PRENDOS

LEAKY HOME GUIDE

PRENDOS New Zealand Limited
Leading consultants to the property and construction industry
Auckland | Christchurch | Tauranga | Wellington | Whangarei

This guide is designed to create a better understanding of the options and processes homeowners are likely to encounter in coming to terms and dealing with a leaky home problem. It is not definitive in its depth of explanation. Instead, it outlines how to carry out a limited form of due diligence on your own home; explains the choices you have in terms of seeking advice and professional assistance and spells out the likely ramifications of those choices.

Many years after Prendos first brought the issue of leaky homes to the attention of government and the public, the crisis shows no signs of abating. Prendos continues to receive a steady flow of calls from concerned homeowners worried that their home might be affected and not knowing what to do next. The type of questions asked indicate confusion and concern over the prospect of owning and dealing with a leaky home.

BACKGROUND TO THE PROBLEM

Traditionally, New Zealand homes have not been built to a 100% weathertight standard. Even so, homes built before the 1990s were usually able to experience a small degree of leakage without suffering a significant loss of durability. In the mid 1990s a number of factors made even the smallest amount of leakage risky in new residential construction. These included the introduction of untreated timber framing and the inappropriate use of new cladding systems on 'Mediterranean' or other complex architectural design styles. Poor workmanship as a result of skill shortages also contributed.

In short, bad designs, inappropriate materials and shoddy construction created a large number of homes that look sound but are at risk of leaking and causing major decay.

THE BUILDING ACT AND WHRS ACT LONG-STOP PROVISIONS

The Building Act establishes an absolute cut off on legal proceedings of 10 years from the date of the act or omission that gives rise to any claim relating to building work. In most cases this will be 10 years from the date of the Code Compliance Certificate, although in some cases the relevant date may be earlier. This 10 year long stop limitation period applies to all proceedings relating to building work or alterations and also applies to claims under the Weathertight Homes Resolution Services Act (WHRS). This means that other than for a few exceptions and for owners of houses built within the last decade, the long-stop has now run its course, leaving many homeowners without any legal redress to the problem.

Once the 10 years are up there is usually nothing that can be done. If you have concerns about your property, and it is close to 10 years old, you have no time to lose – you should seek expert and legal advice and file proceedings in a Court, or apply under the WHRS before the 10 year period expires. If in doubt seek legal advice sooner rather than later.

FRONTING UP TO THE PROBLEM

If you choose to ignore a leakage problem it does not simply go away. Instead:

- The extent of the damage caused by the leakage will continue to grow, sometimes adding considerably to the eventual cost of repair.
- People living in the house risk health-related problems caused by allergenic or toxic reaction to certain mould, bacteria or dust mites.
- The time limit imposed by the long-stop provision on a homeowner's eligibility to place a claim may expire – the house must have been built or altered within the 10-years immediately prior to the date of lodging the claim and the claim needs to be lodged within 6-years of certain knowledge of problems existing.

For these reasons it is better to investigate the nature and extent of the problem and try to fix it as soon as possible.

Q&A

The following Question and Answer section is designed to kick-start this process.

Note: *Self-help is promoted throughout this publication to the extent that it is useful and advisable. Self-help is empowering but in dealing with leaky homes there is a limit to what can be achieved safely on your own. The best thing a homeowner can do is understand the nature of the problem, know what paths are available and the implications of those paths. It is our experience that once people understand the problem and are able to make decisions for themselves they begin to feel less overwhelmed and more in control.*

Q: HOW DO I KNOW IF I HAVE A LEAKY HOME?

A: YOU CAN CARRY OUT A LIMITED FORM OF DUE DILIGENCE BY CHECKING THE FOLLOWING POINTS:

1. Certain cladding types are known to be more at risk. The most risky are those that give the appearance of a plastered exterior e.g.

- Stucco plaster.
- Textured fibre cement.
- Exterior Insulation and Finish Systems (EIFS) claddings*.

