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COMMERCIAL PROPERTY OWNERS & MANAGERS The NEW requirement to obtain evacuation plans from tenants & how non compliance voids your building insurance.

The managing entity (defined as the owner or body corporate) of a commercial building has an obligation to obtain a copy of the Fire and Evacuation Plan for each tenant/owner (secondary occupiers) when preparing the Fire and Evacuation Plan for the building. Also how non-compliance with the new fire regulations that became effective 1st July 2009 will affect your building insurance.

First, all about the need to obtain Fire and Evacuation Plans from tenants (secondary occupiers). The applicable extract from the Building Fire Safety Regulation 2008 states:-

Section 22 Requirements for managing entities

- (1) This section applies to the managing entity of a multi-occupancy building for keeping the Fire and Evacuation Plan for the building under this subdivision.
- (2) The managing entity must ensure the Fire and Evacuation Plan takes into account the evacuation coordination procedures stated in the Fire and Evacuation Plans for all parts of the building occupied by secondary occupiers.

Examples of operation of subsection (2) –

The Fire and Evacuation Plan for a shop in a shopping centre provides for persons in the shop to assemble at a point (point 'A') outside an exit of the shop in the general access area to await further instructions. The Fire and Evacuation Plan kept by centre management for the shopping centre provides for evacuating person form point 'A'.

Maximum penalty – 30 penalty units.'

There is a similar obligation for the secondary occupiers to obtain a copy of the managing entities evacuation plan:-

Section 23 Requirements for secondary occupiers

- (1) This section applies to the secondary occupier of a part of a multi-occupancy building for keeping the Fire and Evacuation Plan for the part of the building under this subdivision.
- (2) The occupier must ensure the Fire and Evacuation Plan for the part of the building complements the evacuation coordination procedures under the Fire and Evacuation Plan kept by the managing entity for the building.

Example of operation of subsection (2) –

The Fire and Evacuation Plan for part of an office block provides for a person to report the number and identities of persons not accounted for after an evacuation to the Evacuation Coordinator mentioned in the Fire and Evacuation Plan kept by the managing entity of the building.

Maximum penalty – 30 units.'

Under this provision owners/managing agents need to contact their tenants and ask for a copy of their Fire and Evacuation Plans when preparing the evacuation plan for the building, and vice versa. Ideally both the evacuation plan for managing entity and secondary occupiers would be supplied simultaneously by the same company, to save on revisions.

There are additional requirements for owners of buildings including:

Advising secondary occupiers of any changes to the common/shared areas Fire and Evacuation Plan within one month (Building Fire Regulation 2008 - Part 4, Section 27 (2)).

There is a dual obligation between the tenant and owner to ensure a copy of the Fire and Evacuation Plans and prescribed documents (like maintenance records) are kept both on the building premises available for use and kept 'in a way that it is reasonably likely not to be damaged in the event of a fire or hazardous materials emergency' and 'in a secure place at other premises.' (Part 7 Section 71 (2) (a)).

The QFRS has said that a fire proof safe is not necessary to keep the onsite Fire and Evacuation Plan. However a lockable metal cabinet is adequate.

Solutions ie can ensure the offsite copy is securely kept and assist the owner/property agent with organising an onsite metal cabinet.

Under Part 7 Section 44 (the requirement to hold an annual evacuation practice), one example used demonstrates that the managing entity has a responsibility to ensure the building as a whole (including tenants and secondary occupiers) complies. The definition for a managing entity includes a body corporate and an owner (Building Fire Regulation 2008 - Schedule 3).

In short an owner of a building has obligations and cannot rely on a tenant to meet these obligations. By insisting tenants, under the terms of their lease, meet their fire compliance obligations an owner/managing agent goes a long way to fulfilling their own duties.

Further, the owner has control over the common areas of the property. As such, it must make sure that:

1. All FSIs required to be in the common/shared property areas are installed and properly maintained;
2. All evacuation routes are safe and free from hazards;
3. A Fire and Evacuation Plan for the building is developed and maintained in coordination with the tenants Fire and Evacuation Plans;
4. The Evacuation Coordinator, people with responsibilities under the Fire and Evacuation Plan and workers receive specific training;
5. If the building is a 'high occupancy' building, a Fire Safety Advisor is appointed; and

6. An 'Occupier's Statement' is submitted to the Commissioner of the Queensland Fire and Rescue Service every 12 months, stating that all FSIs have been properly maintained.

IMPORTANT: Insurance coverage and fire compliance

All the insurers we have spoken to have stated that it is a requirement of every building insurance policy* that a building is fire compliant.

In the event of an insurance claim due to a fire within a building there are a number of ramifications if the building is not totally fire compliant. The Queensland Fire and Rescue Service will as a matter of course ask for evidence of records kept on and off site demonstrating:

- All Fire Safety Installation maintenance records are current;
- All Evacuation routes are compliant;
- A Fire and Evacuation Plan is in place and updated annually;
- Evacuation Signs are installed and updated annually;
- Evacuation practice records show that at least an annual practice has been completed;
- An Evacuation Coordinator has been appointed and trained annually;
- First response training has been completed for all workers and documented'
- Annual Occupiers Statements have been submitted; and
- The Certificate of Classification is installed in foyer or on record.

If any of these items are not in order then the QFRS has made it clear that fines will be issued and, if there have been fatalities, prosecutions will commence.

The insurer may be able to totally dismiss a claim based on non-compliance. More likely they will be able to significantly reduce any payout by demonstrating that, had the FSIs been properly maintained, had people been properly trained and had a Fire and Evacuation Plan been in place, the fire could have been better contained. It would not be hard to show how reactions and fire fighting responses by people and equipment on site would have been significantly better with proper compliance. So non-compliance by owners and occupiers of buildings has the potential to make a building insurance policy null and void.

*This is covered in the terms of every insurance policy. If fire compliance is not mentioned specifically, then there is a requirement for a building to comply with all local, state and federal legislative requirements.

Referenced Legislation (and where available)

Fire and Rescue Service Act 1990

http://www.legislation.qld.gov.au/LEGISLTN/SUPERSED/F/FireARescSeA90_07C_090101.pdf

The Building Fire Safety Regulation 2008

<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/B/BuildgFireSR08.pdf>

Building Code of Australia

<http://www.abcb.gov.au/>

AS 1851-2005 Maintenance of fire protection systems and equipment

<http://infostore.saiglobal.com/store/Details.aspx?docn=AS0733768229AT>

Queensland Development Code MP6.1

<http://www.dip.qld.gov.au/resources/laws/queensland-development-code/current-parts/mp-6-1-maintenance-fire-safety-installations.pdf>

Certificate of Certification information

<http://www.dip.qld.gov.au/resources/factsheet/building/certificates-classification.pdf>

