

Health & Safety for landlords

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LEGAL MATTERS



This week Alan Knowlesley takes a look at health and safety and body corporates, what they are, who runs them, and what they mean for tenants and landlords.

Under the Health & Safety at Work Act a person conducting a business or undertaking (PCBU) has many duties to keep people safe in the workplace.

A landlord is conducting the business of renting out a residence (usually for a profit) so do they owe health and safety duties to their tenants? That will depend on whether the home/flat/apartment is a workplace under the Act.

Normally a residence is not a workplace for the occupier but will be a workplace for people who are there to do work.

If the landlord gets work done on the property e.g. a new roof then the home will be a workplace while the building work is being done.

The landlord and the roofing company will both have duties to the occupiers to keep them safe

during the work.

Likewise if the landlord themselves does some work on the property, such as repairs or maintenance, the property is then a workplace for the landlord during that work.

In a situation where work is not being done on the property, but the tenant's health is being affected, such as contamination from "P" in the home, the situation is unlikely to be covered by the Health & Safety at Work Act, but may fall under other acts like the Building Act, Crimes Act if the landlord knows or should know but doesn't do anything about it.

What about a body corporate? Is the body corporate liable for health and safety at work?

The body corporate is made up of committee members who live in the premises or own one or more units.

The body corporate is a "legal" person conducting a business or undertaking (even though it is not for a profit) so will be a PCBU.

An owner who is renting out their apartment will be a PCBU and will not be exempt under the "occupier" exemption because they are not occupying the apartment as a residence.

Likewise the body corporate is



not occupying a premises as a residence.

The body corporate is responsible for the common areas and is not itself a residential occupier so is not exempt under the "occupier" exemption.

The body corporate cannot insure against fines but can insure against the costs of defending a prosecution and for any reparation orders.

The fines ordered against the body corporate will be operating expenses and will be levied against all owners on their unit entitlement share.

The officers/committee of the

body corporates can also be personally liable for their own "officer" duties.

They must ensure that the body corporate carries out its health and safety duties.

However, any member of the committee who are volunteers (not paid anything except reimbursement of out of pocket expenses) will be protected from prosecution by the "volunteer" exemption.

Any committee member who is paid a meeting fee or allowance will not be a volunteer and therefore they may be personally liable in addition to the body

corporate.

The committee members cannot recover any fine from the body corporate.

It pays to know your potential liabilities before you accept any position and ensure that the body corporate takes all practicable steps to identify then eliminate or minimise all hazards.

Column courtesy of RAINEY COLLINS LAWYERS phone 0900 788 494 or go to

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If you have a legal inquiry you would like discussed in this column please email Alan on aknowlesley@raineycollins.co.nz