

What to do when you are in dispute a practical guide



BUILDING YOUR KNOWLEDGE

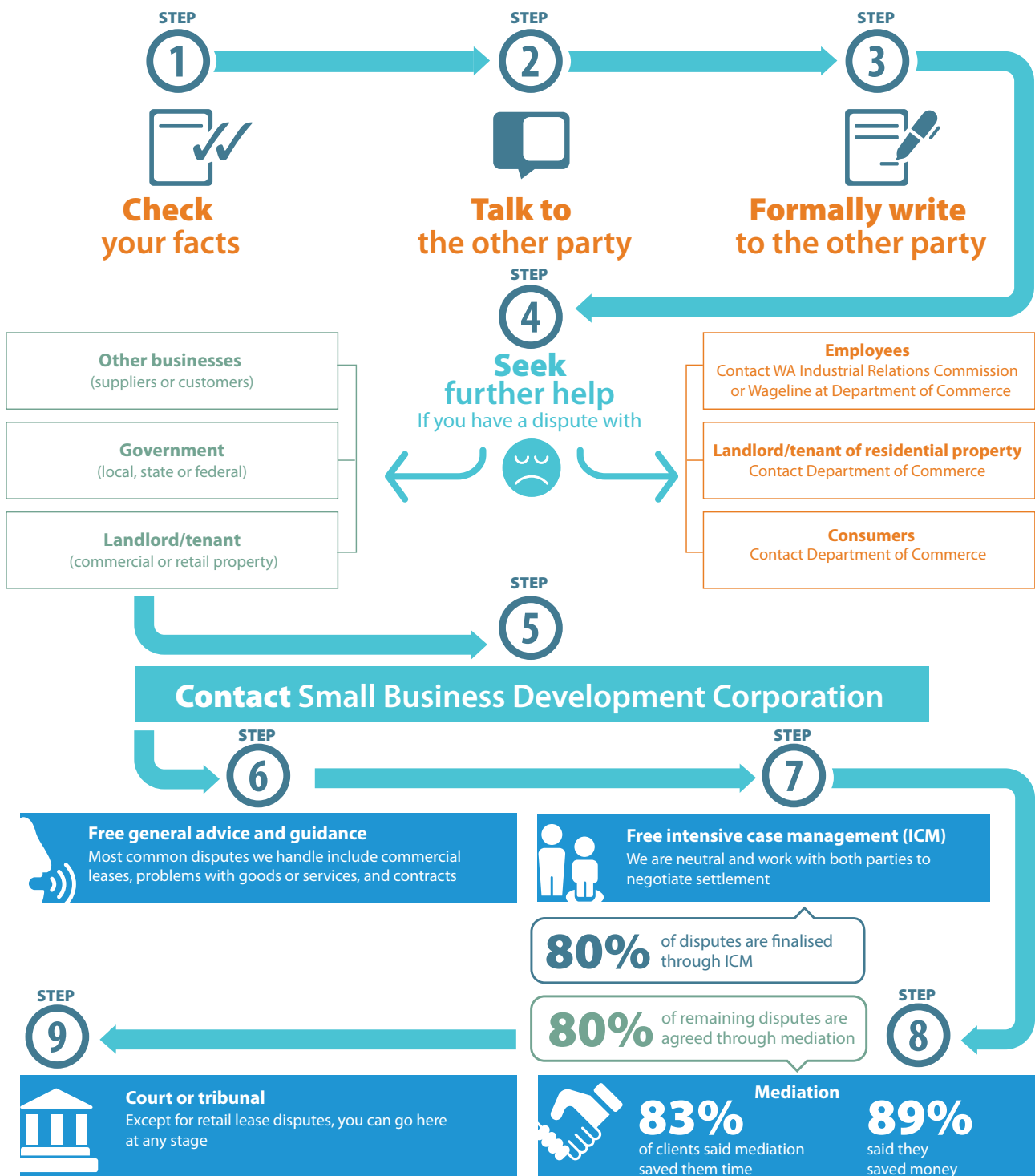


Small Business
Development Corporation

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The small business specialists

What to do when you are in dispute

An essential part of being a small business owner is understanding how to best deal with problems. Many issues can be handled using common sense, however small problems can sometimes escalate into disputes. Often the most costly part of resolving a dispute is the time spent dealing with it, instead of running your business. The steps below explain what to do if you are in dispute.



