

TOXIC MOLD LITIGATION

What is it?

Toxic mold has become a national health and property damage issue resulting in an increase number of lawsuits. There are over 5,000 species of mold identified by scientists, and 150 of them are known to cause allergies in humans. Toxic mold occurs as a result of chronic dampness or water intrusion due to leaks, poor construction, or high humidity. The toxic mold is not always visible and can be hidden in wall cavities. This mold needs to be removed by professionals and should obtain a professional mold inspection to assess the extent of the mold contamination.

Mold that grows outdoors is an integral part of the natural process as it breaks down leaves and other objects. Toxic mold is different than regular mold and usually has a dank musty odor and is capable of producing mycotoxins. Mycotoxins contain neurotoxins causing disease and even death. Further, soft tissue around the nose, mouth, lungs, and trachea are extremely vulnerable to mycotoxin contamination. The most common type of toxic mold is “black mold” called stachybotrys. Even in newer buildings mold can still be a problem because they are tighter and more energy efficient which results in rarely opening windows and thus less ventilation. The mold may develop due to the negligence on the part of the building owner/landlord

Reasons it occurs:

1. The defendant created the moisture that allowed the mold to grow
2. Knowledge of the defendant and the failure to disclose
3. Or failure to repair or eradicate the mold properly once it is discovered

Health Risks?

- Skin irritation (rash or hives)
- Eye irritation
- Coughing/wheezing
- Nasal stiffness
- Respiratory infections
- Asthma exacerbation
- Upper respiratory tract symptoms
- Throat irritation

Where is it found?

Mold requires moisture in order to flourish. It is commonly found on basements, ground floors, and schools. Mold actively growing on an indoor substrate may affect the quality of the environment by potentially adding unhealthy chemicals to the indoor air. There is no established quantifiable levels for what constitutes a unhealthy or dangerous level of indoor mold because mold affects individuals differently.

What does MA require?

- MA State Sanitary Code require landlord to maintain housing free from chronic dampness which is defined as the regular and periodic appearance of moisture, water, mold, or fungi. The landlord is supposed to main structural elements (wall, ceiling, roof) free from chronic dampness.
- Condominium Associations unit owners are generally responsible for cleaning mold from within the interior of their condominium unit unless mold is protruding from common area space.
- Home inspectors are required by law to tell a prospective home purchaser that the buyer should ask their seller whether there is a history of water penetration and if there has been a previous inspection. Homeowners may have claims against numerous possible parties: sellers, brokers, home inspectors, contractors, and insurance companies.

Mold known for adverse health effects: (all molds should be removed regardless because not toxic mold can cause allergic reactions and irritation)

- Fusarium
- Paecilomyces
- Penicillium
- Aspergillus
- Stachybotrys

Who can be held liable?

- Landlords
- Employers
- Maintenance companies
- Developers
- Contractors

Theories of liability:

- Negligence

- Bad faith
- Breach of warranty
- Failure to disclose

What is required?

Extensive gathering of evidence and medical records to obtain a fair monetary compensation.

Self-help strategies:

- a) **Rent withholding** – mold has made their apartment uninhabitable bound by the implied warranty of habitability
- b) **Repair and deduct** – tenants taking care of mold cleanup on their own and subtracting cost from their rent

Laws:

There is no federal law covering landlord responsibilities when it comes to mold. Additionally, there is no laws in Massachusetts that specifically address a landlord duty or liability when it comes to mold prevention and remediation. Legislation is currently pending in regard to the Toxic Substance Control Act. The US Toxic Mold Safety and Protection Act calls for research, education, and standards for preventing indoor mold growth and removing it. Further, the Environmental Protection Agency has no current government or industry standards that specify allowable levels of indoor airborne fungi.

M.G.L. c.111, § 122 states that mold growth in/on building components or materials stored within a building is considered a public health nuisance subject to enforcement action or removal by the Board of Health

Statute of Limitations:

Under the discovery rule the statute of limitations for a toxic mold claim starts when the injured person becomes aware of the existence of toxic mold through investigation or some physical manifestation of being exposed to toxic mold such as respiratory symptoms occurs.

What is needed:

Due to the scientific uncertainty the outcome of toxic mold litigation frequently hinges on expert witness testimony and the ability of the plaintiff to establish a causation between her injuries and the particular species of mold. There are two different types of causation:

- a) **General** – that the particular species of mold is capable of causing the plaintiff the specific injury



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- b) **Specific** – that the plaintiff was in fact exposed to a dose of the alleged toxic mold sufficient to cause the plaintiff's injury