

Understanding Major Defects in Home Building: A Guide for Homeowners in NSW

Owning a home is an Australian dream, but what happens when that dream turns into a nightmare due to defects in your property? The recent case of *Stevenson v Ashton* provides clarity on what constitutes a 'major defect' under the Home Building Act 1989 (NSW) (HBA). This article aims to help homeowners in NSW understand the implications of the case and what they should look out for when assessing their own property for defects.

What is a Major Defect?

The HBA defines a major defect as one that 'has caused or is likely to cause' the inability to inhabit or use the building, the destruction of the building, or a threat of collapse of the building. The recent case of *Stevenson v Ashton* clarified that a defect may be classified as 'major' even if it is only 'likely to cause' these consequences. There does not need to be actual or imminent damage. This means that homeowners should take any potential defect seriously and seek expert advice to determine the severity of the issue.

Expert and Lay Evidence

Expert evidence is often relied upon to assess defects in a property, but the recent case of *Stevenson v Ashton* clarifies that lay evidence, including observations and photographs, may also be used to determine whether a 'defect' is major. Homeowners should take note of any observations they make, such as the location of staining, the absence of relevant elements of the work, and the fact of water ingress during a rain or flooding event. These observations can assist in determining what is likely to occur in the future.

Roofing Defects

The recent case of *Stevenson v Ashton* also provides insight into the assessment of roofing defects. The Appeal Panel noted that the expert evidence was that 'the roof water permitted to enter into the building through the defective roof membrane system will eventually lead to decay of the wooden framing systems and decay and deterioration of wall and ceiling linings'. However, there was no actual evidence of any water ingress in consequence of the defects. This highlights the importance of conducting regular checks and assessments of roofing defects and ensuring that any issues are resolved promptly.

You can be confident that you are getting
the right legal advice.

Contracts Specialist is a Sydney-based construction law firm that deals with Building Disputes, Construction Contracts, Debt Recovery, and Security of Payment. With Contracts Specialist, you are ensured that you are in good hands.

Considerations for Homeowners

When assessing a property for defects, homeowners should consider the design life of the structure and the materials used. They should also take note of how long the defect has existed and whether the defect has resulted in any damage that might indicate the likelihood the premises will become uninhabitable or be destroyed. Homeowners should seek expert legal advice to determine the severity of any defects and take steps to rectify any issues to ensure the safety of the building.

Key Takeaways

The recent case of *Stevenson v Ashton* provides clarity on what constitutes a 'major defect' under the Home Building Act 1989 (NSW) (HBA). Homeowners should take note of the implications of the case and consider expert and lay evidence when assessing their property for defects. Homeowners should also conduct regular checks and assessments of their property to ensure any issues are resolved promptly to ensure the safety of the building.

You can be confident that you are getting
the right legal advice.

Contracts Specialist is a Sydney-based construction law firm that deals with Building Disputes, Construction Contracts, Debt Recovery, and Security of Payment. With Contracts Specialist, you are ensured that you are in good hands.