

Mold Laws

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Issue

This report addresses various questions about mold and related laws.

What is mold? What is the difference between toxic and regular mold?

Molds are microscopic fungi that live on plant or animal matter. These fungi spread and reproduce via very small, lightweight spores. Molds need moisture and food to grow. There are many different types of mold, and mold is found in virtually every environment, indoors and outdoors. While homes and businesses can take steps to minimize the growth of mold indoors (primarily through moisture control), such mold growth cannot be completely eliminated.

Exposure to mold can cause health effects, particularly in individuals with mold allergies, asthma, or a weakened immune system. According to the [Centers for Disease Control and Prevention \(CDC\)](#), the term “toxic mold” is inaccurate, because while certain molds produce toxins (called mycotoxins), the molds themselves are not toxic or poisonous.

According to the [Environmental Protection Agency \(EPA\)](#):

As molds grow, some (but not all) of them may produce potentially toxic byproducts called mycotoxins under some conditions. Some of these molds are commonly found in moisture-damaged buildings. More than 200 mycotoxins from common molds have

been identified, and many more remain to be identified. The amount and types of mycotoxins produced by a particular mold depends on many environmental and genetic factors. No one can tell whether a mold is producing mycotoxins just by looking at it.

The websites for the [CDC](#), [EPA](#), and state [Department of Public Health \(DPH\)](#) contain extensive information and additional links about mold, including mold control; health effects; and mold testing and remediation.

How do Connecticut statutes and regulations address mold?

Connecticut laws and regulations address mold in several contexts. The following are some examples.

DPH Mold Abatement Guidelines

The law required DPH, by October 1, 2006, to publish [guidelines](#) establishing mold abatement protocols, including acceptable methods for performing mold remediation or abatement work ([CGS § 19a-111f](#)).

School Air Quality Inspection And Evaluation

The law requires school boards, every five years, to provide for a uniform inspection and evaluation program for the indoor air quality for every school building constructed, extended, renovated, or replaced on or after January 1, 2003.

The program must include a review, inspection, or evaluation of several issues, such as potential for exposure to microbiological airborne particles, including fungi, mold, and bacteria. Each school board conducting evaluations must make the results available for public inspection at a regularly scheduled board meeting and on the board's or each individual school's website ([CGS § 10-220\(d\)](#)).

Registration as Home Improvement Contractors

As of January 1, 2017, the law requires anyone performing mold remediation for residential properties to register with the Department of Consumer Protection (DCP) as a home improvement contractor. Among other requirements, home improvement contractors must include their registration numbers in advertisements and pay an annual fee to the Home Improvement Guaranty Fund ([CGS § 20-418 et seq.](#)).

Home Inspectors Not Required to Check for Mold

DCP regulations specify that home inspectors are not required to determine the presence of any environmental hazards, including mold (Conn. Agencies Reg., § 20-491-13).

State Building and Public School Construction Projects

State regulations establish requirements for projects over specified cost thresholds for the new construction or renovation of state buildings or public schools. The project manager-facilitator must develop an indoor air quality management plan for the project's construction phase. The plan must include certain components to protect materials from mold or moisture damage, such as the following:

1. there must be periodic inspections of materials stored on-site to ensure that installed or stored absorptive materials are protected from moisture and mold damage;
2. all water-damaged materials must be removed and disposed of properly; and
3. the building enclosure must be watertight before the installation of porous materials and materials vulnerable to mold (Conn. Agencies Reg., § 16a-38k-3).

Are insurance policies required to cover mold-related damage?

Connecticut's insurance statutes and regulations do not specifically reference coverage for mold-related damage. However, in 2002, the Insurance Department issued [guidelines](#) for mold coverage in personal and commercial insurance policies.

In short, according to the guidelines, a Connecticut policy generally cannot exclude property coverage for mold that arises from a covered peril, but in some cases, the coverage may be limited. As far as liability coverage is concerned, (1) a personal lines (e.g., homeowners) policy cannot exclude coverage for liability arising out of mold, although it may limit such coverage, and (2) a business lines (i.e., commercial) policy may exclude such coverage.

