

## The Mess with Molds

“Then the Lord said to Moses and Aaron, “When you arrive in Canaan, . . . I may contaminate some of your houses with an infectious mildew. The owner of such a house must then go to the priest and say, ‘It looks like my house has some kind of disease.’ Before the priest examines the house, he must have the house emptied so everything inside will not be pronounced unclean. Then the priest will go in and inspect the house. If he finds bright green or reddish streaks on the walls of the house and the contamination appears to go deeper than the wall’s surface, he will leave the house and lock it up for seven days. On the seventh day the priest must return for another inspection. If the mildew on the walls of the house has spread, the priest must order that the stones from those areas be removed. The contaminated material will then be thrown into an area outside the town designated as ceremonially unclean. Next the inside walls of the entire house must be scraped thoroughly and the scrapings dumped in the unclean place outside the town. Other stones will be brought in to replace the ones that were removed, and the walls will be replastered. But if the mildew reappears after all these things have been done, the priest must return and inspect the house again. If he sees that the affected areas have spread, the walls are clearly contaminated with an infectious mildew, and the house is defiled. It must be torn down, and all its stones, timbers, and plaster must be carried out of town to the place designated as ceremonially unclean.”

- Leviticus 14:33-45

Concerns that mold in houses could cause serious health problems have been around since biblical times. Recently there has been a flood of lawsuits filed by homeowners and tenants against homebuilders, building owners/managers, manufacturers of building materials, architects, homeowner associations, home inspectors, and insurance companies seeking damages for personal injury and damage to property resulting from the infestation of homes and offices with “toxic mold.” Press reports have heightened the public awareness and even made some people fearful by reporting on homeowners who have abandoned and even burned their homes and belongings to rid them of mold infestations. This article provides an overview of the current controversy with mold and tries to explain why it should be of importance to REALTORS®.

**Question: Why should REALTORS® be concerned with “toxic mold?”**

**Answer:** REALTORS® should be concerned with mold because of the explosion of litigation in this area. The dollar amount involved in some of these suits has been staggering. For example, within the last year, a jury in California awarded \$18 million to a homeowner against an insurer that refused coverage of a mold claim. In

1996 in Florida, a jury awarded a county \$11.5 million in its suit against the architect and builders of the county courthouse. Last spring, the Delaware Supreme Court upheld a one million dollar verdict in a suit brought against a landlord by a tenant who claimed that the “toxic mold” contamination aggravated her asthma and caused cognitive disorders. In June of this year, a Texas jury ordered an insurance company to pay a homeowner \$32 million for damage caused by the insurer’s delay in handling damage caused by a plumbing leak which allowed toxic mold to grow, causing the family to become ill and to abandon their home. Last year, a homeowners group settled toxic mold claims against builders and contractors for \$1.3 million. Even the real Erin Brockovich (of movie fame) is pursuing a toxic mold claim relating to her single-family house. These cases involved much more than a patch of mildew (a form of mold) on the floor or ceiling of a shower stall; rather they involved situations in which toxic mold was widespread, albeit hidden behind walls, under carpets or in heating and cooling ducts.

Some attorneys handling toxic mold suits believe that we may have only seen the tip of the iceberg and that mold may become the latest in a series of real estate related health problems after asbestos, lead paint,

and radon. The focus of toxic mold lawsuits have to date largely been builders/contractors, insurance companies and architects etc. Although there have not yet been reported cases in this area against REALTORS®, the likelihood for such claims is almost inevitable. Therefore REALTORS® need to fully understand the problems with mold and how best to avoid becoming an unwitting target in a toxic mold lawsuit.

**Question: What are state legislators doing to address mold problems?**

**Answer:** The problem has grown to such an extent that some legislatures have begun to take action to protect homeowners and occupants. For example, the Texas Legislature is considering bills that would address mold and other air-quality issues in schools and public buildings. The California Senate is currently working on a bill that’s entitled the “Toxic Mold Protection Act.” If enacted, this piece of legislation would direct the State Department of Health Services to establish permissible exposure limits to mold in and to develop standards for the identification and removal of mold from indoor environments. Of great importance to the real estate industry is that the bill would also require sellers and landlords who know, or have reasonable reason to believe that

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mold is present and exceeds the permissible exposure limits, to provide a written disclosure of the mold conditions to potential buyers or renters. If the bill becomes law, it could serve as the model for other states to enact similar legislation. At the present time, the Georgia Legislature is not considering legislation in this area.

### **Question: What is mold?**

**Answer:** Molds are simple microscopic organisms that belong to the fungi kingdom. Molds are found everywhere in the environment including all regions of our country. There are more than 1,000 species of mold in the United States alone, and more than 100,000 species worldwide. They are present both indoors and out, but they are most prevalent in moist or wet conditions. Molds reproduce by producing microscopic spores that are released and drift on air currents. These spores germinate if they land in a place with favorable growing conditions. Not all molds or fungi are dangerous or bad. For example, penicillin is derived from mold. Mushrooms and yeast used in making bread and beer are fungi. However, some molds can cause health problems when the level of spores in the air within buildings becomes elevated.

