

Chancel Repair Liability and Manorial Rights after 13 October 2013

Until 2003, when the House of Lords ruling in the case of *The Parochial Church Council of Aston Cantlow v Wallbank* hit the headlines, anyone who had even heard of chancel repair liability (including real estate lawyers) assumed it was an obsolete and theoretical liability never used in practice. But then, Andrew and Gail Wallbank, owners of Glebe Farm, were ordered to pay for repairs to their local church. 9 years earlier, in 1994, the Wallbanks had received a repair bill from the Parochial Church Council (PCC) for over £95,000. The Wallbanks knew that their property carried chancel repair liability, but assumed this was a type of gentleman's agreement, discharged by occasional contributions to church funds.

Chancel repair liability appears to stem from the English Church's entitlement to receive tithes. Tithes were utilised to maintain the chancel (the east end of a church, usually around the altar). Under Henry VIII estates and legal entitlements that belonged to the Church passed to the Crown. The Crown sold the assets together with the liability for chancel repair. If the property of an individual rectory was sold to more than one person, the liability was similarly divided among the various plots. The owners of these properties came to be known as 'lay rectors'. Division of land into numerous plots does not dilute the liability. Lay rectors are jointly and severally liable, each potentially being responsible for the entire cost of repair.

In February 1982, the General Synod of the Church of England overwhelmingly supported a motion approving a phasing out of chancel repair liability. Then, in 1985, the Law Commission published a paper on its reform, recommending phasing it out over a 10 year period. The case for reform was based on the lack of certainty as to whether or not a property is subject to the liability and that the law is anomalous, uncertain and obscure, causing unnecessary difficulties and expense in dealing with land, occasionally leading to severe financial hardship, and unsuited to our modern society.

As stated in the Law Commission report, land owners do not necessarily know if their land is subject to chancel repair liability. The liability is currently an overriding interest, in other words it attaches to land and usually there is no notice of that liability on the paper title to the land. Moreover, there may be more than one lay rector in a parish who is obliged to pay for the chancel repair, but the PCC responsible for collecting the contribution is entitled to seek

the whole amount from one lay rector, leaving that person to collect contributions from the other people who are liable to pay, if he can discover who they are.

A solution was finally found in the Land Registration Act 2002, which came into force in October 2003. It provides that the liability's status as an overriding interest ceases at midnight on 12 October 2013. After that date, unless the relevant PCC has lodged a notice at the Land Registry protecting its right to claim for chancel repairs, any buyer purchasing the property for monetary consideration or equivalent value will take free from the liability.

So does this mean that the liability to pay for chancel repair disappears automatically after 13 October 2013 if the local PCC has not registered the proper notice against the property title at the Land Registry? The answer is no. The PCC can still register a notice after 12 October 2013 **if** there has been no change in ownership since 12 October 2013. However, once a transfer of the land is registered at the Land Registry after 12 October 2013, the PCC's right to enter a notice is lost and the liability is then extinguished. However, this only applies if money or other valuable consideration is paid for the property. It appears that property which is transferred under a will, or given as a gift, will retain the liability.

It is not only chancel repair liability that ceases to be an overriding interest at midnight on 12 October 2013. Manorial rights that are owned separately from the land to which they attach, also lose their overriding status. Manorial rights include sporting rights, e.g. the rights to hunt, shoot and fish on the land and the right to extract minerals from under the land. Owners of manorial rights should therefore be seeking to register them at the Land Registry as soon as possible in order to protect them.

If you have any questions or would like further advice in connection with any matter or issue raised by this note, please contact your usual contact at Stevens & Bolton LLP.

This information is necessarily brief and is not intended to be an exhaustive statement of the law. It is essential that professional advice is sought before any decision is taken.

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