

# Dilapidations Seven

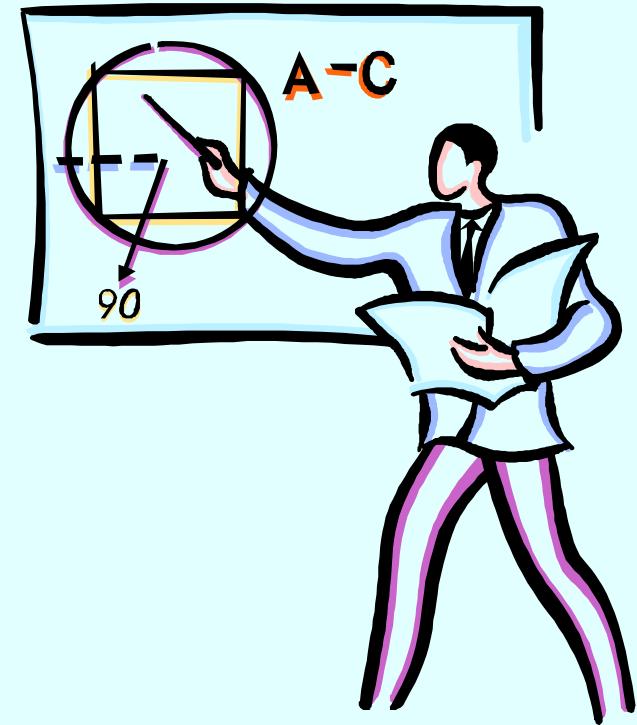
# RICS Guidance Notes

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# Summary

Every lecture will follow the same format:

- The first hour or so will be my presentation (but it will need some participation from you!).
- The second hour or so will be a tutorial – active learning.
- The last half an hour will be general feedback.



# Review

- Week 1 - Schedule of Condition & Property Report for tenants
- Week 2 - Dilapidations for Landlords
- Week 3 – Leases - Full Repairing and Insuring or Limited Liability Leases
- Week 4 – Legal Framework
- Week 5 - Clients T & C - Section 18 Valuations
- Week 6 – Schedule of Dilapidations Review, Goals, Presentations and Offices
- Week 7 – RICS Guidance Notes, Dilaps Questions, Test Yourself & Presentations

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# Course Work 1<sup>st</sup> Dec 2008

Course work requirement:  
Oral presentations



Schedules of Condition & Property  
Reports

and

Schedules of Dilapidations

Ready to present

# Oral Presentation

- This will mean a good readable set of site notes from everyone
- A Schedule of Condition & Property Report
- And a Schedule of Dilapidations with the case law relating to each item
- And a presentation each person taking a five minute minimum part
- Power point handed in

# Dilapidations Process

- ✓ Client rings for advice/ quote
- ✓ Talk to client
- ✓ Confirm instruction and T & Cs
- ✓ Gather available information
- ✓ Inspect property
- ✓ Prepare Schedule of Condition or Dilaps report
- ✓ Advise and agree way forward with your client
- ✓ Meet other surveyor
- ✓ Negotiate and agree
- ✓ Negotiate and Disagree and go to court

# Today - Now

## First Part

ADR

Acapulco

## Second Part

- Presentations

## Last Half Hour

- RICS Guidance notes and Exam style Questions

## Good Habits

- Own a Dilapidations book as reference (but remember the information gets dated)
- Have someone you can discuss Dilaps with
- Read latest RICS Guidance notes
- Keep up to date with the latest Dilaps information  
[www.DilapsHelp.com](http://www.DilapsHelp.com)

# What you must know on Dilaps



- Exam style questions
- Working in groups of two, three or four



# RICS Guidance Notes

Read it!

This is a snap shot of items in the RICS Guidance notes that you should know

And lots of Questions for you?



# RICS Dilaps Guidance Notes

A guide to best practice

You need to read it!

