

Property Transaction Precedents - Climate Change & Climate Search Results

Introduction

In July 2022 Groundsure instructed Stephen Tromans KC In The Matter Of Conveyancers Duty Of Care To Advise Clients About Climate Risk And How To Discharge This Duty. Stephen is the UK's foremost environmental law practitioner. His advice is available to download here: <https://bit.ly/3CY7Ynm>

Section F of Stephen's advice relates to the practical steps which property lawyers can take to discharge their duty to advise clients on climate risks. The advice provided is as follows:

Given the existence of a duty to advise on climate risks, what practical steps should conveyancers take to discharge that duty?

The first step seems to me to become familiar with what search services are available and then to advise the client on the need for such a report. Obviously then if the client does not wish to incur the cost, that is their decision, but the conveyancer should in my view state clearly the risks (both physical and transactional) in not doing so – and should record that advice in writing.

Assuming a report is obtained, it is not enough simply to pass over the results to the client – these need to be explained and the risk put in context. For example for a coastal property it may be necessary to explain the risk that whilst coastal defences may now be in place and maintained by an authority, that will not necessarily continue to be the case in the medium or long term.

If there are issues arising outside the conveyancer's own professional expertise, such as valuation or insurance or flood risk, it may be necessary to recommend the client considers taking such professional advice. This would of course depend to a large extent on the size and nature of the transaction.

It is very important in order for the conveyancer to protect their own position to ensure that all this advice is clearly recorded in writing. The Report on Title would seem the most obvious place to do this.

Point of Information

The following clauses are provided for illustrative purposes. They are intended to help commercial and residential property lawyers to consider how the increasing use of climate searches may justify making some changes to their standard conveyancing enquiries, certificates and reports. Property lawyers may wish to develop their own clauses or to modify the illustrative clauses. Please note that Groundsure assumes no legal duty to any person who uses or otherwise relies upon any of the following clauses.

¹ Stephen Tromans KC assumes no legal duty to any person to whom a summary of his advice is provided. Furthermore, Mr. Tromans does not endorse any particular climate search product. Conveyancers and others can check the suitability of Groundsure's ClimateIndex™ and other climate searches for their purposes.

1. Climate Clauses for Residential Property Transactions

Climate Clauses for Residential Property Transactions

The following clauses are provided for illustrative purposes.

They are intended to help residential conveyancers consider how the increasing use of climate searches may justify making some changes to conveyancing certificates, enquiries and reports.

A. Buyer's Pre-Contract Enquiries / Enquiries before Contract/ Preliminary Enquiries

Please supply a copy of all environmental reports, including climate searches, that have been prepared in relation to the Property or indicate where such reports may be inspected.

B. Certificate Of Title For Lenders

Climate Search Result – Pass

The Property passed a climate search dated [insert date]. The search is attached.

OR

Climate Search Result – Further action recommended

The Property did not pass a climate search dated [insert date]. The search is attached.

C. Report On Title

Climate Search Result – Pass

The Property passed a climate search dated [insert date]. The search is attached.

OR

Climate Search Result – Further action recommended

The Property did not pass a climate search dated [insert date]. Further action is recommended. The search is attached.

You should raise any queries relating to it with your surveyor, valuer or other specialist consultant. A reduction in the market value of the Property as a result of predicted climate change impacts may mean that a price reduction is appropriate. It may also lead to a lender, if applicable, withdrawing from, or imposing additional conditions in, their offer for your purchase of the Property.

We are not qualified to advise further on this search result.

⁵Note: Groundsure's climate search is called ClimateIndex™. It is included within Groundsure's environmental reports at no additional cost. Hence, it is not a separate / additional report for conveyancers to commission. It is an enhanced environmental report.

⁶This is the document the conveyancing solicitor gives to the lender to confirm certain statements about the property.

