

Defects in New Private Dwellings

When a new dwelling is handed over, its new owners effectively concede that it is in a fit state to be taken over and that thereafter they will be responsible for it. Should something arise thereafter, the builder or former owner may disclaim responsibility. However many house builders offer after sale schemes which can provide a certain level of protection for defects. **If you have purchased and taken possession of a property with the benefit of a warranty or guarantee it is important that you are aware of its details, especially its scope and limitations, what to do when you wish to call in the warranty /guarantee and who to contact.** If you have not personally retained a copy of the warranty or guarantee your solicitor or mortgage company may be in a position to furnish you with a copy. Typically properties sold with the benefit of a warranty will have a copy with the deeds. Warranties may be backed by an insurance company or a representative association and will typically offer a number of years cover for major defects that might arise due to problem construction, problem materials or defective design. The new owner may be named as a beneficiary under the warranty and accordingly may enjoy a direct relationship with the guarantee company. Many warranties have a limited time scale within which notice of a claim must be served and most warranties will have a maximum limit of cover either or both for an individual house or for an entire estate.

However the majority of builders are likely to respond directly to customers and to address legitimate concerns. It would be reasonable to expect that a builder would indicate that he/she would or would not attend to a particular concern so that the owner could take timely and effective alternative action. **Where a builder or warrantor wishes to attend to a problem or to investigate an alleged problem it may be important for the structure and fabric of the building that such investigation, repair or replacement is carried out promptly and that the owner arranges for prompt and sufficient access for the builder.** Where an owner is unwilling to facilitate a co-operative builder or where a builder is not prepared to address the matter it is important that the owner take timely and appropriate action to protect the building and him/herself as a claim for loss associated with any delay or complications in addressing the problem may not be attributable to the builder or a delay in taking action may have more serious consequential effects.

Before considerable monies are paid over for a new dwelling its new owners are likely to have secured such advice and assurances as to the quality, suitability, completeness, etc. of their new dwelling as they deem appropriate. Should serious problems arise thereafter it is very likely that such advice or assurances may be reviewed and /or that further advice or assurances might be sought. **Where particular reliance has been placed on any initial advice or assurances the person who provided such advice or assurance should be notified as soon as possible of the concern or defect as they may wish to investigate or to inform their insurers.**

The design and/ or the construction of the dwelling may have been under the supervision of a professional who has provided information directly to the new owners or in connection with the purchase. Such information may suggest that a certain standard of design and /or construction was achieved. **In such cases that person should also be notified of significant defects which the builder will not address.**

In cases where dwelling owners have resolved to pursue a builder, it is critical that the best possible independent advice is secured, that appropriate professionals are engaged from the outset, that meticulous records are made and retained and that the most expeditious legal action is taken.

A general survey might be undertaken by an architect but where more detailed investigation is required or where particular problems have been identified a structural engineer, or an acoustic engineer, or a heating engineer or the appropriate specialist may be required. **Even in cases where a co-operative builder has agreed to address serious problems it can be advisable for a dwelling owner to retain independent professional advice. Where the builder has agreed to carry out substantial and significant works the necessary professional costs of the building owner may form part of any such agreement.**

Intrinsic or endemic defects in new dwellings may also present in the common areas of dwelling complexes and may also give rise to further costs and concerns for dwelling owners.

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