



MOLD and the Insurance Implications



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There are two main areas where coverage can be found for mold related claims, under the Building Coverage and/or within the General Liability Coverage.

Building Coverage

In order to have the damage repaired and the cost of the mold clean-up or remediation covered, you must first show that the mold itself was caused by a **covered peril**, such as water damage from a pipe burst. Once that has been established, you need to then look to the policy form to make sure there is no **Mold Exclusion**.

General Liability Coverage

If the building is being named in a lawsuit or being held negligent because of the possibility of an illness resulting from mold, you must look to your General Liability Coverage. This is one of the areas that **timely reporting** of a claim or even a possible claim is extremely important. If you do not put the carrier on notice at the time of an occurrence and a suit arises later, the carrier can decline coverage for late reporting.

Now, how do we know if the policy will or will not respond to a mold claim? A usual rule of thumb is to find out if the insurance has been placed with an **“Admitted or Non-Admitted Carrier.”**

Admitted Carriers

In **most** cases, **Admitted Carriers** are unable to exclude mold coverage from their policy due to New York State Department of Insurance regulations. The Department of Insurance has received numerous requests over the last few years to exclude Mold, but has not approved any of them. However, prior to 2003, there were a handful of carriers that had the **Mold Exclusion** approved and still have it in their form today. Check with your insurance agent to make sure your carriers do not have this exclusion.

Non-Admitted Carriers

On the other hand, **Non-Admitted Carriers** are not regulated by the New York State Insurance Department and almost always have a **Mold Exclusion**. If there is an exclusion, it will be listed in the endorsements section as **Mold Exclusion**, or in some cases it will be listed as a **Fungi, Wet Rot, Dry Rot and Bacteria Exclusion**. These exclusions will remove coverage for property damage, bodily injury and personal injury. If the policy has an exclusion there will be no coverage, regardless of whether the mold was caused by a covered peril.

Mold results from water leaks, whether from a burst pipe or a flood, excessive humidity and/or condensation. Some of these common causes can be additionally problematic when it comes to mold coverage itself, for example:

- **Excessive Humidity & Condensation** in some cases are not covered perils. Therefore, any mold remediation or property damage would not be covered, but a liability may be covered depending on various factors.
- **Flooding** is another problem area as not all policies cover flood. If Flood coverage was not included or purchased as an endorsement on the policy, then the damage and/or clean-up from mold may not be covered. Again, a liability claim may be covered depending on the circumstances. Even if you maintain Flood coverage within your Package policy, you may still have a problem. Coverage may be considered void if your building is found to be in a High Risk Flood zone (*Zones A or V*) at the time of loss. You would have to check with your agent as to how Flood coverage is handled with the carriers you have.

As you can see, there is not always a cut and dry answer when it comes to insurance coverage.

By taking the following steps, you can improve your chances of having a claim covered:

- **Early detection and a rapid repair response to any type of water damage claim is key to preventing mold from growing!** By developing and following standard procedures for handling leaks, you can help deter the growth of the mold. This practice can also be an asset for the building as a defense in a event of a future mold claim.
- **Every water damage claim has the potential of turning into a mold issue!** Water damage Claims should be treated accordingly even if that means just putting the company on notice for “record purposes only.”
- **Every leak should be taken seriously and acted on quickly!** Make sure that all residents or tenants report all leaks immediately.
- **Keep a paper trail!** All letters, emails, resident service requests and incident tracking logs should be maintained. Even if no mold was found, it will help you in your defense.
- **When in doubt, advice from the buildings insurance agent and an attorney should be sought!** The circumstances of each case will dictate how to proceed.

Important Facts:

- **Directors & Officers Insurance** will not respond to a suit against the board because of a mold issue. If you do not have insurance protection under the for mold, the Board and the Corporation/Association would have to self insure for the defense costs, as well as any resulting judgments. This can be extremely expensive.
- **Commercial Umbrella Coverage** can vary from carrier to carrier and it is better to check with your broker to find out how your umbrella would respond.

The Bottom Line:

If your Board is proactive, you can try to avoid mold claims. If a mold claim does arise, you may be able to help reduce the damages paid, while also helping in the defense of the claim by following strict procedures and by keeping a comprehensive paper.

