

Resolving building disputes

When you are building or renovating, things may not always go to plan. However, you can take steps to help resolve disputes with your builder or tradesperson.

Aim to develop and maintain positive communication with them. Not speaking to each other can make any issues much harder to resolve.

Where you cannot resolve a dispute with your builder or tradesperson, NSW Fair Trading can assist. We deal with building-related disputes about:

- incomplete or defective home building work
- damage caused to other structures as a result of home building work being done
- specialist work (ie. electrical wiring, plumbing, gasfitting or airconditioning / refrigeration), including in non-residential buildings.

Home building work refers to work to construct, alter, repair, renovate, extend, decorate or treat a dwelling.

Step 1: Talk about it

Discuss your concerns as soon as you become aware of a problem. It may simply be a misunderstanding that can be quickly resolved through constructive communication.

If your dispute is about the quality of the work, you can refer to 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 go to our Publications web page or call 13 32 20.

Step 2: Write a letter

Following your conversation, confirm in writing with your builder what was agreed to be done and by when. Date and keep a copy of this correspondence. Consider using registered post or email, which provide proof that the communication was sent. Make sure you can easily access a record of this correspondence - you may need this 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 to assist with dispute resolution if your building work is within the relevant statutory warranty period.

Either you or the trader can formally request for Fair Trading to assist, but both parties need to agree to the attempt at resolution.

Builders, developers, owner-builders and tradespeople must warrant that, among other things, their work has been performed with due care and skill. By law a home owner, or subsequent purchaser, can enforce these warranties within certain time periods after the work was completed.

For contracts signed on or after 1 February 2012 the statutory warranty period for major defects is 6 years, and 2 years for all other 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.

For contracts entered into before 1 February 2012, the statutory warranty period was 7 years for all building work defects.

Is the building work concerned in the dispute nearing the end of the statutory warranty period?

If you are still seeking compensation or rectification of this work, lodge an application with the NSW Civil and Administrative Tribunal. Outside the statutory warranty period, the Tribunal may not be able to deal with your application.

For more information on defects see our Frequently asked questions - home building law changes web page.

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 a home building complaint online through the Fair Trading website, or call 13 32 20.

Fair Trading will attempt to negotiate a suitable outcome between you and your contractor. In most cases, Fair Trading can successfully reach a resolution. If the matter is not resolved, the next step will depend on the issue. If the complaint concerns defective or incomplete building work, it 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.

Caretakers and others 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 (eg. by providing access to locked areas of the common property).

Step 4: Notify your insurer

To safeguard your position under your Home Building Compensation Fund insurance policy, if you become aware of defective or incomplete work, you **must** immediately notify your insurer in writing of necessary information about the nature and circumstances of the loss. For more information, visit our Home Building Compensation Fund claims web page.

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.

The Inspector may issue a Rectification Order if there are matters that the contractor needs to rectify. The

Inspector may also conclude that the builder is not responsible for the alleged defects.

Rectification Order

A Rectification Order issued will:

- list work to be rectified or completed
- outline conditions for both parties to comply with the Order
- set a date for the work to be completed.

A staged Rectification Order will specify the stages in which an order must be complied with.

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

- if the Order is not complied with, or you are not satisfied with the decision made, you may lodge a claim with the NSW Civil and Administrative 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.

Contractors must comply with Rectification Orders. It is a condition of their licence to do so.

You or the contractor may also lodge a claim with the Tribunal where defective work is not involved (eg. when money is owed).

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

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 under the Home Building Compensation Fund

Also, insurance policies generally require the home owner to limit any further damage or loss (eg. not leaving defective or incomplete work 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.

If attempts to have your home building work completed or rectified prove unsuccessful, you may be able to formally lodge a claim under your insurance policy. For more

information, visit our Home Building Compensation Fund claims web page.

IMPORTANT: The Home Building Compensation Fund requires a home owner to take action to try to have the builder finish any incomplete work or rectify any defects.