

Who's responsible?

For several years now, builders' warranty insurance has been optional on multi-storey residential developments. But methods of rectifying high-rise building defects vary between the states and territories. **Caroline Gonzalez**

BUILDERS' warranty insurance, also called home warranty or indemnity insurance, insures the initial and subsequent owners of property against non-completion of the building contract due to death, disappearance or insolvency of the builder, as described by the Housing Industry Association. So what is the situation in each state and how can investors in residential apartment buildings rectify defective work?

New South Wales

Homeowners' warranty insurance is no longer required for buildings of more than three storeys built after December 31, 2003. The collapse of the HIH Insurance Group in 2001 led to an industry crisis, which fuelled legislative changes to insurance in the state.

Wally Patterson, managing director of Dynamic Property Services in Sydney, says owners who find building defects should consult a legal practitioner who specialises in high-rise building claims as soon as possible. The NSW Office of Fair Trading can also help. Claims on buildings covered by insurance must be made in writing within six months of discovering the problem, Patterson says.

"The builder should also be notified, as this cover is 'last resort' and a claim will only be paid after all other avenues for payment have been exhausted, for example, the builder, architect, suppliers who may have provided warranties, engineers and possibly even the developer," he says.

In October last year, the NSW Government amended the *Home Building Act* to allow proceedings for separate building defects under one warranty.

Victoria

In 2002 the Victorian Government



Building disputes

Victorian construction and body corporate solicitor Neil McPhee deals with plenty of building disputes.

He's concerned about the lack of protection for the growing number of Melburnians who are choosing to scale down from the typical 800-sqm house and backyard to an apartment.

McPhee is currently representing a number of owners at a multi-unit development in suburban Melbourne.

The development has "significant" building defects, McPhee says, adding that there's no building warranty insurance.

"Fortunately, the builder has returned to rectify defects," he says.

"If the builder had refused to have anything to do with the problems the owners would be forced into expensive and risky litigation."

McPhee couldn't go into more detail because the case was ongoing at the time of going to print.

removed the requirement for builders of high-rise developments in Victoria to have any builders' warranty insurance.

Construction and body corporate solicitor, Neil McPhee of Neil McPhee and Associates, says owners of units in new high-rise apartments will most likely have no insurance protection for defective works.

If defects do appear, the owner has a right to sue the builder to recover compensation to repair the defect.

While this right exists for 10 years from the date of the occupancy permit, it may be of little or no value, McPhee adds. This situation is unfair, he says.

"More and more people are choosing to live the high-rise lifestyle, and yet the government has seen fit to treat those homeowners and families differently from people who choose to live in a traditional home on a suburban block," McPhee says.

"On any measure, the level of protection now afforded to owners has been diluted."

Under new legislation to come into effect from December 31, 2007, developers with a majority holding in a high-rise development will be required to pursue contract remedies against the builder for any defects to common property.

Queensland

Queensland escaped the fallout from the HIH Insurance Group collapse that brought about the "diluted" legislation in other states.

"For some time after (the collapse), the Queensland Government extolled about how much better our legal environment was for the protection of consumers compared with the southern states," says Phil Pennington from Maunsell Pennington Solicitors.

Builders' warranty insurance is limited to buildings of up to three storeys in Queensland, however Pennington says high-rise investors can pursue repairs for poor building work through the Queensland Building Services Authority.

The authority can issue directions to builders within six years and three months after completion.

Investors must notify the authority within three months of finding a defect that fits the "Category One" description. That is, faulty or unsatisfactory works that allow water penetration into a building or which adversely affect:

- the structural performance of a building,
- the health or safety of people residing in or occupying a building, and
- the functional use of the building.

If the defect doesn't meet reasonable standards of construction and finish, or is a "settling-in period defect" in a new building, then investors must notify the authority within six months of finding the problem.

Directions on Category Two defects can be issued within six months after the completion of building work or after the work has been left incomplete.

Northern Territory

The NT has no legal requirements for builders' warranty insurance on multi-storey apartments.

David Wright from the Department of Planning and Infrastructure says amendments to the *Building Act*, which come into effect in July this year, will force builders to have home warranty insurance for residential buildings only up to three storeys.

The requirements will cover extra costs

Claims on buildings covered by insurance must be made in writing within six months of discovering the problem.

from engaging another builder in the event the original builder who didn't complete the work has died, disappeared or became insolvent.

"The limitations are consistent with those in other jurisdictions and are necessary to ensure national insurance products will be competitive and offered in the NT," Wright says.

Australian Capital Territory

ACT investors who find serious construction defects would have to use their purchase contract to pursue legal action against the developer or vendor, says Warwick Fulton from Canberra Units Plan Services.

Only buildings of up to three storeys are afforded builders' warranty insurance cover for structural defects, under the *ACT Building Act 2004*.

"There was always a problem with building warranties in the ACT before this Act came into force," Fulton says.

"It (the breadth of the new legislation) is not ideal but it's better than what it was."

Western Australia

Home indemnity insurance has been optional on high-rise apartments since amendments to the *Home Building Contracts Act* on April 19, 2002.

Dwellings consisting of more than two units and with a rise of more than three

storeys are exempt from insurance provisions. However, high-rise developers are required to inform investors at the point of sale, particularly for off-the-plan purchases, that there's no indemnity cover for the property, says Nigel Lilley, registrar at the WA Builder's Registration Board.

Lilley says apartment investors can pursue repairs to building defects within six years of practical completion through the Building Disputes Tribunal.

South Australia

Multi-storey apartments built under domestic building work contracts after September 1, 2002 are exempt from requirements of builders' warranty insurance.

The South Australian Office of Consumer and Business Affairs states the regulation applies to buildings over three storeys.

Tasmania

There's no requirement for housing indemnity insurance on properties of three storeys or more in Tasmania.

As with many other states, changes were made to housing indemnity legislation in 2003. ■

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