

# Mold & Moisture in the Home

Strategies for Local & State Government



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Law & policy innovation for the common good.

## WHAT CAN BE DONE ABOUT MOLD?

Exposure to mold has been associated with the development of asthma, allergies, respiratory infections, and difficulty in breathing.<sup>1</sup> Low-income tenants often endure substandard housing with mold and other threats to respiratory health; their children also have the highest rates of asthma.<sup>2</sup>

As the excessive presence of mold in housing has become a public policy issue with social justice implications,<sup>3</sup> local and state governments can play an important role in addressing the underlying causes of mold growth while promoting healthy housing conditions. Policies and programs that are successful in preventing and mitigating indoor dampness and mold reduce the public health risks and associated economic impacts.<sup>4</sup>

This fact sheet summarizes a variety of strategies and policy options that local and state governments have employed to address moisture and mold in housing, and protect residents from mold-related health problems. These approaches include:

- addressing mold and/or moisture in health, housing and nuisance codes;
- improving code enforcement;
- requiring disclosures to buyers and renters;
- regulating businesses that charge for remediation services and providing guidelines for remediation;
- educating tenants and landlords; and
- providing additional statutory protections for tenants.

These tools are not mutually exclusive and are likely to work best as part of a coordinated approach to healthy housing.



## MOLD IS A HEALTH HAZARD

Specific health problems from mold exposure vary depending on age, immune system, and existing respiratory or heart conditions, as well as the characteristics, magnitude, and duration of the exposure.<sup>5</sup> People with an existing respiratory condition, such as allergies or asthma, are more likely to suffer adverse effects.<sup>6</sup> Indeed, approximately 21 percent of asthma cases in the United States can be attributed to mold exposure in homes, with the aggregate cost—including lost school/work days, medical costs, and mortality – estimated to be \$3.5 billion annually.<sup>7</sup> A recent study found infants exposed to high levels of mold in the home have twice the risk of developing childhood asthma.<sup>8</sup>

Airborne mold spores are ubiquitous in both indoor and outdoor environments, but a moist environment allows mold to thrive.<sup>9</sup> Controlling moisture is therefore the key to reducing mold exposure, and may require property owners to address structural problems, improve weatherproofing, and increase ventilation in order to keep interior surfaces and furnishings dry.<sup>10</sup>

### Housing Codes, Nuisance, & Enforcement

#### Explicitly Addressing Mold in Housing Codes

Construction, property maintenance, and housing codes often address mold *indirectly* by establishing requirements for building ventilation, drainage and weatherproofing elements, and by requiring interior surfaces be kept in good, clean condition.<sup>11</sup> However, in the absence of *specific statutory language* establishing the presence of mold as a code violation, code enforcement officers may not be empowered to address mold problems. This impediment can be overcome by *explicitly* identifying the presence of visible mold or mold odor as a violation of state or local codes.



In Massachusetts, the Sanitary Code provides that owners of rental housing must maintain the foundation, floors, walls, doors, windows, ceilings, roof, staircases, porches, chimneys, and other structural elements of dwellings so that they exclude wind, rain, and snow, and are free of chronic dampness.<sup>12</sup> The Massachusetts Code is notable for its specific reference to mold in its definition of “chronic dampness” as “the regular and/or periodic appearance of moisture, water, mold or fungi.”<sup>13</sup>

San Francisco’s Housing Code stipulates that any residence with mold present “to an extent that endangers the life, limb, health, property, safety or welfare of the public or the occupants thereof” is deemed “substandard.” This allows building inspectors to take action to address underlying structural problems.<sup>14</sup>

## Defining Residential Mold as a Nuisance

Health, safety, or housing codes typically compel property owners to eliminate nuisances from their property. Some jurisdictions have defined mold as a private or public nuisance, requiring owners to take steps to abate (eliminate) the underlying moisture. A private nuisance is a condition that interferes with an individual's use and enjoyment of their property or home, while a public nuisance is a condition that interferes with the health or wellbeing of the community. Some conditions may be both public and private nuisances.<sup>15</sup>