### **Question: How do molds get into the indoor environment?**

**Answer:** Because mold spores are airborne, they can enter a building through open windows and doors, as well as through heating and air conditioning systems. Also, spores from the outside air can attach themselves onto animals and people and catch a ride into buildings on clothing, shoes, and fur. People can also be exposed to mold if they directly handle mold items, or if they ingest the mold accidentally.

### **Question: What do molds need to grow?**

**Answer:** Mold spores can grow on nearly all organic substances if the following conditions are present:

(a) Moisture. Mold spores can germinate on almost any substance as long as moisture is available. Standing water is not necessary for mold growth. Any source of water is satisfactory, including moisture from flooding, plumbing leaks, leaky roofs, showers and bathtubs, refrigerator water pans, clothes dryers that are not vented to the outside, or water found in houseplants.

(b) Food. Mold spores need a nutrient source in order to grow. We have all seen mold thriving on food that has spoiled. However, mold can also grow on building materials that contain cellulose (plant material that makes up wood) such as sheet rock, insulation, wallpaper, ceiling tiles, and lumber. Additionally, mold can thrive on carpet, leather and other fabric.

(c) Temperature. Mold grows best in temperatures that range between 65 and 90 degrees Fahrenheit – the exact temperature range of most homes and public buildings.

(d) Time. Mold can begin to germinate in twenty-four to forty-eight hours after mold spores are exposed to the appropriate conditions.

### **Question: Are all molds dangerous or “toxic”?**

**Answer:** No. Of the thousands of different species of mold, only a few “household” molds are dangerous to humans. Most kinds of mold are not hazardous to healthy people, even when present in large concentrations, because the individuals develop antibodies to that protect them from the mold. However, persons with asthma or other allergies may find that

their condition worsens with exposure to high levels of mold. People with weakened immune systems are also more sensitive to molds.

Some molds, however, produce toxic chemicals called “mycotoxins” that can be harmful to people and animals if inhaled, touched, or ingested. These are the so-called “toxic molds.” One such mold that has gotten a lot of bad press lately is the species *Stachybotrys chartarum* (often called “Stachy”). This mold has a high and constant moisture requirement. It can grow prolifically in areas where water has accumulated from roofing or plumbing leaks. The Center for Disease Control website states that accurate information is not yet available about how often Stachy is found in buildings, but it is thought that, although this mold is less commonly found inside buildings than other molds, its occurrence is not rare. People cannot distinguish between toxic and benign molds just by looking. A professional sample must be taken to tell for sure if a mold is toxic.

The science of how mold affects humans is still developing. All molds have potential to affect human health, but every human reacts differently to mold. The degree to which they are harmful depends on the type of mold, the amount of time an individual is exposed and their susceptibility to the mold. The complexity of the science in this area has prevented the development of state or federal standards or guidelines for what level of exposure to mold or mold spores is acceptable. Scientists do not yet know what level of exposure makes people sick. Many studies are currently being conducted to confirm the connection between mold (including toxic mold) and human illness and to establish standards of exposure to mold.

### **Question:** What are the potential health effects of exposure to mold?

**Answer:** Humans can have several different kinds of reactions to mold exposure. The most common symptom of exposure to mold is an allergic reaction such as watery eyes, running nose, coughing and wheezing, sore throat, and fatigue. Less commonly, people experience infections, such as respiratory infections, from mold exposure. Finally, the mycotoxins generated by the toxic molds include rashes, flu-like symptoms, burning sore throats, nosebleeds, fever, headache, memory loss, diarrhea and impaired immune systems. Some toxic molds have been linked with cancer in laboratory animals. Stachy has also been associated as a possible cause of pulmonary hemorrhage in infants.

The diagnosis of mold-induced illnesses are difficult for a variety of reasons. People may think that they have allergies or a respiratory infection when in fact, the symptoms may be caused by mold spores or toxic chemicals generated by mold. Tests to determine if individuals are having a reaction to a specific mold are also available for only a few of the thousands of molds. Although mycotoxins can be measured in air samples, tests to determine the presence of mycotoxins in human and animal tissues have not yet been developed. To make matters more complicated, the effect of exposure to many different kinds of mold at the same time and the interaction between exposure to mold and other substances in the air is not known. Finally, accurate measurement of mold spores in the air varies depending on the instruments and the methodology used.

### **Question:** How can a homeowner tell if they have a toxic mold present in their home?

**Answer:** Toxic molds can be positively identified only by specially trained professionals through a microscopic examination. For example, the toxic mold Stachy is greenish-black in color; however, so are a lot of other less harmful molds. The mold found on bathroom tiles, although black in color, is most likely not a toxic mold.

### **Question:** How can a homeowner avoid problems with mold?

**Answer:** Since mold and other fungi are present everywhere, there is no way to eliminate mold and their spores from the indoor air. The best way to control mold growth is to control and to prevent moisture that is necessary for the mold to grow. Mold is more likely to occur when there is a moisture problem in the house that is either not discovered or not corrected. The Environmental Protection Agency and other experts recommend good housekeeping practices including the following:

1. Homes should be inspected regularly for evidence of mold, water damage and leaks. Also, the presence of a musty or earthy odor is a sign that mold is present.
2. Water Leaks and other moisture problems should be corrected. If the source of the moisture is not eliminated, mold may reappear even after it has been cleaned.
3. Remove mold from walls, ceiling, floors, and paneling. Do not cover mold with paint, varnish or waterproof sealer, since the mold may resurface through these substances.
4. Vent crawl spaces under the home or put plastic cover over dirt in crawlspaces to prevent moisture

from entering the house through the ground.

