

Fire Safety & Asbestos Regulations - responsibilities for landlords of non-domestic properties and management companies of leasehold flats

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Non-compliance by landlords of the fire and asbestos regulations which came into force back in 2006 are increasingly prompting the invalidation of insurance policies and prevent payouts in the event of a claim being submitted, may prevent a policy renewal and by association put a mortgage at risk.

The Regulatory Reform (Fire Safety Order 2005) and the Control of Asbestos at Work Regulations 2006 both came into force on 1st October 2006, but many landlords or managing agents of non-domestic premises such as offices have been unaware of the weight of their responsibilities under these Regulations, or of the possibility of prosecution in the event of non-compliance.

It is not, however, only those responsible for office and other non-domestic buildings which need to be aware of their duties under the Regulations – the enclosed common parts of normal blocks of flats or Houses of Multiple Occupation are defined as being non-domestic premises. This means that the directors of the management companies of these flats could find themselves being sued for non-compliance, even if they considered their small selection of leasehold flats to be a purely domestic set-up. Those who house paying guests – even on a small scale – are also invariably liable under the regulations.

The person responsible for undertaking the necessary assessment will vary depending on the circumstances, but the associated obligations go far beyond the previous requirement for a fire certificate and are not dependent on the size of the enterprise or the number of staff. The Office of the Deputy Prime

Minister (ODPM) has said that the only non-domestic premises which would not require such an assessment is probably where someone works from home, either self-employed or as an employee.

The Fire safety risk assessment must be included in any sale documentation for a non-domestic property, and increasingly both insurers and mortgage lenders will demand to see these before issuing mortgage offers or policies of buildings insurance. More importantly, anyone purchasing a residential long lease and taking on an associated directorship of the management company may also find themselves taking on an associated criminal conviction if regulations have not been strictly complied with.

Furthermore, those using business premises cannot rely on the certification of their landlord – any employer in control of premises occupied by his or her staff or any tenant in control of their premises (which is almost always the case) must by law undertake not only an assessment but also any remedial work required. These costs will inevitably be added to an annual service charge so landlords should be contacted to determine the level or their own provision. Public liability insurance, essential to any business, may not be available without proof of a successful assessment for both fire safety and asbestos regulations.

A form of self certified fire safety assessment is available from the Department of Communities website – visit their Fire Safety pages at <http://www.communities.gov.uk/fire/firesafety/firesafetylaw/> for more information.

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However, the government has recommended that the assessment should be undertaken by a professional and we would support this approach, particularly as the issue could result in criminal prosecution. The same advice would obviously apply to the asbestos risk assessment.

The above is an overview of the basic issues of fire and asbestos regulatory compliance. For further advice on how this applies to your own property, insurance policy or mortgage offer, or for advice about how to avoid problems in the future, please contact our team of experts at our Barnet Office on 020 8364 9955 or our Cockfosters office on 020 8441 1556 or submit your enquiry by e-mail to law@pwjsolicitors.co.uk quoting the words 'website enquiry'.

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