

## Application to Commissioner for Decision

The role of the Commissioner of Residential Building Disputes (the Commissioner) is to be an impartial and independent adjudicator between builders and home owners who are in dispute. When dealing with an Application to Commissioner for Decision, the Commissioner has the power to make decisions in relation to alleged defective residential building works and/or contraventions of consumer guarantees, and will take into consideration the applicable building contract, relevant legislation and national construction codes. The Commissioner can also hand down orders that may require the builder to rectify any substantiated defective building works or pay compensation to the home owner where rectification is impracticable.

### Who can lodge an application?

An Application to Commissioner for Decision can be lodged by a current owner or builder who entered into a building contract for **prescribed residential building** work, on or after 1 January 2013 for which an authorised Residential Building Insurance (RBI) policy or Fidelity Certificate applied and, there is a dispute regarding prescribed residential building work that resulted in alleged:

- structural defects
- non-structural defects
- non-completion of building work.

An application must be received within the effective period. For alleged defective work resulting in non-structural defects, the effective period is **one (1)** year from the date the occupancy certificate was issued. For alleged defective work resulting in structural defects, the effective period is **six (6)** years from the date the occupancy certificate was issued.

There must also be no current contractual obligations in place between the parties, except in the instance where the building works have not been completed and the relationship between the parties has broken down irretrievably, or the application has been received within the effective period for non-completion of building work.

If your matter has previously been heard by the Commissioner, you cannot lodge a further application unless it relates to a separate or different defect.

**Please note:** The Commissioner cannot deal with payment disputes under an application of this nature. It is recommended in these instances that the parties seek legal advice in relation to their rights and obligations under the building contract. A current Application to Commissioner for Decision does not prevent the parties from commencing a proceeding in a court or tribunal to deal with matters that do not relate to consumer guarantee disputes.

## What are prescribed residential building works?

Prescribed residential building works are works exceeding \$12,000 in value, in relation to any of the following:

- a class 1a building
- a class 2 building
- extensions or renovations to a class 1a or class 2 building where the floor area is increased
- a class 10 building - for example a garage, carport or shed - attached to and built at the same time as a class 1a or class 2 building
- a retaining wall - whenever built - that is not attached to a class 1a or class 2 building but on which the integrity of such a building depends or the relocation of an existing building.

## What are consumer guarantees in relation to prescribed residential building works?

Under the *Building Act 1993*, builders must guarantee that they will:

- carry out the building work in a proper and workmanlike manner
- supply good and suitable materials for the purpose which they are to be used
- supply new materials unless the contract specifies otherwise
- carry out building work in accordance with the Act, the Regulations and other laws in force in the NT
- carry out the building work with reasonable care and skill
- will complete the work by the date specified in the contract or otherwise, within a reasonable period.

## What are structural and non-structural defects?

**Structural defects** are defects in a structural element of a building as a result of defective residential building work, or a defect as a result of defective residential building work that is likely to cause a defect in a structural element of a building. A **structural element** of a residential building is a load-bearing component of a building (whether internal or external) that is essential to the stability of the building or part of the building or a component (including weatherproofing) forming part of the external walls or roof of the building.

Structural defects may include things such as roof leaks, major cracks, electrical or plumbing faults – including the failure of a waterproofing membrane that may affect the livability of the building.

**Non-structural defects** are defects in a non-structural element of a building as a result of defective residential building work.

Non-structural defects may include things such as leaking taps, incorrect fixtures and fittings or damage to finishes caused by the builder and are generally cosmetic.

## 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 and still in business the homeowner can lodge an Application to Commissioner for Decision, as long as the application is received within the effective period for non-completion of building works.

The effective period for **non-completion** is within 90 days of the following occurring:

- if the builder has started to carry out the work – the date the builder completely ceased to do so
- if the builder has not started to carry out the work and the contract specifies a starting date – on the specified starting date
- if the builder has not started to carry out the work and the contract does not specify a starting date – on the date the contract was entered into.

## Under what circumstances can a claim be made against the Fidelity Fund?

Before residential building works can commence and prior to a building permit being issued, a builder (including an owner builder) must obtain a Fidelity Certificate to cover the work. A Fidelity Certificate protects home owners (excluding an owner builder) against financial loss should a trigger event occur.

A claim can only be made against the Fidelity Fund if such a trigger event has occurred. A trigger event is one of the following circumstances:

- the builder has died
- the builder has disappeared
- the builder has become bankrupt or insolvent
- the builder has had their registration suspended or cancelled.

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

**Important Information:** There is also an effective period in which you must make an application to the Fidelity Fund. It is recommended that you contact the Master Builders Fidelity Fund as soon as you become aware of a defect with your home or a builder has ceased work on your dwelling, even if you cannot yet lodge an application or have one on foot with the Commissioner of Residential Building Disputes.

