

Dilapidations resolution consultancy



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Dilapidations claims have historically been viewed as nothing more than a 'horse trade', an issue to be addressed at the lease end between the landlord and the tenant.

However this is no longer the case. Changes to the law surrounding dilapidations claims have meant inflated claims prepared on behalf of the landlord, and unrealistically low responses from the tenant, are no longer acceptable.

Both landlords and tenants should view a claim for dilapidations at the end of a lease as being a precursor to an action for breach of contract. It is therefore important to appoint a specialist team with the necessary experience and expertise to provide the correct advice in order to avoid costly litigation.

The advent of the Civil Procedures Rules (CPR) in 1999, and the subsequent Property Litigation Association's Pre Action Protocol For Claims For Damages In Relation To The Physical State Of Commercial Property At The Termination Of A Tenancy (The Dilapidations Protocol), has seen an end to non-specialist practice.

A comprehensive understanding of property law and legal procedures, together with a knowledge of practical building pathology, is essential to navigate successfully through a claim.

Failure to follow the correct protocol could prejudice a landlord's claim or a tenant's defence, particularly in terms of costs that are awarded by the court. At worst it could result in criminal prosecution for fraud under the Fraud Act 2006.

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Cluttons has a dedicated team specialising in the field of dilapidations resolution. The dilapidations resolution consultancy team draws from disciplines across the firm including chartered surveyors with backgrounds in building surveying, property valuation, agency, quantity surveying and arbitration.

Our team deals with all aspects of dilapidations claims including advice prior to agreeing lease terms and has a clear understanding of the issues and complexities from both sides of a dispute. We specialise in larger, more complex claims and have a proven track record in acting for some of the most prestigious landlords and tenants. Each case is unique and we ensure our service and advice reflects this rather than attempting to make the process fit a standard approach.

We encourage our clients to be pro-active in managing dilapidations, to save time and costs. In some instances, this involves looking at the issue of dilapidations before the lease is agreed and as early as the agreement of the heads of terms.

We pride ourselves on seeking to avoid litigious disputes, but in the rare circumstances when litigation is the only option, we can assist in assembling the right team of solicitors, barristers and expert witnesses.



Key services

- **Pre-lease health check:**
advise prospective tenants on how repairing covenants might apply to their specific properties in practice and mitigating potential future claims, prior to agreeing terms;
- **Covenant review:**
advise property purchasers on potential dilapidations and service charge issues prior to the purchase of new assets, including strength of covenant and covenant risk;
- **Option to determine:**
provide strategic advice to ensure the successful operation of a conditional break clause;
- **Covenant compliance:**
provide advice to tenants on how best to comply with the specific terms of their lease during the term;
- **Repairs notices:**
a sometimes difficult and complex area, we provide advice to landlords on executing a repairs notice successfully as well as advice to tenants on what steps need to be taken when faced with repairs notices;
- **Financial Services Authority audit compliance:**
provide comprehensive assessments of future potential dilapidations claims for accounting purposes. Our report format has been designed to allow for updates and changes during the term of the lease thus saving time and expense on any subsequent assessments;

- **Expert witness and independent expert opinion:**
if the worst should happen and a dispute becomes litigious, we can act as an expert witness to the court. Alternatively, we can provide independent expert opinion on a case prior to any decision to issue proceedings; and
- **Service charge dispute advice:**
provide advice to both landlords and tenants on the appropriate administration and application of service charges.

Clients

Citicourt Investment Partners
 Crown Estates Commissioners
 Gascoyne Property Holdings
 ING Real Estate Investment
 Nikon (UK)
 The Church Commissioners for Hyde Park Estate
 The Duchy of Cornwall
 The High Commission of Cyprus
 The Moving Picture Company
 The Oxford Institute of Legal Practice
 The Royal Automobile Club
 The Wellcome Trust
 The Westminster Grey Coat Property Company
 Trustees of The Eyre Estates



CLUTTONS

For more information contact

Martin Heffron
BSc (Hons) MRICS ACI Arb

020 7647 7216
07725 245671
martin.heffron@cluttons.com



cluttons.com