Check your facts

- Consider exactly how the dispute arose.
- List the events leading to the dispute and highlight the key ones.
- If you have a written contract read it carefully to clearly understand the rights and responsibilities of each party. The contract may include a clause relating to a particular dispute resolution process that needs to be followed. Verbal agreements with supporting paperwork, such as emails, specifications and quotes with details of materials and timeframes, can also show evidence of a contract.

Talk to the other party

Many disputes arise due to misunderstandings; a conversation with the other party may clarify the problem and lead to a resolution. While a minor issue could be handled with a phone conversation, more complex matters are often better dealt with at a face-to-face meeting.

Points to remember when dealing with the other party:

- Make sure the person you are communicating with has the authority to settle the dispute.
 - Always remain calm, polite and professional when speaking and in your written communications. Avoid using abusive, hostile or emotional language, or laying blame.
 - Plan what you are going to say. Set out your concerns as clearly as possible making it evident that you are looking to resolve the situation quickly and in a professional manner.
- Make a list of possible solutions to the dispute for discussion with the other party – be realistic and prepared to negotiate.
 - Try to understand the situation from the point of view of the other party.
 - Consider how achieving a particular solution (or not achieving it) will impact on your business – particularly in terms of time, money and future working relationships.
 - After discussions with the other party make clear notes and record any outcomes that were agreed.
 - Listen carefully to what the other party has to say – you may find the distance between your position and theirs is not as wide as you initially thought.

Formally write to the other party

If talking to the other party doesn't work, the next stage is to communicate your concerns and the outcome you are seeking in a polite, professional letter. A letter serves two purposes; it provides the other party with an opportunity to resolve the dispute before further action is taken, and it shows that you have attempted to resolve the dispute, should you need to use other means of resolution.

When sending the letter attach copies of any relevant paperwork, such as a copy of your contract, emails, a list of specifications, quotes, invoices or other documents that outline your areas of concern. Make sure you keep a copy of all correspondence.

If you contact the Small Business Development Corporation (SBDC) for assistance, one of the first things we'll ask you to do is to write a formal letter to the other party.



We understand the value of your time and the importance of your business relationships. The faster disputes are resolved, the sooner you can return to running your business.

Seek further help

If the dispute still remains unresolved there are third parties who can help. Details of who to contact are included in the graphic on the previous page, however if you are still unsure we can point you in the right direction.

Although the option of taking your dispute to court is always available, it should generally be viewed as a last resort – there are three key steps you can take first.

1. Seek free guidance and advice from the SBDC by contacting us in person by telephone or email. Most disputes are finalised at this stage, those that are not may be referred to intensive case management (ICM).
2. You can access free ICM through our alternative dispute resolution (ADR) service.

An experienced ADR case manager will work with you and the other party to outline your rights and obligations and identify options for resolving the dispute. Case managers cannot advocate on your behalf or provide you with legal advice.

Around 80 per cent of disputes handled with ICM are finalised at this stage. Those that are not (or those for which ICM is not appropriate) may be referred to mediation.

3. Mediation is voluntary and offers a more structured negotiation process. Parties are assisted by an independent mediator to reach a settlement of the issues in dispute. Mediation is only available if all parties agree to participate, with each party contributing a subsidised fee of \$125 per session (most disputes are successfully managed within a single session). Sessions are arranged according to the availability of the parties and the mediator, with urgent matters scheduled as quickly as possible.

The mediator cannot provide legal advice, nor do they have the power to direct a party to take a particular course of action.

“I had been battling with a business for eight months trying to get the refund they promised after we returned a faulty winch worth more than \$2500. This was actually the second one of the same make returned – the first one lasted seven months and the second barely 12 months, hence the reason for the refund.

Once the winch was returned all attempts to contact the manager (for our refund) via email and phone calls were ignored. I then sent a letter of demand which was also ignored and finally contacted the manufacturer of the winch, who in turn put me onto the supplier in the Eastern States. Even their attempts to contact the manager were ignored.

I had resigned myself to having to proceed to court. I rang the SBDC for advice on the procedure and was directed to their alternative dispute resolution service. I emailed all the paperwork and details of my attempts to contact the manager at the winch supplier. An SBDC adviser rang me the next day to say he had read through the information and to confirm contact details for the manager. By the third day the refund was in our bank account.

I can't thank the SBDC team enough for the fantastic service as they certainly took away the prospects of further stress and costs to take the matter to court – particularly as we are based in the country.”

SBDC client



A note on our terminology:

Cases are referred to as 'finalised' when they have been closed. Cases may be finalised for a number of reasons including the dispute being resolved, one or more party no longer wanting to proceed, or the matter being taken to court.

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