



## CITY FUTURES RESEARCH CENTRE

# ADVICE FOR REDUCING DEFECTS RISKS

### BEFORE BUYING

[Recent research](#) has shown that defects in strata titled properties are very common (although they vary in severity). It is important to consider how any defects in the building you are buying into might affect you. You should mitigate your risk by incorporating potential costs from defects into your budget. If you are an investor-owner, defects can impact negatively on future rental income. As an owner-occupier, defects can affect the enjoyment of your home, whether because of the defect itself, increased levy contributions required to fund rectification work, or the interruptions that accompany the defect rectification process.

Participants in our [past research](#) gave advice for those looking to buy into strata schemes to minimise the risk of being caught out by defects:

- After collecting as much information as possible, seek advice from a professional with knowledge of strata defects, such as builders, contractors, strata managers and strata lawyers, particularly advice on whether the scheme is subject to the [Home Building Compensation Fund](#) or the [Strata Bond Scheme](#).
- Get a strata inspection report from a reputable strata inspection company. If commissioning a report yourself, ask for a particular focus on the existence of defects and information on whether the scheme is still within its statutory warranty period.
- Talk to your lawyer before contracts are exchanged about making an explicit requisition on title about defects during the conveyancing process, but be aware that this will have effect only after exchange of contracts. Simply asking the real estate agent about the existence of defects either before or after exchange of contracts will likely not be enough because most contracts will have a clause in them saying that, unless the information is in the contract, the purchaser cannot rely on it. If defects are disclosed after exchange of contracts and before settlement, you can decide not to go ahead with the contract (though in most cases you will lose your deposit). If defects are disclosed after settlement you should seek legal advice.

Some strata inspection reports will incorporate a defects report that you should look over closely to see what was identified, what has been rectified and what works are still outstanding. Keep in mind:

- defects reports can vary in quality
- just because there is no defects report, does not mean there are no defects! They may not have been identified yet, or the strata inspector may not have found a copy of the report
- an existing defects report gives you some guarantee that the building has been inspected for defects

- Read all of the minutes for at least the last three years from owners corporation and strata committee meetings (if available).
- Call in personally and see the strata manager and building manager of the scheme to ask about any issues with the building.
- If possible, talk to owners in the building, discuss with the seller their reasons for selling, and find out if other apartments in the building are being sold and the reasons for sale.
- Find out who the developer and builder were for the building, and look into their track record.
- Consider your options if major defects are found in the building you wish to buy into:
  - Will you be able to sell easily?
  - Are you able to manage a defects rectification process?
  - Are you able to take on additional unforeseen costs for the building?
  - Is there a plan in place for rectifying the defects? In some cases, buying into a building with known defects—which are being adequately addressed—may be less risky than buying into a building where defects have not (yet) been identified.



## IMPORTANT:

Check the financial documents and minutes of the owners corporation and strata committee meetings for evidence of an adequate capital works fund and administration fund. If the administration fund is not sufficient for maintaining the common property, this can lead to defects down the track that may deplete the capital works fund. If the capital works fund is not sufficient, then a special levy will be required for any unforeseen major expenditures, and this can be problematic for owners who have not budgeted for these extra costs.

*(Based off interviews with strata residents on the 07/01/2015, 08/01/2015, 25/01/2016)*

## BUYING OFF THE PLAN

Buying off the plan can be a more affordable option, however this process poses [different challenges](#) and [risks](#) to purchasing an already constructed property. Be aware that plans are subject to change through the course of construction, and developers and building practitioners may have a certain amount of flexibility in the finished product (including for instance flexibility over the lot's floor space ratios and the location of car spaces, depending on the contract). If possible, visit an already completed building by the builder and developer to do a visual assessment of the quality, and ask owners of the building if they have any concerns about building quality.

You should obtain legal advice, as contracts can include protections for the builders and developers. Closely consider what they are contractually obliged to deliver, and whether there are foreseeable issues with what is not included. Check that the contract protects you in the event of defective or incomplete work. NSW Fair Trading offers more information on building contracts [here](#).

## IMPORTANT:

If you're buying into a new building up to three storeys high, check that the contract of sale includes proof of cover under the [Home Building Compensation Fund](#). Residential building work valued over \$20,000 (inc. GST) and new multi-unit residential buildings up to three storeys high must have this cover. After settlement of the contract of sale, the contract cannot be cancelled even if the builder has not provided the necessary insurance, so it is important to get proof of insurance before you settle.



## AFTER BUYING

For newer buildings within the [statutory warranty period timeframes](#), consider getting a defects report done for your lot, and request a report for the whole building (if the strata committee has not already commissioned one) immediately after purchasing. Commissioning a defects report as soon as possible gives you the greatest chance to meet any statutory timeframes and notify the builder of any defects. This report will initiate the process of rectifying defective work and should save you money in the future.

