



## Multifamily Housing News

U.S. Department of Housing & Urban Development — San Francisco Multifamily Hub

**Hawaii**

**Northern California**

**Nevada**

**Arizona**

Volume 6, Issue 3

September 2003

### Inside This Edition of Pacific Currents

Mold Feature Article	— 1-16
Occupancy Changes Pull-Out	— 11-14
Development Corner	— 17
Multifamily News	— 18-20
Occupancy Q & A's	— 21
Issuances	— 22
Production Spotlight	— 23
Calendar	— 24

### New Occupancy Handbook Issued

On June 12, 2003, HUD issued  
**Handbook 4350.3 REV-1,  
Occupancy Requirements of Subsidized  
Multifamily Housing Program.**

The revised handbook contains some excellent new features including a glossary and an index.

Questions can be sent to:  
[occupancy\\_handbook\\_comments@hud.gov](mailto:occupancy_handbook_comments@hud.gov)

*Included in this newsletter is a  
**4-Page Center Pull-Out**  
of significant changes to the  
Occupancy Handbook*

**HUD National Web Site:**  
<http://www.hud.gov>

**San Francisco Multifamily Hub:**  
<http://www.hud.gov/local/index.cfm?state=ca>

## September 2003

**-Special Edition-**

### Mold and Multifamily Housing: Facts, Issues and Resources

By Irene Pertsovsky, Program Analyst  
San Francisco Multifamily HUB

Over the last five years the issue of mold contamination has emerged as a serious concern for the public in general and the housing industry in particular. In the 1970s, it was asbestos; in the '80's, lead; and now the issue of mold has gained similar notoriety as health effects are being alleged, insurance litigation is growing, and a variety of public and private organizations are working out regulatory provisions. For folks in the housing business confronted with the problem of mold, it can be an especially difficult time.

In addition to relatively minor allergy-based health effects, serious health concerns ranging from chronic allergies, headaches, fatigue and asthma to memory loss, hypersensitivity pneumonitis, pulmonary hemosiderosis and mycotoxicosis have been alleged. These issues of health, as well as property damage allegations, have generated, and it appears will likely continue to generate, numerous lawsuits against builders, building owners, property managers, insurers and others.

Unlike asbestos and lead, meaningful federal and state legislation has yet to be developed, in part because definitive scientific data does not yet exist. In the absence of credible scientific findings and government regulations, obtaining information on what is known about mold is the best way to avoid potential problems. In most cases, mold problems can be easily and inexpensively resolved; however, small problems that are not properly and promptly addressed can result in more serious problems that will be difficult and costly to resolve.

*Continued on Page 2*

## Multifamily Hub News Staff

Multifamily Hub Director  
Janet L. Browder

Director, Operations — J. Patrick Goray

Editor-In-Chief — Christine Day  
Design, Layout, Advisor — Al Chauvet



Hub Lines Contributor — Jeri Henson  
The Multifamily Hub News is distributed to Hub clients as well as other interested parties. Comments may be directed to Christine Day at (415) 436-8476 or Christine\_J.\_Day@HUD.GOV

**Subscriptions:** The San Francisco Multifamily HUB, USDHUD "Pacific Currents" newsletter is published on a quarterly basis and distributed free of charge to registered subscribers. To subscribe please send your name and complete mailing address to:

Larry\_A.\_Chauvet@HUD.GOV

**Disclaimer:** This publication provides general coverage of its subject area. It is distributed with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional advice or services. If legal advice or other expert assistance is required, the services of a competent professional should be sought. The publisher shall not be responsible for any damages resulting from any error, inaccuracy, or omission contained in this publication.

### Hub Lines . . .

**We make a living by what we get, But we make a life by what we give.**

~ Normal Maceswan

**A warm smile is the universal language of kindness.**

~ William Arthur Ward

**Say little and do much.**

~ SHAMMAI

### "Mold and Multifamily Housing Facts, Issues and Resources" Continued from Page 1

Educating property managers, maintenance staff, and tenants about the issue of mold and establishing a step-by-step protocol on your property is key to reducing potential health risks, costly repairs and expensive litigation. We hope this special edition on mold broadens your awareness of the issue and provides you with the information to develop an approach that will reduce the likelihood of mold becoming a problem at your property.

#### Mold Basics

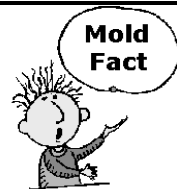
##### What is mold?

Molds belong to the kingdom of Fungi. Unlike plants, they lack chlorophyll and must survive by digesting plant and other organic materials for food. Outdoors, molds play an important role in the breakdown of plant debris, and without molds, our environment would be overwhelmed with large amounts of dead plant and other organic matter.

Molds are characterized by a vegetative body composed of a network of threadlike filaments, which infiltrate the mold's food or habitat. Mold colonies may appear cottony, velvety, granular, or leathery, and may be white, gray, black, brown, yellow, greenish, or other colors.

##### How does mold proliferate in buildings?

Molds need three things to grow: water, a nutrient source, and oxygen. Nutrients for mold can include paper, wood, natural fabrics such as cotton as well as some paints and adhesives. Most buildings have two of the three things that molds need: nutrients and oxygen. Moisture, therefore, is often the determining factor, and controlling it is the best way to prevent mold infestation. Additionally, molds are almost always found on and around household plants. Molds reproduce by making spores. Mold spores are very small and usually cannot be seen without magnification. They easily and continually waft through almost every indoor and outdoor environment. When mold spores land on a damp spot indoors, they may begin growing and digesting almost whatever surface they land on. Molds generally proliferate in buildings when a spore encounters a food source (wood, dry-wall, paint, etc) that is damp. The mold will grow into



*Mold growth requires three elements:  
H<sub>2</sub>O (water), O<sub>2</sub>, (oxygen) and a nutrient source.*

*Without all three elements mold will not grow.*

a colony and will continue to increase in size until the conditions are no longer favorable (i.e., one or more of the three things needed to grow are no longer present). Even after the colony stops growing, it may lay dormant until the conditions again exist for its continued growth.

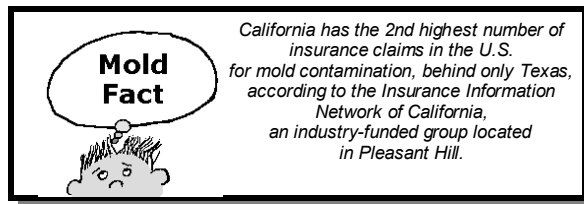
### How does mold affect human health?

According to the New York Department of Health and Mental Hygiene, most types of mold that are routinely encountered are not hazardous to healthy individuals. However, symptoms may develop in people depending on the kind of fungal material they are exposed to, the amount of exposure, the method of exposure, and the susceptibility of exposed persons. Various allergic reactions are the most common symptoms of exposure to mold; they can include cough, congestion, runny nose, eye irritation, and aggravation of asthma. Exposure can occur if people inhale the spores, directly handle moldy materials, or ingest it. According to the Office of Healthy Homes, molds are known to produce a large number of compounds that are potentially allergenic, and there is sufficient evidence to support associations between fungal allergen exposure, asthma exacerbation and upper respiratory disease.

Many molds produce protein or glycoprotein allergens capable of causing allergic reactions in people. These allergens have been measured in spores, as well as other fungal fragments. An estimated 6-10% of the general population and 15%-50% of those who are genetically susceptible exhibit allergic reactions to mold allergens. Some of the major mold allergens identified and isolated to date include those from *Aspergillus fumigatus*, *Penicillium citrinum*, and *Psilocybe cubensis*.

Molds can also produce toxic substances called mycotoxins. Some mycotoxins cling to the surface of mold spores; others may be found within spores. More than 200 mycotoxins have been identified from common molds, and many more remain to be identified. *Stachybotrys chartarum* is a type of mold that has especially been associated with health effects in people. It is a greenish-black mold that can grow on objects with high cellulose content - such as drywall, sheetrock, dropped ceiling tiles, and wood - that are especially vulnerable to water damage from humidity, flooding, and water leaks.

A wide variety of symptoms have been attributed to the toxic effects of fungi. Symptoms, such as fatigue, nausea, and headaches, and respiratory and eye irritation have been reported. Some of the



symptoms related to fungal exposure are non-specific, such as discomfort, inability to concentrate, and fatigue. Allegations have even gone as far as linking pulmonary hemorrhage/hemosiderosis in infants to mold exposure, although this has not been scientifically confirmed.

### What are the established prevention and remediation measures?

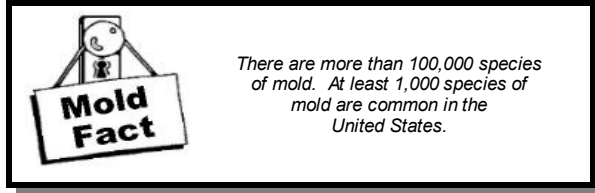
Large mold infestations can usually be seen or smelled, which is why the Minnesota Department of Health recommends that the first steps of mold detection should always emphasize visual inspection to locate sites of growth.

