

PROBLEMS WITH YOUR ARCHITECT?

The New Zealand Registered Architects Board administers a procedure by which complaints about Architects' work can be investigated and, if warranted, disciplinary action can be taken. Also, mediation or arbitration to resolve conflicts can be arranged.

Which Architects are covered?

All New Zealand Registered Architects are subject to the Registered Architects Act 2005, which includes disciplinary procedures. In New Zealand, no one can offer architectural services and call themselves an Architect unless they are registered.¹

It is very easy to find out whether a person is a Registered Architect. Go to the NZRAB website (www.nzrab.org.nz) and enter his or her name into the search facility on the home page. That quickly tells you if the person is a Registered Architect. It also shows if the Architect has been disciplined by the Board in the last three years.

The NZRAB often receives complaints about the work of designers who are NOT Registered Architects. The Board can not help with these complaints.

When should you complain?

The primary purpose of the NZRAB's disciplinary procedures is to protect the public from incompetent Architects. The NZRAB's ultimate sanction is to deregister an Architect.

Financial compensation is not provided for in these disciplinary procedures. Sometimes, suggestions are made as to how the Architect can put things right and there are arbitration and mediation options. However, if financial compensation is your primary interest, a claim in a civil court may be a better course, though the legal costs are much higher, especially if you lose.

Also, the NZRAB receives many complaints that are trivial and they don't proceed. Before complaining, ask whether the issue really warrants the time and effort. For some things, it is better to move on in your life.

What does mounting a complaint cost?

There are no fees or costs that a complainant has to pay. However, the complainant is responsible for any travel costs, documentation and for any legal or technical advice that he or she commissions. There is also the value of the complainant's time to consider.

¹ Architects registered in other countries may offer architectural services in New Zealand and call themselves an architect so long as they make clear that they are registered elsewhere. These persons are NOT subject to the Board's disciplinary procedures.

What can complaints be about?

All complaints must be in terms of section 25 of the Registered Architects Act 2005. The main reasons are that the Registered Architect has practiced in a negligent or incompetent manner, or has breached the Code of Minimum Standards of Ethical Conduct for Registered Architects. The Code is reproduced on the back of this brochure.

Complaints about technical competence or the quality of the work of Registered Architects are rare. Mostly the problems are about inadequate control of the project budget and reflect misunderstandings or poor communications. Typically the client has received a bill far higher than expected, to which the Architect replies that the client kept changing the specifications, which required extensive costly rework or drove up the construction costs.

How does the complaints procedure work?

The following steps apply.

1. People wishing to discuss a concern about a Registered Architect can telephone 04 471 1336, email info@nzrab.org.nz or write to:
New Zealand Registered Architects Board
P O Box 11106,
Wellington.
2. Formal complaints must be in writing, and should include a timeline and relevant documentation.
3. Once a complaint is received, the Registered Architect is immediately notified.
4. Then the complaint is looked at closely to decide whether a formal investigation is required.
5. If warranted, an Investigating Committee carries out an investigation. Further information is sought from the complainant and the Registered Architect, typically with both parties separately meeting the Committee.
6. Depending on the context, the Investigating Committee may suggest options for resolving the problem, such as mediation, arbitration, or another dispute resolution process.
7. If these options are not taken up, the Investigating Committee recommends to the Board whether or not the complaint requires a Disciplinary Committee hearing.
8. If required, a Disciplinary Committee then holds a formal hearing under the framework outlined in the Registered Architects Rules 2006. Typically both parties are present.
The Architect, at least, is likely to have legal counsel.
9. The Disciplinary Committee recommends to the Board that the complaint is either dismissed or upheld.
10. If the complaint is upheld, the Disciplinary Committee recommends a penalty to be imposed on the Registered Architect. The Architect has the right to appeal the decision in the District Court.

Note that this is not a speedy process. If all these ten steps are required, expect it to take at least 12 months.

What are the penalties that the Board can apply?

The Board can:

1. order that the Architect pays a fine of up to \$10,000, although the money does not go to the complainant
2. order that the Architect undertakes training
3. order that for up to three years the Architect practices under supervision or is subject to other specific requirements
4. censure the Architect
5. suspend the Architect's registration for up to 12 months or until he or she meets specific registration requirements, so that for that time he or she cannot practice
6. as a last resort, cancel the Architect's registration and remove his or her name from the Architects' Register, setting a time period during which the person may not apply for registration again. Effectively, this terminates the Architect's career.

