

Building bond

Update

The new strata building bond and inspections scheme (the scheme) will now commence on **1 January 2018**. It was originally scheduled to commence on 1 July 2017.

This means that the scheme will only apply to construction contracts signed (or where there is no contract and building work commences) from 1 January 2018. NSW Fair Trading will not require developers of new strata schemes to lodge defect bonds before 31 December 2017.

The commencement date has been delayed so that all procedural and professional requirements supporting the scheme are in place before commencement. This includes finalisation of:

- the standards and procedures relating to strata-specific building inspections
- new digital business processes to support bond lodgement and processing of the scheme.

NSW Fair Trading has been working with stakeholders in the strata, legal, building and development sectors in developing the scheme.

The strata building bond and inspections scheme

Most reforms to strata laws in New South Wales commenced on 30 November 2016. The strata building bond and inspections scheme is the second part of these reforms and will commence on 1 January 2018.

The scheme applies to building work to construct residential or partially-residential strata properties that are four storeys in height or over. Buildings that are three storeys in height or under are covered under the Home Building Compensation Fund.

This scheme introduces a building bond and mandatory defect inspection reports. It will provide a structured, proactive process that resolves building issues quickly

and cost effectively. This will raise confidence in the quality of new strata high-rise buildings.

Developers will be required to lodge a bond with NSW Fair Trading equal to 2 per cent of the contract price for residential and mixed use high rise strata buildings. The building bond will secure funds (up to the amount of the bond). The building bond can then be used to pay the costs of rectifying any defective building work identified in a final inspection report.

The following information explains how the scheme works. You can also refer directly to the legislation in Part 11 of the Strata Schemes Management Act 2015 (the Act) and the supporting Strata Schemes Management Regulation 2016 (the Regulation).

Who is affected?

Key participants involved in the building bond process include:

- Developer
- Owners corporation - (owners in a strata scheme)
- Strata inspector panel - made up of nominated bodies in the Regulation, through which a building inspector can be sourced
- Building inspector - a member of the strata inspector panel
- Builder - (contracted by the developer).

The following organisations enable and authorise key stages in the process:

- NSW Fair Trading, on behalf of the Secretary of Department of Finance, Services and Innovation (the Secretary).

Stages in the process

The Strata building bond and inspection scheme can be broken down into key stages. The stages include:

1. Preparing to lodge the building bond
2. Bond lodgement
3. Appointing a building inspector
4. Interim inspection and report
5. Final inspection and report

6. Release of bond
7. Completing the process.

1. Preparing to lodge the building bond

Once a building contract is entered into between developer and builder to construct a strata scheme of four or more storeys, the developer should prepare to lodge their building bond equal to 2% of the contract for the building work. Fair Trading will provide more information to support developers to complete this process before the requirements apply from 1 January 2018.

2. Bond lodgement

The developer must, when giving a building bond to the Secretary, upload to the online portal:

- the lodgement form
- building bond (ie a bank guarantee or a 'bond')
- supporting documents and information

and pays the Administration fee.

NSW Fair Trading then verifies, receives and accepts the original building bond (ie a bank guarantee or a 'bond'), which is required before an occupation certificate can be issued.

3. Appointing a building inspector

The developer sources a building inspector through the Strata inspector panels. The building inspector must be independent of the developer. The developer can be penalised for failing to disclose any connection with the building inspector. Likewise, the building inspector can be penalised for failing to disclose any connection with the developer.

The developer must notify Fair Trading and the owners corporation of the proposed appointment of the building inspector. The owners corporation then approve or refuse to approve the building inspector being appointed.

Fair Trading will appoint an independent building inspector if:

- the developer fails to organise for one to be appointed
- the owners corporation rejects the building inspector that the developer seeks to appoint.

The building inspector then arranges a date with the owners corporation to inspect the strata property. At all stages where a building inspector is used in the process, the developer pays for their work.

4. Interim inspection and report

The building inspector conducts their first inspection of the strata property and completes a report identifying any defective building work. This happens between 15 and 18 months after the building work has been completed.

The owners corporation, developer, builder responsible for any defective work and Fair Trading receive copies of the report.

If no defects are identified, the bond may be released to the developer - **two years after the date of completion** (not at 18 months when the interim report is provided by the building inspector).

If there are defects, the builder responsible for the defective work must rectify them. The developer must also organise the building inspector to conduct a final inspection.

If the original building inspector is unavailable, the developer must advise the Secretary of that fact, or make an application to the Secretary to appoint a building inspector. The Secretary appoints the new building inspector and notifies the owners corporation and developer of the appointment.

5. Final inspection and report

The building inspector arranges with the owners corporation to conduct a final inspection of the property. This happens between 21 and 24 months after the building work has been completed.

The building inspector provides a final report to the developer, the owners corporation, builder responsible

for any defective work and Fair Trading. This report will assess whether the defects identified in the interim report have been fixed.

6. Release of bond

If there are no defects, the bond is released in full to the developer.

If there are defects:

- the cost to rectify the defects must be agreed to by both parties. The Secretary will then claim that amount from the issuer of the building bond for payment to the owners corporation, or
- the developer can agree to release part or all of the bond money to the owners corporation.

7. Completing the process

Fair Trading facilitates the release of the bond money. The owners corporation must use any money they receive to fix the defects identified. After the defects are fixed, any money left over must be returned to the developer.

There is an alternative review process if the owners corporation or developer disagrees with how much bond money, if any, is returned to the developer or paid to the owners corporation.

Further information

Details about how the building bond reforms will work in practice will continue to be updated before the new requirements commence on 1 January 2018.