

Section 5**Solving the Problem****5.1 How Do I Solve The Problem?**

We designed this training with the understanding that each LHO faces a unique set of challenges and opportunities. – And that Maine’s LHOs are a diverse audience in more ways than the size of your towns.

VIDEO

<http://www.maine.gov/dhhs/mecdc/local-public-ealth/lho/training/Problem/Problem-1.html>

In this section, we will cover:

- **How do I solve the mold problem**
- **How to Use the LHO Complaint Flowchart**
- **Verify the complaint, if necessary, take appropriate action**
- **Follow up and follow through**



This section walks you through the steps associated with resolving a complaint using the LHO Complaint Flowchart. Many state statutes provide legal remedies that can be used when solving a problem, without having to go to court.

Section 5 should take approximately 90 minutes to read, process, and complete one short knowledge check.

How do I Solve the Mold Problem?

Although perseverance is one factor in resolving the problem, you also have to understand the problem, listen carefully to the statements made, show your professionalism when dealing with the parties, and be fair in your dealings to encourage cooperation between the parties. We will touch on how to obtain the appropriate information, how to verify the complainant's statement, and how to get good advice for solving the complaint problem. In this section you will have to refer to the *Standard LHO Complaint Flow Chart*



Important: A tool that will assist in assessing the presence of mold in residential buildings. We suggest, when investigating a mold site, that you use the [Mold Assessment Form](#) (Word) (when investigating mold site). This form was adapted from the National Institute for Occupational Safety and Health (NIOSH).

5.2 Mold?

There are many types of mold in many colors, but none of them will grow without water or moisture. There are two types of moisture problems—(1) leaks; and (2) condensation. The source of the moisture may not be as simple as a leaking pipe. Although, molds are not usually a problem indoors, unless mold spores land on a wet or damp spot and begin growing. It is common to receive several mold complaints from Maine residents. The majority of the mold growth in a home is due to poor ventilation.



MOLD GROWTH

5.3 Using the LHO Complaint Chart to Solve the Mold Problem

It is the responsibility of all LHOs to handle complaints received from constituents. As previously stated, the LHO will deal with many problems that may not fit within a set of predetermined solutions. Nonetheless, to successively accomplish your duties and responsibilities, it is essential that you approach each challenge confidently and positively.

*Professional investigations
bring professional results*

5.4 Prepare before you Act

Solving the Mold Problem at the Old Turner Place

1. Write down, in your notebook, all the relevant information from the complainant. It is important to maintain records for future reference and in case you need the

PREPARE BEFORE YOU ACT...



information for legal reasons. Once the person making the complaint furnishes the information and you have asked appropriate follow-up questions, end your interview and verify you have all necessary contact information. For example you would ask for the caller's name, address and telephone number, if you plan to make a site visit.

2. Stay professional: since complaints may be due to disputes or misunderstandings, do not choose sides or give the appearance of choosing sides.
3. Do not promise anything to anyone.

Always be prepared when investigating a problem. Do your homework!

The **next step** is to review the LHO manual and relevant Maine statutes that specifically apply to the resolution of the mold problem.

- Determine whether the Maine statutes provide a procedure, penalty, or other remedy.
- Contact your town’s building inspector (Code Enforcement Officer) to discuss the complaint and your intention to visit the property to verify the complaint.
- Ask the CEO to accompany you when you visit the property. The reasons: The CEO can provide technical advice, evaluate the situation and can verify what was said during the interviews.
- Next, contact the residence and set up an appointment.

Title [17 M.R.S.A. §2853](#), authorizes the municipality to order a nuisance abated. This municipality’s order should be signed by the LHO and the Select Board/City Manager. If no appeal is filed by the person creating the nuisance, municipal officers can have the nuisance abated or removed. The owner may have to repay the municipality costs or the municipality can assess a special tax.

In this case of mold, you can also reference other informational material or your contact resources. One such reference is the US Environmental Protection Agency’s web site <http://www.epa.gov/mold/moldcourse/>.

Speak with the owner about resolving the problem

5.5 Verify the complaint, if necessary, take action

Mold Problem at Turner House

As you continue with the mold investigation, visit the complainant’s residence to verify that there is a mold problem and to interview the complainant. Take as many pictures



as needed to document the situation. Include the town’s CEO in your visits and discussions with the landlord and tenant. Even though rentals are private property, tenants have the right to permit a third party to enter their own apartment

over the owner’s objection.

