

Funding Strata Building Defects

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This fact sheet provides general information only and does not substitute legal advice.

Lannock Strata Finance provides funding options for bodies corporate.

Strata Community Australia (Qld) Limited (SCA Qld) is the peak industry body for Body Corporate and Community Title Management in Queensland.

Membership includes body corporate managers, support staff, committee members and products and services providers to the sector.

The impact of building defects in strata properties in Australia is enormous. Apart from the money, there is time and energy expended by all parties and the emotional cost to owners.

Why are there defects?

Developers, builders and sub-contractors may cut costs and make compromises in quality of materials and the construction. Or perhaps the building has been poorly designed or there were errors in the engineering and specifications.

Which legislation covers defects?

Building Act 1975, Building and Construction Industry Payments Act 2004, Domestic Building Contracts Act 2000, Fair Work Act 2009, Queensland Building and Construction Commission Act 1991, Work Health and Safety Act 2011.

How to identify a building defect

A "category 1" defect

- (a) allows water to penetrate a building;
- (b) adversely affects the health or safety of the occupants;
- (c) adversely affects the structural adequacy of the building; or
- (d) adversely affects the serviceability, performance or functional use of the building.

Examples:

- *leaks in roofs, showers, doors, windows or walls*
- *faulty or inadequate flashing*
- *movement in the footing- subsidence or settlement*
- *fretting or spalling masonry*
- *extensive cracking or distortion of walls or ceilings beyond normal settlement of the frame, shrinkage or internal movement*
- *extensive cracking or dislodgment of floor or wall tiles*
- *defective, incomplete or inadequate termite protection methods*
- *inadequate provision for discharge of roof water*
- *incorrect or inadequate site drainage*

A "category 2" defect

- (a) results from failure of the contractor to meet reasonable standards of construction and finish; or
- (b) are things which commonly occur during the 'settling in' period of a new building.

Examples:

- *sticking doors or windows*
- *cracked plasterboard joints or cornice joints*
- *poor finish detail*

What to do

Most owners are shocked and then angry when they find out about defects. As difficult as it is, the critical things to do are:

Get organised - quickly.

Get professional advice and get it early in the process – the legislation regarding defect claims has very strict timeframes and it's an investment in rectifying and restoring value in your property!

Can you put it off?

No. You must act immediately. The legislation, the state of your property, the impact on the occupants and your obligations under strata law to 'repair and maintain the common property' mean you can't wait.

Who to contact

1. Your fellow owners – you need to become a strong, cohesive team and you need to do it quickly.
2. A strata manager with knowledge and experience in handling defect rectification.
3. You'll need a knowledgeable commercial litigation expert who understands intricacies of property defects in a strata environment. Check that they have resources to manage the many reports that are needed and the many filings with courts. Your lawyer will guide you through the process of the expert reports that may be needed from engineers, quantity surveyors and possibly forensic accountants. They will also help with QBCC contracts.

How to fund a defect?

Your strata manager and legal expert will advise whether insurance may cover the defect. Finding the right people; fixing the property; and, if appropriate, seeking redress through the courts; will require time, energy, organisation and funds.

Your options to pay for legal fees or fixing the defect include:-

Raising a special levy is an option,

Any available excess sinking fund monies, as long as all essential maintenance is budgeted for.

Specialist strata finance companies may lend the funds required for pursuing your claim, or fixing the defect.

Consider the financial state of your Body Corporate and take the action which best suits all owners. ◊