** In New Zealand EIFS claddings typically consist of a layer of polystyrene insulation over-coated with two or three layers of polymer-modified plaster. It looks similar in finish to traditional stucco plaster but provides insulation and a finished exterior surface in a single product.*

Risk factors common to the installation of these 'plaster' cladding systems are now well understood and information on them is readily available. See: www.consumerbuild.org.nz/publish/leaky/leaky-look-for.php

2. A number of other factors influence weathertight performance. These include:

- Number of storeys – homes of more than one storey are more at risk than single-storey homes.
- Eaves – homes built with overhanging eaves are less at risk than homes without eaves.
- Complexity – more complex construction creates more risk.
- Location – homes built in sheltered locations are less at risk than those built in exposed locations.
- Date of construction – the year of construction can help identify homes with a higher than normal likelihood of leakage problems.

DATE OF CONSTRUCTION	DEGREE OF RISK
Before 1990	Low/Moderate
1990–1997	High
1998–2004	Very high
After 2004	Low/Moderate

3. Tell-tale signs inside the house can point to a leakage problem but be aware that most leaks are well hidden and difficult to detect. Tell-tale signs include:

- Unexplained dampness around doors and windows.
- Swelling of fibreboard skirting or architraves.
- Damp or rotting carpets, rusty nails to carpet edging.
- A musty smell – though more often than not there is no noticeable smell.
- Unexplained corrosion, staining or mould growth.

Note: *other factors can also cause mould through an excess of internal moisture, e.g. poor ventilation leading to condensation build up on walls and windows.*

4. Check the outside of your house for the following details which can pose potential risk. If you answer "yes" to any of these questions you may have increased weathertightness risk"

Note: *The list below is not exhaustive but can help you identify design features that pose a significant weathertighness risk if not properly installed and finished.*

BUILDING ELEMENT	YES	NO
GROUND CLEARANCE		
Does the cladding finish onto or into the ground or surrounding paving?		
If you have a timber subfloor above a vented space, are there subfloor vents missing on some or all sides?		
If you have a timber subfloor above a vented space, is the ground beneath the floor damp? (Any sub-floor ground not dusty dry is considered damp.)		
CLADDING		
Is there cracking of the cladding?		
Are there penetrations by other building elements? e.g. pergolas, fascias, gutters.		
Are other cladding penetrations poorly flashed or sealed? e.g. around metre boxes, waste pipes, light fixtures etc.		
ROOFING		
Are the roofs too flat with evidence of ponding?		
Are there any parapets?		
Are there any skylights?		
Are there any internal gutters?		
Does the roof butt into the wall cladding, creating roof-to-wall intersection?		

BUILDING ELEMENT	YES	NO
WINDOW AND DOOR JOINERY		
Does the joinery have bends in plan? i.e. faceted glass or, stepped sills or corner windows.		
Are the internal timber reveals showing signs of dampness, staining or damage?		
Do the window heads have slopes or curves?		
FLASHING SYSTEMS		
Do any of the windows and external doors not have a head flashing made of metal or other material?		
Do the joins between the windows and cladding appear seamless with no visual evidence of sealant, flashings, facings or scribers?		
Is the bottom end of any apron flashing to any roof-to-wall intersection straight without any turn-up or stopend?		
DECKS		
Is the deck balcony, if waterproofed and enclosed by a solid balustrade, missing an outlet and an overflow?		
Is the level of this deck less than 50mm below the level of the floor?		
Does the deck support structure penetrate the cladding?		
Are the joists supporting the deck an extension of the house floor joists, without any visible saddle flashings at the cladding penetrations?		

In New Zealand EIFS claddings typically consist of a layer of polystyrene insulation over-coated with two or three layers of polymer-modified plaster. It looks similar in finish to traditional stucco plaster but provides insulation and a finished exterior surface in a single product.

Buyers should also be aware that while councils are obliged to identify properties in Land Information Memorandum (LIM) reports that are or have been subject to WHT claims, properties that have been subject to weathertightness claims through the courts or private actions do not have to be identified.

OWNING A HOME

If you are concerned that the home you own is a leaky home:

- Carry out the checks listed above.
- Or you can contact a registered building surveyor www.buildingsurveyor.co.nz who is also a certified weathertightness surveyor to discuss your concerns and arrange an initial inspection to determine the likely extent of your problem.
- Or you can contact the Ministry of Business, Innovation and Employment (MBIE) to determine claim eligibility. An eligibility assessor's report is free of charge but a full report carries a charge depending on whether it is a stand-alone property, duplex or multi unit complex.

