

# Legal alert

December 2015

## WHAT IS CHANCEL REPAIR LIABILITY?

If a property is subject to chancel repair liability it means that (in England) the relevant parochial church council or (in Wales and Monmouth) the Representative Body of the Church in Wales can call upon the owner of that property to pay for the repair of the chancel (i.e. the eastern part) of a parish church.

Originally, chancel repair liability attached to "glebe" land. That is, land in lay (non-church) ownership that happened to be entitled to receive tithes (one tenth of the produce of the land) from parishioners. In return for tithes, the owners ("lay rectors") of the land were expected to pay for the upkeep of the chancel.

Save in limited circumstances, each landowner is responsible for the whole of the repair bill (subject to a right to recover contributions from other liable owners, if they can be identified).

### WHICH PROPERTIES ARE AT RISK OF BEING AFFECTED?

All land in England and Wales is at risk (albeit a remote risk) of being affected by this liability.

### HOW DOES THE LIABILITY STILL EXIST?

Although tithes (and tithe rentcharges and tithe redemption annuities which replaced many tithes) have all been extinguished, any property in England and Wales can still be burdened by chancel repair liability in any of the following circumstances.

- If the property originally belonged to a person or body, such as an Oxford college, who acquired it on the distribution of monastic land during the Reformation in the sixteenth century.
- Certain tithes were abolished under the enclosure legislation of the eighteenth and nineteenth centuries. Sometimes an "enclosure award" under an Enclosure Act transferred land to a lay rector as compensation for loss of the tithes. The chancel repair liability survives, attaching to the land awarded.
- Some tithes, or payments in lieu of tithes, will have died out because of "merger" under the Tithe Acts. However, merger leaves the chancel repair liability extant, not only for the rectorial land but also for any non-rectorial land included in the merger.
- Some tithe rentcharges were extinguished by the owner of the land burdened by the tithe payment agreeing to take on a proportion of the chancel repair liability. Such arrangements were recorded by the Tithe Redemption Commission in their "records of ascertainment". Most (but not all) of the records of ascertainment are kept in the National Archives at Kew.

### BUT WASN'T CHANCEL REPAIR LIABILITY KILLED OFF ON 12 OCTOBER 2013?

Not quite.

Chancel repair liability ceased to be an overriding interest after 12 October 2013.

In other words, any chancel repair liability affecting a piece of land is overridden (and will therefore disappear) when the freehold first changes hands (for valuable consideration) after that date, unless:

- the liability has already been noted on the registered title for the land; or
- (in the case of unregistered land changing hands) the liability is apparent from the title deeds or protected by a caution against first registration.

Putting this another way, you don't have to worry about chancel repair liability if the freehold of the property has changed hands (for valuable consideration) since 12 October 2013.

But many properties are therefore still at risk from chancel repair liability.

Note in particular:

- All leasehold owners will continue to be at risk (via lease provisions making the tenant responsible for outgoings etc.) until the freehold reversion has changed hands.
- A mortgagee exercising a power of sale will override any chancel repair liability registered after the date of the mortgage. However, if the mortgagee appoints a receiver to sell the land, the land will be sold subject to the liability (because the receiver is the agent of the borrower). If the mortgage is simply paid off, the chancel repair liability will continue to burden the land.
- If you are buying a freehold property that's still at risk, your usual pre-completion priority search will guard against an attempt to register chancel repair liability between exchange and completion. And if there's to be a long time between exchange and completion, consider either registering a notice of your estate contract or insuring (or both).

## SHOULD I DO A CHANCEL REPAIR SEARCH?

Probably not.

A Chancelcheck search merely reveals whether the parish in which your property is situated contains land covered by a record of ascertainment kept at the National Archives (see §3.4 above). 40% of all parishes fulfil this criterion. It therefore tells you nothing worth knowing. Insurers appear to regard Chancelcheck search results as "risk neutral".

Also, think carefully before commissioning a personal search at the National Archives. Such a search will only reveal whether or not the property is fixed with liability as recorded in the records of ascertainment.

A negative search result from the National Archives will not eliminate the risk, because liability can still arise in the other ways mentioned above.

A positive search result will substantially increase any insurance premium or, at worst, make the property uninsurable. It also ought to be disclosed to the Land Registry, who will note the liability on the registered title.

However, a National Archives search might be helpful if you already know that your property is fixed with liability. The result may give you an indication of the proportionate liability attributable to your property. The lower the proportion, the lower the insurance premium.