5 common leaky home myths BUSTE

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.

have been involved in issuing the building

consent, conducting inspections and in

issuing a code compliance certificate, so

As noted above, there may also be

other parties to consider such as

pre-purchase inspectors, real estate

One of the great flaws in the current

system is that it is almost impossible to

recover the cost of your repairs without

However, some of the experts' fees

ought to be recoverable as part of

If you bring a claim in the High Court

a proportion of your legal fees will also

If you choose your lawyer carefully

they ought to be able to run your claim

so that your costs do not unduly eat into

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

BUSTED

may also be liable.

agents and vendors.

Myth 3: It's too expensive to

take any money I get to

pay their fees.

vour claim.

your compensation.

access the justice system.

make a claim - the lawyers will

incurring legal and experts' fees.

be recoverable if you succeed.

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

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.

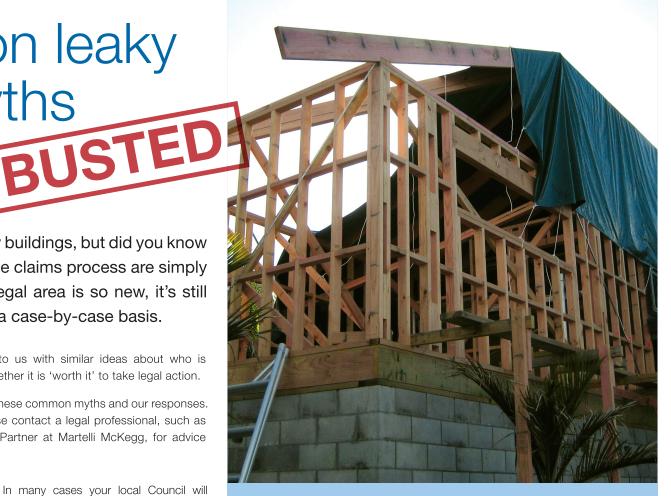
This does not necessarily mean that you will be unable to recover anything.

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.

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



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 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 BUSTED Assistance Package.

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

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