



LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON
COMMISSIONER

ADVISORY LETTER 01-02 (REVISED AND REISSUED)

TO: ALL PROPERTY AND CASUALTY INSURERS ADMITTED OR APPROVED TO ISSUE POLICIES INSURING RISKS IN LOUISIANA

FROM: JAMES J. DONELON, COMMISSIONER OF INSURANCE

RE: USE OF MOLD EXCLUSIONS IN INSURANCE POLICY FORMS

DATE: JULY 28, 2020

Acts 2008, No.415, § 1, effective January 1, 2009, redesignated the provisions of Title 22, formerly comprised of La. R.S. 22:1 to 22:3311, into a new format and numbering scheme comprised of La. R.S. 22:1 to 22:2371, without changing the substance of the provisions. Advisory Letter 01-02, originally issued on December 28, 2001, is being amended to incorporate the provisions of an addendum, originally issued on September 16, 2005, to update contact information for the Louisiana Department of Insurance (“LDI”), and to update the statutory provisions.

ACCEPTABLE EXCLUSIONS

Please be advised that after due consideration, the LDI has determined that it will allow the use of insurance policies and/or endorsements that exclude coverage for mold that results from a covered cause of loss if the exclusion is directed at precluding coverage for remedial costs, including but not limited to the costs of testing the insured premises for mold, or the cost of investigation, treatment, fumigation, containment, decontamination, eradication, removal, or disposal of mold; however such exclusions shall not exclude coverage for the removal of mold on the items damaged.

The LDI will continue to approve the standard exclusion for “mold, rust, wet or dry rot” which has been traditionally included in property policies.

Insurers doing business in Louisiana should take note that standard homeowner’s policies do not provide coverage for “seepage” or for damage arising from wear and tear or the failure to do proper maintenance. More importantly, unlike most states, there is very limited punitive damages exposure in Louisiana.

WHAT'S COVERED

Property policies cover damage caused by water if the underlying cause is a covered cause of loss. For example, during a storm a tree branch falls and causes damage to the roof, allowing water into the insured property; or a waterpipe cracks or bursts and water escapes and causes property damage including ruined sheetrock and carpet. Under the policy, the insurer is obligated to replace and/or repair the damaged property. If mold appears on the wet sheetrock or carpet, the insurer is not relieved of its obligation to make the covered repairs, including, taking the usual and customary steps of treating the damaged area and thoroughly drying it out. However, in the absence of a specific remediation coverage provision, an insurer does not have a separate obligation to remediate any damage arising directly from mold.

The presence of mold does not convert a covered claim arising from a covered cause of loss to a non-covered claim. On the other hand, the presence of mold does not create new and distinct obligations to remediate, decontaminate or otherwise remove the mold unrelated to the repair or replacement of the water-damaged property.

WHAT'S NOT COVERED

Property policies have traditionally excluded coverage for "rust, mold, dry or wet rot." For example, a policyholder leaves a window open and it rains, causing moisture to enter the property. Mold develops and spreads ruining sheetrock and carpet. The mold exclusion would exclude coverage.

GENERAL LIABILITY COVERAGE - PERSONAL AND COMMERCIAL

Advisory Letter 01-02 is not applicable to General Liability Coverage, personal or commercial lines. Insurers may exclude all coverage for damages alleged to arise from mold, rot or fungus or any other such similar airborne spores. In accordance with La. R.S. 22:862, such exclusions should be specific as to the risk being excluded, be unambiguous, and not overly broad.

Insurers should make every effort to develop exclusions that are narrowly drafted. Further, such exclusions should not be used to deny coverage for the costs of repair and restoration of the insured premises for damages arising from a covered cause of loss, even if some mold is present.

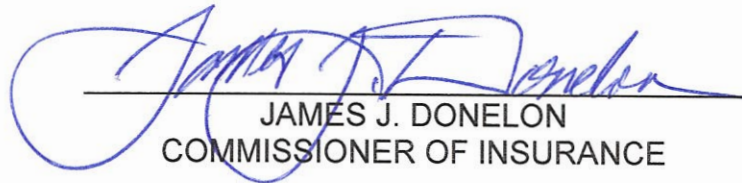
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If there are any questions regarding this Advisory Letter, please contact the Deputy Commissioner for the Office of Property and Casualty, electronically at public@ldi.la.gov.

Baton Rouge, Louisiana this 28th day of July, 2020.



JAMES J. DONELON
COMMISSIONER OF INSURANCE