

**GUIDE TO COMPLETING THE NOTICE OF ADJUDICATION**

Before completing the notice of adjudication on the following pages, please carefully read these guidance notes.

Great care should be taken with the preparation of the notice of adjudication because it is from this document that the adjudicator derives his or her jurisdiction in relation to the nature and scope of the dispute that may be determined. In short, if the notice does not include a matter or matters subsequently raised in an adjudication claim, there is simply no jurisdiction for an adjudicator to determine those matters unless the parties agree.

**THE PARTIES**

In this section, set out the correct details for the claimant and respondent in terms of the construction contract. Be careful to ensure that you name the correct contracting party. For example, if your contract is with a company you need to ensure that the company is named as the other party and not the individual you may have been dealing with, and vice versa as the case may be.

If the contract is with a ‘family trust’, name each of the trustees as the party to the adjudication ie, *A and B as trustees of the X family trust*.

**THE OWNER**

Under section 30 of the Act, if the construction site is owned by an associate of the respondent (as that term is defined in section 7 of the Act), the claimant may, in the notice of adjudication, seek a determination under section 50 of the Act that the owner of the construction site is jointly and severally liable with the respondent to pay the claimant the amount claimed in the adjudication and seek approval for a charging order in respect of the construction site.

If you are seeking a determination of liability against a non-respondent owner and approval for the issue of a charging order in respect of the construction site owned by that person, please also set out the correct details for the owner in this section. This will almost certainly involve undertaking a search of the legal title of the construction site to ascertain who in fact the legal proprietor of the land is, and whether the owner satisfies the criteria for an associate of the respondent.

**DETAILS OF THE CONSTRUCTION CONTRACT**

In this section, you need to set out the details of the construction contract, including the date the construction contract was entered into.

**THE DISPUTE**

This section is critical as an adjudicator’s jurisdiction in relation to any dispute that has been referred to adjudication is limited to determining those matters raised in the notice of adjudication. There is no discretion to consider any claims not set out in this document.

In the first part of this section, you need to specify whether you are bringing your claim on the basis of: (a) default liability; (b) on the merits of the contract; or (c) both default liability and the merits of the contract. For more information in relation to default liability regime, please see the resources on [BDT’s website](http://www.buildingdisputestribunal.co.nz/ADJUDICATION/The+Payment+Regime.html).

You then need to set out a brief description of the dispute ie, the nature and details of the matters in dispute, and where and when the dispute arose.

**THE RELIEF OR REMEDY THAT IS SOUGHT BY THE CLAIMANT**

In this section, you need to specify what it is you are seeking in your adjudication claim ie, whether it is an amount of money or a declaration as to the parties’ rights and obligations under the construction contract.

It is not necessary for a claimant to establish the full details of the quantum of a claim before referring that dispute to adjudication. The relief or remedy sought may be couched in the form of a question, ie *what sum is due?* or made in *the amount of [$amount] or such other sum as the adjudicator may determine*.

**Interest**

If you wish to claim interest, you will need to prove your entitlement to interest either under the contract or by way of damages. Evidence of any applicable interest rates said to apply must be provided with your Claim.

**CHARGING ORDER**

If you wish to obtain approval for the issue of a charging order, please ensure you provide a Certificate of Title with your claim.

**IMPORTANT NOTICE**

Take care to ensure the ‘Important Notice’ and ‘Summary of Rights and Obligations’ at the end of the notice of adjudication are attached to your notice of adjudication when you serve it on the respondent, and the owner (if a determination that the owner is jointly and severally liable with the respondent to make a payment under the contract and a charging order in respect of the construction site is sought).

**SERVICE OF THE NOTICE**

The notice of adjudication must be served on every other party to the adjudication including the ‘owner’ where the owner’s liability to make a payment to the claimant and/or approval for a charging order in respect of the construction site owned by that person is sought.

