



# High Court decision bad news for apartment owners

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### Home owners on their own

Stephen Goddard from the Owners Corporation Network explains why the court ruling shows government intervention is desperately needed.

A High Court ruling over building defects in a multimillion-dollar apartment complex in Chatswood will make it harder for owners to seek legal redress for shoddy apartments, warn experts.

In the final chapter of a two-year court battle, the High Court ruled on Wednesday that the owners corporation of serviced apartments in a 22-storey building in Railway Street could not sue the builder, Brookfield Multiplex, to recover the cost of fixing alleged defects in common areas.

The ruling comes before new building laws are due to take effect in NSW on December 1 that will also limit the rights of apartment owners to seek redress for faults.

Owners Corporation Network chairman Stephen Goddard, a strata lawyer, said the State Parliament needed to step in to address a "gaping hole in consumer protection" for residential apartment owners.

He said "about 85 per cent" of new buildings contained defects. The court's reasoning, while sound, "underlined in red" the need for additional statutory protections for consumers.

The High Court found that contracts relating to the construction and sale of the apartments

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set out the circumstances in which the builder or developer was liable for defects in building work.

It concluded that Brookfield did not owe the buyers of the apartments a separate duty of care under the law of negligence to avoid causing them economic loss resulting from alleged defects in common areas, such as cracks in render on the facade of the building. Brookfield did not have a contract with the owners corporation.

Chief Justice Robert French said the purchasers of the apartments were "effectively investors in a hotel venture".

He concluded that this was not a case in which the owners of the apartments could be regarded as "vulnerable", which would support the existence of a duty of care.

Mr Goddard said he believed residential owners corporations would be in the same position.

Brookfield Multiplex settled a dispute with a separate owners corporation in relation to residential apartments in the same complex on floors 10 to 22. The first nine floors contain the serviced apartments.

It entered into a contract in November 1997 to build the apartment complex for \$57.5 million.

Christopher Kerin of Kerin Benson lawyers said a negligence action was used by owners corporations as a "back-up" in cases involving building defects.

He said the court ruling would have an "extensive impact" in NSW.

"In a separate but related development, the NSW government is compromising the ability of owners corporations to sue builders for breach of statutory warranties by reducing the limitation period within which court proceedings must be commenced, from six years to two years," he said.

"This is set to take effect on 1 December, 2014 and will be retrospective in impact."



Owners Corporation Network chairman Stephen Goddard: There is a "gaping hole in consumer protection" for residential apartment owners. Photo: Supplied

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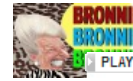
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