



BOOM GO YOUR TERMS AND CONDITIONS

Recent incidents where gas explosions have devastated homes with tragic consequences have also raised serious questions as to what happens to a lender who has taken security over affected properties and how they can deal with such a situation effectively, writes Ann Ebberson, partner at leading solicitors, Rosling King.

With a catastrophic event such as a gas explosion, or any other event which destroys the security property, lenders must hope that their borrower has buildings insurance in place which complies with their lending requirements. It would, of course, usually be a standard clause in the mortgage terms and conditions that the borrower obtains and maintains such insurance. A failure by the borrower to put the requisite insurance in place, or to maintain it, will throw up a whole set of issues for a lender. In the event that a lender finds itself a casualty of such an event the following questions are inevitable:-

If the borrower did not have buildings insurance in place, or has invalidated the insurance in any way:

- What security does the lender have over the property, i.e. over the freehold or leasehold title?
- Is there any way the lender can mitigate its loss? Is there any interest left to sell?
- Has there been an event of default enabling the lender to call in the loan?
- Does the borrower have sufficient means to repay the loan if the lender is able to call it in?
- Is there a guarantor for the loan who must guarantee and/or indemnify the borrower's obligations?

If the borrower or landlord does have buildings insurance and the insurer pays the insurance claim, it then falls to the borrower/landlord to use the insurance monies to rebuild the property. If they fail to do so - what next?

- Is the borrower/landlord required to rebuild the property?
- Has there been an event of default enabling the lender to call in the loan?
- Is there any way the lender can mitigate its loss?
- Is there any interest to sell?
- Can the lender sue the borrower/landlord for the insurance monies if they have not been used to rebuild?
- Is there a guarantor for the loan who must guarantee and/or indemnify the borrower's obligations?

The starting point to answer these questions has to be the lender's mortgage terms and conditions. Most lenders will include clauses to try and protect their position, but do they go far enough?

Unfortunately, if the property is destroyed by a gas explosion, it can result in a complex situation with a number of competing interests between the insurance company, freeholder, borrower and lender. It is not always the case that a lender's standard terms and conditions will properly protect them in such situations. There is often a significant gap between the protection a lender thinks it has and the reality. Well drafted terms and conditions, whilst they can never be fail safe, can go a long way to ensuring that a lender is able to recover its debt without spending significant time, and incurring significant costs, in potentially having to litigate around the issues.

With winter around the corner, and heating systems in houses not used over summer months about to be switched on, it would appear a good time for lenders to review their terms and conditions and also perhaps remind their borrowers of their obligations regarding buildings insurance.

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About Rosling King LLP

Rosling King is a UK-based law firm specialising in serving the needs of financial institutions and private equity, real estate and construction clients. <http://roslingking.com/>

Notes to editors:

For more information please contact Clare Ambrosino clare@mediahouse.co.uk at Media House International on 0207 710 0020