



## Strata Reform 2016



### Fact Sheet #10 – Building Defects

#### At a Glance

- Applies where the building contract is entered into after 01/07/17
- The reference to Secretary is the NSW Government
- AGM must include a motion to consider defects each year

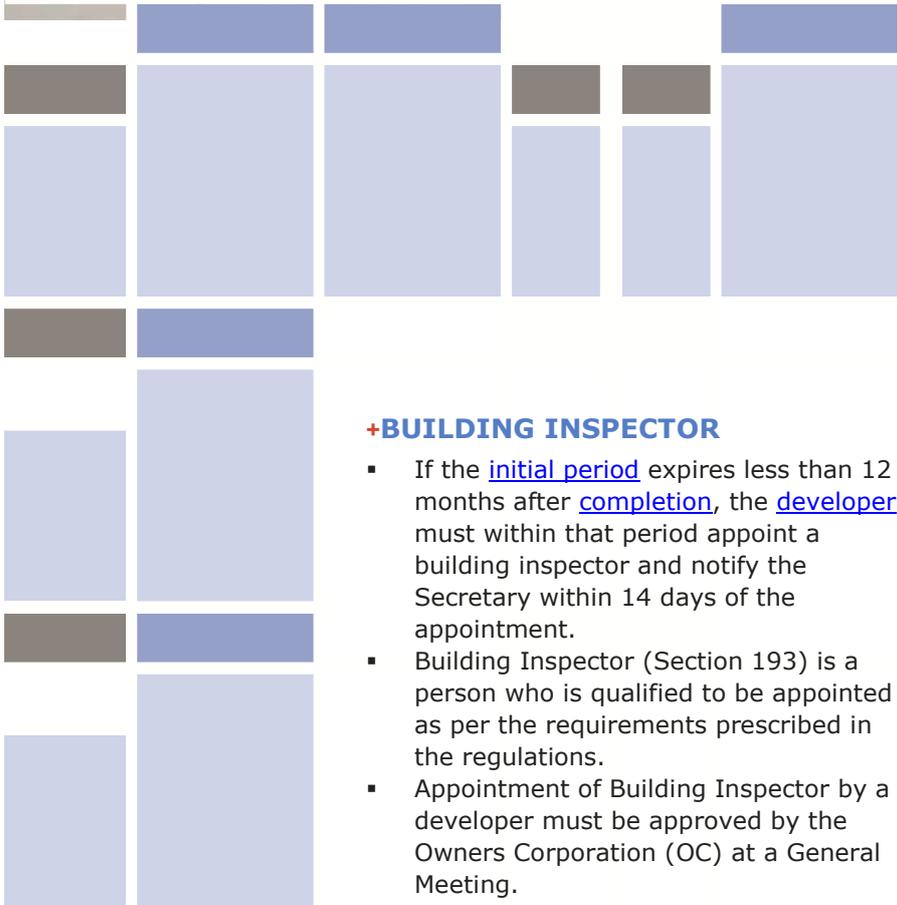
#### + APPLICATION

- Whilst the new legislation and regulations come into effect on 30 November 2016, the exception is Building Defects (Part 8 of Regulations) which commence 1 July 2017 (See Reg 2).
- Applies to strata schemes where the building contract is entered into after 1 July 2017 (or where no contract where work commenced after 1 July 2017): Schedule 3 clause 16
- Does not apply to buildings that require insurance (i.e. HOW - only buildings 4 or more stories)
- Any decisions under this part of the legislation are required to be considered by ordinary resolution at a general meeting.
- A Developer, or lessor of a leasehold strata scheme, is not entitled to vote, or exercise a proxy vote, on a matter concerning building defects. (Clause 15, Schedule 1)
- For the purpose of Building Defects the definition of Secretary in the new legislation is – Secretary of Department of Finance, Services & Innovation (i.e. NSW Government)

#### + AGENDAS

- There is a requirement for defects and rectification to be considered at first AGM - Section 15(n)
- Schedule 1 clause 6(d) – requirement for all other AGM agendas to consider defects:
  - *"until the end of warranty periods for applicable statutory warranties under the Home Building act 1989 for buildings of the strata scheme, an item to consider building defects and rectification."*





**+BUILDING INSPECTOR**

- If the [initial period](#) expires less than 12 months after [completion](#), the [developer](#) must within that period appoint a building inspector and notify the Secretary within 14 days of the appointment.
- Building Inspector (Section 193) is a person who is qualified to be appointed as per the requirements prescribed in the regulations.
- Appointment of Building Inspector by a developer must be approved by the Owners Corporation (OC) at a General Meeting.
- Where there Building Inspector has been employed or contracted by the developer prior to the appointment it must be disclosed prior to the OC considering their appointment.
- If there was a connection in the 2 years immediately before the appointment between the developer and building inspector any such appointment is not permitted.
- The OC can refuse to approve the appointment of a building inspector on any grounds.