There is strong consensus among experts that the most effective way to treat mold is to correct underlying water damage and clean the affected area. However, precise reasons for mold proliferations vary from building to building, and from site to site. Because so much is still unknown and unconfirmed about mold-related health effects, it is recommended that measures for remediation be implemented with caution and expert guidance. Such guidance can be sought from paid professionals, online informational resources, and local and federal health organizations.

Of particular note are two documents, which have come to be generally regarded as the most authoritative guidelines on mold prevention and remediation. They are: New York City's Guidelines on Assessment and Remediation of Fungi in Indoor Environments and EPA's Guidance for Mold Remediation in Schools and Commercial Buildings.

- **New York City Department of Health**, "Guidelines on Assessment and Remediation of Fungi in Indoor Environments." See <http://www.ci.nyc.ny.us/html/doh/html/epi/moldrpt1.html>

This 17-page guide is an update of original guidelines from 1993 that dealt with mold growth problems in several New York City buildings.



It revises and expands those guidelines to include all types of mold, and provides a discussion of health issues, evaluation strategies and clean up and control methods. It was developed by specialists in the fields of microbiology and health sciences, and has been widely cited on many mold remediation projects across North America.

- **EPA Guidance** "Mold Remediation in Schools and Commercial Buildings," can be found out [http://www.epa.gov/iaq/mold/mold\\_remediation.html](http://www.epa.gov/iaq/mold/mold_remediation.html)
- **California Department of Health Services, Indoor Air Quality Program**  
[www.cal-iaq.org](http://www.cal-iaq.org) This is a comprehensive website with information on a range of issues regarding mold. Some of the information it offers is in both English and Spanish, for example "Mold in My Home: What Do I Do?" at [www.cal-iaq.org/mold0107.pdf](http://www.cal-iaq.org/mold0107.pdf)
- **University of Minnesota, Department of Health & Safety**, "Managing Water Infiltration into Buildings: A Systematized Approach for Remediating Water Problems in Buildings Due to Floods, Roof Leaks, Potable Water Leaks, Sewage Backup, Steam Leaks and Groundwater Infiltration" see [www.dehs.umn.edu/iaq/flood.html](http://www.dehs.umn.edu/iaq/flood.html). This reference includes a water damage checklist, testing, a flowchart to evaluate water damaged building materials and furnishings, and flood-related links to other sites.
- **Centers for Disease Control and Prevention**, "Questions and Answers on Stachybotrys Chartarum and Other Molds" March 9, 2000 see [www.cdc.gov/nceh/asthma/factsheets/molds/default.htm](http://www.cdc.gov/nceh/asthma/factsheets/molds/default.htm). This is information from the federal authority responsible for investigating outbreaks of illness.

### Mold Legislation

#### What legislation exists on mold?

Currently there are no U.S. federal or state regulations regarding mold exposure, identification, or remediation. Recent high profile cases of mold infestation and the rising number of buildings

identified with mold problems have increased the visibility of this issue and generated significant concern in the public health community. As a result, federal, state, and some city governments have started to address the legislative gap in the area of mold.

One issue that continues to impede these efforts, however, is the ability of current efforts by state and federal agencies to set meaningful mold exposure limits by the deadlines in these new laws. The problem is that there is still no consensus on what constitutes a "safe" level of exposure to mold of any type.

#### Federal Legislation

The only piece of federal legislation on mold that is currently under review – United States Toxic Mold Safety and Protection Act of 2003, also known as "The Melina Bill." This Bill was proposed by United States Representative John Conyers, Jr. of Michigan, and was prompted by the experience of one of Congressman Conyers' staff members, Pam Walker. According to Ms. Walker, her nine-year-old daughter, Melina, lost 70 percent of her lung capacity shortly after the family moved into a house infested with high levels of the mold *Stachybotrys*.

In its scope, this bill is very ambitious. The major provisions of the bill include: research and public education, housing and real property, indoor mold hazard assistance, tax provisions, national toxic mold insurance program, and health care provisions. Specifically, the act directs various agencies, including the Environmental Protection Agency, the Centers for Disease Control, and HUD, to examine the effects of different molds on human health, establish guidelines for mold inspection, testing, and remediation. The bill also requires mold inspection for all properties that are purchased or leased using funds that are guaranteed by the federal government, as well as requiring inspections for multi-unit residential property. Furthermore, the bill would create a national insurance program administered by the Federal Emergency Management Agency (FEMA) to protect homeowners from catastrophic losses since so many are finding that insurance companies will not offer adequate coverage for mold.

Although, in its proposed measures the Melina bill is a substantial piece of legislation, this bill is still in relatively early stages of development.

Recently, on March 28, 2003, it was referred to the House Subcommittee on Housing and Community Opportunity, where it is awaiting further action by the subcommittee.

To find out more about the Melina Bill and to track its progress, go to:

<http://www.house.gov/conyers/mold.htm>

### State Legislation

In a March 11, 2003, article in the Insurance Journal Kirk Hansen, the Director of claims for the Alliance of American Insurers, stated that presently the Alliance is tracking 30 bills under consideration in 14 states: "What we're seeing this year is an effort by some lawmakers to require studies that determine acceptable exposure limits for mold or set air quality standards." Although many insurance associations, including the Alliance of American Insurers, are opposing such attempts at establishing levels of acceptable exposure, the legislative developments in the area of mold so far and the historic evolution of regulation of lead and asbestos, point in the direction of increasing regulation, standardization, and establishment of enforcement mechanisms.

### California

The transition from mere research to creating express obligations is particularly evident in recent California legislation on mold. California adopted two pieces of legislation in 2001 addressing this issue -- Senate Bill 732 (Ortiz) and Assembly Bill 284 (Jackson). While both bills direct the California Department of Health Services (DHS) to study the issue of fungal contamination in indoor environments and to publish its findings, it is Senate Bill 732 (also known as the Toxic Mold Protection Act of 2001) that is considered to be the most progressive and proactive in its suggested regulation of mold. The bill calls for convening a task force by the DHS to develop, if feasible, permissible exposure limits for mold in indoor environments, to establish public health guidelines, and to develop public education materials. The task force, however, is only one major aspect of the bill.

The other aspects of the Toxic Mold Protection Act, attempt to go beyond guidelines and create mandatory regulations and standards for indoor mold with agency enforcement capabilities. For example, the bill adds toxic mold to the list of sub-standard conditions for buildings used for human habitation. The bill also creates an obligation on

property owners to notify current as well as prospective tenants about known or suspected mold (unless the mold has been remediated in accordance with the standards to be established by these provisions).

It is important to note that these "regulatory" aspects of the bill are contingent and pursuant to the findings of DHS' task force, making the convening of DHS taskforce and its research activities a necessary first step to establishing actual regulations. California's Department of Health Services has estimated the cost of convening such a taskforce and running its operation at \$964,000. A Fund has been set up toward this objective but it is contribution-based and, according to the Department's Bill Implementation Update, which can be found on Senator Ortiz's website, is still in the process of collecting contributions. Even if the Fund is able to secure the necessary amount for the taskforce, according to the proposed work plan (which can also be found on Senator Ortiz's website, <http://www.cal-iaq.org/SB732update.htm>), the DHS findings will not be finalized until 2005.

Regardless of the exact date when the proposed regulations actually translate into law, legal codification of this area is viewed as unavoidable and is likely to be either integrated into existing health and public safety regulations or follow in the path of previous legislation developments on other health hazardous substances inside buildings. Both approaches are proposed by the Toxic Mold Protection Act. On one hand, it adds mold to the existing list of "enumerated conditions that endangers life, limb, occupants" (California Health and Safety Code Section 17920.3); and, on the other, in its requirements for owners to disclose information about mold, it resembles the language of existing law on lead, which requires under Federal law, that: a) All owners of residential property built before 1978 disclose to current and prospective tenants the presence of any known lead-based paint; b) leases and rental agreements contain a Lead Warning Statement; c) Tenants be provided with a federally approved pamphlet on lead poisoning prevention. (42 United States Code Section 4852)



*It is estimated that the average mold claim now costs between \$10,000 and \$30,000 to handle.*

## Maryland

Effective July 1, 2001, Maryland's Senate Bill 283 established a Task Force on Indoor Air Quality to study the nature, location, and extent of health and environmental risks posed to workers as a result of molds, spores, and other toxic organisms located in the HVAC systems of office buildings. A final report will include, among other things, recommendations for appropriate remedies, both physical and legislative.

## New Jersey

Signed into law on May 3, 2001, the New Jersey Senate Resolution 77 urges the Commissioner of Health and Senior Services and the Commissioner of Community Affairs to develop methods to help State residents facing an infestation of *stachybotrys atra* identify the mold and develop the best strategies to address such infestations, and to investigate the health effects of and effective cleanup methods for infestations of the mold *stachybotrys*.

