

Disputes A – Z

A. Adjoining owner and building owner; the two parties involved in a party wall dispute under The Party Wall Etc, Act 1996

There can in some cases be more than one adjoining owner. For example, in the case of a deep foundation, or a block of flats.

Alternative dispute resolution

This is where an out of court formalised way of coming to agreement is used.

B. Builders and building disputes

We once heard it said “to build is to be conned”. Judging by the number of people that make comments about a building project not being to standard, to time, or to cost, it may be a very valid phrase.

There are many ways of resolving a building disputes; everything from commonsense “cup of tea” meetings to formal out of court settlement, such as mediation or adjudication, or single joint experts, to ultimately going to court.

A second choice of boundary dispute

As the name implies this is where the exact location of a boundary is not in agreement with the two, or more, parties involved.

C. Cowboy builders

Cowboy builders, a name frequently used in relation to the quality of the building work. It is so embedded in the English language that you can make the comment that the builder turned up on horseback and everyone knows what you are talking about – please see building disputes.

Civil Procedures Rules/Protocol

These are the protocol used to ensure that as many disputes as possible are kept out of court and, should they go to court, that the parties have prepared themselves appropriately so that the court case isn't taken up by the Judge getting the basis of the case. We would also argue that it gives a set format.

There is also, what is known as, a Part 35. This is an expert witness statement prepared in a set way.

Case Law

In both dilapidations and party walls it is a civil procedure, therefore case law is very important around the statutory law.

Covenants

Always remember the covenants in a lease; they can cost you a great deal of money. A good chartered surveyor specialising in dilapidations will be able to advise you on the repairing covenant, the redecoration covenant, the reinstatement covenant and the statutory regulations covenant, as well as the yield up clause.

D. Dilapidations

As certain as death and taxes! Whilst the serving of a schedule of dilapidations can come as a surprise to the tenant/leaseholder, there is a whole industry out there doing nothing else but dilapidations claims. Please see our website www.DilapsHelp.com or www.DilapsHell.com, depending upon your situation!

Diminution in value

Claims against surveyors are limited by the diminution in value, i.e. the value that the property would have had, compared against the value of the property as is, with the fault, or faults, that were missed by the surveyor. Also, diminution in value is used on a Section 18 valuation to limit the value of the claim between the value of the property as is and the value of the property as it would have been if kept up to the standard within the lease.

E. Expert witness

The term given to the experts called upon in a court case. It can be argued that if you are in a court case that your original adviser wasn't expert enough!

Enabling Act

Sometimes the name given to the Party Wall Act Etc Act 1996, as this legal piece of legislation that is carried out by party wall surveyors, does enable the building owner, and usually the builder, to carry out the work.

Evidence

Evidence is what you need in the case of a schedule of dilapidations dispute, whether you are the tenant or the landlord. Good records of how the property was when it was purchased, known as a schedule of condition, can be of great help. On the landlord's behalf records of alterations and improvement that have been agreed and also a record of how the property was at the start of the lease and also periodically, known as an interim schedule of dilapidations.

F. Full repairing and insuring lease

This is a standard type of lease that most institutional investors require, as this limits liability on maintenance.

Fast forward!

This is what we recommend all people taking on a builder or leased property do before they take on said builder or leased property, i.e. that is fast forward ahead to any possible problems there can be and seek the right sort of professional advice at an early stage to limit or stop problems at a later date.

G. Guidance Notes

Chartered surveyors are required to follow the Guidance Notes, which are deemed to be best practice by the Royal Institution of Chartered Surveyors (RICS). Whilst it says that you don't have to

follow them, if you chose not to you will have to give good reason. We would comment that many chartered surveyors that understand the game of dilapidations sail close to the wind with regarding working under the Guidance Notes.

H. History as shown

A great deal of time and money can be wasted on arguing principles and that in most cases it is far easier to settle out of court than in court, which of course the best negotiators know.

Heads of terms

These are the sales particulars that commercial agents prepare when you are looking to buy a property and are often the only indications of the legal liability you have under the lease that a tenant has before they make an offer to purchase.

I. Investors

Investors think very differently to people that are looking to use a property as a home, or companies that are looking to use a property to run their business from, and you do need to understand that property is their business.