Introduce yourself and the CEO to the owner, explain that you received a complaint about mold growth in the apartment, and that you have examined and taken pictures of the affected area. Discuss the complaint with the property owner. Discuss the mold situation and why you believe that the mold growth is due to excessive presence of moisture. If the owner begins to understand the problem and has proposed a solution, ask the owner to put, in writing, his proposed solution and how he intends to resolve the problem as well as how much time he would need to complete the job. If the tenant is willing to tell the owner about the mold problem, you do not need to identify the complainant. However, if the tenant is reluctant to speak with the owner, but wants to remain anonymous, you should not disclose any information about the complainant, even though the owner may insist. Explain that *the rules of confidentiality* prevent you from sharing or disclosing the complainant’s personal information.

MOLD GROWTH ON BREAD



Confidentiality has long been held as critical to gaining trust between parties. A key principle of ethically maintaining information must not be disclosed to the complainant, but rather only to interests, which means the LHO is prohibited from disclosing the information.



Recap: (i) **Continue to take notes** so you can document the conversation in a follow-up letter.

(ii) **Tactfully inform** the owner that you are relying on the Maine statutes – specifically, the “implied warranty” law and the “covenant of habitability” law - that deal with this type of situation.

NOTE: Refer to these statutes:

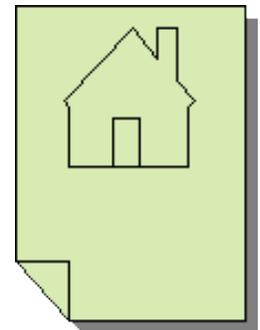
Title 14 §6021: IMPLIED WARRANTY AND COVENANT OF HABITABILITY,

[<http://www.mainelegislature.org/legis/statutes/14/title14sec6021.pdf>];

Title 17, §2851: Dangerous buildings

[<http://www.mainelegislature.org/legis/statutes/17/title17sec2851.html>]

- (iii) If the **owner refuses to abate** the problem within the agreed timeline, you are required to inform the town officials of the refusal to remedy the situation. At that time the town officials would decide what course of action is appropriate, which may include remedying the problem at the owner's expense.
- (iv) Inquire from the **owner what his/her plans** are, and that you will expect a written answer within three working days. Most likely the severity of the situation will dictate the length of time need to accomplish the tasks.
- (v) Explain that if the owner **fails to correct** the situation, you will have no option but to immediately inform the town officials that the landlord is refusing to resolve the problem, and that the town may have to abate the problem at his/her expense.



5.6 Implied Warranty and Covenant of Habitability

The “**implied warranty of habitability**” is a legal principle that requires landlords to maintain livable apartment/premises for their tenants and will make the repairs necessary to keep the apartment in that condition. This promise exists because the courts have ruled that all landlords have made that implied promise to their tenants.

The Maine Consumer Law Guide § 14. 5A. **Tenants Have a Right to a Livable Apartment.**

“Warranty of Habitability” – The law states, in part: *[By] law, all landlords in the State of Maine promise that all rented dwelling units are fit for human habitation—that is, the dwelling is reasonably safe and decent places to live.*

This means that your landlord must promise that your home is safe and fit to live in. Therefore, the landlords have to keep the tenant's home safe and in decent condition. This law gives tenants an "implied warranty of habitability."

So what does it mean to say that your landlord is expected to fulfill an ***implied warranty of habitability***?

This means that the property owner **must**:

- Keep basic structural elements of the building, including floors, stairs, walls, and roofs, safe and intact
- Maintain all common areas, such as hallways and stairways, in a safe and clean condition
- Keep electrical, plumbing, sanitary, heating, ventilating, and air-conditioning systems and elevators operating safely
- Supply cold and hot water and heat in reasonable amounts at reasonable times
- Provide trash receptacles and arrange for trash pick-up
- Manage known environmental toxins such as lead paint dust and asbestos so that they don't pose a significant danger
- In most states, provide rental property that is reasonably safe from the threat of foreseeable criminal intrusions, and
- Exterminate infestations of rodents and other vermin. In virtually every state, these rights are yours, no matter what the landlord has asked you to sign or agree to. (In narrow situations, landlords and tenants in Maine can agree that certain habitability requirements will be the responsibility of the tenant.) In other words, the landlord cannot shrug off these responsibilities in a "disclaimer" when the tenancy begins. And the landlord cannot effectively ask you to waive your right to them. (Any so-called waiver will not be upheld by a court.)



