

# Strata Defects

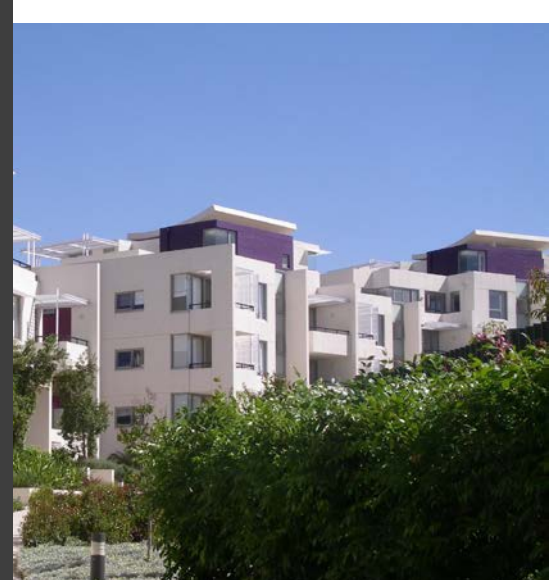
## Anonymous

Never Stand Still

Built Environment

### The Case:

The strata scheme is made up of 4 buildings and is one of multiple schemes in a large community association, completed in 2007. Little more than a year after completion the scheme was served with a partial annual Fire Safety Statement due to a lack of access panels to inspect fire dampers. Local council and the insurance company were notified. Other defects were subsequently identified including failed roof water membranes, cracking of walls and façade, faulty mechanical ventilation and improper installation of the carwash and trade waste pits. Attempts were made between 2009 and 2012 to address issues with the builder and developer but agreement on the requirement to inspect fire dampers in particular became bogged down in legal argument and little was achieved. In 2012, the local council threatened to issue a fire compliance order, the owners corporation hired a new strata manager and new building manager, and the builder went bankrupt. New lawyers and building experts were hired and negotiations began again with the developer. In February 2015, discussions on the terms of an agreement began but nothing concrete eventuated. In April 2015, following a large storm, the roof membranes completely failed with water penetrating over 20 apartments. With no ongoing certainty or positive response from the developer, the owners corporation continued legal action against the developer, who went into voluntary administration on the day Supreme Court action was scheduled to begin in 2017. The developer's parent company offered a cash settlement of significantly less than the estimated costs of rectification on condition of a confidentiality agreement, which was accepted by the owners corporation.



Mid-rise apartment building  
(note: not the actual building)

“Strong leadership helps  
in getting the defects  
issues dealt with”  
(Building manager)

**Challenge:** Taking legal action against the developer to cover the costs of rectifying defective building work.

### Issue

#### Costs

“They've offered us enough to shut us up, but not enough to do the job” (Committee member)

### Challenges

The cost to rectify all the defects was estimated at approximately \$10M. In addition, almost \$1M had to be spent from the sinking fund to pay for emergency repairs. Because the builder was bankrupt, home warranty insurance is not available to buildings over 3 stories and the developer had not made any commitments, the owners corporation was advised by its lawyers to approach the developer to recover costs. Negotiations with the developer eventually resulted in a legal case. Legal costs were high, but relatively minor compared to the total costs of the defects.

To support the legal case, and to identify and quantify the defects, inspections by experts were required. The committee engaged a building consultant, hydraulic engineer, fire compliance expert, mechanical engineer and quantity surveyor. This was a significant, but necessary, cost to the owners corporation.

## Issue

## Challenges

### Support & Communication

"Make yourself record everything and stay calm because the one with more proof will have a better chance of succeeding in the end. Take photos and pass on information" (Building manager)

There was a united determination to get through the issues amongst the committee members, but deciding the best methods was difficult.

The committee communicated with owners and residents through a newsletter, and the use of an intranet (BuildingLink) enabled residents to report building defects to the building manager, who would then inspect the problem and collate a list to pass to the committee, who would in turn pass this information to their lawyers and engineers.

At a general meeting of all owners, some owners were critical of the committee's performance in addressing the defects issues. A committee member responded by saying 'if you think the committee has let you down, come and take over, we will hand the reins to you'. The response was positive, with owners realising that they were in this together and questions turning to practical matters of resolving the issue rather than blaming the committee. At the end of the meeting, an owner thanked the committee for their work and owners gave the committee a round of applause.

### Time

"[The developer] were good at making promises, but not actually doing anything. That was what delayed things." (Committee member)

At the beginning, the strata manager for the scheme was initially employed by the developer. In retrospect, a committee member felt that that manager's existing relationship with the developer had a negative impact on the defects rectification process. Once a new management firm was employed, more progress was made.

The developer maintained contact with the committee and attended the property to 'patch' some of the building defects. The developer would meet with the committee to discuss options to fix the defects to avoid legal action. However, substantial rectification was not carried out by the developer. The lawyers for the scheme advised that legal action must be taken before the 6-year deadline for claims on statutory warranties and a claim was lodged.

Many owners were unhappy with the delays caused by the legal process, as the case first went to NCAT, but then progressed to the Supreme Court as the costs of the defects claim increased.

Now that a settlement has been reached and substantial works have begun on some units, owners appear satisfied that action is being taken to rectify the problems.

## Outcomes:

A settlement was reached with the developer that will cover some of the costs of defects rectification and works have begun. The process took a long time, the money received is insufficient to cover all costs of the defects rectification and the scheme is bound by a confidentiality clause so the developer cannot be identified.



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