

# **Mold Contamination Insurance Coverage 101: The Basics**

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Mold is a fungus. There are all kinds. It's everywhere—indoors and out. At trace background levels, mold is not usually a problem for most people. There are exceptions. Mold needs a moist breeding ground to grow and reproduce. Mold can grow almost anywhere there is water intrusion, high humidity or dampness. Most often mold is confined to areas near the source of water. As mold grows, it may break down or otherwise compromises the integrity of its host material. The first 48 hours after water damage can be critical in preventing or containing mold growth.

Mold reproduces by generating spores—microscopic reproductive bodies similar to seeds. Spores and microscopic fragments of mold growth are a natural component of both outdoor and indoor air. However, when mold germinates and grows, it can produce large amounts of spores. Elevated levels of mold spores in indoor living or working environments can cause adverse health effects, particularly respiratory problems. When moldy material becomes damaged or disturbed, spores can be released into the air. Even if you kill the mold with bleach, but don't remove the mold, when it dries, you may actually make the problem worse by disturbing the dry mold and releasing spores in the air. Exposure can occur if people inhale the spores, directly handle moldy materials, or accidentally ingest them. Some species of mold are considered benign.

Some species of mold are considered hazardous. And there is everything in between. Mold sometimes produces chemicals called mycotoxins. Mycotoxins can cause moderate to severe illness in people who are sensitive to them or if they are exposed to large amounts in the air.

Most mold insurance claims typically arise in one of two circumstances: (1) mold comes to the property owner's attention along with the discovery of ongoing moisture buildup, water leakage or water intrusion that has gone on for some time below the property owner's radar; or (2) after a sudden, accidental flood or leak from a plumbing system or appliance, there is a delay in or failure to adequately dry out water

damaged building products, fixtures, furnishings, finishes or belongings.

If you are making a claim to your own insurer for damage to your property, you are making a “first party” property claim. If you are asking your insurer to investigate or defend a claim against you—for example, your tenants are suing you for mold contamination—you are making a “third-party” liability claim to your insurer. Here are some helpful pointers for each type of claim.

### Property Damage Coverage

Homeowner, commercial property owner and renter property policies differ in kind and in scope from insurer to insurer. Whether mold contamination is covered under your policy will depend on the specific policy language and the cause or causes of the mold contamination. Read your policy carefully. Some property policies are “specified peril” policies, which may cover mold contamination if you can prove that it is caused by one the listed “perils” or causes. Some property policies are “all risk” policies, which may cover mold contamination, unless the insurer can prove that the cause(s) or the mold contamination itself is excluded in the policy.

Most property policies have a long laundry list of exclusions for damage caused by mold, dry or wet rot, corrosion, pollution, wear and tear, deterioration, faulty workmanship and materials, construction defect, and the like. To make matters more complicated, some policies have limited “exceptions” to the exclusions—kind of like a double negative—that may provide some very limited coverage for mold contamination. In several states, like California and Texas—in response to insurers threatening to boycott coverage for water damage, as well as mold contamination coverage—insurance regulators are developing rules to permit insurers to provide minimum mold contamination coverage, e.g., \$5,000 property limits, unless the policyholder buys more expensive coverage separately. Check your policy after it has been renewed to see if mold coverage limitations have been inserted.

Side note: read a [recent court decision](#) holding faulty workmanship is a covered occurrence and a [related UP amicus brief](#).

When, however, mold contamination develops as a secondary or “ensuing” problem from water damage that is covered, your insurance company may cover the additional cost to remediate the mold contamination. More often than not, the real fight with your insurance company is over identifying the

most important cause or causes of the mold contamination—are they covered or excluded? The jury is still out in most states as to whether mold is a “pollutant” within the meaning of most pollution exclusions.

As a general rule, most insurers attempt to exclude coverage for mold contamination associated with long-term leakage, moisture or water intrusion from a construction defect, wear and tear, deferred maintenance or poor repairs. Most insurers will acknowledge coverage for mold contamination associated with accidental discharge of a closed plumbing system—as long as you take reasonable steps to protect and repair the property after you discover the damage. Accordingly, never speculate or guess about the cause(s) of the mold contamination or suggest to or agree with your insurance company that the mold must have been around for a long time or that there must be some hidden leak somewhere. Wait until all the investigation is completed before you acknowledge or agree as to the cause(s) of the loss with your insurance company.

Once you determine that you have a covered loss, be sure to go down the list of all the coverages in your declarations page, including additional living expense (if you have to move out during repairs), and make sure that you explore all the benefits you are entitled to.

### **Third-Party Liability Coverage**

In most liability policies, your insurer agrees to defend you if you’re sued, and to reimburse (“indemnify”) you if get hit with a judgment. Somewhere in between, there is a duty to settle claims against you. The duty to defend you is much broader than the duty to indemnify you: typically the insurer must defend you if the person suing you alleges facts that merely potentially seek damages within the coverage of your policy. You only have to show that the claim might be covered, the insurer has to show conclusively that the claim cannot under any circumstances be covered. Accordingly, immediately tender the defense of any lawsuit against you to your insurer by sending a copy of the complaint and summons and asking for a defense. Don’t wait. Tender early and often. You may not be able to recover attorneys fees you have to pay before you tender your defense to your insurer. If your insurance company refuses to defend you, consult a policyholder attorney to analyze your policy and the claims against you.

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For more information, visit the UP Guide: [Mold Damage](#)