



The Leaves Are Changing But Is the Market?

October 27, 2023

Building Safety Act 2022: Key Provisions for Property Owners

The Building Safety Act 2022 (the “Act”) ushered in a comprehensive and rigorous building safety regime, particularly affecting certain residential buildings classified as “higher-risk building”.

In our previous article titled “[Building Safety Act 2022: What Lenders Need to Know](#)”, we discussed some of the new additional responsibilities, liabilities, and considerations that lenders may need to face to ensure compliance with the new legislation. In this article, we look at some of the new obligations imposed by the Act on property owners and landlords.

Higher-Risk Buildings

A “higher-risk building” (“HRB”) is defined in the Act as a building in England that meets the following criteria:

- is either at least 18 metres in height or at least seven storeys (excluding basements and independent sections meeting certain requirements); and
- contains at least two residential units, where a residential unit is defined as a dwelling or any other unit of living accommodation.

Notably, certain building categories are excluded from the HRB definition, such as care homes, hospitals, secure residential institutions, hotels, and military premises. Mixed-use buildings, however, can still qualify as HRBs under the Act, provided they meet the height and storey criteria. This means that if a building is used partially for residential purposes and partially for excluded purposes (for instance, a hospital and boarding for university students), it then may still be subject to HRB regulations.

The Act has applied to both occupied buildings and those under construction from 1 October 2023. New buildings that fall within the regime and are completed after must be registered before occupation. Property owners must obtain building control approval from the Building Safety Regulator before construction begins. Transitional arrangements may apply to HRBs under construction or not yet started; to qualify, an initial notice must have been given to the local authority (or full plans submitted) by 1 October 2023, and the relevant works must be “sufficiently progressed” by 6 April 2024.

Principal Accountable Person

HRBs must be registered with the Building Safety Regulator by the “principal accountable person” (“PAP”). The PAP is the organization or individual responsible for owning or legally obligated to repair the common parts of the building. In cases where there are multiple accountable persons, the PAP is the one who owns or is legally obliged to repair relevant parts of the building's structure and exterior. Failure by the PAP to comply with the registration deadline could be a criminal offense, carrying the risk of a fine which would continue to increase until the building has been registered, as well as two years' imprisonment for serious breaches.

After registration and occupation of the HRB, the PAP is responsible for various ongoing obligations, including applying for a building assessment certificate, displaying relevant notices and certificates, assessing and reporting on building safety risks, and managing resident requests and complaints. The PAP must also maintain a “golden thread” of information, meaning a digital record of relevant information kept throughout the building's lifetime. This will need to consist of records demonstrating that building regulations were complied with during construction and that the PAP is complying with its requirement to manage and mitigate building safety risks.

Relevance to Commercial Property

While it may be tempting to assume that the Act primarily impacts high-rise residential properties, this assumption is misleading. The Act has far-reaching implications for commercial property for several reasons:

- Some provisions apply to all properties, irrespective of height or use.
- Even where provisions relate to HRBs, mixed-use assets may fall within scope if they meet specific criteria.
- Commercial investments in multi-occupied residential assets, such as build-to-rent and purpose-built student accommodation, are becoming more prevalent.
- The Act also establishes a new standard that many in the industry may want to adopt, regardless of whether they are subject to the Act's provisions.

Closing Thoughts

The Act represents a significant change in building safety regulations, and it is imperative for property owners to comply with the new requirements to avoid potential legal consequences.

Please do not hesitate to reach out if you have further questions or require legal assistance with your compliance efforts.