5.7 More to the Picture Than Meets the Eye

Mold is a good example of a unique situation requiring a case-specific solution.



Since mold always involves excess moisture, the solution to correcting a mold problem, is simply to **remove the source of moisture** in the home. Without removing the moisture's source, mold will return even if you remove it completely. In other words, you must determine the cause

It is best to identify the source of moisture that allowed the mold to grow in that location. Inform the landlord that the source of the moisture must be repaired first, or the mold growth will reappear. Generally, if mold is present, and depending on the size of the affected area, the landlord should clean the area as soon as possible.

Investigate the situation thoroughly without finding fault. Speak with the tenant and then the owner to determine where the moisture is coming from. The problem can



originate from sudden water releases, like a burst pipe or large spill that goes untreated, or from a chronic condition, such as a leaking roof or plumbing.

If you determine that the owner or landlord is on the property, be prepared to visit that individual as a common courtesy. The owner in these situations should not be made to feel blindsided about the problem. They may say something like: "If the tenant had a problem why didn't she just call me...."

Recognize that owners of rental properties may have to deal with many stresses. Do not assume they do not care or are uncooperative - it is usually the opposite.

It is not always necessary to hire a professional to cleanup mold growth from a home. In fact, some mold simply requires a little household mold removal- using liquid dish detergent and water - to get the home back to being healthy once again.

5.8 The First Follow-up and follow through

- a) When you return to your office, discuss the situation with the CEO, or other individual with knowledge or expertise in this area.
- b) When you get back to your office, prepare a letter about what was said at the meeting and mail or hand delivered the letter to the owner.
- c) This letter to the owner must be signed by the Chair of Selectpersons/Town or City Manager and you. This will let the owner know that the town has an interest in resolving the issues.
- d) Periodically give the Chair of Selectpersons or Town Manager an update on how situation is progressing.

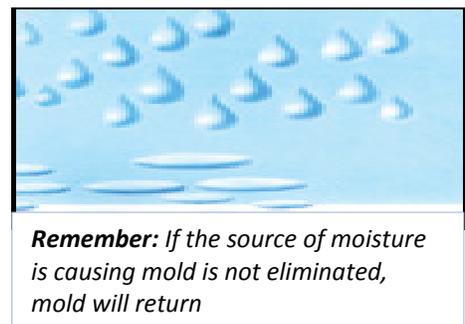
No Response from the Owner - Follow-Up and Follow-Through

If you have not received a call or a letter from the owner since your last conversation five days ago and you do not know what the owner intends to do to resolve the issue, it is time you follow-up with the owner. Visit the property with someone to confirm what happens. Locate the tenant and speak to him/her to find out if he/she is aware of what might be happening.

If the problem has not been resolved and the tenant knows nothing, find the owner and ask what his/her plans are.

Talking Points:

- 1) Tell the owner you had expected a phone call about what he/she is going to do.
- 2) It is now time to find out, as specifically as possible, what the owner plans to do.



- 3) Remind the landlord of the authority the law gives the town and that you are prepared to use that authority.
- 4) Inform the owner that you will be delivering a letter to him regarding an extension of seven days in which to correct the problem. In the event that the owner refuses to correct the problem, the town officials may decide to correct the problem at the owner's expense. Or the town may not pursue the matter because of the town's budget limitations.
- 5) Emphasize that the mold cleanup and repairs must be done correctly. If it is not done properly the mold will recur, which will again be the owner's responsibility.
- 6) Depending on the facts surrounding the mold problem, both the landlord and the tenant may have to share the expense of making the repairs. [For instance, if the tenant actually caused the problem, the owner may not be responsible for the entire repair tenant.]

Mold cleanup and removal can be simple - accomplished by washing easily cleanable surfaces and removing un-cleanable material like rough wood surfaces. On the other hand, the area of the mold may be imbedded in the walls and floor boards requiring the employment of a professional contractor.

If after this second request to abate, the landlord has neither completed the work, or he now refuses to abate the mold problem, you are required to inform the landlord that you will inform the town council as to the status of the situation. If, the town council decides to intervene in the mold abatement, the owner will have to reimburse the town for all monies it spent.

The more you understand a problem, the better you are able to identify the solution.

