

Resolving building disputes

Things do not always go to plan when you are building or renovating, but there are steps you can take to help resolve disputes between you and your home building contractor.

It is important to develop and maintain positive communication with your builder or tradesperson. If people in a home building dispute do not speak to each other about the problem, it becomes very difficult for the issue to be resolved.

NOTE: The term 'residential building work' is widely used in this section and broadly means any work involved in, or in coordinating or supervising, the construction, alteration or additions, or repair, renovation, decoration or protective treatment of a dwelling.

Fair Trading also deals with complaints about specialist work (ie. electrical wiring, plumbing, gas-fitting or air-conditioning/refrigeration) in non-residential buildings.

Step 1: Talk about it

The first step to resolving a dispute with your builder or tradesperson is to discuss your concerns with him or her, as soon as you become aware of a problem. It may simply be that a misunderstanding has occurred which can be quickly resolved through constructive communication.

If your dispute is about the quality of the work, consider getting a copy of a publication called the *Guide to Standards and Tolerances*. Produced by the Victorian Building Commission, the Guide will help you understand what standard of work is acceptable, for example, it explains how much shrinkage around timber windows and doors is tolerable. For a copy of the *Guide to Standards and Tolerances* go to the publications page on the Fair Trading website, a Fair Trading Centre, or call 13 32 20.

Step 2: Write a letter

Following your conversation, write down the details of your discussion in a letter and be sure to include an outline of what was agreed to be done and by when. Send the letter to your builder or tradesperson and keep

a record of the date it was sent. Registered post or email provide proof that the letter was sent so it may be useful to use one of these methods. Before sending the letter, make a copy of it for your records and keep it in a safe place. You may need this letter later if your dispute remains unresolved.

Step 3: Contact Fair Trading

If you and your contractor cannot resolve the dispute yourselves, the next step is to contact Fair Trading for dispute resolution assistance if your building work is within the relevant statutory warranty period.

A formal request for Fair Trading to assist in the dispute resolution may be made by the consumer or the trader - but both parties need to agree to the attempt at resolution.

Builders, developers, owner-builders and tradespeople must warrant that, amongst other things, their work has been performed in a proper and workmanlike manner. By law a home owner, or subsequent purchaser, has the right to enforce these warranties within certain time periods after the work was completed.

From 1 February 2012, the statutory warranty period is 6 years for structural defects and 2 years for non-structural defects. If the loss becomes apparent in the last 6 months of the statutory warranty period then the home owner has a further 6 months from becoming aware of the loss to enforce the statutory warranty.

Prior to 1 February 2012, the statutory warranty period was 7 years for structural and non-structural building work defects.

If the building work that is the subject of your dispute is nearing the end of the statutory warranty period and you are still seeking compensation or rectification of the work, then you should lodge an application with the Consumer, Trader and Tenancy Tribunal. If you lodge an application outside the statutory warranty period the Tribunal may not be able to deal with your application.

Fair Trading deals with disputes about incomplete and/or defective home building work and/or damage caused to

other structures as a result of home building work being done.

When you contact Fair Trading for dispute resolution assistance, you will generally be asked to put your complaint in writing. However, if there are health or safety risks, an oral complaint is acceptable.

You can lodge your home building complaint online through the Fair Trading website. Alternatively, call 13 32 20 or visit a Fair Trading Centre for a copy of the home building complaint form. Complete the form and lodge it with Fair Trading by post or at a Fair Trading Centre.

Fair Trading will attempt to negotiate a suitable outcome between you and your contractor. In the majority of cases, Fair Trading is successful in reaching a resolution. If the matter is not resolved, the next step will depend on the issue in dispute. If the issue is defective or incomplete building work, the complaint may be referred to a Fair Trading Building Inspector.

Strata/community scheme building work disputes

Individual strata and community lot owners may lodge complaints with Fair Trading and invite a Fair Trading Building Inspector onto the common property of a strata scheme or association property in a community scheme. As a further safeguard, caretakers and other persons who control access to areas of the common property will be obligated to cooperate with officers from Fair Trading and provide assistance to enable the inspection to be carried out, for example by providing access to locked areas of the common property.

Step 4: Notify your insurer

In order to safeguard your position under your home warranty insurance policy, if you become aware of defective or incomplete work, you **must** immediately notify your home warranty insurer in writing providing such information as may be reasonably necessary to put the insurer on notice as to the nature and circumstances of the loss. For more information, visit the Home warranty insurance claims page on the Fair Trading website.

Step 5: Building inspections

The Fair Trading building inspection process is designed to help resolve disputes. The role of a Fair Trading Building Inspector is to assist you and your contractor to come to an agreement about how to resolve the dispute. The Inspector will arrange to meet with you and your contractor on-site to inspect the work under dispute and discuss the issues reported in the complaint.

IMPORTANT: Fair Trading Building Inspectors do not undertake a general inspection of the work. They visit the site to look at the specific items that are the subject of the dispute.

Where the Inspector determines that there are matters requiring rectification by the contractor, a Rectification Order may be issued. In some cases, it may be concluded that the builder is not responsible for the alleged defects.

Rectification Order

If a Rectification Order is issued, it will list the work that is to be rectified/completed and the conditions that both parties are to meet in complying with the Order. A date will be set for the work to be completed.

If the Order is complied with and you are satisfied with the outcome, the matter is resolved. Other possible outcomes from the issuance of a Rectification Order include:

- if the Order is not complied with, or you are not satisfied with the decision made, you may lodge a claim with the Consumer, Trader and Tenancy Tribunal (Tribunal)
- if either party lodges a claim with the Tribunal during the order period, the Order ceases to have effect and the Tribunal will hear the matter.

A claim may also be lodged with the Tribunal by you or your contractor where defective work is not involved, for example when money is owed.

Home Building Advocacy Service

The NSW Government is committed to helping consumers resolve their disputes with builders. In

this regard, NSW Fair Trading provides funding for a Home Building Advocacy Service (HoBAS) run by the Macquarie Legal Centre.

HoBAS offers consumers access to the following services:

- advice to NSW residential home building consumers on their rights, responsibilities and on what action can be taken to resolve their home building dispute
- advocacy on behalf of consumers in disputes with home building licensees or relevant parties via telephone, letters or face to face representation
- negotiation of disputes between consumers and builders or relevant party
- assistance to residential home building consumers in the preparation of cases for Tribunal hearings
- representation of residential home building consumers at Tribunal hearings where considered appropriate
- referrals to relevant authorities
- community education activities.

NOTE: HoBAS can only assist consumers after they have completed the NSW Fair Trading dispute resolution process. There may be charges for some services offered by the Centre.

To find out if Macquarie Legal Centre can assist you with your building dispute, contact them on Tel: 8833 0911, Fax: 8833 0900, Email: hobas@clc.net.au.

Claim on home warranty insurance

IMPORTANT: It is a requirement of the home warranty insurance scheme that a home owner must take action to try to have the builder finish any incomplete work or rectify any defects.

In addition to this, insurance companies in general require the home owner to limit any further damage or loss eg where the defective or incomplete work is left exposed to the weather. Where a home owner does not take this action, an insurer may reduce its liability (or

the amount paid out under a claim). An insurer may do this on the basis that its interests have been prejudiced because the home owner did not try to mitigate their losses.

In the event that attempts to have your home building work completed or rectified prove unsuccessful, you may be able to formally lodge a claim under your home warranty insurance policy. For more information, visit the Home warranty insurance claims page on the Fair Trading website.