

Mould becoming serious issue for home buyers



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A recent court ruling found a home inspector liable for the cost of removing mould from a house.

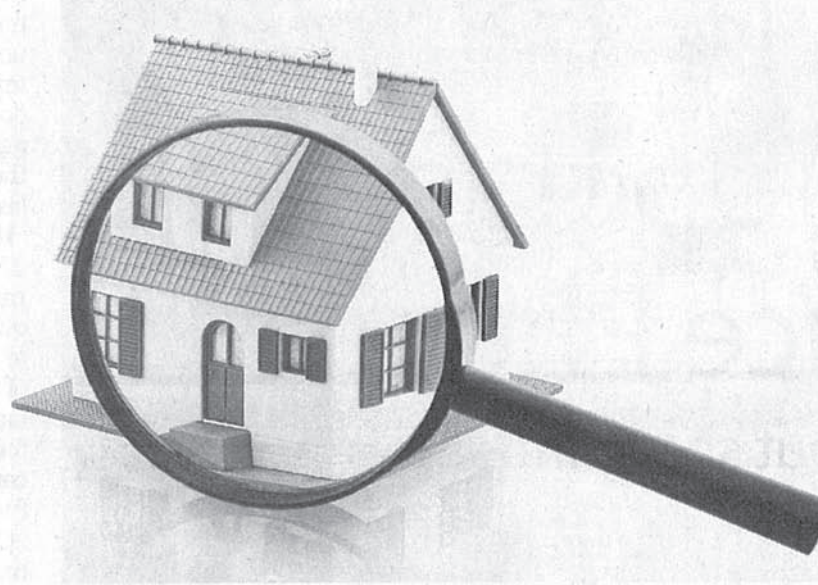
The inspector didn't find mould during his inspection, but the owner had a mould allergy and after she took possession there were problems. She sued and a judge ruled the inspector should have suspected mould based on his review of the premises.

The ruling highlights the importance of checking or identifying mould, especially in older homes.

Here is what happened.

Glenda and Jennifer Halliwell bought an 80-year-old home on Dufferin St. in Toronto in 2006. Glenda told her real estate agent that she was allergic to mould. The agent referred her to a home inspector who found no evidence of a leaky roof or basement and so nobody suspected any problem. The inspector's report said the exterior brickwork concrete at the base of the home near the driveway needed repair, as did sections of the driveway, but that this was common in most old homes.

The report had a standard limited liability clause, which meant that if the inspector made a mistake, the most the buyer could expect would



Making sure a new home is inspected is essential.

be the cost of the report. This clause is common in most home inspection reports, mostly due to the fact that the inspector can't look behind walls or under floors.

The Halliwells bought the house and within three months after closing, moisture, mould and mildew presented problems for Glenda. They sued the seller, the home inspector and the real estate agent for the cost to fix the problem.

In court, it was revealed that the seller had lived in the house for six years and the house was leak-free. There was no evidence he tried to hide anything by building a wall or repainting the basement walls.

In a January 2011 decision, the judge ruled the inspector should have known that the damaged concrete and driveway could result in leaks to the foundation, which could eventually cause mould,

which would be especially problematic for someone who was allergic to it.

The judge decided that the home inspector should pay 50 per cent of the buyer's loss. Even though there was a limitation of liability clause, the judge accepted the evidence of Glenda that it was not explained to her so it had no effect. The judge also decided that the buyer's real estate agent was 25-per-cent responsible for the loss, saying that the agent should have also read the inspection report and come to the same conclusion about the possibility of mould occurring. The buyers were found to be 25-per-cent responsible for not reading the report themselves. The sellers were not responsible because they did not know about any leaking.

Everyone appealed. In a decision released last month, Ontario ap-

peal court judges decided that the home inspector should pay all of the loss. It was too much to ask a real estate agent or a buyer to make the connection that defects in the concrete and driveway at the front of the house could somehow later lead to mould.

The buyers were fortunate in the case that the court found that the inspector did not properly explain the limitation of liability clause.

Real estate agents are not general contractors, and should not be expected to provide this type of advice to buyers. Still, agents should be suspicious if there are any cracks in the walls, water stains or visible slopes in the floor. In addition, any time the seller has done recent renovations or paint jobs, it could be that the sellers are trying to hide an old problem. In all cases, buyers should be warned to conduct detailed home inspections to satisfy these concerns.

Mould is becoming a serious issue for buyers. It can cause illness if one is exposed to it over an extended period of time and costs a lot to remove. The problem was that testing for mould once cost over \$1,000.

Now companies such as Tristar Discovery Recovery Inc., with offices in Hamilton, Toronto and Waterloo, can conduct tests for mould for as low as \$250 and can assist homeowners with removing mould as well. Since most homes for sale in the GTA are over 50 years old, a mould test should be mandatory for every buyer.

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