

Even If You Rent You Could Be On The Hook For Building Code Act Infractions

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kmb notes

One issue that many business owners, who do not own the premises they operate from, do not usually think about is compliance with the *Building Code Act* ("Act") and its regulations.

■ You May Be Faced With An Order

Building Code compliance issues are generally considered to be the landlord's responsibility and are often addressed in the lease itself. Further, structural changes are not changes that tenants believe they are authorized to make. After all, tenants should not be responsible for and should not be authorized to tackle the construction issues associated with the building they do not own, should they? The answer is not so clear-cut. And the governing legislation does not clearly set out the persons against whom the municipality may issue orders to comply.

■ Your Worst Nightmare

Picture this. Your business is operating as usual, however, you find yourself faced with a visit from the City inspector. He or she looks around, conducts some tests, and some time later an order is posted on your front door. Some structural component of the building is considered unsafe and your company is required to take the necessary steps to bring the building into compliance with the Act and its regulations. You learn that the landlord received the same order, however, the landlord is clearly not addressing the problem. The renovations required are time consuming and costly and will inevitably impact on your business operations. Further, it appears that the structural issues were caused prior to your business becoming a tenant of the premises

and that your business operations did not cause the problem. Can the municipality involve you in this manner? And what can you do to protect yourself?

■ Appreciate The Municipal Powers Under the Building Code Act

The purpose of the *Building Code Act* is to ensure that the standards of construction safety are applied uniformly. The Act gives a variety of powers to inspectors, for example, allowing them to enter your business premises for the purpose of investigating a safety concern at any reasonable time and without a warrant. The wording of the Act is very broad – it simply states that if upon conducting an inspection the inspector finds that the building is unsafe, he or she may make an order setting out the remedial steps necessary to render the building safe.

One of the options available to the municipality facing an uncooperative owner is to carry out the remedial work itself and collect the amounts expended as taxes. However, this is not the only option set out in the Act. If an order is not complied with, the chief building official of the applicable municipality has the broad powers of

- a issuing an order prohibiting the use or occupancy of the building; and
- b may cause the building to be renovated, repaired or demolished to remove the unsafe condition or
- c take such other action that he or she considers necessary for the protection of the public.

■ Be Concerned – The Fines Are Really Large

Clearly, the potential implications for a tenant are concerning. The concern is amplified by the recent increase in the maximum penalties for infractions under the *Building Code Act*. As of December 15, 2005, the fines under the Act are a maximum of \$50,000 for an individual for a first offence. The fines for a corporation are a maximum of \$100,000 for a first offence. Where a person fails to comply with an order prohibiting the use or occupancy of the building, in addition to other penalties, that person, if convicted of the offence, may be liable to a maximum of \$10,000 per day for every day the offence continues after the time given for complying with the order has expired.

■ Act Quickly When Faced With An Order

You are not powerless when suddenly faced with an order. Municipalities must comply with all of the statutory requirements in order to properly discharge the powers conferred on them by the Act. Further, just as the Act confers broad powers on the municipality, it offers a process to contest the municipality's decision to any person who considers himself or herself wronged by an order or decision of the inspector or chief building official. A decision of a municipality may be appealed to the Building Code Commission, a body that resolves disputes arising under the Act, or to

the Superior Court of Justice, depending on the issue in question. Within the appeal, you may ask the Court to defer the effect of the order until the issue is resolved. However, the time periods for appealing are short and those against whom orders are issued must act quickly.

In the end, it is in all of the parties' interest to resolve any safety concerns with the premises. However, the appeal process set out in the Act provides an opportunity for you to ensure that the matter is addressed and resolved in the proper manner.

■ Questions?

If you have any questions or comments regarding matters discussed in this newsletter, or you would like some assistance in developing preventative strategies, please contact, **Patricia Szwed** pszwed@kmblaw.com

Patricia Szwed is a commercial litigator at the firm. She works with a variety of closely held owner operated companies. Our litigation group acts on behalf of a variety of clients including sole proprietors, family owned businesses, professionals, large and small private companies, financial institutions, and nonprofit organizations. We are all skilled negotiators and will do everything possible to minimize the impact of litigation, whether as plaintiff or defendant. Once in court, however, we are formidable opponents. **Please see www.kmblaw.com.**

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