



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM
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Submission Cover Sheet

Inquiry into Building Quality in the ACT

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Committee Secretary
Standing Committee on Economic Development and Tourism
Legislative Assembly for the ACT
GPO Box 1020
CANBERRA ACT 2601

Submission to inquiry into building quality in the ACT

To whom it may concern,

Thank-you for holding this inquiry into building quality in the ACT.

It seems there has been many examples of poor building quality in recent times, raised in places such as the Canberra Times, the Riot ACT website and by word of mouth. I would like to highlight for this inquiry my personal experience buying an apartment off the plan.

Apartment purchase

In December 2015, I placed a deposit on a new apartment in the suburb of [REDACTED]. Although this was technically an "off-the-plan" purchase, the apartment building was at a well developed stage. Despite being scheduled for settlement the same month, this was delayed until March 2016 however I won't dwell on delays in settlement is not within the remit of this inquiry.

There were issues raised during the 90 day warranty period and provided to the seller to be raised with the builder.

Issue 1

There seems to be insufficient responsibility taken by sellers regarding the quality of off-the-plan residential developments. The seller, in my situation, was the development arm of a large real estate company. Despite the contract being between the buyer and the seller, as the seller now had now been paid in full, any responsibility for the quality of the dwelling was palmed off to the builder, and in turn, the builder palmed off responsibility for the defects to his subcontractors and left me to pursue the subcontractors myself. This puts buyers, such as me, in a precarious position as we attempt to pursue persons with whom we have no direct contractual relationship to attend to building defects.

Recommendation

In my opinion, the law should be made clearer that it is the responsibility of sellers for the quality of new dwellings. The seller, which in most cases will be a sizeable real estate development company, should be the sole point of contact for buyers with quality issues. It should be the responsibility of the seller to liaise with the builder to rectify any defect issues. Where a builder or other tradesperson is unwilling to attend to the defects, it should be the responsibility of the seller to ensure that the buyer's defects are attended to by other professionals whilst the seller pursues this with the original builder or trade, such as through a tribunal or the courts. I would also posit there is commercial incentive for builders to attend to defects at the behest of the seller, rather than the

purchaser, as the seller may be able to take this into account when choosing the builder of their next development.

Issue 2

Whilst ideally there would be no defects to begin with, it is acknowledged that realistically things can and do go wrong but it is how these issues are dealt with that matter. In my experience, it took multiple attempts on my part to have the builder of my dwelling, and the builder's subcontractors, return to attend to defects. This dragged on for two years and, whilst some of the defects were attended to, in the end I paid a few hundred dollars out of my own pocket to have the last defects rectified. As this defect was only a few hundred dollars to rectify, it did not make it financially viable to pursue the matter through a tribunal or the courts however it means in situations such as mine, buyers are out of pocket despite the fact that buyers have paid good money for a dwelling which was supposedly certified to a certain standard.

Recommendation

I would recommend the ACT government consider an incentive scheme to ensure builders and other tradespeople return to attend to defects, or a disincentive scheme to ensure defects are dealt with appropriately and in a timely manner. Whether this be through withholding of a percentage of the full payment in trust with the ACT government as trustee until a buyer agrees that all defects have been appropriately dealt with, or through a penalty mechanism (as outlined in the Discussion Paper for this inquiry concerning the situation in other jurisdictions), I leave this to the consideration of the inquiry however I feel there needs to be a better mechanism to deal with building defects on new dwellings, without a penalty for buyers seeking such rectification as it was in my case.

Further comment

I note the paragraphs in the Discussion Paper for this inquiry concerning the potential conflict of interests in building certification. I can only echo comments in other submissions to this inquiry that there is a real potential for conflict between the interests of certifiers and buyers which may lead to compromise or bias. I would also echo the comments in the Discussion Paper that the ACT consider moving to a model whereby building certifiers (and building inspectors in the case of existing properties) are wholly or partly government employees.

Yours faithfully,

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