

External walls and the new EWS1



Since the Grenfell tragedy, high rise residential properties (over 18m) have been a focus of the Government's Building Safety Programme.

A number of guidance and advice notes have been issued by the Ministry of Housing Communities and Local Government in connection with the construction of external wall systems in high rise buildings as well as balconies and other external protrusions. The effects of this have been felt in a number of different areas of the residential property industry including:

- Developers involved in the construction and disposal of a new build block of flats;
- Property investors who have acquired high rise residential blocks constructed some time ago;
- The owners of individual flats in a high rise block;
- Prospective purchasers of such flats and their lenders; and
- Insurers of such blocks.

To provide a consistent approach in the disposal of individual flats within high rise blocks, on 16 December 2019 RICS, The Building Societies Association and UK Finance (formerly the Council of Mortgage Lenders) agreed to the External Wall Fire Review process.

By means of a relatively short standardised form (EWS1) a suitably qualified professional can provide a certification as to the materials used in the construction of external walls and their combustibility/safety which in turn would provide lenders with information on which to make a decision on whether to fund.

A few key points to note from the contents of EWS1 and its use:

- The life of the EWS1 is 5 years. This means that building owners do not need to commission expensive and lengthy reports on condition repeatedly. However, it is important that sufficient information is obtained about the certifier at the time in case this is queried in a disposal that takes place a few years after the EWS1 was completed.
- The professional engaged to produce the form is instructed by (and owes duties to) the building owner. EWS1 states that no third party is entitled to rely upon the contents of the certification. The rationale for this disclaimer is that, without such a provision, any third party who relied on the certification within the 5 year life of the EWS1 could sue the surveyor. The effect on insurance premiums within the surveying sector if such exposure was allowed to prevail would make EWS1 unworkable.
- Given the no reliance provision, it appears clear that the purpose of the form is no more than to provide information to prospective purchasers and their lenders to enable them to then take a view on lending. It is not formal advice to buyers, sellers or lenders. Given the involvement of UK Finance and the Building Societies Association, it would appear that this is all that lenders will be expecting to receive in order to make a decision on whether to lend.
- It would not be unusual for (and indeed the EWS1 envisages there to be) underlying reports and advice from the surveyor to the building owners. This underlying information does not need to be disclosed with the EWS1. However, building owners must always consider whether such information is otherwise discloseable to third parties, whether in the context of a prospective disposal or otherwise.
- While the EWS1 may appear to be a simple form to complete, it does have to be completed by a suitably qualified professional. The inspection such a professional may need to make in order to provide the certification could involve invasive investigations, particularly in the case of older buildings.
- If the outcome of such investigations results in a recommendation that remedial work is needed, the building owner will need to undertake such work within a relatively swift period of time. Depending upon the nature of the work and the reason for it, the building owner may be able to recoup some or all of the costs associated with such works, whether under the service charge, an insurance policy or by virtue of a claim against the original contractor. That, however, is not a certainty in all cases.

The introduction of EWS1 will hopefully assist individual leasehold disposals. However, it is ultimately nothing more than a means of communicating a third party's view on an external wall system to prospective purchasers and their lenders.

It certainly does not water down the obligation on building owners to ensure they have undertaken all necessary investigations so that they understand the make-up of external wall systems in high rise buildings and that, where remedial works are required to ensure such buildings meet current fire safety requirements, such works are implemented without delay.

How we can help

Please get in touch with our [residential property team](#) if you would like to discuss this topic.