If you have an application on foot with the Commissioner of Residential Building Disputes and a trigger event occurs, the Commissioner will no longer be able to deal with your application and will refer you to the Fidelity Fund.

You can contact the **Master Builders Fidelity Fund** on **(08) 8922 9680**. You can also find further information on their website here: <http://www.fidelityfundnt.com.au/>.

## Lodging an Application

An Application to Commissioner for Decision can be lodged by a current home owner or a builder. A copy of the application form and information on relevant fees can be found on the NT Consumer Affairs website here:

<https://consumeraffairs.nt.gov.au/for-consumers/residential-building-disputes>.

You will need to provide **two hard copies** of the following documents with your fully completed application form:

- building contract (unless you are a subsequent owner)
- building permits
- RBI or Fidelity Certificate
- Occupancy Certificate (if applicable)
- photographic evidence of the defects
- any correspondence between yourself and the builder relating to the defects
- receipt for payment of applicable lodgement fee
- any professional reports or quotes you have obtained relating to the defects.

**It is recommended that you speak to a Northern Territory Consumer Affairs representative before lodging an application to ensure your eligibility.**

There is a prescribed fee to lodge an Application to Commissioner for Decision which is 100 revenue units. You can find information on the value of a revenue unit here: <https://nt.gov.au/employ/money-and-taxes/taxes,-royalties-and-grants/territory-revenue-office/revenue-units>.

You can pay the prescribed fee by attending any office of the Receiver of Territory Monies. Their offices are located at:

**Darwin:** Manunda Place, 38 Cavenagh Street, Darwin NT 0830 – PH: (08) 8999 1606

**Alice Springs:** 1<sup>st</sup> Floor, Alice Springs Plaza, Todd Street Mall, Alice Springs NT 0870 – PH: (08) 8951 6491

**Katherine:** 1<sup>st</sup> Floor, Government Centre, First Street, Katherine NT 0850 – PH: (08) 8973 8715

## Where to lodge the Application

You can lodge your completed application at either of the NT Consumer Affairs offices located at:

**Darwin:** 1<sup>st</sup> Floor, The Met Building, 13 Scaturchio Street, Casuarina; or

**Alice Springs:** Ground Floor, Green Well Building, 50 Bath Street, Alice Springs.

You can also lodge your completed application via post to:

**The Commissioner of Residential Building Disputes**

PO Box 40946

Casuarina NT 0811

## What happens next?

Once an application has been accepted by the Commissioner, the other party will be sent a copy of the application and all associated documents. They will then be given the opportunity to respond to the allegations. They will also be asked if they would like to participate in a Negotiated Agreement Process (this is voluntary).

If both parties agree to participate, a preliminary conference will be held and all parties will be given notice in writing of the details. If the parties cannot come to an agreement through the Negotiated Agreement Process or one refuses to participate, the matter will be listed for a hearing where a decision and order can be made by the Commissioner or their delegate.

If the parties are able to reach an agreement at a conference, this is considered binding on the parties. The Commissioner will then make a negotiated agreement decision in accordance with the agreement.

## Can an order be enforced?

If an order has been handed down by the Commissioner for payment of an amount of money, the amount is recoverable as a debt. The party to whom the amount is payable may apply to a court of competent jurisdiction for registration and enforcement of that debt if not paid.

If an order has been handed down by the Commissioner for rectification works to be undertaken and the builder contravenes this order, the order may be revoked and replaced with an order for the payment of money.

It is an offence to contravene an order handed down by the Commissioner – **100 penalty units apply**. Disciplinary action may also be taken by the Director of Building Control and the Building Practitioners Board.

## Can a decision be reviewed?

A decision handed down by the Commissioner may be reviewed or appealed against within the review period by way of an application to the Northern Territory Civil and Administrative Tribunal (NTCAT). NTCAT may set aside the Commissioner's decision and order whilst determining the matter. NTCAT may then make their own decision and any subsequent orders. Further information regarding lodging an application with NTCAT can be found here: <https://ntcat.nt.gov.au/getting-started>.

## Builder conduct related complaints

If you have a complaint against a registered builder that relates to professional misconduct or a breach of the *Building Act 1993*, this is dealt with by the Director of Building Control. You can find the complaint form and relevant contact information via the following webpage: <https://nt.gov.au/property/building/make-a-complaint-or-settle-a-dispute/building-complaints-and-disputes/complain-about-professional-misconduct-or-a-breach-of-building-law>.

## Need more information?

If you need more information in relation to residential building disputes and/or lodging an application, you can contact our office during business hours on **(08) 8999 1999** or via email to [consumer@nt.gov.au](mailto:consumer@nt.gov.au).