For full details, including allowable limits on such coverage, see the [guidelines](#). A person should check their policy for applicable coverage and any limitations. And if they have questions, they can contact the department's [Consumer Affairs Unit](#).

How do courts establish liability for mold-related injuries in a landlord-tenant case involving a *commercial* rental?

Under a commercial tenancy, liability regarding the presence of mold is usually addressed in the terms of the contract between the parties. A typical commercial lease has a "maintenance and repairs" clause that specifies the landlord's and the tenant's responsibilities. The obligations under the lease are generally described in a way that establishes which party is responsible for "reasonable wear and tear" versus "structural repairs." The presumption is that parties to a commercial contract are generally equally sophisticated in their ability to negotiate the terms of the agreement.

How do courts establish liability for mold-related injuries in a landlord-tenant case involving a *residential* rental?

Under a residential tenancy, there are various legal issues that a court may consider in establishing liability in a landlord-tenant case that involves mold-related injuries (all discussed in further detail below). The legal principle that is most broadly applied across the states and that appears in landlord-tenant statutes is the "implied warranty of habitability" (i.e., the landlord's duty to maintain a safe and habitable premises). Additionally, we found two jurisdictions, Virginia and the city of San Francisco, that specifically address a cause of action for mold injuries in a landlord-tenant situation.

However, a landlord or a tenant may point to laws outside of the landlord-tenant statutes to establish legal obligations in cases involving mold injuries. These include laws that require parties to (1) provide certain notices and disclosures related to the property's condition and (2) adhere to certain moisture and weatherproofing requirements.

Finally, from a contract law perspective, parties may seek to include mold clauses in their lease agreements in an attempt to shield the landlord from liability due to any injury resulting from mold. Courts have generally refused to enforce such a clause.

Warranty of Habitability

As stated above, in most states, including Connecticut, a landlord's responsibility regarding mold is generally not specifically addressed in landlord-tenant statutes, regulations, or town ordinances. However, the statutes in most states impose a duty on landlords to maintain safe and habitable premises. This extends to the maintenance of things such as roofs, windows, and pipes from which water can leak and cause mold. Under such circumstances, a court may hold a negligent landlord

liable for mold-related injuries. On the other hand, liability may shift to the tenant if the presence of the mold can be attributed to the tenant's behavior, such as failure to keep the dwelling unit clean or properly ventilated.

Establishing a landlord's breach of the warranty of habitability depends on the facts of each case. Below are examples of two Connecticut Appellate court cases.

Constructive Eviction (Connecticut). Courts may consider a landlord's negligence in determining whether a tenant's actions to mitigate potential mold-related injuries is valid. For example, in *Welsch v. Groat*, the parties entered into a one year written residential lease agreement for a single-family residence. The tenant (defendant) used the premises as his primary residence and intended to use the finished portion of the basement as a bedroom for his children. During the first month of the tenant's occupancy, he and his children became aware of water damage and the presence of mold and mildew in the basement. The tenant informed the landlord (plaintiff) who failed to make any repairs and so the tenant broke the lease. The landlord sued for breach of lease. The Connecticut Appellate Court ruled in favor of the tenant and held that "the leased premises were rendered uninhabitable by landlord's failure to make necessary repairs in regard to water damage and presence of mold and mildew which made it impossible for tenant to use basement room as bedroom for his children, thus resulting in constructive eviction" (*Welsch v. Groat*, 95 Conn. App. 658 (2006)).

Statute of Limitations (Connecticut). The presence of mold alone does not mean that a party will prevail in court as a plaintiff would still need to prove causation and the plaintiff's claim might be time barred. In *Mollica v. Toohey*, a residential tenant sued the landlord for failure to maintain the property and alleged personal injuries from toxic mold due to landlord's negligence. The Connecticut Appellate Court upheld the lower court's ruling that the case was barred by the two-year-limitations period governing such cases (*Mollica v. Toohey*, 134 Conn. App. 607 (2012)).