­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

If you have any questions or concerns regarding your legal rights and obligations under your construction contract, we highly recommend that you speak with a legal advisor who is experienced in construction law matters.

We suggest you try NZLS’ Find a Lawyer to locate someone near you who is able to provide the advice you are seeking: <http://www.lawsociety.org.nz/for-the-community/find-lawyer-and-organisation>.

|  |  |  |
| --- | --- | --- |
| M:\NZDRC Temp\ID2\058492E8-0F22-44A4-A9C7-D2111A08E020\0\7000-7999\7675\L\L\BDT Logo (ID 7675).JPG | **IN THE MATTER** | **of an adjudication under the Construction Contracts Act 2002** |
|  |  |
| **BETWEEN** | [**INSERT** **CLAIMANT NAME]**  **Referring Party and Claimant** |
|  |  |
| **AND** | **[INSERT RESPONDENT NAME]**  **Respondent** |
|  |  |
| **AND** | **[INSERT OWNER NAME IF APPLICABLE]**  **Owner** |

**NOTICE OF ADJUDICATION**

**DATE OF THIS NOTICE: [INSERT DAY/MONTH] 2017**

**[CLAIMANT] hereby gives written notice of its intention to refer a dispute with [OTHER PARTY OR PARTIES] to adjudication in accordance with the Construction Contracts Act 2002.**

**THE PARTIES**

Provide the names, address for service (ie the registered office or usual or last known place of residence or business in New Zealand) and contact details of each party to the construction contract.

**The parties to the construction contract are:**

|  |  |
| --- | --- |
| **CLAIMANT:** |  |
| **Address for Service:** |  |
| **Telephone:** |  |
| **Email:** |  |
| **Attention:** |  |
|  |  |
| **RESPONDENT:** |  |
| **Address for Service:** |  |
| **Telephone:** |  |
| **Email:** |  |
| **Attention:** |  |

**THE OWNER (if applicable)**

Provide the name and address of the Owner of the construction site if, under section 30 of the Act, a determination that the Owner is jointly and severally liable with the respondent to pay the claimed amount and approval for the issue of a charging order in respect of the construction site is sought under section 50 of the Act.

**The owner of the construction site is:**

|  |  |
| --- | --- |
| **OWNER:** |  |
| **Address for service:** |  |
| **Telephone:** |  |
| **Email:** |  |
| **Attention:** |  |

**DETAILS OF THE CONSTRUCTION CONTRACT**

Provide details of the construction contract to which the dispute relates.

|  |  |
| --- | --- |
| **Contract:** |  |
| **Project:** |  |
| **Site Location:** |  |
| **Date contract entered into:** |  |

**THE DISPUTE**

Is your claim brought on the basis of: (please select one option below)

(a) default liability (ie payment as debt due under sections 22 – 24 of the Act);

(b) the merits under the contract; or

(c) both default liability and the merits under the contract.

Provide a brief description of the dispute, the nature and details of the matters in dispute, and where and when the dispute arose.

|  |  |
| --- | --- |
| **The nature and a brief description of the matters in dispute:** |  |
| **Where and when the dispute arose:** |  |

**THE RELIEF OR REMEDY THAT IS SOUGHT BY THE CLAIMANT**

**The claimant seeks the following relief and/or remedy against the respondent:**

Please **DELETE** the appropriate response to each of the following:

1. A determination that the respondent is liable to pay the claimant the sum of **$ [AMOUNT]** (including GST), or such other sum as the adjudicator may determine.

**YES / NO**

1. Interest on the above sum (or such other sum as the adjudicator may determine).

**YES / NO**

1. A determination about the rights and obligations of the parties under the construction contract.

**YES / NO**

1. A determination that the respondent must pay the claimant’s costs and expenses of the adjudication and the adjudicator’s fees and expenses under section 56 of the Act.

**YES / NO**

1. A determination that the respondent must pay the claimant’s costs and expenses of the adjudication and the adjudicator’s fees and expenses under section 57 of the Act.