Institutional investors

This type of investor is often often investing for pension funds and has a very strict criteria as to the sort of leases they will invest in.

Income stream

Income stream is how an investor thinks of the rent on a leased property.

J. Joint agreed surveyor

Often known as the agreed surveyor. This is where one single surveyor is used by both parties in a party wall agreement.

Jerry built

Jerry built, a phrase sometimes used in relation to the quality of building. We assume it relates back to using prisoners of war to carry out building work. We have to add that the only jerry built properties that we have come across (where the history was certain) were actually quite well built! Please also see building disputes.

K. Knowledge

Best when it is a mixture of education and experience. Ensure the expert that you employ has knowledge in the area that you need it in.

L. Leases

Or we should correctly say lease clauses, which need to be read very carefully. The main dispute clauses on a dilapidations claim (although we appreciate some of them aren't strictly speaking a dilapidations claim) are the repair covenant, the redecoration covenant, the statutory regulations covenant, the reinstatement covenant and the yield up covenant.

Leaseholders

The name given to a personal company who is renting a property. In the case of a business they, in our experience, haven't read the lease terms, and it normally comes as a shock when they are served a schedule of dilapidations at the end of the lease. It should be remembered by all leaseholders that a landlord doesn't have to serve a schedule of dilapidations on you at all while you are still at the property and indeed many will only serve the schedule of dilapidations once you have left the premises, entitling them to a monetary solution. In our experience, it is far cheaper to call a good dilaps specialist chartered surveyor and anticipate your schedule of dilapidations.

Limits of a claim

We have been involved with a claim against a surveyor over a building survey on a timber framed property, where a cement mortar had been used to form the render, rather than a lime mortar,

and the surveyor had not explained the problems that this would cause – (please see our article on lime every time). The building, which should be breathable, had been smothered by the cement render, which has caused deterioration in the structure to the value of hundreds of thousands of pounds.

However, it has been argued by the solicitors that the limit of the claim is the diminution in value, which is the difference between what the property would have valued at if it had been built correctly using a lime mortar render, to the value if it has a cement render. This is more likely to mean the claim is the hundred thousand range rather than hundreds of thousands.

Line of junction

The term used in the Party Wall Etc. Act 1996 for the boundary line. We would argue, the very start point for a party wall award is knowing where the line of junction, or boundary line, is.

M. Mediation

A method used of formally agreeing a dispute and is one of several methods that come under ADR (Alternative Dispute Resolution).

Measure twice, cut once

This is the phrase used in carpentry. A similar phrase could be used to help stop building disputes, that is to communicate once (on a larger project), in the form of drawings and specifications and possibly a bill of quantities, and then to communicate twice, by going through and making sure both you and your builder understand what needs to be done, or, indeed, by employing a project manager to make sure this happens and to help prevent disputes.

N. No win, no fee

This is an increasingly popular way of employing solicitors. Unfortunately, where they do win then there is a large fee as you will need to pay for all the cases that they didn't win!

Neighbours

You never know your neighbours until you have had a good dispute with them. We are happy to help if there is a boundary dispute or a party wall case.

O. Overview

It is important that you have a chartered surveyor that can look at the detail, but also take an overview of the situation and advise more strategically.

P. Party Wall Etc. Act 1996

Originally said to date from the Great Fire of London, it was mainly in the London area (and Bristol), but was considered such a good way of dealing with “shared” wall issues, both for new builds and existing buildings and as it worked so well in London it was rolled out across the whole country.

We personally love the Act because it enables the building owner to carry out work with the consent of the adjoining owner, or owners, and it also has time limits in it, for example 14 days, where if a response isn't received then the Act automatically starts the next process.

Professional advice

Whilst using a chartered surveyor may seem expensive, it certainly is not expensive if you are the person with the cost of the potential property problem and often the earlier that you use a chartered surveyor in the cases of boundary disputes, leasing a property and party wall matters, the less likely you are to have a dispute, as they know the rules of the game!

Practice Statement

This is a requirement, which chartered surveyors have to follow for carrying out certain work, as set out by the Royal Institution of Chartered Surveyors, and it should give a minimum standard.

