

RICS Dispute Resolution Service Expert Determination Agreement

Including Guidance Notes

RICS Dispute Resolution Service Expert Determination Agreement

*Text in italics indicates where information has to be added.
Text in square brackets indicates where a choice has to be made.
Please refer to the guidance notes for commentary on and help with the
completion of this Agreement.*

Date

Parties

.....("Party A")

.....("Party B")

.....("Party C")

(jointly "the Parties")

Add full names and addresses

.....("the Expert")

.....("the Assistant")

Dispute

("the Dispute")

*Here set out details of the contract(s) or other legal relationship(s) and brief
details of the dispute(s) to be resolved by expert determination.*

.....
.....
.....
.....

Appointment of Expert

1. RICS Dispute Resolution Service has appointed the Expert to resolve the Dispute. The Parties agree that the Expert will resolve the Dispute by Expert Determination. The Expert will act as an expert and not as an arbitrator.

Purpose of Expert Determination

2. Unless the Parties subsequently agree otherwise, this Expert Determination leads to a decision ("the Decision") being issued by the Expert. The Decision will be final and binding on the Parties.

Confidentiality

3. The Expert Determination process is private and confidential. The Parties, the Expert and the RICS Dispute Resolution Service will keep it confidential except to the extent that it is necessary in order to implement the Decision or is required by law.

Independence

4. The Expert and the RICS Dispute Resolution Service are independent of the Parties, neutral and impartial, and do not act as advisers to the Parties.

Conduct of Expert Determination

5. The Expert will conduct the Expert Determination in accordance with procedural directions which the Expert will seek to agree with the Parties. If they cannot be agreed, the Expert's directions will prevail.

Challenge to the procedure

6. The Parties agree that they are not permitted to challenge the Expert's rulings on issues arising during the procedure including those on the Expert's own jurisdiction.

Mediation option

7. At any time before the issue of the Expert's decision the Parties may agree to refer the Dispute to mediation with the RICS Dispute Resolution Service, in accordance with a procedure agreed between the parties. In that case each of the Parties notifies the Expert and the RICS Dispute Resolution Service, and the Expert Determination is suspended. If the dispute is settled by mediation, the Expert Determination comes to an end and the Parties settle

the fees and expenses of the Expert and of the RICS Dispute Resolution Service. If the dispute is not settled by mediation, the Expert Determination resumes, and if they have been acting as mediators the Expert and the Assistant may take up their previous roles.

Reasons in the Decision

8. The Decision of the Expert [shall/shall not] include reasons.

Interest

9. The Expert is empowered to award interest as part of the Decision.

Fees and expenses

10. Unless the Parties agree otherwise, the fees and expenses of the Expert Determination will be borne by the Parties in equal shares. The fees and expenses will be estimated by the RICS Dispute Resolution Service and paid to the RICS Dispute Resolution Service as a condition precedent for the Expert Determination to start. The Expert will be paid fees and expenses. Interim bills may be raised by the RICS Dispute Resolution Service to cover the Expert's fees at the Expert's option. A final account of the fees and expenses will be sent to the Parties by the RICS Dispute Resolution Service when the Decision is ready for issue to the Parties and the Decision will be released on payment by the Parties of any further amounts due. The RICS Dispute Resolution Service will reimburse the Expert. If the Parties agree not to proceed with Expert Determination, the RICS Dispute Resolution Service will refund a proportionate amount of the fees and expenses advanced, depending on the amount of work done by the Expert and the RICS Dispute Resolution Service.

Implementation of the Decision

11. The Parties agree to implement the Decision within [e.g. - seven] days of its being published to them.

Challenge to the Decision

12. The Parties agree they [are/are not] permitted to challenge the Decision in any legal proceedings or otherwise.

No liability

13. The Parties expressly acknowledge that neither the Expert nor the RICS Dispute Resolution Service shall be liable to the Parties for any act or omission whatsoever in connection with this Expert Determination and the

Parties specifically indemnify the RICS Dispute Resolution Service and the Expert against all claims whatsoever in connection with this Expert Determination.

Role of the RICS Dispute Resolution Service

14. The RICS Dispute Resolution Service appoints the Expert and is responsible for the Expert Determination procedure. The RICS Dispute Resolution Service may be consulted by any of the Parties to this Agreement in case of difficulty. Should the Expert be unable to complete the task, the RICS Dispute Resolution Service will appoint a substitute Expert within a reasonable time.

