

Building Dispute Resolution: Your Options

Has your contractor or landscaper done a horrifying job? We have good news. There are plenty of ways to amicably rectify the situation and resolve the dispute, without having to go through the hassle of a stressful, expensive lawsuit. Read on to find out what your alternatives are.

When Is There a Building Dispute?

A building dispute occurs when one of the parties to a construction contract violates any provision in said contract, or when one party violates any of the express or implied warranties therein.

An example is when a builder or a landscaper you contracted causes damage to your property in the course of, or as a result of, the work they did.

Modes of Settling Building Disputes

The modes of settling domestic building disputes are categorized as follows:



Alternative Dispute
Resolution (ADR)



Arbitration



Litigation

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Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution (ADR) is an umbrella term for different methods of resolving disputes in a non-adversarial, amicable manner.

None of them involve the courts or the rendition of a final judgment. Decisions arrived at by the parties through ADR are binding, though.

Forms of ADR

The different types of ADR processes include:

- Negotiation
- Early Neutral Evaluation
- Expert Determination
- Mediation
- Conciliation
- Adjudication

In what instances should the parties undergo ADR?

In case of dispute, the parties should undergo ADR:

- When it is provided in their contract
- When it is not provided in their contract, but the parties nevertheless agree to pursue them
- When it is ordered by the NSW Civil and Administrative Tribunal (NCAT) or the courts

What are the most commonly resorted to modes of ADR?

These are mediation, conciliation, and expert determination.

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Mediation

Mediation is a private and confidential process, where the parties will try to settle their dispute by arriving at a compromise. It is facilitated by a neutral, third party mediator, whose role is not to decide the dispute on the merits, but to help the parties arrive at a mutually acceptable resolution.



Conciliation

Like mediation, conciliation involves a neutral third party facilitator whose objective is to help the disputing parties arrive at a settlement agreement. Unlike in mediation, however, the facilitator in conciliation proceedings (the conciliator), is less involved in the discussions.



Expert Determination

Another type of ADR is expert determination, wherein the parties agree to appoint a third party expert, like a building consultant, who is tasked with making an independent assessment. This is most relevant in cases where there is damage to the works or to the property. The expert's findings are generally binding.

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Arbitration

Arbitration is resorted to if the same is provided for in the construction contract. The process is very similar to a court litigation, with the same formalities and procedure. The arbitral award is binding and enforceable.

This is not a common remedy in domestic/residential building disputes, and is generally more applicable to international construction contracts.

Litigation

Litigation is a full-blown court proceeding, either in the circuit courts, or in the supreme court. Resort to the courts may only be had if ADR or tribunal hearings fail.

How We Can Help

Contracts Specialist has been in active practice of Construction Law for more than 10 years now, and has helped countless clients obtain satisfactory judgment on various types of building disputes. We can give you advice on practical next steps, and help you choose the best course of action, in light of your specific circumstances; each case being unique.

Give us a call to learn more about how we can help you. First consult is absolutely free.

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