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PARTY WALL ACT INFORMATION SHEET

Party walls are governed by the terms of The Party Wall etc Act 1996 (The Act). The Act defines a wide range of circumstances where a wall, or structure, is considered to be a Party Wall and hence should be maintained as such. These circumstances range from walls dividing terraced and semi-detached buildings, to walls that fall entirely on one owners land but form the boundary line for a neighbouring property. In addition, floor and / or ceiling structures that separate properties from those above and below are also considered to be party structures and also covered by the Act. Boundaries marked with wooden fences or concrete posts are not covered by the Act and property owners should refer to their title documents to see if provisions for responsibility of these areas is covered there. The Act also covers specific excavation works near neighbouring buildings but a professional should be consulted in any case for these works.

Important: the guidance on this information sheet is of a general nature, and is correct as of September 2018. You should always ensure that specific advice is given in relation to your project and the property on which the works are proposed.

WHAT IS A PARTY WALL?

In simple terms, a party wall is a structure that divides the buildings of two owners with the boundary between ownerships usually, but not always, and positioned at the centre of the wall. In accordance with The Party Wall etc. Act 1996, there are two different types of party wall:

Type A

A wall that stands astride the boundary of land belonging to two (or more) different owners. Examples include walls separating terraced or semi-detached houses or walls that form the boundary between two gardens, known as a "party fence wall".

Type B

A wall that stands wholly on one owner's land, but is used by two (or more) owners to separate their buildings. Examples include where one neighbour has a structure that leans against a wall that is owned by the other neighbour. Only the part of the wall that is enclosed by the lean-to is a Party Wall.

Party Structure

The Act also uses the expression "party structure", as in "Party Structure Notice". As well as the party walls described above this term encompasses dividing structures such as floors or other partitions. It is rare that structures of this type are the subject of a Party Wall Agreement.

Party Fence Wall

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A "party fence wall" is not part of a building. It stands astride the boundary line between lands of different owners and is used to separate those lands. Wooden fences, or even fences with concrete posts, are not party fence walls.

If you are unsure whether the adjoining structure you are thinking about is actually a party well then Contour Designs can help you with the determination.

DOES THE ACT AFFECT ME?

If the owner of a property wishes to undertake works that fall within the remit of the Party Wall etc. Act 1996 then it is their statutory duty to inform their neighbour(s) by serving a party wall notice.

If you intend to carry out any work which involves one or more of the following:

- Work on an existing wall, ceiling or floor structure shared with another property?
- Building on or at the boundary with another property?
- Excavating near a neighbouring building or structure?

then the Act does apply, and you must take action and be aware of your obligations under the Act. You should review the section below entitled "Are my proposed works covered by the Act?" for further details.

Owners should be aware that before major works are performed to a party wall they are obliged to notify adjoining owners of the intention to perform works via a party structure notice. In some circumstances there may be more than one Adjoining owner and notice should be served on all owners. It is highly advisable to speak to adjoining owners in advance of serving a notice to ensure they are aware it will be incoming and to discuss the arrangements and perhaps gauge their consent in principle. Whether the adjoining owner agrees or not the notice of the works must still be served upon them.

The Act does allow minor works, such as the installation of shelving and wall units, without a notice or consent. However, there is an automatic obligation to ensure that any works to party walls do not cause unnecessary inconvenience to adjoining owners or adversely impact the structural support provided by the structure. If in doubt a structural surveyor should be consulted as an adjoining owner can seek to take out an injunction to halt work of which they have not been notified and seek compensation where relevant.

ARE MY PROPOSED WORKS COVERED BY THE ACT?

We have provided some brief notes summarising works which come within the scope of the Party Wall etc. Act 1996 and therefore would be notifiable works and require a notice to be served. The focus of this article is alterations and extensions to residential properties though it can be applied to commercial properties as well.

Under the Act and as mentioned above, notifiable works will fall in to one of three categories

- Section 2: Work on an existing wall, ceiling or floor structure shared with another property?
- Section 1: Building on or at the boundary with another property?
- Section 6: Excavating near a neighbouring building or structure?



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Under Section 2: Work on an existing wall, ceiling or floor structure shared with another property?

The list of works which a Building Owner has the right to undertake which have a direct effect on a party wall are given under section 2(2), these are listed below with some typical examples:

(a) 'To underpin, thicken or raise a party structure, a party fence wall, or an external wall which belongs to the building owner and is built against a party structure or party fence wall' - This section allows a Building Owner to increase the height of a party wall as part of a loft conversion (for example) or to add an extra floor to a building or to underpin the whole width of a party wall which has suffered from subsidence.

