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Effective Strategies for Handling Mold in Your Community

Mold has become a problem affecting many associations, both young and old. Knowing how to handle a mold complaint and having a plan in place could save your association significant money and minimize exposure to personal injury claims. This article sets forth some strategies for practically addressing mold in your community.

1) Take Mold Complaints Seriously

Many Boards and managers make the mistake of trivializing mold complaints from homeowners. While the idea of “toxic” mold has not garnered much support in the scientific community over the years, mold can certainly have allergenic effects on certain people. Young children and the elderly with compromised immune systems may be particularly susceptible to mold. Asthmatics or people with chronic lung disease can also exhibit severe symptoms. We urge Boards and managers to not be dismissive of mold complaints. Taking these complaints seriously can prevent potentially significant damage to common area and protect the health of residents.

2) Pre-Select Vendors

Assessing mold complaints is a time-sensitive issue. We recommend that an association pre-select the vendors it will use. Typically, you will need a certified industrial hygienist and licensed mold remediation contractor. A hygienist can assist in formulating the remediation plan and the contractor performs the actual remediation work. Other professionals may be needed later in the process to determine the source of water causing the mold and to recommend the appropriate repair to prevent further water intrusion.

Pre-selecting vendors will also allow an association to undertake whatever due diligence it normally would in selecting a vendor. We recommend an association request the vendor’s standard contract and have it reviewed by counsel. We also recommend the association confirm the vendors are licensed, if required, and that the vendor has appropriate insurance in place.

3) Have a Plan

While pre-selecting vendors is important, it is also crucial that an association promptly respond to a mold complaint. If a Board meets monthly, or even less frequently, it becomes difficult for an association to address mold complaints in a timely fashion. Mold problems do not improve with time. They get worse and even more expensive to handle. For this reason, we recommend that the Board discuss and delegate certain authority to the manager so that mold complaints can be assessed without undue delay. This way, associations are not hamstrung in promptly dealing with mold complaints that occur between meetings. Of course, if a mold complaint reveals a significant problem outside of the authority delegated to the manager, we recommend that an emergency meeting be called.

4) Remediate the Mold Immediately and Without Regard for Who is Responsible

After an owner reports mold in their home, many Boards want to debate where the mold came from and whose responsibility it is to clean it up. Unless the association is a planned unit development where the association has no responsibility for any repair or maintenance of components suspected in the water intrusion that caused the mold, rarely are those debates fruitful. While the Board and homeowner go back and forth, the mold problem grows worse. Leaving mold in a home while you argue with the homeowner about responsibility only allows the damage to get worse and you may be creating a personal injury claim where none existed before.

Do not conduct tests to determine the type of mold prior to remediation. If you can see or smell mold, it needs to be remediated. Remediation methods are the same regardless of the type of mold. Further, testing for mold will not tell you where the mold is or where the moisture is coming from. In the best case, the test results are meaningless. In the worst case, the test results convince an owner that they should make a personal injury claim against the association.

5) Consider Relocating the Owners

We also urge associations to consider relocating the owners affected by the mold. The mold remediation process can be very disruptive in that large plastic sheeting containment enclosures are erected within the affected areas. Sometimes this means entire rooms are closed off and unable to be used by a homeowner. When a kitchen or bathroom is involved, questions of habitability are raised. Further, most remediation protocols require the establishment of negative air which involves the use of HEPA (High Efficiency Particulate Air) air scrubbers. The high powered air filtration machines can be noisy and disruptive. Sometimes mattresses, pillows, clothing and other furniture need to be removed for cleaning or in extreme cases, disposal. All of these factors can be quite stressful to a homeowner.

An offer of relocation also becomes important should an owner subsequently make a personal injury claim. It is of great benefit to the association's defense to demonstrate that it offered to relocate the owners to a hotel during the mold remediation. If an owner refuses and later claims injury due to exposure to mold, the association has a good argument that the owner failed to mitigate his damages by refusing to accept the offer of relocation. If relocation is necessary, select a residence type hotel with a kitchen so the association can avoid a request for meal reimbursement.

Many Boards balk at remediation and relocation. However, it is important to keep in mind that the vast majority of governing documents contain provisions for reimbursement assessments. If it turns out the water source which lead to the mold growth is the owner's responsibility, the association can impose a reimbursement assessment for both the remediation and relocation costs. If the association turns out to be responsible, the problem has already been resolved and the owner is thrilled with the association for being responsive and proactive. Plus, by prompt removal of the mold, the association is eliminating the basis for any future personal injury claim. Whether meritorious or not, defending mold personal injury claims is incredibly costly for an association.

6) Perform Clearance Testing After the Remediation

After the mold has been remediated, but before any repairs are performed, have the industrial hygienist return to do clearance testing. Clearance testing involves taking air samples inside the containment enclosure, outside the containment enclosure, and often times, outside of the unit entirely. Clearance testing establishes that the mold has been fully remediated. Think of it as a kind of insurance policy.

7) Identify the Source of Water or Moisture and Correct It

Mold requires a water or moisture source to grow. Remediating the mold but failing to correct the source or water or moisture is a waste of money as the mold will just come back. If the source of the moisture is readily apparent and the repair is simple, the mold remediation contractor may be able to take of the repair. If there are multiple sources of moisture, the source is not readily apparent or the repair is more involved, the Board may wish to retain an architect or other design professional to evaluate the problem, develop a repair protocol, and oversee the work.

8) Make the Interior Repairs

Once the source of the moisture has been corrected, it is time to repair the interior of the home. If the cause of the mold was a homeowner responsibility, the Board may want to consider insisting that the homeowner perform any repairs. Since there is no longer any health issue, there is less risk to the association from engaging in a dispute with the homeowner at this point.

Other Considerations

Should the association tender the mold complaint to its insurance carrier?

Many insurance policies now exclude coverage for mold damage to common areas (some policies refer to this as limited fungi or bacteria coverage). In the past, damage to homeowner property and personal injury claims were covered but it is now quite common for policies to exclude all claims related to mold. We have seen some insurance companies cancel or refuse to renew policies for associations who make mold claims—whether or not the claim was covered. Therefore, it is important to consider the likelihood of coverage and the amount of coverage after the deductible before submitting a claim.

Should the association amend its governing documents to include a Marie Antoinette clause?

Such a clause essentially makes water damage to a homeowner's property the responsibility of the homeowner unless the association has been grossly negligent. Such a provision can eliminate disputes between the association and the homeowners and can reduce insurance premiums for the association.

What if my association was built before 1980?

If your association was built before 1980, you may have asbestos in the ceilings or walls. If so, you should make sure that the mold remediation contractor is aware of the asbestos and that any disturbance of the asbestos is done under the direction of a licensed asbestos abatement consultant. Absent the appropriate protocols, stiff fines can be imposed if sheetrock containing asbestos materials is cut into or disturbed.