

Application to Commissioner for Decision

This application is used if you believe that a consumer guarantee has not been fulfilled in relation to building work and you wish for the Commissioner of Residential Building Disputes (the Commissioner) to make a binding decision in regard to payment of money or rectification of works. **You should speak to a Northern Territory Consumer Affairs representative before lodging an application.**

When to lodge an application.

You can apply to the Commissioner for a decision if you are a current owner or builder and you entered into a contract on or after 1 January 2013 and; you have a dispute regarding defective work in relation to either:

- structural defects
- non-structural defects
- non-completion of building work
- or consumer guarantee disputes

The role of the Commissioner is to be an impartial and independent umpire between builders and owners. The Commissioner can make a binding decision in relation to consumer guarantees in line with the contract between the builder and the owner. If the application is upheld, an Order may require the builder to rectify the defective work or pay compensation to the owner. If allegations do not relate to consumer guarantees, the Commissioner can mediate disputes between parties but cannot make binding decisions.

Has this matter been heard by either the Commissioner of Residential Building Disputes or the Lands, Planning and Mining Tribunal?

If the matter has previously been heard by the Commissioner and you are disputing the decision, and wish to appeal, you will need to contact the Lands, Planning and Mining Tribunal.

If the matter has been heard by the Lands, Planning and Mining Tribunal previously, please contact them for further information on how to proceed.

If the matter has not been heard by either body previously and the time is frame correct, fee paid and the correct details are entered, you can make an application to the Commissioner.

****If the matter is found to be complex in that it is a question of fact or law, the Commissioner may refer the application to the Lands, Planning and Mining Tribunal at any stage of a hearing.**

What compensation value can I come to the Commissioner for?

The Commissioner may make a decision if the respondent has contravened some or all of the consumer guarantees as alleged in the application. If the Commissioner makes an Order for the respondent to pay compensation and the amount of compensation assessed to be payable **exceeds** \$100,000, the Commissioner must refer the dispute decision to the Lands, Mining and Planning Tribunal (LMPT).

If you are seeking compensation for over \$100,000 you will have to contact the LMPT for dispute resolution. To obtain further information about LMPT refer to their web page: <http://www.nt.gov.au/justice/courtsupp/landplantrib/> .

What is the dispute about?

An alleged structural or non-structural defect?

Structural or non-structural defects have an effective period¹ in relation to consumer guarantees and the construction period.

Defective work is where work is carried out in breach of a consumer guarantee.

Structural defects are covered for a period of six years from the last day of the construction period.

A structural defect is a defect in a structural element of the building as a result of defective residential building work, or a defect that is reasonably likely to cause a defect in a structural element of the building.

A structural element is a load bearing component of the building (whether internal or external) that is essential to the stability of the building or part of the building, or component (including weatherproofing) forming part of the external walls or roof of the building.

Structural defects may include things like: exterior paint, shower membranes, foundations, floors (not coverings), walls, roofs, columns or beams.

Non-structural defects are covered for a period of one year from the last day of the construction period.

A non-structural defect is a defect in a non-structural element of the building as a result of defective residential building work.

Non-structural defects may include things like: leaking taps, incorrect fixtures and fittings or damage to finishes caused by the builder.

¹ The effective period is the date the contract is entered into or if there is no contract the day the building permit is granted; or within the two year period for which the building permit has been granted.

The defective work may be work of poor quality, may not conform to the National Construction Code or the goods supplied may be faulty. It may also be that the work was not carried out according to the building plans.

Non completion by the builder?

Non-completion of residential building work is the failure of a builder to complete the work under the residential building contract. If the builder is still contactable you can lodge an Application with the Commissioner.

Non-completion may also be due to things such as: the builder's death, disappearance, bankruptcy or loss of building registration. In these cases please refer to your Residential Building Cover.

The cap for each claim in relation to non-completion or defective work is 20% of the total contract price, to a maximum of \$200,000.

Non-completion of residential building work under a contract has an effective period² in which to make an application.

Is there a Fidelity Certificate or other Residential Building Cover (RBC) in place?

If there is an RBC in place and the claim relates to a consumer guarantee dispute, you are able to lodge an application to receive either a technical report or a decision by the Commissioner. If the matter relates to something other than a consumer guarantee dispute, a claim may only be made through the Fidelity Fund or RBC by the owner when the builder has died, cannot be found, has disappeared, has become insolvent or bankrupt or cannot complete the work because the builder's registration has been suspended or cancelled by order of the Building Practitioners Board or Local Court.

If the value of work involved is under \$12,000, a RBC is not required.

If you require further information about RBC please contact the Master Builders Association on (08) 8922 9666 or visit their web page here: <http://www.mbant.com.au/> or the Fidelity Fund web page: <http://www.fidelityfundnt.com.au/>

How to Lodge an Application

Download the application form (Application to Commissioner for Decision) from the NT Consumer Affairs, Residential Building Disputes web page: www.consumeraffairs.nt.gov.au .

Ensure the form is completed correctly and in its entirety.

² The effective period is the date the contract is entered into or if there is no contract the day the building permit is granted; or within the two year period for which the building permit has been granted.

Pay the prescribed fee by attending an office of the Receiver of Territory Monies. Current fees are available on the NT Consumer Affairs, Residential Building Disputes web page. The receipt is to be provided to NT Consumer Affairs before any further action will be taken with the application.

The Receiver of Territory Monies offices are located at:

Casuarina: The Domain, 16 Scaturchio St, Casuarina NT 0801 - ph: 08 8943 6219

Darwin: Level 1, Palm Court, 8 Cavenagh St, Darwin NT 0800 – ph: 08 8999 1628

Alice Springs: Level 1 Alice Plaza, 36 Todd Mall, Alice Springs NT 0870 – ph: 08 8951 6491

The application can be lodged at NT Consumer Affairs at either:

1st Floor, The Met Building, 13 Scaturchio Street, Casuarina; or

Ground Floor, Green Well Building, 50 Bath Street, Alice Springs; or

via post to: PO Box 40946, Casuarina NT 0811, along with copies of all relevant documents.

What happens next?

The application will be assessed and if further information is required an Officer will contact you.

If the application meets all requirements, the other party will be sent copies of all documents and given the opportunity to respond.

If the party responds and agrees to participate, a pre-hearing conference will be listed. All parties will be given Notice in writing of the details of the pre-hearing conference.

Once the matter is heard, the Commissioner, will make an Order and Decision.

What happens if you disagree with the Commissioner's decision?

The Commissioner's decision is binding with the written reasons for the decision to be provided to both parties.

If you disagree with the decision you can appeal by contacting the Lands, Mining and Planning Tribunal within 20 days after the Commissioner's decision is handed down.