San Francisco's Health Code defines "any visible or otherwise demonstrable growth of mold or mildew in the interiors of any buildings or facilities" as a public nuisance, and requires property owners to maintain their property free of such nuisances.<sup>16</sup>

## Training Code Enforcement Officers to Respond to Mold

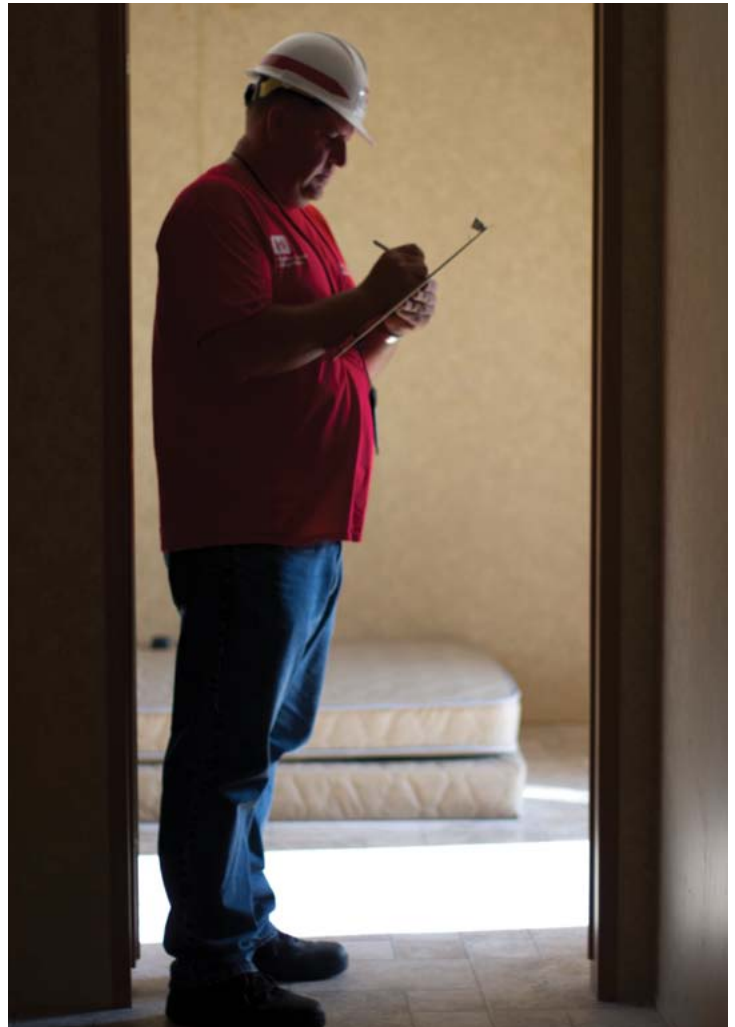
Where the presence of excessive moisture is a violation of building, health, or housing codes, jurisdictions can improve code enforcement around mold and moisture issues by specifically training code enforcement officers to recognize mold as evidence of a citable, underlying moisture problem.

Local jurisdictions can also fortify staff expertise by establishing a dedicated mold inspector position. An inspector who specializes in investigating mold problems in residences can be a valuable resource to other code enforcement officers and tenants. Alternately, all housing enforcement officers can be trained to identify mold as a potential violation of building and health codes.



The New York State Department of Health provides in-service training to code enforcement officers on mold, water, and the state building code. Training topics include the health effects of mold, factors affecting mold growth, structural issues, investigation, and remediation.<sup>17</sup>

The Vermont Department of Health developed a training program for local health officers on how to identify and address mold in rental housing.<sup>18</sup> The existence of mold is not technically a violation of the state's rental housing code, but the training stresses that mold is a symptom of other problems. The health officer's authority lies in identifying and ensuring that homes are free of standing water or excessive moisture.



