

Draft Mold Immunity/Presumption Legislation

Version 6

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New Chapter 13.4 of Title 55

§ 55-248.55. Applicability.

The provisions of this Chapter shall be applicable residential dwellings within the purview of Chapter 13, Chapter 13.2 or Chapter 13.3 of Title 55 of the Code of Virginia.

§ 55-248.56. Definitions.

As used in this section, the following definitions apply:

"Authorized occupant" means a person entitled to occupy a dwelling unit with the consent of the landlord, but who has not signed the rental agreement and therefore does not have the rights and obligations as a tenant under the rental agreement.

"Dwelling unit" means a structure or part of a structure that is used as a home or residence by one or more persons who maintain a household, whether single family or multifamily.

"Guest or invitee" means a person, other than the tenant or person authorized by the landlord to occupy the dwelling unit, who has the permission of the tenant to visit but not to occupy the premises.

"Interior of the dwelling unit" means the inside of the dwelling unit, consisting of interior walls, floor, and ceiling, that enclose the dwelling unit as conditioned space from the outside air.

"Landlord" means the owner or lessor of the dwelling unit or the building of which such dwelling unit is a part.

"Managing agent" means a person authorized by the landlord to act on behalf of the landlord under an agreement.

"Mold remediation in accordance with professional standards" means mold remediation of that portion of the dwelling unit or premises affected by mold, or any personal property of the tenant affected by mold, performed consistent with guidance documents published by the United States Environmental Protection Agency, the U.S. Department of Housing and Urban Development, the American Conference of Governmental Hygienist

(the Bioaersols Manual), Standard Reference Guides of the Institute of Inspection, Cleaning and Restoration for Water Damage Restoration and Professional Mold Remediation, or any protocol for mold remediation prepared by an industrial hygienist consistent with said guidance documents.

"Notice" means notice given in writing by either regular mail or hand delivery, with the sender retaining sufficient proof of having given such notice. However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, or he has received a verbal notice of it. If a notice given is not in writing, the person giving the notice has the burden of proof to show that the notice was given to the recipient of the notice.

"Readily accessible" means areas within the interior of the dwelling unit available for observation at the time of the move-in inspection that do not require removal of materials, personal property, equipment or similar items.

"Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others. Tenant shall not include (i) an authorized occupant, (ii) a guest or invitee, or (iii) any person who guarantees or cosigns the payment of the financial obligations of a rental agreement but has no right to occupy a dwelling unit.

"Visible evidence of mold" means the existence of mold in the dwelling unit that is visible to the naked eye by the landlord or tenant in areas within the interior of the dwelling unit readily accessible at the time of the move-in inspection.

§ 55-248.57. Landlord immunity where mold is caused by negligence of tenant.

The landlord shall not be liable for civil damages in any personal injury or wrongful death action brought by a tenant, authorized occupant or guest or invitee for exposure to mold arising from the condition within the interior of a dwelling unit, or for any property damage claims arising out of the landlord tenant relationship, if the mold condition is caused by the negligence of the tenant.

§ 55-248.58. Managing agent immunity where agent has no maintenance responsibilities.

A managing agent with no maintenance responsibilities for mold conditions shall not be liable for civil damages in any personal injury or wrongful death action brought by a tenant, authorized occupant or guest or invitee for exposure to mold, or for any property damage claims arising out of the residential landlord tenant relationship, unless the managing agent fails to disclose (i) to the landlord the existence of a mold condition of which the managing agent has actual knowledge, or (ii) to prospective tenants the existence of a mold condition of which the managing agent has actual knowledge.

§ 55-248.59. Move-in inspection report; no visible evidence of mold.

If the written move-in inspection report reflects that there is no visible evidence of mold in areas readily accessible within the interior of the dwelling unit, and the tenant does not object thereto in writing within five days after receiving the report, there shall be rebuttable presumption that the landlord is not liable for civil damages in any personal injury or wrongful death action brought by a tenant, authorized occupant or guest or invitee for exposure to mold arising from the condition within the interior of a dwelling unit, or for any property damage claims arising out of the landlord tenant relationship.

§ 55-248.60. Tenant notice of mold condition; prompt response required by landlord or managing agent.

