

Outline of key pre-litigation steps prior to commencing a defective domestic building action

When considering action against a builder for defective building works, an Owners Corporations should consider and deal with the following matters and take the following steps:

1. Identify issues at the property.
2. Obtain legal advice on the legal boundaries as outlined in the Plan of Subdivision to identify whether the defects are common property, private lot property or a mixture of the two.
3. Identify the relevant parties/entities. Who is the builder? If the builder is a company, is that company still registered? If still registered proceed. If no longer registered, consider insurance options.
4. Consider the applicable limitation periods, if these dates have not yet expired, proceed as outlined below. If the limitation periods have expired, then the Owners Corporation is statute barred from making a claim for domestic building work against the relevantly liable parties.
5. Obtain a VCAT-Compliant Expert Report which:-
 - a. Identifies the defects, why they are defects, and the location of each;
 - b. Specifies whether a defect is originating or resultant;
 - c. Provides a scope of rectification works;
 - d. Outlines the approximate costings to carry out works as per the recommended scope of rectification works.
6. Where Expert Evidence confirms originating defects exist within common property at the Property, write to the relevant party (most likely the builder) placing them on notice.
7. If eligible, make an application to Domestic Building Dispute Resolution Victoria ("DBDRV").
8. If the DBDRV conciliation is not successful and a 'Certificate of Conciliation – dispute not suitable' is obtained, then decide whether to commence a building action in VCAT against the builder (and any other potentially liable parties).
9. Obtain a special resolution of the Owners Corporation to issue legal proceedings. In accordance with Section 18 of the Owners Corporations Act 2006, a special resolution of the Owners Corporation must be passed before legal proceedings are commenced.
10. Issue legal proceedings against the Builder and any other relevant party at the Victorian Civil and Administrative Tribunal.

It is important to obtain legal advice early in the process. Contact Phillip Leaman, Principal of our Owners Corporation Team for assistance or advice.



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