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High rise owners face bill for replacing dangerous cladding




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Agreement between builders and state governments creates more issues for apartment owners Wayne Taylor



by Duncan Hughes

Apartment owners in buildings taller than three storeys will have to pay to [replace dangerous cladding](#) themselves because of a legal loophole that means neither builders nor insurers are not liable.

The loophole in a 2003 agreement between state governments and the industry could be used by developers and insurers to shift the potentially huge cost of replacing dangerous cladding on high-rise buildings onto owners or taxpayers.

A 'catastrophe' fund negotiated in the same agreement, by which builders would fund cash-strapped owners in a crisis, is empty because state governments never enforced mandatory contributions, industry chiefs claim.

The agreement was first negotiated by the NSW and Victorian governments in the wake of the collapse of HIH Insurance and was subsequently adopted nationally under the Council of Australian Governments.

The prospect of apartment owners of hundreds or thousands of buildings higher than three storeys having to pay costs totalling hundreds of millions to replace faulty cladding is expected to rock a residential apartment sector already nervous about over-supply and falling demand.

Lenders are also expected to question the capacity of off-the-plan buyers' to pay additional refurbishment costs before agreeing to final funding of a purchase, according to industry specialists.

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"Purchasers have more consumer protection when they buy a fridge or microwave than purchasing a \$500,000 apartment," warns Sahil Bhasin, national general manager of Roscon Group, which advises on strata properties.

"The question of who ultimately [pays for the repair](#) and/or rectification of properties affected by flammable cladding will take years to answer," said Simon Black, a partner with Barry.Nilsson Lawyers.

"In the short term, it seems increasingly clear that buildings and apartment owners will be the most immediately impacted," Mr Black said.

The 2003 agreement between developers and the NSW and Victorian governments followed the collapse of HIH Insurance with losses totalling more than \$5 billion.

The mandatory requirement for builders of high-rise residential buildings to provide builders' warranty insurance was removed.

"Owners of high-rise dwellings will have access to a last resort catastrophe fund which is to be funded by builders and insurers," the agreement adds.

There is no evidence a fund was established or contributions made, according to industry representatives.

"Governments conduct related to home warranty for consumers is scandalous," said Phil Dwyer, national president of the Builders Collective of Australia, a lobby group to improve building standards and regulations.

A spokesman for Richard Wynne, Victoria's Minister for Planning, confirmed the agreement.

He said "protection of consumers and property owners" is a top priority of the Victorian Cladding Taskforce, which was set up by the government in July to investigate the extent of non-compliant cladding on Victorian buildings.

The absence of a catastrophe fund, legal disagreement about responsibility and uninsured owners being unable to meet repayments could lead to tax payers having to foot some of the bill, industry sources warn.

"This will raise issues for high rise apartment buyers," said Elishah Lusi, director of Direct Property Group, a real estate agency that specialises in inner-city residential accommodation. "How will they know which apartments are impacted?" she said.

The number of new apartments due to settle over the next two years is approaching the average number of apartment sales during the past five years, which is a record high, according to CoreLogic, which monitors property sales.

Much of the focus about dangerous cladding has been on high rises in the Melbourne and Sydney central business districts.

But the biggest problems could be in metropolitan outer suburbs where buildings under 25-meters, or seven storeys, have mushroomed during the past five year property boom.

The number of buildings with dangerous cladding is being investigated but best guess initial estimates is that it will be thousands. There are estimated to be more than 5000 buildings in Melbourne alone.

"For now, owners will bear the brunt of immediate rectification costs but should have one eye firmly on their rights of recovery from third parties," said Mr Black.

[Insurers](#) are introducing cladding exclusions or imposing high premiums and excesses, he warns.

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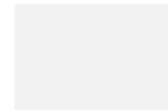
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