

APARTMENT BLOCKS – DEALING WITH DEFECTS

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Where to start?

Physical investigation

Legal investigation

Insurance

Investigation

Fire safety consultant
Building surveyor
Engineer

- Expert assessment of the nature and extent of the problem
- Remedial works schedule

Management companies - MUDs Act

- Organise liaison group with managing agent
- Seek information on survey outcome, remedial works and estimated costs
- Voting
- Recovery of costs against developer
- Service charge should not be used to deal with defects without consent of members

Reach out to other owners



Dealing with repair costs

- No general State loan or redress scheme
- Consider accruing over period of years rather than in one payment
- SCSI have called for loan scheme and State fund for defects

LEGAL

1. **Identify** builder, developer, professional team and all stakeholders
2. **Engage** legal team to advise on options depending on nature of claim and factual matrix
3. **Notify** relevant parties of defects and potential claim
4. Implement **strategy**

Identification

- Who holds the title documents for the development?
- Have the common areas been transferred?
- What firm acted in the sale of units?
- Is this information stored and readily available?

Legal Engagement

- Need to know range of legal options and appropriate forum for disputes at outset.
- Need to verify negligence, breach of contract, verify design etc has occurred and is actionable
- Documents of title must be reviewed to determine optimum course of action

Notification

- Crucial that correct parties are notified properly, sufficiently and at the right time
- “Letter before Action” – an important document to frame the case

Strategy

- Preference is to implement rather than devise strategy
- Broader non-legal issues to be considered
 - What third parties will be involved - local authorities, media, politicians?
 - Role of Managing Agent
- How are members informed?

Legal Investigation

- Only first purchaser can sue under Building Contract: for apartments, building contract for block will cover common areas
- Developer may have owned land but not built - no liability for unit
- If multiple parties at fault, home owners may sue all: designer / certifier may be 'last man standing'
- No regulator to deal with complaints: local authorities not obliged to inspect / enforce

Legal Investigation (Contd)

- Liability outside contract?
- **Designers:** negligent design
- **Professionals** giving Certificates and Opinions on Compliance: can be liable for negligent misstatement
- **Builders:** in principle can be liable outside contract for building defects, but law is unclear, and builder may be insolvent or not a mark

Statute of Limitations 1957

Builder:

6/12 years from date of breach of contract depending on whether contract signed under seal

Designers and certifiers:

6 years from date of 'damage' following negligence - very unclear:

Supreme Court decision due on when this period starts

Statute of Limitations 1957(Contd)

What stops the clock?

- Issuing court proceedings
- Referral to arbitration

Mediation / conciliation does not stop time running

Dispute resolution

- Builder: Law Society Standard Building Agreement – **arbitration**
- Designers and certifiers: **litigation**
- If architect appointed by homeowner, mediation before litigation (new RIAI Standard terms)

Insurance

- Check coverage and exclusions
- Comply with notification requirements:
eg HomeBond consent may be required to incur professional fees for investigation
- Can be lengthy process : keep in contact and keep pressure on insurers

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