



Get your copy of '59 Biggest Mistakes Made by Property Investors & How to Avoid Them'. Sold for \$29.95.  
Yours **FREE** in e-book version **CLICK HERE**.

[Current issue](#)[Resources](#)[Subscribe](#)[Business Directory](#)[Calculators](#)[Advertise](#)

## API ONLINE

September 5, 2012

### Defect with your new unit? A tough situation could get worse

Those who fork out for a newly built apartment reasonably expect it'll be free of defects. If there are issues, it's equally rational to assume they'll be promptly fixed. Yet that's rarely the case, and another review of legislation in New South Wales could further erode owners' rights.



BY SHANNON MOLLOY

I'm not a naïve guy by nature. It's not like I spend my time trapped inside a utopian daydream, set to a looped Daryl Braithwaite soundtrack, where people are inherently good and the world is fair. However I expect that ordinary folks have a certain level of legal protection against dodgy behaviour.

So, a conversation with a strata law expert last week left me fairly shocked about what appears to be an atrocious situation. Before I delve into the issue, which affects tens of thousands of property owners, let's feast on a few raw facts.

New South Wales is the most populated state in Australia and it's also home to the country's most populated city, Sydney. As you'd expect, there are apartment and unit complexes *everywhere*. In fact, statistics from July 2011 indicate there are almost 600,000 residential strata lots across the state and more than 67,000 registered strata schemes.

A number of these buildings, in varying sizes and styles, have popped up in the past decade or so. A significant chunk of those were built even more recently – say, in the past three years. How many do you reckon would have defects? A small minority? Think again.

An October 2011 analysis of ongoing research by the University of New South Wales' Faculty of Built Environment paints a troubling picture. Their surveys found a staggering 85 per cent of strata titled property owners, living in buildings completed since 2000, have experienced defects of some kind. Of those, three-quarters say the problem still hasn't been fixed.

The *City Futures* report lists common issues as internal water leaks, cracking to internal or external structures and water penetration from outside.

"Many respondents had experienced problems having these defects remedied," the report says.

"The most common problems were that the developer and/or builder held control of the (strata) scheme and was delaying the rectification of defects and that the developer and/or the builder was no longer operating and therefore couldn't remedy the defects."

Sadly, as the report points out, it's "extremely difficult and costly" for most owners to have the problems fixed. But isn't that what legislation is meant to do – protect people from being done over? Here's where my rose-coloured glasses were shattered.

Chris Kerin is a partner at TEYS Lawyers in Sydney and specialises in building defect disputes, and he's got serious concerns about the legislation. As he points out, the Home Building Act – which is supposed to provide legal protections for property owners – has been watered down significantly over the years.

[FREE API eNEWSLETTER](#) »

ADVERTISEMENTS:



Open Wealth Creation  
Wealth Building Through Property Investment

The ultimate mini guide to  
**property finance**  
RRP \$12.99  
Carr McLellan

**MAXIMISE YOUR TAX THIS NEW FINANCIAL YEAR**

**FREE FINANCE MINI GUIDE**

**CLICK HERE FOR YOUR FREE FINANCE GUIDE**



renovating for profit

**FREE RENOVATION TRAINING EVENT**

**REGISTER NOW**

#### Recent Posts

Look what's happening to Australia's population  
Ticking time bomb for off-the-plan investors  
Living it up on cat food and crackers  
Australia's a magnet for Chinese money  
How to refinance: a step by step guide  
"House prices 30% undervalued": RBA researcher  
Housing markets to ease in 2017  
Tasmania's property market scorecard  
You're losing out on unclaimed tax depreciation entitlements  
7 ways to bleed the banks dry

#### Recent Comments:

Mike: I like your approach to defining growth or high demand areas through looking at jobs and accessibility to public transport. Personally I hate...  
Ryan: Double-check their license and certifications is a big one, but in my experience the home owner who chases the cheapest price is normally the...  
Inventory Clerk Kingston: I am agree with you john. Today price of properties are increasing so much. At present rising in properties price...  
John: The median house price statistic is misleading, I suggest investors use this information for what it is a trend of sales. An article I read...  
John: Hi, Just wanted to let you know about quiet little tip. Seems by my calcs that the value for money of property in Adelaide is well under that...

#### Most commented posts:

Buyer beware! Should sellers have to provide mandatory building inspection reports to prospective purchasers? (31)  
Will our property market crash? (20)  
Property vs shares: battle of the assets (19)  
What does a good property manager really do? (17)  
Block your ears! (14)

#### Archives:

2015  
2014  
2013  
2012  
2011  
2010

#### Subscribe to the API Blog:

RSS | Comments RSS

The most recent amendments late last year diminished the avenues of dispute for owners, including putting a two-year deadline on complaints relating to non-structural defects. If issues come to light after this time, you're essentially on your own. Or, if your body corporate is like most and can't agree on what to do and how to fund it and you miss the deadline, that's too bad. Plus, the definition of "non-structural" is somewhat open to interpretation.

NSW Fair Trading believes the changes struck the right balance, saying: "Homeowners are still provided with adequate consumer protection against building defects. Builders are provided with certainty and fairness by warranting their work within a sensible and practical time limit."

The review last year was rushed, Kerin says, and the time allocated for public feedback was far from adequate. He says the result was an "erosion of already weak legislation (that) takes away people's fundamental rights".

And it's a lot of people who are affected. Based on the available data, Kerin believes some 38,000 people in NSW live in a building that's less than three years old and affected by defects in some way. When you're looking at buildings constructed since 2000, that number explodes to more than 100,000.

A spokesperson for NSW Fair Trading disputes the findings of the City Future report, on which Kerin bases his estimates, saying the department receives far fewer complaints of defects.

"The focus of the government... is on the economic benefits of housing construction, given the size of this sector and its importance to the New South Wales economy," Kerin says. "While this concern is obviously laudable, it fails to address the issue – the sheer number of unit owners and occupiers who live in buildings that leak or have some form of defect."

As you can imagine, *yet another* review of the legislation announced in July was met with trepidation. Kerin is fearful of further scaling back of the rights of owners. "The current debate unfortunately doesn't focus on the critical issue of housing quality, and to some extent this suits the government as it complicates the debate considerably." Of course, NSW Fair Trading disagrees.

In short, Kerin believes the legislation already seems to favour builders and developers, and there are concerns further amendments will push the pendulum further in their direction. When the Minister responsible is hosting private lunches with developers and builders who've paid for that access, their fears might be well founded.

[Media reports at the weekend](#) revealed property and construction identities paid about \$2000 each at a Liberal Party fundraiser auction earlier this year for private meetings with Fair Trading Minister Anthony Roberts. At least one development identity says his beef with the *Home Building Act* was discussed at his catch up. This was a few months before the Minister released a discussion paper on changes to the legislation.

Does the Minister devote as much of his diary to meetings with those struggling to have building defects fixed in their homes, or advocates concerned about their rights? I asked – a spokesperson insists he does.

**Shannon Molloy** is the deputy editor of Australian Property Investor magazine [www.apimagazine.com.au](http://www.apimagazine.com.au)

2

Comments Off on Defect with your new unit? A tough situation could get worse

## No Comments

No comments yet.

[RSS feed for comments on this post.](#)

Sorry, the comment form is closed at this time.