Some interesting sections



# RICS Guidance Notes

Guidance Notes are not compulsory

But - to quote to the Dilaps Guidance Note:

“In the opinion of the RICS a member conforming to the practices recommended in this note should have at least a partial defence to allegation of negligence by virtue of having followed those practices. However, members have the responsibility of deciding when it is inappropriate to follow the guidance”

# Not Necessarily

But it does not follow the members are negligent

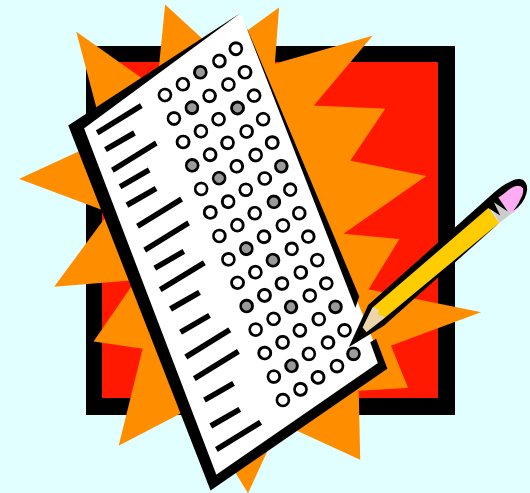
I think you would be on the defensive unless you had a very good reason

# Test and Measure Questions

**Each question has several sections**

- One point for either correct section
- Extra point for all right

Work in groups



# Question One

- a) What's the difference between RICS GN and RICS PS?
- b) What does CPR and ADR stand for?
- c) When is CPR & ADR be used?

# Protocol – We are Preparing for Court?

CPR

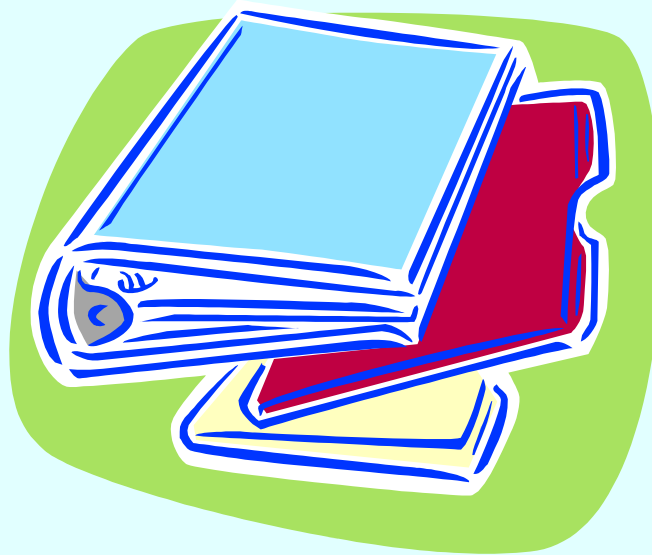
Or

Civil Procedure Rules

See [www.pla.org.uk](http://www.pla.org.uk)



# RICS Guidance Notes



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# Part One - Introduction

## Interestingly says:

- (the surveyor) should understand the client's position fully
- Ascertain the relevant factual and legal background

# Part Two – Surveyor's Role

- Expert Witness
- Adviser



Be professional, objective and act within the  
RICS Rules of Conduct

# CPR Pre Action Protocol

- Act reasonably in exchanging information and documents
- Ultimately if nothing else works use Alternative Dispute Resolution before court



# Exaggeration & Understatement

- Warning against subsequent litigation carries danger of heavy costs order against you
- CPR part 44.3
- In deciding what order (if any) to make about costs, the court must have regard to all circumstances, including the conduct of all parties



# CPR 44.3



- Conduct before as well as during the proceedings
- Whether it was reasonable to raise, pursue or contest a particular allegation or issue
- The manner in which the party has pursued or defended the case

# Question Two

- a. What's the difference between an adviser and an expert witness role?
- b. What's a SJE
- c. Why are SJEs rare?