(b) 'To make good, repair, or demolish and rebuild, a party structure or party fence wall in a case where such work is necessary on account of defect or want of repair of the structure or wall' - Where a party wall has become defective either owner can take the initiative and serve notice to have it repaired or re-built. The costs of the work are split according to the use that the owners make of the wall and responsibility for the defect or lack of repair.

Sub-sections (c) & (d) of the Act typically do not apply to works on residential properties.

(e) 'To demolish a party structure which is of insufficient strength or height for the purposes of any intended building of the building owner and to rebuild it of sufficient strength or height for the said purposes (including rebuilding to a lesser height or thickness where the rebuilt structure is of sufficient strength and height for the purposes of any adjoining owner)' - This right would only be exercised as a last resort as the costs would be considerable; including the payment of compensation to the Adjoining Owner for disturbance and inconvenience. Most designers/engineers would explore alternative options first.

(f) 'To cut into a party structure for any purpose (which may be or include the purpose of inserting a damp proof course)' - This right is most commonly exercised by a Building Owner cutting pockets in to a party wall to insert beams, either as part of loft conversion works or when internal walls are to be removed. It also covers the insertion of flashings and damp-proofing works which involve drilling or cutting in to the party wall.

(g) 'To cut away from a party wall, party fence wall, external wall or boundary wall any footing or any projecting chimney breast, jamb or flue, or other projection on or over the land of the building owner in order to erect, raise or underpin any such wall or for any other purpose' - This section covers the demolition of chimney breasts which are attached to a party wall but also gives the Building Owner the right to cut away other projections from the party wall, such as footings, if they are impeding his building work.

(h) 'To cut away or demolish parts of any wall or building of an adjoining owner overhanging the land of the building owner or overhanging a party wall, to the extent that it is necessary to cut away or demolish the parts to enable a vertical wall to be erected or raised against the wall or building of the adjoining owner' - In practice it will be items such as rainwater goods, soffits and fascias or coping stones which will be in the way of a Building Owner raising wanting to raise his wall. The Building Owner has a duty to make good any damage.

(j) 'To cut into the wall of an adjoining owner's building in order to insert a flashing or other weather-proofing of a wall erected against that wall' - If a Building Owner constructs an extension alongside an Adjoining Owner's existing extension it is likely that a small gap will remain. It would normally be in the interests of both owners to waterproof the gap with a flashing, if that flashing has to be cut in to the Adjoining Owner's wall this section gives the Building Owner the right to do just that.



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(k) 'To execute any other necessary works incidental to the connection of a party structure with the premises adjoining it' - In practical terms this section is only likely to be used in residential situations where a Building Owner wants to re-build his property but leave the party wall in place, it may then be necessary to form a more permanent connection between the party wall and the Adjoining Structure and to attach the new building to the existing party wall.

(l) 'To raise a party fence wall, or to raise such a wall for use as a party wall, and to demolish a party fence wall and rebuild it as a party fence wall or as a party wall' - A party fence wall is effectively a garden wall which is in shared ownership – they are commonly found between period properties; particularly those with back additions which have windows to the side. This section gives either owner the right to raise or re-built such a wall as part of their new building.

(m) 'Subject to the provisions of section 11(7), to reduce, or to demolish and rebuild, a party wall or party fence wall to -

(i) a height of not less than two metres where the wall is not used by an adjoining owner

(ii) to any greater extent than a boundary wall; or a height currently enclosed upon by the building of an adjoining owner

This section allows a Building Owner to reduce the height of a party wall or a shared garden wall down to a height of no less than 2 metres so long as it doesn't compromise the Adjoining Owner's building. If both owners are in agreement a wall can be removed altogether.

(n) 'To expose a party wall or party structure hitherto enclosed subject to providing adequate weathering' - The purpose of this section is really to protect an Adjoining Owner where a Building Owner plans to remove part or all of his structure and as a result expose the party wall. It may be necessary to protect the newly exposed wall with felt and battens if the exposure is temporary or if it is to be permanent exposed a more permanent solution, such as rendering or re-pointing may be required.

The notice period for works under section 2 of the Act is 2 calendar months.

2. Under Section 1: Building on or at the boundary with another property?

It surprises many Building Owners that they must serve a notice on their neighbour even though the hole they plan to dig will be entirely on their own land. The reason of course is that excavating close to any structure carries a risk that the foundations to that structure will be compromised and movement will occur.