5.9 The Final Visit

It is clear the owner is unwilling to take corrective action. The municipality council may decide whether it wants to take the matter to District Court. Who is authorized, to represent the town in District Court? Does the town hire an attorney to represent the town in this court matter?



Maine law states that if there is an appeal to any order –to abate the mold - or there are excessive delays to any orders given, an authorized municipality official can ask the District Court Judge to require the owner to act, or correct the situation.

In all court cases the principles of “due process” requires the municipality and the court to protect citizens from actions taken by state government, counties, towns, and cities. This means that the parties are to follow and administer the due process standards for fair treatment of citizens. Therefore, do not expect the court to simply agree with the municipality’s version of the facts. The court may request that the parties settle the matter through negotiations and ultimately to work out a reasonable solution and agreement to the problem.

Although an attorney is not required to represent the municipality in District Court,



Maine Rules of Civil Procedure requires non-attorneys to have completed the **Rule 80K Certification** program before representing the municipality in District Court. If the code enforcement or local health officers have been trained and certified under the requirements of Rule 80K, either one may represent the municipality in court, without an attorney. Prior to starting an action in District Court, obtain a properly executed document from the selectperson or council, which authorizes you to act on behalf of the municipality, if you are certified under Rule 80K.

In addition, make sure you have the facts, and an understanding of the relevant law. You can review the Dangerous Building and Implied Warranty and Covenant of Habitability laws by using the links under Additional Materials to the right.

If you have exhausted all the possible steps in resolving this situation, it is the end of the road. However, if a land use violation creates a danger, a health risk to its citizens or the property owner is a repeat offender the municipality may decide as a matter of principle, to take the case to the Superior Court. The town's attorney will have to represent the municipality in this case.

5.9.1 Customer Service Best Practices

EQ NOT IQ: BETTER CUSTOMER SERVICE THROUGH EMOTIONAL INTELLIGENCE



Strategies for Difficult Customers

- ❖ Listen
- ❖ Empathize
- ❖ Respond professionally
- ❖ Recognize underlying factors
- ❖ Ask Questions
- ❖ Give Feedback
- ❖ Summarize

Strategies for saying "No"

- ❖ Explain why it cannot be done
- ❖ Do not quote policy
- ❖ Do not be patronizing
- ❖ Offer alternatives when you can
- ❖ Avoid making excuses
- ❖ Eliminate negative phrases
- ❖ Do not mention other or similar complaints

Sometimes you have to say "no,"but if you do it right, you can still get a "thank you" for your service

Limited English Speakers

- ❖ Be patient and concentrate
- ❖ Speak in a normal tone of voice
- ❖ Speak Slowly and distinctly
- ❖ Avoid using slang or industry jargon
- ❖ Be extra courteous
- ❖ Repeat what has been said
- ❖ Have customer say what he/she will do

Argumentative Customers

- ❖ Speak softly
- ❖ Ask for their opinion
- ❖ Take a break, do not get drawn in

Verbally Abusive Customer

- ❖ Remain Calm
- ❖ Let the caller know the consequences, calmly and objectively

To read more: [The Emotional Competence Framework](#)

[Emotional Intelligence \(EQ\) - Five Key Skills for Raising Emotional Intelligence](#)

In this section, we covered:

How to Use the LHO Complaint Flowchart

1. **Prepare before you act**
2. **Verify the complaint; if necessary, take action**
3. **Follow up and follow through**



If you have reached a level of comfort with the material presented so far then you are ready to move on to the next section.

5.10 Sample KNOWLEDGE CHECK #3**Solving the Problem**

Multiple choice

Mold is becoming very common in homes due to inadequate ventilation. What is the most important thing required in order for mold to exist?

- A) Moisture
- B) Warmth
- C) Cellulose
- D) Food Source

Question 1 of 4

Multiple choice

What is the most important thing to do when working with the owner and a nuisance?

- A) Increase your Emotional Quotient
- B) Use due process and remain fair and objective
- C) If you know you are right, stand your ground
- D) Make sure the County Sheriff is standing by

Question 2 of 4

True/False

Rule 80K is a Rule of Court that allows the Code Enforcement Officer to represent the municipality in court without an attorney.

A) True

B) False

Question 3 of 4

True/False

Due process is designed to safeguard the legal rights of the individual.

A) True

B) False

Question 4 of 4