

Mold: is there a hidden fungus among us?

In Texas a simple claim for water damage to a hardwood floor turned into a verdict of over \$32,000,000¹ because the home became infested with mold. In Arizona, a small claim for a leak in a Culligan soft water conditioner that was initially estimated at \$2,500 in damage ended up as a claim for over \$700,000. The home was razed after two unsuccessful attempts to remediate mold growth resulting from the leak. But do we need to be concerned about mold here in Colorado? Yes we do!

Awareness of the existence of mold and its potential adverse affects on health are increasingly becoming known throughout the country. In December Denver's Channel Nine News chronicled the stories of residents of the Reserve at Southcreek Apartments in Arapahoe county, where apartments that are only approximately 18 months old are infested with mold. In another story the problems and mold growth a high end townhouse complex in Cherry Creek were told by Channel Nine news reporters. Mold is and will continue to be a concern as it affects the life, health and safety of the homeowner or resident.

Molds produce spores that can cause allergy problems. Symptoms of an allergic response to mold exposure include coughing, watery eyes, burning sensation in the nose and mouth, rashes, sore throat, itching, etc. However, not all people will have these symptoms. Because of this it is difficult to know if symptoms are related to mold exposure, especially when the mold is not seen in the visible construction. Individuals can be tested to determine whether they have any allergies to molds or even certain molds.

In addition to causing allergic reactions in some people as a result of the mold spores, certain molds also produce chemicals that are believed to be harmful. These chemicals are believed to be responsible for more serious health risks, including persistent headaches, nausea, vomiting, and asthma-like symptoms. Toxic chemicals from certain molds, primarily aspergillus, penicillium, stachybotrys and cladeosporium are also believed to affect immune systems, increase susceptibility to cancers, intestinal hemorrhaging, bleeding from the lungs, infertility and depression just to name a few.

Homeowner associations should be concerned. Why? For several reasons. First, most insurers are now excluding mold from coverage altogether. As a result of the \$30 million dollar verdict in Texas, Texas insurers almost immediately put a cap of \$5,000 for any mold claim. Colorado insurers are completely excluding mold from coverage in newer policies. Second, while the insurer may limit their liability for mold, an association cannot do the same if a common element causes damage that leads to mold growth. So what does this mean to an association? It means that if a common element such as drainage, roof leaks, plumbing leaks or some other common element causes water intrusion, the association may have liability that they cannot insure against.

¹ The verdict was ultimately reduced by the Appellate court to \$4,006,320.72

Is there anything an association can do to limit their exposure? The short answer is yes. First, any association must be very aggressive in making repairs to any issues involving water intrusion. This may include window leaks, roof leaks, water intrusion from drainage, or from any other source². Second, if the association is 6 years old or less or if the damages did not become apparent until the sixth year the original developer and/or builder may have some liability.³

There are also considerations if a mold abatement is undertaken. The process and procedure may differ depending on the extent of the mold infestation. To learn more about this issue please attend one of our in depth presentations...

² The source of water that may give rise to liability for an association is wholly dependant on the association's governing documents and may differ from one association to another.

³ There is a 2 year statute of limitations and a 6 year statute of repose that apply to any claim against a construction professional. The claim must be brought within 2 years of discovery and within 6 years of substantial completion of construction.