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Essential safety measures – new requirements for building owners

Amendments to the Victorian *Building Act 2003* (Act) and *Building Regulations 2006* (Regulations) come into effect from 14 June 2009 and will have an impact on the maintenance of, and reporting on, essential safety measures by owners of buildings and places used for public entertainment.

Prior to these amendments, reporting by owners was limited to buildings constructed after 1 July 1994 in keeping with requirements of occupancy permits. The Regulations now impose maintenance and reporting obligations on owners for all buildings and places used for public entertainment constructed prior to and since 1 July 1994.

Owner's obligations

Owners of buildings and places used for public entertainment will be required to maintain and annually report on all safety fittings, equipment and essential safety measures. The Regulations apply to all residential, commercial and industrial buildings, including: boarding houses; guest houses or hostels; sole-occupancy units; backpackers; residential hotels or motels; aged care accommodation; office buildings; retail premises; storage or car park buildings; laboratories or warehouses used for assembly of goods; and any public buildings. Single dwellings (being individual houses, town houses, villas, terrace houses or row houses) are exempt from the Regulations.

Essential safety measures

The provision of essential safety measures includes: services such as air conditioning systems, exit doors and signage, emergency lighting, power supply, warning systems and lifts; and fire related services such as extinguishers, detectors, hydrants, fire-isolated stairways, smoke and heat alarms and sprinkler systems.

Annual reporting

Building owners must prepare an Annual Essential Safety Measures Report (AESMR). The AESMR should be a comprehensive log of all essential safety measure reports, records of maintenance checks, service and repair work. Building owners must confirm that they have taken all reasonable steps to ensure each essential safety measure is operating at the required level of performance and has been maintained in accordance with the relevant occupancy permit for the building or public place, or any maintenance determination issued by the relevant authority.

Post 1 July 1994 construction

Where an occupancy permit has been issued for a building or public place, it must list all essential safety measures and specify the level of performance to function in order to fulfil its purpose, as determined and specified by a municipal or private building surveyor.

The owner of the building or place of public entertainment must:

- comply with essential safety measures imposed as conditions to the occupancy permit;
- comply with any subsequent maintenance determinations;
- prepare an AESMR in relation to any essential safety measure that formed a condition of the occupancy permit and any requirements imposed by a maintenance determination; and
- make available on site at all times copies of maintenance schedules, maintenance determinations and the AESMR for inspection by the municipal building surveyor or chief officer following at least 24 hours' notice.

The AESMR must be completed annually before the anniversary date of the issue of the original occupancy permit or the making of any maintenance determinations.

Pre 1 July 1994 construction

The definition of essential safety measure in a building or place of public entertainment constructed prior to 1 July 1994 (and not previously subject to the safety requirements contained in an occupancy permit), are now broadly defined to include "any measure (including an item of equipment, form of construction or safety strategy) required for the safety of persons using a building or place of public entertainment."

The owner of the building or place of public entertainment must prepare an AESMR. The AESMR and records of all maintenance, service or repair work carried out must be made available on site at all times for inspection by the municipal building surveyor or chief officer, following at least 24 hours' notice.

The first AESMR for buildings and places for public entertainment constructed before 1 July 1994 must be prepared before 13 June 2009 and in the case of each subsequent report before each anniversary of 13 June 2009.

The Regulations prescribe that the owner bears all responsibility for ensuring that any essential safety measures required are maintained in a state that enables the essential safety measure to fulfil its purpose, and should not be removed from the building except for the purpose of maintenance or in accordance with the Regulations. This responsibility cannot be passed off to a tenant of the building regardless of the terms of the lease.

Non compliance

A fine may be issued to an owner for failing to comply with its responsibility for maintaining essential safety measures or for failing to prepare the AESMR in accordance with the Regulations.



Foreign investment – changes to policy for residential real estate

The Federal Government has announced a number of changes to foreign investment policy for residential real estate, relating largely to notification and administrative arrangements.

The policy changes announced by the Government include:

- **New dwellings purchased ‘off-the-plan’:** Provided that properties are marketed both locally and overseas, property developers or vendors are no longer restricted to capping sales of new ‘off-the-plan’ dwellings to foreign investors to 50 per cent. This change will come under review again after 2010.

Additionally, the definition of ‘new dwelling’ has been broadened. Previously a new dwelling was one that had not been sold or occupied. The definition has now been extended to include dwellings that have not been sold but have been rented, provided the tenancy does not exceed 12 months.

- **Foreign companies:** Foreign-owned companies can now purchase any number of established dwellings for use by their Australian-based staff. The property must be rented or sold if expected to be vacant for more than six months.
- **Temporary residents:** Foreign students that are temporary resident in Australia are no longer subject to a \$300,000 limit on the value of an established dwelling purchased as their principal place of residence.
- **Vacant residential land:** The dwelling development time on a single block (single dwelling) of vacant residential land acquired by a foreign-owned company, trust estate and non-resident foreign person has been extended to 24 months. Previously, a foreign investor was required to build within 12 months.

- **Redevelopment of established dwelling:** Foreign interests can redevelop an established (second-hand) dwelling provided the redevelopment increases the number of dwellings and no rental income is derived from the existing dwelling prior to demolition. Redevelopment must commence within 24 months and development expenditure must be at least 50 per cent of the property purchase price.

In addition to the changes to policy, the Government has indicated that they plan to make changes to the *Foreign Acquisitions and Takeovers Regulations 1989* (Cth) in February 2009.

Subject to the amendments being finalised, the Government has indicated that the Regulations will be changed to provide for the following:

- Advance approval for the sale of new dwellings to foreign interests will no longer be granted directly to developers. The individual non-resident foreign person must submit an approval application directly to the Foreign Investment Review Board (FIRB).
- Temporary residents will no longer be required to notify the FIRB of a proposed acquisition of an established dwelling for use as their own residence or any new dwellings or any single blocks of vacant residential land.
- Resorts and hotels and other accommodation facilities will now be treated as commercial real estate rather than residential real estate. Notification and approval from the FIRB will no longer be required for an acquisition valued below the developed commercial property threshold of \$5 million for a heritage listed property, \$50 million for a non-heritage listed property, or \$953 million for US investors.

Contacts

If you would like further details about the information contained in this newsletter or assistance with any property-related issues, please contact:

Ken Gray, Partner
Telephone 61 3 9229 9875
kgray@abl.com.au

Lily Tell, Partner
Telephone 61 3 9229 9848
ltell@abl.com.au

Simonne Einfeld, Special Counsel
Telephone 61 2 9226 7239
seinfeld@abl.com.au

Further information

For copies of recent publications, or for further information about the firm, please visit the Arnold Bloch Leibler web site at www.abl.com.au.

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Arnold Bloch Leibler

Lawyers & Advisers

Level 21 333 Collins Street
Melbourne VIC 3000 Australia
Telephone 61 3 9229 9999
Facsimile 61 3 9229 9900

Level 24 Chifley Tower 2 Chifley Square
Sydney NSW 2000 Australia
Telephone 61 2 9226 7100
Facsimile 61 2 9226 7120

www.abl.com.au