



Building a new home or having extensions or renovations carried out on an existing home can be an exciting prospect.

If you are a builder, contractor or tradesperson chances are private residential building work will consume most of if not all of your time and labour and contribute a vast proportion of your income. Given the amount time, money and resources put into the planning and construction of a project it is not surprising that the process can often be stressful and turn out to be more expensive than originally intended. Unfortunately disputes can arise between home owner and builder in which case you may have initiate proceedings in the NSW Civil and Administrative Tribunal (NCAT) or defend a claim against you.

Ways to help prevent building disputes

Home owners and builders can reduce the chances of a building dispute arising by taking a number of preventative steps and measures. Some things you can do include:

- Ensure that any prospective builder or tradesperson is qualified to carry out the desired work. You can conduct a licence check on the Fair Trading website or by calling 13 32 20. A tradesperson must be licenced for all residential building work valued at more than \$5,000 in labour and materials and all specialist work such as electrical and plumbing work regardless of its cost.
- Always check with Council to see if Development Application approval is needed prior to commencing building work. It may be the case that the proposed work is exempt from DA approval because the scope of work is only minor. It is prudent that you check the zoning, locations, restrictions and heritage status of the land.
- For any work to be carried out over the value \$20,000, it is essential that builders ensure that they obtain a Certificate of Insurance from the Home Building Compensation Fund. Under the Home Building Act 1989, it is an offence for any builder to commence work on a property or demand payments for work over \$20,000 without first obtaining Home Warranty Insurance. Homeowners should ask their builder for as copy of the Certificate of Insurance before any work is commenced or a deposit is paid.
- The contract should always be set in writing. The NSW Fair Trading Website provides free

contract templates for both small and large jobs. It is highly advisable to use these contracts as they provide for and contain provisions relating to specifications, plans and descriptions of the work, quality of contractions clauses, clauses stipulating that the work must comply with Building Codes and Australian Standards, a statement relating to a cooling-off period, statutory warranties, termination clauses, contract prices and progress payment plans.

What should you do if a building dispute arises?

If matters cannot be resolved between the parties themselves, NSW Fair Trading should be contacted. NSW Fair Trading can carry out investigations and assist in finding a compromise between the parties. If the parties are still in disagreement, you may have to file a claim with NCAT. Preparing such application requires careful attention, skill and expertise. Legal proceedings are often very complex and while individuals may represent themselves, it may be in your best interest to retain a solicitor to process and prepare the great number of forms such as Affidavits and Scott Schedules, retain and brief expert building experts, research case law and legislation, brief barristers (if required) and ensure compliance with Tribunal procedures to be adhered to.

Seeking Legal Representation

If you believe you have suffered a wrong or loss, or if a building dispute or claim is being made against you that cannot be resolved, you should contact your solicitor as soon as possible. Statutory time limits apply for all claims. To assist your solicitor in preparing and presenting your case to the Tribunal you should prepare a statement of your version of event containing a timeline of key events, quotes as to what was said during important conversations and greater detail about what you saw, heard or experienced. You should also collect all relevant documents and names and contact details of any witnesses to the incident(s) or events. Such action may reduce the time involved for a solicitor and lead to savings in costs as well as increase the likelihood of achieving your desired outcome.

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