

## The Mold Exclusion

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Why do we cover mold? Isn't mold an exclusion on property policies?

Yes, a mold or fungi exclusion is found on all the standard property policies. However, this exclusion is not one of the current causation exclusions and thus the concept of proximate cause applies. As a result, mold is covered if it is a direct result of a covered peril. The costs of cleaning up mold after a fire are covered under the peril of fire, for example. But, mold following flooding would not be covered because flood is not a covered cause of loss.

Why is mold covered at all under our liability policies; don't we have pollution exclusions that will apply? The Commercial General Liability policy, as well as many other liability policies, exclude coverage for damage caused by pollution. Will the courts apply this exclusion to the mold claim? In general, the courts have been reluctant to consider mold to be a pollutant. One major distinction some courts have made, is that pollution is man made and mold is not. The bottom line is that an insurance carrier cannot count on the pollution exclusion for protection against the mold-related liability claim today.

To learn more about the application of the mold exclusion in standard property policies or the pollution exclusion in liability contracts, we suggest the book *Mold, Mildew, and Water Damage*.