Prendos building surveyors are qualified to discuss your concerns and carry out initial inspections but do not provide pre-purchase surveys.

BUYING A HOME

A pre-purchase survey is limited in what it can detect. The New Zealand Standard for pre-purchase inspection NZS 4306:2006 specifically excludes a more comprehensive weathertightness investigation because of the need for destructive investigation.

Buyers should also be aware that while councils are obliged to identify properties in Land Information Memorandum (LIM) reports that are or have been subject to Weathertight Homes Tribunal (WHT) claims, properties that have been subject to weathertightness claims through the courts or private actions do not have to be identified. Therefore, the fact that a LIM makes no mention of past weathertight issues does not necessarily mean they have not occurred. Also, while property owners are now legally obliged to apply for a building consent to cover any remediation work– and the consent would be noted on the LIM – not all repair work is consented.

HOMEOWNER FAQ

Q: IF I CONTACT A REGISTERED BUILDING SURVEYOR TO DISCUSS MY CONCERNS WHAT WILL THE BUILDING SURVEYOR WANT TO KNOW?

A: INITIALLY THE BUILDING SURVEYOR WILL WANT TO KNOW:

- The age of construction.
- The type of cladding.
- The number of storeys.
- How long you have owned the property.

Q: WHAT SHOULD I ASK THE BUILDING SURVEYOR TO DO?

A: AFTER DISCUSSING YOUR CONCERNS WITH THE BUILDING SURVEYOR IT IS BEST TO REQUEST A BRIEF, VISUAL, NON-DESTRUCTIVE INSPECTION, WITH A WRITTEN REPORT.

Preparing a list beforehand helps and it is advisable to obtain a fee proposal before commissioning any report. Information relevant to the affected property is helpful to the investigation and report. A homeowner can obtain a relevant Property File from the local council. Ring the council and check the uplifting procedures – some councils offer digital retrieval procedures. This contains information relevant to a property, such as.

- Files of building consents or permits and associated drawings and documents.
- Inspection records and other relevant documents.

Property file data will help with dates and timing relevant to the construction of your home, and possibly provide information on issues related to its construction. Look for dates of Building Consents, Inspections, Notices to Fix, Code Compliance Certificates (CCCs) and other material relevant to your situation.

It is a good idea for the homeowner to be on site at the time of the preliminary survey to:

- Ensure the building surveyor has ready access.
- Answer the building surveyor's questions.
- Obtain insight into any potential weathertightness issues identified by the building surveyor.

The purpose of a preliminary investigation is to determine the nature and likely extent of any potential problems and whether further investigation is required. It also allows the surveyor to more accurately determine a fee estimate or quote for further investigation if considered necessary.

If you are present during the inspection do not expect detailed answers to questions. Discussion regarding findings and solutions is best left to a later stage following a more detailed invasive investigation and report.

Q: I NOW HAVE THE BUILDING SURVEYOR'S REPORT – WHAT NEXT?

A: YOU HAVE TWO OPTIONS:

1. If the preliminary report finds no problems you can accept it or seek a second opinion.
2. If the report indicates potential issues:

- Arrange for a more detailed inspection (obtain a fee estimate or quote first).
- Check the type and extent of any further investigation and how it will be carried out.
- Check whether the investigation makes use of an independent agency to identify decay and/or mould and timber treatment – it is important that it does so.

Q: WHAT DOES A MORE INVASIVE INVESTIGATION ACHIEVE?

A: GOOD INFORMATION IS ESSENTIAL TO GOOD DECISION-MAKING. THIS USUALLY MEANS AN INITIAL ASSESSMENT NEEDS TO BE FOLLOWED BY A MORE DETAILED AND INVASIVE INVESTIGATION AND REPORT. THE LEVEL OF DETAIL SOUGHT WILL DEPEND ON WHETHER LEGAL ACTION IS BEING CONTEMPLATED AND IF REPAIR IS TO TAKE PLACE BEFORE OR AFTER LEGAL ACTION IS COMPLETED.

