

Key Considerations for Developers, Contractors and Project Stakeholders

Before seeking advice on construction collateral warranties, it is helpful to consider the following points and gather the relevant project information.

-  **The Underlying Contract or Appointment:**
Providing the building contract, subcontract or professional appointment allows your solicitor to check that the collateral warranty is consistent with the obligations already agreed.
-  **The Parties Requiring Protection**
Identifying whether warranties are required for a funder, purchaser, tenant, developer or another stakeholder will help determine the appropriate protections and terms.
-  **The Parties Providing Warranties**
A schedule of the contractors, key subcontractors and professional consultants involved in the project can help establish who will be required to provide collateral warranties.
-  **Warranty Requirements Within the Contract Documents**
Building contracts and professional appointments often specify which warranties must be provided, to whom and by when, so these provisions should be reviewed at an early stage.
-  **Liability Provisions**
Consider any proposed liability caps, net contribution clauses or exclusions, as these may affect the protection available to the beneficiary and should align with the underlying contract.
-  **Professional Indemnity Insurance**
Where a warranty is being provided by a professional consultant or a contractor with design responsibility, the available professional indemnity insurance and required period of cover should be considered.

Assignment Requirements

Consider whether the beneficiary may need to transfer the benefit of the collateral warranty to a future purchaser, funder or other party and whether any restrictions should apply.

Execution and Timing

Establishing how and when warranties must be signed and delivered can help prevent outstanding documentation from delaying funding, practical completion, a property sale or another key transaction.

Alternative Third-Party Rights

Depending on the project structure, rights granted under the Contracts (Rights of Third Parties) Act 1999 may provide an alternative to individual collateral warranties and should be considered when establishing the contractual strategy for the project.



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