

# Mold Licensing Law for Assessment, Remediation, and Abatement

By Andrew Lieb

On January 1, 2016 the amended Article 32 of the Labor Law became effective thereby making it “unlawful for any person to engage, advertise or hold themselves out as a mold assessor, remediation contractor, or abatement worker unless they have a valid mold license, issued by the commissioner, for the type of work they will be performing. Individuals who do so may be subject to a civil penalty.”<sup>i</sup>

According to the Labor Law, “[m]old remediation’ means conducting the business of removal, cleaning, sanitizing, or surface disinfection of mold, mold containment, and waste handling of mold and materials used to remove mold from surfaces by a business enterprise, including but not limited to, sole proprietorships. Mold remediation for the purposes of this article shall not include remediation of the underlying sources of moisture that may be the cause of mold that requires expertise not specific to acts authorized under this article.”<sup>ii</sup> Further, “[m]old assessment’ means an inspection or assessment of real property that is designed to discover mold conditions

that facilitate mold, indicia of conditions that are likely to facilitate mold, or any combination thereof.”<sup>iii</sup> Lastly, “[m]old abatement’ means the act of removal, cleaning, sanitizing, or surface disinfection of mold, mold containment, and waste handling of mold and materials used to remove mold from surfaces by an individual.” The new licensing scheme was implemented and is now enforced by the Department of Labor, inclusive of the continuing education requirements thereunder.<sup>iv</sup>

In 2016, it is unlawful for a contractor to both engage in unlicensed mold related contracting and also to advertise whatsoever for such work.<sup>v</sup> Further, there is a requirement for a complete separation between mold assessment and mold remediation wherein “[n]o licensee shall perform both mold assessment and mold remediation on the same property.”<sup>vi</sup> In fact, the same person may not own an interest in separate entities that are each separately performing either mold assessment or remediation on the same property.<sup>vii</sup> However, design profes-



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sionals, property owners, managing agents and the employees of both as well as federal, state or local government unit or public authority employees are each exempt from the licensing requirements.<sup>viii</sup>

Of great import, the new law requires mold assessors to draft and provide an itemized mold remediation plan to such assessors’ clients before any remediation work commences.<sup>ix</sup> This plan must include:

- a.) The rooms or areas where the work will be performed.
- b.) The estimated quantities of materials to be cleaned or removed.
- c.) The methods to be used for each type of remediation in each type of area.
- d.) The personal protection equipment (PPE) to be supplied by licensed remediators for use by licensed abaters.
- e.) The proposed clearance procedures and criteria for each type of remediation in each type of area.
- f.) When the project is a building that is currently occupied, how to prop-

erly notify such occupants of such projects taking into consideration proper health concerns; the plan must also provide recommendations for notice and posting requirements that are appropriate for the project size, duration and points of entry.

g.) An estimate of cost and an estimated time frame for completion; and

When possible, the underlying sources of moisture that may be causing the mold and a recommendation as to the type of contractor who would remedy the source of such moisture incident thereto and prior to the commencement of work, the mold remediation work plan to implement the plan of the mold assessor.<sup>x</sup> Lastly, the mold remediation is prohibited from “remov[ing] or dismantle[ing] any containment structures or materials from a project site” until such time as the mold assessor performs a post-remediation assessment and delivers a passed clearance report.<sup>xi</sup>

The Department of Labor is expressly authorized to enforce the mold license law through penalties including

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suspension of licensing, revocation of licensing, refusal to renew licensing, orders directing the cessation of unlicensed activity, and/or fines. In such, initial violations of the license law are subject to a fine of up to \$2,000 whereas subsequent violations are to be fined up to \$10,000.<sup>xii</sup> Nonetheless, due process is afforded by a complete scheme for notices, hearings and judicial review contained within the enabling statute.

It is noted that there is no private right of action afforded in the statute and all public complaints (a/k/a client complaints) are directed to be made to the Department of Labor, which is

charged with investigating and enforcing such complaints.<sup>xiii</sup> Nonetheless, this statute is envisioned to impact construction litigation and personal injury cases as being evidence of negligence (a/k/a setting the duty or standard of care for the industry). Moreover, it is noted that an unlicensed contractor may not collect on a contract and the statute provides an additional licensing scheme for this niche field of contracting.<sup>xiv</sup> Still further, the Deceptive Acts and Practices Act (i.e., GBL §349) coupled with this statute may give rise to a host of false advertising lawsuits. Lastly, our clients seeking business and corporate law

will need referrals to learned practitioners of the license law in order to obtain the requisite licensing to operate and thereafter to defend any complaints by the Department of Labor in practice because mold assessment, remediation, and abatement is now a regulated industry. All attorneys should be mindful of this new law and educate our clients of its existence.

*Note: Andrew M. Lieb is the Managing Attorney at Lieb at Law, P.C., a law firm with offices in Center Moriches and Manhasset. Mr. Lieb is a past Co-Chair of the Real Property Committee of the Suffolk Bar Association*

*and is the Special Section Editor for Real Property in The Suffolk Lawyer.*

<sup>1</sup> <https://labor.ny.gov/workerprotection/safety-health/mold/frequently-asked-questions-licences.shtm>

<sup>2</sup> Labor Law §930(3)

<sup>3</sup> Labor Law §930(4)

<sup>4</sup> Labor Law §§ 930(1) and 934(4)

<sup>5</sup> Labor Law §931

<sup>6</sup> Labor Law §936(2)

<sup>7</sup> Labor Law §936(3)

<sup>8</sup> Labor Law §§ 931(5) and 933

<sup>9</sup> Labor Law §945

<sup>10</sup> Labor Law §946

<sup>11</sup> Labor §§ 946(4) and 947

<sup>12</sup> Labor Law §937(2)

<sup>13</sup> Labor Law §948

<sup>14</sup> Lee v. Schweizer, 300 A.D.2d 364 (2d Dept., 2002)