This type of work is covered by section 6 of the Act and can be divided in to two parts. Below I have given the relevant text from the act together with a sketch which I hope will clarify the description.

Section 6(1), where -

(a) a building owner proposes to excavate, or excavate for and erect a building or structure, within a distance of three metres measured horizontally from any part of a building or structure of an adjoining owner; and

(b) any part of the proposed excavation, building or structure will within those three metres extend to a lower level than the level of the bottom of the foundations of the building or structure of the adjoining owner.

Section 6(2), where -



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(a) a building owner proposes to excavate, or excavate for and erect a building or structure, within a distance of six metres measured horizontally from any part of a building or structure of an adjoining owner; and

(b) any part of the proposed excavation, building or structure will within those six metres meet a plane drawn downwards in the direction of the excavation, building or structure of the building owner at an angle of forty-five degrees to the horizontal from the line formed by the intersection of the plane of the level of the bottom of the foundations of the building or structure of the adjoining owner with the plane of the external face of the external wall of the building or structure of the adjoining owner.

The notice period for excavation work which comes within the scope of the Act is 1 calendar month.

3. Under Section 6: Excavating near a neighbouring building or structure?

This category covers the construction of new walls at the line of junction i.e. the boundary line between two properties in different ownership. The new wall may be built up to the boundary line but wholly on the land of the Building Owner or astride the boundary line i.e. with part of it on each owner's side. If the Adjoining Owner refuses consent then the wall must be built wholly on the Building Owner's side. The construction of new wall at the line of junction are covered under section 1 of the Act.

There are two practical reasons why a Building Owner might want to carry out work detailed under this section of the Act:

- To maximise the width of a rear extension.

If the flank walls of a new extension can be built astride the boundary then a few extra square feet of internal floor space will be gained. It should be noted that new walls built astride the boundary under this section of the Act will be defined as party walls and may be enclosed upon by the Adjoining Owner at a later stage (subject to serving notice and contributing towards the cost of building the wall).

- To replace an existing boundary wall, fence or hedge with a party wall or party fence wall.

This is less common and the motivation will generally be to provide additional privacy or to overcome the maintenance that is required with fences and hedges.

The notice period for building a new wall at the line of junction is 1 calendar month. Procedures differ from works under sections 2 & 6 of the Act in that there is no automatic dissent to a notice after 14 days. If the wall which the Building Owner wishes to construct is wholly on his own land and he has had no response to his notice after 1 calendar month has passed he is free to proceed.

WHAT IS A PARTY WALL NOTICE?

Unless there have been preliminary discussions between the parties, very often, the first time that an adjoining owner becomes aware of the Party Wall etc. Act 1996 is when they receive a Party Wall Notice. In accordance with the Party Wall Act, there are 3 types of notice that a building owner may have to serve upon an adjoining owner to make them aware that he intends to carry out work which falls under the scope of the Act.

Party Structure Notice

Registered Office: Building 46 ● 9 Marlborough Road ● Royal Arsenal ● London ● SE18 6TA

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Party Structure Notices are served under section 3 of the act although they cover works described in section 2 (2) sub sections (a) to (n). Generally speaking, these are alterations that directly affect the party wall and include common jobs such as cutting holes to insert beams and padstones, cutting in flashings and removing chimney breasts.

The notice period is 2 months and the following information must be included for the notice to be valid (although there is not a prescribed form):

- Name and address of the building owner
- Nature and particulars of the proposed work
- Date on which the work will begin

Notice of Adjacent Excavation

Notices of Adjacent Excavation are concerned with works notifiable under section 6 of the Act. There are two types of excavations that are covered under section 6:

- Excavating within 3 metres of your neighbour's building and to a depth lower than the bottom of their foundations
- Excavating within 6 metres of your neighbour's building, if any part of that excavation intersects with a plane drawn downwards at an angle of 45 degrees from the bottom of their foundations, taken at a line level with the face of their external wall (this will normally mean that you neighbour is using piled foundations).

The notice must contain the same information as a Party Structure Notice but also be accompanied by plans and sections showing the extent of the proposed excavation.

With each of these types of notices the adjoining owner has 14 days to respond after which they are automatically deemed to be 'in dispute' and obliged to appoint a Party Wall Surveyor.

