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WH&S and Asbestos Information for Property Owners!

Do we need an Asbestos Report for our rental property?

YES

This information is suitable for all investment property including strata and non-strata property, and for a variety of land uses such as residential, industrial, retail and commercial offices.

Firstly, there are a number of considerations to ensure you comply.

1. your Common Law Duty of Care, and
2. the Work Health and Safety (WH&S) legislative requirements.



Common Law Duty of Care

The Common Law Duty of Care always remains regardless of whatever steps you decide to take. That is, everyone has a duty to inform any person of any likely hazards associated with any area that you have the management or control over, whether as a managing agent or as an owner. Currently the Court in NSW will look at the Principles contained within the Civil Liability Act 2002 (section 5B). Other States have similar provisions.

In essence these principles include:

- whether the risk was foreseeable (which is a risk that you knew or ought to have known about);
- whether a reasonable person would have taken precautions against that risk after considering the probability and the likely seriousness of harm;
- whether it is reasonably practicable as well as the financial burden of taking those precautions, amongst other relevant considerations.

Asbestos is known to be a harmful material and the property manager and property owner both have a Duty of Care to ensure that this material does not cause harm to your visitors, tenants, workers, contractors and the like. The Duty of Care is no different for any other dangerous material or chemical or similar risk. You have an obligation and duty to ensure that no harm is caused by your acts or omissions.

The WH&S Legislative requirements

From 1 January 2012 in NSW the Work Health and Safety Act 2011 and the Work Health and Safety Regulation 2011 placed significant duties, obligations and responsibilities upon any person in the management or control of a workplace (this includes a residence when a worker is on site) to ensure that the workplace is free from risks.

These duties, obligations and responsibilities relate to any PCBU (Persons Conducting a Business or Undertaking) such as a property manager.



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The specific wording under section 20(2) is *"The person with management or control of a workplace must ensure, so far as is reasonably practicable, that the workplace, the means of entering and exiting the workplace and anything arising from the workplace are without risks to the health and safety of any person."* The maximum fine is \$3,000,000 for a corporation and \$1,200,000 for an individual. As an owner of property that is managed by a property manager you still have a Duty of Care to the tenant, workers and contractors, as well as to 'other persons'. In addition to your Common Law Duty of Care, you have a specific Duty of Care under section 19 (Primary Duty of Care) of the Work Health and Safety Act 2011.

Fines for Asbestos non-compliance

Set out below is a summary of the fines under the Work Health and Safety Regulation 2011 that can be imposed by SafeWork NSW for non-compliance.

Clause	Non Compliance item	Fine: Individual	Fine: Company
422	Not identify Asbestos	\$6,000	\$30,000
424	Not identify the presence and location of Asbestos	\$6,000	\$30,000
425	No Asbestos Register	\$3,600	\$18,000
425	Not maintain Asbestos Register	\$3,600	\$18,000
426	Not review the Asbestos Register	\$3,600	\$18,000
427	Not have Asbestos Register readily accessible	\$3,600	\$18,000
429	No Asbestos Management Plan	\$6,000	\$30,000
429	Not maintain Asbestos Management Plan	\$6,000	\$30,000
429	Not have Asbestos Management Plan readily accessible	\$3,600	\$18,000
430	Not review the Asbestos Management Plan	\$3,600	\$18,000

Non-compliance can be an expensive exercise in both fines and legal costs if you or your contractors are found to be negligent. **It is simply essential and prudent to obtain an Asbestos Register and Asbestos Management Plan for any investment property today.**

Engage our professional services – from \$330 including gst

We adopt a very practical and cost effective approach to your Asbestos and WH&S compliance requirements.

We provide an Asbestos Report that contains both an Asbestos Register and an Asbestos Management Plan. Although we can obtain samples for testing at an additional fee, we prefer not carry out invasive testing of materials that may potentially contain asbestos or asbestos containing materials. We simply carry out a Level 1 visual inspection of easily accessible areas in order to provide a compliant Asbestos Register and Asbestos Management Plan.

We are available to discuss any Asbestos or Safety related matter. Please feel free to contact our principals either Shane Foley or Wal Dobrow at any time on 9114 9800 or 0412 039 189.



Shane Foley
Director
0412 039 189



Wal Dobrow
Director

The above information is not legal advice and has been provided as a guide only. Legal advice should be obtained to confirm and clarify each particular circumstance.



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