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How Does Your Company Handle New Home Construction Disputes?

“American consumers expect a perfect home,” says Jerry Howard, CEO of the National Association of Home Builders.

In an ideal world, every house you build would wow its buyer, and all of your clients would live happily ever after in their gorgeous new homes. However, sometimes the process can be less smooth and expectations aren't met.

“American consumers expect a perfect home,” says Jerry Howard, CEO of the National Association of Home Builders. But, he adds, “there’s no such thing as a perfect home, and so I think that there are often disputes that arise out of that.”

When you consider that the typical house contains more than 3,000 different parts, it’s no wonder that nearly three in four new construction homes end up with defects requiring a return visit for repairs. Often the complaints are structural in nature—a quarter of newly built homes will experience some structural distress within the first 4 to 7 years.

The owner of a new home is as likely to experience significant structural damage as they are a major fire. [Eighty percent](#) of structural claims concern the home's foundation, while other common construction defects involve:

- Plumbing
- Roofing
- Framing
- Finishes such as siding, stucco or drywall
- Soil that has not been compacted or graded properly

Construction defects are so common that some major builders set aside hundreds of thousands of dollars a year to deal with the claims they receive. While some are immediately obvious—such as a crooked roof or crack in the foundation—others may not show up until the homeowner has lived in the home for months or even years.

When this happens, disputes may arise. What counts as a construction defect? Is the problem covered by the home warranty? Who's responsible for repairs?



Resolving New Home Disputes

When the homeowner and builder are unable to agree on a fair course of action, it's often necessary to bring in a third party to settle the conflict. **There are three primary ways to resolve a home construction dispute:**

1. Mediation

Mediation is typically the first step in resolving disputes between buyers and contractors. A neutral party is assigned or chosen and agreed upon by all sides to examine the conflict, hear the arguments and make a decision.

Although it isn't legally binding—which means it doesn't stop homeowners from suing later—mediation is often successful in “getting all parties to look at conflicts and



come to an agreement before launching into the more expensive alternatives,” says [Construction Dive](#).

Mediation has become an increasingly popular way of avoiding the exorbitant costs of going to court. A qualified mediator can help quantify the issue and give both parties a frank assessment of how realistic their chances are. Often one or both parties end up realizing that rolling the dice in court isn't the smartest financial decision or the mediator helps both parties reach a mutually agreeable solution.

Of course, not every dispute can be settled through mediation. “If the parties are so far apart that a compromise isn't realistic, then mediation makes no sense,” says attorney [John Patrick Curran](#).

2. Arbitration

Arbitration presents a faster and potentially less expensive alternative to a court trial. It involves a private hearing with a third-party arbitrator. Although the ruling doesn't have to adhere to prevailing law, it is legally binding and typically can't be reversed in court.

Unlike a court trial, arbitration is often wrapped up within several months of filing. The hearings themselves often last only [a day or two](#) rather than weeks. Although the costs of hiring an arbitrator plus legal counsel can still add up, the shorter timeline helps curb the overall expense.



Builders often prefer arbitration not only because it's less costly, but because arbitrators are generally more knowledgeable about real estate and construction issues than the average jury. Many are real estate lawyers, architects, engineers, or other professionals within the industry.

In most cases, it's best to settle home construction disputes through mediation rather than arbitration or litigation. "Whether it's a court trial or an arbitration, it costs us," says [John Burchfield](#), general counsel for David Weekley Homes. "There's the cost of the defense and the loss of a good relationship with a customer. It's expensive either way you go. It should be avoided at all costs."

3. Litigation

When homeowners aren't able to get a satisfactory response from the builder about their complaint, their first impulse is often to take the problem to court. If the builder has failed to provide a 3rd party administered builder's warranty program covering structural defects, for example, litigation may be the only avenue available when the homeowner experiences a major defect or failure.

While homeowners often perceive a civil court case as the fairest way to seek redress for their losses, it's also the most expensive solution for everyone involved. Attorney fees alone can sink both the owner and the contractor—especially when you consider that a trial can drag on for weeks, and neither side has any guarantee of winning. Even when one side does prevail, there's always the chance the other party will get the decision overturned on appeal.



"I think most people are not aware of how much time it takes to be a plaintiff in a construction-defect case," says attorney [Jeffrey Masters](#).

In the time it takes to get to trial (which can be months or even years), the homeowner is left to struggle with a defective home. Frustration mounts, and the relationship between the builder and buyer often deteriorates to the point that a peaceful resolution becomes impossible.



MEDIAN TIME TO RESOLUTION

-  **MEDIATION: 146 DAYS**
-  **ARBITRATION: 232 DAYS**
-  **LITIGATION: 27.2 MONTHS**

Keeping Contract Terms Clear

Most disputes occur because the contract between the builder and homeowner isn't clear enough. Home buyers say a lack of proactive communication about the building process is one of their [two biggest sources](#) of frustration. Builders can prevent problems from the very beginning by clearly outlining their home builder warranty terms and dispute resolution process in the initial sales contract.

"The contract should provide specific answers and procedures to resolve typical questions that arise during construction," says construction planning attorney [Margaret Greene](#). Common mistakes home builders often make in their contracts include:

Vague language.

Avoid using nebulous terms like "reasonable" for items such as markups or time limits. Instead, identify specific limits or amounts to prevent misunderstandings and minimize potential arguments.

Unrealistic terms.

An over-the-top contract may not hold up during the construction process. If it can't be practically enforced in the field, it forces representatives to resolve issues by making up their own rules on the fly. Then, when conflicts do arise, they become even more difficult to settle.

Too many restrictions.

Builders often try to manage their risks by including provisions in their contract that eliminate the possibility of punitive damages. But the court may refuse to uphold a contract that's too restrictive or one-sided.

It's important for builders to realize that dispute resolution clauses can vary from contract to contract—and their enforceability can differ from state to state. For example, many states have enacted laws that specifically define what counts as a construction defect. Following the American Arbitration Association's residential construction rules when drafting a contract can help ensure its enforceability.



The best way to manage home construction risks is to provide a clear and comprehensive builder's warranty administered by a proven 3rd party warranty company. Many builder home warranties, such as those administered by PWSC, include built-in conflict resolution processes as well as warranty protection to address buyer complaints before they become costly disputes. A third-party administered home warranty and in particular, PWSC's warranty document, is a clearly written agreement outlining defined structural elements, specific tolerances, remedies and dispute resolution for issues that may occur.



By including PWSC's home builder warranty services, builders can limit their legal risks while also demonstrating their commitment to delivering best-in-class home construction.



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