## New York

Senate Bill 896, Toxic Mold Protection Act, creates a taskforce to advise the Department of Health on exposure limits, assessment standards, and remediation. The Bill also includes a notice provision requiring a seller of real property to provide written notice to a prospective buyer regarding the presence of mold in the property if the mold exceeds permissible established levels.

## Nevada

Signed into law on June 14, 2001, Senate Bill 584 authorizes issuance of bonds to finance capital improvements for toxic mold remediation and prevention.

## Local Ordinances

### San Francisco Ordinance 125-01 (Newsom, et al.):

Ordinance 125-01 was passed into law in San Francisco, California on June 4, 2001. This

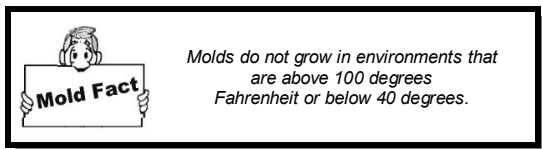
ordinance consolidated various nuisance provisions that were already part of the local code into a single article. San Francisco had already declared that lead hazards, rodents, waste contamination, etc., to be public nuisances. The city council determined that mold and mildew also posed a similar threat to San Francisco's citizens, and included mold and mildew in its list of nuisances. The ordinance provides that the minimum criminal penalties for property owners, landlords, or any other individual responsible for the elimination of the nuisance, ranges from \$25 to \$1,000 for non-compliance with the provisions of the ordinance.

### Insurance Claims on the Rise

According to a Wall Street Journal Article, nowhere is the growing liability problem more apparent than with mold. In 2001, the number of mold claims were up threefold from 2000, with the problem particularly acute in California, according to the Insurance Information Institute, a New York-based trade association that represents the property/liability industry. Insurers estimate they paid out \$670 million in 2001 for mold-related property damage in Texas alone. And according to the Institute, the average mold claim now costs between \$10,000 and \$30,000 to handle.

Traditionally, mold had been excluded from policies except when it resulted from the accidental discharge or overflow of water or steam or wind-storm, according to the Insurance Services Office Inc., a Jersey City, N.J., provider of statistical data for the property-casualty insurance industry. But now, insurers are increasingly excluding mold from their policies altogether, regardless of the cause, and, in effect, shifting the tab to property owners. More than 35 states have allowed insurance companies to exclude mold from homeowner and commercial insurance claims.

It is anticipated that coverage for mold insurance will result in higher premiums. According to the Insurance Information Institute, many insurers are now inserting clarifying language in their homeowners policies to avoid confusion. It is anticipated that some companies may decide to cover all mold claims and price the policy accordingly. Others may exclude mold, but offer an endorsement to the policy that allows you to add the coverage. Still other companies may provide a tighter definition of what is and what is not covered.



A special report "Mold Matters: Dealing with Mold Risks in the Origination and Securitization of Mortgage Debt in Real Estate Transactions," issued by Dechert LLP in 2002, suggests that it is likely that an insurance policy that does not mention mold will not cover a mold claim. If mold coverage is desirable, therefore, it should be specifically obtained. Increasingly, mold coverage is found in new Pollution Legal Liability policies, or endorsements to already existing policies rather than basic Commercial General Liability policies.

Because mold coverage depends on many factors (i.e. state in which the property is located, type of property, whether a recent environmental or property assessment that includes a mold inspection has been conducted on the property, etc.), the report suggests that it is important to determine and clarify through policy language the exact range of coverage: "the policy should cover mold-related personal injury claims, legal defense fees, business interruption losses, restoration costs and clean-up costs." (report can be found at <http://www.dechert.com/practiceareas/practiceareas.jsp?pg=home>).

Additional Sources of Information on Insurance and Mold:

[www.iii.org](http://www.iii.org) - Insurance Information Institute provides information on mold and its implications for the insurance industry. Offers an excellent PowerPoint Presentation: "Mold and Insurance: Is the Worst Behind Us?"

[www.realtor.org](http://www.realtor.org) - National Association of Realtors offers insurance information and update.

[www.ibhs.org](http://www.ibhs.org) - Institute for Business and Home Safety provides information resources and research update to reduce property damage and economic losses caused by natural disasters, includes publications on mold.

<http://www.mealeys.com/mold.html#1> - This site includes an excellent article: "The 'Molden' State: Evaluating Third-Party Mold Claims Under California," by Linda Bondi Morrison.

### Mold Litigation

In 2002, insurers estimated that there were about 8,000 to 10,000 lawsuits pending nationwide for mold litigation. Schools, courthouses, commercial office buildings, warehouses, residential single-family and multifamily – all have been involved in mold related lawsuits. Likely defendants include:

builders, building owners, property managers, architects, contractors, subcontractors, realtors, and insurers of any of these parties. According to Damian Wach of EMG Corporation, a consulting company for real estate professionals, "More than half of the mold assessments conducted by EMG are at multifamily properties, 30 to 40 percent at office buildings, and a smaller fraction at retail properties."

### Related Web Links on Mold Related Legal Issues:

[www.mealys.com](http://www.mealys.com) - a litigation resource providing publications and news on toxic torts, insurance, construction defects, health care, and other litigation practices.

[www.nolo.com](http://www.nolo.com) - an online legal resource containing in-depth law centers, encyclopedia, statutes and cases, legal tools, and news.

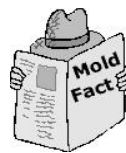
[www.policyholdersofamerica.org](http://www.policyholdersofamerica.org) - a nonprofit organization formed by policyholders who have been through the claims battle and emerged victorious; empowers policyholders to battle insurance fraud.

[www.toxlaw.com](http://www.toxlaw.com) - a collection of toxic tort resources and message boards on topics involving pathogen and chemical exposures.

### HUD and Mold

The Code of Federal Regulations Chapter 24 Part 5 covers the subject area of health and safety and Subpart (f) explicitly covers mold. Owners and property managers of HUD-insured and/or subsidized housing are required to, "maintain the property in a condition that is decent, safe, and sanitary, and in good repair." This requirement is found in 24 CFR Part 5, and, although the exact wording may be different, it is also found in all Regulatory Agreements, Housing Assistance Payment Contracts and Use Agreements.

24 CFR Part 5, Subpart (f) was included in the 1998 HUD rule which created uniform physical standards and standardization of inspection



### More Info On Mold

There are over 20 web sites highlighted in bold print throughout this feature article. They provide additional mold related information.

protocol applicable to Section 8 housing, public housing, HUD-insured multifamily housing, and other HUD assisted housing. Specifically Subpart (f) stipulates that all housing assisted by HUD programs "must have proper ventilation and be free of mold, odor (e.g., propane, natural gas, methane gas), or other observable deficiencies." The text can be found at: <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi>.

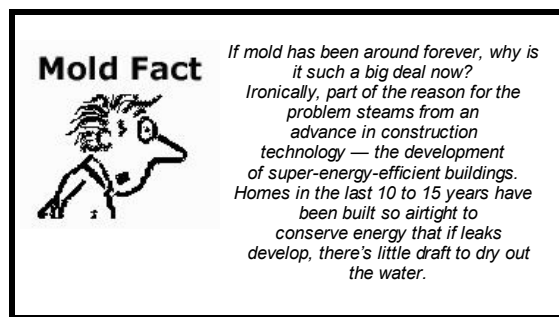
Failure to comply with this section could result in suspension, termination and/or non-renewal of the Section 8 contract, point deductions on REAC inspection scores, and foreclosure.

Furthermore, Subpart (f) also states that "The physical condition standards in this section do not supersede or preempt State and local codes for building and maintenance with which HUD housing must comply. HUD housing must continue to adhere to these codes." This is a particularly important clause because it means that not only must the property management staff adhere to the federal requirements of Subpart (f) but it must also be aware and comply with the city and state health codes. For example, San Francisco is one of only few cities that has enacted legislation specifically dealing with mold, Ordinance 125-01 (Newsom, et al.).

#### Set Up a Preventative Maintenance Program

To ensure mold does not become a problem on your property, experts say the best strategy is to set up a preventative maintenance program. Here are some recommended measures to include in your program:

- **The key to mold prevention is moisture control.** The EPA guidelines recommend that buildings be routinely inspected for evidence of water damage and visible mold, moisture condensation, musty odors, water leaks, and wet carpets. Special attention should be paid to the bathroom, kitchen, basement, HVAC unit, and other areas of the building where moisture is common.
- **Set up water leak hotline.** According to an article on mold in the "Assisted Housing Management Insider," December 2001, the best way to get information about existing moisture problems, which can potentially give rise to mold infestation, is to set up a water leak hotline that residents can call to report leaks or wet conditions in their units 24 hours a day,



seven days a week. This will help your maintenance staff to be informed about potential sources of mold immediately and can fix problems before mold has a chance to grow.