**+ INTERIM & FINAL REPORTS**

- An interim report must be completed not earlier than 15 months and not later than 18 months.
- A final report must be completed not earlier than 21 months and not later than 24 months.
- The report must be in a form prescribed by the regulations which is currently as "approved by the Secretary"
- Within 14 days of receiving the report (Interim & Final) the building inspector must provide a copy of the interim report to:
  - The developer
  - The OC if the initial period has ended
  - The Secretary
  - The Builder

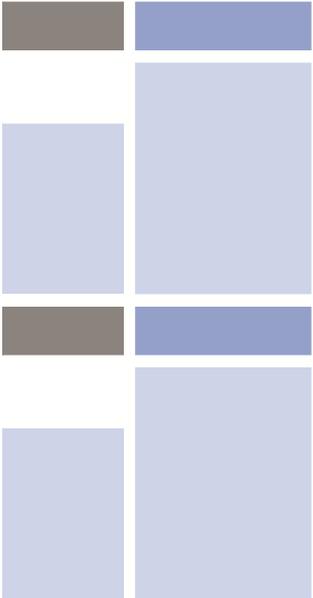
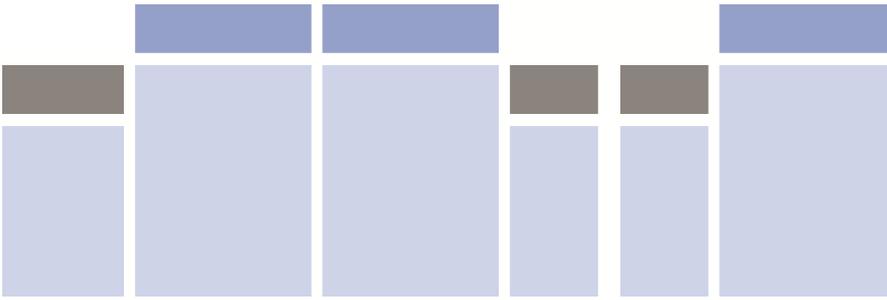
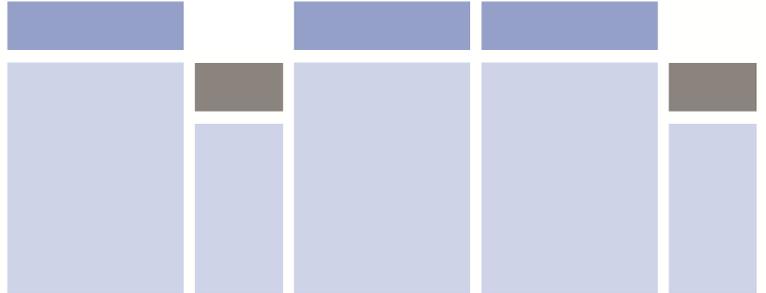




**+ INTERIM & FINAL REPORTS (Continued)**

- Within 14 days of receiving the report the OC must notify all owner of the receipt of the report. The notice must advise whether the report is interim or final and how to obtain an electronic copy.
- The final report must:
  - Identify any works from the interim report that have not been rectified.
  - NOT contain items that relate to defective items that were not identified in the interim report, other than work arising out of rectification of works already identified.
  - Specify how the defective works should be rectified.
- The Developer must not later than 18 months after completion:
  - Arrange for the building inspector who provided the interim report to carry out a inspection and provide a final report
  - If the original inspector is not available give notice within 14 days to the Secretary.
- Where the Secretary receives notice of the unavailability of the building inspector they may appoint an alternate building inspector.
- Where an interim report is arranged by the Secretary and identifies no defects, a final inspection and report is not required under the legislation.
- Where an interim report is arranged by the Developer and identifies no defects, the Developer may apply to the Secretary that a final inspection and report is not required.
- The Secretary must give written notice within 28 days to the developer and owners corporation of the determination.
- In these instances the interim report is then taken to be the final report.
- The costs of the reports are borne by the Developer whether or not that they were appointed by the developer.





