



## Your guide to property defects and strata insurance

**Does your strata property have defect issues? Are you considering whether strata insurance will cover the defect and any resulting damage? Unfortunately, the answer isn't always as straight forward as you would hope.**

With strong demand for property and inner city living, the demand for apartment developments has continued to rise. However, pressure on contractors to deliver within tight time frames has led to quality being compromised in some cases. As a result, property defects and the insurance claims that follow have become increasingly common.

### What classifies as a property defect?

A property defect can result from a defective design, defective or faulty workmanship, defective materials, or a failure to comply with the structural performance requirements of the National Construction Code. By definition, a defect must have consequences that will cause, or is likely to cause, part or all of the building to become uninhabitable, or to be unable to be used for its intended purpose. To put this into context, a building defect may include issues such as faulty waterproofing, poorly constructed balconies, or problems affecting the building's structural integrity, such as foundations, footings, walls, roofs or beams.

### Common examples

Common examples of property defects relate to building materials. Major defect claims for water damage often arise as a result of incorrect protective membranes being used under showers, or on balconies, and in some cases from the absence of a protective membrane altogether.

Severe strata property defects have also become increasingly common in recent years, with Sydney's Opal Tower and Melbourne's Lacrosse building two highly publicised examples.

**Opal Tower** In the Opal Tower, parts of the structure were found to have been constructed using 'lower strength concrete' and 'under-designed' critical support beams, which burst under extreme pressure.

**Lacrosse apartment building** In the Lacrosse fire, the severity and rapid spread of the blaze was due in part to the exterior of the building not being clad in appropriate fire-resistant sheeting, as required by the Building Code of Australia.

### What can you do about resultant damage from a property defect?

In strata properties it is not uncommon to discover defects within the first few years following construction. But what happens if the defect also causes resultant damage to the property?

Most owners seek to lodge an insurance claim under the strata insurance policy. Unfortunately, strata unit owners are often shocked when their claim for property damage is denied by the insurer. Denials tend to arise because the defect was already known, or because the insurer deems that any 'reasonable person' would have known about it and - if repaired earlier - initial or further damage could have prevented damage from occurring, avoiding the need to claim.

### Unknown defects vs known defects - are you covered?

#### Claiming due to an unknown defect

If you purchased a relatively new property, and subsequently discovered a defect which caused damage to the property, there is a good chance it will be considered an unknown defect if the Owners Corporation (OC) Committee and / or strata manager have not informed you of the issue. This generally means the insurer will consider covering repairs for any resultant damage. Note: Rectification of the defect itself is excluded from strata insurance in most cases.

In general, most insurance policies specify that - If damage was caused by the non-rectification of a defect you were unaware of, or could not have

reasonably been expected to be aware of, then repairs for the resultant damage will be covered.

### Claiming due to a known defect

Alternatively, if this same defect is known to have occurred elsewhere in the strata property, and the defect is known to any one of the owners, the OC Committee, the strata manager or the insurer (whether or not a claim has been made), the insurer will not accept any insurance claims for this defect, anywhere in the strata property.

Why? Essentially, if anyone else knew of the defect, it is no longer considered an unknown defect. Insurers are of the view that actions could have been taken to prevent the resultant damage caused by the defect, and therefore the insurer's 'known defects' policy exclusion applies to the claim.

### What options do you have if the defect is already known and you are unable to make a claim?

If your defect is already known and you cannot claim under your strata insurance policy, your next step should be to contact the builder to explore rectification.

A common misconception is that you can claim against the contractor's Builders Warranty Insurance policy. Unfortunately, the name of this policy is misleading. A Builders Warranty Insurance policy will only cover you for losses to a residential property if the builder becomes insolvent, disappears or is deceased within six years of performing the works. However, if the **builder** does not meet these criteria, the next step - once isolating where the defect lies - should be to contact the **contractor** who performed the works in question.

If the response received from the contractor is not satisfactory, and they refuse to complete repairs or rectification works for the defect, you and any other owners may then have grounds to pursue legal action, as the contractors may be in breach of the National Construction Code.

## Strata property defects 3 key steps to follow

1

### Inform the right people

If a defect is discovered, the OC and Strata Manager should be informed immediately. Information on the defect can then be communicated to all property owners within the building, giving each the opportunity to repair the defect and prevent resultant damage.

2

### Details

Builders' / contractors' details and invoices for any work they carried out should be kept for six years following completion. If the OC needs to seek damages to repair a defect, or claim against the contractor's Builders Warranty Insurance policy, this will prove invaluable.

3

### Communication

Always encourage good communication between the Strata Manager, OC Committee and lot owners. Open and frequent communication will help to ensure that any defect or property issues are identified and dealt with appropriately.

### Achieving the best Strata Insurance outcome

Please contact your Whitbread insurance broker for further advice on navigating insurance claims for property defects or if you would like to discuss a particular risk in greater detail.

This article is not intended to be personal advice and you should not rely on it as a substitute for any form of personal advice. Please contact Whitbread Associates Pty Ltd | ABN 69 005 490 228 | License Number 229092, trading as Whitbread Insurance Brokers for further information or refer to our [website](#).