This Mould is making me sick – What's my Solution?

Recent heavy rainfall and the consequential water damage have caused many lot owners to fear mould growth within their buildings. Mould growth can pose a substantial risk of poisoning and infection to residents, leading to personal injury or abatement of rent claims. Unfortunately, these matters are becoming more and more prevalent in NSW and across Australia. One potential issue in making a claim due to mould lies in determining the cause of the mould growth, and therefore who is responsible.

Mould growth due to failure to repair and maintain the common property

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.

The NCAT Appeal Panel in *The Owners Strata Plan No 30621 v Shum [2018] NSWCATAP 15 summarised the statutory duties of an owners corporation as follows:*

1. to properly maintain and keep in a state of good and serviceable repair the common property and any personal property vested in the owners corporation; and
2. to renew or replace any fixtures or fittings comprised in the common property and any pers
3. onal property vested in the owners corporation.

Pursuant to section 106(5) of the *Management Act 2015*, a lot owner is entitled to recover reasonably foreseeable loss suffered in consequence of a breach of these statutory duties. In this case, the lot owner was able to retrieve $28,000 from the owners corporation when water penetration through the common area roof caused mould and water damage to his property and a consequential loss of rent.

Mould growth caused by lifestyle issues/ventilation issues from BASIX requirements

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 and assess what has caused mould growth.

BANNERMANS LAWYERS

T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA
Liability limited by a scheme approved under Professional Standards Legislation

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Conclusion

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 to due to health dangers arising from the mould.

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, strata 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.

Related Articles

Failure to Repair: Guidance on Strata Committee and Strata Managing Agent Liability

Claims by Owners for Damages Caused by Water Ingress Under Section 106(5)

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Owners Corporation's Duty to Ensure Safety of the Common Property

What's the Damage? Details and Damages Involved with Owners Corporations Failing to Repair and Maintain Common Property

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Key takeaways

- Mould growth can pose serious health risks and lead to claims for damages in strata properties.
- Owners corporations may be liable for mould caused by failure to maintain common property.
- Lifestyle and ventilation issues can also contribute to mould growth, complicating liability.
- Expert reports may be necessary to establish health dangers related to mould in buildings.
- Strata insurance policies vary and may contain exclusion clauses regarding mould-related claims.

****The information contained in this article is general information only and not legal advice. The currency, accuracy and completeness of this article (and its contents) should be checked by obtaining independent legal advice before you take any action or otherwise rely upon its contents in any way.*

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BANNERMANS LAWYERS
T: (02) 9929 0226 ABN: 61 649 876 437
E: dbannerman@bannermans.com.au W: www.bannermans.com.au
P: PO Box 514 NORTH SYDNEY NSW 2059 AUSTRALIA
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