## Increasing Interagency Coordination

Partnerships between local agencies, such as public health departments, housing departments and clinical health providers, can provide a comprehensive approach to addressing the health hazards of mold exposure in homes. Through formal or informal collaborations, these partnerships can allow a jurisdiction to more efficiently focus resources to protect particularly vulnerable residents (e.g., children with asthma), improve referrals between agencies, and establish more full-service case management protocols for residential mold cases.





Boston's Breathe Easy at Home Program (BEAH) is designed to improve the health of children with asthma by addressing the environmental health of their homes, including dampness and mold. This replicable model allows doctors, nurses, or other health professionals who become aware of a possible code violation through their treatment of a patient to make a web-based referral for a housing code inspection, upon the consent of the parent or responsible adult. The referring party then receives regular online updates on the status of the referral and violations.<sup>19</sup>

Inspections are conducted by staff in the housing inspection division of the Boston Inspectional Services Department as part of their sanitary code enforcement responsibilities. Inspectors are trained to identify asthma triggers that are also code violations, such as mold and chronic dampness, leaks, pest infestations, drafty doors and windows, lack of heat, poor ventilation, and damaged carpeting. Where a code violation is identified, the owner or responsible person is given 24 hours to 30 days to correct the violation. Inspectors also work with property owners to achieve compliance.<sup>20</sup> Inspectors then conduct follow-up inspections and forward outstanding violations to Boston Housing Court. To date, 70 percent of BEAH cases have been resolved without going to housing court.<sup>21</sup>

For tenants, this system has the advantage of making physicians or nurses the complainant, which can reduce tenant-landlord tensions. Where a complaint is filed concerning a housing unit that is part of the Boston Housing Authority (BHA), the BHA has agreed to respond within 24 hours to violations uncovered by BEAH inspections.<sup>22</sup>

According to individuals familiar with the program, inspector buy-in is critical to program success. "Training the inspectors to understand the health significance of their work, listening to their feedback, and allowing them the opportunity to interact with the health care system directly (e.g., by having medical residents shadow them on inspections) are all strategies that have helped propel [Boston's Breathe Easy at Home] program forward."<sup>23</sup>



## Mold Disclosure Requirements

State or local law may require that sellers and landlords provide disclosures of the presence of mold in connection with the sale or rental of residential real property. These disclosures can serve to put buyers and renters on notice of potential health hazards and allow them to make informed decisions about whether to purchase or rent the property. A seller who informs prospective purchasers of a property's known mold-related conditions may also be protected from liability.



Montana state law requires a seller of residential or commercial property to disclose the presence of any mold of which he or she is aware.<sup>24</sup> The law also requires that a seller disclose to the buyer the results of prior mold testing on the property and provide evidence of any subsequent mold remediation. Sellers or landlords who voluntarily provide a general notice to a buyer or renter about the potential for mold in buildings, the possible health effects of mold, and the respective duties of the seller and buyer in connection with mold at the property are not liable in any action based on the presence of or propensity for mold in the building.<sup>25</sup>

## Remediation

Mold remediation can be a complicated and expensive undertaking. State and local governments can protect consumers by regulating mold remediation contractors through licensing and practice standards and providing educational information.

## Regulation of Mold Remediation Contractors

States and localities can regulate mold inspectors and remediation contractors through licensing schemes and/or other legislative interventions.<sup>26</sup> Such regulation enables states and localities to maintain quality control and oversight of mold-related inspection and remediation services.

In addition, states can reduce the potential for conflicts of interest and consumer abuse (such as price gouging) by regulating the circumstances in which an individual or company that conducts mold assessment may perform remediation services on the same job.



Several states, including Florida, Louisiana, and Texas have passed statutes establishing licensing programs for mold-related services.<sup>27</sup>

The Texas Department of State Health Services establishes minimum work practices for mold assessors, remediators, and laboratories, certifies training programs, and administers licensing tests.<sup>28</sup> The Texas program also provides work site inspections and investigates complaints related to mold remediation jobs.

In addition, Texas state law prohibits individuals and companies from conducting mold assessment and remediation on the same project, as well as from owning an interest in a company that performs mold assessment services and mold remediation services on the same project.<sup>29</sup>

## Remediation Guidelines

A number of local and state governments have established publicly-accessible guidelines on remediating mold in home environments for use by building owners and managers, environmental contractors, and environmental consultants.

