

## Residential Property: Briefing Note on Chancel Repairing Liability

Chancel repair is an ancient law which has long since survived medieval times. Although all good Property Lawyers are aware of it, it has largely been consigned to textbooks until a recent case (Church Council of Aston Cantlow –v- Wallbank) highlighted that chancel repair liability is still enforceable.

We need to consider does it still affect properties today? Will it come to an end and what is the practical way forward to deal with this for your modern practice.

### First, we must consider what is a chancel repair liability?

The chancel of a church forms a significant part of the building which is near to the altar; reserved for the clergy and the choir only. The liability to repair the chancel stems from medieval common law when the tithe system was used to finance church repairs. The rector of a parish church was responsible for the repair of the church chancel but he had the benefit of tithes from the land within the parish in order to pay them. When the church land was sold off and purchased by laymen the liability for chancel repair was transferred with the land.

It is estimated to still relate to around 5,200 churches (roughly one third of all parish churches in England and Wales today) covering many, many acres of land.

### Secondly, does it still affect the property I am buying, selling or mortgaging today?

Section 2 of the Chancel Repairs Act 1932 gives parochial councils the power to serve notices to repair on those affected by the chancel repair liability, and if a notice is not complied with, the church can issue proceedings to recover the cost of repair. The liability is joint and several so, it could be the whole liability or you could be responsible for a proportion of the cost. Unfortunately, It does not matter that the original land burdened with the liability has been divided into hundreds of parts as you would see in a modern housing estate, each part of the land is equally liable for the whole amount. It is irrelevant whether the property is commercial or residential however, it is thought that the liability attaches to the freehold rather than a leasehold title, meaning that the freeholder (ie a Landlord) and not the tenant of a property will be liable.

### The Wallbank case

The House of Lords' decision in the case of Aston Cantlow v Wallbanks in 2007 has highlighted the effect of owning a property which is subject to chancel repair liability. The Wallbanks' spent several years trying to argue against this liability but were left with a repair bill of around £100,000 together with all the legal costs of around £250,000.

### Will chancel repair liability ever come to an end?

There have been campaigns by the land registry, the law society and comments by the courts about how unfair this ancient law is. However, unless there is an act of parliament abolishing it, the liability will continue to affect property owners.

On a positive note, there will be some certainty given in 2013 as a result of the Land Registration Act 2002 in that chancel repair liability will not affect specific properties if:

- the liability has not been registered against the property by 12 October 2013; and
- the property is sold to a new purchaser, who would then take the land free from any chancel repair liability.

So, after the date any new purchasers of a property can be satisfied there is no liability if nothing is registered against that property, but existing owners are still liable. It is reported that the Church of England is proactively identifying and registering land that is subject to chancel liability before 2013 deadline. Properties with a chancel repair liability registered against them will remain liable unless they can persuade the church to remove the entry.

### Protection against the chancel repair liability.

All property lawyers should carry out a chancel repair search which will identify whether there is a liability. Unfortunately, there is no way of checking 100% whether a property is subject to a chancel repair liability, unless the church has registered the this against the property. This makes it difficult to ascertain which properties are affected. However, properties known to be within the



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boundaries of a mediaeval parish are usually identified as having a 'potential liability'.

### Indemnity Insurance

- *Potential Liability*

If a chancel repair search comes back the result as a potential liability then the most cost effective and practical solution is to take out insurance. Policies are available online and can cost from as little as £50 (depending on value of the property). In most cases it is a small price to pay for peace of mind; the risks may be slight but if you are liable, the cost could be substantial.

- *No Search*

Some insurers now offer an option of not actually carrying out a search and agreeing to cover properties on a block policy basis and this can be as little as £15.00 per property.

- *Actual Liability*

Where the search reveals an actual liability or the deeds are explicit in indicating there is a liability then indemnity insurance to cover the risk would be fundamental for the transaction to proceed. Each insurer will quote for the property involved and the value of the property. As there is a liability the premium would reflect this ranging from £300 upwards but it is down to the insurer as to what they consider the risk is likely to be of the church actually requiring repair.

### Contacts

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