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property losses – latest developments



Two recent cases have dealt with different aspects of damage to residential property and have provided clarification of the approach the courts will take.

In the first case, a man whose home was destroyed by fire claimed under his insurance policy. The policy gave the insurer the right to reinstate the property rather than to pay a cash sum to the insured. The insurer opted to undertake reinstatement and required the insured to enter a standard form JCT Minor Building Works contract with a builder.

The builder's performance was not satisfactory to the homeowner and he therefore withheld progress payments that were due to the builder under the contract. The builder then sought an

adjudication (as provided for in the contract terms) to confirm his entitlement to the payments.

The adjudicator ruled in favour of the builder and the homeowner appealed the decision. The court overturned the decision on the basis that the contract had been imposed on the man by the insurer and the wording of the withholding clause was unfair under consumer law.

In another case, the Court of Appeal had to deal with a case concerning a fire that occurred after work had been undertaken by electricians.

They had finished their work and left, but before the owner of the house had returned, it caught fire.

The owner was able to demonstrate that the work done by the electricians had been negligent, but the expert evidence did not categorically demonstrate that their negligence had caused the fire. The Court ruled that the inability of the electricians to show with a reasonable degree of probability that something else, for which they were not responsible, could have caused the fire was fatal to their defence.

If your property is damaged through the fault of another or you have a dispute with a builder, we can help you negotiate a satisfactory resolution.

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lifting covenants on property

Some people think that a covenant on a property lasts forever, but in some circumstances an application can be made for a covenant to be discharged.

The instances in which this can be done are:

- if circumstances have changed so that the covenant has been rendered obsolete;
- if the modification or removal of the covenant will not injure those who benefit from it;
- if those benefiting from the covenant give express or implied agreement to its modification or removal; or

- where the reasonable use of the property is impeded by the covenant and this is contrary to the public interest or there is no continuing benefit from the covenant and the disadvantage arising from the modification or discharge of the covenant can be adequately compensated for by the payment of money.

If your property is subject to a covenant which prevents you using it as you would like or diminishes its value, please contact us for advice.

problem trees and preservation orders



Cases involving damage to a property caused by trees located on a neighbour's land, especially those dealing with subsidence or heave due to roots, are fairly common.

A recent Court of Appeal case concerned a tree on a neighbour's land which was causing

continuing damage to a house. As the tree was the subject of a preservation order, the homeowners applied to the council for permission to fell it. The application was refused, the council arguing that the nuisance could be prevented by other methods, such as creating a root barrier or by underpinning the house.

The question in point was whether the council was right in requiring that alternative means of abating the nuisance, which would allow the preservation of the tree, had to be considered. The Court ruled that it was.

If you have problems with nuisance caused by your neighbours or their plants, we can help you resolve them.

in brief

lenders taking tougher line

According to Experian, lenders had started to reign in lending well before the advent of the 'credit crunch'. With property prices having fallen continuously since the beginning of the year, getting good deals on mortgages or remortgages is getting increasingly difficult as interest rate cuts are often not being passed on to borrowers.

E-conveyancing on the way

The Land Registry's e-conveyancing project is expected to go live this summer. The system is designed to allow authorised users to exchange information quickly, securely and reliably with each other and with the Land Registry. Once up and running, the system should allow property

and mortgage registrations to be completed online, almost instantly.

who doesn't need a HIP?

Home Information Packs (HIPs) are now required for most residential properties put on the market, but there are several exceptions, including:

- residential properties not available for sale with vacant possession (in some circumstances);
- seasonal and holiday accommodation; and
- where the property is unsafe or intended for demolition.

We can help you ensure your property sale or purchase runs as smoothly as possible.