Provisions in Landlord-Tenant Laws

We found two jurisdictions, Virginia and the city of San Francisco, that have provisions in their landlord-tenant laws that a court could use to establish liability in a case involving mold injuries.

Virginia. Virginia law explicitly requires a landlord to maintain the premises in such a condition as to prevent the accumulation of moisture and the growth of mold, and to promptly respond to any notices from a tenant related to any such condition. Where there is visible evidence of mold, the landlord must promptly remediate the mold conditions in accordance with the law's requirements and inspect the dwelling unit to confirm that there is no longer visible evidence of mold. The

landlord must provide the tenant with a copy of a summary of the mold remediation occurring during that tenancy and, upon the tenant's request, make available all such information and reports not protected by attorney-client privilege. Once the mold has been remediated in accordance with professional standards, the landlord is not required to make disclosures of a past incidence of mold to subsequent tenants (Va. Code Ann. § 55-248.13(A)(5)).

The law also requires tenants to use reasonable efforts to maintain the dwelling unit and any other part of the premises that they occupy in such a condition as to prevent accumulation of moisture and the growth of mold, and to promptly notify the landlord of any moisture accumulation that occurs or of any visible evidence of mold they discover (Va. Code Ann. § 55-248.16(A)(10)).

San Francisco. In San Francisco mold is a public health nuisance which gives tenants the right to sue their landlords for violating city nuisance laws if mold is found in the rental unit. The health code prohibits anyone who owns, occupies, or controls real property from having any public nuisance on the property. This includes any visible or otherwise demonstrable growth of mold or mildew in the interiors of any buildings or facilities (San Francisco Health Code Art. 11 § 581(a)(6)).

Notice and Disclosure Requirements

In establishing liability for mold injuries, a landlord or a tenant may point to laws that do not specifically address liability but that impose a legal obligation on parties to provide certain notices and disclosures related to mold or conditions that may cause mold. These laws typically require the (1) tenant to notify the landlord of certain conditions or (2) landlord to disclose certain information to the tenant. Below are summaries of the statutes we found for states with such provisions. (There are other states with notice and disclosure requirements related to moisture and weatherproofing codes; we discuss these in the next section.)

Arizona. Under Arizona law, a tenant must notify the landlord of any situation or occurrence that requires the landlord to provide maintenance, make repairs, or otherwise take action (Ariz. Rev. Stat. § 33-1341(8)). Presumably, a landlord could raise a tenant's failure to provide such notice as a defense in a mold injury case.

California. Residential landlords must provide written disclosure to prospective and current tenants of affected units when the landlord knows, or has reasonable cause to believe, that mold, visible, invisible, or hidden, is present that affects the unit or the building. To be subject to the disclosure requirement, the mold must either exceed the permissible exposure limits to molds established by law or pose a health threat according to the department's guidelines. A residential landlord is not required to conduct air or surface tests of units or buildings to determine whether

the presence of molds exceeds the permissible limits. Landlords must provide the written disclosure to prospective tenants prior to them entering into the rental or lease agreement and to current tenants in affected units as soon as is reasonably practical. The law exempts landlords from providing written disclosure to prospective tenants if the presence of mold was remediated according to the mold remediation guidelines (Cal. Health & Safety Code § 26147).

Colorado. A tenant fails to maintain the premises in a reasonably clean and safe manner when the tenant substantially fails to promptly notify the landlord if the residential premises is uninhabitable or if there is a condition that could result in the premises becoming uninhabitable if not remedied (Colo. Rev. Stat. § 38-12-504).

Hawaii. Under Hawaii law, any defective condition of the premises which comes to the tenant's attention, which the tenant has reason to believe is unknown to the landlord, and which the tenant has reason to believe is the duty of the landlord or of another tenant to repair, shall be reported by the tenant to the landlord as soon as practicable (Haw. Rev. Stat. § 521-55).