# Adviser Role

## Involves:



- Identify breaches of covenants and appropriate remedies, prepare schedules or responses
- Provide or comment on valuation advice
- Negotiate
- Provide strategy and tactics

# Expert Role Surveyor

- Appropriate experience and expertise to undertake
- Be objective, work in a professional manner





# Expert Witness

- A personal appointment
- Bound by the RICS Practice statement and Guidance Notes
- Surveyors Acting as Expert Witnesses

# Expert Witness



- Under the CPR the PS and the GN
- The surveyor's duty is to the tribunal and should be objective unbiased evidence
- CPR part 35 sets out surveyors obligation in court proceedings

# Part 3 – Taking Instructions

- T&C in writing
- Act for the client within the bounds of the RICS rules
- State fees in a way the client will understand
- Recommends getting copies of information

# Question Three

a. How would you want to be paid for Dilaps work?

a. What information would you request / require from the client?



# Section 4 – The Lease and Other Enquiries



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# Answer - Information Required

- Lease
- Plans
- Licences
- Side letters
- Schedule of condition
- Inventories (who owns what)
- Schedule of fixtures and fittings
- Any notices under L & T Act 1954
- Any consents, Any agreements

- Then goes through the 4 Rs & yield up
- Mentions “torrential” drafting - this is where the lease has lots of terms relating to “repair”
- Example .....
- Repair and
- Uphold and,
- Maintain and,
- Rebuild and,
- Renew and,
- Amend
- You should work with the Tenant’s or Landlord’s Solicitor to establish what exactly it means

# Landlord's Fee

Check the lease to see if the landlord can claim but this should not affect your contract with the landlord, but can!



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# Advise on Schedule of Condition

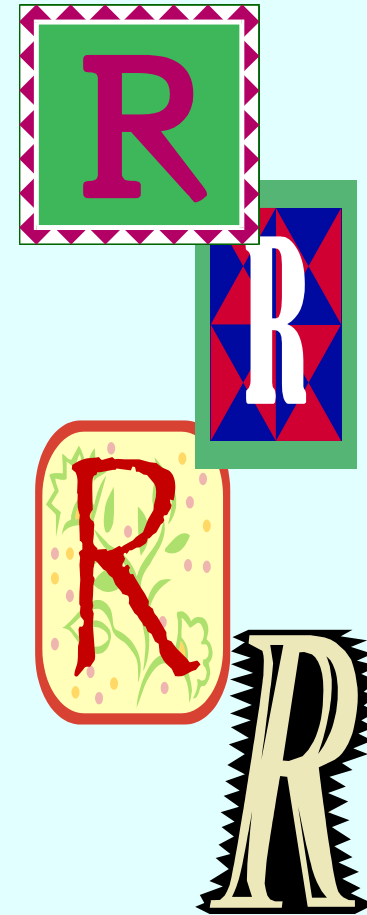
Schedules of Condition - no standard approach for the surveyor



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# Question Four

- a) Name the four Rs
- b) Which one R does Section 18 limit?
- c) What are the two ways a claim is limited by a section 18?



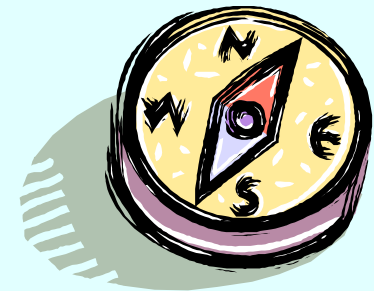
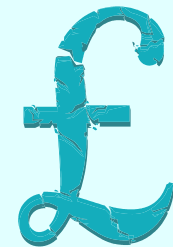
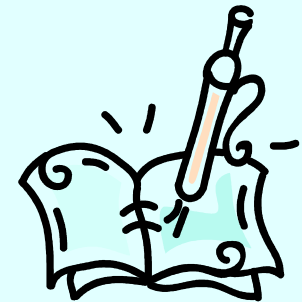
# Part 5 - Inspection



- Pleased to see it says look around
- Note general standard of repair in locality and whether similar properties are boarded up
- Any changes in the area since the lease was granted

# Inspection

- All site notes should be retained
- “sufficiently thorough” to enable Schedule of Condition or Schedule of Dilapidations
- Associated costs
- North point – I would add some way of establishing beyond doubt what you’re looking at!



# Question Five

If you were in court and your site notes were asked to be viewed

- What drawings and sketches would help your case?
- Do your site notes include your drawings and sketches?

# Section Six - The Schedule

Use RICS format

and

Scott Schedule (if required!)