Also, the Registered Architects Act 2005 (S21) requires that if an Architect has been disciplined, any penalties imposed must be shown on the Architects Register for three years. You can access the Register at www.nzrab.org.nz

What are mediation and arbitration?

Mediation is a voluntary process by which an independent and impartial mediator facilitates negotiations between the parties to assist them to resolve their dispute. When a dispute is resolved by mediation a written agreement is signed by the parties, which sets out the agreement reached and is binding.

Arbitration involves both parties agreeing that an independent and impartial arbitrator will make a decision that will settle the dispute after both parties have presented their views. The arbitrator's decision is called an "award" and is normally final and enforceable by the courts.

For both mediation and arbitration, the parties have to pay the costs.

Is there anything I should do to ensure that problems with my Architect don't occur in the first place?

Absolutely. Most commonly, problems occur because the parties have not communicated with each other effectively. No matter how small, every job should have a written contract. Never be embarrassed to talk about money. You and your Architect should be absolutely clear about how fees are to be charged and especially how extra fees will be charged if additional work is commissioned. Don't order any re-design without getting in writing what it will cost. This protects you and the Architect.

Also, whatever your budget is for the construction of the building, make absolutely sure that your Architect has that in writing. If you have any doubts, talk to your Architect. And always ask whether any redesign will push up the construction costs.

The New Zealand Institute of Architects has published a comprehensive range of brochures explaining how to get the **best** out of an Architect. They can be viewed at www.architecturenz.net

Code of Minimum Standards of Ethical Conduct for Registered Architects

(Taken from the Registered Architects Rules 2006)

Standards related to the public

46. Not misrepresent himself or herself

A Registered Architect must not represent or promote himself or herself, his or her business, or his or her professional services in a false, fraudulent, misleading, or deceptive manner.

47. Uphold the law

A Registered Architect must abide by the professional codes of ethics and conduct and laws in force in the countries or jurisdictions in which he or she provides professional services.

Standards related to the client

48. Exercise unprejudiced and unbiased judgement

A Registered Architect must exercise unprejudiced and unbiased judgement.

49. Care and diligence

A Registered Architect must perform his or her professional work with due care and diligence.

50. Terms of appointment

A Registered Architect must not undertake professional work unless the Registered Architect and the client have agreed the terms of the appointment, which may include but need not be limited to:

- (a) scope of work
- (b) allocation of responsibilities
- (c) any limitation of responsibilities
- (d) fee, or method of calculating it, and terms of trade
- (e) any provision for termination
- (f) provision for professional indemnity insurance.

51. Remuneration and inducements

A Registered Architect must:

- (a) be remunerated solely by the fees and benefits specified in the appointment or employment agreement; and
- (b) not offer any inducements to procure an appointment.

52. Confidentiality of client's affairs

- (1) A Registered Architect must observe the confidentiality of the client's affairs and must not disclose confidential information without the prior consent of the client.
- (2) Subclause (1) does not apply if the Registered Architect is required by law to disclose that information.

53. Conflict of interest

A Registered Architect must disclose to clients, owners, or contractors significant circumstances known to the Registered Architect that could be construed as creating a conflict of interest. The Registered Architect must ensure that the conflict does not interfere with the Registered Architect's duty to render unprejudiced and unbiased judgment.

Standards related to profession

54. Act with honesty and fairness

A Registered Architect must pursue his or her professional activities with honesty and fairness.

Standards related to other Registered Architects

55. Acknowledge colleagues' contributions

A Registered Architect must:

- (a) build his or her professional reputation on the merits of his or her own performance;
and
- (b) not claim as his or her own intellectual property and ideas of other Registered Architects.

56. Not maliciously or unfairly criticise

A Registered Architect must not maliciously or unfairly criticise or attempt to discredit another Registered Architect's work.

57. Conflicts of professional appointment

A Registered Architect must, on being approached to undertake professional work for which he or she knows, or by reasonable inquiry ascertains, that another Registered Architect has a current appointment with the same client, notify the other registered Architect.

58. Giving an opinion on the work of another Registered Architect

A Registered Architect must, when appointed to give an opinion on the work of another Registered Architect, notify the other Registered Architect unless the appointed Registered Architect is aware of any current or pending litigation concerning the work that is the subject of the opinion.

For further information contact
New Zealand Registered Architects Board
PO Box 11106
Manners Street
Wellington

Office Address
Level 3
The Dominion Building
78 Victoria Street
Wellington

tel: +64 4 471 1336 fax: +64 4 472 5352 email: info@nzrab.org.nz