MANAGING MOLD EXPOSURE AND DEALING WITH MOLD COMPLAINTS

A PRACTICAL GUIDE FOR THE REAL ESTATE PROFESSIONAL

Organico
(248) 617-6653

MANAGING MOLD EXPOSURE AND DEALING WITH MOLD COMPLAINTS

A PRACTICAL GUIDE FOR THE REAL ESTATE PROFESSIONAL

Concerns about mold exposure continue to grow in the eyes of the general public. Real estate agents wrestle with the term "mold like substance" and search for quick solutions to get to the closing. Property management companies and landlords find themselves responding to mold complaints. Juries are now returning large judgments in favor of tenants for mold related injuries.

MOLD EXPOSURE AND HEALTH CONCERNS

Why mold? Why the Big Health Concern?

Molds are microscopic fungi that live on plant or animal matter. These fungi spread and reproduce via very small, lightweight spores. Mold spores need moisture and food to grow. There are many different types of molds, and mold is found in virtually every environment, indoors and outdoors. While homes and businesses can take steps to minimize the growth of mold indoors (primarily through moisture control), such mold growth cannot be completely eliminated.

HEALTH CONCERNS

If a person has a mold allergy, their immune system overreacts when they breathe in mold spores. A mold allergy can cause coughing, itchy eyes and other symptoms that make one miserable. In some people, a mold allergy is linked to asthma and exposure causes restricted breathing and other airway symptoms.

If a person has a mold allergy, the best defense is to reduce their exposure to the types of molds that cause their reaction. Medications can help keep mold allergy reactions under control.

Common Symptoms:

A mold allergy causes the same signs and symptoms that occur in other types of upper respiratory allergies. Signs and symptoms of allergic rhinitis caused by a mold allergy can include:

- Sneezing
- Runny or stuffy nose
- Cough and postnasal drip
- Itchy eyes, nose, and throat
- Watery eyes
- Dry, scaly skin

Most allergic responses to mold involve hay fever-type symptoms that can make a person miserable, but aren't serious. However, certain allergic conditions caused by mold are more severe. These include:

- **Mold-induced asthma.** In people allergic to mold, breathing in spores can trigger an asthma flare-up. If they have a mold allergy and asthma, there needs to be an emergency plan in case of a severe asthma attack.
- **Allergic fungal sinusitis.** This results from an inflammatory reaction to fungus in the sinuses.
- **Allergic bronchopulmonary aspergillosis.** This is a reaction to fungus in the lungs that can occur in people with asthma or cystic fibrosis.
- **Hypersensitivity pneumonitis.** This rare condition occurs when exposure to airborne particles such as mold spores causes lung inflammation. It can be triggered by exposure to allergy-causing dust at work.

Other Problems Caused by Mold:

Mold spores can also pose other health risks to susceptible people. For example, mold can cause infections of the skin and/or mucous membranes. Generally, however, mold doesn't cause systemic infections except for people with impaired immune systems.

Toxic Mold Syndrome: Involves controversial claims that exposure to mold can cause more serious health effects such as inflammation, memory loss, insomnia, anxiety, depression, trouble concentrating and confusion. There are conflicting claims within the medical community about Toxic Mold Syndrome.

Environmental Health Center of Dallas: *"Toxic mold exposure has also been linked to more serious, long-term effects like memory loss, insomnia, anxiety, depression, trouble concentrating, and confusion. In a 2003 study by the Environmental Health Center-Dallas,100 participants were examined in an effort to uncover how toxic mold exposure can affect the brain and lead to cognitive and emotional impairments. After the mold exposure, nervous system challenges were observed in all 100 patients. Brain SPECT imaging scans also identified abnormalities in a significant portion of the patients studied."*

Conclusion:

Mold spores are found in our indoor and outdoor environments, and can not be completely elimiated. Exposure to mold spores can cause health problems in individuals with mold allergies, asthma, or a weakened immune system. Toxic mold syndrome is an evolving area of study. Toxic mold syndrome is being admitted as evidence in courts and is serving as a basis for imposing liability on landlords and property managers.

DECLINING INSURANCE COVERAGE FOR MOLD CLAIMS

It is critical to understand what type of mold coverage, if any, that your insurance policies actually provide. Is there a total exclusion for mold contamination? Are you covered for mold contamination arising out of a covered claim such as water damage? If you are covered, is there a limitation on coverage? Is there a duty to defend you against mold claims for personal injury and property damage? Increasing levels of liability for mold and decreasing levels of insurance protection mean that mold is becoming an **uncontrolled** risk. Reduce these risk levels by being proactive in dealing with mold and mold complaints.

ADOPTING A MOLD RESPONSE POLICY

How a Landlord or Property Manager responds to a mold complaint may dramatically influence the outcome not only for the tenant (health issues) but also for the Landlord or Property Manager (legal liability). All Landlords and Property Managers should adopt a written response policy for mold complaints that can be quickly followed by your employees.