Line of Junction Notice

This is the least common of the notices and is served under section 1 of the Act and again covers two distinct tasks:

- The construction of a new wall next to a boundary.
- The construction of a new wall that sits across a boundary.

The notice period is one month.

If the adjoining owner does not respond to a section 1 notice relating to a neighbour's intentions to build a new wall up to the boundary, the work can commence when the notice period has expired. The building owner may place any necessary footings and foundations (with the exception of reinforced foundations known as 'special foundations') under the adjoining owner's land provided that it is necessary.

The building of a new wall astride the boundary is the only type of work covered under the Act which the adjoining owner can prevent. If the adjoining owner does not respond in writing within 14 days the building owner will have to build the new wall entirely on his side of the boundary line. Again, the building owner may place any necessary footings and foundations (with the exception of 'special foundations') under the adjoining owner's land.

Serving Notices



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Notice can be served in person or by post. If the adjoining owner's name is not known the notice can be served on "The Owner" although in this situation it has to be either delivered personally or displayed on a conspicuous part of the premises.

WHAT IS A PARTY WALL AGREEMENT?

The Party Wall Notice described above should be served on any and all owners of any adjoining properties before any works start. Unless the adjoining owner responds within 14 days the law will assume that they do not consent and that a dispute has arisen. Which means you have to appoint an independent "agreed surveyor" (at your expense) to draw up a legal agreement known as a "Party Wall Award" or Party Wall Agreement. Alternatively, each neighbour can appoint their own surveyor, in which case the award will be drawn up jointly by each surveyor. The Award is a document that describes your proposed works and confirms that you will pay for any damage that is caused by your building activities. Specifically, it will deal with the following matters:

- Sets out how and when the works will be carried out
- Records the condition of the next-door property before works begin (so that damage can later be attributed and made good). This is called a Schedule of Condition Report.
- Allows access for the surveyor(s) to inspect the building works

The award will typically be based upon a standard draft document which is then tailored to the specific details. The RICS produce a template award document that is commonplace. It should clearly state details of the two properties, their owners and their owners' addresses. It should also contain full details of the two surveyors (or agreed surveyor) and the "Third Surveyor" (if an "agreed surveyor" is used there will be no Third Surveyor). Other items covered by the award will include:

- Brief details of the proposed works
- Working hours; normally 8am to 5.30pm weekdays only of residential work
- Assurances regarding the contractor's public liability insurance
- Indemnities by the building owner in favour of the adjoining owner
- Access arrangement for the surveyors
- A time limit for commencement of the works, usually 12 months
- The adjoining owner's surveyor's fee

Let's take a look at and understand who benefits from the Act itself.

For the building owner the Act:

- Ensures that existing cracks and other defects to the adjoining property are recorded before the works commence.
- Provides a right of access to the adjoining owner's property to execute work in pursuance of the Act

For the adjoining owner the Act:

- Allows the surveyors to control the times during which the notifiable work can be executed.
- Includes provisions for dealing with damage without the need for a civil claim.
- Provides assurances that their land or buildings will not be compromised during the course of the work.
- Ensures that the works are carried out without unnecessary inconvenience.



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Although the adjoining owner receives the greater number of benefits those received by the building owner can be very important, particularly in protecting themselves from spurious claims for damage particularly in the event that an adjoining owner brings claim for compensation as a result of a crack in their property that never existed before works commenced next door.

The only situations where the benefits gained from a party wall award do not outweigh the cost of having it drafted are where minor works are involved. Examples include re-pointing, renewal of flashings or the insertion of a damp proof courses. These are all tasks where technically a party wall notice should be served but the likelihood of significant damage to a neighbour's property is minimal.

It should be remembered that just because an adjoining owner avoids a party wall dispute by consenting to minor party wall works the building owner's responsibilities do not disappear. If there is a dispute between the owners later in the process, for instance over some alleged damage, surveyors may still be appointed to resolve it.

Once you as the building owner have served a Party Wall Notice on your neighbour, they will realise you undertaking construction work that is notifiable under the Party Wall etc Act 1996. At this point, having received a Party Wall Notice your neighbour will have the following three response options:

1) Consent to the Party Wall Notice

A consent means that no further formalities of the Party Wall etc Act 1996 are followed, your neighbour would therefore not be afforded the various protections that the Party Wall etc Act 1996 Act provides to them. A consent from your neighbour also allow you to commence the works as soon as possible, assuming you are both in agreement to this and neither party wants to enforce the statutory time period.

