

# What Happens if you Miss the Warranty Period?

## **Question: What Happens to your Statutory Warranties If You Do Not Settle or Commence Proceedings Within The Relevant Period?**

**Answer:** You have lost that warranty and your claim will be dismissed and if legal proceedings have been subsequently commenced you could be facing a large adverse costs order, as what transpired below.

### ***Owners Corporation SP66090 v Sydney Commercial Builders Pty Ltd & Anderson (Home Building) [2008] NSWCTTT 1096 (30 June 2008)***

The Owners Corporations initiated proceedings against the builder and developer but the Tribunal found that as it was not commenced within 7 years (as was the statutory time limit which applied at the time) of the date of completion of the building work, the owners had no recourse and the application was dismissed.

### ***Abrahams & Anor v Degan [2009] NSWDC 315***

The home owners commenced proceedings against the owner builder but did not commence proceedings in time under the Home Building Act 1989 (HBA). The Court held that the date of completion was the date of inspection by the certifier for the final occupation certificate under section 18E of the HBA and the application was dismissed.

### ***Owners Corporation SP69123 v Romanous Constructions Pty Ltd & Romanous (Home Building) [2010] NSWCTTT 23 (15 January 2010)***

In this case, the builder returned to rectify defects but this action did not extend the completion date of the property and therefore did not extend the statutory warranty period. Further, the Tribunal determined that the builder's failure to comply with an undertaking did not extend the statutory warranty period and the application was dismissed.

### ***Owners Corporation Strata Plan 64757 v MJA Group Pty Ltd [2011] NSWCA 236***

MJA Group Pty Limited ("MJA") retained Build-Care Pty Limited ("Build-Care") to carry out construction works. Build-Care achieved practical completion on 5 January 2001. The Owners Corporation commenced proceedings on 16 January 2008. Under the applicable HBA, the proceedings had to be commenced within 7 years, as it stood at relevant times.

The District Court determined that the claim was not made within the statutory time limit. The Court of Appeal upheld the primary decision and held that the limitation period expired before the proceedings were commenced as the construction works were completed by Build-Care when practical completion was achieved on 5 January 2001. Despite commencing proceedings only a few days after the expiry of the limitation period, the Owners Corporation's case was dismissed and the owners corporation were ordered to pay the costs of the proceedings.

## ***The Owners – Units Plan No 1917 v Koundouris [2016] ACTSC 96***

Defects were present from the outset and were raised by the owners corporation. The builder/developer spent 5 years promising to fix the defects, but ultimately did not. After the statutory warranty had expired, the builder/developer began ignoring requests to fix or contribute to fixing the defects.

When the owners corporation finally decided to get legal and expert advice, the time limits for bringing action to enforce the statutory warranties had expired for most of its losses. The owners corporation was unable to pursue the builder/developer for the defective works and the application was dismissed.

### **So what happens next?**

Check out our [Building Defects Handbook](#) to access a helpful guide to answer all your FAQ's around defects and ideally assist you in ensuring the best way to stay on top of any issues.

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