Here are some basic steps that should be part of any written response policy:

- **Document All Inspections and/or Maintenance**: Record and date all inspections or maintenance performed on the mechanical systems of the building and tenant space. Roofing systems, gutter systems, HVAC systems, hot water heaters, washers and dishwashers, shower fans should all be inspected on an annual basis to ensure these systems are functioning and that there is no moisture or water leaks. Also conduct an annual visual inspection for mold. A record of these inspections may help to refute claims of negligence asserted by a tenant in a future mold claim.

- **Document All Mold Complaints:** Record the date and time of any mold complaint is received and request a specific description of its location in the premises. Record who made the complaint and when the complainant first noticed the mold. Record if the complainant is claiming to have suffered any adverse health effects from the mold exposure.

  This record can be used to establish a "start date" for your notification of possible mold problems. It will also establish a "response date" by which you demonstrate that quick and responsive steps were taken to investigate and resolve any mold concerns.

- **Immediate Visual Inspection:** Conduct an immediate visual inspection of the leased premises **by a person properly trained** to look for and identify mold. A visual inspection may be all that is needed. Swab testing, Surface testing, ATP Testing and Air Sampling all cost money. These costs can be avoided if a visual inspection reveals significant mold contamination.

- **Assess the Amount of Mold Contamination:** Is it a small amount of mold which can be immediately resolved by applying an anti-mold product to the surface? Is it a large amount of mold that is so severer that the tenant should be immediately relocated until the problem is resolved? This assessment should be made **by a person properly trained** to look for and identify mold.

- **Assess the Cause of the Mold Contamination:**
  Identify the cause of the mold growth. Was it caused by a water leak, broken pipe, leaking roof, leaking hot water heater, uncontrolled high humidity, broken shower fan, is there a shower fan, or improperly vented shower fan. This assessment may require a dialogue between the mold inspector and the building manager who will be more familiar with the mechanical systems of the building.

  Molds grow in wet environments or high humidity environments. Hence, it is critical to identify the cause of the moisture and remedy the moisture problem before attempting to resolve the mold contamination.

  It is equally critical to keep physical examples of failed or broken mechanical systems which were the source of the moisture. Why? These physical examples might determine if your insurance company will treat the claim as a "covered claim" which may require the insurer to provide a legal defense or indemnification.

- **Additional Possible Testing**: If the visual inspection fails to identify any visible mold are your concerns over? No!

  Mold can hide in air ducts, behind wallpaper, inside walls and under carpets. Consider conducting ATP Testing or Air Sample Testing. An air sample test will establish with specificity the amount and type of mold in the premises and compare it to a base line outside. These tests can identify a mold contamination problem that cannot be identified simply with a visible inspection. At a minimum, such a test should establish for both the Landlord and the Tenant whether there is, in fact, a mold contamination problem. Once again, these test reports should be properly maintained along with any documents relating to chain of custody of the test samples.

  If the tenant asserts a mold contamination lawsuit, then the results of an air test might serve as evidence to establish that (1) the Landlord was responsible in investigating/not negligence and/or (2) that the mold levels were within the normal range or were quickly brought into a normal range.

- **Treat the Mold Contamination:** If visual inspection or subsequent scientific testing establishes elevated levels of mold then retain a **professional mold cleaning company.**

- **Post-Treatment Compliance Testing:** Once a mold problem is properly treated, compliance testing should be conducted. ATP testing or Air Sampling Testing should establish that the mold levels in the leased space are within a normal range. Once again,

these test results should be maintained as they can be used as evidence to defend against any potential mold contamination litigation.

- **Conclusion :**
  It is important to properly manage the risks associated with mold contamination by adopting a written response policy to deal with mold complaints. Any written response program should include the above eight steps.

TESTING TECHNIQUES USED TO IDENTIFY MOLD CONTAMINATION

There are a variety of scientifically based techniques used for testing for mold contamination. Each of these tests has strengths and weaknesses, and these tests can range from inexpensive to very expensive. Here is a review of the various tests:

- **Visual Inspection:** A visual inspection by a properly trained individual is, oftentimes, all that is needed to determine the existence of a mold problem. The drawback to a visual inspection is that it will not provide a qualitative or quantitative analysis of the type of mold. Such detailed information is, oftentimes, not needed, as regardless of mold type it will have to be properly removed. The benefit of visual testing is the low cost.

- **Surface Testing:** Involves taking a bulk sample or using tape or a swab to secure a sample of the suspected mold and sending it to a laboratory for analysis.

  Swabs, tapes, and bulk samples will establish mold types but are considered the lowest form of scientific confirmation as they only focus on a small, localized area and not typically the entire area of leased property.

- **ATP Surface Testing** – This testing also uses swabs, but it does not measure for mold spores or mold DNA. Adenosine Triphosphate (ATP) is an organic compound – energy molecule – found in all living matter. ATP is often referred to as the molecular unit of currency. A swap is taken of various room surfaces and then inserted into a handheld meter. Low levels of ATP indicate that the area is free of biological contamination – such as mold. **The benefit of ATP testing is that it is inexpensive and test results are obtained instantly.** It is, oftentimes, used for clearance testing after an area has been treated for mold. One drawback is that it is not a direct measure of mold levels.

