

MEMORANDUM

To: BCASWI Builders
From: BCASWI Mold Task Force **Pages:** Total of 3 pages
Subject: Mold Liability and Construction Contracts

In order to minimize your exposure for liability relating to mold in your homes, it is imperative that you educate yourself about these claims and immediately implement the following preventative measures.

1. Read and implement the material in “A Builder’s Guide to Handling Mold Claims and Litigation” written by the National Association of Home Builders. It does an excellent job explaining these claims and how builders can minimize their liability. The Guide is available at the BCASWI office.
2. Become educated about and implement construction techniques being successfully employed by other builders in the Treasure Valley. Many mold claims in this area involve mold growth in crawl spaces caused by improper grading, plumbing or HVAC leaks, poor crawl space ventilation or high water tables. As an example, installing perimeter foundation drains is a technique many builders are successfully using to reduce the moisture in their crawl spaces and therefore the growth of mold.
3. Begin attaching to your construction contracts as an addendum the “Notice, Disclosure, Disclaimer and Waiver” attached to this memo (“Notice and Waiver”). The Notice and Waiver educates the homeowner about the possibility of mold, informs the homeowner of their maintenance responsibilities and attempts to waive or disclaim any warranties and liability relating to mold claims. **Please note that the effectiveness of the waiver and disclaimer provisions is unclear under Idaho law. Nevertheless, they should still be included in your construction contracts.** Ensure that your construction contracts specifically reference and incorporate the Notice and Waiver. Failing to do so may prevent the Notice and Waiver from being included in your construction contract thereby negating its benefits. The Notice and Waiver **must** be attached to, and be executed simultaneously with, the construction contract. Handing the Notice and Waiver to buyers at closing or at your walk-thru will render it null and void. **It is essential that the Notice and Waiver be a “part of the deal” – not a surprise after the fact.**

Of Course, there is no way to eliminate your exposure to mold claims, but implementing these preventative measures will certainly minimize your potential liability.

ADDENDUM NO. _____

SAMPLE NOTICE, DISCLOSURE and DISCLAIMER

What Homeowners Should Know about Mold

Mold. Mold is a type of fungus. It occurs naturally in the environment, and it is necessary for the natural decomposition of plant and other organic material. It spreads by means of microscopic spores borne on the wind, and is found everywhere life can be supported. Residential home construction is not, and cannot be, designed to exclude mold spores. If the growing conditions are right, mold can grow in your home. Most homeowners are familiar with mold growth in the form of bread mold, and mold that may grow on bathroom tile.

In order to grow, mold requires a food source. This might be supplied by items found in the home, such as fabric, carpet or even wallpaper, or by building materials, such as drywall, wood and insulation, to name a few. Also, mold growth requires a temperate climate. The best growth occurs at temperatures between 40* F and 100* F. Finally, mold growth requires moisture. Moisture is the only mold growth factor that can be controlled in a residential setting. By minimizing moisture, a homeowner can reduce or eliminate mold growth.

Moisture in the home can have many causes. Spills, leaks, overflows, condensation, and high humidity are common sources of home moisture. Good housekeeping and home maintenance practices are essential in the effort to prevent or eliminate mold growth. If moisture is allowed to remain on the growth medium, mold can develop within 24 to 48 hours.

Consequences of mold. All mold is not necessarily harmful, but certain strains of mold have been shown to have adverse health effects in susceptible persons. The most common effects are allergic reactions, including skin irritation, watery eyes, runny nose, coughing, sneezing, congestion, sore throat and headache. Individuals with suppressed immune systems may risk infections. Some experts contend that mold causes serious symptoms and diseases which may even be life threatening. However, experts disagree about the level of mold exposure that may cause health problems, and about the exact nature and extent of the health problems that may be caused by mold. The Center for Disease Control states that a causal link between the presence of toxic mold and serious health conditions has not been proven.

What the Homeowner can do. The homeowner can take positive steps to reduce or eliminate the occurrence of mold growth in the home, and thereby minimize any possible adverse effects that may be caused by mold. These steps include the following:

1. Before bringing items into the home, check for signs of mold. Potted plants (roots and soil), furnishings, or stored clothing and bedding material, as well as many other household goods, could already contain mold growth.
2. Regular vacuuming and cleaning will help reduce mold levels. Mild bleach solutions and most tile cleaners are effective in eliminating or preventing mold growth.
3. Keep the humidity in the home low. Vent clothes dryers to the outdoors. Ventilate kitchens and bathrooms by opening the windows, by using exhaust fans, or by running the air conditioning to remove excess moisture in the air, and to facilitate evaporation of water from wet surfaces.
4. Promptly clean up spills, condensation and other sources of moisture. Thoroughly dry any wet surfaces or material. Do not let water pool or stand in your home. Promptly replace any materials that cannot be thoroughly dried, such as drywall or insulation.

5. Inspect for leaks on a regular basis. Look for discolorations or wet spots. Repair any leaks promptly. Inspect condensation pans (refrigerators and air conditioners) for mold growth. Take notice of musty odors, and any visible signs of mold.
6. Should mold develop, thoroughly clean the affected area with a mild solution of bleach. First, test to see if the affected material or surface is color safe. Porous materials, such as fabric, upholstery or carpet should be discarded. Should the mold growth be severe, call on the services of a qualified professional cleaner.

Disclaimer and Waiver.

Whether or not you as a homeowner experience mold growth depends largely on how you manage and maintain your home. Our responsibility as a homebuilder must be limited to things that we can control. As explained in our written warranty, provided by separate instrument, we will repair or replace defects in your construction (defects defined as a failure to comply with reasonable standards of residential construction) for a period of ___year(s). We, the builder, will not be responsible for any damages caused by mold, or by some other agent, that may be associated with defects in our construction, to include but not be limited to property damage, personal injury, loss of income, emotional distress, death, loss of use, loss of value, and adverse health effects, or any other effects. Any implied warranties, including an implied warranty of workmanlike construction, an implied warranty of habitability, or an implied warranty of fitness for a particular use, are hereby waived and disclaimed. **There are no warranties which extend beyond the description on the face hereof.**

This Notice, Disclosure, Disclaimer and Waiver agreement is hereby appended to and made a part of the contract of sale. The consideration for this agreement shall be the same consideration as stated in the contract of sale. Should any term or provision of this agreement be ruled invalid or unenforceable by a court of competent jurisdiction, the remainder of this agreement shall nonetheless stand in full force and effect.

I acknowledge receipt of this Notice, Disclosure, Disclaimer and Waiver agreement. I have carefully read and reviewed its terms, and I agree to its provisions.

BUYER	DATE	SELLER	DATE
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BUYER	DATE	SELLER	DATE
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CAUTION

The language contained in this document is for sample purposes for the membership of the Building Contractors Association of Southwestern Idaho. While the BCASWI Mold Task Force recommends inclusion of this addendum in builder contracts as a preventative measure against mold claims, builders should consult with their attorney in regard to proper inclusion and execution in any contracts.