

Bannermans Lawyers

How to Minimise Building Defect Risks

Building defects can be one of the most significant risks you face as a property investor, particularly when buying a newly constructed house or apartment, because defects may not be immediately apparent.

The cost of rectifying defects can be high and could seriously undermine the return on your investment. However, this risk can be reduced by considering the following before you make your purchase.

Understand the warranties under the contract and residential building laws

This is very important because you could be buying a property with building defects where warranties have already expired. This is a difficult area, largely because of recent amendments to the home building legislation. For contracts entered into on or after February 1, 2012, the warranty period will usually be two years, which may be less time than it takes for defects to become apparent, let alone to pursue legal action.

Research the builder and developer of your investment property

Does the developer and builder have a track record of quality work? Are they financially solvent? Developers of strata buildings and project homes may not be as diligent about their contractors' work quality as they'll likely be selling the properties before defects are identified, so reputation is important. This is why it's worth doing some research on the developer and builder and their reputations.

Quality of products and materials used

Builders are reported to be bracing for a wave of claims following allegations that cheaply imported aluminum cladding fuelled a recent disastrous fire in Melbourne and the cladding material has been widely used. It's not much of a stretch to imagine that similar issues may exist with other cheaply imported building materials. Again, liability for these poor materials may now cease after just two years, therefore asking the right questions or getting a thorough building report done can prove invaluable.

Has the developer provided sufficient information to understand what you are really buying?

This is particularly important when buying an apartment off the plan, as it can be hard to visualise a completed unit from plans and specifications of inclusions, especially if they're vague. Ask about the materials used, quality of inclusions and brands of equipment and ideally get this in writing. This will not only offer peace of mind for you but give you something to go on should something go wrong due to lesser quality materials or inclusions being used.

Is homeowner warranty insurance available?

This can be very helpful, as it may provide a remedy if building defects are identified and the developer and builder are insolvent. However, it may not be legally required for some multi-storey buildings or some purchases from

owner-builders and may be overlooked or ignored by the builder. Definitely worth checking as it can save you a lot of money and stress should something go wrong.

Can the developer hinder attempts around any building defect issues?

In strata buildings, it's not unusual for a developer to have retained sufficient voting power or to have put in place restrictive by-laws or to have withheld important information, assisting the developer to frustrate claims made by the owners. Reforms to the strata laws aimed at assisting with these issues have been proposed, but have not yet been implemented. It's worth checking if the strata building's independently managed or if the owners' corporation is locked into a contract with a strata manager and/or caretaker that might be sympathetic to the developer. It's all about liability and reducing your risk.

Have building defect issues already been identified?

In strata buildings, the owners' corporation may already have obtained a report and may already have a fair idea of the costs involved and the amount likely to be recovered from the developer/builder or from insurance cover. It pays to be aware of any defects already identified before you sign the purchase contract. It may be that liability is clear and defects are being rectified, but you would definitely want to know rather than not.

What can be done as a pre-caution?

If no defects are apparent or have been disclosed, the steps you could take to identify any building defect usually involves engagement of an independent and suitably qualified consultant to inspect and report on the property.

Realistically, you need to obtain legal advice about these issues before signing the contract to purchase an investment property. Your legal adviser will assist you in identifying what risks need to be investigated and what other consultants should be engaged.

It's recommended to speak with a strata expert and legal adviser fluent in strata and owners' corporation matters, rather than your usual conveyancer or property purchase lawyer.

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