Minnesota. The law generally requires a landlord to provide tenants a copy of all outstanding (1) inspection orders for which a citation has been issued and (2) condemnation orders and declarations that the premises are unfit for human habitation. The landlord must specify code violations that the housing inspector identified as requiring notice because the violations threaten the health or safety of the tenant. This must be sent to the tenant by delivery or by United States mail, postage prepaid, within 72 hours after issuance of the citation (Minn. Stat. § 504B.195).

Mississippi. Under Mississippi law, a tenant must inform the landlord if he or she has actual knowledge of any condition of that may cause damage to the premises (Miss. Code Ann. § 89-8-25(g)).

Moisture and Weatherproofing Laws

In establishing liability for mold-related injuries, a court may also consider laws that impose a duty on landlords regarding moisture and weather protection. Violation of these laws may prove a landlord's breach of the implied warranty of habitability.

According to the National Council of State Legislatures, five states (California, Colorado, Georgia, Virginia, and Washington) explicitly address a landlord's duties pertaining to moisture and weatherproofing. California, Colorado, and Washington require effective waterproofing and weather protection. Washington also requires that the landlord give information that addresses mold to the tenant that is either provided or approved by the state department of health. Virginia is the only

state that requires the elimination of mold and the accumulation of moisture, as described above. It requires the tenant to promptly notify the landlord and the landlord must promptly respond. Georgia requires landlords to notify prospective tenants of certain properties' propensity to flood.

These laws are summarized below.

California. A residential unit must be deemed untenantable if it substantially lacks effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors (Cal. Civ. Code § 1941.1).

Colorado. A residential premises is deemed uninhabitable if it substantially lacks waterproofing and weather protection of roof and exterior walls maintained in good working order, including unbroken windows and doors (Colo. Rev. Stat. § 38-12-505).

Georgia. When the owner of real property seeks to lease or rent that property for residential occupancy, prior to entering a written lease agreement, the owner must notify the prospective tenant in writing of the property's propensity of flooding if flooding has damaged any portion of the living space at least three times in the previous five years. An owner who fails to give such notice must be liable in tort to the tenant and the tenant's family residing on the leased premises for damages to the personal property of the lessee or a resident relative of the lessee which is proximately caused by flooding which occurs during the term of the lease (Ga. Code Ann. § 44-7-20).

Washington. The landlord must at all times during the tenancy keep the premises fit for human habitation (warranty of habitability). Specifically, the landlord must (1) maintain the dwelling unit in reasonably weathertight condition and (2) provide tenants with information provided or approved by the department of health about the health hazards associated with exposure to indoor mold. Information may be provided in written format individually to each tenant, or may be posted in a visible, public location at the dwelling unit property. The information must detail how tenants can control mold growth in their dwelling units to minimize the health risks associated with indoor mold. The law protects the landlord and his or her agents and employees from civil liability for failure to comply with these requirements except where the noncompliance was done knowingly and intentionally (Wash. Rev. Code § 59.18.060).

Mold Clause in Lease Agreements

In an attempt to shield themselves from liability due to injury resulting from mold, some landlords insert mold clauses in the rental agreement that purport to provide the landlord immunity from liability in such cases. Courts have generally refused to enforce such a clause, on the grounds that it is against public policy. In 2014, an Indiana appellate court considered the issue of whether a landlord can enforce a provision in a residential lease contract intended to protect the landlord from liability for personal injuries caused by fungus or mold on the leased premises. The appellate court upheld the lower court's ruling that the landlord was 100% at fault and liable to the tenant for both compensatory and punitive damages. The appellate court concluded that the exculpatory clause in the lease was void because it was against public policy (*Hi-Tec Properties, LLC v. Murphy*, Ind. Ct. App. 14 N.E.3d 767 (2014)).

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