- **Check humidity levels.** Maintenance staff can usually detect humidity by using their senses. They can also look at the HVAC system's humidity indicators to see if the proper moisture level is being maintained throughout the site.
- **Visually inspect for mold growth.** In addition to visually inspecting for leaks and standing water, maintenance staff should also be explicitly instructed to inspect for obvious mold growth, especially after periods of heavy rain or flooding.
- **Replace damp drywall.** Leaky pipes or flooding can cause drywall to retain moisture. Drywall, combined with the moisture, creates an excellent breeding ground for mold

#### What Department in HUD Deals with Mold?

Within HUD, it is the Office of Healthy Homes and Lead Hazard Control that has overall responsibility for advising the Department on mold. The mission of the Office of Healthy Homes and Lead Hazard Control is to eliminate lead-based paint hazards and other housing-related threats to children's health and safety. The Office was created in December 1991 and advises the Secretary, the Deputy Secretary and all HUD program and field offices on lead poisoning prevention and other healthy homes issues, such as asthma, toxic mold, allergens, carbon monoxide and other hazardous agents and conditions found in the home environment.

Although HUD has not developed any official guidance on mold prevention and remediation, the



Office of Healthy Homes has issued a working paper on mold, "Healthy Homes Issues: Mold," and is preparing to issue three more. According to Emily E. Williams, environmental scientist with the Office of Healthy Homes, the staff has generally referred people with mold-related questions to the EPA materials and the New York City guidelines. Reiterating the underlying need for moisture control, Ms. Williams maintains that it is crucial that the tenants report visible mold and recurring moisture problems to property maintenance staff.

#### **How to Devise an Effective Action Plan for Dealing With Mold at Your Property**

The incomplete scientific findings on mold's health effects, the lack of legislative regulation, and the skyrocketing insurance policy premiums that cover mold, all highlight the tremendous importance of taking preventative action. The possible financial and health risks of not doing this can be devastating. The good news is that notwithstanding the absence of binding legal standards or scientific consensus, certain steps can be taken to diminish the potentiality of mold infestation, its health hazards, and legal liability. Educating property staff and establishing an action plan for mold prevention, assessment, and remediation is one of the most important steps that owners and property managers can take. Please consider these widely accepted strategies, which have been developed by housing and real estate professionals, to empower yourself against the pernicious effects of mold.

#### **Offer Training on Mold**

Suggested training topics include: introduction to mold biology, review of any company-specific policies and procedures, resident awareness, addressing resident concerns, documentation and notification protocol. Such training can help enable regular building maintenance staff to address water intrusion and conduct remediation of isolated areas of mold contamination.

#### **Mold Fact**



Go to <http://www.aiha.org/GovernmentAffairs-PR/documents/moldtranscript.pdf> for a transcript of an enlightening June 2002 Panel Discussion of experts on "Mold Biological Contaminations," sponsored by the American Industrial Hygiene Association.

Additional training or retention of experts with experience in handling environmentally contaminated materials, however, may be necessary depending on the extent of contamination.

Here are several sources of training on mold:

- UC Berkeley Extension Program's Engineering Department periodically offers a course: "Mold: Inspection, Assessment, and Control" <http://www.unex.berkeley.edu/em/336495.html>
- University of California Indoor Air Quality Committee publishes educational materials, such as "Indoor Air Quality Tools Education Prevention and Investigation" <http://ehs.ucsc.edu/ih/IAQC/IAQC-intro.html>
- The Center for Disease Control and Prevention offers an assessment guide on air quality specifically designed for building owners and managers, "Building Air Quality A Guide for Building Owners and Facility Managers," at <http://www.cdc.gov/niosh/baqtoc.html>
- You can get information on seminars, conferences, and training from The American Industrial Hygiene Association (AIHA) at <http://www.cdc.gov/niosh/baqtoc.html>

#### **Engage Residents in Helping to Prevent Mold Growth**

The California Apartment Association advises property owners and managers to educate residents on the issue of mold by supplying each new resident with the California Department of Health Services (DHS) Indoor Air Quality Informational Sheet, "Mold in My Home: What Do I Do?" as part of their move in package. Since mold growth can happen in a matter of hours, it also recommends that residents be encouraged to promptly report any signs of water leakage, sites of excessive moisture, and areas of mold growth. The National Multi Housing Council even suggests putting specific language in the lease which would advise residents to notify the property owner/manager if water intrusion exists or mold is found.

#### **Respond Quickly to a Mold Complaint**

It is important to have a prepared policy to deal consistently, appropriately and thoroughly with mold concerns and complaints. Once a mold concern is identified, a property manager's highest

### Mold Fact



California Department of Health Service, Indoor Air Quality Program provides a list of California-based firms that provide professional assistance in addressing IAQ problems. These are self-reported firms are not endorsed or certified by CDHS. ([http://www.cal-iaq.org/FIRMS/NO\\_CAL.htm](http://www.cal-iaq.org/FIRMS/NO_CAL.htm))

priority should be to protect the health and safety of their residents and staff. Even with great attention to mold prevention, there are no guarantees that mold will not grow in hidden areas. According to the National Multi Housing Council's "White Paper: Mold in Apartment Buildings," what is certain, however, is that once mold has been reported by a resident, a property owner/manager should respond promptly. The White Paper recommends that maintenance staff should conduct an inspection of the reported problem and mitigate the problem by eliminating or correcting the underlying moisture source which caused the mold growth.

### Remediation

There are no clean-up procedures specified by regulations or laws. There are, however, several guidelines that have become widely accepted authoritative protocols on clean up and remediation, all of which emphasize the importance of correcting the underlying water problem in remediation.

- New York Department of Health "Guidelines on Assessment and Remediation of Fungi in Indoor Environments," 2001. The guideline establishes five levels of abatement based on size of the affected area and discusses health protection measures for workers and occupants.
- U.S. EPA "Mold Remediation in Schools and Commercial Buildings," 2001
- American Conference of Governmental Industrial Hygienists "Bioaerosols: Assessment and Control," 1999
- American Industrial Hygiene Association "Report of Microbial Growth Task Force," 2001
- The California Department of Health Services also publishes clean-up procedures, [www.cal-iaq.org/mold9803.htm](http://www.cal-iaq.org/mold9803.htm), "Indoor Air Quality Info Sheet"

### What to Look for When Hiring Professional Help?

Although the Minnesota Department of Health and other health authorities advise observing for visual signs and smells as the first measures of mold assessment, proper handling of mold in later stages of investigation and remediation might necessitate retention of professional help. In seeking a consultant for mold assessment and remediation, many clients are demanding the expertise of a Certified Industrial Hygienist (CIH). A voluntary certification program has been available through the American Board of Industrial Hygiene ("ABIH") since 1960.

It is important when selecting a CIH to understand that a CIH can be certified in a variety of different areas of technical experience ranging from ergonomics to epidemiology. As such, it is necessary to determine whether the CIH has specific experience in the type of fields most applicable to mold related claims, such as microbiology or toxicology, as well as the CIH's actual experience with mold claims. Once a CIH is selected, he or she should provide a general sampling plan detailing the types of sampling recommended. After the initial sampling, the CIH should be prepared to provide a preliminary verbal report with analysis of sampling results, followed by a written report. Then, where appropriate, the CIH should provide a remediation protocol.

For further information about CIHs, you can visit the main pages of the ABIH and the American Industrial Hygiene Association website: [www.abih.org](http://www.abih.org) and [www.aiha.org](http://www.aiha.org).

### Communication With Tenants When Remediating

Communication with building occupants is essential for successful mold prevention and remediation. According to the EPA's guidelines on remediation in School and Commercial Buildings, some occupants will naturally be concerned about mold growth in their buildings and the potential health impacts. Occupants' perceptions of the health risk may rise if they perceive that information is being withheld from them. The status of the building investigation and remediation should be openly communicated including the information on any