An invasive investigation consists of a visual survey of the building to identify defects and hidden leaks. Moisture readings are then taken of timber framing moisture levels via holes drilled in the cladding in at-risk locations. These holes are re-sealed after the investigation but can later be repaired to a higher level at the homeowner's expense.

Where decay is suspected or the method of construction needs to be investigated a 300mm square piece of cladding is removed and timber samples taken for laboratory analysis. Again, holes are temporarily sealed and can be later repaired to a higher standard at the homeowner's expense.

Other tests such as air sampling of the interior spaces may be recommended to determine mould spore levels which might present a health hazard. Other expert advice may be necessary to assess corrosion or structural concerns.

Following the investigation and report a building surveyor in conjunction with a quantity surveyor can provide the owner with a scope of work for remediation and an estimate of the likely cost of repair.

An invasive investigation consists of a visual survey of a building to identify defects and hidden leaks. Moisture readings are then taken of timber framing moisture levels via holes drilled in the cladding in at-risk locations. These holes are generally re-sealed after the investigation but can later be repaired to a higher level at the homeowner's expense.

Q: WHAT SHOULD I DO IF THE INVASIVE INVESTIGATION REPORT INDICATES PROBLEMS?

A: THE 10-YEAR LONG-STOP PROVISIONS NOW PREVENT MANY HOMEOWNERS – BUT NOT ALL – FROM TAKING LEGAL ACTION TO CLAIM DAMAGES. HOMEOWNERS WITHOUT LEGAL RECOURSE STILL NEED TO DECIDE HOW TO PROCEED; A NUMBER OF OPTIONS ARE AVAILABLE.

Homeowners should to seek legal advice to determine whether or not they are in a position to seek legal redress. If they are, legal counsel is likely to advise you to file a claim either with the Courts or the MBIE.

1. District or High Court

- The MBIE and WHT path is claimed to be quicker and cheaper than District or High Court but this is not always the case. The process allows parties to have legal representation or to be your own advocate but the latter course is not easy: extensive time is needed to understand relevant legal issues and legal principles of law still apply to any outcome. Knowledge of relevant laws is, therefore, advisable, particularly in situations where respondent parties have highly skilled legal representation.
- In seeking legal advice, be careful to ensure that the legal advisor is experienced in this field. Meeting with two or three lawyers is advisable before deciding who you want to represent you.
- Legal counsel will help prepare your case and notify potential parties.
- With both the WHT and Court you can proceed with repair. (However, if using the Financial Assistance Package (FAP) you need to follow the steps as laid out by MBIE to approve a repair – see below for more information on the FAP.)

2. MBIE & the WHT offer three claims processes:

1. Claims for repair below $20,000 are quite rare and follow a streamlined resolution process within the MBIE. The claims process uses negotiation and where that fails, mediation to arrive at a settlement. If mediation fails a decision via adjudication can be sought from the WHT.
2. Claims for repair above $20,000 are handled by the WHT. The claim process uses either MBIE mediation process to arrive at a settlement or, if that fails, a WHT adjudication hearing to arrive at a decision.

3. The FAP: under this package the government and local council – if it carried out the building inspections and issued the Code Compliance Certificate (CCC) – will each contribute 25% of the "agreed repair cost" to help owners fund the repair of their home. The homeowner must agree not to sue the contributing council and the government, although they can still pursue other liable parties such as builders, developers and manufacturers of defective products.

For further information and an overview on claimant eligibility and how these various claims processes work, see the following webpage:
www.dbh.govt.nz/weathertight-services

Q: SHOULD I REPAIR FIRST OR LITIGATE FIRST? A: AS A HOMEOWNER YOU HAVE THREE REALISTIC PATHS OF ACTION.

Path 1. Repair then litigate

If you have the money or can raise the funds needed for the repair and legal processes this option generally gives the best possible outcome.

- The surveyor is required to do just enough investigation to determine the scope of repair.
- Better evidence of the cause of leaks and subsequent damage becomes apparent during the repair process.
- The cost of repair is based on fact rather than opinion.
- Almost all issues relating to the claim become evident during repair. (Note there is a point of difference in what can be claimed under WHT and Court claims. Under WHT you cannot recover any of your legal or expert costs other than those for the investigative report and the design and administration of repairs. The Courts allow claims for legal and expert costs and damage other than that caused by weathertightness defects, such as structural defects.)
- This approach is very compelling for defendant parties to settle.

