

Tips for buying into a brand new strata building with problems!!



Here are committee member Sean McNamara's tips, as discussed with Amanda in episode 33, on how to deal with a problematic new strata building, particularly when it comes to the rectification of defective building works:

SOME CHALLENGES THAT MIGHT BE FACED:

- By-laws may not be finalised or registered when contracts for sale are exchanged. In Sean's case, the by-laws in the contract of sale did not match those registered.
- Contracts for sale between individual owners and vendor often have a sunset clause for reporting of building defects. Be aware that your contract does not usually cover the process for dealing with defective works on the common property.
- Lack of documentation, eg: no as-built plans for works done, no scope of works for rectification of individual lots or the common property.
- Trades are often "in house" or the cheapest available contractor. The builders' favourite tool may be silicon sealant!
- Some issues affect lot property only; other issues affect common property only. It is important to identify the difference.
- The builder/developer may be looking for a way to avoid its legal obligations. While technically bound by all the usual legal requirements - e.g. BCA, council, strata legislation - refurbishing developers especially are looking for quick turnaround.

TIPS FOR OVERCOMING THESE CHALLENGES:

- Carry out your own research wherever possible: Google, conduct Land and Property Information searches, get out the lawyer/strata manager text books, search social media for information about the builder/developer, involve your strata manager, speak to experts, attend industry events (SCA, OCN, Fair Trading).
- Get to know your rights and any obligations a developer may have. Fair Trading and local councils are good first ports of call.
- Understand the requirements for the First AGM: what is the developer supposed to hand over to the owners corporation?
- Push for the builder to provide a comprehensive scope of rectification works, so you have something to refer to and hold them accountable to.
- Keep a diary/timeline of issues and works related to the rectification. The more detail the better as sometimes patterns of behaviour, or the importance of details, may only become apparent well after the event. Photos, text messages, voicemails, e-mails, letters could all be important evidence later. When it comes to photos, the more pictures from the more angles, the better. Keep everything.
- If lawyers are involved, all communications should be sent via the lawyers. Not only are such communications properly noted/documented, if the developer has a lawyer but the owners corporation does not, this will place extra cost pressure on the developer to finalise outstanding issues.
- Maintain and leverage a good relationship with on site workers.
- Communicate with and get to know your neighbours. Act co-operatively and this will help co-ordinate later action if it's necessary. This also builds a solid community from the start.
- Stay level headed, clear and consistent. Don't engage in libellous or defamatory actions or statements: keep everything factual and clear. For example, don't say "they lied", instead say "this was promised on this date but as far as we are aware it has not been done".
- Check in on the works periodically so you're aware of what's being done where, especially when it comes to works on common property.
- Make a list as early as possible of the issues needing attention, and decide which ones you're willing to forego as bargaining chips in a settlement. Some of your claims are likely to be more expensive to pursue than to pay for the fix yourselves.
- Consider accepting a cash settlement in place of the builder actually carrying out rectification works.