



Claiming for Building Defects: A guide to limitation periods

Share

27 Nov 2018

Published by: Nicolas Rovolas

Before contemplating litigation for building or strata defect claims, the first thing that you need to ask yourself is: "Am I out of time?". When claiming for building defects there are limitation periods.

With nearly every type of legal action there is a limitation period. This is the period of time after which no action can be taken. If your claim is brought out of time then it's probably doomed to fail from the outset. This is especially the case in claims involving defects in residential building work.

The Home Building Act 1989 (the Act) and its regulations provide for limitation periods for claiming under the statutory warranties found in section 18B of the Act. These warranties are automatically implied into a building contract for "residential building work" and include:

- (a) building works "will be performed in a proper and workmanlike manner and in accordance with the plans and specifications set out in the contract"; and
- (b) materials will be "good and suitable for the purpose for which they are used and that, unless otherwise stated in the contract that those materials will be new"; and
- (c) "work will be done in accordance with, and will comply with, the Act or any other laws"; and
- (d) "the work will be done with due diligence and within the time stipulated in the contract", the "dwelling is reasonably fit for occupation"; and
- (e) materials used are "reasonably fit for the specified purpose".

If your builder breaches these statutory warranties it often results in defects occurring and an owner may commence an action for damages against the builder (or developer).

It used to be the case that an owner had a period of 7 years from the date of completion of the work within which to commence proceedings for a breach of a statutory warranty however the legislation was amended reducing that period to 6 years for a "major defect" and 2 years for a "minor defect".

More often than not owners are confused as to what limitation periods applies to their situation. If the date of your building contract is:

People that can help



Amy Jenkins

Principal

+61 2 8987 0000

ajenkins@rk.com.au

Amy Jenkins, Principal, is the lead of our Farr team. Amy has been working in the field of fa

[Learn More](#)

[Related Services](#)

1. Before 1 February 2012, the limitation period for all defects is 7 years from the date of completion of the work;
2. Between 1 February 2012-15 January 2015, the limitation period for "structural defects" is 6 years and minor defects 2 years from the date of completion of the work; and
3. From 15 January 2015 onwards the limitation period for "major defects" (previously referred to as structural defects) is 6 years and minor defects (being a defect that is not a Major Defect) is 2 years from the date of completion of the work

The limitation period commences from the date of completion of the work. Section 3B of the Act refers to this date as the date of "practical completion", which is often recorded in the Building Contract. If the Building Contract is silent on the issue or there is no Building Contract, it is determined by the earliest of the date that:

- The Builder hands over possession to the Owner;
- The Builder left the site; or
- Occupation Certificate is issued.

It's also extremely important now to understand what a "major defect" is and what a "minor defect" is. We will address this in part 2 of this series.

If you have recently retained a builder who you are not happy with or you are the Owner of a house or a residential unit in a Strata Scheme and you are interested in claiming for building defects, contact our [Construction and Infrastructure team](#) for advice as to how to best protect yourself.

To keep updated with Russell Kennedy's insights, please sign up [here](#).

Corporate & Commercial Advisory

Dispute Resolution

Government

Planning & Environment

Property & Development

Property & Development Sales and Acquisitions experience

Prosecutions

Workplace Relations, Employment & Safety

[View all services](#)

View related insights



Construction and Infrastructure Alert | Proposed Update to AS 4000-1997

16 May 2024

The AS 4000-1997 General Conditions of Contract, is being updated by its publisher, Standards Australia. The AS 4000 - 1997 is a standard form 'construct only' agreement and is widely used ...



Developer fined for moving and burying soil containing asbestos in contravention of a planning permit

31 Oct 2023

Russell Kennedy Lawyers were engaged by Hobsons B Council to prosecute a breach of the Planning and Environment Act 1987 (Vic) (Act) regarding land developed in contravention of a Planning Permit ...

[View](#)

[View](#)



- [Our Firm](#)
- [International](#)
- [Leadership Team](#)
- [Awards](#)
- [Community](#)
- [Diversity and inclusion](#)
- [Russell Kennedy Women's Network](#)

- [Available positions](#)
- [Law Graduates](#)
- [Seasonal Clerkship Program](#)
- [Paralegal Pathway Program](#)