Note: *1. At the same time you begin the repair process you should instruct your lawyer to inform those whom you intend suing to give them the chance to respond.*
2. It is likely that any ensuing legal process, whether through the WHT or High Court, will be interrupted by a mediation process which is designed to achieve an outcome acceptable to all parties but is unlikely to return the full claim.

Path 2. Tender the repair work then litigate

If you do not have sufficient money to fully fund both the repairs and the legal process you can choose to obtain a full report, commission design documents, tender or negotiate the remediation work (using a detailed estimate prepared by a quantity surveyor for comparison) and then seek legal redress. By doing this you establish a competitive process which is valid. The issues to be aware of are:

- The investigative report needs to be thorough.
- Hidden issues remain hidden.
- Any legal action undertaken is effectively based on an estimate of the extent of remediation which may not be an accurate reflection of the full extent or cost of the work.

Note: *1. Tenderers should be given a letter of intent to proceed when satisfactory settlement is reached.*
2. WHT decisions are often of lower quality, tend to award less financial compensation and are more subject to appeal than those of the Courts, especially the High Court.

Path 3. Quantify the repair work then litigate

The third and potentially least effective course of action is to commission a report and estimate of the anticipated repair work and then seek legal redress to fund the repair work. The issues to be aware of are the same as Path 2 with the additional consideration that:

- The court or WHT is likely to base its decision on the 'lowest reasonable value' and both the extent of the repair work and the actual cost are thus diminished.

Q: WHAT DO I NEED TO EFFECTIVELY SUPPORT MY CASE?

A: SUFFICIENT INFORMATION. IN PARTICULAR YOU NEED TO:

- Know what is wrong with the building and the various causes.
- Know how the causes of various problems relate to the parties involved in the design and building processes and be able to identify their role.
- Obtain through a registered building surveyor support material in the form of photos, test result of decay and mould, reports on timber treatment and other relevant technical literature.
- Expert evidence is needed to support your case. Obtain historic records from the Council and other documents such as drawings and specifications relevant to the building process, correspondence between parties, records of site meetings, inspections, changes to drawings or specifications etc. and have it reviewed by the expert.
- Understand court or tribunal procedural processes. Discuss these either with your MBIE case manager or legal counsel.

It is surprisingly common for leaky homes to have other issues with design and construction some of which might not be able to be claimed in the WHT process.

Q: WHAT ARE THE PROS AND CONS OF THE COURT AND WHT PROCESSES?

A: THE FOLLOWING POINTS ARE NOTED.

Pros Court

- Legal and expert costs can be claimed as a part of the claim and will be factored into any settlement that might be negotiated.
- A broad range of issues can be addressed – the claim is not limited to weathertightness issues. It is surprisingly common for leaky homes to have other issues with design and construction some of which might not be able to be claimed in the WHT process.

Cons Court

- Procedural matters are slower and therefore legal costs are often higher.

Pros WHT

- It is less costly for the homeowner to initiate and fund a claim.

Cons WHT

- You cannot sell your property until the matter is settled.
- You cannot recover any of your legal or expert costs other than those for the investigative report and the design and administration of repairs. Additional costs might typically be between $80,000 – $150,000, or possible higher with bigger houses.
- Claims are restricted to leak matters. Other matters including structural failure independent of leaking are not dealt with.

Mediation

1. Both the Court and WHT processes are often resolved by voluntary mediation between parties, which usually takes one day to resolve. Using mediation you need to be aware that:

- Early negotiated settlements are possible but rare because defendants have little incentive to negotiate early on.
- Full recovery is not likely but you avoid the cost of a lengthy legal process.
- Mediation can also deliver a better result in complex cases involving numerous parties where the probable cost to all parties of pursuing recovery through a lengthy court or WHT process far outweighs the value of the case. This scenario, which applies equally to cases involving small as well as large sums of money, highlights the fact that there is usually a point at which you are better to settle, take the money and get on with life.

