

Legal

Mold and the Law

by Quenda Behler Story

I've been asked to share with you any medical, scientific, and legal wisdom I have regarding mold. Don't worry, it won't take long.

Medical Issues

Let's start with the medical part. Mold is everywhere, and there are thousands of kinds. Most molds can cause trouble for people with allergies, but a few molds are also toxic. Some of the worst are members of the aspergillus, penicillium, and stachybotrys families. Stachybotrys has gotten a lot of press because it attacked the homes of several high-profile victims, including Erin Brockovich. The resulting lawsuits got the insurance industry worried about paying claims and led to much higher insurance rates.

Unfortunately, there is no consensus among experts about what levels of mold-spore concentrations are acceptable inside a house or even which species of mold cause the most problems. According to some medical researchers, the types of mold mentioned above are a life-threatening danger to small children, the elderly, and people with impaired immune systems. The symptoms of a reaction to mold often resemble those associated with asthma but can also include rashes, fatigue, nausea, and vomiting. In severe cases, people have died because their lungs were bleeding.

Science Issues

Here's the scientific part. What enables mold growth? Moisture. I bet you already knew that. There is no mold without moisture. Does that mean every moldy building has leaks? Not necessarily. You can get moisture through condensation, which is one of the reasons there have been more problems since we started constructing airtight buildings.

Suppose you're being sued because a building you worked on is now full of mold. Are you going to wind up paying big bucks to a kid with asthma? Maybe. Maybe not. Legally, there are very few definitive answers to that question.

So, what exactly are you supposed to do about mold? Again, there are no good answers. No one can tell builders exactly how to prevent mold. No one can tell them how much mold is too much mold. And there are no national mold standards.

Existing Legal Standards

Fewer than 10 states have adopted mold standards. There is a federal bill concerning mold, but it's still being debated in Congress, and the likelihood of an agreement is small.

This is a case in which people who don't like government regulation may want to reconsider their position, because there's substantial legal protection in being able to say, "I'm sorry you're sick, but I did what the law and the regulatory agencies required me to do."

Asbestos is a good example. There are specific legal standards that spell out how much asbestos is allowed in the air and what you're supposed to do if you find asbestos in a building. Because asbestos standards exist, asbestos isn't the big legal problem it once was.

Insurance problem. When it comes to mold, about the only thing I can say with certainty is that your insurance company has probably excluded mold problems from your coverage. In other words, if you're sued for mold damage, forget your insurance: You're on your own. Insurance companies don't want to deal with mold because the legal answers are still so uncertain.

How to Protect Yourself

There are steps you can take to protect yourself — and if at all possible, you should take every single one of them.

Use disclaimers. In their warranties, your insurance company and your material suppliers disclaim responsibility for mold. You should, too. First, include language in your contract that limits your liability for mold problems to those you created yourself by not meeting industry standards or not following the plans. The reason I don't suggest excluding every single mold problem is that judges and juries are more likely to ignore that broad,

boilerplate language than they are to ignore language that is a genuine effort to limit your liability to the problems you actually created.

Whatever you say, don't forget to include language that states you're not liable if you built according to the design and standards given you by the owner or the architect.

Follow industry recommendations. Second, be aware of industry recommendations about moisture abatement and water infiltration, and unless you're living in a very dry climate, follow them.

Actually, after reading some of the lawsuits out of the Southwest, let me amend that advice: Follow the recommendations regardless of how dry it is where you are. This means that whenever you install a building product, you need to read and follow the instructions. If the installation of this product leads to mold growth, you might be able to shift some of the blame to the manufacturer, but only if you followed the instructions.

Disclose and document. Third, don't limit yourself to advising the homeowner about potential problems with only the parts of the building you are working on. If you're working on an existing building, you should docu-

ment every water infiltration and condensation problem you find.

For example, if you're replacing a window and happen to look up and notice moisture damage from a past ice dam, tell the owner and architect. In fact, tell them in writing and mention that the conditions you observed can lead to mold problems. Be sure to keep copies of these notifications for yourself. If mold is discovered after you work on a building, you want to be able to prove that it was there before you started.

Why would I tell you to be so careful about something that isn't even part of your window-replacement job? Because you were up there and you saw the problem, and at this time, the legal outcome of mold lawsuits is in such a state of flux that it's impossible to say with certainty who will be left holding the bag. All we can be sure of is that it won't be the insurance companies.

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