Continued on Page 15

Clarification and Changes to Handbook 4350.3 issued June 12, 2003, Page 1

Issue	New Version	Reference
Occupancy Issues relating to 202 PRAC and PAC projects and 811 PRAC projects	Provides broader guidance regarding PACs and PRACS as well as calculating assistance payments, e.g. TTP may exceed PRAC Operating Rent	Paragraph 1-3 C, Page 1-7 and 9-12 D, Page 9-22
Title VI-D of the Housing and Community Development Act of 1992	Authorizes owners of certain HUD multifamily assisted properties to elect to serve elderly families, limit the number of disabled families residing in the project or to adopt preferences for elderly families, depending upon the type of project and whether certain requirements are met. Although not a civil rights law, if applied incorrectly, an owner may be in violation of federal civil rights laws, as well as program requirements.	Paragraph 2-10, page 2-9, 42 U.S.C. 13641
Race and Ethnicity Data	Ethnicity and Race of applicants and tenants is determined by self-certification rather than an observation of the owner.	Paragraph 2-11, page 2-9
Section 504 Self-evaluation	Recommends that owners update and continue to use the transition plans. Also clarifies that the owner has an affirmative obligation to make the property accessible, i.e., take steps to meet the 5% fully accessible and 2% visual/hearing impaired and accessible common and public areas.	Paragraph 2-34, page 2-30
Definition of "persons with disabilities" and "disability"	Includes six definitions related to persons with disabilities and their eligibility for housing assistance and program benefits.	Chapter 3, Figure 3-6, page 3-39
Income Eligibility Determinations	Tenants whose incomes increase above the income limit continue to receive assistance so long as they qualify for assistance in paying rent under the applicable program rules.	Paragraph 3-6C, Page 3-5, Chap. 5, & Chap. 7
Unborn Child	Owners must include unborn children for determining family size for income limits as well as determining unit size.	Paragraph 3-6 E 4, Page 3-8
Persons confined to hospital or nursing home	Persons confined to a nursing home may be included as member of household for determining income limits, but may not be listed as head, co-head or spouse, but as other adult member of household. Family has a choice with regard to how individual's income will be counted.	Paragraph 3-6, page 3-9 Paragraph 5-6, page 5-9
Admission of Police Officers or Security Personnel in Section 8 Properties	Owners may admit a police officer or security personnel who is over income limits. For police/security personnel whose income exceeds the income limit for the property, the rent is set by the owner. Owners should establish a rent that is attractive to the officer, but not less than what the officer would pay as an eligible Section 8 tenant.	Paragraph 3-8 D, page 3-14, Paragraph 5-27, page 5-66
Disclosure of Social Security Numbers	Provides discussion of acceptable documentation of social security numbers or certification stating no number has been issued. An applicant may not become a participant in the program unless the applicant submits the required SSN documentation to the owner within 60 days from the date on which the applicant certified that the documentation was not available.	Paragraph 3-9, page 3-16
Non-citizen Rule	Applies to all programs <b>except</b> 221(d)(3) BMIR properties, Section 202 PAC, Section 202 PRAC; Section 811 PRAC, and Section 202 projects with units not receiving assistance under the Rent Supplement or Section 8 programs.	Paragraph 3-12, page 3-19

Clarification and Changes to Handbook 4350.3 issued June 12, 2003, Page 2

Issue	New Version	Reference
Remaining Family Member	If the qualifying head of household moves out leaving other family members behind, a determination must be made as to whether the remaining members of the household will be eligible to receive assistance. However, in a Section 202/8, Section 202 PAC, Section 202 PRAC or Section 811 PRAC, if the individual who establishes eligibility for the project leaves the unit for any reason other than death, the owner must determine if the individual(s) still residing in the unit meet the eligibility requirements for the project, income and age or disability. If the individual is not eligible for the project, they may not receive rental assistance and depending upon the type of project, he or she may or may not be allowed to remain in the unit. In a 202/8 or a 202 PAC project, the individual may remain in the unit but must pay contract rent, in a 202 or 811 PRAC the individual may not remain in the unit.	Paragraph 3-15, page 3-34
Accepting Housing Choice Vouchers	Vouchers may only be used in non-assisted or partially assisted projects and only into units that do not already have a form of rental assistance such as Section 8, RAP, Rent Sup, Section 202 PAC, or Section 202 and 811 PRAC. Vouchers may be accepted in Section 236, 221(d)(3) BMIR and Section 202 units without assistance contracts. The PHA and HUD may limit rents that may be charged and subsidies the owners may collect in units where a voucher family is housed. If a tenant is receiving rental assistance through the Section 8 Housing Choice Voucher program, the PHA completes the annual recertification. Owners are not responsible for completing recertification activities but must cooperate with PHA staff in providing needed information.	Paragraph 3-20, page 3-55  Paragraph 7-4 D, page 7-4
Child Joint Custody	Children in joint custody arrangements who are present in the household 50% or more of the time are considered when determining unit size. When more than one family shares custody and both families live in assisted housing, only one family at a time can claim the dependent deduction and unearned income of the child. The family with primary custody or with custody at the time of the initial certification or annual recertification receives the deduction.	Paragraph 3-22 E, page 3-60, Paragraph 5-6A, page 5-7 Paragraph 5-10, page 5-37
Family Members in Correctional Facility	The owner may establish reasonable standards for counting family members that are temporarily in a correctional facility. It is reasonable for an owner to count a teenager who will return to the family in six months from a detention center. It is not reasonable to count an adult member who may return to the family in two years following incarceration.	Paragraph 3-22, page 3-61
Screening and Eviction Rule	Incorporated into Handbook	Chapter 4
Tenant Selection Plans	Requires owner to develop and make public a plan, including required contents.	Para. 4-4, page 4-3
Income Targeting	Now incorporated. Provides recommended methods for meeting income targeting of at least 40% Extremely Low-income.	Paragraph 4-5A, page 4-7
Preferences	Incorporated into Handbook	Para. 4-6A, Page 4-9
Live-In Aides	Live-in aides and new additions to tenant household must be screened for drug abuse and other criminal activity	Paragraph 4-7, page 4-15
Affirmative Fair Housing Marketing Plan	Requires owner to update AFHMP every 5 years as needed to assure compliance.	Paragraph 4-12 F, Page 4-27

Clarification and Changes to Handbook 4350.3 issued June 12, 2003, Page 3

Issue	New Version	Reference
Application for Tenancy	Provides guidance on what questions should be included on a tenant applications.	Para. 4-14,B, pg 4-29
Placing Families with Disabled Family Members	An owner must not skip over a family that has reached the top of the waiting list and has indicated a need for certain unit accommodations because of a disability. If separate waiting lists are used for persons with disabilities, they must also be placed on the general waiting list. The family must be given the opportunity to benefit from the program and decide for itself whether a unit meets the needs of the family.	Paragraph 4-17, page 4-35
Waiting List Maintenance	Provide criteria for documenting and maintaining such lists. Must provide an auditable record of applicant additions, selections, withdrawals, and rejections.	Paragraph 4-18, page 4-35
Absence from a Unit	Owners must count all income of family members approved to reside in the unit, even if some members are temporarily absent. A temporarily absent individual on active military duty must be removed from the family, and his or her income must not be counted, unless that person is the head of the family, spouse, or co-head. If the spouse or a dependent of the person on active military duty resides in the unit, that person's income must be counted in full, even if the military member is not the head, or spouse of the head of the family. The income of the head, spouse, or co-head will be counted even if that person is temporarily absent for active military duty.	Paragraph 5-6 B, page 5-8
Deduction for Disability Assistance Expense	Families are entitled to a deduction for unreimbursed, anticipated costs for attendant care and "auxiliary apparatus" for each family member who is a person with disabilities, to the extent these expenses are reasonable and necessary to enable the individual 18 years of age or older to be employed. If assistance allows more than one person to work, assistance may equal but not exceed combined income of individuals	Paragraph 5-10 C, page 5-39
Medical Expenses	1) Owner may use expenses the family anticipates to be paid during the 12 months after re-certification. 2) Owner may use medical expenses paid during the past 12 months to estimate medical expenses. 3) Past "one-time" nonrecurring medical expenses that have been paid in full may be used in the calculation of the medical expense deduction if the tenant did not request an interim recertification at the time these expenses were incurred.	Paragraph 5-10 D, Page 5-42
Verification	Same verification methods are required in all programs and discusses those methods	Paragraph 5-13, 5-49
Minimum Rent	Incorporated into Handbook	Para. 5-26, page 5-63
Double Occupancy in Section 811 Group Homes	Calculation has now been incorporated into Handbook.	Paragraph 5-28A, page 5-66
Unit Designation for Shared Occupancy	Incorporated into Handbook	Paragraph 5-28A, page 5-66
Model Lease for 202/8, 202 PAC, 202 PRAC and 811 PRACS	Model lease may not be modified except that an owner may include a provision that permits the owner to enter leased premises at any time without advance notice to a tenant when there is a reasonable cause to believe an emergency exists or that the health and safety of a family member is endangered.	Paragraph 6-5 Page 6-9

Clarification and Changes to Handbook 4350.3 issued June 12, 2003, Page 4

Issue	New Version	Reference
Lead Based Paint Disclosure	Now incorporated into Handbook.	Para. 6-8, Page 6-12
House Rules	House rules are established at the discretion of the owner. Provides discussion for establishing house rules and suggested "reasonable" house rules	Paragraph 6-9 B, Page 6-15
Smoking	There are no statutory or regulatory provisions governing smoking in assisted housing. HUD assisted properties are required to comply with applicable state and local laws, which would include any laws governing smoking in residential units. Owners are free to adopt reasonable rules that must be related to the safety and habitability of the building and comfort of the tenants. Owners should make their own informed judgment as to the enforceability of house rules.	Paragraph 6-9, Figure 6-5, page 6-16
Pet Rules	Greatly expands language concerning pet rules.	Para. 6-10, page 6-18
Security Deposits	Figure provided summarizing the amount of security deposit collectible by program	Figure 6-6, page 6-29
Checks returned for Insufficient Funds	Owners may impose a fee on the second, and each additional, time a check is not honored for payment. Tenant may be billed for only the amount of the bank charges for processing returned checks.	Paragraph 6-25, page 6-38
Lease Consent Forms, HUD 9887, 9887A	There is no longer a HUD Form 50059. However, all adult members of the household must now sign the lease, 50059 facsimile and consent forms.	Paragraph 7-6, Figure 7-2, Page 7-7
Termination of Assistance Payments	Assistance will be terminated if recertification is not submitted to TRACS within 15 months of previous year's certification anniversary date.	Paragraph 7-6, page 7-6
Timing of Annual Recertifications	120 days – Tenant has until 10 <sup>th</sup> day of 11 <sup>th</sup> month to re-certify. Tenant to be provided 30 days notice of any increase in rents	Paragraph 7-7, page 7-6
Interim Re-certifications	\$200.00 trigger requiring interim recertification	Par. 7-10, page 7-19
Termination of Assistance	When a tenant knowingly allows an ineligible person to live in the unit on a permanent basis without informing management, the tenant's assistance must be terminated. The tenant will not be eligible to receive assistance again for at least 24 months.	Paragraph 8-7, page 8-8
Tenant Rental Assistance Certification System (TRACS)	Provides clarification concerning aspects of the TRACS program	Chapter 9
Special Claims	Owner must submit claim within 180 days after the unit becomes available for occupancy. Use actual number of days in the month when determining monthly assistance for adjustments and the daily contract rent for special claims.	Paragraph 9-14, page 9-27