#### + BUILDING INSPECTOR POWERS

- May enter and inspect any part of the strata parcel.
- Must give 14 days notice to the OC, owners and occupiers of any intention to enter any part of the strata parcel.
- The OC, owners, occupiers, building managers, managing agents etc must provide any reasonable assistance to enable access for the inspection.
- A person cannot refuse or obstruct the access for inspection under the legislation without reasonable grounds.

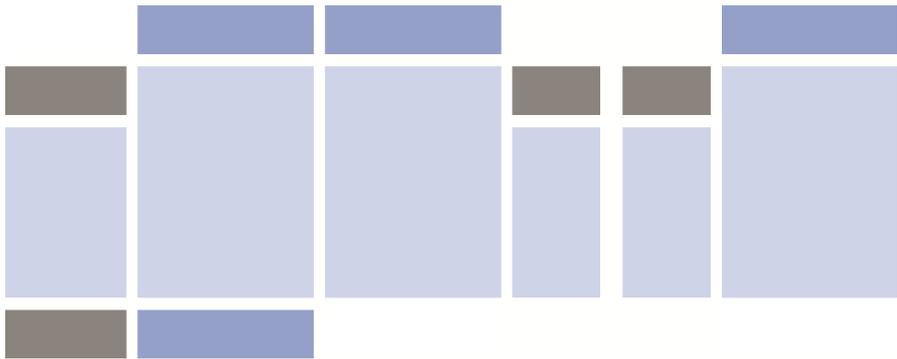
#### + RECTIFICATIONS

- A builder may enter any part of the parcel for the purposes of rectifying defects provided 14 days notice is to all stakeholders.
- Time frames involved must be reasonable considering the circumstances.
- A person cannot refuse or obstruct the access for rectification under the legislation without reasonable grounds. (Consequences: The Secretary may reduce the amount payable to the OC if they are satisfied the developer or builder was unreasonably refused access).
- However does not apply while the building inspector is carrying out a final inspection.

#### + BUILDING BOND

- The developer must give to the Secretary a security (building bond) which is 2% of the contract price for building work prior to the occupation certificate being issued.
- The bond is to provide funding for the payment of costs to rectify defective building work identified in the final report.
- If the building work comprises only part of the building to which a contract applies, then only 2% of the applicable contract price is secured.
- The tribunal may on application by an OC the developer or Secretary make an order specifying the amount of the contract price.
- The bond can be in the form of
  - Bank Guarantee
  - Bond
  - Any other form as prescribed by the regulations





#### + BOND PAYMENT

- Can be claimed or realised for payment:
  - To the OC to rectify defective building work in the final report
  - With consent of the developer on application by the Secretary.
  - Applications must be not less than 14 days before the last day on which the building bond must be claimed.
- The building bond must be claimed or realised
  - 2 years after completion of the building work or
  - Within 60 days after the final building report is given to the Secretary by the building inspector.

#### + USE OF BOND

- Where the OC is paid the whole or part of the bond, they must use the amount within a reasonable timeframe to costs related to rectifying the defective work.
- The bond must not be used to meet the costs of an inspection or report, except where the regulations provide it. (i.e. died, insolvency, ceased to exist, etc)
- The OC must repay to the developer any part of the bond that is not required for defective works.

#### + REVIEWABLE DECISIONS

- An interested person may apply for a review of a reviewable decision.
- For the purpose of this section, reviewable decisions include:
  - Decision appointing building inspector to carry out final report
  - A determination that developer is not required to arrange a final report (sec 200)
  - Decision under sec 212 to vary period which interim or final report is to be provided
  - Decision that whole or part of building bond may be claimed or realised for payment to OC, developer or other person
- Application for review must be made no later than 14 days after decision is given.

#### + OTHER

- The OC must give the developer written notice of the completion of rectification defective building works.
- Owners are not entitled to have any amounts secured or paid to them in respect of defective works affecting the lot.
- With consent of the developer the OC can retain any part of the building bond for any purposes.

