



MODEL DOCUMENT

Model security for expenses clause

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DOS & Co. Ltd. is authorised and regulated by the Financial Conduct Authority under the Payment Services Regulations 2017 (FRN: 1041318) for the provision of payment services.

Wording the appointed surveyors can put into a party wall award so that the security for expenses is held by this scheme. Complete the bracketed terms and it stands on its own.

This is a starting point for the appointed surveyors to adapt. It is not legal advice, and the scheme takes no view on whether security is reasonable or on what the sum should be.

The clause

Where the two owners have each appointed a surveyor and a third surveyor has been selected.

SECURITY FOR EXPENSES

1. The Adjoining Owner having served notice under section 12(1) of the Act requiring the Building Owner to give security for expenses in respect of the works described at clause [] of this Award, the Building Owner shall, before commencing those works, open an account with the UK Security for Expenses Scheme, operated by DOS & Co. Ltd. (registered in England and Wales, company number 08294966) (the "Scheme"), and deposit into it the sum of £ [amount] ([amount in words] pounds) in pounds sterling (the "Security").
2. The works described at clause [] shall not commence until the appointed Surveyors have received written confirmation from the Scheme that the Security has been received and is held.
3. The Security stands as security for the Building Owner's liabilities to the Adjoining Owner arising from those works, including (a) any sum payable in lieu of making good under section 11(8) of the Act, (b) any compensation payable under section 7(2) of the Act, (c) the cost of making good any damage under section 2(5) of the Act where the Building Owner does not make it good, and (d) the reasonable professional fees and Value Added Tax properly attributable to any of them.
4. No part of the Security shall be released otherwise than upon (a) the joint written direction of the two appointed Surveyors, (b) the written direction of either appointed Surveyor together with the Third Surveyor, (c) the written direction of the Third Surveyor alone following an award made by them in respect of which the period for appeal under section 10(17) of the Act has expired without an appeal having been brought, or (d) an order of a court of competent jurisdiction in respect of which the time for appeal has expired.
5. Any sum released under clause 4 shall be limited to such sum as the Surveyors giving the direction determine to be reasonably and properly due.
6. Subject to there being no outstanding claim for damage, making good, compensation or costs to which the Security relates, the balance of the Security shall be released to the Building Owner upon a direction given under clause 4 following completion of the works described at clause [].
7. Any dispute arising out of or in connection with the Security shall be determined in accordance with section 10 of the Act.

Variant: staged release

Where the security should come back in tranches as the riskiest work is completed, rather than in one payment at the end. Replaces clause 6.

6. Subject to there being no outstanding claim for damage, making good, compensation or costs to which the Security relates, the Security shall be released to the Building Owner upon directions given under clause 4, as follows:

(a) []% upon completion of [the excavation, underpinning and temporary support]; and

(b) the balance upon completion of the works described at clause [].

Variant: shorter release wording

Where the surveyors prefer the shortest form that works. Replaces clause 4, and does the same job in one sentence for as long as both appointed surveyors remain able to act.

4. The Security shall be released, in whole or in part, only upon the joint written authority of the two appointed Surveyors or, in the event of a dispute between them, of the Third Surveyor acting in accordance with section 10 of the Act.

Notes for the appointed surveyors

The clause assumes the Adjoining Owner has served notice under section 12(1). Where security instead follows from the surveyors' own determination, clause 1 should open accordingly.

Name a Third Surveyor. Clause 4 depends on one, and so do the scheme rules, which recognise any two of the three surveyors or the third acting alone.

The building owner deposits from a bank account in their own name. Worth knowing before the sum is agreed with a company that banks elsewhere.

The scheme is not a party to the award and is not bound by it. It holds the money on its published rules and acts on the directions the award provides for, so where the two ever differ it is the rules that govern the account.

The clause deliberately carries no address and no regulatory reference number. An award is signed, served and kept for years, and no later correction reaches it, so the operator is identified by its company number, which cannot change. The scheme's current registered office and regulatory details are published on its website.

It also takes no position on interest or on what the account costs. Those are governed by the scheme rules, which the award should not attempt to restate.

What the scheme needs to open the account

The award must require the deposit, set out the terms on which the security is released, and denominate the sum in pounds sterling. The clause above does all three. The building owner then provides identity or company verification the first time they open an account, and a copy of the award.