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Lease-end dilapidations in commercial property

The content is based upon circumstances current in May 2012.

Scope and terminology

The term “dilapidations” refers to breaches of lease covenants that relate to the condition of the property, and the process of remedying those breaches.

This guide deals only with breaches by the tenant and the landlord’s subsequent remedies towards the end of the lease term; sometimes known as “terminal dilapidations”. The guide does not deal specifically with leases which end because of the exercising of a break clause. It relates to the law and procedure in England and Wales; other parts of the British Isles have their own law and processes which can differ from those detailed here.

Some Definitions

A “**Schedule of Dilapidations**” is a document prepared by the Landlord (or their surveyor) which lists the allegations, suggests remedial works and sometimes estimates the costs of those remedial works.

A “**Quantified Demand**” is a document prepared by, or on behalf of, the Landlord which sets out further details of the allegations. It is only issued after the end of the lease. It includes details of what the Landlord considers to be its likely loss as a consequence of the tenant’s alleged breaches. The likely loss does not always equate to the cost of the works set out in the Schedule of Dilapidations.

A “**Response**” is the reply from the Tenant (or their surveyor) to the Quantified Demand and/or Schedule of Dilapidations. This normally takes the form of a covering letter / email and a Scott Schedule.

A “**Scott Schedule**” is an extended version of the Schedule of Dilapidations which allows space for the Tenant’s surveyor to comment on the content of the Schedule of Dilapidations.

The “**Dilapidations Protocol**” is a document published by the Ministry of Justice which sets out the courts’ expectations of the landlord and tenant when it comes to lease-end dilapidations. The document is available to download from the Ministry of Justice web site.

The “**Dilapidations Guidance Note**” is a document published by the Royal Institution of Chartered Surveyors (“RICS”) which sets out the RICS’s expectations of the performance of its members in relation to dilapidations matters.

I am a Tenant; what should I know?

Prior to signing the lease

The principle of 'buyer beware' holds as true when taking a lease of property as it does when buying it and so you should familiarise yourself with the lease terms and their dilapidations implications prior to signing the contract. A chartered building surveyor can advise you of the implications of the clauses you are signing up to.

During the lease term

It is recommended that tenants consider their potential future dilapidations liability in good time, and budget for that future obligation. Financial Reporting Standard 12 suggests that provision is made in advance, and may be allowable against future taxes.

If you undertake alteration works to the premises then it is likely that your landlord may require you to reinstate those alterations shortly before the end of the lease. A Licence for Alterations (or Licence to Alter) is often agreed which sets out the obligations.

Near the end of the lease term

Dilapidations disputes can ultimately end in a court. It is therefore important to protect your position in the event that the landlord eventually commences proceedings so you should always obtain early advice from your solicitor and surveyor. You may be advised to make offers to settle at various stages, and should consider such advice carefully, as it may be referred to later in court.

You should be aware of the extent of dilapidations work you have committed to complete. This can be a complicated assessment and there is decades of case law to take into account. It is normal to engage a chartered building surveyor, experienced in the field of dilapidations and familiar with the case law, to advise you.

Unless you have completed all the building work which the lease and any licences for alterations require of you then you should expect to receive a Schedule of Dilapidations from your Landlord. The Schedule of Dilapidations may be sent to you shortly before or shortly after the end of the lease term. If it is sent to you before the end of the lease term then the Landlord may update it at the end of the lease to reflect any changes to the premises.

If the lease or any licences for alterations requires them to do so, your landlord might serve you with a notice to reinstate alterations you have made. This notice may be separate from or included within the Schedule of Dilapidations.

Even if the Landlord does not send you a Schedule of Dilapidations you still have potential dilapidations obligations and a chartered building surveyor can give you advice as to the scope and potential cost of the obligations.



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If you do not complete the dilapidations works before the end of the lease term then your landlord can claim damages from you to recompense them for the adverse financial position they find themselves in, because you did not complete the dilapidations works.

Landlords should not however profit from dilapidations payments and so the amount set out in the Quantified Demand is sometimes lower than that in the Schedule of Dilapidations. This may be because the landlord intends to redevelop the premises; because the landlord intends to upgrade the premises; because a new tenant wants the premises left as they are and the terms of the new lease don't prejudice the landlord; etc.

It can therefore sometimes be very difficult to decide whether to complete the work yourselves before the end of the lease or to wait for the landlord to send his Quantified Demand.

It is possible that the Quantified Demand will include sums such as loss of rent, loss of service charge, etc. if the Landlord is confident that it can demonstrate a loss caused by the time taken to complete the works which you should have completed before the end of the lease. These sums are not always payable and again a chartered building surveyor can advise you in this respect.

The Schedule of Dilapidations and Quantified Demand can also include an allowance for VAT, if the Landlord is anticipating carrying out the works and would not be able to recover VAT. In those circumstances, if you are able to recover VAT on such works then you might be more inclined to complete the works before the end of the lease term.

After the end of the lease term

You should have received a Schedule of Dilapidations and, within about 56 days after the end of the lease, also a Quantified Demand. However, you should be aware that the landlord's entitlement to start a court claim will not become legally time-barred for six or 12 years (depending upon how the lease is signed) after expiry of the lease. Some leases contain a specific timescale for service. The Landlord or their Surveyor should have endorsed the Schedule of Dilapidations to confirm that it is reasonable and reflects the Landlord's intentions for the building.