**"Communication With Tenants When Remediating?"**  
Continued from Page 10

known or suspected health risks. When building-wide communications are frequent and open, those managing the remediation can direct more time toward resolving the problem and less time to responding to occupant concerns.

- Communicate regularly (by posting updates and/or holding meetings) with tenants about the nature of the problem, remediation plan, and timetable.
- Identify a person whom tenants can contact directly to discuss questions and comments about the remediation activities.
- Keep residents and staff away from the remediation area and make certain that workers wear proper personal protection equipment.

**Major Guideline Documents and Legislation on Toxic Mold**

**I. Accepted Guidelines**

- EPA Guidance: Mold Remediation in Schools and Commercial Buildings.
  - [http://www.epa.gov/iaq/molds/mold\\_remediation.html](http://www.epa.gov/iaq/molds/mold_remediation.html)
- NYC Dept. of Health Guidelines on Assessment of Fungi in Indoor Environments.
  - <http://www.ci.nyc.ny.us/html/doh/html/epi/moldrpt1.html>
  - Comprehensive guidelines for mold assessment and remediation.
- Center for Disease Control Q&A Document.
  - <http://www.cdc.gov/nceh/airpollution/mold/stachy.htm>
  - Answers common questions about toxic mold.

**Proposed Federal Legislation**

- United States Toxic Safety and Protection Act of 2003.
  - <http://www.house.gov/conyers/mold.htm>
- Legislation that would order:
  - EPA to set standards for acceptable mold levels.
  - All mold inspectors to obtain certification.
    - Mold inspection for all properties that are purchased or leased using funds that are guaranteed by the federal government, as well as requiring inspections for multi-unit residential property.

**Mold Fact**



*The key to mold prevention is moisture control.*

- create a national insurance program administered by the Federal Emergency Management Agency (FEMA) to protect homeowners.
- authorizes grants for mold removal in public buildings.
- would enable states to provide Medicaid coverage to mold victims who are unable to secure adequate health care.

**Enacted State Legislation**

- California Law (SB 732): Toxic Mold Protection Act
  - <http://www.cal-iaq.org/SB732update.htm>
  - Creates task force to investigate toxic mold issues
  - Sets timeline for developing guidelines for the identification, assessment, and remediation of toxic molds
  - adds toxic mold to the list of sub-standard conditions for buildings used for human habitation
  - creates an obligation on property owners to notify current as well as prospective tenants about known or suspected mold, unless the mold has been remediated in accordance with the standards to be established by these provisions.
- Maryland Senate Bill 283
  - <http://mlis.state.md.us/2001rs/billfile/SB0283.htm>
  - Establishes a task force on indoor air quality.
  - Signed into law May 18, 2001.
- New Jersey Senate Resolution 77 signed into law on May 3, 2001.
  - [http://www.njleg.state.nj.us/2000/Bills/sr/77\\_i1.pdf](http://www.njleg.state.nj.us/2000/Bills/sr/77_i1.pdf)
  - Urges the Commissioners of Health and Senior Services and Community Affairs to provide information on the identification and remediation of mold, as well as research into the potential for adverse health effects.

- Nevada Senate Bill 584, effective June 14, 2001.
  - <http://www.leg.state.nv.us/71st/Reports/history.cfm?ID=4799>
  - authorizes issuance of bonds to finance capital improvements for toxic mold remediation and prevention.
- New York Senate Bill 896, Toxic Mold Protection Act
  - <http://assembly.state.ny.us/leg/?bn=S00896>
  - Would establish a task force to advise the New York Department of Health on the development of standards for safe levels of mold so that permissible exposure limits may be adopted and enforced by the state.
  - The bill is currently under consideration by the State Senate.

#### Local Legislation

- San Francisco Health Code, Ordinance No. 125-01.
  - On June 15, 2001, San Francisco Board of Supervisors added "any visible or otherwise demonstrable growth of mold or mildew in the interiors of any buildings or facilities" to the list of public nuisances.

#### Concluding Remarks on Mold

Just as the scientific community is in the process of developing research on mold and its impact on human health, government organizations, insurance companies, and the courts are struggling to understand how the issue of mold should be handled. Likewise, we, in the housing industry need to incorporate the issue of mold into our educational materials, news literature, and training programs. There are still no established acceptable mold exposure levels and no federal legislation has been passed yet. But the multiplying court cases, the increasing denial of mold coverage by insurance companies, and the growing state mold legislation in recent years highlights the importance of addressing the problem of mold on all levels – federal, state, local, as well as at your specific properties.

As this special issue of Pacific Currents shows, in the absence of regulating legislation and complete scientific findings, mold awareness and proper maintenance are key in preventing mold from becoming a problem on your property. The websites and information about various government agencies and organizations listed in this issue offer vast and up-to-date information on mold, as well as professional expertise to help you in prevention, assessment, and remediation. One of the major challenges to being a successful rental property owner or manager is keeping abreast of the constantly-evolving health and safety requirements across the country that affect rental properties. Don't let the problem of mold catch you off guard; stay aware.

#### Asset Management Reminders --

- ◆ Annual Excess Income Narrative Reports are due 30 days after the end of the project's fiscal year.
- ◆ Service Coordinator Semi-Annual Performance reports are due October 30 for the period April 1 through September 30. Semi-Annual Performance reports are due from **all** Service Coordinators funded by either the project's budget or grant funds.
- ◆ Exigent Health and Safety certifications are due to your local HUD office within **three business days** after the date of the inspection.

#### SHARE THE GOOD NEWS...

This newsletter is sent to our industry partners, which include: Lenders, Developers, Management Agents, Consultants, Government Officials, Project Site Offices, etc. The residents of the developments have advised they are interested in the information in the newsletter. We request that the copy sent to the project site be posted in the community room, on a bulletin board or somehow shared with the residents. You could also advise the residents that the newsletter is on our website, (<http://www.hud.gov/local/index.cfm?state=ca>) should they want to view it on their computer or in your Neighborhood Network location.



## Development Corner

### Section 202/811 Initial Endorsements

Hale Mahaolu Eono 5, 5 units, Section 202, Lahaina, HI  
Hale O Mana'o Lana Hau II, 15 units, Section 811, Wailuku, HI  
Maui Kokua Housing, 7 units, Section 811, Kahului, HI  
NBA Estes Gardens, 57 units, Section 202, Tucson, AZ  
Mountain Vistas, 57 units, Section 202, Redding, CA  
International Hotel Senior Housing, 105 units, Section 202, San Francisco, CA  
Gault Street Senior Housing, 37 units, Section 202, Santa Cruz, CA  
Las Golondrinas, 50 Units, Section 202, San Jose, CA

### Section 202/811 Final Endorsements

Hale Noho, 7 units, Section 811, Kaneohe, HI  
North Las Vegas Silvercrest, 60 units, Section 202, North Las Vegas, NV  
McFarland Apartments, 48 units, Section 202, Las Vegas, NV  
Vista Alegre, 60 units, Section 202, Glendale, AZ  
Rodeo Gateway Apartments, 50 units, Section 202, Rodeo, CA

### Initial Closings

Coronado Bay Club Apartments, 346 nits, Section 221d4, Las Vegas, NV  
Quail Run Apartments, 156 units, Section 221d4, Peoria, AZ  
Arborwood Apartments, 325 units, Section 221d4, Phoenix, AZ  
Liberty Cove Apartments, 264 units, Section 221d4, Phoenix, AZ  
Desert Vista Apartments, 128 units, Section 221d4, Glendale, AZ  
Stockton Commons ALF, 100 beds, Section 232, Stockton, CA  
Pacific Gardens Assisted Living Facility, 103 beds, Section 232, Santa Clara, CA  
Timber Ridge at McKinleyville, 48 beds, Section 232, McKinleyville, CA