You should also attend the next strata committee meeting and all general meetings to be aware of any current discussions of defects, and to get an idea of what has been done so far to identify and/or rectify defects. If the next strata committee meeting is to follow the first annual general meeting (AGM) of the owners corporation (for a newly constructed strata scheme), you should consider getting defect identification and legal advice from a qualified strata lawyer on the agenda to help the owners corporation understand their timeframes for defect rectification. Legal advice is also advisable for any potential defects in your lot.

The Strata Bond Scheme began on 1 January 2018 and applies to contracts executed from this date (or if there's no written contract, where building work commenced from this date). Under the scheme, an interim defects report will be completed by a building inspector who is agreed on by the owners corporation. The [interim report](#) will be provided within 15 to 18 months after construction is completed. A final defects report will then be prepared by the building inspector and provided to the owners corporation 21-24 months after construction is complete. However, this [final report](#) is limited in scope and will not necessarily address any defects that arise after the interim defect report has been provided.

However, the owners corporation may choose to commission an additional defects report as some defects may not be immediately visible, may require closer inspection or may become apparent after the interim defects report is provided. It might be wise to hold off on getting a defects report completed until the owners corporation has received all relevant documents, such as maintenance schedules and original drawings from the builder. These documents are required to be made available by the developer before the first AGM of the owners corporation, and they can then be used to inform the defects inspection. If the documents are not accessible by this time the owners corporation should consider getting a defects report done within the first 15 to 18 months after construction.

To maintain your building and ensure you identify major defects throughout the life of your ownership:

### 1 MAINTENANCE SCHEDULE

Check if there is a 'maintenance schedule' outlining what is needed to manage the building and that this is being followed. For new builds, an [initial maintenance schedule](#) for the common property must be prepared by the original owner (often builder/developer) under the Strata Schemes Management Act 2015. This information should be available from your building or strata manager. A maintenance schedule should include information on guarantees and manuals for:

- exterior walls, guttering, downpipes and roof,
- pools and surrounds, including fencing and gates,
- air conditioning, heating and ventilation systems,
- fire protection equipment, including sprinkler systems, alarms and smoke detectors,
- security access systems,
- embedded networks and micro-grids.



### IMPORTANT:

Be aware of the timeframes of any statutory warranties that your building is covered by. Should these timeframes lapse, the responsibility and cost of rectifying defects will fall to the individual owners or the owners corporation (depending on the location of the defects). The earlier the defects rectification process is started, the greater chance of a good outcome.

The owners corporation and your building manager (if applicable) should be following this schedule. Also make sure that the strata manager or owners corporation is [keeping records](#) of insurance and warranty information, correspondence relating to occupation certificates and development consent for all building work, maintenance manuals and important dates. These documents are essential for any legal case and the developer must provide these documents to the owners corporation by law. If these documents are not provided for your new building, the owners corporation can obtain an order from [NCAT](#). For help, seek legal advice.

If your scheme is an older building and does not have a maintenance schedule, you can raise this issue with your strata committee and they can consider hiring a [quantity](#)

[surveyor](#) to create one.

Sticking to the maintenance schedule reduces the likelihood of problems arising with the building. It may also

help you to identify construction defects more quickly and will also help in determining whether any issues that are identified are the result of defective design or construction work rather than poor maintenance.

## 2 MANAGING FUNDS

Check that the owners corporation has a 10-year capital works fund plan, detailing repair and maintenance for common property. This is a requirement by law. The capital works fund plan should be reviewed yearly at the AGM of the owners corporation and updated every 5 years in accordance with [Section 80](#) of the *Strata Schemes Management Act (2015)*.

Potential issues can arise down the track if owners are not willing to contribute the required funds to the administration

fund and capital works fund plan. Insufficient ongoing contributions to these plans mean less money available for defects rectification and other capital works that are not paid for by the builder/developer, or regular maintenance and upkeep, and may result in large special levies down the track. Make sure that owners are aware of the rationale behind their strata levy contributions, to avoid being caught out with high costs for any major capital works in the future. The *Strata Schemes Management Act (2015)* provides [guidance](#) on how to do this (s79-81).

## 3 COMMUNICATION

Raise concerns about potential defects if you become aware of them and notify the owners corporation, strata

committee or strata manager as soon as possible (see [Identifying, documenting and reporting defects](#)).

### ADDITIONAL RESOURCES:

- [Managing Major Repairs in the Residential Strata Sector – City Futures, UNSW](#)
- [Defects in strata schemes – City Futures, UNSW](#)
- [Buying off the plan – NSW Fair Trading](#)
- [Levies and Capital Works Funds – NSW Fair Trading](#)

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Strata Community Association (NSW) is the peak industry body for Strata and Community Title Management in New South Wales. Membership includes strata managers, support staff, committee members and suppliers of products and services to the industry. SCA (NSW) has in excess of 3,000 members who represent over 75% of strata lots in NSW by way of helping to oversee, advise or manage a combined property portfolio with an estimated replacement value of over \$400 Billion. SCA (NSW) proudly fulfils the dual roles of a professional institute and consumer advocate. Contact: (02) 9492 8200 | [enquiries.nsw@strata.community](mailto:enquiries.nsw@strata.community) | <https://nsw.strata.community/>