If the landlord or managing agent receives a notice from the tenant that a mold condition exists in the dwelling unit, and promptly responds thereto, exercising ordinary care to perform mold remediation in accordance with professional standards, there shall be rebuttable presumption that the landlord is not liable for civil damages in any personal injury or wrongful death action brought by a tenant, authorized occupant or guest or invitee for exposure to mold arising from the condition within the interior of a dwelling unit, or for any property damage claims arising out of the landlord tenant relationship. However, a managing agent shall only be liable if the managing agent breached the standard of care by committing an affirmative act of negligence.

§ 55-248.61. Landlord or managing agent liability for civil damages and property damages.

If the landlord or managing agent (i) receives a notice from the tenant that a mold condition exists in the dwelling unit, and fails to promptly respond to said notice, (ii) fails to exercise ordinary care in the performance of mold remediation in accordance with professional standards, (iii) commits fraud or conceals the existence of a mold condition at any time during the move-in process or during the tenancy, (iv) fails to disclose an existing mold condition, or (v) landlord had actual knowledge of a property condition and failed to take reasonable steps to remedy such property condition, that resulted in the accumulation of moisture and the growth of mold, the landlord may be liable for civil damages in any personal injury or wrongful death action brought by a tenant or authorized occupant for exposure to mold arising from the condition within the interior of a dwelling unit, or for any property damage claims arising out of the mold condition. Further, the landlord or managing agent may be liable for civil damages in any personal injury or wrongful death action brought by a tenant or authorized occupant for exposure to mold arising from the condition outside of the interior of a dwelling unit, or for any property damage claims arising out of the mold condition. However, a managing agent shall only be liable if the managing agent breached the standard of care by committing an affirmative act of negligence.

Virginia Landlord Tenant Act (Chapter 13 of Title 55)

§ 55-225.3. Landlord to maintain dwelling unit.

A. The landlord shall:

1. Comply with the requirements of applicable building and housing codes materially affecting health and safety;
2. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;
3. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, supplied or required to be supplied by him;
4. Supply running water and reasonable amounts of hot water at all times and reasonable air conditioning if provided and heat in season except where the dwelling unit is so constructed that heat, air conditioning or hot water is generated by an installation within the exclusive control of the tenant or supplied by a direct public utility connection.

5. Maintain the premises in such a condition as to prevent the accumulation of moisture and the growth of mold, and to promptly respond to any notices from a tenant as provided in subdivision A 8 of § 55-225.4;

B. The landlord shall perform the duties imposed by subsection A in accordance with law; however, the landlord shall only be liable for the tenant's actual damages proximately caused by the landlord's failure to exercise ordinary care.

C. B. If the duty imposed by subdivision A 1 is greater than any duty imposed by any other subdivision of that subsection, the landlord's duty shall be determined by reference to subdivision A 1.

D.-C. The landlord and tenant may agree in writing that the tenant perform the landlord's duties specified in subdivisions A 2, 3 and 4 and also specified repairs, maintenance tasks, alterations and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

§ 55-225.4. Tenant to maintain dwelling unit.

A. In addition to the provisions of the rental agreement, the tenant shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;
2. Keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;
3. Remove from his dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner;
4. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;
5. Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances;
6. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person to do so whether known by the tenant or not;
7. Not remove or tamper with a properly functioning smoke detector, including removing any working batteries, so as to render the smoke detector inoperative;
8. Use reasonable efforts to maintain the dwelling unit and any other part of the premises that he occupies in such a condition as to prevent accumulation of moisture and the growth of mold, and to promptly notify the landlord of any moisture accumulation that occurs or of any visible evidence of mold discovered by the tenant;
9. 8. Be responsible for his conduct and the conduct of other persons on the premises with his consent whether known by the tenant or not, to ensure that his neighbors' peaceful enjoyment of the premises will not be disturbed; and
10. 9. Abide by all reasonable rules and regulations imposed by the landlord.

B. If the duty imposed by subdivision A 1 is greater than any duty imposed by any other subdivision of that subsection, the tenant's duty shall be determined by reference to subdivision A 1.

§ 55-225.6. Inspection of dwelling unit.

