

ENGLISH COMMERCIAL REAL ESTATE

Building Safety Act 2022: Key Points for Buyers of Higher- Risk Buildings

As of 16 January 2024, the Building Safety Act 2022 (“**BSA**”) has widened the duty on owners of occupied buildings of at least 18 metres or seven storeys high which comprise at least two residential units (**Higher-Risk Buildings** or “**HRBs**”) to remediate defects and comply with relevant safety regulations. This note is intended to provide a brief overview of the key points to consider when purchasing an HRB. For more detailed guidance around the definitions of Accountable Persons and Principle Accountable Persons and the specific responsibilities placed upon those roles, please refer to our January 2024 [Briefing Note](#).

There are three schemes depending on what stage of construction the HRB is at – one for planning, construction and upon completion of the build. These are known as “gateways”. This note focuses on HRBs which have already passed through the planning phase and construction, and have reached practical completion. For more information on the planning and construction gateways, please see this [Briefing Note](#) or speak to a member of our BSA team for further advice.

During the construction phase the BSA imposes additional duties to carry out safety checks and report any major or notifiable changes to the build which could have an impact on compliance with building control approval. As a buyer, you



will need to confirm with the seller or developer what steps have been taken to maintain an effective reporting system and clear records.

If you are purchasing an HRB which has already reached practical completion, the BSA imposes a number of additional requirements and responsibilities. These are the key areas to focus on:

ENQUIRIES

Firstly, check whether the HRB has been registered with the Building Safety Regulator (“**BSR**”). The register is publicly available. The legal owner of the building is generally the person responsible for registration, and residential units in the HRB cannot be occupied until registration is complete. Upon acquisition of the HRB you have 14 days to update the registration

information held by the BSR. If the HRB hasn’t been registered, we can assist you with raising further enquiries of the seller to ensure that the necessary information has been provided to the BSR.

Depending on when the building was completed, you may need to obtain a “Gateway 3” completion certificate. We can advise as to whether this certificate will apply to your development.

It is also important to raise enquiries of the seller around who the current responsible persons are for the building, and obtain details of any existing mandatory reporting occurrences that have taken place. This is to ensure you have a full picture of the nature of the property and any risks you may be exposed to as a result of the BSA regime.

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DOCUMENTATION

Where the building is already occupied, it is important that you obtain copies of any **Landlord Certificates** that may have been served on leaseholders and any **Leaseholder Certificates** provided by leaseholders to the seller. As mentioned, there are two types of certificates – **Leaseholder Certificates** (these are issued by residential tenants upon a sale to confirm whether their lease qualifies for protection under the BSA – qualifying leaseholders have statutory protection from the costs of building safety risk remediation), and **Landlord Certificates** (which are those served by the landlord on leaseholders in relation to any known relevant defects, and to inform leaseholders on the sale of the HRB).

POTENTIAL COSTS

It is essential that you instruct both a building surveyor and also a fire safety consultant. The building surveyor can assess the condition of the building and establish

whether there are existing defects which may require remediation works. It is important to establish whether the remediation costs can be passed on to any occupiers, or if these are the responsibility of the building owner. The fire safety consultant can review the building survey and identify any areas of risk, and establish how to manage building safety risks going forwards.

The BSA also imposes service charge caps on the costs for remedying relevant defects under the BSA, so it is important that you review the different leases in place and any construction documents relevant to the building and establish how the costs of carrying out remediation works, if relevant, can be recovered. We can help you with this process.

There is a government scheme in place to help fund the cost of cladding related remediation where developers cannot meet this cost. We can assist in assessing whether an application could be made to the fund.

ONGOING OBLIGATIONS

The BSA imposes ongoing obligations on the person who owns the building, or who has a legal obligation to maintain the structure, common parts and exterior. These include duties to:

- assess the building's safety risks;
- prepare safety reports;
- put in place a clear reporting scheme; and
- ensure that residents are engaged with the process and aware of these assessments and the building's safety. This includes making sure that there is a clear complaints process in relation to concerns over building safety risks.

As building owner, it is critical that you maintain a Safety Case Report to show how building safety risks are being managed. This information must be readily available for inspection at any time.

The BSR can request that the owner of the HRB apply for a building assessment certificate with 28 days' notice. The BSR will issue this certificate once satisfied that all relevant building safety regulations are being complied with.

In addition to the new BSA requirements, the usual fire safety requirements remain in place.

CONCLUSION

The new BSA regime is complex and carries serious consequences if breached. For more detailed advice on any of the points covered in this note please speak to a member of the Forsters Building Safety Act Team (details below) who will be happy to provide further information and assistance.

This note reflects the law as at 11 March 2024.



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ANDREW PARKER

Partner

Construction

T: +44 20 7863 8483

E: andrew.parker@forsters.co.uk



RICHARD SPRING

Counsel

Construction

T: +44 20 7863 8314

E: richard.spring@forsters.co.uk



LOUISE IRVINE

Senior Knowledge Development Lawyer

Commercial Real Estate

T: +44 20 7399 4778

E: louise.irvine@forsters.co.uk



CHARLOTTE YOUNGS

Senior Associate

Commercial Real Estate

T: +44 20 7863 8485

E: charlotte.youngs@forsters.co.uk



SARAH HEATLEY

Senior Associate

Property Litigation

T: +44 20 7399 4813

E: sarah.heatley@forsters.co.uk



CHARLOTTE ROSS

Senior Knowledge Development Lawyer

Property Litigation

T: +44 20 7399 4781

E: charlotte.ross@forsters.co.uk



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