

CONVEYANCING GUIDE: CHANCEL REPAIR LIABILITY

The history of chancel repair liability is ancient and complex, demonstrating how some of the more historic aspects of ancient property ownership have survived to current times.

This information guide is provided where we believe your property falls within an area which may be affected by this ancient liability, and describes in outline issues you should consider prior to committing yourself to the property transaction. Please read our guide carefully in accordance with our full report on the title to the property provided to you.

What is Chancel Repair Liability?

The liability relates to the historic responsibility for upkeep of a church being divided between the rector and the parishioners. Parishioners responsibilities were eventually transferred by legislation to the church and do not pose a problem. However rectors were historically responsible for the upkeep of the chancel of the church – the chancel is the space around the altar including the choir and sanctuary. When the lands of the rector became divided and sold into private ownership, the responsibility to repair the chancel would have passed to the subsequent owners of land formerly belonging to the rector.

Which properties are affected?

You do not need to live adjacent or close to an identifiable church to potentially be subject to this liability. The existence of the liability can be difficult to discover because of the historic fragmentation of rectory lands.

The law dates back to before the time of King Henry VIII, and churches built before 1536 have the benefit of this historic right. When King Henry dissolved the monasteries and sold the rectories and their land, this liability passed with that land to the new owners and eventually transferred to current day home-owners. The liability generally does not apply to same extent in Wales, following the disestablishment of the church in Wales in 1920, but where it does apply the liability is owed to the Church of Wales rather than individual parochial churches.

How is the liability enforced?

The Chancel Repairs Act 1932 gave the Parochial Church Council (PCC) the power to serve a demand for the cost or contribution towards the cost of repairing the church chancel. In the event that an owner fails to pay then the PCC can enforce the demand through the courts.

There is no requirement for all properties affected by this liability within the parish to receive a demand, or for the repair bill to be split equally between all property owners.

How many Churches are affected?

It is estimated that up to one third of parish churches could be entitled to recover chancel repairs from land owners that would historically have been owned by the rector of the parish. There are approximately 5,200 pre reformation churches who could benefit from this right across England and Wales, meaning up to 500,000 properties could be affected. There is no register or quick search to see which properties are affected by this liability. Searches are available using the National Archive to see if the property is within an ancient parish that could be affected, but the result is not definitive.

Has this liability ever been demanded?

In liable parishes, only a minority have exercised their rights to apportion the cost of the chancel repairs amongst the affected landowners, and it was thought unlikely for many years that a church could force any property owner to pay repair costs. In 2008 the owner of a property in Warwickshire received a demand for payment and the case was referred to the courts. The court decided that the property did still have the liability to make payment to the church, even though it was not registered on the deeds.

Will the liability show on the deeds?

Chancel repair liability in most cases will not be registered on title deeds. Under the Land Registration Act 1925, chancel repair liability became an 'overriding interest' meaning that the liability does not need to be registered on the deeds or with the Land Registry to be enforced.

The Land Registration Act 2002 recognised that the law needed to be clarified and made a 10 year transitional provision to preserve the status of chancel repair liability for that period. From 12 October 2013, the liability should only bind new owners of registered land if it is protected by an entry in the land register, but the Law Society expressed doubts in 2006 that all liabilities have been removed as a result of the Act.

During the 10 year transitional period it is estimated that 250 churches registered notices of liability against over 12,000 properties.

If you have a property that does have a chancel repair liability registered on the legal title, we will give you further legal advice on the next steps to take. This may include taking out an insurance policy to cover the risk of any demands being received. Please refer to our full legal report on title sent to you.

Even if there is no liability on the deeds, if the property has not been sold since 2013, the liability could still remain. It could also possibly be registered at the Land Registry during the period between exchange of contracts and completion. For this reason your Case Handler may carry out an additional Land Registry search before exchange takes place to see if there are any pending applications for a restriction.

What's the position now?

In December 2017 the Law Commission announced its intention to re-examine chancel repair liabilities over the next 3 years as part of its focus on law reform. It is important to understand that chancel repair liability has not been abolished. An attempt to abolish and end all liability for chancel repair in England in 2014 was not progressed through Parliament. Even though the Law Commission have announced an intention to review the law surrounding chancel repair liability, there is no guarantee that this will be abolished, or that any recommendations would be acted on by parliament and become law, and therefore issues relating to chancel repair liability will be considered by us as part of your conveyancing transaction.

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