

# Strata Reform – Building Defects: What You Need To Know

- Owners corporations should be aware that on or from 30 November 2016, the strata reform requires owners corporations to consider building defects and rectification at each annual general meeting until the expiry of the warranty periods for the applicable statutory warranties.
- Due to difficulties in determining which warranty scheme applies, and the expiry of these warranty periods, at a minimum those preparing agendas should be careful and conservative about when the warranty periods expire until appropriate legal advice has been obtained. Where a building is less than 7 years from the date of the first occupation certificate, a motion should be included in the AGM agenda. Bear in mind, urgent advice prior to the AGM may well be required due to the expiry of a warranty period.

Suggested motions many of our clients use are provided below:

- (a) *The Owners – Strata Plan No. [INSERT] RESOLVES by ordinary resolution to consider building defects and rectification.*
- (b) *The Owners – Strata Plan No. [INSERT] RESOLVES by ordinary resolution to engage [INSERT LAW FIRM] in accordance with its fee proposal dated [INSERT DATE] to provide advice regarding liability and recovery of losses in respect of building defects and rectification.*

*Explanatory note (not part of motion): The owners corporation has a mandatory obligation to repair and maintain the common property including building defects which can be varied by law. If building defects exist then another party may be held accountable to rectify or pay the loss, such as, builders, developers, certifiers, Home Owners Warranty insurers, contractors, subcontractors, designers or engineers.*

*There are key dates and steps required to be undertaken in order to claim for the loss or rectification. Such time limits, without limitation, range from immediately to 45 days, 6 months, 12 months, 2 years, 6 years, 7 years and 10 years, starting from different points in time. Failure to comply with these time limits may result in denial of the claim or liability or reduction in the amount otherwise ordinarily recoverable.*

*It is not part of the strata managing agent's agreement with the scheme to provide legal advice on building defects nor is it sufficiently qualified to do so.*

## What About the New Building Defects Bond Scheme?

- Owners corporations should not get confused by the introduction of the building defects bond scheme which commences on 1 January 2018.



T: (02) 9929 0226      M: 0403 738 996      ABN: 61 649 876 437  
E: [dbannerman@bannermans.com.au](mailto:dbannerman@bannermans.com.au)      W: [www.bannermans.com.au](http://www.bannermans.com.au)  
P: PO Box 514      NORTH SYDNEY NSW 2059      AUSTRALIA

- Practically speaking, owners corporations will not need to consider the new bond scheme which provides for a 2% bond, restricted voting rights for developers and a procedure for obtaining expert reports paid for by the developer as it will not apply to the majority of this current construction cycle. The scheme only applies to:
  - buildings which are not eligible for home warranty insurance i.e. buildings over three storeys high; and where
  - contracts for residential building work are entered into after 1 January 2018; and
  - if there is no contract or where the builder and developer are the same entity, where works commenced after 1 January 2018.
- Despite the many online publications providing information about this, please note that developers cannot be excluded from voting on matters concerning building defects unless the building defects bond scheme applies.

### **Further Advice**

If and when you need further advice regarding the strata reform with respect to building defects and rectification, please contact us. For example we can assist with the following issues which may arise with the implementation of the building defects bond scheme:

1. *Amount of the bond* – we can assist in determining whether the bond is sufficient. If it does not appear sufficient, the owners corporation can apply to the Tribunal requesting that an order be made specifying the amount of the contract price of building work for the purpose of determining the amount of the bond.
2. *Voting rights* – developers will be excluded from voting at meetings on various matters concerning building defects.
3. *Expert reports* – appointment and payment of experts to draft defect reports.
4. *Release of the bond* – a comprehensive process for the developer to undertake rectification of defects and secure release of the bond.

**Prepared by Bannermans Lawyers**  
**Updated 27 June 2017**



T: (02) 9929 0226      M: 0403 738 996      ABN: 61 649 876 437  
E: [dbannerman@bannermans.com.au](mailto:dbannerman@bannermans.com.au)      W: [www.bannermans.com.au](http://www.bannermans.com.au)  
P: PO Box 514      NORTH SYDNEY NSW 2059      AUSTRALIA