

infosheet *on the Unit Titles Act*

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BARRISTERS & SOLICITORS

Leaky Buildings - Options

You own a building and find it is “leaky”. What are your options? That may depend on whether you have a freehold title, or are part of a Unit Title Body Corporate. In the later case, you need to decide corporately what to do. Let’s assume it is just you.

The first thing is to investigate the problem carefully and completely. The cheapest first step is to file a claim with the Weather Tight Homes Tribunal (“WHT”), who will send someone out to prepare a preliminary report. That report qualifies you for making a claim, or for seeking the new government assistance package.

When that report is to hand, you can decide what to do next. If you wish to proceed with some form of claim, you are best to have a further report prepared from one of the acknowledged experts in the field. This may involve “destructive testing” – taking bits of the building apart to find what is really beneath the cladding, and what is causing the problems.

If you want the assistance package, you need to find funding for at least half the repair costs. If you do not have a claim against the local Council, the package may only give you a 25% payment, instead of the 50% otherwise available. Finding out who may be liable is one of the reasons you start with the WHT report.

If you wish to bring a full claim in the WHT, or wish to go to another Court (and there are good technical reasons that have to be carefully considered when making that choice) you also have to decide whether to repair first and sue later, or sue first and risk that the damage is worse than thought, and therefore any settlement sum is less than might have been available.

Another option is to throw your hands up in horror and try to sell. However, the market prices in such leaky building risks now, and therefore you are likely to suffer a significant capital loss, meaning you then have to try and sue in the High Court – but having sold access to the building (making any claim very difficult).

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On the other hand, if you “fix” a leaky building, you may still suffer a loss, as the purchaser will still price in a risk factor. There are a number of instances where a fix has failed, so the new owner can start the process again – but now targets the person who was unsuccessful in trying to fix the problem.

Being between the devil and the deep blue sea, the best outcome I have seen was a claim that was made in the WHT for the costs of repair, which were so extensive that once the payments were made for those costs, the clients demolished the building, sold the cleared section, and pocketed the repair payments, ending up reasonably close to the position they would have had if they did not have a leaky building to start with.

Every leaky building is unique, and there are a myriad of actors to be considered in order to get the best outcome from the particular circumstances. To get the best possible advice, contact us.

Disclaimer:

We have taken every care to ensure that the information given is accurate, however it is intended for general guidance only and it should not be relied upon in individual cases. Professional advice should always be sought before any decision or action is taken.

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