

Mold Claims and

By John Manougian

The next round of insurance coverage exclusions to arrive at your community association will be a "Fungus or Spore Exclusion." This exclusion will be attached to the Commercial General Liability Policy in States where the insurance department has approved use of such an exclusion.

This exclusion effectively removes coverage for bodily injury and property damage, as well as personal injury and advertising liability caused directly or indirectly, in whole or in part, by a fungus or spore.

Property insurance exclusions are also being developed that will limit coverage caused by a covered water damage claim to the repair and replacement of covered property, but will exclude cleanup and remediation of any mold damage caused by the water damage.

Currently, traditional water damage claims that are covered by property insurance policies will cover mold remediation, but the industry will balk at the increased costs associated with mold removal, including the testing and treat-

ment of further mold remediation.

The cost of mold remediation is extremely expensive, even for the typical water damage claim that is an everyday occurrence at condominium associations. Decontamination and rebuilding a mold-infested unit is very expensive, and as such, has become a significant concern to insurance industry underwriters. If, due to the threat of litigation, testing of air quality is required each time there is a water damage claim, and absent scientific data that can show safe or unsafe levels of mold that can establish whether medical conditions are caused by short-term exposure to mold, the insurance industry would be facing uncertain claims expense.

Unfortunately, in terms of both state and federal standards, there is very little in the way of written guidelines regarding mold infestation and remediation. The New York City Department of Health, Bureau of Environmental & Occupational Disease Epidemiology published in 2000, *Guidelines on Assessment and Remedia-*

tion of Fungi in Indoor Environments for mold remediation, which appears to be the acceptable standard by which other states follow. In addition, the Environmental Protection Agency (EPA) published in 1995, *The Inside Story: A Guide to Indoor Air Quality*, to which boards of directors and managers of communities may refer. More information can be obtained by visiting the EPA's web site link on this topic at www.epa.gov/iaq/pubs/moldresources.html.

Current Policy Exclusions

Current condominium property and liability policies already contain exclusions that may trigger a denial of coverage for a mold-related claim. These include:

1. Pollution Exclusions. The Courts have formed different opinions as to whether or not this exclusion applies to toxic mold.
2. Owned Property Exclusion. Precludes coverage for property damage to property owned, rented, or occupied by the insured.

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Insurance Coverage

3. Deterioration of covered property.
4. Faulty Workmanship Exclusions.
5. Contamination Exclusions.
6. Naturally occurring mold growth is excluded unless the proximate cause of loss is a covered peril under the policy.

New Endorsements

The Insurance Services Office (ISO), which promulgates standard forms for the industry, has developed endorsements that either:

1. eliminate coverage; or
2. offer modified limits of coverage.

The exclusions to policies are at the discretion of the individual insurance carriers, but it seems safe to say that the vast majority of companies will use exclusions in states that already allow the exclusions in commercial policies. In our area, both Virginia and the District of Columbia have approved a mold exclusion, while Maryland, as yet, has not. Boards of Directors and property management companies must be aware of the exclusions to their condominium insurance policies, and take the appropriate steps to manage and control water damage claims. Failure to do so can result in claims against an association for failure to maintain the property, and other legal challenges that can be very costly to defend.

Directors and Officers Liability policies will not defend a board should a lawsuit be served against a board of directors. Inherent in these contracts are exclusions for bodily injury and property damage claims, including the defense of such claims.

Absent insurance protection, boards will be required to self-insure both the defense of mold-related claims, as well as the resulting judgments should an association be found responsible for the mold damage.

Conclusion

It seems there is an ever-increasing awareness and frequency of mold claims that has led to new insurance policy exclusions. This is the result of greater media attention and mold-related litigation that the insurance industry has determined has become too expensive to insure. They want to cut their losses before the mold frenzy forces them to restrict other policy coverages as well.

Boards must recognize their exposure notwithstanding the jurisdictions in which they are located, and put into practice risk control measures that deal effectively with water damage claims. While current property contracts are written on an "All Risk from Direct Physical Loss" basis (meaning all losses are covered with

the exception of those specifically excluded from the policy), failure to practice risk management of water-related claims will eventually result in higher premiums, higher deductibles, and/or the very real possibility of a return to a "named perils policy," wherein only claims for specific perils are covered.

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NEWS SCAN

Dominion Virginia Power filed a proposed 2003 Fuel Charge Factor of 1.576 cents/kWh.

This represents a 2.3% reduction from the 2002 approved fuel charge of 1.613 cents/kWh.

For a customer paying an average of 5 cents/kWh, this represents a 0.7% reduction in average electricity cost. This proposed fuel charge factor still needs to be reviewed and approved by the SCC. The approved fuel charge factor will become effective on January 1, 2003.

Risk Management of Mold Claims

1. During the early stages of water damage, it is important to get the environment under control quickly. Maintain relative humidity under 40 percent, and temperature at around 72° Fahrenheit.
2. Have all reports of water damage to units submitted by management immediately in order to prevent further damage.
3. Maintain on file a list of qualified contractors who can respond quickly to your building(s) and who can provide services such as drying out the affected areas and regulating temperature and humidity levels. The goal is moisture control.
4. Have the contractor identify all affected areas and their moisture readings.
5. Water damage claims should be submitted to your insurance carrier quickly if the loss exceeds your property deductible. If the loss is under the deductible, the board must take

steps to control the loss by developing both pre-loss and post-loss strategies.

6. If the loss exceeds the policy deductible, the insurer should inspect the damaged property to determine whether mold is a pre-existing condition, or rather a result of the current claim.

7. If the water damage to a unit results from a common element or from property that the association is responsible for maintaining, and the damage is not covered by insurance, management and the board need to act quickly by mitigating and repairing damaged property.

8. Be cautious of companies that claim to be "Mold Remediation Specialists." Research and verify the company's qualifications carefully, including past performance testimonials and referrals before entering into a contract for removal and remediation.

9. Depending upon the extent of mold growth in

a unit and whether the affected areas of mold growth can be cordoned off for work, the unit owner(s) may want to consider vacating the unit until the mold has been safely removed.

10. HVAC systems should be checked and cleaned as part of the remediation process.

11. Consult the Building Air Quality Alliance for tips on reducing the potential liability associated with poor indoor air quality.

12. Consult with your insurance agent as to whether specialty pollution insurance liability policies can be purchased for your community.

13. Consult with a certified industrial hygienist who can advise the board of directors of any special needs of the association.

14. Absentee Owners of condominium units should consult with their attorney for any special language that should be included in the lease regarding mold damage.