

Chancel repair



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What is chancel repair liability?

Chancel repair liability occurs when a landowner is responsible for the cost of repairing a church of the Church of England or Church in Wales.

It is a remnant of ecclesiastical law stemming from the reign of Henry VIII. Rectors were responsible for maintaining the church chancel and the parishioners the nave. When Henry VIII took over rectorial property upon the dissolution of the monasteries in around 1540, he also took over the liability to repair the chancel attached to these properties. Most of the land has long been sold off by Henry and his successors, but the liability lives on – and attaches to the land. It therefore binds whoever owns the land now.

How do you know if a property has a potential chancel repair liability?

A common misconception is that it's just properties immediately adjacent to or near a parish church that are likely to have a chancel repair liability. This is not true. What is relevant is what land the Rector owned in around 1540 (when Henry acquired the assets of the Church). That would often be large tracts of land throughout a Parish.

Another common misconception is that this issue only relates to rural areas of the country, with quaint parish churches. Remember – in the 1500s Southwark was a rural area.

A recent change in the law has made it easier to discover if a property has potential liability. From 13 October 2013, in order for the liability to be protected, it must be entered into the property official copies as an interest of the Parochial Church Council. These can then be easily obtained from the Land Registry.

Although current owners will still be liable if the liability is not registered, the main beneficiaries of the change are buyers; they will no longer need to carry out searches, but instead can rely on the official copies for a definitive answer.

If there is no notice on the register, a buyer (who has paid more than a nominal amount for the property) will not have any liability for repairs, even if the property is in a parish area that affects liability; the fact there is no notice means the buyer takes the property without it.

For current owners (as opposed to future buyers) the most common way to establish if there is a risk of liability is to commission a search by a specialist search provider such as ChancelCheck. These searches are carried out by Lewis Silkin as standard on conveyancing transactions.

A basic search will tell you if the property is located in a Parish which has a continuing chancel repair liability. If not, then there is no risk to any land in that Parish. If yes, then you might be unlucky.

A more detailed search can be carried out on individual properties through the National Archives at Kew. This is more expensive. Whilst it gives you certainty, it is not always in your best interest, as it means that insurers will either refuse to insure or charge a prohibitive premium. In practice it is quite rare to carry out this detailed search.

If a property is found to have a potential chancel repair liability – what's the risk?

The risk is that you may have to foot the bill for the cost of repairing your local church. In reality chancel repair liability is rarely enforced by the Church. However, there have been cases when this has occurred and in some of these instances it has proven extremely expensive! In 2004 Andrew and Gail Wallbanks were landed with a £186,986 bill for the repair of their local church, St John the Baptist.

What can you do to protect yourself?

The usual option to protect against potential liability would be to take out an indemnity insurance policy – i.e. insure against the risk of the Church knocking on your door if their roof needs re-leading.

The premium for taking out a policy varies depending on the limit of indemnity covered. If you go for a low level, you will pay a lower premium – but there is a greater risk that the cost of repairing the church will exceed the limit of your insurance – you then end up paying the balance.

People often assume that the level of indemnity you should seek depends on the value of your property. Actually that's not relevant. What you are insuring against is the cost of repairing the Church – which will bear no relationship to the cost of your property.

Chancel repair liability – the future...

At the moment chancel repair liability is an 'overriding interest', which means that it will bind purchasers of land even if it is not noted against the title at the Land Registry. However as of 13 October 2013, a new purchaser will only generally be bound going forward if the liability is noted on the property's title.

If you only remember five things, remember these five things:

1. If a property you own has chancel repair liability you may have to pay for a parish church to be repaired.
2. Andrew and Gail Wallbanks had to pay £186,986.
3. You can now tell from the registered title whether there is potential liability or not.
4. If there might be a liability we advise insurance.
5. In deciding what limit of indemnity to seek, the value of your property is not relevant. What you are insuring against is the cost of repairs to the Church.

Vaguely relevant fact

A study by the Royal Armouries published in 2009 reveals that Henry VIII's waist size increased from 32 inches when he was in his 20s to 52 inches at his 51st Birthday.

...little bits of law

This is one in a series of leaflets published by Lewis Silkin LLP, providing information on a range of legal issues that face our developer clients. Other topics discussed range from boundaries to wildlife.

Professional advice should be obtained before applying the information in this client guide to particular circumstances.

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