

# MOLD COMPLAINTS-NOT TO BE IGNORED OR WISHED AWAY

By Morrell I. Berkowitz, Esq.

Complaints by residents of buildings in New York about mold conditions, whether observations of black substances in bathroom ceilings, stained living room ceilings where leaks have occurred, or even foul odors, have grown and are unfortunately becoming more and more common.

The potential for exposure to various dangerous forms of mold, fungi, heavy metals and other toxic substances has also increased as a result of repair and restoration efforts over the last year involving hurricanes, storms, and floods around the country. Superstorm Sandy has itself caused a substantial increase in toxic substance exposure risks.

Managing agents, owners of residential buildings, and cooperative and condominiums must therefore be constantly alert to the potential dangers, and must address these issues immediately upon the slightest hint of a problem. After being involved in many mold lawsuits, I assure you that if mold or other toxic and harmful substances exist, they do not go away by themselves; the condition does not get better on its own; and the poten-

tial harm to individuals who are exposed only increases and worsens. As the extent of the problem increases, the probability of litigation and its costs, as well as remediation expenses, grow geometrically. Mold spreads effortlessly from unit to unit, into elevator shafts, easily exposing all residents and possibly risking a full evacuation of an entire building.

The most prudent course of action is to investigate as soon as a complaint is made or when there is knowledge that a leak has occurred, no matter what the reason, where it is located or who is at fault. Addressing and stopping the infiltration of water is essential to prevent further development of mold for the safety of residents and to avoid damage to the building itself and to personal property contents.

It is important to ascertain if in fact mold or other harmful substances have developed as a result of the water infiltration. Surface and air tests done by properly trained testers should take samples and have them tested by an experienced lab.

November 2013

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Effective remediation cannot occur until the water infiltration has been stopped. That is easier said than done because water infiltration can come from a number of sources: a faulty roof, leaking pipes, exterior walls and terrace doors and other water carrying conduits. Sometimes, the source is far from the damaged apartment. Water travels! So you should bring in experienced contractors and professionals. The same applies to the remediation once the infiltration has been addressed, and once the area containing questionable substances has been tested. Contrary to some efforts to “do it on the cheap,” self-help use of bleach does not remove the more dangerous toxic molds and fungi.

A good first response plan must take into account the November 2008, NYC Department of Health and Mental Hygiene, “Guidelines on Assessment and Remediation of Fungi in Indoor Environments”, [www.nyc.gov/html/doh/downloads/pdf/epi/epi-mold-guidelines.pdf](http://www.nyc.gov/html/doh/downloads/pdf/epi/epi-mold-guidelines.pdf), plus all the latest regulations involving the protections that first responders are to employ issued by the U.S. Department of Occupational Safety and Health, and should include:

- immediate investigation of leaks by qualified personnel
- repair of conditions that cause water infiltration
- test any areas where either visible staining, odors, or actual appearance of questionable substances appear
- if harmful substances are found, qualified remediation personnel should be hired to perform remediation

- notify building insurance carriers and attorneys for the building of a potential claim.

Failure to do so is not only poor management, but can be indefensible, and will almost certainly result in a larger problem which will undoubtedly be much more expensive and time consuming to address.

On the legal side, the failure to cure conditions that can lead to dangers to the life, health and safety of residents can form the basis for a defense to the payment of rent as well as claims for personal injury and damage to property. In 2012, in a case we handled for a tenant who had been driven from her apartment by severe mold, the New York State Appellate Division decided that scientific evidence can establish that serious mold conditions can cause personal injury. The appeals court sent the case back to the lower court for a trial on a claim of serious personal injury damages that could exceed the amount of insurance, as well as putting the insurability of the building at risk. In that case, there was plenty of evidence well in advance that there was mold contamination, but it was ignored. A big mistake that building managers, operators and owners do not want to repeat.



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