- Mediation is designed to achieve an agreed settlement rather than a 'fair' outcome. This means the outcome is likely to be one in which the homeowner agrees to give up some part of their claim. If you decide to use the Court process to pursue a more 'just' solution, you might win all you want but it will cost much more to do so and the likelihood of receiving such a favourable judgment is often less than homeowners want to believe.
- In almost all cases mediated agreements are eventually settled before going to court and there is no risk of appeal.

2. Going to Court or WHT can be a risky thing in that you put yourself entirely in the hands of your lawyer and the judge or adjudicator.
- All litigation is risky. The Court or WHT will decide your case based on the evidence that it hears and you have to remember that the other parties will be there fighting just as hard as you to win the case. In the end the Judge or Adjudicator will have to come to a decision. With a good lawyer and good experts you would hope to succeed, but there is always a risk that the decision may be one that you do not like.

Mediation makes you a more active player – you take part in the decision-making process and decide whether or not you are prepared to accept a given settlement. In mediation the parties rather than the mediator have the final say but ironically the threat of failed mediation being ultimately decided in another venue by an adjudicator or judge acts as a keen incentive for mediation to succeed.

As a rule of thumb you can expect both processes to deliver less money than it costs to repair your home and seek legal redress.

Q: HOW MUCH WILL IT COST TO REPAIR AND LITIGATE?

A: IT IS IMPOSSIBLE TO PUT A DEFINITIVE PRICE TAG ON THE PROCESS – THE SIZE AND COST OF REPAIR OF EACH HOME IS DIFFERENT.

- Generally, the overall cost of repair and litigation is likely to be about one-and-a-half to two times the cost of the repair bill alone.
- Early resolution of the legal process reduces legal costs but may lower your chance of a higher return. The flip side of this is that resolution of the legal process at a later stage may cost you more in legal fees but give you a better chance of a greater return.
- There are no guarantees on levels of return. Legal and mediation processes are dependent on circumstance and those involved.

Q: WHAT ABOUT FUNDING?

A: PERSONAL FINANCES INFLUENCE DECISION-MAKING PROCESSES AND THESE IN TURN INFLUENCE OUTCOMES. HOMEOWNERS REALISTICALLY HAVE TWO OPTIONS FOR COVERING THE COST OF CARRYING OUT REPAIRS AND TAKING LEGAL ACTION.

Covering Costs – Option One

This option requires the homeowner to have access to a considerable sum of money to repair and then litigate. These might be private funds or funds arranged through a loan or a mortgage.

Borrowed Funds: Borrowing more than 100% of the value of the property to carry out repairs and pay for the legal process creates a situation where there is more debt on the property than there is equity to cover it, which is not a situation lenders like. Under such circumstances lenders would be expected to turn down a request for a loan.

Lenders who have an existing interest in a property will sometimes lend additional money to fund the remediation process because it reinstates the value of the asset which might otherwise be difficult to sell.

If the bank is unsure of your position, ask that it talk to your building surveyor to gain confidence in the process. The questions the bank will want answered are:

- Can you get the dwelling back to a code compliant state?
- Will there be financial controls on the remediation process?
- Can the bank be kept informed of progress all the way through?

The answer to all these questions is usually yes but the building surveyor rather than the homeowner needs to create this assurance to the bank and become involved in certifying drawdown payments.

Covering costs – Option Two

This requires the homeowner to generally spend a minimal amount of money then initiate a claim with either the WHT or under the FAP.

Under the FAP, in theory if a council is involved there is a contribution of 50% of the cost of repairs, and if the work was under a Private Building Certifier then only a 25% contribution from government applies. Our experience is they regard certain parts of the actual repair to be betterment. In addition, the extra time involved in dealing with the bureaucratic process is significant and further diminishes the 50% or 25% contributions. Overall, the final contribution may be reduced to around 40% or 20% respectively of the actual cost of repair.

THE REMEDIATION PROCESS

Traditionally architects were engaged to design a building and then manage the building contract; this type of arrangement is now a rarity. Common law says the design is not complete until the building is complete but it is now common practice to separate the various design and construction functions. Most buildings are now built without the designer administering the building work. In some cases a project manager takes administrative control on behalf of the owner.