The landlord shall, within five days after occupancy of a dwelling unit, submit a written report to the tenant, for his safekeeping, itemizing damages to the dwelling unit existing at the time of occupancy, which record shall be deemed correct unless the tenant objects thereto in writing within five days after receipt thereof. The landlord may adopt a written

policy allowing the tenant to prepare the written report of the move-in inspection, in which case the tenant shall submit a copy to the landlord, which record shall be deemed correct unless the landlord objects thereto in writing within five days after receipt thereof. Such written policy adopted by the landlord may also provide for the landlord and the tenant to prepare the written report of the move-in inspection jointly, in which case both the landlord and the tenant shall sign the written report and receive a copy thereof, at which time the inspection record shall be deemed correct.

§ 55-225.7. Disclosure of mold in dwelling units.

As part of the written report of the move-in inspection required by § 55-225.6, the landlord shall disclose whether there is any visible evidence of mold in the dwelling unit. If the landlord's written disclosure states that there is no visible evidence of mold in the dwelling unit, this written statement shall be deemed correct unless the tenant objects thereto in writing within five days after receiving the report. If the landlord's written disclosure states that there is visible evidence of mold in the dwelling unit, the tenant shall have the option to terminate the tenancy and not take possession or remain in possession of the dwelling unit. If the tenant requests to take possession or remain in possession of the dwelling unit, notwithstanding the presence of visible evidence of mold, the landlord shall promptly remediate the mold condition but in no event later than five business days thereafter and re-inspect the dwelling unit to confirm there is no visible evidence of mold in the dwelling unit, and reflect on a new report that there is no visible evidence of mold in the dwelling unit upon re-inspection. For purposes of this chapter, "visible evidence of mold" means the existence of mold in the dwelling unit that is visible to the naked eye of the landlord or tenant at the time of the move-in inspection.

§ 55-225.8. Relocation of tenant where mold remediation needs to be performed in the dwelling unit.

Where a mold condition in a dwelling unit materially affects health or safety of any tenant or authorized occupant, the landlord may require the tenant to temporarily vacate the dwelling unit in order for the landlord to perform mold remediation in accordance with professional standards as defined in § 55-248.56 for a period not to exceed 30 days. The landlord shall provide the tenant with either (a) a comparable dwelling unit, as selected by the landlord, at no expense or cost to the tenant, or (b) a hotel room, as selected by the landlord, at no expense or cost to the tenant. The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation. The landlord shall pay all costs of the mold remediation, unless the tenant is at fault for the mold condition.

Virginia Residential Landlord Tenant Act

§ 55-248.11:1. Inspection of premises.

The landlord shall, within five days after occupancy of a dwelling unit, submit a written report to the tenant, for his safekeeping, itemizing damages to the dwelling unit existing at the time of occupancy, which record shall be deemed correct unless the tenant objects thereto in writing within five days after receipt thereof. The landlord may adopt a written policy allowing the tenant to prepare the written report of the move-in inspection, in which case the tenant shall submit a copy to the landlord, which record shall be deemed correct unless the landlord objects thereto in writing within five days after receipt thereof. Such written policy adopted by the landlord may also provide for the landlord and the tenant to prepare the written report of the move-in inspection jointly, in which case both the landlord and the tenant shall sign the written report and receive a copy thereof, at which time the inspection record shall be deemed correct.

§ 55-248.11:2. Disclosure of mold in dwelling units.

As part of the written report of the move-in inspection required by § 55-248.11:1, the landlord shall disclose whether there is any visible evidence of mold in the dwelling unit. If the landlord's written disclosure states that there is no visible evidence of mold in the dwelling unit, this written statement shall be deemed correct unless the tenant objects thereto in writing within five days after receiving the report. If the landlord's written disclosure states that there is visible evidence of mold in the dwelling unit, the tenant shall have the option to terminate the tenancy and not take possession or remain in possession of the dwelling unit. If the tenant requests to take possession or remain in possession, of the dwelling unit, notwithstanding the presence of visible evidence of mold, the landlord shall promptly remediate the mold condition but in no event later than five business days thereafter and re-inspect the dwelling unit to confirm there is no visible evidence of mold in the dwelling unit, and reflect on a new report that there is no visible evidence of mold in the dwelling unit upon re-inspection. ~~or to accept the dwelling unit in an "as is" condition.~~ For purposes of this chapter, "visible evidence of mold" means the existence of mold in the dwelling unit that is visible to the naked eye of the landlord or tenant at the time of the move-in inspection.