However be aware, despite consent having been given, your neighbour will still have the right to dissent at a later date, but if this is done once the works have commenced it can often be very difficult for them to make your contractor stop work while the Party Wall process is then followed.

2) Dissent and Appoint Their Own Surveyor

If you neighbour dissents to the Party Wall Notice, they can choose to appoint their own Party Wall surveyor, and their surveyor's role would be to administer the Party Wall etc Act 1996 and ensure that their property is fully protected.

If they select this option you will also have to appoint your own Party Wall surveyor. The two surveyors would then mutually agree a Party Wall award. Under the Party Wall etc Act 1996 Act the you as the building owner are responsible for your appointed Party Wall surveyor's reasonable fee.

3) Dissent and appoint an agreed surveyor

An agreed Party Wall surveyor under appointment to your neighbour will undertake all of the same procedures as response option number 2, with the only difference being that there will be a single Party Wall surveyor acting impartially upon behalf of both you as the building owner and your adjoining neighbour. Once a dispute has arisen both the building owner and the adjoining owner change from being "clients" to "appointing owners" - the terminology re-enforces the surveyor's duty to be impartial. A surveyor can serve notice on behalf of their client because at that stage it is not known whether the adjoining owner will consent or not. If they consent there will be no award and no need for a party wall surveyor.

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Generally speaking, Contour Designs would only recommend proceeding with option 3 if you are able to choose and put forward your own Party Wall surveyor, however your neighbour will be advised the same. This way you can ensure that the surveyor has been selected based upon his or her merits.

An agreed Party Wall surveyor appointment is only applicable if the adjoining owner is agreeable to the single surveyor appointment.

Your response to the Party Wall Notice is a key moment in the Party Wall process and dictates the procedures that you as the building owner will duty bound to follow.

WHAT IS A SCHEDULE OF CONDITION REPORT?

A Schedule of Condition Report involves appointing an experienced and qualified Party Wall Surveyors to visiting the appointing owner's property prior to the building owner's construction work commencing. The Party Wall Surveyor will take photographs and a detailed written record of the property.

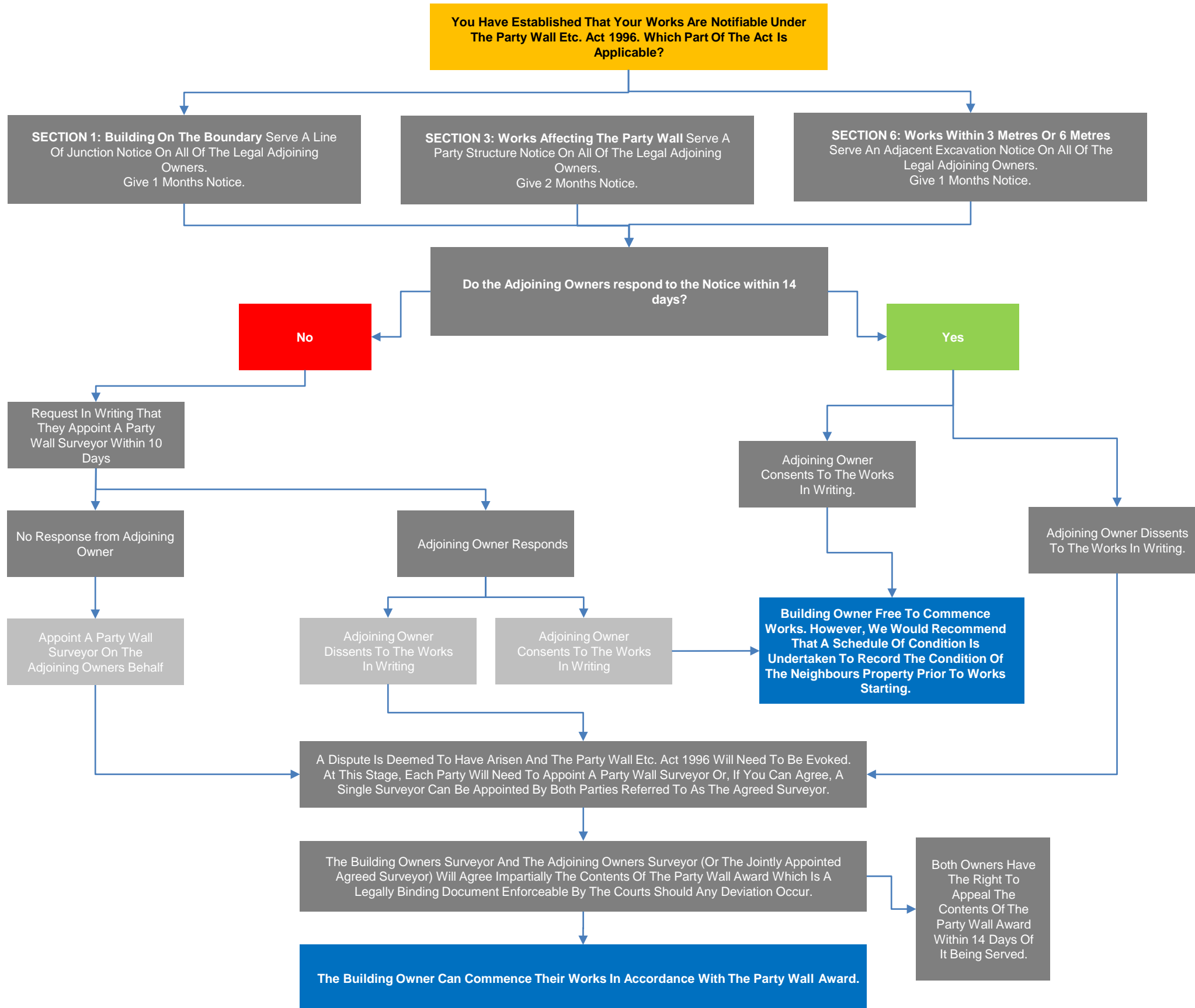
This report then acts as record of proof that is checked off upon completion of the building owner's construction works.

