

Why have a Schedule of Condition carried out?

We have recently been asked by a client who is taking on a Lease what is a Schedule of Condition and why should they have a Schedule of Condition carried out? We can honestly say that we have been carrying out Schedule of Conditions for many, many years in fact a long, long time and you only really understand why you have a Schedule of Condition carried out at the end of your Lease. We have had the experience with some of our original clients where the Lease has come to the end and the Schedule of Condition has been used to help protect our clients' interest.

Freehold or Leasehold Property

Most people, apart from the lucky few, when they start a business and require a property do not have that much money and decide to have a Lease as the capital cost is initially lower, although once you have had Dilapidations served on you, you may think completely differently (more about that in a minute) and often the monthly payments are lower than a mortgage - it is all relatively low cost to the business. Typically newer businesses will be asked for a deposit and a guarantor normally upon a house they have equity in however some established businesses will often negotiate on these but it does depend of course on how the property market is performing. In a falling property market the landlord is, as any businessman is, looking to maximise his profits (rent for example) and minimise his risk. In a poor property market whilst he is still trying to maximise his profits and minimise his risk, he also has to be realistic about the business market and normally adjust down his expectations unless the property is located in a primary location.



If a Lease, what type?



Leases generally fall into two types the very common Lease is a Full Repairing and Insuring Lease, also known as a FRI Lease and the Internal Only Lease or a similar restrictive Lease. We would argue ironically that in both cases the surveyor carrying out the work needs to look externally as external things can impact on internal things. The Lease requires property to be put back in the condition as stated in the Lease and kept in the condition as stated in the Lease. An example would be a Lease clause that requires you to put and keep a property in good condition. It is these clauses/legal terms that a Surveyor that carries out work Schedule of Conditions work (and Dilapidations work) needs to understand and when preparing a Schedule of Condition ensure that the Schedule of the Condition of the property is appropriately written.

Guidance Notes on Schedules of Condition

At the time of writing there is no Surveyor prescribed way to carry out Schedules of Condition and indeed what you would think would be quite a simple matter has various opinions on it. Some surveyors simply like to put a description and the condition other surveyors like to put a description, a condition and an action required or work required while other surveyors like to put in photos. We can offer all these options but would normally go for the description, the condition and the action required as we feel this gives a most definitive view of what the property is like. We also recommend a video is carried out of the property which we will do if you so request or you can do.

In fact you can do the entire Schedule of Condition yourself if you want to as it is not rocket science although it does require a knowledge of construction as often there are cause and effect issues i.e. a simple one would be that the hopper heads (part of the rainwater system) are leaking and causing a parapet wall box gutter detail to deteriorate. We say that you can do the Schedule of Condition but we often find that most business people are too busy to do it and even if they do, do it the ones we have seen are not particularly good and leave the business person/tenant wide open to a claim.

So why do we do Schedules of Condition?

The reason we do Schedules of Condition is to ensure that you have an accurate record of the condition of the property when a landlord requests repairs/maintenance work, as he is entitled to do, normally known as a Dilapidations Schedule (Dilaps for short) you can argue your case. This will not happen to me as my landlord has been very nice and helpful as has the landlord's surveyor. We would only comment that we find all landlord and landlord surveyor's very nice at the outset before you have taken the Lease and sometimes this even continues on when you have the Lease as long as you pay the rent of course but we often say that death and taxes are certain and so is a Dilapidations claim. We would refer you to one client of ours who was a tenant in a property for some years and as their business grew they decided to move to a larger building and gave the landlord lots of warning and even spoke to the landlord's surveyor and asked them if they needed to do any work. They advised them that they would come round and have a look and the landlord's surveyor duly did come round and had a look and said that they would put a report in. They repeatedly requested sight of the report and they began to get concerned and requested the report in writing and many months later they vacated the property and then they were served with a Dilapidations Notice after they had vacated the property. This is normal practice, the reason it is normal practice is because it is up to you the business person to fulfil your Lease requirements and although the landlord does not have to serve a Dilapidations Notice, often they do In this case they decided to serve the Dilapidations Notice once the client had left and they can serve the Dilapidations Notice many years after, we looked into this and believe it is up to six years. Under the terms of the Lease you are required to do the work.



How do you do the work once you have given back the Lease and vacated the property?



This is a good question, how do you do the work, the problem is that you cannot go back and do it as you would then be trespassing, most landlords will not let you and by law they require and are able to ask for a monetary settlement i.e. they are able to charge you for the work you should have done which is where a Schedule of Condition really helps protect your position. In the case in question the tenants have now left the property, they have contacted us after they have left the property and we have no record of either the condition they left the property in or the condition the property was in when they took it on. You can see the difficulty here for a Surveyor even one experienced in Dilapidations to argue your case. There are however certain things that you can negotiate on to protect you but it is very difficult and far easier with a Schedule of Condition. This is why we would always recommend a Schedule of Condition.