

Mediation, arbitration and adjudication

Last updated: 21 March 2016

You can try to come to an agreement with the help of a neutral third party even if your contract does not provide for it, or you have no written contract.

To ensure you have a clear understanding of the problem and to help you decide what to do, you could first get some advice. This might be:

- good technical advice to confirm the nature and extent of the problem (useful in any future discussions or court proceedings)
- good legal advice to help you understand all of your options, not just court proceedings (lawyers have a legal obligation to give cost and time estimates for their work, which might help you consider the extent of their involvement).

Jointly seek mediation

If both parties agree to it, you could try mediation, where both parties try to come to an agreement with the help of a mediator. Often the contract will include a requirement for early mediation of disputes.

Mediation:

- requires parties to:
 - agree to participate (including attending the mediation session)
 - agree on a mediator
- has no guarantee of resolution
- involves a mediator facilitating and discussing, but not making a decision
- can be used effectively for all types of disputes, so long as the parties participate fully in the process
- is not a formal legal process involving attendance at court
- is probably the least costly option (depending on the cost of you attending on the day (time off work, travel), hiring a venue, etc).

Any one of the following groups would be able to provide you with a list of suitable mediators or appoint a mediator if required:

- [New Zealand Law Society \(https://www.lawsociety.org.nz/\)](https://www.lawsociety.org.nz/)
- [Resolution Institute \(https://www.resolution.institute/\)](https://www.resolution.institute/)
- [Arbitrators' and Mediators' Institute of New Zealand \(http://www.aminz.org.nz/Category?Action=View&Category_id=659\)](http://www.aminz.org.nz/Category?Action=View&Category_id=659)

Request adjudication

Adjudication is a unique, fast track dispute resolution process for resolving building and construction disputes. As outlined in the Construction Contracts Act, it applies to all construction contracts whether written, by handshake or verbal, even if there are no dispute resolution provisions in the contract terms. The aim of adjudication proceedings is to allow the parties to resolve disputes quickly so that cashflow and construction work can continue. While the orders are only interim, they are often accepted by the parties without further legal proceedings being required. Each case will vary but adjudication will likely have similar preparation time and process costs to mediation.

[Construction Contracts Act \(https://www.building.govt.nz/projects-and-consents/why-contracts-are-valuable/construction-contracts-act-2002/\)](https://www.building.govt.nz/projects-and-consents/why-contracts-are-valuable/construction-contracts-act-2002/) provides a brief overview of the Act and information about disputes and adjudication.

Agree to arbitration

Like mediation, arbitration requires both parties to agree to participate and also agree on the arbitrator. The building contract may require that disputes are resolved through arbitration. The arbitrator's decision is binding and enforceable by a legal court. However the process is less formal than court.

Arbitration:

- requires parties to agree to participate
- requires parties to agree on the arbitrator
- is a binding decision
- can be used effectively for all types of disputes
- gives you some control over the process, time and confidentiality
- is essentially a private court process
- can cost as much as court (for example, the parties need to hire an arbitrator).

[Activate your consumer rights \(https://www.building.govt.nz/resolving-problems/resolution-options/activate-your-consumer-rights/\)](https://www.building.govt.nz/resolving-problems/resolution-options/activate-your-consumer-rights/) includes information about options for resolving your problem.

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- with compliance with the Building Act, it is published under section 175 of the Building Act
- with a Weathertight Services claim, it is published under section 12 of the Weathertight Homes Resolution Services Act 2006.