

## Taking your Chancels

Anyone who has bought a property or taken a lease in recent years is likely to have seen a reference to chancel repair liability. Concern over this liability increased significantly following the high profile House of Lords case of *Parochial Church Council of Aston Cantlow and others v Wallbank*. In this article we look at what chancel repair liability means for property owners.

The Wallbanks, as owners of a property called Glebe Farm, were ordered to pay around £200,000 towards the cost of repair of a church chancel. Ultimately, the Wallbanks had to sell Glebe Farm to pay for the repair costs. Jodi Chapman and Jim Fairclough acted for the purchaser of Glebe Farm and needed to ensure that the liability wasn't going to transfer with the farm to their client. In this article Jodi puts to Jim the pertinent questions on chancel repair liability and what it might mean for you.

### **Q. What is a chancel?**

A. It is the part of a church around the altar, reserved for clergy and choir, and typically separated from the nave by steps or a screen.

### **Q. What does a chancel have to do with my property?**

A. Historically, about four million acres of land in England and Wales was owned by parish churches. Those who used the land had to pay a tithe (a tax or levy) for the privilege, which was put towards the cost of church chancel repairs. Over time the land was sold and the liability to pay the tithe transferred with the land. The liability has been passed on as the land has been divided up over the centuries. It is now known as a chancel repair liability. In England, the parochial church council (the PCC) has the right to collect any money due.

### **Q. How can I tell if the liability attaches to my property?**

A. There is no current requirement for chancel repair liability to be registered on the title of a property at the Land Registry. Steps are afoot to change this. In the meantime, the practice has been for people to carry out a chancel repair liability search to see if there might be a potential liability and/or take out insurance to cover the risk. Sometimes clues can be found in the name of the property. For example, a glebe is land belonging to a parish church so any property known as 'Glebe.....' is highly likely to have a chancel repair liability. The liability to pay the tithe is only relevant to pre-reformation churches and then only those with a chancel, so another indicator (although again not conclusive) is to ascertain whether there is a parish church in the vicinity of the property. The liability arises in relation to around 5,200, (approximately one third) of all parish churches.

**Q. You mentioned that steps are afoot to change the registration requirements?**

A. Yes, the Land Registry is requiring the PCC to register all chancel repair liabilities on the titles of affected properties by 13 October 2013. If the liability is not registered by that date it doesn't automatically mean that the property is free from liability whilst it remains in the same owner's hands. However, if you buy a property at market value without liability registered on the title after 13 October 2013, the property will be freed from the liability and neither the new owner nor any purchaser after that will have to worry about chancel repair liability. If you don't sell then the position will not change and you may still be liable. The situation is slightly different if land is unregistered but the principle is the same.

**Q. How much could be payable?**

A. The liability is not capped; It will relate to the actual cost of putting the chancel into repair, so it depends on what state the chancel is in. The value of your property is irrelevant. The cost of the repairs could exceed your property's value. The PCC is not under any obligation to claim the cost from all of those who have properties within the affected area. They can (and in the Wallbanks' case did) claim the entire cost from one property owner.

**Q. Can I get the liability released if my property is affected?**

A. A typical lawyer's answer - possibly! There is no mechanism to force the release of the liability but the Ecclesiastical Dilapidations Measure 1923 states that if you can agree a sum with the PCC and if the Diocesan Dilapidations Board approves that sum, then the liability can be released. The sum is to be the amount estimated by the Diocesan Board of Finance as being reasonably sufficient for the cost of future repairs of the chancel and a sum for insurance of the chancel.

**Q. There was no mention of chancel repair liability when I bought my property - do I need to do anything now?**

A. It will be interesting to see how the position changes as we get closer to October 2013. The PCC will be able to register the liabilities until then. If your property is affected it is unlikely that you will be able to obtain insurance once the liability has been registered. The insurance is not particularly expensive and is a one-off payment. Personally, I would prefer to spend a few pounds now to obtain protection while the position is unknown rather than take the risk. We can only speculate on the consequences of a liability being registered. Will it render a property unmarketable or devalue the property? If you don't want to take the risk then you should look into getting a search done and/or taking out indemnity insurance now.

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