### Initial/Final Closings

Casa Tiempo Apartments, 138 units, Section 223(f), Las Vegas, NV  
Northern Lakes Apartments, 234 units, Section 223(f), Glendale, AZ  
Monte Vista Apartments, 208 units, Section 223(a)(7), Glendale, AZ  
Casa Madera Apartments, 80 units, Section 223(a)(7), Tucson, AZ  
Foothill Plaza Apartments, 98 units, Section 223(a)(7), Sacramento, CA  
Crestwood Behavioral Health Center - San Jose, 174 beds, Section 223(f), San Jose, CA  
Crestwood Manor, 126 beds, Section 223(f), Fremont, CA  
Elizabeth Oaks Apartments, 126 units, Section 223(f), Santa Cruz, CA  
Chestnut Street Apartments, 96 units, Section 221d4, Santa Cruz, CA  
Steamboat Landing Apartments, 151 Units, Section 223(f), Stockton, CA  
Glenwood Inn, 126 Units, Section 223(a)(n), Menlo Park, CA  
Seville Terrace, 125 beds, Section 223(f), Las Vegas, NV

### **"Big Buy" Lead Inspections Delayed**

Under current regulations, pre-1978 property owners are required to conduct a risk assessment or visual assessment to determine if there are any lead-based paint/lead-based paint hazards at their properties. Owners of pre-1960 properties were to comply by May 2002. Owners of 1960 and pre-1978 properties must comply by September 15, 2003.

Many FHA insured and Section 8 properties built after 1960 but before 1978 requested free lead-based paint testing, the "Big Buy," through HUD's Real Estate Assessment Center (REAC).

HUD Headquarters has notified the field offices that owners who requested "Big-Buy" free inspections through HUD's Real Estate Assessment Center (REAC), but have not yet been inspected are not subject to the September 15 deadline. These owners should have received confirmation from HUD that they are on the waiting list for free LBP testing. If you have not received notification from HUD and you are a pre-1978 property, you should immediately obtain your risk assessment in order to comply with the September 15, 2003 deadline.

In addition, HUD has now determined that abatement activities, as well as testing, is an eligible Reserve for Replacement expense. If available, Residual Receipts should be utilized prior to Reserve for Replacement funds.

REAC is no longer in charge of the inspections. Jurisdiction for the inspections has been moved to the Office of Housing in coordination with the Office of Healthy Homes. For more information please go to: [www.hud.gov/offices/lead](http://www.hud.gov/offices/lead)

### **Tenant Notification**

Although not previously required, 24 CFR Part 245 now requires owners/agents who are requesting an Operating Cost Adjustment Factor (OCAF) or an Annual Adjustment Factor (AAF) to provide notification to tenants of the proposed rent increase. This notification must be given to tenants at least 30 days before submitting a request to HUD for approval of an increase in rents. Copies of the notice are at 245.15.

### **Supreme Court Rejects Challenge to Loitering Law**

The Supreme Court recently upheld a controversial anti-crime policy in Richmond, Virginia's, public housing projects. The Court ruled unanimously that putting the streets and sidewalks of the complexes off-limits to nonresidents does not violate the constitutional right to free speech.

Richmond's authorities, supported in the case by public housing officials elsewhere who are looking for new ways to contain drug-related crime, said their policy was a creative means to stop violence in low-income housing - most of which was caused by outsiders.

The Virginia Supreme Court had previously ruled in favor of the plaintiff. However, Justice Antonin Scalia wrote in reversing that ruling that "(the plaintiff) has not shown ...that the... trespass policy as a whole prohibits a 'substantial' amount of protected speech in relation to its many legitimate applications."

The case is Virginia v Hicks, No. 02-371.

### **New Special Assistant for Cooperative Housing**

Allen H. Jones has been named Senior Advisor and Special Assistant for Cooperative Housing by Federal Housing Commissioner John C. Weicher.

This position was created by Congress in 1955, but has been vacant for more than a decade.

### **Management Fees and Retained Excess Income**

HUD Headquarters recently issued clarification on whether excess income that is retained should be included in the calculation of management fees. The amount of excess income retained is NOT part of the calculation of earned management fees. If the agent "takes a cut" it simply reduces the amount available for the specific purpose identified when retention was approved. Agents in properties that have excess income requirements have fee yields and percentages based on not collecting a fee on any excess collected.

### Limited Fair Housing Monitoring Reviews

HUD will soon be conducting Limited Fair Housing Monitoring Reviews on a random basis at properties all over the country. The following 13 items are part of the HUD review:

1. Tenant Selection Plan
2. Affirmative Fair Housing Marketing Plan (HUD form 935.2)
3. List of occupants, by bedroom size, showing race/ethnicity of head of household.
4. Waiting list
5. Map showing facility locations within the city
6. Total number of units by bedroom size and total number of units receiving Section 8
7. Brochures, flyers, and floor plans given to applicants or tenants
8. Lease agreement and all attachments
9. Description of property: number of stories; buildings, units per building; and map showing location of public common areas, i.e., Community Room, rental Office, laundry room, dumpster, parking, etc.
10. Grievance procedures and Section 504/ADA grievance procedure
11. Most recent advertising in print or media
12. List of applicants, including race/ethnicity who were rejected in the last year.
13. List of tenants, including race/ethnicity who were evicted (involuntarily terminated) from residency within the last year.

### Enhancement to TRACS Certification Query

As you know, owners and agents have access to HUD's Secure System website to perform TRACS voucher queries, certification queries, etc. If a tenant does not show up on the active certification query, management can now query by the tenant's Social Security Number. TRACS will display that tenant's last certification, no matter how old it may be. That will let management know which certifications are missing and have to be retransmitted.

### National Homeownership Month

President Bush designated June as National Homeownership Month. HUD sponsored several activities during the month including HUD's "Homeownership Express" a bus which left Washington, D.C., for a cross-country trip to make communities aware of the resources available to prospective homebuyers. The bus was a joint effort of HUD and its partners in the Blueprint for the American Dream Partnership.

In addition, we encourage residents to visit <http://www.hud.gov> to learn how they can transform their lives through homeownership, as well as HUD's new website -- <http://www.espanol.hud.gov> -- available to help Spanish-language speakers navigate the entire homebuying process.

### How to Access REAC's Physical Inspection Scheduler on the Internet

You can now check to see if your property is scheduled for a REAC Physical Inspection. Simply go to REAC's homepage: <http://www.hud.gov/offices/reac/index.cfm>, on the left-hand side of the page click on "Business Area Products," on the left-hand side of the REAC Products page click on "Physical Inspection." In the Helpful Tools box on the right-hand side of the Physical Inspection page, click on "Software," then on the software page click on "Public Scheduler" which will take you to the Physical Inspections Query Page. To use the query, enter at least one search criteria and then click on the Submit Button.

---

### Rent Comparability Studies

Many projects have five-year Section 8 contracts executed in 1999 which will be expiring during fiscal year 2004. New rent comparability studies will have to be submitted with the contract renewal documents. If you have not already done so, check to see when the rent comparability study for your project was performed to assure that a new one is not required. Rent Comp studies are to be submitted every five years.

### Residents Rights to Organize

A resident association can be a tremendously positive, valuable and complementary component of a successful apartment property operation. Not only can an association help to foster active, cohesive and empowered communities, it can make an owner's and/or agent's job much easier. Tenants have a significant stake in working to ensure that the community in which they live is the best it can be.

Resident associations are uniquely qualified to, and can be extremely helpful, in identifying and communicating resident needs, and developing solutions to meet those needs. For example, resident associations often make substantial contributions in areas such as, safety, social services, physical appearance, budgeting, community events and management/resident communication. Not only can this type of resident based action reduce costs, it often enjoys a greater degree of legitimacy and support than an owner/management agent imposed action. Some of the best examples of affordable housing in large part got that way from proactive resident associations and management agents that have a high degree of cooperation based on mutual respect and support.

HUD established several basic requirements that owners and agents must abide by with respect to resident involvement. HUD views these requirements as minimum standards for resident participation and encourages owners and agents to take further steps to foster strong resident/management relations.

The regulations, 24 C.F.R. 245, outline all the requirements that must be followed by owners and agents such as; recognizing legitimate tenant organizations and giving reasonable consideration to their concerns; not attending organization meetings unless invited by the organization to attend; not impeding the reasonable efforts of residents to organize, or impending activities of the organization; not requiring tenants and tenant organizers to obtain prior permission before engaging in the activities permitted under the rule; allowing tenants and tenant organizers to conduct other reasonable activities related to the establishment or operation of a tenant organization, etc. A tenant organization is considered legitimate if it has been established by the tenants of a multifamily

housing property, meets regularly, operates democratically, is representative of all residents in the development, and is completely independent of owners, management, and their representatives. The rule, in its entirety, can be obtained at [www.hudclips.org](http://www.hudclips.org).

