

Growth in mould claims

Dealing with complicated issues concerning mould in buildings is becoming more and more prevalent in NSW. Some points worth considering are:

- The science and expertise surrounding the dangers, such as, poisoning and infection from mould is increasing and moving across from Europe and the US.
- Owners may face personal injury or abatement of rent claims.
- Owners corporations may be responsible where the mould is caused by a failure of the common property. This is usually from either inadequate membranes or ventilation.
- In strata schemes these owners may have a right to claim this as part of a damages claim in respect of the scheme's failure to repair and maintain the common property.
- Mould may be caused by lifestyle issues, which are not related to a failure to repair and maintain the common property. In addition, mould may be caused by ventilation issues which have been introduced to a building by restrictive BASIX requirements which affect the ventilation measures that a builder can install in a building.
- Suitably experienced specialists should be properly briefed and retained to advise on these issues.
- Where the new 2 and 6 year statutory warranty for new buildings applies and owners are trying to claim the waterproofing defects within 6 years and outside 2 years, it is expected that more and more expert reports from mycologists will be required to establish that the part of the building cannot be used due to health dangers arising from the mould.
- The new strata reform due to commence later this year will change the landscape for the personal liability of executive committees and of the owners corporation in respect of failing to address mould issues adequately. For instance, in many cases owners corporations will have a strict liability whereby negligence of the owners corporation is no longer required to be established.
- The application of the scheme's strata insurance policies in relation to liabilities for losses arising from mould varies from contract to contract which contain many varying exclusion clauses.

Owners, tenants or owners corporations facing problems with mould will be well advised to seek advice on the liability of the builder, developer, executive committee, owner, tenant or owners corporation as this is a complex area which continues to become more complicated with strict time limits requiring adherence or otherwise barring of the claim may occur.

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