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MA5-10508



The Problem of Mold

*"transforming the way real estate agents
think about doing business"*

Real Estate Brief

Mold is “the fungus among us,” proclaimed a March 2002 Kansas City Business Journal headline after a jury awarded \$32 million to a Texas woman who had claimed mold in her home had left her husband brain-damaged and herself and her son sick. While the Texas case may be one of the largest verdicts in a mold case, it’s far from the only one. A number of states, including Texas and California, have added specific mold provisions to the environmental hazards section of their standard property disclosure forms. As a real estate professional, it is important that you understand the questions being asked. And if your state’s standard real estate documents don’t address mold, you might want to consult with an attorney to create your own mold disclosure form.

Mold is transforming the way real estate agents think about doing business. While the law governing mold in real estate transactions is still evolving, there are steps you can take to help protect yourself from getting embroiled in a mold-related lawsuit.

1 Use your sense of smell.

Real estate agents in most states are statutorily required to perform a visual property inspection. Mold, however, is often smelled but not seen—and a musty smell should raise red flags. As an agent, if you smell mildew or mustiness in a bathroom, under the kitchen sink, in the basement, or generally throughout the house, this could be a signal that there is mold or that the preexisting moisture conditions exist to have a systemic mold problem. As a seller’s agent, you should discuss disclosure with your client.

2 Disclose repaired leaks.

A new roof can be a selling point, but if a property owner invested in a new roof because he had extensive leaking, that asset can quickly turn into a liability if the facts are not disclosed to potential buyers. What if, for example, the leaking had resulted in substantial moisture behind the walls?

As a real estate professional, you have a duty to make sure your client discloses any leaks. This is critical; even remediated mold can dry and become airborne. While your client may not be sensitive to mold, his or her buyer could be. So disclose everything so that each potential buyer can make an informed decision. It may cost you a sale today—but it could save you from a lawsuit in the future.

3 Provide advice and counsel.

If you are representing a buyer, you should suggest (and document) that your client bring in an expert to check out any potential mold problems whenever you see signs of mold, mildew, or water damage, or have a disclosure statement in hand that references prior leaks or mold problems. Don’t be tempted, however, to answer questions about what impact mold exposure might have on a client’s health. After all, that’s not your area of expertise. Instead, refer your client to an environmental consultant, an industrial hygienist, or perhaps a building forensic consultant.