

# POST

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## Europe: Title Insurance

With economies recovering across Europe, the property market is beginning to show signs of movement again. But, as the credit crunch is still relatively fresh in people's memories, insurers are looking to provide reassurance to those feeling more cautious about property transactions.



Title insurance, which protects property investors and mortgage lenders against losses arising from both known and unknown legal risks relating to acquisitions and mortgage finance, is beginning to feature in a growing number of European commercial property transactions.

Sean Dalton, chairman and cofounder of Secure Legal Title, explains: "Central and Eastern Europe is particularly active and we've seen growth in the number of foreign investors looking to buy property in these regions. These investors are more used to having title insurance and will expect it with European transactions."

Additionally, whether or not a foreign investor is accustomed to the use of title insurance, the legal framework in the country they are buying in can be very different from that of their home country. In these situations, title insurance gives them reassurance the transaction is in order.

### Property fraud

As an example, Kevin Richardson, underwriting development manager at Countrywide Legal Indemnities, has seen more interest in title insurance as a result of an increase in property fraud. "Over the last few years property fraud - where the seller hasn't had legal rights to the property - has become a growing problem. These cases can be very complex and won't always be picked up in conveyancing, so title insurance can provide valuable protection," he says.

Title insurance can also support a sale. Chris Taylor, chief executive of Titlesolv, a Hanover Re-owned title insurer, says the growth in corporations using special purpose vehicle entities to hold real estate assets means there can be difficulties providing warranties regarding title, meaning title insurance can step in and provide a simple solution. "Title insurance provides an alternative to the provision by the seller of parent company guarantees," he says.

While there is appetite from the buyers and sellers, there is also likely to be pressure from the lending institutions. Following the recession, lenders have become more risk-averse - and title insurance takes away some of the uncertainty.

## Attracting interest

Given these factors, the European market presents plenty of opportunities for title insurance. But it is not an easy market to enter. As policies are written in perpetuity in exchange for a one-off premium, insurer appetite for this type of business tends to be low.

In addition, as it is a relatively new market, there is a shortage of data on which to base actuarial calculations, which could make potential market entrants uneasy.

Although the UK market has experience of legal indemnities cover, this is not the same as title insurance - it is more restricted, so knowledge about how the two differ would be needed before widespread take-up. Jean Claude Domaingue, underwriting director at Conveyancing Liability Solutions, explains: "In the UK, legal indemnities has been used to paper over the cracks in a property transaction. If there are missing documents that create a risk - for instance lack of planning permission or a right of way, then a legal indemnities policy can be used. But, while this is all about known risks, title insurance covers the unknown risks too."

In spite of this, a number of policies have been launched that take this step into the unknown. For example, in the UK, First Title launched its Home Owners' Protection Policy in 2010 to cover unforeseen risks. This was followed by Countrywide Legal indemnities Secure Conveyancing Insurance Policy.

The opportunities presented by the European market have also attracted interest from the US players. The senior management of Secure Legal Title includes Joel Peck and Jean-Bernard Wurm, who launch and manage US title insurance companies in Europe.

CLS also has capacity from one of the US title insurers, Fidelity. Domaingue says he is seeing a bit of a shift in the market. "There's a growing number of carriers in the market. Being able to put together a group of [carriers] makes it much easier to write risk."

## US model

But, while there are opportunities in the European market, title insurance is unlikely to reach the same position it has in the US. There it has been used alongside property transactions for more than 100 years and, as a result, \$11.4bn of gross premium was written in 2012. "Title insurance is sold on every real estate conveyance, mortgage and remortgage," says Joel Peck, chief executive and cofounder of Secure Legal Title. "If you buy a house, you'll take out a policy to ensure you have good title. In addition, the mortgage company will also insist on a separate policy to cover their loan."

The importance of title insurance in the US stems from the country's legislative framework. Laws and regulation vary from state to state, so title insurance enables lenders to offer the same mortgage conditions across the country.

In addition, while the conveyancing process is undertaken by solicitors or notaries in Europe, this function sits with the title insurers in the US. "Title insurance was really created to eliminate risk," adds Peck. "Insurers will conduct the searches and where any problems are identified these will need to be fixed before a policy can be issued. The policy really provides a guarantee of their work."

## European differences

With the conveyancing function in the hands of the legal profession in Europe, title insurance is much more likely to remain a niche product that focuses predominantly on commercial property.

Richardson isn't surprised. "It can be awkward for a conveyancer to charge you for his work but then ask if you'll also pay for insurance to guarantee you won't be out of pocket if he's missed something," he explains.

This has also been seen in some continental European countries. For example Peck says in France and Italy (where a notary oversees the property transaction), there is resistance to insurance. He is hopeful this will change. "We did write a policy for a buyer in France," he explains. "The notary had recommended they didn't buy unless they received a guarantee from the developer. These can be difficult to obtain and don't necessarily provide certainty anyway, so we persuaded the notary that insurance was an option."

So, although the characteristics of property transactions in Europe are likely to mean title insurance remains a niche product, market conditions do mean it is set for strong growth across the continent.