# Question Six

- a) Draw a Scott Schedule
- b) Advise three ways you can cost a Schedule of Dilapidations
- c) As the tenant's surveyor what's the best way of avoiding agreeing a Schedule of Dilapidations and usually reducing your client's costs?

## Part 7 - Claims at the End of the Term

- Reiterates
- A landlord cannot recover more than its loss
- Section 18 L & T Act 1927 only applies to repair covenants
- Section 18 limits by diminution in value

And

- If future demolition or structural alterations are to take place



# Question Seven

- a) What is supersession?
- b) Where would you get information from to defend a tenant on a Section 18 basis?
- c) What is a heads of terms and who has produced one for the presentation (with the costs backed up either with quotes or detailed estimates)

# Surveyor's Endorsement

Which means signed by surveyor or “for and on behalf of”

Must include “confirmation in the opinion of the surveyor all the works set out in the schedule (of Dilaps) are reasonably required .....

And that full account has been taken of the landlords intentions for the property at or shortly after the termination of the tenancy and that costs if quoted are reasonable”

## Important point

List information provided that you worked on to make the claim (S of D)

If acting for the Landlord ask for his intention for the property in writing

Anything you're not 100% sure  
about, discuss with a specialist  
**Solicitor**



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# Consequential Losses (i.e. over and above the building costs)

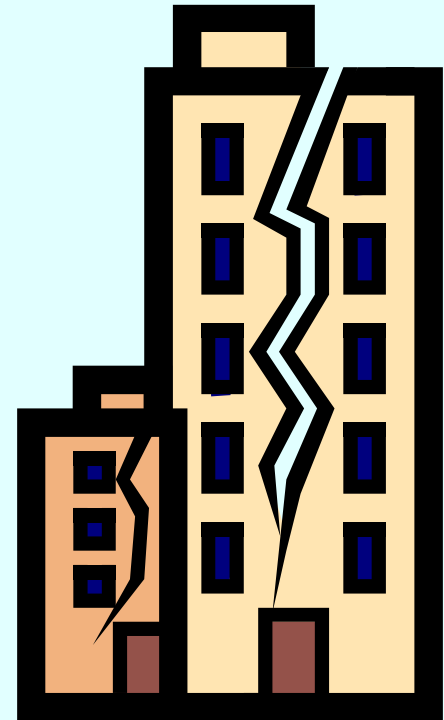
- Legal fees
- Admin
- VAT
- Holding costs until relet or sold
- Loss of rent
- Rates liability
- Insurance, security, energy and cleaning costs
- Loss due to lack of service charge recoupment
- Finance cost (including interest)
- Preparation of schedule
- Other fees of the surveyor

# Part 8 – Claims During the Term

- Interim claims
- Damages
- Forfeiture
- Entry to carry out work
- Specific performance

# Interim Claim - Damages

- Section 146 under Law of Property Act 1925
- Counter notice within 28 days under Leasehold Property (repairs) Act 1938



# Interim Claim - Forfeiture

- Law of Property Act 1925 Section 146  
“reasonable time”
- Tenant Counter notice within 28 days  
under Leasehold Property (repairs) Act  
1938
- But if landlord accepts rent or demands  
rent

# Entry to Undertake Remedial Work

*Jervis v Harris* – right to re entry



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# Break Clauses

Also known as “options to determine”

## Likely clauses:

- Period of notice
- Payment of premium
- Providing vacant possession
- Compliance with lease obligations

All clauses have to be 100% satisfied  
(GN warns about professional negligence in this area)

# Claims Against Landlords

Landlord's covenants

**Example:**

Common parts on a larger property



# Interesting Scenario for the Presentation



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# Part 11 – ADR

## Alternative Dispute Resolution

Alternative to a trial

Commonly:

### 1) Mediation

An agreed way forward

### 2) Independent expert determination

No rights to appeal

### 3) Arbitration

Based on evidence from the parties or by enquiry



# Part 12 - Settlements

- Agreed by the surveyors
- Be a full and final settlement in writing
- Be “open” not marked “without prejudice”
- Details, dates and work required
- Be signed (by someone authorised to sign – be careful on this point)



