

Chancel repair liability

Introduction

A landowner's liability to contribute to the upkeep of the part of a local church known as the chancel (chancel repair liability) needs to be considered when acquiring property. Whilst the impact of chancel repair liability on properties where the title is registered at the Land Registry has been reduced, it can still cause problems. This information sheet explains what the issues are and where there are continuing risks.

What is a chancel repair liability?

The owners of certain pieces of land can be responsible for paying, or contributing towards, the cost of chancel repairs to Church of England churches.

The liability relates to some, but not all pre reformation churches (those in existence before 1534). Unfortunately, it is not as straightforward as there being no liability if the local church is post reformation. Additionally, because of the way chancel repair liability developed, land affected can be geographically distant from the church it relates to.

There is probably no limit on the amount that the church can claim to repair the chancel and the sum could theoretically be higher than the value of the property.

Where it exists, the liability to the church is permanent, whether or not the owner of the land affected knows about it. Making a payment does not cancel out the liability.

The responsibility for repair of a particular church may be divided between a number of land owners. If this is the case then they are jointly and severally liable.

How do you know if a chancel repair liability affects your land?

Identifying whether chancel repair liability is an issue will depend on whether the title to the property you are acquiring is registered at the Land Registry or whether it is still an unregistered property.

Registered land post 12 October 2013

For registered land only, once a transfer for valuable consideration has been registered at the Land Registry post 12th October 2013, the Church will be defeated in a claim for payment towards chancel repairs unless it has previously made a successful application to note that liability on the Land Registry title to the property. Until such a transfer is registered, liability will continue even if no notice has been registered.

A transfer for valuable consideration is one where an appropriate payment has been made and is usually as a result of a sale on the open market. If an owner leaves his property to a beneficiary in a will, or makes a lifetime gift, the liability will still continue as the Church can register a notice of liability against the property at any time before a transfer for valuable consideration. In that event the landowner will be notified and the liability will bind subsequent owners.

Consequently, unless a transfer for valuable consideration has been registered before your acquisition, we would still recommend carrying out a search. This is because there is a risk, although very slight, that if registration of your purchase is delayed for some reason, the Church could note its right to chancel repair liability on your title in that intervening period.

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Unregistered land

Chancel repair liability can exist even if the owner of the land affected is unaware of that liability. Unfortunately, the records detailing which land is affected are piecemeal. The main source of information is the national archive, but the records are not complete. To complicate matters further, parish boundaries have changed over the years. There are, however, searches we can carry out.

Searches and insurance

There is a basic search we can make to clarify whether or not your property lies in a parish where there is a potential liability for chancel repair. Unfortunately, due to the broad nature of this search, it often comes back with a positive response which means insurance cover has to be put in place.

It is possible to do a more detailed search which considers all the parish records. However, this is time consuming and expensive and if a positive search result is obtained insurance cover is unlikely to be available to cover the risk.

Indemnity insurance cover

If a basic search has a positive result, the usual course of action is to seek insurance cover. If you are buying a property where chancel repair liability is revealed, it would be usual to obtain the cost of the insurance from the seller.

However, insurance does have some limitations. Cover is normally provided against the sum claimed for chancel repair. This means the policy would not cover any reduction in the value of the property as a

result of it being established that it has a liability for chancel repair.

Some policies do not cover subsequent owners of the property. However, circumstances could change which would mean insurance would be more difficult to obtain on a later sale. Therefore, it may be a false economy not to obtain a policy which covers future owners of the property.

Finally, if a lender is involved, they would need to be satisfied with the terms of the policy.

Conclusion

A claim being made for a chancel repair is relatively rare. However, if a claim is made, it could be for a substantial sum. Consequently, save when we are dealing with registered land where we are certain the Church no longer has a right to note a claim for chancel repair liability, we would recommend carrying out a basic chancel repair search, and then if necessary seek to obtain indemnity insurance.

Further information

This information sheet has been prepared to highlight some key issues relating to chancel repair liability. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at March 2019 and may be affected by subsequent changes in the law. For more information please contact Sarah Easton on 01892 510000 or email at:

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