- **Air Sampling:** This is considered the highest level of scientific confirmation as it not only confirms the presence of mold spores and types from several locations in the building space, but it also provides a quantified amount of mold spores using an outside air sample as a base. The drawback to air sample testing is that it tends to be expensive.

- **ERMI Testing:** The Environmental relative Moldiness Index (ERMI) was originally developed by the US Environmental protection Agency (EPA). This index was used for research purposes only and is based on dust samples collected throughout a home or building.

An ERMI test uses dust to determine the likely amount of mold present in an area. It uses DNA-based methods to determine the mold type.

We often see other mold inspectors and tenants using ERMI tests, but it really shouldn't be relied on in its entirety. Thirty-Six (36) different fungi make up the ERMI test and are species-specific. There are two types of mold groups: Group I (Water damaged homes) and Group II (commonly found in all homes). ERMI does not help identify the mold's origin, and the measurement results are not always accurate. **In fact, the US EPA itself does not recommend its use for mold testing in residential and commercial settings.**

- **ARMI Testing:** The ARMI is an acronym for American Relative Moldiness Index. This is another type of DNA analysis that can determine the species of mold and the likely amount of mold in the property.

This test is a more cost-efficient version of the ERMI testing but is not as thorough. There are only 13 different fungi that make up the ARMI, and they are designated as group 1 (water-damaged homes) and group 2 (commonly found in all homes).

The fungi identified in the ARMI tests are:

- Stachybotrys chartarum
- Chaetomium globosum
- Cladosporium sphaerospermum
- Aspergillus Versicolor
- Eurotium (A.) amstalodami
- Penicillium variable
- Aspergillus flavus
- Aspergillus restrictus
- Penicillium crustosum
- Penicillium purpurogenum
- Aspergillus fumigatus
- Penicillium corylophilum

MOLD ABATEMENT METHODS

A variety of mold cleanup methods are available for remediating damage to building materials and furnishings caused by moisture control problems and mold growth. The specific method or group of methods used will depend on the type of material affected.

Please note that professional cleaners and remediators may use some methods not covered in these guidelines; absence of a method in the guidelines does not necessarily mean that it is not useful.

- **Removal of Contaminated Materials:** Commonly known as the "**rip and tear**" method. It calls for all mold contaminated building materials, such as sheetrock and insulation, to be removed from the building and replaced. Oftentimes, the contaminated material must be placed in sealed plastic (6-mil polyethylene sheeting) to prevent further contamination of the area or a sealed containment area needs to be created. **This approach is labor intensive and expensive as it involves removal of debris and new construction costs.** Typically, these excessive remediation costs can be avoided by using more modern cleaning techniques.

- **Fogging or Atomization of Affected Area:** Recent advancements in life science have developed a new technique of fogging a mold contaminated area with plant-based proteins and enzymes that render the mold inanimate. It does so by destroying key molecular bonds found in the cell walls of all molds. Once the fogging is completed walls and floors can be HEPA vacuumed and, if needed, encapsulated using a Kilz of Binz primer paint fortified with an anti-mold chemical.

  The critical benefit of this approach is that it dramatically reduces costs by avoiding the need for demolition, disposal of debris and reconstruction of the affected area.

  An additional benefit is that the proteins and enzymes are non-toxic to humans and pets (unlike inorganic chemicals) and these proteins and enzymes remain in the environment for years and continue to neutralize mold spores that enter the area.

- **HEPA (High-Efficiency Particulate Air) Vacuums**: These vacuums are recommended for final cleanup of remediation areas after materials have been thoroughly dried and contaminated materials removed. HEPA vacuums are also recommended for cleanup of dust that may have settled on surfaces outside the remediation area. Care must be taken to ensure that the filter is properly seated in the vacuum so that all the air must pass through the filter. When changing the vacuum filter, remediators should wear PPE to prevent exposure to the mold that has been captured. The filter and contents of the HEPA vacuum must be disposed of in well-sealed plastic bags.

- **Damp Wipe Affected Surfaces:**

Mold can be removed from non-porous (hard) surfaces by wiping or scrubbing with water, or water and detergent, inorganic chemicals or by using plant-based proteins and enzymes. It is important to dry these surfaces quickly and thoroughly to discourage further mold growth. Instructions for cleaning surfaces, as listed on product labels, should always be read, and followed. Porous materials that are wet and have mold growing on them may have to be discarded.

Since molds will infiltrate porous substances and grow on or fill in empty spaces or crevices, the mold can be difficult or impossible to remove completely. **Fogging techniques are far more efficient at deeply penetrating materials and spaces and crevices.**

- **Air Scrubbing:** This is a technique used to clean the air of mold spores and any mycotoxins that might remain in the environment after remediation is completed. Air scrubbing is recommended for use when dealing with an individual who is highly sensitive to mold. It can also be used to ensure a baseline for air sampling.