



## BUILDING DEFECTS IN A STRATA COMPLEX

A new unit or townhouse comes with time-limited warranties that the building is fit for purpose and has been built with due care and skill. Under NSW home building laws, these protections apply even if they have not been specifically included in the building contract.

Fixing strata building defects can be costly and time-consuming. As time goes on, it may be harder to distinguish genuine defects from ordinary 'wear and tear' or maintenance issues, whether on common property or the individual lot owner's property.

Avoid the pitfalls and help prevent potentially long or costly legal action. Become informed along with your scheme to identify and act on potential defects early to meet the warranty timeframes.

### WHAT IS A BUILDING DEFECT?

A defect must result from defective design, defective or faulty workmanship, defective materials or a failure to comply with the structural performance requirements of the National Construction Code. All building defects are covered by the builder for a period of two years from the time of an occupancy certificate being issued for the premises.

### WHAT IS A MAJOR DEFECT?

A two-step test decides if a problem is a 'major defect' asking:

1. Is the defect a major element of the building? (a fire safety system, waterproofing, or something key to the building's stability or structure; eg. foundations, footings, walls, roofs, beams or columns.)
2. Will the defect cause or be likely to cause part or all of the building becoming uninhabitable or unable to be used for its intended purpose? Or, will the defect cause or be likely to cause the collapse or destruction of the building, or part of it?

Major defects are covered by the builder for a period of 6 years from the time of the occupancy certificate being issued for the premises.

The most common defects in new premises are water proofing, wall cracks, tiling and roof leaks.

If you are unsure if an item in your premises is a defect, you may wish to check with the "Guide to standards and Tolerances 2015"

The Guide to Standards and Tolerances has been developed for use by builders and building owners as a convenient reference for acceptable standards of workmanship in domestic building construction. It is intended to address areas that are not prescribed under legislation or under a domestic building contract. It should be understood that this is a guide only and that all other documents prescribing statutory and contractual requirements, relevant to the contract, take precedence over this guide. The guide can be downloaded from the link below:

[NSW Guide to standards and tolerances](#)

## RESOLVING BUILDING DEFECTS IN A STRATA COMPLEX

### 1. COMMUNICATE

If you become aware of a building defect in your premises or complex, the first step to resolving it is to report it to the right person(s).

**All common property defects** are to be reported to your strata manager/property manager or building manager. The strata manager will then pass these on to the builder, along with all other common property defects notified to them by various owners/residents. You can either send us an email or letter to notify us.

**All internal lot defects** are to be reported directly to the builder or his representative. This may be done by your solicitor on your behalf. If your premises are leased out, this may be done by your real estate agent on your behalf.

It is advisable that you keep a written, dated record of all correspondence sent directly to the builder. Consider using registered post or email. This may be needed later if your dispute remains unresolved.

**All defective appliances** are to be reported directly to the manufacturers. Please make sure that you have your appliance warranty documents on settlement. Manufacturers will usually ask for them when you make a warranty call.

### 2. CONSULT WITH A PROFESSIONAL

It is advisable that after 12 to 18 months of occupation, a professional defect report be conducted on the common property. The Owners Corporation may also choose to have the report expanded to include lot owner defects. This however would considerably increase the cost of the defect report (There is nothing preventing a lot owner from obtaining a defect report on their lot at their own expense). A defect report conducted by an experienced professional would provide the

Owners Corporation with the following:

- a) Identify any building defects that have been missed.
- b) Confirm and quantify the existence of known defects.
- c) A professional report that can be used in dealings with the builder in aiding to have defects rectified.
- d) A legal document that can be forwarded to NSW Fair Trading as evidence in any complaints lodged about building defects.

### 3. COMPLAIN TO NSW FAIR TRADING

If after being notified of defects, the builder not rectify them to an acceptable standard, a Fair Trading.

A complaint about common property defects is to the Owners Corporation.

A complaint about a lot owner defect is to be  
**Fair Trading will not accept complaints about lot**



To discuss how to lodge a complaint, NSW Fair Trading can be contacted on 13 32 20, or an online complaint can be submitted via the link below:

<https://www.cas.fairtrading.nsw.gov.au/icmspublicweb/forms/HomeBuildingForm.html>

Once NSW Fair Trading receives a complaint, they will contact the person who lodged the complaint, as well as the builder/contractors to organize for one of their inspectors to attend the property to inspect the work under dispute. This will take anywhere from 2 to 6 weeks from a complaint being made.

The Fair Trading building inspection process is designed to help resolve disputes. The role of a Fair Trading Building Inspector is to assist owners and the builder to come to an agreement about how to resolve the dispute.

The Inspector will arrange to meet with the strata manager (for common property defects) or the property owner (for lot owner defects) and your contractor on-site to inspect the work under dispute and discuss the issues reported in the complaint.

**IMPORTANT:** Fair Trading Building Inspectors do not undertake a general inspection of the work. They visit the site to look at the specific items implicated in the dispute.

The Inspector may issue a Rectification Order if there are matters that the builder/contractor needs to rectify. The Inspector may also conclude that the builder is not responsible for the alleged defects.

## 4. COURT PROCEEDINGS WITH THE NSW CIVIL AND

If the builder/contractor fails to comply with a Rectification order from a Fair Trading Inspector, the Owners Corporation (for lot owner defects) will need to proceed Administrative Tribunal against the builder.



**NCAT**  
NSW Civil &  
Administrative Tribunal

This step will require legal representation and usually the following:

- a) In the case of an Owners Corporation, a resolution at a General Meeting of the Owners Corporation approving the legal action, if the legal costs are expected to be more than \$1,000 per lot or \$12,500 (whichever is lesser)
- b) Expert Building reports and Scott Schedule.