

SIMPLE GUIDE TO DEALING WITH BUILDING DISPUTES

Objective

The objective this paper is to provide owners with some general and simple guidance on how to manage building disputes/defects.

It is not intended to be legal advice or otherwise.

Building Warranty

For all building works there is an implied warranty for structural defects (including plumbing and electrical works) of 10 years from the date the Certificate of Occupancy was issued.

If an apartment complex were under 4 storeys, generally the builder would have been required to take out building warranty insurance. This is useful in the instance that the builder has disappeared, died and in some instances de-registered. A copy of this building warranty insurance should form part of your contract of sale.

Your contract of sale should also include the builder's details.

Note: If your building is over 10 years old then most likely all warranties have expired. You would have to treat any defect as a private repair/maintenance matter or a common property repair/maintenance matter.

Who Should Deal With Building Matters?

It is recommended (and supported by Consumer Affairs) that individual owners should deal with building disputes impacting their individual units.

The Owners Corporation should address common property issues.

Please call MIA Property if you have any questions in relation to the process of dealing with Building Disputes.

Process of Dealing With Building Disputes

It is recommended that the following process be undertaken when dealing with building disputes.

Following these steps is recommended to show that you have made a reasonable attempt to resolve the issue with the business/builder.

Step 1: Speak with the Business

If an item or a service does not meet an implied condition, you should contact the business/builder to seek a remedy to the situation (e.g. defect needs to be repaired).

Approach the business/builder in person or via telephone. It is recommended that you document the details of this conversation.

Step 2: Write a Letter of Complaint

If speaking with the business/builder has not resolved your issue send them a letter or email. Act quickly to ensure that your rights are protected.

When writing your letter it is recommended that you follow the template included in Appendix 1 (source: Consumer Affairs)

It is recommended that you send the letter via registered post and keep a copy for your records.

Be persistent – write a reminder letter if the business does not reply. You may want to indicate in this letter that if they do not reply you will take your complaint further to one of the options below (per Step 3).

Step 3: Take Your Complaint Further

Consumer Affairs

If Steps 1 and 2 do not resolve your problem with the business/builder we recommend that you contact Consumer Affairs and lodge a formal complaint via completing and lodging a formal Complaint Form.

It may be beneficial to contact Consumer Affairs before lodging the complaint to confirm that lodging a formal complaint is the best option for you. You can contact Consumer Affairs on 1300 55 81 81.

Upon receiving your complaint form, Consumer Affairs will attempt to arrange conciliation between you and the business/builder.

Conciliation is an informal process to help you and the business resolve a dispute through communication, identifying the issues in dispute and exploring options for resolution.

Consumer Affairs usually conducts conciliation by telephone, email and letters, but sometimes hold face-to-face meetings.

As Victoria's consumer affairs regulator, Consumer Affairs can try to help you reach an agreement, but only VCAT or the courts can compel a business/builder to resolve an issue. They can advise you about your options with VCAT or the courts.

Consider Getting a Building Report!

Depending upon the nature of the defect you may want to consider obtaining an independent building report.

Benefits of obtaining a report include:

- Third party and independent confirmation of a defect.
- It should detail the method by which the defect should be repaired.

We would recommend that an independent building report be obtained for defects that relate to water damage, such as a leaking balcony, major cracking etc. Particular attention should be placed upon the method of rectifying the defect to avoid builders carrying out short term, band-aid repairs such as using silicone to stop water leaks.

You can obtain a report from the Victorian Building Authority. They cost approximately \$300. Contact VBA on 1300 815 127 for more information.

Alternatively you can engage an independent Building Inspector. This is generally more expensive, however may be warranted given your situation.

Depending upon the nature of the dispute, Consumer Affairs may request that an independent building inspection is obtained by the Victorian Building Authority (refer above). There will be no cost to the owner if Consumer Affairs requests this report.

Benefits of lodging a complaint via Consumer Affairs include:

- Conciliation will normally take place between 2 – 4 weeks and is generally quicker than VCAT.
- There is no cost to the applicant.
- Process will be seen in good light if the matter progresses to VCAT.

VCAT

If all else fails then you need to apply for a civil claims hearing at the Victorian Civil and Administrative Tribunal (VCAT).

In determining whether to proceed down this path consideration needs to be given to:

- The nature of the dispute. Sometimes the cost of fixing the issue yourself is cheaper than pursuing the matter via VCAT.
- Independent evidence that you have obtained to support your case.

We recommend that you contact VCAT to obtain details on the cost of pursuing action via VCAT and other important information that you may need to know relevant to your case. You can contact VCAT on (03) 9628 9999.

You can visit the VCAT website which has useful information including FAQ and an online application form.

We hope that the above information has assisted in clarifying the steps you need to take when dealing with a building dispute for a building that is still under warranty.

If you have any questions please contact MIA Property.

Resources

Visit the following websites or contact the following bodies for further information on building disputes:

Victorian Building Commission www.buildingcommission.com.au

VCAT www.vcat.vic.gov.au

Plumbing Industry Commission www.pic.vic.gov.au

Energy Safe Victoria www.esv.vic.gov.au

Consumer Affairs www.consumer.vic.gov.au

MIA Property www.miaproperty.com.au

Appendix 1: Letter of complaint - template

Your name

Your address

Your telephone number/s

Your email address

Today's date

Contact name

If your dispute is with a franchise (chain store), write to the store you originally dealt with, and send a copy to its head office.

Position title

Business name

Business address

Dear **contact name**,

Re: Subject of your letter including address of property

Outline the history of your complaint:

State the problem you have with the goods or service – for example, was the product faulty or unfit for the purpose you specified? Include the date you first became aware of the problem.

Indicate the steps you have taken to resolve the issue, such as times you have visited, phoned or written to the business/builder, and the names of people you have dealt with.

Indicate that you have attached or enclosed copies of any supporting documents, such as:

- prior correspondence
- receipts (or other proof of purchase)
- warranties / guarantees
- contracts
- photos

Send copies, not original documents. You may need these documents later if you take your complaint further.

If possible, get evidence such as an independent technical report to support your claim.

Clearly state how you would like your complaint resolved – for example, you want the trader or service provider to either:

- refund your money (or provide a credit note)
- repair the goods
- replace the goods
- fix the work (or pay for the work to be fixed by another service provider).

Give a reasonable timeframe for the trader to take action, such as 10 working days.

Include details of when and how you may be contacted.

Yours sincerely,

Your signature

Your name (printed)

OPTIONAL ADDITION:

State that if you do not hear from the trader, you will take your complaint further (to the relevant complaints agency).