5. Insure that the home has adequate ventilation including exhaust fans in bathrooms and kitchens. Be sure that clothes dryers are vented to the outside.
6. Reduce indoor humidity to between 30 and 60 percent. Dehumidifiers & air conditioners should be used in hot moist climates.
7. Raise the temperature of cold surfaces where moisture condenses by using insulation or storm windows.
8. Carpet on concrete floors can absorb moisture. It should be removed and replaced with area rugs that can be washed or a plastic sheet and insulating sub-flooring can be laid over the concrete before carpet is installed.
9. Remove and do not use carpets in areas where there is a chronic moisture problem.
10. Mold inhibitors can be added to paints.
11. Bathrooms should be cleaned with mold killing products.
12. Remove and replace moldy shower curtains and other items that have sustained water damage.

### **Question:** What should be done if mold is present in a home?

**Answer:** All mold should be cleaned up as soon as it appears. Small areas of mold can usually be removed by using a bleach solution and drying the area after eliminating or correcting the source of the moisture. Gloves should be used when cleaning mold. Moldy carpets and insulation or wallboard should be discarded. The New York City Department of Health guidelines recommend that persons cleaning mold should be "free of symptoms and allergy." Homeowners may choose instead to contact a profes-

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sional with experience in this area to perform the cleanup. Large areas should be cleaned by professionals because protective gear and containment measures may be needed. And of course, the source of the moisture that gave rise to the mold should be found and corrected to prevent the mold from returning.

### **Question: Why is the toxic mold problem just now becoming an important issue?**

**Answer:** There are several theories about why mold is just now becoming such a major problem. Some environmental scientists believe that the increase in toxic molds in buildings is due to use of new building materials and new construction techniques which make buildings more air-tight for energy efficiency. These construction techniques and building materials can lower the amount of outdoor air entering buildings, which in turn may increase the moisture content within buildings. For example, the use of EIFS, “Exterior Insulation and Finish Systems,” and synthetic stucco can trap moisture in buildings and create favorable conditions for mold growth.

### **Question: How can REALTORS® minimize the potential for legal problems in the mold area?**

**Answer:** Disclosing and educating customers and clients on mold problems are the two best tools to minimize the potential for a claim. Buyer agents should advise their clients to have homes professionally inspected, including an inspection for mold problems, before buying them. Buyers should also be encouraged to look closely when they walk through houses for visible signs of mold and

evidence of water damage and leaks. Buyers should also be on guard for a musty or earthy odor in a house since that might be an indication of a possible mold problem. While many home inspectors are not yet familiar with toxic mold, the likelihood is that they will quickly develop expertise in this area.

Buyers should also be advised to specifically ask sellers whether they have had any problems with mold that have reoccurred after cleaning. Similarly, buyers should ask if the seller has had any major or recurring leaks or water damage and if so, how did the seller fix or correct the problem. If there has been a problem with leaks or flooding, the buyer should specifically ask if the carpet, ceiling tiles, insulation, and/or wall-board damaged by water have been replaced. If this has not been done, or if the buyer otherwise suspects that there may be a problem with mold, the buyer may want to have these areas inspected further by a professional house inspector to determine if these or other materials are harboring mold.

Listing agents should discuss with their clients the fact that toxic mold is a new basis of potential liability for sellers. Judging from the claims to date, the dollar amount of potential liability could be immense in the right case. For this reason, erring on the side of disclosure is preferable to non-disclosure. But common sense must be used. For example, the fact that the seller has occasionally had to clean mildew from his shower tiles is most likely something which does not have to be disclosed. On the other hand, a chronic problem with mold that returns after each cleaning, for example mold coming through wallpaper and wallboards or persistent mold in clos-

ets, should definitely be disclosed. The seller should either find the source of the moisture that is giving rise to the mold and eliminate the problem completely, or make a full disclosure of the fact that there has been a history of mold at a specified location in the house which has required repeated cleaning. Be aware that if a seller has a recurring mold problem and he merely cleans it in preparation for putting the house on the market without disclosing the problem, he/she may be setting the stage for a fraud case against him based on concealment. Also, if there has been a history of leaks or flooding of the home, the seller should disclose this to put potential buyers on notice of potential mold problems. Regardless of whether the seller makes the appropriate disclosure, a REALTORS® knowledge of the presence of a recurring mold problem would be an adverse material fact that the REALTOR® has a duty to disclose to potential buyers.

### **Conclusion**

Although the incomplete science in the area of mold litigation may mean that a plaintiff has significant hurdles to overcome in order to win a toxic mold claim, the huge expense of defending such a suit and the potential liability in the event that the plaintiff wins make it wise for REALTORS® to be aware of the problem and to take steps to avoid becoming engulfed by this emerging issue.



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