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Tenants' high-rise fears a new headache for apartment investors



Elishah Lusi says tenants are becoming more aware of the potential risks of a panoramic view. Josh Robenstone



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by **Duncan Hughes**

Frightened high-rise tenants are imploring their landlords to move them to another property or rescind the lease because of fire concerns, creating more problems for apartment owners and investors already worried about valuations.

A 60th-floor resident of a residential Melbourne high rise claims the 2014 fire in a nearby Dockland's apartment block — followed by the inferno that incinerated dozens of residents in an inner-London apartment block — has forced the decision. She wishes to remain unnamed.

Both fires are shaking confidence in the future of high-rise living, the nation's fastest-growing inner-urban accommodation, as a safe, cheap, convenient alternative to the suburbs.

Rising insurance premiums, tougher building rules and higher liability for tenants' injuries, death and damages are making the difficult decision on whether to invest in a high rise even harder.

Owners of buildings and apartments clad in non-compliant materials face depreciation in values, big bills for rectification and complicated claims against builders, developers, architects and building surveyors.

"This has a long way to run," says Simon Black, a partner with legal firm Barry.Nilsson.

Ray White.

"It is only a matter of time before claims and litigation," he adds.

Action needed

Unfortunately it's often unclear as to who is liable under different circumstances. But existing and future high-rise property owners do need to take steps to minimise their risk and liability.

"This is causing a lot of head-scratching and soul-searching across the industry," says Elishah Lusi, director of Direct Property Group, a real estate agency that specialises in inner-city residential accommodation.

"Tenants are becoming more aware of the potential risk they are putting themselves in for the sake of a panoramic view."

The chief concern of the 60th floor tenant is what would happen to the lifts if there was a fire and whether she would have to make her way downstairs on the fire escape with other residents.

Growing public concern about potential dangers from shoddy building and cheap cladding were crystallised in Melbourne in 2014 when the 13-storey Lacrosse Apartments in Melbourne Docklands engulfed the facade in less than 15 minutes.

The cladding used was Alucobest, which is aluminium on the outside and polyethylene fibre on the inside, a plastic commonly used on the facades of multi-storey buildings.

Watch out for more to come

But this is "just the tip of the iceberg", according to Strata Community Australia (SCA), which claims to represent more than 80 per cent of corporations representing strata title complexes.

Exploding glass panels falling from high-rise buildings are another example of dangers emerging in an industry that for years turned a blind eye to slipshod building standards and sub-standard products because of high demand and big profits.

The Victorian state government is already on its second public investigation into cladding and building standards, having spent years reaping massive taxes by allowing the structures to be built.

A recent study NSW study found there are up to 2500 buildings in NSW that may have non-compliant cladding.

[A Victorian Building Authority audit of about 170 high rises in Melbourne's central business district and surrounds found more than 100 had problems.](#)

Legal firm Slater and Gordon claims industry insiders "are concerned the use of illegal cladding has been widespread".

Don't be blind to potential liability

Apartments have been a good investment in Melbourne and Sydney, with prices rising during the past 12 months by more than 10 per cent, or five times the rate of inflation.

By contrast, Perth and Darwin have recorded losses of 8 per cent over the same period.

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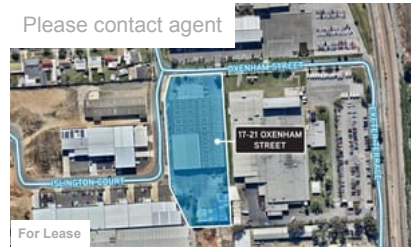


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New apartment builders are offering great deals to buyers in response to rising mortgage costs, the waiving of tax incentives and concerns about over-supply in some postcodes.

For example, Mirvac, one of Australia's largest property developers, is offering potential buyers of a new Melbourne tower block \$11,000 of furniture, a full refund of stamp duty fees and a 5 per cent rental guarantee for 12 months, in effect a saving of 12.5 per cent, if they buy in the building.

But buyers need to factor in the potential liability for loss or damage arising from faulty construction, or replacement of sub-standard materials, even if a calamity is caused as a result of changes to government construction policies rather than breach of regulations.

For example, [owners of the Melbourne's Lacrosse Apartments were last year served a \\$16 million bill to rectify the building, which works out to be about \\$40,000 per owner. The residents are considering a class action.](#)

Widespread ramifications

SCA general manager Rob Beck says: "Ahead of thousands of proposed inspections and material tests, it could well be that we sit on the brink of multiple owners' corporations being faced with similar bills to strip and replace dangerous materials."

Insurance specialists predict increased risk of loss or injury will result in higher premiums and, for some apartment buildings, refusal to provide cover by exempting faulty products. This might lead to astronomical premium increases or governments being forced to provide guarantees.

Black says another common legal scenario might be a fight over who pays to replace or rectify undamaged, non-compliant cladding.

Tim O'Dwyer, property lawyer and author of *Real Estate Escapes*, says whoever might cause a fire, if negligent, could be liable for injuries, inconvenience and any reasonably foreseeable adverse consequences.

"Duties of care extend from tenants, landlords and bodies corporates — or owner corporations — through to all involved in a building's construction," he says.

But damages actions taken against builders, developers, architects, building surveyors and others on the grounds that "they have failed to take reasonable care to ensure that any cladding or other structural component complied with the relevant building standards" may be expensive, time-consuming and could hammer a property's value for prospective buyers.

What to do before you buy

O'Dwyer recommends those considering buying an apartment obtain a comprehensive inspection of body corporate/strata records.

"After purchase, ensure you are suitably insured," he adds. "Tenants would be wise to have their own apartments insured."

Body corporates, or owners corporations, which manage the apartment as a whole, must have adequate cover for the building and should be alert to their potential liabilities.

"How owners manage — and notify — non-compliance issues may have a significant

impact on their position," adds Black.

"They will have to decide whether to notify insurers — and be subject to increased premiums and decreased property's value — or fail to notify and face the inevitable consequences in the event of a claim."

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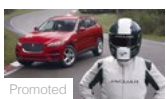


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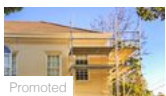
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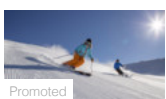
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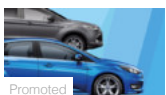
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