

Better Resolution of Building Defect Claims

There may be a way to avoid lengthy and costly litigation and focus on what matters – the rectification of building defects. Some builders, particularly those who are familiar with the disadvantages of the lengthy litigation process through the Courts or Tribunal, may be willing to enter into an agreement which focuses on a binding independent expert determining the defects, the methods of rectification and the subsequent certification of the works by the contractor. The advantages of this process if adopted are:

- It is less adversarial;
- Reduces expert and legal costs;
- Quicker remediation of the defects; and
- The builder is more engaged.

There are a lot of factors to take into account, such as:

- Insurance requirements;
- No warranty terms;
- Payment of the experts costs;
- Payment of legal costs;
- Liability of the developer; and other
- Suitable dispute resolution mechanisms.

Do not be misled into thinking that under the proposed legislation you will have access to 2% defect bonds, reports paid for by developers and no voting rights for developers on defects.

These benefits will only apply if:

- the contract to build the building was entered into after the legislation commences or if there is no contract where the works were commenced after the legislation commences; and

- home warranty insurance is not required for the new building.

When the law commences, owners in strata schemes can expect to see a motion to consider building defects and rectification at the first annual general meeting and subsequent annual general meetings, up until the warranty period for buildings of the strata scheme expire.

We can help implement and negotiate tailored solutions at any point in time. We often implement these arrangements part way through proceedings once the parties have protected their relevant positions due to the statutory time limitation issues. However, if owners are proactive enough they can avoid those litigation costs.

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