



# The Look Out

*Professional Risks News from TLO*

## *In This Issue*

### Escalating Ground Rent

We look at the increasingly well publicised issues around escalating ground rents and historic advice

### How much is too much?

We ask a former Solicitor, Kelly McDonnell for her thoughts on caseloads for conveyancers and issues of capacity management

### PII due in April?

If you are looking to review your insurance arrangements for 2018 - can we help?

## *In Our Next Issue*

We will focus discussion on the impending General Data Protection Regulations (GDPR)



## Focus on Conveyancing

*Jim Brindley - Account Executive, TLO Risk Services*

Historically, insurers rate the area of conveyancing work as one of the biggest risk area's for law firms when setting a professional indemnity premium. Some insurers are happy with firms who undertake a large amount of conveyancing work, others are far more cautious.

Over the past ten year's, conveyancing claims have contributed, on average, to over 40% of claims notifications.

There are many risk areas associated with conveyancing work for law firms to consider. These include:

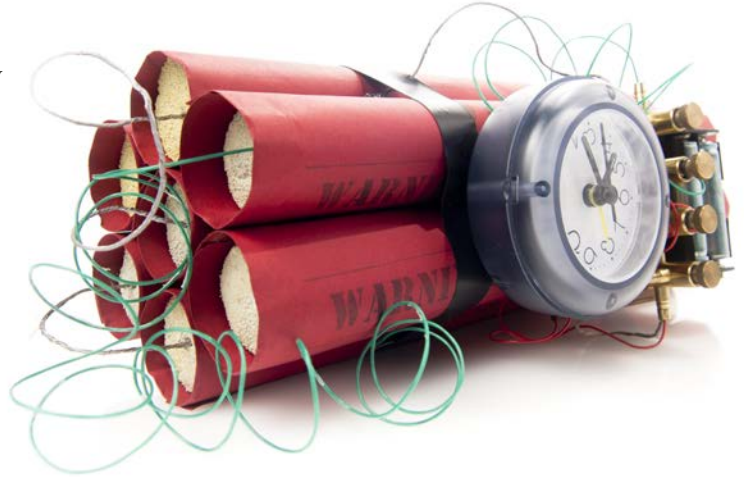
- Risk of fraud and the increased risk of identity fraud,
- Increased duty of care to both client and lender,
- Large transactional values,
- Cyber Fraud "Friday afternoon"
- Urgency from clients to complete transactions quickly,
- Global economic conditions,
- Increased workloads on staff, and
- Emerging risks in certain property transactions

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Emerging risks within the property sector are nothing new. They can occur when a particular type of mortgage is sold or when a specific type of property is purchased. Generally, law firms can do a number of these transactions. Past issues have included right to buy, properties in overseas developments and properties involving sale and lease back transactions. Law firms need to consider the risk of becoming exposed to certain conveyancing transactions and to ensure procedures and tests are put in place. Otherwise, firms could find themselves notifying potential claims if the overall property transaction comes under scrutiny.

## The Escalating Ground Rent Timebomb

One area currently causing concern is leasehold properties where onerous ground rent clauses may exist. If you Google "excessive ground rent clauses" the internet is awash with stories of homeowners exposed to significant increases in ground rent and higher than expected purchase costs in buying the freeholds. Lenders are also refusing mortgages to purchasers on properties containing such clauses, resulting in properties being valued for much less than the original purchase price.



The terms of the leasehold can also include notifying the freeholder of any possible changes to the property, leaving homeowners exposed to subsequent charges. Charges can include initial requests, administration costs and use of professional services, such as surveyors. Such costs can run into hundreds, sometimes thousands of pounds for just, in certain circumstances, small alterations to the property!

### Management of Risk

The recent October PII renewal season saw a number of insurers asking specific questions on this type of conveyancing work.

"Do you have controls in place to ensure all new build or refurbished properties with escalating ground rents are reported to lenders and buyers?"

"Please provide the approximate number of transactions involving leasehold property and escalating ground rents you may have been involved in. Please advise what controls you have in place to bring fully to the attention of the lender and purchaser."

Law firms are coming under increased scrutiny over their advice and procedures when advising on escalating ground rent clauses with homeowners claiming they were not fully made aware of the terms and conditions of the leasehold and, if they were, it was very late in the transaction process. Law firms should ensure they inform their clients of escalating ground rents, recommending independent valuations to ensure their client understands and is clear on such charges, prior to completion.