You are expected to respond to the Schedule of Dilapidations and/or Quantified Demand within about 56 days of receipt. Your Response should also be endorsed by you or your Surveyor.

Normally, the surveyors appointed by the Landlord and Tenant meet and can narrow the differences sufficiently to recommend a settlement figure to their respective clients. If such a settlement is not possible then you may be faced with potential litigation from your former landlord. The Dilapidations Protocol states that the parties should consider alternative dispute resolution (ADR) in dilapidations cases.



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I am a Landlord; what should I know?

All dilapidations disputes can ultimately end in a court. It is therefore important to protect your position in the event that you eventually commence proceedings so you should always obtain early advice from your solicitor and surveyor. You may be advised to make offers to settle at various stages.

Timing can be important. Before the end of the lease you may need to serve Notices on your tenant in order to oblige them to reinstate alterations made to the premises.

While your entitlement to start a court claim will not become legally time-barred for six or 12 years (depending on how the lease was signed) after expiry of the lease, the Dilapidations Protocol expects that you will issue a Schedule of Dilapidations and a Quantified Demand within about 56 days after the end of the lease term, and the lease may also give a specific timetable. If you have sent a Schedule of Dilapidations to the tenant before the end of the lease term you are expected to update it at the end of the lease term.

It is normal to engage a chartered building surveyor to prepare a Schedule of Dilapidations for you, in an industry standardised form. This is then sent to the tenant (and the terms of the lease might dictate how it is to be sent).

Before they prepare the Schedule of Dilapidations, your surveyor will ask you what, on the date the lease ended, your intentions for the premises were. This is so the surveyor can endorse the Schedule of Dilapidations as required by the Dilapidations Protocol. Your answer must be honest and full because it may be reviewed in years to come by a judge.

The Schedule of Dilapidations will set out the cost of the works which the tenant should have completed. The Quantified Demand may necessarily be set at a lower figure. This is because the Quantified Demand should not exceed your likely loss. If the tenant's breaches of lease obligations have not actually caused you to suffer a loss then you must not include those items. Although the reasonable cost of works that the tenant should have undertaken is likely in many cases to be the main guide to the amount of compensation, the law does not allow this to exceed the amount by which the property had in fact been devalued by the breaches at the expiry of the term.

The former tenant should send you an endorsed Response within about 56 days of receiving the Schedule of Dilapidations / Quantified Demand. Once you receive the Response you will understand the scope of any disputed items.

Normally, the surveyors appointed by the Landlord and Tenant meet and can narrow the differences sufficiently to recommend a settlement figure to their respective clients. If such a settlement is not possible then you may be faced with having to litigate to recover the damages. The Dilapidations Protocol states that the parties should consider alternative dispute resolution (ADR) in dilapidations cases.



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Alternative dispute resolution (ADR)

Surveyor negotiation is an established form of dispute resolution, but the Dilapidations Protocol also requires that the Landlord and Tenant consider ADR. Neither party can be forced to undertake ADR but the court, if the claim is pursued that far, may expect this to have been attempted and unreasonable refusal to do so may be taken into account by the court when considering its award of costs.

ADR is a more formal setting for dispute resolution, can take various forms and may represent a cheaper means of settling the dispute than would a court hearing.

Forms of ADR suitable for dilapidations include Expert Determination (a single expert makes a binding decision); Mediation (the parties, their advisers and a mediator meet, with the mediator trying to broker a mutually acceptable settlement on the day), or; Arbitration (a private form of dispute resolution with processes similar to litigation but governed by the Arbitration Act).

The RICS holds a list of individuals qualified to act in these roles and, in certain circumstances, can appoint individuals to resolve disputes. Details can be obtained via the RICS Dispute Resolution Services web site.

Complex cases

This Guide focusses on the basics of the dilapidations process and does not attempt to cover all circumstances. Dilapidations disputes can be very complex with multiple specialists involved. For example, where the Landlord has not completed the dilapidations works but is proposing to litigate to recover damages, a specialist valuation report will be required (called a diminution valuation) which is usually prepared by a chartered valuation surveyor.

Other specialists may be required to advise on particular aspects such as lifts, air conditioning, cladding, land contamination etc. If the dispute does become litigious then barristers will probably be engaged to review the case and to act on behalf of the parties.

Similarly, if the matter becomes litigious then expert witnesses will probably be required. Because of their prior involvement it is normal, but not mandatory, for the parties' surveyors to be engaged as expert witnesses. From that time their principal duty is to the court and not to their appointing party.

What if it all goes wrong?

If you engage a chartered surveyor then they will be expected to follow the guidance set out in the RICS Dilapidations Guidance Note. A copy of the Guidance Note can be purchased from the RICS, or is free for RICS members to download from the RICS web site.

Your chartered surveyor will also will have a complaints handling procedure in place.



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Further Guidance

If you wish to contact a dilapidations surveyor in your area then please visit www.ricsfirms.com

A copy of the RICS Dilapidations Guidance Note can be purchased from the RICS or is free for RICS members to download from the RICS web site.

A copy of the Dilapidations Protocol can be downloaded free from the Ministry of Justice web site.

If you wish to contact the RICS then please use dilaps@rics.org, call 0870 333 1600 or write to

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