

Moldy Misdemeanor: SB 655

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You have probably been hearing a lot of discussion on the recent adoption of Senate Bill 655, which amended the law to include “visible mold growth” as a condition that would render housing “substandard.” This discussion includes the question “does this new law affect community associations?” To the extent an association maintains portions of a building’s structure, where the existence of mold could have an impact on living units in that building (generally, condominium associations), this law appears to apply. Despite the change in law, associations should always make it a practice to investigate and act promptly in response to reports of mold in areas for which the Association is responsible.

SB 655 amended section 17920.3 of the California Health and Safety Code and added section 1941.7 to the Civil Code. Under Health and Safety Code section 17920.3, “visible mold growth” was added to a list of conditions (including lack of a bathroom, lack of heating or proper ventilation, and infestation of insects or rodents) that would render housing “substandard.” The statute makes an exception for “the presence of mold that is minor and found on surfaces that can accumulate moisture as part of their properly functioning and intended use.” Legislative analysis equates this to mold that can be abated through regular household cleaning, such as mold that accumulates in showers or sinks. The determination as to whether “visible mold growth” exists is made by a health or code enforcement officer. The law provides that violation of these provisions is a misdemeanor punishable by a fine not exceeding \$1,000 or by imprisonment not exceeding six months, or by both a fine and imprisonment.

Civil Code section 1941.7 provides that a lessor of residential property is not obligated to make a repair related to mold until he or she has notice of it, or if the tenant is in violation of certain statutorily specified obligations that substantially contribute to the mold problem or interfere with the lessor’s ability to fix it.

Health and Safety Code section 17920.3 applies to any building or portion of a building that includes a dwelling unit, which could include condominium projects. Therefore, if “visible mold growth” is discovered in a unit, and such mold originates from the common area or is caused by a common area source (or an area or item for which the association is responsible), it appears the association could be found in violation of this provision. Because this law is new, we will keep you informed of any developments that might add more insight into how these changes will impact associations.

Civil Code section 1941.7, which requires notice of the existence of mold before action is required, is specific to lessors of property. Although an association generally would not fall under the category of a “lessor” (unless renting out a foreclosed unit), presumably under general legal principles an association would also require notice of mold growth before it could be found in violation of Health and Safety Code section 17920.3.

Even if SB 655 had not been adopted, prompt action should be taken by boards to investigate and address mold claims involving association-maintained areas. Because this is now part of the law, it is even more imperative that mold claims and water intrusion claims that could result in mold are addressed in a timely manner.