These guidelines can also serve as the basis for educational materials for residents on how to reduce their exposure to mold through recommended cleaning and removal procedures.



The New York City Department of Health and Mental Hygiene published detailed guidelines for response to water damage and mold growth in buildings.<sup>30</sup> The New York City guidance document has been adopted as a minimum work practice by other agencies, such as the Pennsylvania Department of Health.<sup>31</sup>

The state of Connecticut has published similar guidelines, as has the U.S. Environmental Protection Agency.<sup>32</sup>

## Education & Incentives

Owners and residents may be able to address some dampness or moisture problems themselves—for example, by improving ventilation in the home or properly cleaning up minor leaks after a storm. Some localities offer guidance and resources on how to safely and effectively clean mold and limit non-structural sources of moisture and when to call an expert. These resources can help ensure that property owners and tenants do not magnify the health impacts of mold by using unsafe cleaning practices.

Some localities provide resources and training to support landlords to manage their rental properties safely and appropriately – including how to respond to tenant complaints about mold and how to effectively detect and remediate mold. Building owners may be motivated to remediate mold-related problems by learning that dampness can speed the degradation of building materials and undermine structural integrity.<sup>33</sup> Tax breaks or low interest loans to property owners may also encourage and support remediation.



Boston's Breathe Easy at Home Program website offers guides on proper housekeeping and safe cleaning for people with asthma, information on what to expect from Breath Easy inspections, and general information on mold and the health risks of exposure.<sup>34</sup>

The city of Buffalo, has offered free workshops for landlords covering the topic of mold prevention and remediation.<sup>35</sup>

The Minnesota Department of Health has web-based information for tenants on mold in rental housing, including an overview of the landlord's obligations and tenant rights.<sup>36</sup>

Minnesota also allows the owner of a homestead property damaged by mold to submit a request to the Tax Assessor for a reduction in the value of the property in order to reduce property tax owed. The costs to repair the mold must be at least \$20,000.<sup>37</sup>

## Additional Tenant Protections

Low-income tenants are more likely to be exposed to and suffer the health effects of moisture and mold in residential housing. These tenants may be unaware of their rights to a safe and healthy home or lack the means to pursue enforcement of these rights.<sup>38</sup> Furthermore, landlord responsibilities regarding mold are typically not clearly defined in building codes, ordinances, statutes, or regulations, making it even more difficult for tenants to pursue resolution without resorting to litigation.<sup>39</sup>

In addition to requiring landlords to disclose mold in a rental unit to tenants, as discussed above, states and localities can pass laws providing additional tenant protection, such as:

- specifically requiring landlords to maintain the premises to prevent the accumulation of moisture and the growth of mold;
- providing tenants statutory protection of the right to terminate a lease where a mold problem is not remediated;
- requiring landlords to mediate in advance of a tenant filing a complaint for violation of the implied warranty of fitness for human habitation due to a mold/moisture problem; and
- requiring landlords to pay tenant expenses if relocation is necessary.

A significant number of tenants living with dampness and mold are residents of public housing.<sup>40</sup> City public housing authorities are in a position to prioritize resolution of this health hazard and protect vulnerable children and families.



Virginia state law requires landlords and tenants to maintain the premises to prevent the accumulation of moisture and the growth of mold and requires landlords to respond promptly to notifications by tenants of mold or moisture accumulation. If a tenant elects to take possession of a unit notwithstanding presence of mold, the landlord must promptly remediate the condition. Where a mold condition materially affects the health or safety of a tenant, the landlord may require the tenant to temporarily vacate the premises for up to 30 days while the landlord undertakes mold remediation. In such cases, the landlord is required to pay the tenant's relocation costs.<sup>41</sup>

ChangeLab Solutions is a nonprofit organization that provides legal information on matters relating to public health. The legal information in this document does not constitute legal advice or legal representation. For legal advice, readers should consult a lawyer in their state.

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