While homeowners are free to choose how they manage the remediation process attempting to save money by taking on the role of project management is not recommended. There are frequent cases where owners obtain a report on a house and arrange for builders to do the repairs. Later, when in spite of everyone's best intentions the repair fails, owners find themselves back at square one much poorer for the experience. The situation can be much worse if the home has been on-sold and the vendor has to defend a leaky building claim. (The 10-year longstop runs from when the repair work was completed.) The risk of repeated failure of a leaky home is real and is happening now. Identifying timber decay is a specialised skill which builders are ill equipped to do. Indeed, builders who are familiar with this type of repair work will usually refuse to carry out repairs without the backup of an experienced building surveyor and laboratory resources. Likewise, designing and constructing a building to ensure it does not fail again requires specialised knowledge and expertise.

Note: *If competent and qualified personnel do not carry out the building survey, redesign, construction, inspection and internal contract monitoring processes, the risk of a repeat failure increases.*

DESIGN AND ADMINISTRATION

Design

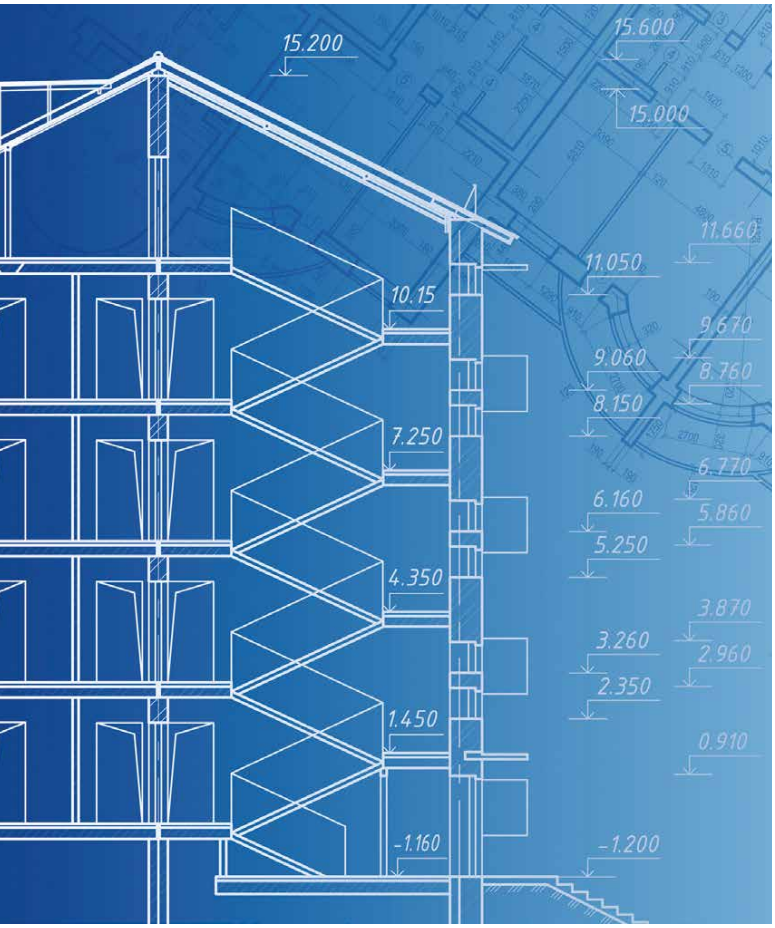
To remediate a leaky home you need to know:

1. What caused the building to fail?
2. What issues must be dealt with to ensure the building does not suffer another failure? These are generally defined by the report.
3. What design solutions should be used to achieve a successful and more reliable outcome?
4. How can the aesthetic design of the building be enhanced?

Administration

Once the design is complete a building consent needs to be obtained, contract documents and tender documents prepared, a tender needs to be awarded or negotiated and a building contractor selected. As the building work proceeds it needs to be monitored, administered and progress claims assessed and payments made to the contractor. When work is finished, completion in accordance with the contract needs to be confirmed, trade guarantees and code compliance certificates acquired and final payments made to contractors.

