Residential Freehold ASSOCIATION

Proposals for solving the building safety crisis

Over two years after the passage of the Building Safety Act 2022 ("the Act"), there remain various roadblocks to remediating unsafe buildings. As part of its commitment to helping solve the building safety crisis, the RFA has developed proposals for government which if adopted would expedite the remediation of leaseholders' homes.

Lingering problems with the building safety regime:

1. **Inconsistencies between the Act and developer remediation contract**

   The Self Remediation Terms "SRT" also known as the Developer remediation contract only oblige developers to remediate those life critical fire safety defects which would leave intolerable risk to the occupants from the spread of fire.

   Meanwhile the Act places far more stringent obligations on building owners, including the management of risk pertaining to the structural integrity of the building. This has left building owners in deadlock with developers, who have treated their liabilities as being carved out under the SRT rather than defined by legislation. Since every building owner has been left to negotiate its own delivery agreement with individual developers these inconsistencies are inevitably leading to delays and may result in costly and lengthy litigation.

2. **A disproportionate approach to risk**

   The use of a Fire Risk Appraisal of External Wall (FRAEW) construction means that assumptions are often being made about the risks posed by the condition of the internal compartmentation of a building, unless a separate intrusive investigation is carried out. Some developers are refusing to check all the internal aspects of a building as they consider the SRT don't expressly obligate them to. This means that there is a significant risk the building safety regime will create a swathe of half safe buildings with defective internal compartmentation.

   Developers are also leaving leaseholders to fund expensive FRAEWs before coming to the table to discuss remediation. Our members are often seeing developers 'peer review' or instructing their own assessment, which creates delays and conflict over remediation terms. Current approaches to resolving these conflicts are disproportionately weighted towards developers and do not consider the objectivity of the primary legislation.

3. **An inconsistent funding and regulatory regime**

   The previous Government wrongly prioritised apportioning liability over providing a consistent means of accessing funding to fix unsafe buildings quickly. Forcing parties to litigate to raise funds ignored the reality of funding remediation works and the need to remediate promptly. Although funds were made available for the remediation of cladding, there are now multiple funding regimes, all with their own guidance and criteria, and these do not cover internal fire safety defects such as missing compartmentation. The time it is now taking to gather funds is now becoming longer than the time to undertake remediation work itself, meaning leaseholders are being left stranded for longer.

With the roll out of the Cladding Safety Scheme, to which some Building Safety Fund applications are being switched over, there are inconsistencies in the approach to reviewing applications and considering the recommendations of FRAEWs.

The irregular patchwork of regulations stemming from the Act have also hindered remediation efforts on the ground and caused confusion. Secondary legislation has its place, but it's application to date has been defective necessitating various clarifications. There has been even further amendment to the legislation through the Leasehold and Freehold Reform Act 2024.

Practical solutions to expedite remediation outcomes

1. Implement the 'rule of one' principle

All buildings should be remediated to 'the rule of one'. Each leaseholder should expect to receive a building remediated to a set standard formulated by MHCLG, then applied and certified by an independent fire engineer appointed by MHCLG, not the developer. Without these amendments many buildings will remain in a non-remediated condition for lengthy periods whilst protracted legal discussions take place.

2. Place the same liabilities on developers as under the law

Inconsistencies in legal definitions are having significant consequences for the safety of leaseholders. The SRT for developers need to be amended to reflect the liabilities that all developers carry in law, making them expressly obligated to deal with structural remediation. They must also be prevented from mitigating these obligations and causing further unnecessary delays.

3. Enforce a cohesive risk-based approach

In order to prevent remediation efforts only producing half-safe buildings, a standard of acceptability must be developed to fund remediation works to a safe standard. Developers should, as a minimum, be obligated to complete a Type 2 survey of the internal common parts compartmentation, where such a survey reveals any defects, further Type 4 surveys should be completed within the flats.

The RFA are glad to discuss this issue or provide a more detailed briefing as needed. To arrange this, please email enquiries@residentialfreeholdassociation.co.uk