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Your Ref:

20 September 2012

The Research Director
Transport, Housing and Local Government Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: thlgc@parliament.qld.gov.au

Dear Sirs

Inquiry into the operation and performance of the Queensland Building Services Authority

We act on behalf of bodies corporate and have encountered the Queensland Building Services Authority ('QBSA') while handling several building defect matters for them.

Accordingly, we wish to make submissions regarding the following issue identified for the Committee's consideration:

'The effectiveness of the QBSA to provide remedies for defective building work and to provide support, education and advice for both those who undertake building work and consumers.'

Bodies corporate

Bodies corporate have a strict legislative obligation to maintain common property in good condition, including, to the extent that common property is structural in nature, in a structurally sound condition (s. 159 *Body Corporate and Community Management (Standard Module) Regulation* and s.157 *Body Corporate and Community Management (Accommodation Module) Regulation*).

Accordingly, in large-scale developments with defective building works, they face significant rectification works often worth hundreds of thousands of dollars.

In our experience, the QBSA has been ineffective in providing appropriate remedies for such defective building works. For example, the QBSA has closed files based on so-called evidence produced by the builder regarding their compliance with QBSA directives, without allowing the Body Corporate to make submissions on whether the directives were completed in a satisfactory manner.

This has resulted in the owners of the scheme being forced to foot the bill to remedy the situation, when the builder's repairs are inadequate, or faulty.

We refer to the following examples.

Example 1

In this matter, the Body Corporate currently faces a significant repair bill to remedy faulty building works.

Summary

1. Following a complaint, the QBSA directed the builder to complete significant rectification works.
2. Some works were completed pursuant to the QBSA's directions, but they failed to fix the problems.
3. The QBSA notified the Body Corporate that:
 - a. it had received evidence from the developer, superintendent and builder's engineer that the building issues were the result of a design fault, and not a result of defective construction practices by the builder; and
 - b. accordingly, the BSA did not apportion responsibility to the builder and would close its file.
4. The Body Corporate provided the QBSA with a 56 page report from an engineer with extensive experience in the relevant area. The report:
 - a. concluded that the builder was responsible for the building faults, not design faults; and
 - b. was a stark contrast to the one page report received from the builder's engineer.

Issues

The QBSA's withdrawal of their direction for the building work to be rectified was inadequate for the following reasons:

1. the QBSA only relied on unsubstantiated evidence from the builder;
2. the QBSA did not seem to take into account the report from an independent engineer;
3. the QBSA did not allow the Body Corporate to respond to the information from the builder that they were not responsible for the faults;
4. the QBSA only sent the Body Corporate an email stating that they had received information from the builder and were closing the file;

5. the QBSA told the Body Corporate that it would have to make an application under the *Right to Information Act 2009* in order to view the documents on which the BSA based its decision to close the file;
6. the Body Corporate has never been formally notified that the file was to be closed or of the period for lodging an Appeal against the decision.

Example 2

In this matter, the building contains a vast number of severe defects. The QBSA issued three directives to the builder to complete rectification works.

Some, but not all of these repairs were carried out.

In cases where repairs have been attempted, the Body Corporate is now finding that the repair work is faulty, and they are continuing to have issues with the building.

Issues

1. The QBSA closed files without proper substantiation or evidence that rectification works had been completed satisfactorily. For example the QBSA closed a file following receipt of a letter from the builder stating only:

'I am pleased to advise rectifications in respect of the above matter are now complete.'

2. There is no follow-up by the QBSA to ensure the rectification works completed were satisfactory and up to standard.
3. The Body Corporate continues to be plagued by defective works that were supposedly rectified by the builder.
4. There doesn't appear to be any recourse for poor rectification work that is not up to the required standard.
5. The time limits imposed for taking an action with the QBSA are difficult for Bodies Corporate to comply with. It requires a speedy response which is not possible for Bodies Corporate who require authorisation by owners before taking action.

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Please contact our offices should you require any further information or specific details.

Yours sincerely,



MATHEWS HUNT LEGAL