

Building Safety for flat buyers

If you're buying a flat or thinking about buying one in the future, there are several matters to consider.

The fire at Grenfell Tower in Kensington in 2017 and the Hackitt Building a Safer Future report emphasised the need for anyone thinking of buying a flat to investigate the fire safety aspects of the flat and the building it's part of.

It's important to understand the risks, so you know:

- whether the flat is a safe place to live
- how much you might have to contribute to the costs of building works to make your flat safe
- how straightforward it may be to sell
- the nature of any fire safety work or other building safety work that needs to be carried out how such works might affect your use of the flat (for example, if you want to work from home)

Why is it an issue now?

If you have bought a flat before, you may not have encountered this issue. It's only since Grenfell and the Hackitt report that there has been an increased interest in fire safety for residential buildings.

The landscape is complex and changing. New laws have been passed, such as the [Fire Safety Act 2021](#) and the [Building Safety Act 2022](#).

Guidance continues to change from the government and for those providing valuation information to mortgage lenders. You may also have seen media coverage about fire safety, especially about cladding.

The impact of these changes on parts of the residential property market is significant.

Even if you can establish that the flat you're buying is not affected, you may be part of a chain of linked transactions with someone in the chain who is affected. This could cause difficulties and delays across the whole chain.

What are the issues you need to investigate?

Before you buy a flat, you need to find out if it's safe and/or will not require you to pay to make it safe.

If you're told that the building in which the flat is located needs work to make it safe, you will need to find out the answers to the following questions:

- Is there an effective fire watch system (waking watch) or common alarm system to alert residents in case of fire?
- Who pays for this system?
- How much does it cost?
- Who will pay for the works needed to make the building safe, which may include removing and replacing the external cladding?
- How much will those works cost?
- When will those works be done and the costs be paid?
- How much disruption will be involved?
- Who will be responsible for any costs associated with the disruption (for example, the cost of temporary accommodation if it becomes necessary to vacate the building while the works are carried out)?

What are the issues you need to investigate?

Fire safety engineers are best placed to advise, but there are a limited number of these, and you're unlikely to have access to them.

Your surveyor is the best person to talk to in the first instance.

Other flat owners in the same building may be able to provide some background information.

Solicitors are not able to advise on the physical structure of buildings or related matters generally. They also cannot advise in relation to fire safety issues.

They can let you know what the landlord or the managing agents of the building say in response to questions about fire risks.

A solicitor can also help you check if the building in which you're thinking of buying a flat:

- has a fire risk assessment and EWS1 form (and help you get copies)
- has any government funding for fire safety works

In general, the safety of buildings is the responsibility of the 'responsible owner'. This is usually the owner of the freehold of the whole building.

Each building has a responsible owner who should take reasonable steps in relation to the safety of the building. The responsible owner must:

- make sure that people can leave the building safely if there is a fire
- reduce fire risks in the building

Fire risk assessments

The responsible owner must have a suitable risk assessment carried out to identify the general fire precautions they need to take to comply with the requirements.

This document is a 'fire risk assessment'.

Your solicitor can help you to:

- find out if there is a risk assessment for the building that contains your flat
- get a copy of the risk assessment

The EWS1 form

The heightened interest in the fire safety of residential buildings has had an impact on lending and some mortgage lenders have become reluctant to lend on certain buildings.

The EWS1 form was created by the Royal Institution of Chartered Surveyors (RICS) and UK Finance to help reassure lenders.

EWS1 stands for 'external wall system' and relates to the walls made up of insulation, cladding and other materials. The

EWS1 form provides a rating of the building's external wall system for fire safety. It must be renewed every five years.

In April 2021, the guidance for those preparing valuations for lenders and providing EWS1 forms was changed again.

The government published a ministerial statement and an independent expert statement in July 2021 suggesting that an EWS1 is not required on buildings below 18 metres.

We understand from RICS that its guidance remains in place and that its advice to its members is that they should continue to follow it until RICS has more clarity about the government documents and their impact on its guidance.

Your solicitor can help you find out if there is an EWS1 form for the building that contains the flat you're buying and get a copy of it.

However, you cannot assume that all is well if the property you're buying is in a building that has an EWS1 form.

EWS 1 form ratings

The form has several ratings, which vary from low risk of fire to combustible materials being found. Some ratings are suitable for certain lenders while some are not.

Even if the external wall system has a form with a rating that is suitable for some lenders at a point in time, this rating can be revised at any time, following a re-assessment of the building.

Should you be reassured that a lender has issued a mortgage offer on the flat you wish to buy?

You should not rely on the fact that you have a mortgage offer.

A mortgage offer does not necessarily mean the flat is safe or that you will avoid being asked to contribute to the cost of fire-safety or other building-safety work. You could still be faced with very high costs, now or later, and you may still find it difficult to sell your property in the future, particularly to anyone who needs a mortgage.

Even if there is an EWS1 form, this must be renewed every five years. In future, it's possible that renewal may need to be sooner or later than this.

You might have high costs to pay once the form needs renewing and it may be difficult to sell your property, particularly to anyone who needs a mortgage.

You should also bear in mind that, since the EWS1 form was issued, the condition of parts of the building covered by the form may have changed.

Re-assessments can be made at any time, and the rating set out on the form may be changed following the further assessment of the building.

This means that the EWS1 form might no longer be suitable for lenders if you want to buy, or if you have bought and are looking to sell to someone who needs a mortgage or re-mortgage.

Which types of buildings can be affected?

The answer is not straightforward as government requirements are changing.

The main focus is on taller buildings, but other types of buildings may be affected too: presently, almost any building may be affected.

If I'm buying a flat where all the owners in the block own the whole building, will this be more straightforward?

An advantage of buying in a block that is owned by all the flat owners is usually that you're more likely to have greater control over any works carried out to the building and the costs of these works.

You're also likely to be able to extend your lease more cheaply and more simply than if the building is owned by a different person or company.

However, this situation needs to be viewed differently in relation to building safety.

You may be taking on extra liabilities and responsibilities because you, along with all your building co-owners, are likely to be the 'responsible owner'.

If you are, you may:

- be responsible to engage contractors to remove and replace unsafe materials
- need to contribute to any outstanding costs unpaid by one or more of the other flat owners in the building

Will buildings insurance pay?

It cannot be assumed that the costs of any necessary works will be covered by insurers.

Buildings insurers may have concerns about issues such as whether:

- legislation has been complied with
- proper materials were used in the construction
- materials were fitted correctly

Insurers may not be willing to pay at all or may not pay until satisfied in relation to each individual claim. This could take a very long time to establish.

Some of the new build warranty providers, such as the National House Building Council, may contribute to some of the remediation costs, but this may not cover the full costs of necessary works.

Whether the flat that you're buying is a new build property or not, you should read the freeholder's insurance policy carefully and ask your solicitor about anything you do not understand.

What about government grants?

At first, the government said it would bear the reasonable costs of removing and replacing unsafe cladding for local authorities and housing associations.

However, the present position under the Fire Safety Act 2021 makes it clear that leaseholders are primarily responsible for the costs of making buildings safe where they pay a service charge.

There is a Building Safety Fund to support the removal of unsafe cladding from the most dangerous high-rise buildings, but it appears to apply to relatively few buildings.

Your solicitor can help you check whether the building in which you're thinking of buying a flat has government funding for any fire safety works.

Even if the building has an allocation from this fund, the amount allocated may not cover the costs of all the work needed to make the building safe.