In our experience, a Schedule of Condition Report is one of the key parts of the Party Wall Agreement process and as a result we recommend them in all cases, even when an adjoining owner consents to the Party Wall Notices.

The Schedule of Condition Report not only adds clarity to a potential damage claim, but it also avoids a potential dispute between the owners thereby ensuring that no strain is put on the neighbourly relationship.

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You Own A Property Next To Someone Who Is Planning Alteration Works.

Have you been served Party Wall notice?

Yes

No

You Have Three Options On The Reply Form To Choose From.

You Will Also Have 14 Days To Respond In Writing To The Building Owner Or The Building Owners Surveyor. If You Do Not Respond Within The 14 Days, You Are Deemed To Dissent And A 'Dispute' Arises Under The Act.

The Building Owner Or Surveyor Can Then Serve A 10 Day Notice On You To Appoint A Surveyor, And If You Fail To Respond Then A Surveyor Will Be Appointed On Your Behalf.

Respond To Notice In Writing Within Permitted Time

Establish Communication With Your Neighbour And Determine If Their Proposed Works Fall Under The 1996 Act
If The Works Are Notifiable Then The Building Owner Needs To Serve 'Party Wall Notice'

You Have Established The Proposed Works **Are Not** Notifiable Under The 1996 Act And **You Do Not Require** A Party Wall Notice.

You Have Established The Proposed Works **Are** Notifiable Under The 1996 Act And **You Require** A Party Wall Notice.

Building Owner Serves You A Valid Party Wall Notice.

Building Owner Refuses To Meet Their Legal Obligations Under The 1996 Act And Will Not Serve Party Wall Notice.

Provide Written Consent to the Notice

Dissent to the Notice in Writing
Appoint an Independent Surveyor

Dissent to the Notice in Writing
Appoint a Mutual Surveyor

A Statutory 'Dispute' Is Deemed To Have Arisen Under The 1996 Act. Both Parties Have Now Appointed An 'Agreed' Surveyor

The Agreed Surveyor Will Impartially Agree And Serve A 'Party Wall Award'. This Is A Legally Binding Document That Will State How The Manor And Execution Of The Works Will Be Carried Out

Contour Designs Recommends Two Options In This Scenario:
1) Take Photographic Images Of Your Property Internally And Externally Before Any Works Commence Next Door And Keep A Written Timeline Of Events.
2) Seek Independent Legal Advice (Citizens Advice Bureau, Home Insurance Or Any Solicitor Helpline) And Enquire About A Injunction To Stop The Building Owner's Work Until A Party Wall Award Is Made By The Surveyors.

The Party Wall Award Has Now Been Signed And Served And The Building Owner Can Now Commence Works Under The 1996 Act.

The Building Owner Can Commence Works. It Is Always Recommendable That You Undertake A 'Schedule Of Condition' Before Works Begin
Contour Designs Can Arrange This "Schedule Of Condition" On Your Behalf



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