

# Minimizing Mold Issues Is the Best Defense

by *Mike VanKleeck*

**M**old grows anywhere where there is moisture and a source of nutrition are present, such as in bathrooms, kitchens, laundry rooms and other spaces which are frequently damp and lack sufficient ventilation.

Left unchecked, mold that grows and multiplies on a surface can adversely affect indoor air quality and lead to toxic and allergic reactions, respiratory problems, eye and skin irritation and health problems. It can also damage walls and other building materials.

While some mold situations can arise from construction defects, they commonly result from unaddressed water damage or excess moisture within an apartment or in a common area of a complex. Though residents may sometimes see watermarks or discoloration on an affected surface, first detection of the presence of mold is often the emanating distinct earthy or musty odor.

Because mold can begin growing within 48 hours of excess moisture, it is good policy to take care of any water damage as soon as possible. It is also a smart idea to practice "preventive maintenance" and use construction materials that minimize risk of mold growth in the first place.

In California, mold is a leading complaint in construction-defect lawsuits and sometimes a source of personal injury cases against landlords.

Years ago, the state of California considered but ultimately did not pass a law that would have required landlords to provide prospective tenants disclosure in writing of knowledge of or reason to believe there is mold present in a building that exceeds permissible exposure limits or poses a health threat. However, the state's Repair and Deduct Law (California Civil Code Section 1942) gives some tenants who have mold in their apartments a leg to stand on in court.

According to the Repair and Deduct Law, a landlord can be held liable for damages that result from a mold-related illness if the instigating problem is a condition or situation in violation of the building code. For example, liability can arise from failure to fix a leak in a window,



wall, or roof that causes build-up of moisture or from failure to fix an interior plumbing leak. Liability can also stem from failure to address a written tenant complaint in a timely manner.

There are several ways a tenant can respond to a mold-related situation that remains unaddressed by a landlord or management. The tenant may withhold up to a month's rent and hire

a contractor directly to remedy the situation or may withhold rent for as long as it takes for the landlord to fix the problem. Another option is suing to recover damages covering the illegal living environment and the adverse health consequences stemming from the situation.

The November 2001 landmark toxic mold case in California, *Mazza v. Schurtz*, the plaintiff (a family of three) won a jury verdict of \$2.7 million against the landlord for personal injuries resulting from living in a mold contaminated apartment in Sacramento. That is the largest personal injury award for mold in the U.S. to date. The lawyer for the plaintiff was John C. Miller, Jr., the founder and a member of Miller Law Inc., Folsom, California, a law firm that represents plaintiffs and defendants in toxic mold cases.

Mr. Miller often represents tenants who bring suit against owners/management of apartment complexes. According to Mr. Miller, common causes of action include perceived construction defects, breach of implied warranty of habitability, including negligence and failure to maintain and repair the property, and fraud, which arises when managers and owners know about the existence of a mold condition yet do not reveal it to a tenant before move-in. Typically, Miller Law settles cases for anywhere between \$300,000 and \$800,000.

Kevin Gramling, of Klinedinst Attorneys at Law, in Santa Ana, who often represents landlords, owners, and property managers in lawsuits involving mold issues, points out that proving in court that mold exposure causes a physical condition is difficult. And, he notes, "most landlords/owners/property managers are more aggressive in combating mold problems than in the past" resulting in

fewer cases reaching the courts. Of the over 50 lawsuits he has handled in the past five years, 95% have settled out of court.

He estimates that about 75 percent of the cases are brought against owners/landlords and property managers of apartment complexes or commercial buildings and that 25 percent are against real estate agents/sellers of homes.

About 75 percent of the mold-related lawsuits Mr. Gramling handles involve bathroom/kitchen leaks, 20 percent involve window/door/ roof leaks; and five percent involve slab leaks.

While leaks not related to drywall are the most common cause for development of mold in an apartment complex, mold can develop from dampness without a leak.

Use of mold-resistant building materials, especially in areas where there is no natural ventilation, will minimize risk of mold growth on walls in areas where there is often dampness.

To minimize risk of mold developing on a painted or otherwise finished surface in potentially damp rooms or spaces, specifiers select mildew and mold-resistant drywall – fiberglass-faced or paperless gypsum board or cement board.

That type of drywall has its limitations. Notably, joint compound and paper-based tape used to finish the joints and cover fasteners are not mold resistant and so are compromising weak links. In fact, the paper tape itself actually supports mold growth. When the joints are taped with paper tape and the compound is feathered out, close to 40 percent of each board becomes a surface on which mold can grow and take hold. And in installations where the finish calls for complete skim coat coverage, there's essentially no mold resistance left at all on the outer surface.

There are two common types of joint compounds: drying type joint compound, which comes ready-mixed or as a powder, and setting-type joint compound, always sold as a powder. Conventional drying-type joint compounds contain glue, starch or other organic material that nourishes mold. Setting-type joint compounds sometimes contain organic matter that supports mold. The only way of guaranteeing mold resistance is through documented testing.

Mold-resistant setting-type joint compounds are designed for use with fiberglass mesh tape and are more moisture-resistant than drying types. A cement based compound that is intrinsically mold and mildew resistant will not compromise the anti-mildew and anti-mold properties of mold resistant wallboards. Cement based compounds made with rapid-setting cement also resist moisture.

In addition to covering and finishing joints in mold-resistant drywall, an anti-mildew, anti-mold cement based drywall compound is useful as a fast-drying repair compound that is sandable in 45 minutes and paintable in 90 minutes, a time frame much shorter than conventional joint compounds allow. This type of material, which is VOC-free, is also suitable for speedy repair and painting of holes and damage to conventional wallboard, plaster, masonry surfaces both interior and exterior, and some applications to wood fascia boards.

Specifying mold resistant products wherever possible can help landlords avoid mold-related claims.



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