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 the expiry of the 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 the warranty period.

A suggested motion many of our clients use is provided below:

> "The owners corporation resolves to consider building defects and rectification and engage Bannermans, Lawyers in accordance with its fee proposal dated **//insert date//** to provide advice regarding liability and recovery of losses in respect of building defects."
>
> > *<u>Explanatory note (not part of motion):</u> 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 July 2017.
- 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 as it will not apply to the majority of this current construction cycle. The scheme only applies to:

BANNERMANS LAWYERS

T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

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- buildings which are not eligible for home warranty insurance i.e. buildings over three stories high; and where
- contracts for residential building work are entered into after 1 July 2017; and
- if there is no contract i.e. where the builder and developer are the same entity, where works commenced after 1 July 2017.

- So please note that developers cannot be excluded from voting on matters concerning building defects at general meetings 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 in 2019 with respect to 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.

Key takeaways

- Owners corporations must address building defects at annual general meetings until warranty periods expire.
- The introduction of the building defects bond scheme will affect certain buildings and contracts after 1 July 2017.
- Legal advice is essential for navigating the complexities of building defects and potential liabilities.
- Time limits for claims regarding building defects vary significantly and must be adhered to.
- Developers cannot be excluded from voting on building defects unless the bond scheme applies.

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P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

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Prepared by Bannermans Lawyers
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BANNERMANS LAWYERS

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E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA

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