

# The Dilapidations Protocol



## *A Landlord must substantiate their loss*

The days of inflated claims, 'golden handshakes' for Landlords at Lease expiry and 'horse-traded' dilapidations settlements bearing no resemblance to actual loss are over!

10 years after initial conception and a number of revised draft versions, the Property Litigation Association's Dilapidations Protocol came into force on **1 January 2012**. The Protocol is endorsed by the RICS and incorporated into the latest Guidance note for 'best practice'.

The Protocol applies to Terminal Dilapidations claims for damages on expiry of Leases for commercial property in England and Wales. Its aim is to reduce litigation by preventing exaggerated claims and by requiring both Landlords and Tenants to act within a procedural framework promoting co-operation and the disclosure of information.

### **Key Requirements**

The Protocol provides a framework for the respective parties to follow which includes key requirements. These are summarised as follows:

#### **Schedule of Dilapidations**

This should be prepared in an approved format and issued usually within 56 days of Lease expiry.

**Landlord's Endorsement** - The Schedule must include an endorsement by the Landlord or Landlord's Surveyor confirming that the works set out within the Schedule are reasonably required to remedy the breaches claimed; that full account has been taken of the Landlord's intentions for the property; and that the costs claimed are reasonable.

**Quantified Demand**—This should be prepared and issued usually within 56 days of Lease expiry (this may or may not be enclosed with the Schedule of Dilapidations) and should set out the Landlord's likely loss (which may not be the same as the cost of the works) and be supported by a quotation or invoices of actual expenditure incurred or by a diminution valuation (or both).

**Diminution Valuations** – The default position regarding diminution valuations is:

- (1) If the landlord has done the works the starting point is that a valuation is not required;
- (2) If the landlord has not done any works the starting point is that a valuation is required;
- (3) If the landlord has done some but not all of the works or intends to do all of the works, the starting point is that a valuation is required and also that the landlord provides information as to what works are going to be done, when they are going to be done, and that they provide estimates or tenders.

**Tenant's Response** – This should be given within a reasonable time, usually within 56 days of receipt of the LL Schedule of Dilapidations.

**Tenant's Endorsement** - The Response must include an endorsement by the Tenant or Tenant's Surveyor confirming that the works detailed in the Response are reasonable required to remedy the breaches; that the costs given in the Response are reasonable; and that the response takes into consideration the Tenant's (or Tenant's Surveyors) beliefs regarding the Landlord's intentions.

**Diminution Defence** - If the Tenant relies on a diminution defence, there is an obligation to disclose this and to provide a diminution valuation to the Landlord, usually within 56 days of receipt of the Quantified Demand.

**Negotiation** - The protocol requires that the respective Surveyors meet, usually with 28 days of the Response having been issued, in order to narrow the issues which may be in dispute and to gain a full understanding of the respective positions.

**ADR** – The Protocol requires both parties to consider Alternative Dispute Resolution as an alternative to litigation

### **Can we help you?**

Bradley Mason takes a proactive and commercial approach to Dilapidations, offering best practice and enhanced value to both Landlord and Tenant Clients. Our aim is to provide early, realistic advice to clients in order to manage expectations and minimize the risks associated with non-compliance with the Protocol.

We have a proven track record in providing strategic advice to both Landlords and Tenants regarding Terminal Dilapidations issues, reducing exposure to unnecessary costs and reaching early settlements.

**Please contact Bradley Mason, your 'Dilaps Doctor', today to see how we can help you.**

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