Q. Questions

It is often the quality of questions that are asked. See Tony Robbins “The power of questions”: five key points to remember when communicating:

1. Ask specifically
2. Ask someone who can help you
3. Create value for the person you are asking
4. Ask them to focus, congruent to belief
5. Ask until you get what you want

R. Royal Institution of Chartered Surveyors (RICS)

The governing body of chartered surveyors. It sets out both educational standards and practice standards for chartered surveyors, together with lifelong learning requirements (previously called Continued Professional Development).

Rent

Many would argue that this is all that matters to an investor. Some cynics would argue that this and the dilapidations claim is all that matters!

Repairing covenant

So important to understand when you take on a lease, as is the redecoration covenant, the reinstatement covenant and the statutory regulations covenant.

S. Schedule of Condition

A way that a tenant or leaseholder can protect themselves against a future schedule of dilapidations claim. This is as long as the schedule is carried out correctly and legally forms part of the lease, although we do think there are benefits to carrying out a schedule of condition even where it cannot form part of the lease.

Scotts Schedule

The schedule used by specialist dilapidations chartered surveyors to come to agreement, or some would argue come to disagreement, on a schedule of dilapidations claim.

Silent clauses in the lease

It is often not what lease says but it is what the lease is silent on, or doesn't say, that is very important in cases. You need to make sure that your lease is drafted correctly, be you the leaseholder or the lessee.

Section 18 valuation

In a dilapidations claim, if you are representing the tenant, it is very important that you establish what the landlord intends to do with the property, as if they intend to develop the site then the claim will be limited.

T. Tenants

The name given to a personal company who is renting a property. In the case of a business they, in our experience, haven't read the lease terms, and it normally comes as a shock when they are served a schedule of dilapidations at the end of the lease. It should be remembered by all tenants that a landlord doesn't have to serve a schedule of dilapidations on you at all while you are still at the property and indeed many will only serve the schedule of dilapidations once you have left the premises, entitling them to a monetary solution. In our experience, it is far cheaper to call a good dilaps specialist chartered surveyor and anticipate your schedule of dilapidations.

Third surveyor

The third surveyor is a term used in the Party Wall Etc. Act 1996 and it relates to the surveyor appointed by the party wall surveyor right at the start of a party wall case. It really should be the first thing that takes place before anything happens (but mainly a dispute), as this is the surveyor that will then settle any disagreement.

Take a step back and review the situation

Often when a dispute arises it can become rather heated and often personal. Sometimes an impartial third person can be a great help.

Treat people as you wish to be treated yourself

At the very least it can make you have a better day, at the very best it can stop you getting into a legal argument.

U. Understanding leases

So many people sign leases, only to regret signing them and they finally come to understand what they mean and the implications what they have, particularly with regard to dilapidations, which is they understand how a Schedule of Condition would have protected them.

V. Valuation – Section 18

This is a valuation where the limit of a Schedule of Dilapidations claim meets the criteria set down in Section 18. It is the difference between the value of the property as it is and the value of the property if all of these conditions have been met, which is known as the diminution in value.

W. Wood from the trees

Having an expert look at your case can separate the wood from the trees and if you are prepared to listen to a very different view on a case.

We were involved in an asbestos claim against us, where, even though we had photos showing that the asbestos was actually polystyrene, the asbestos contractor had claimed this was asbestos and provided tests to prove it! Had the matter gone to court the focus would have been on showing that we were experts in what we did and a claim would have been for, what is known as, diminution in value (explained in sections L and V).

X. Other than extras, which isn't really an X, we can't think of anything – e-mail us if you can!

Extras, tend to be the root cause of building disputes, along with the time taken and the quality of the work.

Other than this we can't think of anything for X! E-mail us if you can think of anything.

Y. Yield up covenant

This is a term used when a lease comes to an end. There will often be certain yield up clauses that a tenant has to comply to in order to end the lease, as well as the usual repair, redecoration, statutory regulations and reinstatement covenants.

Z. Zzzzzzz

We hope you are still awake!!

We hope you found the article of use and if you have any experiences that you feel should be added to this article that would benefit others, or you feel that some of the information that we have put is wrong then please do not hesitate to contact us (we are only human).

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