

THE TRUTH ABOUT MOLD RELATED HEALTH CLAIMS

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Many people scoff at the notion that mold can hurt you. After all, mold is everywhere and just about everyone has been exposed to some form of mold, whether it was the cheese that you ate last night, or the green fuzz growing on the mystery dish in the back of the fridge. Mold is even outside in the air we breath. So, how bad can it be? Well, the answer is that mold can be a dangerous organism and you can get sick from exposure to certain kinds of mold. Unfortunately, many homeowner associations are coming to this realization too late, after a homeowner has been damaged and filed a claim. Many of these claims are viable, with plaintiffs who have real damages and who obtain real recoveries against associations, regardless of whether the association's insurance policy covers the claim. And, even if you still don't believe that mold can make someone sick, the fact remains that mold related personal injury lawsuits are on the rise. But, the good news is that the claims can often be avoided if an association is prepared to act swiftly and responsibly when there is a complaint of water damage.

First, what is mold and how can it hurt you? Molds are a form of fungi that can be found all year, both indoors and outdoors. It is an organism that grows and thrives on moist, usually warm surfaces. There are many different kinds or species of mold and each type is not considered harmful. But all kinds of mold have one thing in common; mold needs moisture to grow. If the mold growth is undetected, which is often the case, it continues to grow both in surface and strength. Mold often begins growing where you can't easily see it, in wall cavities, behind furniture, under sinks, behind toilets and in bathrooms. Usually mold is first detected by a homeowner noticing a musty smell.

Second, what are the health effects of exposure to mold? Unfortunately there is no easy answer to this question. There is a lot of controversy about precisely what the health effects are of exposure to mold. The reason is that scientific studies about the health effects of mold are incomplete and not conclusive enough to establish accepted national standards for medical diagnosis of mold related health effects. In addition, not all people will react to mold in the same way. Finally, the symptoms that signal your health has been compromised are very similar to the symptoms for the common cold, flu or allergies; so it is sometimes difficult to know if mold exposure is the only cause of the symptom.

The more common symptoms include headaches, itchy watery eyes, nausea, sinus pressure, nasal congestion, throat irritation, and respiratory problems. People who are especially at risk for mold related health effects are those with depressed immune systems, such as the young and elderly. In addition, people with allergies, asthma and other respiratory ailments are also susceptible.

Third, what can an association do to limit its liability with respect to mold related personal injury complaints? It is very important that an association react quickly to any complaint regarding water damage. Mold can begin to grow on wet materials after only 48 hours. Therefore, the association should have a plan in place before any complaints arise as to the protocol for handling complaints regarding water damage. The protocol should include hiring a

licensed contractor to immediately repair the source of the water damage, as well as any building material that is water damaged. Finally, where more than 48 hours has elapsed, a licensed mold remediation company should be brought in to inspect and if recommended, test for mold.

Associations should also be proactive in the maintenance of all building components that it is responsible to maintain, especially roofs, windows, irrigation, and plumbing systems. In addition, associations can also encourage owners to be proactive in their maintenance of the separate interests, which can include ensuring their living areas are well ventilated when cooking or doing laundry, and regularly checking their plumbing for leaks. Associations should educate owners about the importance of promptly notifying the association of any water damage or musty smells. Such vigilance will decrease the likelihood of a water related damage claim or personal injury claim.

Another step that associations can take to ensure that they are adequately prepared to address water damage is to create a contingency fund for emergency repairs related to water loss. This is especially important so that short term financial constraints don't result in long term financial hardship, i.e. it is less expensive to take care of the problem on the front end than to pay to defend against a lawsuit by a homeowner. Such lawsuits tend to be very expensive because the claims are driven by experts. Even if the association pays for the repair on the front end it can always attempt to later recoup these funds from the responsible owner or owners when the issue of liability is resolved.

Finally, who pays for the mold related personal injury complaint? The answer depends on several factors, not the least of which is insurance. All too often board members erroneously believe that the insurance policy dictates what the association is responsible to pay for. The reality is that if the association is responsible for the water damage and the associated mold growth, it is responsible to pay for the repair, mold remediation and any successful personal injury complaints, regardless of whether there is coverage under the association's insurance policy. Independent of any insurance policy coverage issue is the requirement in the CC&Rs that the association maintain and repair the common area at all times. This ongoing duty sometimes requires the association to take action even when the issue of liability is unclear simply because the loss involves the common area. However, the good news is that many association's condominium policy packages include coverage for third party personal injury complaints that arise from mold exposure, even where mold damage and clean-up are excluded under the association's fire and casualty as well as general liability policies.

The bottom line is that associations need to be proactive when there is water damage that impacts the common area. This is not to suggest that associations must adopt a blanket policy to repair all water damage, as each claim should be evaluated on a case by case basis, under the totality of the circumstances, which includes an analysis of the association's responsibilities under the CC&Rs and the facts surrounding each claim. But, as noted above, it really is no longer an option to sit back and do nothing because the exposure and liability continue to grow by the day. Since the association is, by default, typically in the best position to act, it should do so if the individual owners and their insurers are sitting idle. In the end, such action will reduce the association's overall liability exposure.

