

January 26, 2003, Sunday

REAL ESTATE DESK

YOUR HOME; Managing Mold, and Lawsuits

By JAY ROMANO (NYT) 1431 words

ACCORDING to the Insurance Information Institute, an industry organization based in New York, there are more than 10,000 mold-related lawsuits pending in state courts across the country.

And while most of those suits were filed in states like Florida, California and Texas -- where weather conditions make it easier for mold to get a foothold -- some New York lawyers say that multimillion dollar jury awards in some of those cases seem to be inspiring an increasing number of mold-related claims here. As a result, property managers and lawyers who represent co-ops, condominiums and owners of rental buildings are doing everything they can to ensure that the buildings they represent will not wind up in a mold-related lawsuit.

"The fear of mold has become an issue unto itself," said Daniel Sitomer, a Manhattan co-op and condominium lawyer. "There are a lot of lawyers out there chasing mold cases, everybody is running to court, and that is resulting in a series of construction-defect lawsuits. Instead of trying to manage mold problems, many people are litigating them."

Greg Carlson, executive director of the Federation of New York Housing Cooperatives and Condominiums, said that mold may be present in just about any building and may even be more likely to grow in newer buildings than in older ones.

That is because the newer buildings are often airtight. "And in buildings that have mold problems," he said, "central heating and air-conditioning systems can spread mold spores throughout the building."

Another reason newer buildings may be susceptible to mold, Mr. Carlson said, involves the building materials used. In older buildings, he said, the plaster used for construction of interior walls is less likely to provide a good breeding ground for mold. In newer buildings, on the other hand, where wallboard is commonly used for interior walls, the paper backing provides an ideal environment for mold if that paper becomes wet.

Dr. Joseph Q. Jarvis, an expert in public health who is affiliated with the University of Nevada School of Medicine in Reno, agreed. "My experience has been that when you get a lath and plaster wall wet, it's less likely than a Sheetrock wall to grow mold," Dr. Jarvis said.

He explained that there are "three possible outcomes" when people are living in a "moldy" building.

"The most common is that people do well," he said. "Even in the most moldy buildings I've investigated, more than half the people reported no problems or symptoms at all."

Another possibility, he said, is that people exposed to mold spores will develop irritation in their eyes, nose or throat. "Mold is an irritant," Dr. Jarvis said. "And the irritation causes things like red eyes, runny or stuffed nose, sore throat or hoarseness." Such symptoms can persist, he said, for as long as the irritant is present.

The third possibility, he said, and one that is least frequent, is that people can develop an allergic respiratory disease. "Mold is clearly an allergen," Dr. Jarvis said, adding that among the problems exposure to mold can cause are allergic rhinitis (also known as hay fever), hypersensitivity pneumonitis (an inflammatory allergic condition of the lung tissue) and asthma.

"You have to remember, though, that there are a lot of people who have allergic respiratory diseases who haven't gotten them from indoor mold," he said, adding that any number of other allergens can be the cause of such a problem.

Moreover, Dr. Jarvis said, while the term "toxic mold" is often used to describe a type of mold that can be quite dangerous -- and even lethal -- if it is swallowed, he has never seen a case in which that type of mold was present in such quantities that simply inhaling it would produce a toxic effect.

Nevertheless, co-op and condominium lawyers are looking at the number of mold lawsuits being filed and are naturally getting nervous. The concern was confirmed recently when a unit owner in a luxury Park Avenue condominium filed a \$400 million lawsuit against the condominium association, its board and the building's architects, engineers and developer. The suit alleges that mold in the building damaged the unit owner's property and injured his wife and child.

"This is a serious issue," said Eva Talel, a Manhattan co-op and condominium lawyer who recently participated in a seminar for property owners addressing the liability and insurance issues relating to mold litigation. "And you can have different problems in co-ops than you have in condominiums."

Ms. Talel explained that since a co-op corporation owns the building, the corporation has more legal exposure to liability than a condominium association, which typically owns only the common elements in its building. Thus, she said, while mold inside the walls between two apartments would probably be the responsibility of the corporation in a co-op, it is likely to be the responsibility of the unit owners in a condominium. At the same time, she said, if a common element is the cause of the problem -- for example, a leaky pipe in a wall between units -- the condominium would probably be liable.

"You also have the issue of the warranty of habitability in a co-op," she said, explaining that since a shareholder is basically a tenant of the co-op, the corporation has an obligation to provide a habitable apartment. And when a serious mold problem occurs in a co-op building, she said, the corporation could be deemed to have violated the warranty of habitability, thereby making it liable to the shareholder.

Yet another problem that co-op and condominium boards are encountering, Ms. Talel said, is that some insurers are eliminating coverage for mold-related problems in their standard policies. "You can still get the coverage," Ms. Talel said. "But you're going to pay a premium for it." For example, she said, a 150-unit building with a good claim history might pay \$15,000 or more for a three-year, \$1 million policy endorsement covering mold. "And that coverage could be twice as expensive or even unavailable tomorrow," she added.

Doug Weinstein, vice president of operations for Akam Associates, a Manhattan management company, said the most important thing a co-op or condo board can do to minimize the potential for a mold-related lawsuit is to react immediately to complaints about water leaks.

"If you have a leak in the building, you have to see to it that the leak is repaired right away," Mr. Weinstein said. "The wetter a wall or a ceiling gets, and the longer it stays wet, the greater the possibility that mold will develop."

And while immediate attention to leaks is critical, he said, it is also important for building maintenance workers to ensure that wet surfaces are given time to dry before any holes are closed up, even if that means the superintendent will have to make a return trip to an apartment after a couple of days. It is also wise, Mr. Weinstein said, for building personnel to inspect apartments adjoining the one with the leak to ensure that all surfaces in those apartments are dry.

In cases where mold has already gained a foothold, building management must decide what, exactly, to do about it.

Mr. Sitomer, the Manhattan co-op lawyer, said boards and managers should resist the impulse to immediately hire a mold remediation firm to eliminate any and all mold that may be found in a building.

"The first thing we tell our boards is not to overreact," he said.

For example, Mr. Sitomer said, if mold is discovered in an interior cavity in a building -- such as behind a wall or between a ceiling and the floor above -- the first thing management should do is to conduct testing to determine whether there are hazardous levels of mold spores in the living area. If so, he said, there is probably no alternative but to eliminate the problem by removing the mold. On the other hand, Mr. Sitomer said, if the mold is not getting into the living areas of the building, and the source of the moisture that led to the formation of the mold has been eliminated, it might be better to leave the mold undisturbed until remediation can be tied into the building's ongoing maintenance of renovation plans.

"The most important element of a mold-management program is to educate and train building employees to be able to identify mold and know how to deal with it," Mr. Sitomer said.

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