

Commercial and retail property at risk from latent defects

Phil Hammond, LABC National Director of Business Development, busts a few myths about collateral warranties, suggesting many building owners with this type of cover could still be at risk from hidden defects

In theory collateral warranties protect building owners against the cost of rectifying construction defects by creating contractual obligations between developers, contractors, sub-contractors and building owners.

Lawyers are happy to check that these exist, but rarely check that they are viable and current. In reality, most collateral warranties do not and cannot work. They leave building owners exposed and uninsured against hidden defects.

Why don't collateral warranties work? There are several complex reasons and any single or combination of these make it very unlikely that the costs of fixing building faults can be recovered.

- Can the lawyer prove sufficient negligence for a court case to succeed?
- Is the party who gave the warranty still trading?
- Is the PI insurance that backed the warranty still in place?
- Has the warranty (and the PIs on which it was based) been checked each year for its continuance? Once lapsed, it cannot be re-instated.
- Have there been other claims against this cover? Cover is aggregated which means subsequent claims share a declining pot.
- Most PI restricts cover to two assignments (new owners and occupiers) during the course of collateral warranty. But in

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reality buildings can be bought and sold several times between property firms before the end user takes occupancy.

- If no formal insurance exists, have the warranty parties got sufficient assets to cover a claim?

Obviously all of this is complicated where several sub-contractors are in the 'loop'.

Just one break in the chain means that the collateral warranty collapses to the point that it is not even worth pursuing in court. This is why few claims reach court and virtually none succeed.

Yet business risk has to be controlled. This is where Latent Gold has a big advantage. It is a direct approach to latent defects insurance. It is designed for building owners and provides a first party non-negligence route of recovery that removes all uncertainties.

Latent Gold is administered by Oval Insurance and is underwritten by Allianz. Uniquely, there is no need for site visits or plans inspections provided that local authorities have undertaken the building control service.

Find out more by telephoning the Latent Gold enquiry line on 0845 0753530.

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