Building Defects

The construction team at Bannermans Lawyers can provide tailored, commercial, effective legal advice to you in the management of building defect matters.

Protecting Your Asset

Often your home or investment property is one of your most important assets. Accordingly, you should consider consulting a legal practitioner who specialises in building and construction law for advice when determining the best course of action to take when:

- faced with a building defect; or
- a statutory warranty period is shortly due to expire.

A Targeted Strategy

Bannermans Lawyers can provide you with expert legal advice on the following in relation to building defect issues, and arm you with the information that you need to ensure the protection of your consumer rights:

- Assistance with selecting and briefing building experts to investigate building defects.
- Providing advice to you on the applicable statutory warranty periods.
- Providing advice to you on home warranty insurance notifications, claims and determinations.
- Liaising with relevant owner-builders, builders, developers, subcontractors in relation to building defect matters.
- Drafting remedial works contracts for the rectification of building defects.
- Assistance with applications to, investigations by and mediations through the NSW Office of Fair Trading in relation to building defect matters.
- Assistance with alternative dispute resolution mechanisms for the resolution of building defect matters.
- Tribunal or Court proceedings for building defect matters.

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Navigating the Home Building Act 1989 (NSW)

The statutory framework which sets out the consumer protections for the owners of residential dwellings in NSW is contained in Home Building Act 1989.

Since the commencement of the Home Building Act 1989 there have been numerous amendments to that act creating a potential minefield for consumers to work through without expert legal advice. Bannermans Lawyers can assist you to chart a clear course through this legislation.

Various Amendments Result in Different Statutory Warranty Periods

The Home Building Act 1989 requires that builders and developers must provide statutory warranties in relation to building defects, however, it can be unclear to many home owners as to what their rights are given that amendments to the legislation at various points in time have resulted in there currently being three statutory warranty periods which may potentially apply to residential buildings in NSW:

1. 2 years from completion (plus 6 months where a defect becomes apparent during the last 6 months of the warranty period); or

2. 6 years from completion (plus 6 months where a defect becomes apparent during the last 6 months of the warranty period); or

3. 7 years from completion.

The date of the building contract, the nature of the defect and the severity of the defect will determine which statutory warranty period applies.

Action Items for 2 Year Statutory Warranty Period

For example, if your building was constructed under a building contract dated 1 February 2012 the majority of building defects may well fall within a 2-year warranty period. Only major failures in major building elements that prevent the use of a building (or part of a building) for its intended purpose, destroy a building (or part of a building) or cause a threat of collapse of a building (or part of a building) may attract a 6-year warranty period. In the 2-year warranty period the following must occur:

1. Investigation of building defects;

2. Liaising with the developer/builder and relevant sub-contractors in relation to rectification of building defects;

3. Notification of the building defects to any home warranty insurer where a home warranty insurance policy is in place; and

4. Filing proceedings in a Court or Tribunal.

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With the 2-year warranty period commencing from the completion of a dwelling, there is very little time to carry out the above actions. If you are the second owner of a home, there may be very little time left on a statutory warranty by the time you purchase the property. Often even the first owner of a strata apartment may have little time left on a 2-year warranty period when they purchase their apartment from the builder/developer. Home owners should carefully consider seeking expert legal advice in a timely manner to ensure that their rights are not lost.

The 2015 strata reform will not come to your aid for this construction cycle

Do not be misled into thinking that 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
- Only where 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.

Key takeaways

- Bannermans Lawyers offers tailored legal advice for managing building defect matters.
- The Home Building Act 1989 provides consumer protections for owners of residential dwellings in NSW.
- There are three statutory warranty periods for building defects that homeowners should be aware of.
- Timely action is crucial within the 2-year warranty period for building defects.
- Bannermans Lawyers can assist with investigations, notifications, and legal proceedings related to building defects.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

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