

Guidance Statement – Confidential – For Internal Use Only



Defects Known at the Time of Purchase

Background:

Scenarios often arise where BSA is required to adjudicate on defective building works known to a consumer prior to settlement and officers of BSA, when assessing a complaint, are then required to determine if the licensee who performed the work should be held accountable to rectify.

Consumers generally become aware of the defective work via pre-purchase inspections sourced by them prior to settlement of the property.

Comment:

BSA has an obligation to regulate the activities of licensee within the building industry, which goes beyond any fairness considerations between a subsequent home purchaser and a licensee. In this regard BSA's charter is to maintain proper building standards.

What the above means is while a subsequent purchaser may not 'deserve' to have defects rectified that were apparent on settlement, it is also the case that a licensee should not get away with performing defective work just because the dwelling has been on-sold.

If BSA is to maintain standards in the industry, there needs to be a consequence for licensees who perform defective building work.

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When assessing complaints lodged with BSA two scenarios will generally arise:

There are obvious benefits to grade a floor to a gully trap and contractors can elect to exceed the requirements of the BCA in this regard if they wish to do so.

Scenario 1 - (BSA will assist)

In circumstances where **no** documentary evidence exists to show a purchaser negotiated a reduced contract value specifically for known defects then BSA **should** request / direct rectification.

Scenario 2 – (BSA will not assist)

Where clear documentary evidence **is** available showing a purchaser **did negotiate** a reduced contract value specifically for known defects then BSA **should not** request / direct rectification.

(This determination is based upon the principle of "unjust enrichment").

Important Note:

Generally it will be extremely difficult for BSA to prove that a purchaser negotiated a reduced contract price specifically due for consideration of known defects.

BSA officers can not assume a contract was reduced in value simply due to a pre-purchase inspection that identified defects.

To establish if a contract price was reduced due to known defects, BSA may need to contact both the vendor and purchaser of the property to verify the facts regarding known defects.

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No Protection Afforded by BSA Home Warranty Insurance Scheme:

BSA's Home Warranty Insurance Scheme specifically excludes assistance to a homeowner where defective works, subsidence or settlement was, in the opinion of BSA, evident prior to settlement of their contract to purchase. This means despite BSA having the ability to direct rectification of known defects under Scenario 1, the homeowner will not have any entitlement to access BSA Insurance. Should a licensee not positively respond to the direction issued, BSA can commence disciplinary actions to penalise the licensee for the failure to rectify

Precedents / Other Determinations:

- Building Codes Queensland Newsflash Number 170 issued 6/9/2004.
- http://www.lgp.qld.gov.au/docs/corporate/publications/building_codes/newsflash/2004/170.pdf

Conclusions:

BSA does **not** consider the lack of falls to a floor waste gully trap to be unsatisfactory or defective building work.

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