After the Decision

15. None of the Parties will call the Expert or the RICS Dispute Resolution Service (or any employee, consultant, officer or representative of the RICS Dispute Resolution Service) as a witness, consultant, arbitrator or expert in any litigation or arbitration in relation to the Dispute and the Expert and the RICS Dispute Resolution Service will not act voluntarily in any such capacity without the written agreement of all the Parties.

Law and jurisdiction

16. This Agreement shall be governed by the law of [Queensland / New South Wales / Victoria / South Australia / Tasmania / Northern Territory / Australian Capital Territory] and under the jurisdiction of its courts. All the Parties to this Agreement agree to refer any dispute arising in connection with it to mediation first.

Signed

On behalf of Party A

On behalf of Party B

On behalf of Party C

Signed by the Expert

Signed on behalf of the RICS Dispute Resolution Service

.....

Schedule

Expert's fees at \$..... per hour (excluding GST)

Payment to be made on account by each Party by [date]

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Guidance Notes

Essential Information

The RICS Dispute Resolution Service Expert Determination Agreement includes the RICS Dispute Resolution Service as well as the Parties to the Dispute and, of course, the Expert. The role of the RICS Dispute Resolution Service is defined in paragraph 14 of the Agreement.

The section “Dispute”, when completed, sets out how the dispute arose with a brief description of the issue(s).

Paragraphs 1 and 2 establish the appointment of the Expert, that the process is Expert Determination, and that the result is a Decision, which will be final and binding on the Parties. Paragraphs 3 and 4 establish the confidentiality of the process and the independence of the Expert and the RICS Dispute Resolution Service.

The Procedure

Once appointed, the Expert will wish to establish the procedure. Paragraph 5 states that the Expert will seek to agree the procedure with the Parties, and that if agreement cannot be reached, the Expert’s directions will prevail.

Procedural directions may deal with any or all of the following:

- a timetable for the submission of case summaries and supporting documents to the Expert with copies to each other;
- whether submissions are to be simultaneous or sequential;
- whether there should be one round or two rounds of submissions;
- whether the Expert has the power to call for documents; or
- whether the Expert has the power to award costs.

Challenge to the procedure

Paragraph 6 gives the Parties the choice whether they have the right to challenge the Expert Determination procedure before the Decision is issued. The RICS Dispute Resolution Service strongly encourages Parties to give up this right. This enhances the use of Expert Determination, is in the spirit of ADR and allows the Expert to do the work for the Parties as agreed without the time and expense of court applications.

Mediation option

Paragraph 7 provides that the Parties may agree to refer the dispute to mediation at any time before the Decision is made, provided the fees and expenses to date are paid, and that the RICS Dispute Resolution Service will organise the mediation.

Reasons in the Decision

Paragraph 8 gives the Parties a choice as to whether to include reasons in the Decision. The inclusion of reasons increases the cost, but may make the resolution of the Dispute by this means more attractive and therefore worth the extra cost.

Interest

The Expert does not have the power to award interest unless the Parties agree, so paragraph 9 gives the Expert that power.

Fees and expenses

Paragraph 10 deals with fees and expenses, some of which are payable in advance.

Consequences of the Decision

Paragraphs 11 and 12 deal with the consequences of the Decision. The Parties agree to implement it within an agreed period, and have a choice whether to challenge the Decision. A Decision can be challenged only on very limited grounds arising from its fundamental validity, and not from differences on issues of fact, law or professional opinion. The effect of excluding the right to challenge a Decision is uncertain.

No Liability

Paragraph 13 gives immunity from liability to the Expert and the RICS Dispute Resolution Service.

Role of the RICS Dispute Resolution Service

Paragraph 14 explains the role of the RICS Dispute Resolution Service, in making the appointment and other arrangements, and collecting the fees and expenses.

After the Decision

Paragraph 15 ensures that those involved in the Expert Determination do not get involved in future proceedings without the consent of all the Parties.

Law and Jurisdiction

Paragraph 16 establishes the governing law of the Agreement, with disputes referred first to mediation and then to the court. It may be necessary in international cases to provide that the language of the Expert Determination is to be English.