



Department of  
Building and Housing  
*Te Tari Kaupapa Whare*

# Pursuing a claim through the lower-value claims process

The remediation cost set out in the assessor's report, or the receipts from your repairs, total \$20,000 or less. Consequently, your claim is eligible for the lower-value claims dispute resolution process under the Weathertight Homes Resolution Services Act 2006.

The Department of Building and Housing (the Department) provides negotiation and mediation services to help you resolve your claim. If negotiation and mediation are unsuccessful, you can apply to the Weathertight Homes Tribunal (the Tribunal) supported by the Ministry of Justice (the Ministry) for adjudication. All services are potentially quicker and less expensive than going to court.

Your other options are:

- pursuing a private settlement with parties through private negotiation, mediation or arbitration
- the Disputes Tribunal (if your claim is for an amount less than \$7,500, or less than \$12,000 if everyone involved agrees to participate)
- District Court proceedings
- taking no further action and repair the house without pursuing parties.

## REPAIRS

If you have not already done so, you may wish to begin repairs and then proceed to resolution using accurate costs of repair. This should be discussed with your claims advisor before you begin. Your claims advisor has information sheets that can help you when you are considering repairing your house. It is vital that you keep detailed records and photos of all work undertaken if you intend to proceed to dispute resolution after repairs are complete. You should consider asking parties that were involved in the construction or alteration of your home to come and have a look at the damage while you are repairing it, as this can reduce points of contention during the dispute resolution process.

Even if you cannot undertake full repairs of your home, it is important that you mitigate the damage as much as possible. You can achieve this by undertaking temporary repairs, such as using sealants on known points of water penetration. It is likely that mitigating damage will be discussed at adjudication. See the information sheets on repairs for further information – Repairs and the resolution process and Repairs and maintenance.

## LOWER-VALUE CLAIM DISPUTE RESOLUTION

If you wish to resolve your claim through the lower-value claim dispute resolution process, the first step is to send your claims advisor the 'referral to resolution' form along with the 'nomination of parties' forms. This begins the dispute resolution process. You will then be allocated a settlement advisor who will contact you to discuss your options and how the process will work.

After receiving your form, your settlement advisor will start contacting the parties you have nominated and discuss the claim with them. The settlement advisor will ask the parties what relevant documents they hold and whether they are aware of any other parties who should be involved. They will also ask if they are willing to participate in the dispute resolution. From these discussions the settlement advisor will be better able to help you and the parties decide whether to pursue negotiation or to proceed directly to mediation.

The lower-value claim dispute resolution process has four possible stages.

- Initial contact stage  
The claims advisor:
  - contacts all parties you have requested
  - checks whether any further parties should be invited to participate
  - organises a telephone conference where administrative details and the possibility of negotiation and mediation are discussed.

- Negotiation

You and the other parties:

- agree to try negotiation
- gather together to discuss the issues and try to work out a resolution.

- Mediation

You and the other parties:

- agree to try mediation, which is similar to negotiation
- meet to discuss the issues and try to work out a resolution.

A professional mediator, provided by the Department free of charge, helps to facilitate the meeting.

- Adjudication

If negotiation and mediation are unsuccessful after every effort, you can apply to the Weathertight Homes Tribunal for adjudication

## WHAT IS NEGOTIATION?

Negotiation is an informal, flexible way of finding a solution between you and the parties involved with the construction or alteration of your house. Your settlement advisor will help you undertake negotiation, but you are the main driver of the resolution. We strongly recommend that any agreement negotiated is put into writing to protect all parties. A Department of Building and Housing mediator can sign such an agreement after it has been put together if the parties wish it to be enforceable in a District Court.

If you choose to proceed with negotiation, your settlement advisor will discuss with you how the negotiation may work for you.

Some things the settlement advisor can do are:

- inform you of common pitfalls
- provide a template for the settlement
- arrange a venue for you and all the parties to meet
- help you with how to conduct the discussions
- facilitate the exchange of position statements
- provide a mediator to sign a statutory declaration after a written agreement is reached making the agreement enforceable in court.

If you and the parties choose to take this option, the settlement advisor will send you an information sheet.

