

DOING BUSINESS

The Law & You



Mold: a fungus among us

To reduce liability, seek red flags, then defer to experts.

BY ROBERT BRAND

Unquestionably, the disclosure du jour in residential real estate is mold.

Toxic mold, as it's been called, is an increasingly important issue for real estate professionals. There are several reasons:

- Modern energy-efficient building practices provide a conducive environment for mold growth.
- Public awareness on the topic has grown.
- Litigation activity has increased after several recent multimillion-dollar judgments.

Recently, for example, a Texas court awarded a family \$32 million from their insurance company for alleged mold exposure. The verdict included payments for property damage, mental anguish, punitive damages, and legal fees.

With judgments like that, you can

be sure mold lawsuits are here to stay.

At the outset, you should understand three key points about mold liability:

1. As a real estate professional, you don't need to become an expert on mold.
2. Large legal settlements don't change what you're responsible for disclosing.
3. Some basic and simple strategies can equip you to address this important issue.

Mold, a fungus, is ubiquitous, found everywhere indoors and out. It appears as a woolly growth on damp or decaying organic material. Most of it is harmless. But some varieties, such as the aspergillus and stachybotrus strains, are known to produce potent toxins under certain circumstances.

Mold needs two conditions to

thrive: moisture, often resulting from leaky roofs, defective plumbing, drainage problems, and high-humidity rooms (such as laundry rooms); and a food source, such as certain types of insulation, wood, and carpeting.

Many times, mold is easily eliminated by removing the water source or applying common housekeeping practices, such as thorough cleaning with bleach. However, when the mold is concealed and conditions are favorable, it can take hold and release a steady stream of spores into the air, which people then breathe in.

Those who suffer from mold exposure complain most often of respiratory problems, skin irritation, and nervous system disorders. There is much disagreement in the medical community about the precise correlation between mold and health problems, but mold is a serious enough threat that it has its own page on the EPA website (go to <http://www.epa.gov/iaq> and click on Mold Resources).

Because major mold problems often start with slight indicators, you should be alert to red flags when conducting your visual inspections. The most common telltale signs are staining on walls and ceilings and a musty, mildewy odor. Discoloration can range from common water stains to the multicolored variety.

So what do you do when you detect a red flag or find out that red flags have been detected by a home inspector, a pest control company, or a prospective buyer? Federal and state protocols on mold exposure in residential structures range from minimal to nonexistent. In May the California Senate approved the country's first mold bill, which sets standards for acceptable indoor levels and requires homesellers to disclose

mold problems.

Because there are no standard practices yet, buyers often look to third parties in the transaction for toxic mold remediation. Real estate practitioners should be aware that home inspectors and pest control operators are rapidly adding disclaimer language to their reports to control their liability, and homeowners insurance coverage limitations are commonplace. Real estate companies should prepare for the possibility of being held liable for mold problems by buyer clients.

To reduce liability, consider the following points:

- During your visual inspections, pay specific attention to stains or discoloration on ceilings and walls, including the baseboard area, to pick up red flags associated with plumbing leaks and drainage problems.
- Pay attention to mold or mildew odors.
- If you notice any of these signs of potential mold problems, carefully word a written disclosure. Be sure not to offer expert analysis, avoiding terms such as "black mold" or "toxic mold." Generic descriptions such as "mold type" or "mildew-like" might be used. Here's an example: "Some staining observed on north wall of downstairs bedroom. Mildew-like odors also noted in master bedroom closet. Contact a qualified specialist for review."
- Insist that potential buyers have their own, independent home inspections conducted.
- Become aware of the licensed experts in your area who are prepared to inspect for mold, and know when to advise (in writing) that potential buyers hire one of those experts. Some home inspectors are beginning to provide specific mold

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detection and diagnostic services. If necessary, recommend that your buyer clients retain a Certified Industrial Hygienist (CIH) or other environmental specialist to provide mold detection and lab analysis services.

- As always, avoid recommending a particular vendor; instead, give buyers a list of vendors or simply direct

them to the type of service they need and let them choose one themselves.

- Consult a lawyer to determine whether a special mold disclosure disclaimer form should be developed and signed by the transaction principals.

Equipped with basic knowledge, and using some simple litigation prevention strategies, you'll be better prepared to address this disclosure challenge effectively.

Brand is a licensed general contractor who works as a consultant on litigation avoidance strategies. He can be reached at 760/752-7754 or www.disclosureinfo.com.

