

Is Your Property Affected by the Building Safety Act?

February 16, 2024

Introduction

It's now been more than four months since the Building Safety Act 2022 (BSA) introduced new requirements that sought to improve the overall safety of high-rise buildings that have some element of residential use. Incepted to address safety concerns of high-rise residential buildings, the BSA seeks to improve the design, construction and management of higher-risk buildings following the 2017 Grenfell Tower Tragedy.

1. Who Will the BSA Affect?

Broadly speaking, the BSA affects buildings that are either at least 18 metres or 7 storeys high and contain at least two residential units. Buildings that meet those criteria will be classed as “**Higher-Risk Buildings**” for the purposes of the BSA.

The BSA applies retrospectively to both existing Higher-Risk Buildings, and to buildings that are currently in development, so owners of both will need to be aware of the regulations under the BSA.

In the case of new buildings currently under development, since 1 October 2023, developers must submit a building control approval application before commencing construction of a qualifying building to the Building Safety Regulator (BSR), whose approval is required for building work to begin (although we are currently in the six-month transition period, expiring on 6 April 2024, where the approval may fall under the responsibility of building control rather than the BSR).

Once the works are completed, the building can only be occupied once the BSR has issued a completion certificate.

2. Registration of Higher-Risk Buildings

Since 1 October 2023, all Higher-Risk Buildings must be registered with the BSR. Until registration has taken place, units in the building must not be occupied. The person responsible for registration is the person who owns or has a legal obligation to repair the structure and exterior of the building, known for the purposes of the BSA as the Principal Accountable Person (PAP).

It is important to note that for any Higher-Risk Buildings which are already occupied, failure to register before 1 October 2023 is an offence.

Failure to have registered existing Higher-Risk Buildings or allowing tenants to occupy unregistered Higher-Risk Buildings could result in a fine or imprisonment of up to two years for the PAP.

3. Safety Case Reports

The BSA has introduced safety case reports for buildings, which must be prepared by the PAP. This report should prove that the Accountable Person (AP) (namely, the person who owns or has responsibility for the building) has assessed all building safety risks and taken all reasonable steps to control them. This report must be given to the BSR on request, who can examine the report as part of their building assessment.

4. Amendments to Fire Safety Regulations

The BSA also aims to improve the recording and sharing of comprehensive fire safety information to ensure that tenants in a building have access to adequate and relevant fire safety guidance.

5. Recent Examples in Practice

Now that the legislation has had some time to bed in, Katten has worked with our clients in cases where they have been unexpectedly affected by the BSA. Hospitality practices, in particular, should beware the following:

- The precise measurement of a building can be problematic and owners should take care to ensure that their building is measured in accordance with the regulations required under the BSA. Furthermore, in one particular matter, despite the upper residential floors of our client's building being let to and maintained by a long leaseholder, it still resulted in the client (who was the freeholder) being considered as a PAP, who was then ultimately responsible for compliance with the BSA; and
- Where a Higher-Risk Building is let to a hotel operator (and therefore not initially considered as residential for the purposes of the BSA), the building was actually still caught by the BSA because it was not fully let to the hotel operator due to the presence of other commercial units on the ground floor.

Conclusion

If you are in any doubt as to whether your existing property or new development is deemed or will be deemed as a "Higher-Risk Building" which should be registered with the BSR, please get in touch.

Contacts

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