

# 5 common leaky home myths

## BUSTED

Everyone's talking about leaky buildings, but did you know many popular beliefs about the claims process are simply not true? What's more, this legal area is so new, it's still being tested in the courts on a case-by-case basis.

At Martelli McKegg, clients often come to us with similar ideas about who is responsible for their leaky building and whether it is 'worth it' to take legal action.

We thought it would be useful to highlight these common myths and our responses. They're for your consideration only - please contact a legal professional, such as Lisa Gerrard, Property and Construction Partner at Martelli McKegg, for advice specific to your situation.

**Myth 1: My house was built more than 10 years ago, so I can't make a claim.**

## BUSTED

Whilst your home may have been built more than 10 years ago, the final Council inspection may have occurred and a Code Compliance Certificate may have been issued far more recently.

If this is the case, you may still have a claim against the Council in the Courts.

In addition to the Council there may be other parties to consider such as pre-purchase inspectors, real estate agents or vendors if they have unfairly represented the condition of the house when you bought it.

If your vendor had building work done on the house they may also be liable under the vendors' warranties in your sale and purchase agreement.

**Myth 2: The developer, builder and other people who built my house have gone bust, so there is no one left for me to sue.**

## BUSTED

This does not necessarily mean that you will be unable to recover anything.

The director of the building or developing company may have been personally involved in the construction to such an extent that he/she may be liable for the negligent work.

In many cases your local Council will have been involved in issuing the building consent, conducting inspections and in issuing a code compliance certificate, so may also be liable.

As noted above, there may also be other parties to consider such as pre-purchase inspectors, real estate agents and vendors.

**Myth 3: It's too expensive to make a claim – the lawyers will take any money I get to pay their fees.**

## BUSTED

One of the great flaws in the current system is that it is almost impossible to recover the cost of your repairs without incurring legal and experts' fees.

However, some of the experts' fees ought to be recoverable as part of your claim.

If you bring a claim in the High Court a proportion of your legal fees will also be recoverable if you succeed.

If you choose your lawyer carefully they ought to be able to run your claim so that your costs do not unduly eat into your compensation.

Martelli McKegg offers clients fixed fees, capped fees and other flexible payment arrangements to ensure that as many owners of leaky homes as possible can access the justice system.



## FREE leaky building seminars

Martelli McKegg is running a series of leaky building seminars commencing Wednesday, 30 May 2012. Please contact Moraig Gordon on (09) 379 7333 or by email at [moraigg@martellimckegg.co.nz](mailto:moraigg@martellimckegg.co.nz) for more information and to register your interest.

**Myth 4: The Council only pays 20% of a claim, so I may as well take the Financial Assistance Package and get 25%.**

## BUSTED

It is a common misconception that the Council will only ever pay 20% of the amount claimed. In fact, the Council is often found jointly and severally liable for 100% of the proven claim amount.

Where there are other liable parties, such as a builder or developer, the Council may only be ordered to contribute 20% and the builder or other parties make up the remaining 80%. However, if those other parties do not pay, the Council often has to pay the full 100% under the principle of joint and several liability.

**Myth 5: I'll get more of my repair costs back by taking the Financial Assistance Package.**

## BUSTED

There remains much uncertainty around the Financial Assistance Package (FAP). Depending on the circumstances of your case, you may be better off suing the Council rather than opting into the FAP.

By opting into the FAP, you will have to come up with the other 50 - 75% of the repair costs either by suing others or by obtaining funding.

However, by suing the Council you have the opportunity of recovering the full, proven amount of the repairs and have a safeguard against the possible insolvency of other defendants, as the Council may have to make up the shortfall left by an insolvent party under the principle of joint and several liability.

In addition, in the Tribunal or the Court you can claim more of the additional losses that flow from having to repair your home, such as removal costs, kennel or cattery costs for pets and damages for the stress, anxiety and inconvenience of owning and repairing a leaky home.

If you'd like to know more about leaky buildings, or whether litigation is the right course for you, please contact Lisa Gerrard, Property and Construction Partner at Martelli McKegg on DDI (09) 300 7633 or by email [lg@martellimckegg.co.nz](mailto:lg@martellimckegg.co.nz)

### About Martelli McKegg

Martelli McKegg acts for numerous owners of leaky buildings throughout New Zealand and has a reputation for providing cost-effective, client focussed legal solutions. Our team of leaky building specialists has a proven record of success in the Weathertight Homes Tribunal, High Court and Court of Appeal.

To get the latest news on leaky buildings delivered straight to your inbox, sign up to our blog at [www.martellimckegg.co.nz](http://www.martellimckegg.co.nz)

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