

Name: [REDACTED]

Membership Number: [REDACTED]

1. Competency: 1

Learning Outcome: 1.4

Undertake Legal Research

2. Evidence provided

Research into [REDACTED] powers to in relation to temporary possession of land under the (The [REDACTED] Rail [REDACTED] (Land Acquisition) Order 2009). Extract of the relevant Article from the Order enclosed and email to the client.  
*Pages 40-42*

3. The situation giving rise to the research: I was acting for a client purchasing commercial premises that had been served notice from [REDACTED] to take temporary possession of a small strip of land next to the commercial property being purchased. The client was concerned that [REDACTED] may have a right to more than just temporary occupation and asked for clarification on this point.

Sources used: <http://www.legislation.gov.uk>

Research used: I located the statutory instrument from legislation.co.uk and found that Article 10 of the Order that was referred to specifically in the notice served on the owner of the commercial property, gives clear guidance on the point. Article 3 deals with the company's power of acquisition and the Schedules deal with the land over which temporary possession can be taken.

Apply findings to the matter: I advised the client that Articles 3 and 10 of the Order give clear distinctions between the company's powers to acquire land and to take temporary possession. I confirmed that where there is a power to take temporary possession of land there is no right under the Order for that possession to become permanent. It specifically confirms under Article 10 that the company cannot remain in possession for more than a year following completion of the works that are being undertaken.

The land being occupied by [REDACTED] in this instance was a small piece of land close to the rail lines and separate to the commercial property but covering part of the car park belonging to the property being purchased. I therefore went on to read the Order to confirm the situation once the works have been carried out and found that there is an obligation for [REDACTED] to remove all works and restore the land to the reasonable satisfaction of the owner. The owner of the land would also have the right to compensation under the Order should any loss or damage be caused to the land.

4. Reflection and evaluation: It is important to check all paperwork that is given in the draft contract package and ensure that where a third party has any rights even where those rights are of a temporary nature, the relevant legislation is researched. Although the strip of land here was small it did encroach onto car parking that the client would want to have use of and it was important to ensure in any case that the land demised to them would be returned.

5. Completion date: 28.05.2014

6. Signed (applicant)

Date: 20/11/14

7. Signed (supervisor)

Date: 20/11/14

[Redacted]

**From:** K [Redacted]  
**Sent:** 28 May 2014 13:33  
**To:**  
**Subject:** RE: Purchase of

Dear

Your first point as we do not have any evidence that the wall isn't a party wall we must assume that it is and therefore your obligations under the Party Wall Act will apply and I've attached some useful guidance on those obligations through this link <https://www.gov.uk/party-wall-etc-act-1996-guidance>

I have asked the seller's solicitor in relation to your second point but it is usual for buyers to satisfy themselves on this point by contacting the council.

In relation to your third point I have looked at the legislation (The [Redacted] Rail [Redacted] (Land Acquisition) Order 2009) which has a clear distinction between [Redacted] Rail's powers of acquisition of land and their power in relation to temporary possession and there is no reference to their rights to claim any permanent possession where temporary possession has been taken. Article 10 of the 2009 Order that is quoted in the notice of entry we have been given relates specifically to their power of temporary possession and in particular it states that [Redacted] Rail cannot remain in possession for more than one year following completion of the works that are being undertaken. It goes on to provide that following temporary occupation [Redacted] Rail must remove all temporary works and restore the land to the reasonable satisfaction of the owner. You would also have the right to claim compensation should any loss or damage be caused to the land.

I hope that helps.

On a separate note I have had confirmation from the seller's solicitor that the seller has never been asked to contribute to the maintenance of the access area that is referred to in the 1975 TP1.

Can you confirm if you are happy with the documentation so I can confirm to the seller's solicitor the contract is approved.

Kind Regards

K [Redacted]

GCILEx  
Trainee Legal Executive

Department line: [Redacted]

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**From:**  
**Sent:** 27 May 2014 17:32  
**To:**  
**Cc:**  
**Subject:** FW: Purchase of

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

STATUTORY INSTRUMENTS

2009 No. [REDACTED]

The [REDACTED] Rail [REDACTED] (Land Acquisition) Order 2009

PART 2

ACQUISITION AND POSSESSION OF LAND

Temporary possession or use of land


Temporary use of land for construction of works

Temporary use of land for construction of works


- 10. (1) [REDACTED] Rail may, in connection with the carrying out of the authorised works, enter upon and take temporary possession of—
  - (a) the land specified in column (1) of Schedule 4 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule relating to the authorised works specified in column (3) of that Schedule; and
  - (b) subject to paragraph (11), any of the other land within the limits of land to be acquired or used in respect of which no notice of entry has been served under section 11 of the 1965 Act or no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981.
- (2) Not less than 14 days before entering upon and taking temporary possession of land under this article [REDACTED] Rail shall serve notice of the intended entry on the owners and occupiers of the land.
- (3) [REDACTED] Rail may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the work specified in relation to that land in column (3) of Schedule 4.
- (4) Before giving up possession of land of which temporary possession has been taken under this article, [REDACTED] Rail shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but [REDACTED] Rail shall not be required to replace a building removed in connection with the carrying out of the authorised works.
- (5) [REDACTED] Rail shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.
- (6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.
- (7) Without prejudice to article 22 (no double recovery), nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).
- (8) The powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the land referred to in paragraph (1)(a) except that [REDACTED] Rail shall not be precluded



from acquiring new rights over any land specified in Schedule 3 (land in which only new rights may be acquired) under article 6 (power to acquire new rights).

(9) Where  Rail takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 4(1) (application of Part 1 of the Compulsory Purchase Act 1965).

(11) Paragraph (1)(b) shall not authorise  Rail to take temporary possession of—

- (a) any land specified in Schedule 3 or Schedule 5 (land over which temporary rights of access may be exercised);
- (b) any house or garden belonging to a house; or
- (c) any building (other than a house) if it is for the time being occupied.