§ 55-248.13. Landlord to maintain fit premises.

A. The landlord shall:

1. Comply with the requirements of applicable building and housing codes materially affecting health and safety;

2. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

3. Keep all common areas shared by two or more dwelling units of the premises in a clean and structurally safe condition;

4. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, supplied or required to be supplied by him;

5. Maintain the premises in such a condition as to prevent the accumulation of moisture and the growth of mold, and to promptly respond to any written notices from a tenant as provided in subdivision A 8 of § 55-248.16;

6. Provide and maintain appropriate receptacles and conveniences, in common areas, for the collection, storage, and removal of ashes, garbage, rubbish and other waste incidental to the occupancy of two or more dwelling units and arrange for the removal of same; and

7. Supply running water and reasonable amounts of hot water at all times and reasonable air conditioning if provided and heat in season except where the dwelling unit is so constructed that heat, air conditioning or hot water is generated by an installation within the exclusive control of the tenant or supplied by a direct public utility connection.

B. The landlord shall perform the duties imposed by subsection A in accordance with law; however, the landlord shall only be liable for the tenant's actual damages proximately caused by the landlord's failure to exercise ordinary care.

C. If the duty imposed by subdivision 1 of subsection A is greater than any duty imposed by any other subdivision of that subsection, the landlord's duty shall be determined by reference to subdivision 1 of subsection A.

D. The landlord and tenant may agree in writing that the tenant perform the landlord's duties specified in subdivisions 3, 6 and 7 of subsection A and also specified repairs, maintenance tasks, alterations and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord, and if the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

§ 55-248.16. Tenant to maintain dwelling unit.

A. In addition to the provisions of the rental agreement, the tenant shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

2. Keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;
3. Remove from his dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner and in the appropriate receptacles provided by the landlord pursuant to § 55-248.13, if such disposal is on the premises;
4. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;
5. Use in a reasonable manner all utilities and all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances including elevators in the premises, and keep all utility services paid for by the tenant to the utility service provider or its agent on at all times during the term of the rental agreement;
6. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person to do so whether known by the tenant or not;
7. Not remove or tamper with a properly functioning smoke detector, including removing any working batteries, so as to render the smoke detector inoperative;
8. Use reasonable efforts to maintain the dwelling unit and any other part of the premises that he occupies in such a condition as to prevent accumulation of moisture and the growth of mold, and to promptly notify the landlord ~~in writing~~ of any moisture accumulation that occurs or of any visible evidence of mold discovered by the tenant.
9. Be responsible for his conduct and the conduct of other persons on the premises with his consent whether known by the tenant or not, to ensure that his neighbors' peaceful enjoyment of the premises will not be disturbed; and
10. Abide by all reasonable rules and regulations imposed by the landlord pursuant to § 55-248.17.

B. If the duty imposed by subdivision 1 of subsection A is greater than any duty imposed by any other subdivision of that subsection, the tenant's duty shall be determined by reference to subdivision 1.

§ 55-224.18:2. Relocation of tenant where mold remediation needs to be performed in the dwelling unit.

Where a mold condition in the dwelling unit materially affects health or safety of any tenant or authorized occupant, the landlord may require the tenant to temporarily vacate the dwelling unit in order for the landlord to perform mold remediation in accordance with professional standards as defined in § 55-248.56 for a period not to exceed 30 days. The landlord shall provide the tenant with either (a) a comparable dwelling unit, as selected by the landlord, at no expense or cost to the tenant, or (b) a hotel room, at no

expense or cost to the tenant. The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation. The landlord shall pay all costs of the mold remediation.

Virginia Manufactured Home Lot Rental Act

§ 55-248.41.1. Inspection of dwelling unit.

The landlord shall, within five days after occupancy of a dwelling unit, submit a written report to the tenant, for his safekeeping, itemizing damages to the dwelling unit existing at the time of occupancy, which record shall be deemed correct unless the tenant objects thereto in writing within five days after receipt thereof. The landlord may adopt a written policy allowing the tenant to prepare the written report of the move-in inspection, in which case the tenant shall submit a copy to the landlord, which record shall be deemed correct unless the landlord objects thereto in writing within five days after receipt thereof. Such written policy adopted by the landlord may also provide for the landlord and the tenant to prepare the written report of the move-in inspection jointly, in which case both the landlord and the tenant shall sign the written report and receive a copy thereof, at which time the inspection record shall be deemed correct.