# Appendices

PLA Protocol

Or

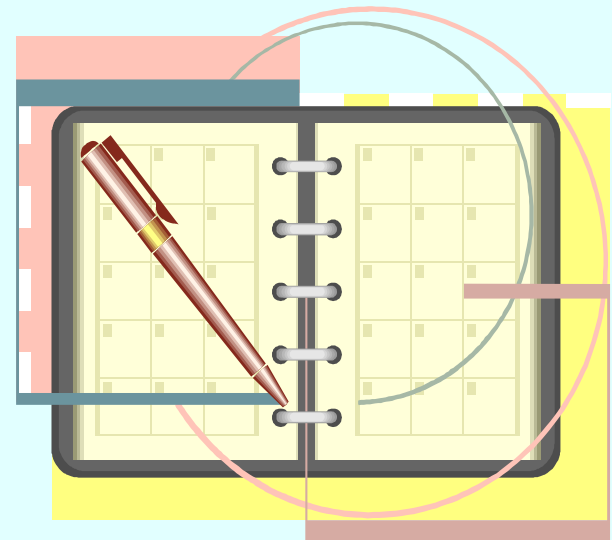
“Pre-action Protocol for claims for damages in relation to the physical state of commercial property at the termination of a tenancy”

Or

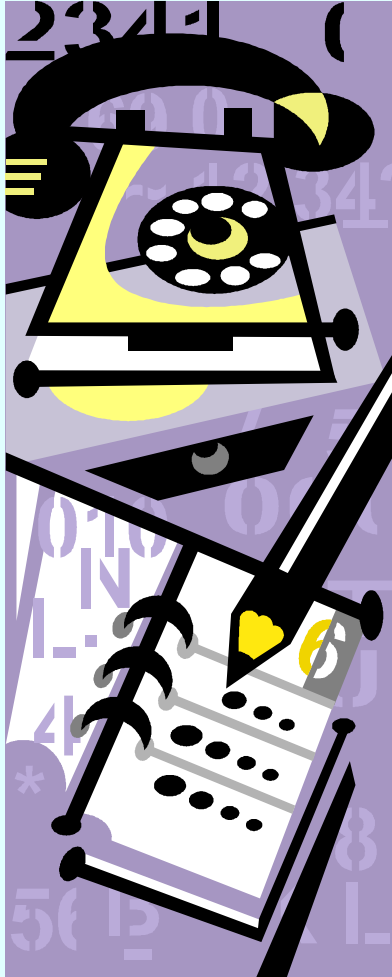
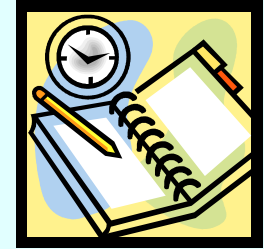
Dilaps protocol

# Protocol

**Aim** – to improve the pre action communication between landlord and tenant by establishing a timetable for exchange of information relevant to a dispute and by setting standards for the content of the schedules and claims and in particular the conduct of pre action negotiations



# Timetable - 56 Days



- Landlord's Schedule of Dilapidations within 56 days after termination of lease
- Tenant's response 56 days from service of claim
- Negotiations - meet within 28 days



# Good things in the Protocol that don't always happen

- Landlord's Surveyor does not give you an electronic copy of the Schedule of Dilapidations
- Landlord's surveyor does not include an endorsement of the Schedule of Dilapidations including a statement saying the Landlord's intentions have been fully taken into consideration
- Claim for cost of works are not supported by an invoice or detailed estimate

# Stock Take

- Last step before court where the protocol has been followed and court proceedings are likely to follow
- It's a gathering of information before that the court would need, this reduces the time in court



# Lots of Examples

- Blank Schedule of Dilapidations
- Filled in Schedule of Dilapidations
- Blank Scott Schedule
- Filled in Scott Schedule
- Flow chart on information
- Extracts from legislation
- L of P 1925 section 146
- L & T Act 1927 Section 18
- Leasehold Property (Repairs) Act 1938 1 to 8
- L & T Act 1954 section 51

# Quote for the Day

*"We are not creatures of  
circumstance: we are creators of  
circumstance"*

Benjamin Disraeli