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# Wolf, Rifkin & Shapiro, LLP

## COMMUNITY ASSOCIATION LAW UPDATE

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Fall 2002

### COMMUNITY ASSOCIATION MOLD ACTION GUIDE

Toxic molds have been causing serious health problems in humans for many years. Dangerous molds can exist in damp environments, in our homes or workplaces, without us ever knowing it. In the last ten years, there have been many reports of various molds causing serious and even fatal illnesses in infants and sensitive individuals.

It is for this reason that community associations and property managers must be educated in methods of toxic mold prevention and emergency response to mold infestation. The following is a short action guide which should assist board members and property managers in dealing with mold conditions.

A. **TOXIC MOLD PREVENTION.** The most important consideration for preventing toxic mold is that fungi and mold need a moist, wet, or damp environment in order to thrive. Maintaining a clean, dry home or workplace prevents mold growth. Unfortunately, it is often difficult to distinguish between toxic molds and those that do not pose a risk. Most types of mold appear similar - black or gray sooty patches. Even if toxic molds are in or around a home, most of the time they are removed through normal cleaning before they grow to a size where they would pose a health threat.

Sources in and around homes that can harbor mold include leaky or broken pipes, windows or doors that lack good seals, roofs that leak, and cracks or holes in the structure. Boards of directors and property managers should consider taking the following preventative measures to avoid mold infestation:

1. **Scheduled Maintenance** - All buildings should undergo scheduled maintenance that includes inspections for water leaks,

improperly sealed windows and doors, as well as inspections for visible mold and moist or damp parts of the structure. Any conditions that could cause mold or fungi growth should be corrected to prevent possible future problems.

2. **Education** - It is extremely important to educate the board, owners and property managers about the causes and effects of mold. Owners should be reminded of their responsibility to maintain as mold-free an environment as possible in their respective units. Additionally, the board and individual owners should be reminded of their respective duty to report known water intrusion problems.

3. **Insurance Policy Review** - The association and individual owners are urged to have their respective insurance policies reviewed by insurance professionals so as to maximize the probability that coverage will apply for losses that result in damage caused by mold. Owners should speak to their personal insurance representatives about coverage for personal property, floor coverings, wall treatments, etc. Owners should also seek appropriate advice concerning loss assessment coverage in case of an emergency special assessment.

4. **Emergency Response Team** - The board should have an emergency response team in place before a problem arises. The board should pre-interview and price appropriate professionals including an industrial hygienist, construction consultants, an insurance adjuster, and attorneys.

5. **Governing Documents** - The governing documents should be reviewed to ensure that the board is able to undertake

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immediate steps to respond to a water intrusion problem including access to individual units.

6. **Identify Substitute Housing** -

Under certain circumstances, homeowners may need to be relocated for long periods of time. The board should contact hotels and/or motels in the vicinity to confirm available temporary housing for displaced members.

B. **EMERGENCY RESPONSE**. If the board and/or property manager has followed the steps for prevention set forth above, instances of water intrusion causing mold will decrease or be eliminated entirely. However, should water intrusion occur despite preventative measures taken, the board and/or property manager must be ready to immediately and appropriately respond to the situation. Some simple steps to consider:

1. **Do Not Panic**

2. **Conduct Immediate Water Intrusion Clean-Up** - Clean-up and water removal should be performed within the first 24-48 hours after the incident in order to prevent mold growth. An experienced environmental hygienist should be contacted immediately.

3. **Report The Claim** - Report the claim to the association's insurance carrier. Advise owners to report any damage to their own units to their own insurance carriers.

4. **Create A Remediation Plan** - Work with qualified remediation contractors to identify affected areas and to determine the best method for remediation.

5. **Contact Counsel** - Board members and property managers find themselves under strict scrutiny when faced with emergency circumstances. The best way to minimize exposure to liability claims is for board members and property managers to rely upon experts for advice. A board of directors for an association is a fiduciary charged with the duty of maintaining the complex in a state of good repair and insuring every member's right to quiet use and enjoyment of his or her unit. These duties

are expressly stated in virtually every set of CC&Rs which govern the day-to-day operations of an association.

In discharging the fiduciary duties owed to the membership, boards are governed by the "Business Judgment Rule." The Business Judgment Rule refers to a judicial policy of deference to the business judgment of a corporate director in the exercise of the director's broad discretion in making corporate decisions. Judicial deference will be paid to those directors who make informed decisions.

When faced with possible mold problems, the board and property manager should consult with appropriate experts including attorneys experienced in mold claims. Attorneys will be able to assist the board and property manager in many areas including the screening, selection and retention of appropriate construction professionals, submitting and adjusting of insurance claims, and determining responsibility for remediation between the association and individual owners.

In conclusion, prevention of mold-forming conditions is the best medicine. Taking the simple steps outlined herein could alleviate many future problems.

*If you have any questions regarding the topics covered in this issue, please contact either Daniel C. Shapiro or Leslie S. Marks at (310) 478-4100.*

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