§ 55-248.41.2. Disclosure of mold in dwelling units.

As part of the written report of the move-in inspection required by § 55-248.41.1, the landlord shall disclose whether there is any visible evidence of mold in the dwelling unit. If the landlord's written disclosure states that there is no visible evidence of mold in the dwelling unit, this written statement shall be deemed correct unless the tenant objects thereto in writing within five days after receiving the report. If the landlord's written disclosure states that there is visible evidence of mold in the dwelling unit, the tenant shall have the option to terminate the tenancy and not take possession or remain in possession of the dwelling unit. If the tenant requests to take possession, or remain in possession, of the dwelling unit, notwithstanding the presence of visible evidence of mold, the landlord shall promptly remediate the mold condition but in no event later than five business days thereafter and re-inspect the dwelling unit to confirm there is no visible evidence of mold in the dwelling unit, and reflect on a new report that there is no visible evidence of mold in the dwelling unit upon re-inspection. For purposes of this chapter, "visible evidence of mold" means the existence of mold in the dwelling unit that is visible to the naked eye of the landlord or tenant at the time of the move-in inspection.

§ 55-248.41.3. Relocation of tenant where mold remediation needs to be performed in the dwelling unit.

Where a mold condition in a dwelling unit materially affects health or safety of any tenant or authorized occupant, the landlord may require the tenant to temporarily vacate the dwelling unit in order for the landlord to perform mold remediation in accordance with professional standards as defined in § 55-248.56 for a period not to exceed 30 days. The landlord shall provide the tenant with either (a) a comparable dwelling unit, as selected by the landlord, at no expense or cost to the tenant, or (b) a hotel room, as selected by the landlord, at no expense or cost to the tenant. The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation. The landlord shall pay all costs of the mold remediation, unless the tenant is at fault for the mold condition.

§ 55-248.43. Landlord's obligations.

A. The landlord shall:

1. Comply with applicable laws governing health, zoning, safety and other matters pertaining to manufactured home parks;
2. Make all repairs and do whatever is necessary to put and keep the manufactured home park in a fit and habitable condition, including, but not limited to, maintaining in a clean and safe condition all facilities and common areas provided by him for the use of tenants of two or more manufactured home lots;
3. Maintain in good and working order and condition all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances supplied or required to be supplied by him;
4. Provide and maintain appropriate receptacles as a manufactured home park facility, except when door to door garbage and waste pickup is available within the manufactured home park for the collection and storage of garbage and other waste incidental to the occupancy of the manufactured home park, and arrange for the removal of same; and
5. Provide reasonable access to electric, water and sewage disposal connections for each manufactured home lot. In the event of a planned disruption by the landlord in electric, water or sewage disposal services, the landlord shall give written notice to tenants no less than forty-eight hours prior to the planned disruption in service.
6. Maintain the premises in such a condition as to prevent the accumulation of moisture and the growth of mold, and to promptly respond to any written notices from a tenant as provided in subdivision A 8 of § 55-248.44.

B. The landlord shall perform the duties imposed by subsection A in accordance with law; however, the landlord shall only be liable for the tenant's actual damages proximately caused by the landlord's failure to exercise ordinary care.

§ 55-248.44. Tenant's obligations.

In addition to the provisions of the rental agreement, the tenant shall:

1. Comply with applicable laws affecting manufactured home owners and lessors;
2. Keep and maintain the exterior of his manufactured home and his manufactured home lot as clean and safe as conditions permit;
3. Place all garbage and other waste in the appropriate receptacles, which shall be provided by the tenant when door to door garbage and waste pickup is provided;
4. Use in a reasonable and orderly manner all facilities and appliances in the manufactured home park, and require other persons on the premises with his consent to do so;
5. Conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises;
6. Abide by all reasonable rules and regulations imposed by the landlord; and
7. In the absence of express written agreement to the contrary, occupy his manufactured home only as a dwelling unit.
8. Use reasonable efforts to maintain the dwelling unit and any other part of the premises that he occupies in such a condition as to prevent accumulation of moisture and the growth of mold, and to promptly notify the landlord of any moisture accumulation that occurs or of any visible evidence of mold discovered by the tenant.