



Defects in strata schemes

Millions of Australians currently live in strata titled dwellings, and the focus on urban consolidation in recent metropolitan strategies for Australian cities means that many more people will live in strata titled dwellings in the future. In Sydney more than 1 in 4 residents already live in a strata titled property. The long-term success of these plans for urban consolidation will depend on the adequate provision of good quality strata buildings. However, evidence from NSW indicates that there are currently underlying concerns about both the quality of new strata buildings, and the adequacy of the mechanisms in place to address these problems.

What are 'defects'?

Defects are building faults that have existed since construction or are triggered later on by faulty original construction. The most common defects are: water ingress (water penetration from outside to internal spaces); cracks in walls (internal and external); roofing and guttering faults; tiling problems; and internal leaks (such as from showers).

Why are higher density defects a problem?

- Defects impact the quality and liveability of private and common areas, which affects property values and rental incomes, and can lead to damages claims by owners, residents and others.
- Buildings experience ongoing damage and deterioration as a result of defects and consequential damage can occur inside apartments.
- Scheme operating costs increase to cover emergency or other repairs, investigations, legal actions, etc.
- Owners, committees and managers can be distracted from usual management when addressing defects.
- Conflicts over defects can occur between owners, committees, managers, developers and others, adversely affecting strata scheme harmony.

How can the defects problem be addressed?

There are two main approaches to preventing and addressing the defects problems in higher density buildings.

1. At construction – so that building quality improves, lessening the extent and magnitude of defects.
2. By rectification – so that mechanisms for enforcing obligations to rectify defects are more accessible and effective.

Both of these approaches face the following challenges in NSW:

- Controls over building quality have been relaxed and there is far less accountability. The shift from local council to independent or self certification and the gaps this caused have allowed more inadequate work to go unnoticed during construction.
- Builders and developers often disappear or stop operating and cannot rectify defects. Because many developments are undertaken as single project entities (and are shut down when the development is sold) and because of the regular liquidation of builder businesses the parties directly responsible for defects often disappear from the recovery hit-list. Further, in some cases builders cease doing residential work and relinquish licences so they cannot lawfully rectify defects.

- Consumer protection via Home Warranty Insurance schemes has been reduced and access to them delayed. The reduction in time limits for claims, the narrowing of coverage for defects, shifts from first resort to last resort insurance and the exclusion of buildings over 3 storeys combine to reduce the effective benefits and protection of Home Warranty Insurance.
- Legal remedies for compensation are uncertain and have become more complex and costly. Court decisions about defect claims have created more complexity over liability bases, time limit starting dates, expert opinions, proportionate liability of different parties and the extent of duties of care (in negligence) so owners corporations must take action against more parties with more dispute issues.
- Strata scheme operation causes many delays in discovering defects, determining solutions (technical and legal), making decisions and implementing action/s. Multi-party reporting lines (resident to agent to owner to manager), delays and gaps in internal strata scheme communications, infrequent committee and owner meetings, and decision inertia all combine to slow everything down.
- Some stakeholders – such as developers who retain lot ownership or uninformed owners – interfere, further delaying the process. Whether to protect real or imagined interests parties related or connected to developers and builders can use the slow processes, lack of owner knowledge and ingenious strategies to hide defects, delay investigation and defer or avoid claims and/or actions.
- There is an imbalance in power, knowledge and financial strength between the builders and developers and the owners corporations of the strata schemes. Whilst owners only deal with defects once, developers and builders do so regularly as part of their usual business. Plus developers have better access to, and more familiarity with, the investigation, rectification, claim and legal processes.
- Strata schemes and owners often cannot often afford lengthy litigation over defects as well as paying to rectify them. In the early days of most strata schemes their budgets are low and there are no reserves, so there is an ongoing shortage of money for extra things like defect investigation, claims or actions.

What improvements can be made?

Some of the focus areas for improvements to the problem of strata defects include:

1. More control over building quality - including incentives to build to higher standards.
2. Improved home warranty insurance protections for schemes and owners.
3. Better equipped systems for complaints, claims and resolving legal challenges.
4. Education for owners and other stakeholders about the incidence, impacts and challenges of defects.
5. Minimising or preventing conflicts of interest within strata schemes that delay defect rectification.
6. Transferring developers contractual rights against builders to owners corporations so that they can exercise them when developers don't.
7. A building rating system for construction quality, building documentation completeness/integrity, and defect rectification progress/results.
8. More sophisticated building handover strategies from developers to owners that include defect rectification requirements.

There are many potential benefits in improving the position of owners corporations and related stakeholders in relation to strata defects. The systems for preventing, identifying and addressing strata defects need to be improved so that the people investing and living in these properties can be guaranteed justice, relief and quality of life, and so that the pressure on mediation and court systems does not become too great as these problems will inevitably multiply in conjunction with the growth in this kind of development.