Note: *Contract administration does not include day-to-day management and supervision of the construction process which remains the responsibility of the building contractor.*



THE PRENDOS PROCESS

Prendos's role in the repair of leaky buildings is investigation, design, contract administration and providing expert evidence. In practice, rather than acting as project managers we work with building companies that take responsibility for managing and undertaking the construction process. This means the building company bears responsibility for the construction, health and safety, organisation and supervision of subcontractors and the council inspection and documentation process.
Prendos requires a quality monitoring process whereby builders record their own self-inspection during construction.

Step 1 – Design and tender

1. Obtain and review the building report and visit the building site.
2. Prepare concept drawings to minimise future weathertightness risk and to enhance property value in accordance with the homeowner's wishes.
3. Provide estimates for the likely cost of repair.
4. Once approved, prepare detailed design drawings.
5. Submit building consent application to council.
6. Prepare tender and contract documentation. Let tenders or initiate negotiation with a selected builder.
7. Evaluate and recommend a builder; or negotiate with a selected builder.
8. Meet with owner and preferred tenderer for familiarisation before recommended tender is accepted.
9. Accept the tender including any negotiated and agreed items.

Step 2 – Managing the building process

10. Monitor the build and observe the work of the builder so it is in accordance with the design.
11. Amend or clarify the design as needed and address other relevant construction issues as they arise.
12. Chair regular site meetings attended by the owner and contractor at agreed times to monitor and record construction progress, resolve issues and deal with other relevant matters.
13. Review claims and certify payment schedules to the owner and the builder.

Step 3 – Completion

14. Acquire producer statements as required for building code compliance, and trade guarantees and warranties as required by the building contract.
15. Identify and manage defects and completion, and approve final payment to the builder.

Note: *Administration procedures vary from company to company. Homeowners do not necessarily need to follow the Prendos design and administration procedure but we suggest that the key elements should at least be, considered and included in some suitable form.*

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THE ROLE OF COUNCILS

Many leaky homes settlements include payments from councils. These payments relate to the council's failure to meet its duty of care to homeowners.

In practical terms, for a homeowner to receive damages from any of the parties deemed liable for causing damage to his or her home, those parties must be financially solvent. If they are not solvent, there can be no payout.

In many cases council is the only remaining solvent defendant and therefore, the only party effectively able to pay compensation. For this reason it helps to understand the role of councils in relation to homeowners.

Councils have two responsibilities; statutory and legal, with the legal role stemming from the statutory responsibility.

Councils process and approve designs in accordance with the New Zealand Building Code and by way of building consent inspections or other means, follow the construction process through to a point where it can confirm completion in respect of the building consent. It then issues a Certificate of Code Compliance (CCC). The building is now classified as a Code Compliant building. This does not form any kind of warranty or guarantee; it is simply an assurance that all the statutory processes have been satisfactorily completed.

Statutory role: The ultimate statutory authority for all building work is the Ministry of Business Innovation and Employment (MBIE) but the main interface between the public and MBIE are the councils. Councils process and approve designs in accordance with the New Zealand Building Code and by way of building consent inspections or other means, follow the construction process through to a point where it can confirm completion in respect of the building consent. It then issues a Certificate of Code Compliance (CCC). The building is now classified as a Code Compliant building. This does not form any kind of warranty or guarantee; it is simply an assurance that all the statutory processes have been satisfactorily completed.

Legal role: in providing a reference point to monitor and control the design and construction process councils assume a common law responsibility. Legal precedent has established that a council has a duty of care to the homeowner in its consenting of drawings and specifications and in its subsequent inspection processes. The duty of care extends to all subsequent owners but only for a period of 10 years beyond the date of building consent approval for building consent matters and the CCC for its subsequent inspection and monitoring role.

The 10-year long-stop provision applies not just to a council but to all parties involved in the design and construction process. However for other parties the 10-year longstop is based on the date of the act of omission giving rise to any particular claim.

PRENDOS

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PHILIP O'SULLIVAN DIRECTOR
BE (Hons) MNZIBS

The Prendos residential surveying team has more than 20 years of experience in providing building surveying services to owners of both standalone homes and low-rise and high-rise multi-unit developments. Our building surveying and design professionals can provide owners of leaky homes with comprehensive and efficient solutions, from initial diagnosis through to project completion, and can assist with legal claims if required. Our solutions are enhanced by our ability to draw on a spectrum of disciplines.

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