

A Proactive Approach to the Problem of Indoor Mold

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The Problem of Indoor Mold

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Earlier this year the National Association of Realtors® commissioned the Real Estate Research and Education Center to undertake a study to determine the current state of our knowledge regarding the problem of indoor mold. The goal of this research is to provide real estate industry leaders with the information necessary to formulate proactive policy initiatives that will best serve the real estate industry when dealing with problems related to harmful mold.

Although indoor mold is not a new problem, it has only been the last few years that it has garnered so much attention. The weight of a growing body of medical evidence strongly linking indoor mold exposure to serious health problems along with a few very substantial and widely publicized lawsuits have generated a lot of media interest and raised public awareness about the problem. While Erin Brockovich and Ed McMahon's encounters with indoor mold have been well documented, no one is immune to the problem. The most recent incidence of mold was reported just this July at the Hilton's Hawaiian Village Kalia Tower on Waikiki Beach which had to shut down operations during the height of the summer season to begin remediation efforts.

Increased public concern has also resulted in a significant increase in mold related insurance claims and lawsuits which, in turn, has caused many insurance underwriters to limit mold coverage in new policies and renewals, eliminate mold coverage entirely, or raise the cost of comprehensive coverage.

While not all mold types or strains are hazardous, molds can hurt people in a variety of ways by producing toxins, allergens, and microbial volatile organic compounds. For purposes of our study, we defined harmful mold to include all molds that have been associated with illness in humans or structural damage to dwelling.

Mold has been linked to a wide variety of illnesses, including nausea, hay fever like symptoms, skin and throat irritation, respiratory problems such as asthma, hemorrhaging, cancer, and neurological disorders such as headaches and memory loss. The specific types of problems resulting from mold exposure are a function of the type of mold encountered, the length of exposure, and the susceptibility of the victim. Individuals with weakened or compromised immune systems are more susceptible to mold toxins and infections than are healthy people. Complicating the detection and treatment problems is the ubiquitous nature of mold; there are thousands of mold types and strains, many of which produce toxins that have not yet been identified. Another problem encountered when attempting to assess the seriousness of the harmful mold threat is the fact that there are as yet no laboratory tests of blood or urine that can determine whether a person has been exposed to mold toxins, nor have permissible mold exposure limits been established.

There are a few things that all the experts agree do on. First, that any exposure to mold is potentially hazardous, and second, that more research is needed to deal effectively with the problem. We also know the causes of indoor mold.

The critical element necessary for mold growth is moisture. Without a source of water mold cannot survive. Mold also needs a food source, which, unfortunately, can be almost anything within a structure. Wood products, drywall, insulation, wallpaper, carpeting, clothing, and even books can provide essential nutrients. Mold can survive

within a very broad temperature band, although it grows best between 68 and 100 degrees Fahrenheit. While mold has been found in cold climates, Southern states, not surprisingly, appear to have a higher incidence of mold infestation. Research indicates, however, that mold related insurance claims and lawsuits have been filed in every state of the nation.

The best defense against indoor mold is prevention. Maintaining a clean, dry home or workplace prevents mold from gaining a foothold. The most common recommendations in this regard include regular visual inspections for water entry, being on the alert for musty odors, fixing leaky plumbing and roofs, moisture-proofing basements and the use of dehumidifiers in areas of high humidity. More detailed information and recommendations for dealing with indoor mold can be found at the EPA's website, www.epa.gov/iaq/pubs/moldresources.

When moisture or mold problems are discovered remediation must be quick and thorough. Depending upon the extent and type of mold infiltration cleanup can range from the simple application of a bleach and water solution to effected areas, isolation and containment of contaminated areas, and, in cases of widespread, uncontained mold invasion, the sealing off of buildings and decontamination of ventilation systems. When dealing with small areas of contamination, cleanup can be performed by homeowners, environmental contractors, or building maintenance staff people. For more serious infestation problems, trained health and safety professionals, using protective gear, may have to be employed. Because remediation can be very costly it is important for property owners to check with their insurers to determine if and under what circumstances mold damage is covered. If an indoor mold problem remains untreated or the problem goes unnoticed for any length of time costs of remediation can run as high as \$150 or more per

square foot. The Texas Department of Insurance recently estimated that investigation a mold claim, covering living expenses of displaced occupants, and paying for cleanup and mold remediation costs an average of \$30,000 per claim.

Growing public concern over the mold problem is also putting property sellers, landlords, builders, developers, and property managers at risk. Failure to disclose a known mold or moisture problem leaves them open to lawsuits by buyers and tenants. Real estate licensees may also be exposed to legal action when assisting in the purchase or sale of such properties. Since harmful mold could constitute a material fact, failure to disclose such information, if known by a real estate licensee, could put a real estate professional in legal jeopardy. This could be the case even in caveat emptor states like Alabama since mold infestation could fall under the health and safety exception to this common law doctrine. So far, most of the mold related lawsuits have involved sellers, insurance companies, and property management companies. We only know of two mold cases, one in Arizona and the other in Pennsylvania, involving real estate agents. I believe that both cases are still being litigated.

What is the real estate licensee's role when confronted with a potential mold problem? The specific duties of real estate salespersons depend, in part, upon whether they are working with customers or clients, who they represent, and the state in which they practice. Absent governing statutes or relevant case law it is extremely difficult to develop risk management strategies and recommendations. Some suggestions, however, can be offered for consideration. Certainly, brokers acting as buyer agents have a fiduciary duty to their clients to disclose if they know or suspect a property may have a mold problem. At the very least, they should advise prospective property owners to

include mold detection as part of the home or property inspection before committing to a purchase.

Selling agents and non-agent transaction brokers should consider informing their clients and customers that failure to disclose known harmful mold or moisture intrusion problems to prospective buyers could be the basis for a lawsuit. Obviously, common sense must be exercised when dealing with mold problems. What we are talking about here are chronic problems with mold or moisture, not mildew on a shower curtain.

So far only one state, California, has mandated mold disclosure requirements for sellers and lessors of residential property. Although not legally mandated, the same legislation encourages real estate salespersons to give prospective buyers and tenants the state's newly revised environmental hazards (it now includes mold) booklet. Doing so will probably constitute adequate disclosure and compliance with the intent of the statute as far as real estate professionals are concerned.

In the absence of governing statutes or case law that specifically address the duties and obligations of real estate professionals in dealing with indoor mold, real estate brokers and salespeople should abide by the existing requirements of their state laws governing the disclosure of latent or material defects. The best protection for real estate licensees is to become proactive and adopt proven risk management procedures when dealing with property condition disclosure issues. In so doing they will best serve themselves and their customers and clients.