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## Toxic mould in homes becoming a hot issue

Is toxic mould the new urea formaldehyde foam insulation?

That was the question raised at a Law Society summit for several hundred real estate lawyers in April by Toronto lawyer Rosalind H. Cooper of Fasken Martineau DuMoulin LLP. Cooper is an environmental law expert, and has lectured extensively in this field.

Her scary question points to what may be a major focus in the residential real estate industry in the new millennium.

For the past 20 years, virtually every property transaction in Ontario has contained a clause relating to UFFI urea formaldehyde foam insulation. UFFI was commonly used as home insulation in the 1970s when the government was providing subsidies to upgrade insulation levels.

By the time it was banned in December 1980, about 100,000 Canadian homes had been insulated with the foam. The theory was that if it was improperly installed, it became unstable, and exposure to airborne UFFI could cause cancer.

Despite the fact that many modern studies have debunked the fears about UFFI (visit <http://www.carsondunlop.com/OBS/uffi.html>), it still remains a stigma that can affect the value of residential properties.

Due to a recent increase some would say explosion in mould litigation in Canada and the United States, the issue of mould in Canadian homes has become a central focus of stakeholders in the real estate field.

Technically, moulds themselves are not toxic or poisonous, but some varieties can produce dangerous toxins.

Most homes contain moulds in the air and on many surfaces. Some individuals can be very sensitive to moulds, and can experience asthma, bronchitis and rhinitis after exposure. When mould spores in houses end up on places where there is excessive moisture, they grow and can trigger bouts of nasal stuffiness, eye irritation, wheezing or skin irritation in sensitive individuals.

Individuals with chronic lung diseases or immune suppression issues can experience higher risks of infection.

Mould can affect new homes or resales, low-rise units and highrise condominiums.

Last week, I reviewed a status certificate for a unit in a 15-year old Mississauga highrise condominium project. A routine inspection in 2002 revealed the presence of mould in the fan coil units in 343 of the condominium suites. Remediation is ongoing.

In May last year, I wrote in this column about Ottawa resident Karen Somerville. She and her husband bought a new \$450,000 home but had to move out on her doctor's orders when Somerville was diagnosed with asthma, sick building syndrome and a sinus infection resulting from toxic mould and a cocktail of other chemicals in the inside air.

Her problems were aired in a two-part CBC documentary on Ottawa Morning last year. She sued the builder, and following a trial earlier this year, the parties are awaiting the judge's decision.

Cooper told the real estate lawyers at the Law Society summit that mould litigation in the United States is considered to be the next asbestos.

In 2001, a police constable who worked in the Newmarket courthouse started a class action on behalf of 300 persons suspected of having health problems caused by toxic mould in the building. The courthouse was closed for several months in 2000 to replace the affected walls and ceilings.

In California the Toxic Mold Protection Act requires the state government to determine whether or not it is appropriate to set exposure levels for remediation of toxic mould. It would also require sellers and landlords of property to disclose to buyers and tenants when mould contamination levels exceed state-approved levels.

Real estate agents in California have already begun to advise buyers that the presence of certain types of mould may adversely affect the property and the health of some individuals.

Cooper advised the lawyers at the Law Society seminar that in her view the seller of a property is obliged to disclose the presence of inherently dangerous or toxic substances when he or she is aware of their presence. Withholding this kind of knowledge could be risky.

In the alternative, a seller could take appropriate steps to effect complete removal and remediation of the mould.

Finally, Cooper predicted that purchasers will begin demanding clauses warranting that houses or condominium units are free from toxic mould. In my view, this type of clause belongs in both new and resale home offers.

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