**YES / NO**

1. Under section 29 of the Act, the claimant seeks approval for the issue of a charging order in respect of the construction site owned by the respondent under section 49 of the Act.

**YES / NO**

|  |  |
| --- | --- |
| The Registered Proprietor(s) of the Site is/are: |  |
| The legal description of the Site is: |  |

1. Under section 30 of the Act, the claimant seeks a determination under section 50 of the Act that the owner who is not a respondent is jointly and severally liable with the respondent to pay the claimed amount, or such other sum as the adjudicator may determine, to the claimant, and/or approval of charging order in respect of the construction site owned by the owner:

**YES / NO**

|  |  |
| --- | --- |
| The Registered Proprietor(s) of the Site is/are: |  |
| The legal description of the Site is: |  |

1. The claimant seeks a determination that the owner, who is not a respondent, is jointly and severally liable with the respondent to pay the claimant’s costs and expenses of the adjudication and the adjudicator’s fees and expenses under sections 56 and 57 of the Act.

**YES / NO**

**Dated at [PLACE] this day of 2017**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**[NAME]**

**IMPORTANT NOTICE**

This is a notice of adjudication under the Construction Contracts Act 2002 (the **Act**).

The person who sent the notice (the **claimant**) has a dispute with you and is giving you notice that they are going to refer the dispute for adjudication.

**What should I do with this notice of adjudication?**

You should read the notice thoroughly. This notice provides a brief explanation of the adjudication process and your rights and obligations in the adjudication.

This notice summarises the Act, but is not a substitute for the Act.

**Important: If there is anything in this notice that you do not understand or if you want further advice about what to do, you should consult a lawyer immediately.**

**What sort of process is an adjudication?**

An adjudication is intended to produce a quick decision (called a determination) on the dispute. It is different from going to court, mediation, or arbitration and it is intended to be quicker and less formal than most other dispute resolution processes.

However, an adjudicator’s determination is binding and can be enforced in court by entry as a judgment.

**Can we choose other methods of resolving our dispute?**

Yes, you can still take your dispute to court, arbitration, mediation, or any other dispute resolution process (as well as to adjudication).

If a court makes a decision on the dispute, the court’s judgment will stop the adjudication (if it is still underway) or override the adjudicator’s determination.

Until a court gives a judgment, court proceedings will not prevent an adjudicator from making a determination or prevent the claimant from enforcing an adjudicator’s determination against you.

**What kinds of things can an adjudication resolve?**

The adjudication process may be used for any dispute arising under a construction contract.

However, an adjudicator’s role is limited to the following (unless you and the other parties to the dispute agree in writing otherwise):

* if the claimant is claiming money, determining whether you or any of the other parties to the adjudication are liable to make a payment under the contract; and
* determining any questions in dispute about a party’s rights and obligations under the contract; and
* determining any other matter that is necessary to determine who is liable to pay or the dispute about rights or obligations.

**Note**: If your dispute does not arise under a construction contract, an adjudicator cannot determine it. If you think that the dispute does not arise under a construction contract, you should immediately tell the other party or parties and the adjudicator (if one has been nominated), and consult a lawyer.

**How long will an adjudication take?**

|  |  |  |  |
| --- | --- | --- | --- |
| **The key steps to an adjudication and the indicative time limits are as follows:** | | | |
| **•** | choosing an adjudicator |  | 2 to 5 working days after a notice of adjudication has been served\* |
| **•** | claimant serves adjudication claim on you |  | within 5 working days of receipt of the adjudicator’s notice of acceptance |
| **•** | you serve a written response |  | within 5 working days of receiving the adjudication claim or the adjudicator’s notice of acceptance (whichever is the later), but this time limit may be extended |
| **•** | adjudicator’s determination |  | within 20 working days after the end of the period during which you can serve a written response, but this time limit may be extended.\*\*† |
| **\*An adjudication will take less time if you and the claimant can agree earlier on who should be an adjudicator or on who can select an adjudicator. (However, note that any agreement that was made before the dispute arose about the choice of an adjudicator will not be binding on you or any other party to the adjudication.)** | | | |
| **\*\*The adjudicator can extend the time limit by up to 10 working days.** | | | |
| **†The parties can agree to extend the time limit for any period of time.** | | | |

For the purposes of the Act, **working day** is any day other than a Saturday, a Sunday, a public holiday, or any day from 24 December to 5 January.

