

## **Residential Developer's Liability for Defects:**

### ***Harrison and Others v Shepherd Homes Limited (2011)***

This case confirms that residential developers have contractual and statutory liabilities to owners of the homes that the developers build. In addition to contractual liability, under any express provisions set out in the sale agreement between the developer and a purchaser, the developer may also be liable under the Defective Premises Act 1972 to a purchaser (as well as to a home owner who had not bought the home directly from the developer). In this case, the court found that the developer had breached its obligations under the sale agreements between the developer and some of the home owners. In addition, the court found that the developer was liable under the 1972 Act - this was relevant to some of the home owners since they had not bought their homes directly from the developer.

The Act states that: "*A person taking on work for or in connection with the provision of a dwelling ... owes a duty ... to see that the work which he takes on is done in a workmanlike or as the case may be, professional manner with proper materials and so that as regards that work, the dwelling will be fit for habitation when completed*". In finding that the developer was in breach of their obligations under the Act, the judge stated that (referring to guidelines set out in *Bole v Huntsbuild*):

1. It is not necessary for a dwelling to be in imminent danger of collapse for it to be unfit for habitation.
2. Unfit for habitation is a matter of fact in each case.
3. Unfitness for habitation extends to defects of quality which make the dwelling unsuitable for its purpose as well as to dangerous defects.
4. Unfitness for habitation relates to defects which make the dwelling dangerous or unsuitable for its purpose, not to minor defects.
5. Such a defect in one part of the dwelling may make it unfit for habitation even if it does not apply to the other parts.
6. This applies to such defects even if the defects were not evident at the time that the dwelling was completed.
7. You must consider the effect of the defect as a whole.

In this case the Court found that the defects were caused by foundation work not being done in a workmanlike or professional manner and, accordingly, as regards to that work, the properties were not fit for habitation when completed. The court found that the measure of damages, payable by the developer, was to be by reference to the properties' diminution in the value rather than their reinstatement cost.

In another recent case, *Jenson and Another v Faux (2011)*, the Court confirmed that the Act only applies to *new* dwellings: the works carried out by the developer must create a "new dwelling, the identity of which was wholly different from the old".