The final rule published in the Federal Register on June 7, 2002, includes responses to comments submitted by owners, agents, residents, etc. These comments can prove to be useful in obtaining a better understanding of the rule. A copy of the Federal Register can be found at [www.gpoaccess.gov](http://www.gpoaccess.gov).

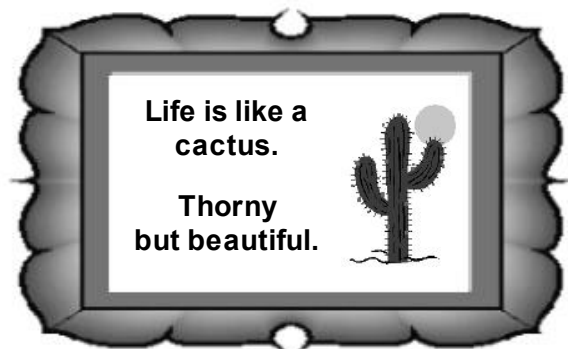
Owners and agents should be aware of their responsibilities with respect to tenants' rights to organize and consider incorporating this rule into their training program for staff. This type of proactive training could assist an owner and agent in avoiding violations of the rule that could possibly result in sanctions.

---

### Rent Increases for Partially Assisted Properties

Not all owners are aware that OCAF rent increases for partially assisted Section 236 projects are only applied to the Section 8 rents. The OCAF rent increase does not affect the Section 236 basic rent. As a result, the property will have two tiered rents.

However, when the project submits a budget-based rent increase, it is to be applied across the board to Section 8 as well as Section 236 rents. This will not eliminate the two-tiered rent structure if the property has previously received an OCAF rent adjustment, but the budget-based rent increase will affect both the Section 8 as well as the Section 236 rents.



## Frequently Asked Questions Relating to the New Occupancy Handbook

Since issuance of the new Occupancy Handbook and at our last industry meeting, we have received several questions relating to changes in the Handbook. We would like to try to answer your questions below.

**Q. If a resident has several (4-5) different aides (someone there 24 hours) do we have to do drug and criminal background on each person? Is someone from an agency on rotating duty considered a live-in aide?**

A. In this example, the aides would not be considered live-in aides as they do not physically reside at the property. As such, drug and criminal background checks would not be required.

**Q. Can an owner impose a minimum income requirement in a straight Section 236 project?**

A. Paragraph 4-7 E, 3, states that applicants for Section 236 and 221(d)(3) BMIR unassisted properties may be screened for the ability to pay the Section 236 basic rent or the BMIR rent. Owners may establish a reasonable minimum income requirement to assess the applicant's ability to pay the rent.

**Q. Define "ineligible" under HUD regulations as it relates to "Termination of Assistance," paragraph 8-7.**

A. Paragraph 8-7 relates to termination of assistance when a resident fails to establish citizenship or eligible immigration status. It specifically states that the owner may terminate assistance based on a determination that "...a tenant has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit..." It further states that this provision does not apply if the individual's ineligibility was known and considered. Therefore, assistance would only be terminated in this instance if the tenant family had an individual living in the unit who was not on the lease. If management was aware of the ineligible individual, assistance would have been prorated and there would be no need to terminate assistance.

**Q. If an owner of a Section 236 partially assisted property accepts vouchers for the non-Section 8 units, must the owner recertify the resident as well as the PHA?**

A. Paragraph 3-20 C states that the PHA will conduct annual unit inspections and recertify family income annually prior to making assistance payments. Paragraph 7-4 C also states that owners are not responsible for completing recertification activities for tenants with Housing Choice Vouchers, but must cooperate with PHA staff in providing needed information. Owners should also coordinate with the PHA to assure that 30% of the tenant's income does not exceed the basic rent for the property, which would eliminate the need for the voucher.

**Q. For a pregnant woman, when calculating the income limit, is she one or two?**

A. The unborn child should be counted in determining both appropriate income limits and unit size. See paragraph's 3-6 E 4, and 3-22 E 6.

**Q. When will the new requirements concerning Special Claims be effective?**

A. It is our understanding that Headquarters will soon be issuing a memorandum stating that if the unit was ready for occupancy prior to June 12, 2003 (the date the new 4350.3 was issued), the owner will have 1 year to submit their claim. However, if the unit was ready for occupancy June 12 or after, the owner will have only 180 days to submit their claim.

**Q. Are the requirements regarding the recertification timeline and tenant reminder notices immediately effective?**

Since these provisions of the handbook require changes to existing software, it is not required that they be implemented immediately. However, it is anticipated that all software adjustments should be completed by the end of this year and that these changes will be effective in January 2004.

## Issuances

**H 2002-19**, Extension of Notice H 99-7, Subordinate Financing by Federal Home Loan Banks Section 202 Supportive Housing for the Elderly and Section 811 Supportive Housing for Persons with Disabilities Programs

**H 2002-20**, Clarification Regarding Title Approval Issues, Property Condition at Conveyance, Administrative Offsets, and a New Process for Lender Appeal of Conveyance Issues

**H 2002-21**, Extension of Notice H 2001-10 (HUD): Cost Not Attributable to Dwelling Use and Site Not Attributable to Dwelling Use in Underwriting FHA Multifamily Mortgages

**Notice H 2002-22**, Screening and Eviction for Drug Abuse and Other Criminal Activity - Final Rule

**Notice H 2002-23**, Extension of Notice H 95-38 Secondary Financing by Public Bodies for Section 202 and Section 811 Projects

**Notice H/OHHLHC-03-01**— Lead Safe Housing: Notice of Extension of Date Certain Owners of Housing Receiving Project Based Section 8 Assistant Must Complete Risk Assessment.

**Mortgagee Letter 2002-23**, Expiration of FEMA's National Flood Insurance Program

**Mortgagee Letter 2002-24**, Expiration of National Flood Insurance Program

**Federal Register September 30, 2002**, Fair Market Rents for the Housing Choice Voucher Program and Moderate rehabilitation Single Room Occupancy Program Fiscal Year 2002; Notice

**Federal Register October 15, 2002**, Reduction in Certain FHA Multifamily Mortgage Insurance Premiums

**Federal Register January 21, 2003**, Notice of certain Operating Cost Adjustment Factors for Fiscal Year 2003

**Federal Register January 22, 2003**, Section 8 Housing Assistance Payments Program - Contract Rent Annual Adjustment Factors, Fiscal Year 2003; Notice

## COMINGS AND GOINGS

### San Francisco Hub

#### **Welcome To:**

*Jane Chang, Appraiser, Multifamily Accelerated Processing,  
Production Division, San Francisco*

#### **Farewell To:**

*Michael Klion of Las Vegas Multifamily, Retirement*

#### **Congratulations To:**

*Andy Lai, Region IX Employee of the Year, Program Assistant, SF MF  
Christine Day, Senior Project Manager, SF, AHMA Government Employee of the Year  
Lavona Llewellyn selected for a Sr. Project Manager position in Phoenix, AZ*

## Multifamily Production Spotlight

### Diamond Sunrise Apartments, Placerville, CA



**T**he complex is the second phase of an existing 24-unit senior project called Diamond Sunrise Apartments. The sponsor worked closely with the Army Corps of Engineers and the U.S. Fish and Wildlife Service on various wetland issues and the site had to be redesigned by moving the buildings away from existing storm drains. Construction commenced on May 25, 2002 and was completed on January 30, 2003.

The Grand Opening was held on May 7th, 2003, and attended by Bill Bolton, Sacramento HUD Office Director, and other members of the Sacramento Field Office.



**Project/Location:**  
Placerville, CA

**Description:**  
16 1-Bedroom Units

**Status:**  
Construction Completed  
January 30, 2003

**Sponsor:**  
Diamond Sunrise  
Corporation and Rural  
CA Housing Corporation

**Architect:**  
Western Sierra  
Architects

**Contractor:**  
Brown Construction

**Funding Source:**  
HUD 202 Capital  
Advance; \$1,140,200  
El Dorado County  
HOME Funds  
\$879,341  
Low-Income Investment  
Funds \$25,000



**U.S. Department of Housing and Urban Development  
Office of Multifamily Housing, 9AHM  
450 Golden Gate Avenue, 9th Floor  
San Francisco, CA 94102-3448**



## CALENDAR

### September

**2** - 4350.3 Update, NCHM, Sacramento, 800-368-5625

**3-5** - Certified Occupancy Specialist, NCHM, Sacramento, 800-368-5625

**10-13** - 2003 Annual Co-op Conference, National Association of Housing Cooperatives, Atlanta, GA 202-737-0797

**24-26** - Certified Voucher Specialist, NCHM, San Francisco, 800-368-5625

### October

**2-3** - Realistic Approaches to Drug and Arms Reduction (RADAR), NCHM, San Francisco, 800-368-5625

**12-15** - National Training & Networking Conference, American Association of Service Coordinators, Orlando, Florida

**16** - HUD Multifamily Industry Meeting, 450 Golden Gate Avenue, San Francisco, CA

**20-22**, Certified Occupancy Specialist, NCHM, Oakland, 800-368-5625