**When will I have to pay any money?**

If the adjudicator determines that you must pay an amount to the claimant, you must pay that amount within 2 working days of being given a copy of the determination, or by a later date specified by the adjudicator.

**SUMMARY OF RIGHTS AND OBLIGATIONS**

**It is important that you—**

* **read the following statement of your rights and obligations; and**
* **act promptly (and within the stated times) to exercise your rights or perform your obligations.**

**Do I get a say in the choice of adjudicator?**

The claimant is entitled to request an authorised nominating authority chosen by the claimant to select a person to act as an adjudicator.

However:

* The claimant may contact you to discuss the choice of adjudicator for the dispute. You and the claimant can agree on an adjudicator. If the person you and the claimant have chosen indicates that he or she is unwilling or unable to act, you and the claimant can agree on another adjudicator.
* If you and the claimant cannot agree on an adjudicator, you and the claimant can still agree on a nominating body to appoint an adjudicator.
* If you and the claimant do not agree on a nominating body, then the claimant can ask an authorised nominating authority to nominate an adjudicator.

**Note**: A party to the construction contract cannot be the adjudicator.

If a proposed adjudicator has a conflict of interest (whether financial or not), that person must advise you and must not act as the adjudicator unless all of the parties to the adjudication agree.

A person who agrees to act as an adjudicator must serve a notice of acceptance on all parties. The notice of acceptance must confirm that the adjudicator has no conflict of interest that he or she has not disclosed (if not, the notice is ineffective).

An agreement that was made before the dispute arose about the choice of an adjudicator, nominating body, or authorised nominating authority is not binding on you or any other party to the adjudication.

**What happens once an adjudicator is appointed?**

The claimant must serve an adjudication claim on you no later than 5 working days after receiving the adjudicator’s notice of acceptance. The claim must set out the nature or grounds of the dispute and, to the extent that it is still relevant, be accompanied by a copy of the notice of adjudication.

**What should I do once I receive an adjudication claim?**

If you want to dispute the adjudication claim, it is essential that you respond promptly, setting out your side of the case.

You can serve a written response on the adjudicator. Your response can be accompanied by any other documents that you consider useful.

You can serve your response by delivering or posting it to the adjudicator at his or her last known place of residence or business in New Zealand or by fax. You may also serve your response by email if the adjudicator has agreed to receive the response electronically.

You have 5 working days in which to do this after receiving the adjudication claim or the adjudicator’s notice of acceptance (whichever is later). You may also have any further time that you and the other parties to the adjudication agree to or that the adjudicator allows. (**The adjudicator can only grant an extension of time if you make the request within the 5-working-day period**.)

If you do not serve a written response within that time, the adjudicator may draw inferences from that failure and may decide the dispute on the basis of the information that is available to him or her without the benefit of your response.

You must also serve a copy of the response and any accompanying documents on the claimant and any other party to the adjudication either before or immediately after they are served on the adjudicator.

You can serve a copy of your response by delivering or posting it to the claimant or other party to the adjudication at their last known place of residence or business in New Zealand or by fax. You may also serve your response by email if the recipient (i.e. the claimant or other party) has agreed to receive the response electronically.

**Can I be represented?**

Yes, all parties can be represented by legal (or other) representatives. However, the adjudicator may limit the number of representatives at any meeting so that the meeting can be conducted efficiently.

