

ADVANTAGE ASSET MANAGEMENT

PRESENTS

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REAL ESTATE AND MOLD: UNDERSTANDING & MANAGING THE LEGAL IMPLICATIONS OF MOLD PROBLEMS FOR REAL ESTATE PROFESSIONALS*

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“Houston...We have a Problem”

1. Background:

- Houston’s humid and warm conditions are a perfect breeding ground for mold.
- Modern building techniques, including well-insulated buildings and insulation itself, actually make the problem worse.
- More members of the public are tuned-in to the mold issue, even though medical evidence remains unclear.

2. Inspection for Mold:

- The most obvious sign is discoloration on walls in damp areas. However, mold can grow in pretty much any damp environment, including above ceilings and inside walls.
- “The Nose Knows” – musky or dank odors often indicate conditions ripe for mold.
- Likely places: Shower stalls, window sills, air conditioning drain lines, water heater emergency relief valve pipes, garages, water leaks of any kind, and any place that recently was flooded.
- Testing:
 - Home Test Kits – available at hardware stores.
 - Professional testing companies that inspect and sample various areas.
 - New technology - infrared thermal imaging

3. Legal Issues in Texas:

Caldwell v. Curioni (TX APP 2004) – The Caldwell family rents a house from Curioni that is represented as “freshly redone.” They rent the house despite an odd odor in the house, which the real estate agent said was pet odor left over from prior tenant. Baby son gets sick and family has other health issues. They discover that the house had been flooded and that various molds exist in the house. Medical doctors support their position that mold made them sick. Curioni wins a summary judgment, but reversed on appeal. Note, “as is” provision did not get the landlord off the hook.

Landlord who makes repairs is responsible for the repairs.

Jones v. Zearfoss, (Tex. App. 2015) – In TX DTPA case, Sellers win since they provided Buyers detailed information on a serious water event that occurred prior to the sale and that was professionally repaired and remediated. Disclosure was key legal issue in favor of Sellers.

TX DTPA requires landlords to disclose known facts about the property that may influence a prospective tenant’s decision to rent.

4. Landlord's Duty to Remediate:

- The tenant gives notice of the condition to the person who normally accepts rent
- The tenant is not delinquent in rent payments
- The condition materially affects the physical health or safety of an ordinary tenant
- The tenant, a member of the tenant's family, or a guest of the tenant did not cause the condition

5. Suppose Mold Caused by Tenant:

- In well-run properties, this can be a problem. Mold remediation is expensive.
- One possible approach is inspection sheet/walk through at beginning of lease.
- Possible lease clause in absence of walk-through:
 - *MOLD. The Premises should be free of mold at the time of occupancy. Tenant will inspect the Premises upon occupancy and will advise the Landlord within 3 days of occupancy if there is any mold inside the Premises. Beyond that point, any mold found inside the Premises will be the responsibility of the Tenant.*

6. Contingency when Mold Found during Sale Inspection:

- The deal may not be dead
- If dispute, using a mutually selected inspection service may help.
- Cost of remediation could be covered at closing, or may need to be done prior to closing if the new mortgage company requires the remediation.

7. What about insurance?

- Many policies exclude mold remediation, although sewer back-ups and water damage not caused by flooding may be covered.
- Flood damage is only covered by flood insurance and covers damage, but in most cases, will not directly cover mold remediation.
- Consider adding a mold rider to your current policy.

8. Questions?