


Is Mold Growing Your E&O Exposure?

It's evening, you just finished dinner and there's a knock at your door. You look through the peep hole and see a burly man wearing dark shades on the other side with a daunting German Shepard leashed to his hand. "Honey, are you expecting someone?" She replies, "Yeah, a guy and his dog are going to sniff the house." You instantly think: Why would someone be here to sniff my house? Your wife explains that the dog is there to go through the house to check for the existence of toxic mold.

That's right, mold has gone to the dogs with companies offering to identify mold within homes or new construction projects using highly trained dogs. Depending on who you talk to, the issue of mold is either dead or the onslaught of claims just has not occurred yet. (See "Mold E&O Claims: Mania or Manageable?" on p. 38.) Since nobody can predict the future, there are some things that you can do to safeguard your agency from E&O exposure related to the possibility of mold claims. Following sound fundamental business procedures, whether it relates to mold or another coverage exposure, can reduce your agency's potential for loss.

First, you need to understand where your agency is exposed to mold claims. This involves knowing which customers will be most likely to have a claim, where coverage gaps may exist and the potential damage as a result of mold. Just as with any line of coverage, the sources of your E&O exposure can come from failure to advise your client of a loss exposure and failure to offer appropriate coverage, including buybacks. While an agent's obligation to do this may vary by state, erring on the side of comprehensive coverage is the best practice to follow. Potential mold-related damages can include: investigation expenses, testing costs, containment and remediation expenses, loss of use claims, repair and replacement, loss of earnings, and the potential for emotional distress or mental anguish.

It's critical to know where coverage gaps may exist. Pollution exclusions may prohibit coverage for mold. These exclusions may consider mold as a contaminant/pollutant, while other pollution exclusions attach "micro-organism" exclusions. Homeowners coverage forms may also include exclusions caused by smog, rust or other corrosion, mold, wet or dry rot. Buy-backs offering sub-limits may be available. Finally, other policies may also be affected including workers' compensation and umbrella policies.

Whether you are talking about mold or another exposure, the fundamentals of an E&O loss avoidance strategy don't change. If you make clients aware of exclusions in their policy and offer appropriate coverage, you can shut the door on potential liability exposure for your agency. Only time will tell what impact mold-related losses will have on the insurance industry, but today brings to opportunity to protect your agency from E&O claims. 

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Best Bets to Avoid Mold Claims

You need to recognize the clients that could potentially be involved in mold litigation—it will enable your agency to be proactive in reducing your exposure. Not all classes of business with a greater risk of being mold defendants are obvious. Pay particular attention to explaining mold exclusions and offering coverage to these business classes: property managers and maintenance firms, architects, engineers, developers, contractors, plumbers, roofers and construction materials manufacturers. Also, be aware that the mold problems may exist in buildings of poor construction, substandard materials and airtight structures that facilitate the accumulation of moisture.

Follow these best practices to reduce your E&O exposure:

1. Understand policy coverage—lack thereof—for claims relating to mold.
2. Make clients aware of exclusions in their policies.
3. Advise policyholders on their exposure to loss and offer the appropriate coverage. Since environmental coverage can be difficult to understand, work with an experienced wholesaler for placement of coverage.
4. Document the client file with a signed declination to purchase coverage.
5. Provide your client with a disclaimer letter if you are unable to obtain the appropriate coverage.

—D.H.

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