**Can more than 1 dispute be dealt with at the same time?**

If 2 or more related adjudications are pending and all of the parties consent, it is possible for the adjudicator to determine all of the adjudication proceedings at the same time.

**What are the rules about adjudication proceedings?**

Adjudicators are required to act independently, impartially, and in a timely manner. They must avoid incurring unnecessary expense and must comply with the principles of natural justice.

If an adjudicator becomes aware that he or she has a conflict of interest, the adjudicator must advise the parties to the adjudication and resign (unless all of the parties agree to the adjudicator acting anyway).

As long as an adjudicator complies with these requirements, he or she may conduct the adjudication in any manner he or she thinks fit.

For example, an adjudicator may—

* request additional (written) submissions from the parties to the adjudication;
* ask the parties to provide copies of any documents that the adjudicator might reasonably require;
* set deadlines for further submissions and comments by the parties;
* appoint expert advisers to report on specific issues (as long as the parties are notified before the appointments are made);
* call a meeting of the parties;
* carry out an inspection of any construction work, or any other thing to which the dispute relates;
* issue reasonable directions relating to the conduct of the adjudication; and
* request that the parties do any other thing during the course of an adjudication that the adjudicator considers reasonably necessary to determine the adjudication.

**Are adjudicators and expert advisers otherwise responsible to me?**

Neither the adjudicator nor any expert adviser that the adjudicator appoints is under any liability to you for anything that they do or fail to do in their capacity as adjudicator or expert adviser (unless they act in bad faith).

**Are adjudications confidential?**

All information that is disclosed during an adjudication, for the purposes of the adjudication, is confidential (to the extent that it is not already public). Any statement, admission, or document made or created for the purposes of an adjudication is also confidential.

Neither the adjudicator nor any party to the dispute may disclose that information except—

* with the consent of the relevant party; or
* to the extent that disclosure is necessary to the adjudication or for the enforcement of the adjudicator’s determination; or
* in statistical or summary form in a way in which no particular person can be reasonably identified; or
* where the information is to be used for statistical or research purposes (and will not be published in a way in which any particular person can reasonably be identified).

**How will the adjudicator make a decision?**

The adjudicator’s determination must—

* be in writing; and
* be in the form prescribed in the Construction Contracts Regulations 2003; and
* contain the reasons for the decision (unless you and the other parties to the adjudication agree that reasons do not have to be given).

The adjudicator must give you a copy of the determination as soon as practicable after making it.

If the adjudicator decides that any party is liable to pay money, the adjudicator must also decide the amount payable, when it is payable, and whether any conditions must be met before it is payable.

**Who has to pay the costs of adjudication proceedings?**

In most cases, the parties to the adjudication must meet their own costs and expenses.

However, an adjudicator may decide that costs and expenses must be met by one of the parties to the adjudication if that party has caused those costs and expenses to be incurred unnecessarily.

**Note**: An agreement made by the parties before a dispute arose about how the costs and expenses in adjudication proceedings will be apportioned is not binding.

**Who has to pay the adjudicator’s fees and expenses?**

The adjudicator’s fees and expenses must usually be met equally by the parties to the adjudication.

However, an adjudicator may decide that—

* one party must bear a greater share of the adjudicator’s fees and expenses if that party behaved in a contemptuous or improper manner during the adjudication; or
* the claimant must bear a greater share of the adjudicator’s fees and expenses because the claim was (substantially) without merit; or
* the respondent must bear a greater share of the adjudicator’s fees and expenses because the respondent’s written response was (substantially) without merit.

The adjudicator’s fees and expenses are payable only if the adjudicator determines the dispute within the required time.

If an adjudication claim is withdrawn or terminated, or the dispute is resolved without adjudication, an adjudicator is still entitled to be paid fees and expenses incurred to date.

**Note**: An adjudicator may require you to pay his or her fees before communicating his or her decision.