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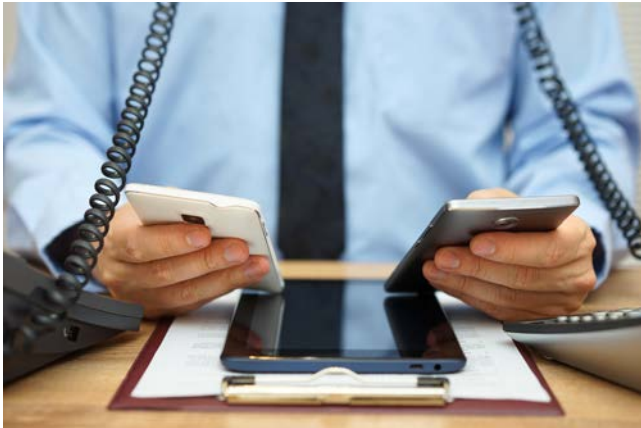
## The Legal Sector Group

In June 2017, the Legal Sector Group (comprised of The Conveyancing Association, the Chartered Institute of Legal Executives, Bold Legal Group and The Society of Licensed Conveyancers) published proposals on Leasehold reform. The Key areas of these proposals are:

- Reasonable fees for administrative activities.
- Reasonable timescales for administrative activities.
- Enforcement - all Freehold Management or Leasehold Administrators to be part of a mandatory redress scheme.
- Unfair lease terms - covering initial lease terms, rent review clause, escalating ground rents, and exit/event or transfer fees.
- Overhaul of tenure - covering a review of Common hold regulations and a simplification of the process to extend leases and convert to freehold.
- Building insurance - obligations for landlords and requirements for Lease Administrators to seek competitive insurance premiums
- Marketing of leasehold properties - covering the provision of upfront information on remaining term of the lease, ground rent, annual service charge, rent review clauses, lease clauses, etc.

These are being considered by the Government and it is hoped approval of these proposals will bring much needed change and clarity on leasehold properties for homeowners.

## Conveyancing: How much is too much?



I have seen a couple of examples, post the credit crunch of 2008 where too much conveyancing work was undertaken by too few people and/or by staff who were not experienced to deal with matters, resulting in a number of claims under their PII policy. One of the examples resulted in the firm being unable to obtain PII.

Kelly McDonnell, former solicitor now working in the legal indemnity sector, discusses "when is too much" and how do we identify this?

Having qualified as a Solicitor into Residential Conveyancing back in 2005 I have worked at firms where my caseloads varied between 150 - 450 files at any one time. With a very high caseload, even the most experienced and technically competent of conveyancers can begin to struggle, simply under the volume of work and pressure from clients and third parties, who want the transaction completed as quickly as possible. Unfortunately, there does not seem to be an industry standard, or any guidance given, regarding an optimum caseload.

I posted this as a discussion topic on LinkedIn recently and it provoked a great deal of conversation, with most people agreeing that around 70 -80 files for a Solicitor, together with an assistant, is manageable and any more than that would cause service to suffer. One Director did comment that they have two full-time people on every file with a caseload of 55 and they do not expect their staff to work outside of their contracted hours.

It is inevitable that the higher the volume of work the less time there is to dedicate to each file. Considering that there could potentially be four other parties to communicate with in each transaction, in addition to the client, the sheer volume of calls coming in per transaction can be difficult to manage and potentially detract from the actual legal work itself.

Partners and Heads of Departments need to give capacity management serious consideration. Failure to do so can result in poor service, complaints, unhappy staff and potentially PI claims. However, get it right and employees can manage their work more effectively, enabling them to work sensible hours, provide an excellent service resulting in a positive client feedback, which motivates the team and creates a happy work environment.

## PII Renewal: Is your insurance due?



Following the removal of the common renewal date by the Solicitors Regulation Authority back in 2013 many law firms chose to move away from the traditional date of the 1st October. April and June have now become key months of the year for PII.

If you are looking to review your insurance arrangements for 2018, and are interested in finding how TLO Risk Services can assist your firm, please contact James Brindley on 0121 2121 9090 or [james.brindley@tlorisk.com](mailto:james.brindley@tlorisk.com) for more information.

*TLO Risk Services (TLO) is a privately owned insurance broker. Since 1996, we have specialised in helping firms that provide professional advisory services, from accountants and law firms, through to investment agents, surveyors and estate trustees. For more information visit [www.tlorisk.com](http://www.tlorisk.com) or speak to our experts on 0121 212 9090 or 020 7183 4925*

## In our future issues

Brexit will have no short term effect on the EU's General Data Protection Regulation (GDPR) which will come into effect from May this year. In future issues we look at the subject in more detail as well as the role of Cyber Insurance

