Building Defects Advanced Edition FAQ – Handover Documents from Developers

What are handover documents?

Handover documents refer to a comprehensive set of construction and compliance records that the developer is legally obliged to deliver to the owners corporation.

These documents serve as the foundation for managing and maintaining the building and are extremely essential for ongoing compliance and risk mitigation.

Some of the key documents include but are not limited to:

- Development application, approved plans and specifications. Development consent and related conditions.
- Construction certificate and application.
- Building contract and any variations or amendments.
- Architectural and engineering plans and specifications. Final inspection sheet issued by the certifier.
- Final fire safety certificate or inspection documentation.

Statutory obligation to provide handover documents

Under Section 16 of the Strata Schemes Management Act 2015 (NSW), the developer must provide all relevant documents and records to the Owners Corporation at least 48 hours before the first AGM.

Penalties can be enforced for non-compliance: Up to $11,000 can be imposed on the developer.

Why are handover documents so important?

1. Legal Compliance and Governance

The handover documents are essential for the owners corporation to meet its obligations under the Strata Schemes Management Act 2015 (NSW). The documents allow for the management and operation of the building from day one.

For instance, documents such as fire safety certificates and occupation certificates are required to ensure that the building is safe and legally occupied.

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2. Enforcing Building Defect Warranties

The statutory warranty period for building defects under the Home Building Act 1989 (NSW) begins on the date the final occupation certificate is issued. The owners corporation must know this exact date to enforce warranties correctly:

- 2 years for non-structural defects; and
- 6 years for major defects – which include waterproofing, structural and fire safety defects.

In developments where multiple interim OCs exist, identifying the one that applies to the entire development is critical.

3. Future Maintenance and Rectification

Plans, specifications, and building contracts are essential for:

- Identifying future maintenance issues;
- Identifying latent defects; and
- Understanding how systems (such as waterproofing, fire safety, or structural elements) were originally intended to function.

Without these documents, the owners corporation may be left making assumptions or costly guesses when repairs are needed.

4. Financial and Insurance Considerations

Many insurers and financial auditors require access to original construction and compliance documentation to assess risk, calculate premiums, or confirm that the property meets all applicable standards. Missing documents can delay insurance renewals or affect policy coverage.

5. Dispute Resolution and Litigation

In the event of a building defect, incomplete work or non-compliance issues, the handover documents are often the first point of evidence in any legal or tribunal proceedings.

They provide the contractual and technical framework to support claims against the builder, developer or any other relevant entity.

What if the occupation certificate is missing?

If the final occupation certificate is missing or unclear, we recommend undertaking the following steps:

1. Contact the Certifier who issued the final occupation certificate: this is often the most direct route.
2. Contact Local Council: Councils typically hold a record of occupation certificates issued by private certifiers, though this is sometimes missed.
3. Off-the-plan purchasers: Committee members may have retained a copy in their settlement documents.

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4. Enquire with the Developer: The developer remains legally obligated to provide these documents. If they fail to do so, enforcement options through NSW Fair Trading or legal advice may be warranted.

Obtaining full and accurate handover documentation is not just a box-ticking exercise. It is a critical step in protecting the owners corporation's rights and ability to properly manage and maintain the building. Delays can severely limit the owners corporation's ability to address defects, recover costs or otherwise meet compliance obligations.

How can we help?

Bannermans Lawyers can provide you with the expert legal advice you need in relation to building defects as we understand that your home or investment property is one of your most important assets.

For a FREE 15 minute consultation on how we can help resolve your defects in a cost effective and efficient manner click more information.

Key takeaways

- Handover documents are essential for managing and maintaining buildings and ensuring compliance with the Strata Schemes Management Act 2015 (NSW).
- The developer must provide all relevant handover documents to the Owners Corporation at least 48 hours before the first AGM.
- Handover documents are critical for enforcing building defect warranties and understanding future maintenance needs.
- Missing handover documents can complicate financial and insurance assessments, as well as dispute resolution.

****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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