## WHAT IS MEDIATION?

Mediation is a voluntary and informal process where an impartial person (the mediator) helps people with a dispute work together to find their own solution. Mediators are independent, professional people and their focus is on solving the problem. You, together with the other people in the mediation, decide your own outcome.

The mediator will help the parties to work out what the issues are, the positions of each party and possible options for resolution. The mediator will not make a decision for you or anyone else at the mediation, or give legal advice of any kind. Any agreed settlement is binding on those agreeing to it and can be enforceable in the District Court.

Mediation has several advantages.

- It requires a constructive, co-operative approach.
- Parties can develop and agree on workable and mutually acceptable solutions – often outcomes that could not be achieved at adjudication or court.
- Confidentiality applies to anything disclosed or agreed to in mediation.
- Mediation is likely to be less expensive than adjudication or court action and the process is relatively quick compared with adjudication or the courts.
- The presence of the mediator can also ensure power imbalances between parties are minimised.

If you and the parties decide to go to mediation, you will need to fill in a form that officially refers the claim to mediation. You may still go ahead with mediation with some parties if you don't get all potential parties agreeing to participate.

There are statutory time limits that mean a mediation must take place within 20 working days from the date the claim is referred to mediation.

The settlement advisor will identify any further information required or further steps that need to be taken before the mediation, although most of this work will have been completed in the initial contact stage of the dispute resolution process. The mediation itself should only take half a day. Mediations will be held in locations as close as practicable to the property involved.

If the claim is resolved, an agreed settlement is signed. If agreement is not reached through mediation with some or all parties, you may choose to go on to adjudication if the Chief Executive of the Department of Building and Housing feels further efforts at negotiation and mediation will be unsuccessful (see below).

If you and the parties choose to take the mediation option, your settlement advisor will send you a detailed information sheet specific to mediation.

### **WHAT IS ADJUDICATION?**

Adjudication is a judicial process in which an independent person (the Tribunal Member) determines the parties' dispute. Adjudication is undertaken by the Weathertight Homes Tribunal (the Tribunal).

For lower-value claims, adjudication can only be initiated after informal resolution methods such as negotiation and mediation have been tried. This is to ensure the process is cost-effective for everyone involved. If you wish to go to adjudication, your application to the Tribunal will need to be accompanied by a certificate from the Chief Executive of the Department of Building and Housing confirming that you have made reasonable attempts to resolve the claim through the above methods.

In most cases the Tribunal Member will deal with lower-value claims on paper only with no formal hearing taking place. However, the proceedings are officially documented. The Tribunal Member will run the claim as efficiently as possible to limit costs to all parties. After you and the respondents have put forward your cases, the Tribunal Member makes a decision according to law. The Tribunal Member's decision is binding, with rights of appeal to the District Court.

Once the process has begun, certain stages have time limits. However, it will generally take longer to get through the adjudication process than through mediation.

If you continue on to adjudication after an unsuccessful negotiation and/or mediation, your settlement advisor will provide you with help in making an application to the Tribunal.

Tribunal Members have considerable powers. They may, among other things:

- request additional information or submissions
- order people to become respondents if they think it is desirable
- ask for additional documents
- appoint experts
- carry out site visits of the building concerned
- decide that a particular party must pay costs and expenses in limited circumstances.

The parties to the adjudication are required to comply with any request or directive of the Tribunal Member.

The Tribunal Member will make a decision on the information provided to them. There will not be a hearing. The decision will state which parties are liable and what remedies there should be. This decision is the equivalent of an order of the District Court and may be enforced in the same way as a court order.

If you apply to have your claim adjudicated, the settlement advisor will send you further information.

### **OUTCOMES**

It is important to enter any dispute resolution process with an open mind and realistic expectations. A settlement can only be reached if you find a mutually agreeable solution with some or all of the parties.

### **FEES**

Negotiation and mediation are free services. Adjudication costs \$400.

## **FURTHER INFORMATION**

Please contact your claims advisor on 0800 324 477 if you have any queries.

You can request information sheets by calling 0800 324 477, or download them from our website at [www.dbh.govt.nz](http://www.dbh.govt.nz). The information sheets cover topics including:

- assessing your house
- invasive testing
- mediation
- repairs.

For practical, consumer-focused information about buying, building, renovating and maintaining homes, visit [www.consumerbuild.org.nz](http://www.consumerbuild.org.nz)