoids protracted negotiations or disputes to get the damage rectified.

- **Professional Indemnity Insurance and Latent Defects**

Many claims can be caused by faulty materials or workmanship as opposed to defective design,

specification or planning, and therefore are not covered by professional indemnity insurance.

Whilst latent defect Insurers expect the professional team (or anyone else with a design input) to maintain professional indemnity insurance, the changing professional indemnity insurance market (capacity and price) means its availability or affordability in the future cannot be guaranteed. If the policy is on an “aggregate” limit of indemnity basis and if there are multiple claims under the policy the limit may be exhausted with no capacity to deal with a loss.

Latent Defects Insurance is a “strict liability” policy whereas professional liability needs to be a proven “legal liability” resulting from a breach of professional duties.

Professional indemnity is typically on a “claims made” basis so there needs to be a policy in force for a claim to be made. This is a challenge in that if the contractor or consultant responsible for a latent defect has become insolvent there is likely no insurance policy in place to cover the loss (see insolvency point below).

- **Insolvency**

If any party to the contract become insolvent and an issue arises, the Company have no recourse.



The value of Latent Defects Insurance

Why the need for Latent Defects?

- At the end of the prescribed defects liability period, the building owner no longer has a contractual right to insist that the contractor rectifies defects.

The Company's options are then to seek redress in an action for damages, for breach of contract or for negligence.

Rights of action are not perpetual; actions for breach of contract may be time barred after six years from the date of breach (usually practical completion date but in the case of a design failure, this breach may occur earlier) except where the contracts are under seal, thereby extending this period to 12 years.

The time limits for claims in negligence is six years from the date on which the cause of action accrued, which will be the date when the damage occurred.

- **ROLE OF Technical Inspection Surveyor:**

A condition of policy cover is that Insurers appoint a Technical Inspection Surveyor who will be independent entirely, appointed by insurers but paid by the policyholder.

This adds another layer of professional and "independent" monitoring throughout the technical audit process and is an additional risk management tool.

- A Latent Defect policy is assignable for future tenants or purchasers.

- **Cost of Premium**

The premium is a one- off premium paid at the commencement of the policy for a period of 10 or 12 years.

It may be more appropriate to view this as an annual premium over the insured period.

In terms of premium levels, it is worth considering the cost against a potential latent damage claim cost.

- **Scope of Cover**

- a) Actual damage, physical loss or physical destruction or physical damage and/or;
- b) Imminent damage - a condition required (with the company's prior written agreement) for remedial action to prevent actual damage and;
- c) Ingress of water into the water proofing envelope of the premises whether or not accompanied by acute or imminent damage.

Business Interruption

The policy can be extended to include loss of rental income as a result of a claim under the policy.

- **Mechanical and Electrical Latent Defects Insurance - can be considered separately** which will provide cover for mechanical and electrical plant in isolation to damage to the structure. In other words, the inherent defect manifests in the mechanical and engineering element rather the premises itself.



The value of Latent Defects Insurance

Summary

We expect recent market changes in the foreseeable future will increase the demand for the type of cover as large scale investors wish to protect their assets.

Latent Defects Insurance warrants important consideration if you wish to be adequately protected in respect of damage resulting from a defect in design, plan specification, workmanship or material which is uncovered after the date of issue of a practical completion certificate.

Consider your risk exposure and how you can mitigate the risk and understand how valuable Latent Defects Insurance can be as an investment.

Please contact us should you require any insurance advice in relation to this class of business or on any other matter that may have affected your business at this time

Contact

Terry Keaney - Director

DD: +353 1 611 0220 | T: +353 1 661 8080

Zita Erdis - Director

DD: +353 1 611 0222 | T: +353 1 661 8080

www.keaneyinsurance.ie

Keaney Insurance Brokers Ltd | 30 Lower Leeson Street, Dublin 2, Ireland,

Keaney Insurance Brokers Ltd is regulated by the Central Bank of Ireland