



ISSUE PAPER

Subject: **Mold's Impact on Commercial and Residential Finance**

Issue: Currently, there is no standard detailing a permissible level of mold in indoor spaces. The lack of standardization has given rise to questions and concerns as to how to address mold considerations and how to properly protect all parties' interests. Both the actual physical damage to a multifamily or commercial building and the stigma of a possible mold presence can harm the value of the collateral. For residential lenders, there is concern about the potential impact that overly broad federal and state laws could have on residential financing.

Background:

It is not uncommon to find mold in indoor environments. Mold feeds off of materials such as wood, dust, paper, and carpets and grows in normal room temperatures. A food source and ideal temperature, coupled with excessive moisture or a water source (pooled water, leaks, humidity, etc.) create the key component for mold growth.

Industry Guidelines

Lenders and servicers continue seeking guidance on how to address the issue of mold, which has caused a sense of unrest in the legal, insurance and investment community.

In 2004 the MBA created a Mold Working Group, under the Commercial Real Estate/Multifamily Finance Board of Governors' ("COMBOG") Loan Origination Committee to address the myths and realities of the mold issues. The Working Group completed a White Paper, "Mold: Steps Toward Clarity," as an informational guideline for addressing mold in several circumstances, including: insurance availability, litigation, prevention and maintenance, assessment, remediation and new construction. The White Paper and other mold resources are available on the MBA website.

Although MBA continues to monitor mold's impact on single family financing, there has been no industry request for a working group to focus on the issue.

Several organizations have developed criteria or standards for mold detection and remediation. The most recent was issued in April 2006 when ASTM International's E50.02 Commercial Real Estate Transactions Sub-Committee

Mold's Impact on Commercial and Residential Finance

Page 2

Mold Task Force offered a new inspection standard for observing mold and conditions conducive to mold (water damage, excess humidity) in multifamily and commercial buildings. The standard is intended to be a limited screening process that can be used alone or in conjunction with other property assessment reports.

Scientific Research

To date, there is no definitive scientific evidence showing any causal relationship between a healthy person's exposure to mold in an indoor environment and decreased health. Despite numerous studies, claims that exposure to "toxic" mold (containing mycotoxins) causes severe health symptoms (memory loss, chronic fatigue, hemorrhaging, headaches) have not been proven by scientific data.

The National Academy of Sciences (NAS) conducted a study on the health effects of indoor mold on humans. The NAS report, "Damp Indoor Spaces and Health," was completed on May 25, 2004. In summary, the Committee concluded that there is not "sufficient evidence of a causal relationship" between mold and health outcomes and that additional scientific research is required. The Committee stated that "questions of exposure and dose have not, by and large, been resolved." The Committee recommended additional research, education and evaluation.

Litigation

An increasing number of lawsuits have been filed in the past 3 years for mold and water damage claims.

Although there has not been a major impact on single family financing, a few residential "mold" cases have dominated the media spotlight with a select number of high-profile plaintiffs (Ed McMahon, Erin Brockovich, Bianca Jagger) and large verdicts. While anecdotal stories exist of mold's impact on homeownership, lenders have not reported a widespread impact on residential originations due to mold.

The commercial lawsuits to date are less publicized and less frequent; apartments, schools and courthouses have been the largest targets to date. The possibility of large verdicts and negative publicity remain a potential threat to commercial real estate transactions.

To date, most lawsuits are not won on claims for medical and psychological damages based on mold health effects. The successful lawsuits have focused on contractual relationships and tort actions. Yet, the reality exists that while a mold health claim may not win in court, the lender may still suffer irreparable harm. Because of the media attention around the issue, attorneys will continue to pursue claims and the taint of allegations of "toxic mold" in a multifamily or commercial building may tag a rental space as undesirable.

Mold's Impact on Commercial and Residential Finance

Page 3

The pursuit of claims has led to insurance companies' fear of losses due to mold and is cited as one of the reasons behind escalating property casualty insurance costs and decreasing availability. Mold claims and judgments in particular have led many insurers to seek exclusions for mold coverage from basic homeowners' policy terms. Provisions allowing insurers to restrict mold coverage to limited cases have been approved in more than 30 states and the District of Columbia.

Legislation

Many state legislators have drafted bills to address mold issues. To date, very little legislation has been actually passed and there is no determined or accepted set of standards for a permissible level of mold in multifamily/commercial buildings or single family residences.

On a national level, in March 2003, Representative John Conyers, Jr. (D-MI) introduced the "United States Toxic Mold Safety and Protection Act of 2003" (H.R. 1268), also known as the "Melina Bill." The bill did not leave committee and therefore expired with the end of the Congressional term in 2004. On March 14, 2005, Representative Conyers reintroduced the Melina bill, H.R. 1269, which was referred to the House Financial Services Committee. No committee action was taken and bill expired again at the conclusion of the 109th Congress.

A number of states are now adopting laws that set building and performance standards, and require mold disclosure regulations for multifamily/commercial and single family properties. Several key issues contained within the legislation include:

- a. Scientific and health research – studies on the effects of mold on individuals in an indoor environment (some include trying to define an exposure limit)
- b. Regulation of mold assessment – special license, type of review, disclosure
- c. Education – requirements for educational materials and training
- d. Disclosure in real estate transactions to tenants, homeowners, lessees
- e. Remediation/Clean up of known mold in indoor environments

Both the federal government and the states continue to try and find answers to what possible effects indoor mold may have on humans. To date, states have leaned toward increased education and awareness of the issue as the most practical solution. States have also commissioned their own studies to understand any scientific and medical links. The country continues to be in a fact-gathering mode, with no clear answers yet determined.

MBA Position: MBA is supportive of measures that protect the health and safety of homeowners and tenants. As no environmental standards have been established for mold, MBA cautions against additional mandates on the real estate finance industry. MBA also cautions against legislation that is overly broad and could adversely impact sellers, builders, and lenders.

