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Building Safety Act 2022: What Lenders Need to Know


By **Duncan Hubbard**
Partner | Real Estate


By **William Lo**
Associate | Real Estate

The enactment of the Building Safety Act 2022 (the “Act”) in the United Kingdom brings about significant changes to building safety regulations. While the Act primarily aims to enhance building safety standards, it also introduces various new challenges for lenders who finance construction projects. Lenders may now face additional responsibilities, liabilities and considerations to ensure compliance with the new legislation.

Extended Liability for Lenders

Under the Act, lenders may find themselves subject to increased liability for the safety of buildings. The Act introduces a "duty-holder" framework, where various parties involved in a construction project have specific responsibilities for ensuring building safety. Lenders may be designated as duty-holders, responsible for ensuring that adequate funding is allocated for remediation and compliance with building safety requirements. Consequently, lenders may face legal obligations and potential financial liabilities if their funded projects fail to meet the prescribed safety standards.

Extended Limitation Periods

The limitation period is the time period within which a party can bring a claim against another for damages, and where a claim is brought after the expiry of such applicable limitation period, this can serve as a defence for the defendant.

The Act has increased the limitation period for bringing claims to unprecedented levels. The limitation period for prospective claims (that is, claims accrued after the Act took effect on 28 June 2022) has been raised from six years to fifteen years, and the limitation period for retrospective claims where the cause of action accrued before 28 June 2022 has now been raised to thirty years. This would mean that there could be claims brought in respect of historic defects dating back to 1992.

Requirement for Safety Case Reports

Another significant change introduced by the Act is the requirement for the production and maintenance of a safety case report for higher-risk buildings. A higher-risk building is defined under the Act as a building containing at least two residential units and at least 18 metres high or with at least seven storeys and is of a description specified in relevant regulations (subject to certain specific exclusions).

Lenders will need to review these reports carefully to assess the safety risks associated with the projects they finance. These safety case reports will contain vital information about the design, construction and maintenance of the building, as well as potential fire and structural risks, and it must be made available to the Building Safety Regulator on request. It is important that lenders thoroughly analyse these reports to evaluate the risks involved and make informed decisions about their financial involvement.

Impact on Financing Arrangements

The Act grants the Secretary of State the power to issue "stop notices" and "compliance notices" to halt or rectify construction work on unsafe buildings, respectively. Such regulatory interventions can disrupt project timelines, impact cash flow, and even lead to potential defaults on loan repayments. Lenders should include appropriate clauses in loan agreements to address these risks, such as provisions for reviewing safety case reports and monitoring compliance with building safety obligations.

Review of Existing Loan Portfolios

The extension of the limitation period means that a comprehensive review of a lender's existing loan portfolio may need to be conducted. Lenders should assess the safety risks associated with the buildings they have financed in the past, particularly those classified as higher-risk under the new legislation. Such review will help identify any potential safety issues, the need for remedial actions and the allocation of resources for building remediation. It is essential for lenders to proactively manage these risks and engage with borrowers to ensure compliance with the enhanced safety standards.

Closing Thoughts

The Act brings about significant implications for lenders involved in financing construction projects. It is crucial for lenders to establish robust processes to review safety case reports, monitor compliance, manage liabilities and collaborate closely with borrowers to ensure adherence to the new building safety standards. By actively addressing these key issues, lenders can mitigate potential risks as well contribute to the overall improvement of building safety in the UK construction industry.