
By: **Delegate McIntosh**

Introduced and read first time: March 3, 2004

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Lead Risk Reduction - Challenges to Compliance Reports**

3 FOR the purpose of altering one of the grounds for finding that a certain report is not
4 conclusive proof of, or a rebuttable presumption that, an owner of property is in
5 compliance with certain standards for lead risk reduction; requiring a certain
6 allegation to be accompanied by a certain affidavit; establishing that, if an
7 owner makes a certain motion for a hearing, the court shall immediately notify
8 affected parties, allow a certain period of time for discovery, and schedule an
9 evidentiary hearing within a certain period of time; limiting the issues that can
10 be considered at a certain hearing; requiring the court to make a certain order if
11 the court makes a certain finding; providing for the application of this Act; and
12 generally relating to challenges to compliance reports for lead risk reduction.

13 BY repealing and reenacting, with amendments,
14 Article - Environment
15 Section 6-818 and 6-819(k)
16 Annotated Code of Maryland
17 (1996 Replacement Volume and 2003 Supplement)

18 BY repealing and reenacting, without amendments,
19 Article - Environment
20 Section 6-819(f)
21 Annotated Code of Maryland
22 (1996 Replacement Volume and 2003 Supplement)

23 BY adding to
24 Article - Environment
25 Section 6-819(l)
26 Annotated Code of Maryland
27 (1996 Replacement Volume and 2003 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
29 MARYLAND, That the Laws of Maryland read as follows:

Article - Environment

1 6-818.

2 (a) Any person performing lead-contaminated dust testing or conducting
3 inspections required by this subtitle:

4 (1) Shall be accredited by the Department;

5 (2) May not be a related party to the owner; and

6 (3) Shall submit a verified report of the result of the lead-contaminated
7 dust testing or visual inspection to the Department, the owner, and the tenant, if any,
8 of the affected property.

9 (b) A report submitted to the Department under subsection (a) of this section
10 that certifies compliance for an affected property with the risk reduction standard
11 shall be conclusive proof that the owner is in compliance with the risk reduction
12 standard for the affected property during the period for which the certification is
13 effective, unless there is:

14 (1) Proof [of actual fraud as to that affected property] THAT THE
15 REPORT CONTAINS A FALSE STATEMENT OF MATERIAL FACT THAT WAS
16 INTENTIONALLY MADE AS THE RESULT OF THE PAYMENT OR OFFERING OF MONEY
17 OR OTHER CONSIDERATION BY THE OWNER TO THE PERSON PERFORMING THE
18 INSPECTION OR THE PERSON SUBMITTING THE REPORT;

19 (2) Proof that the work performed in the affected property was not
20 performed by or under the supervision of personnel accredited under § 6-1002 of this
21 title; or

22 (3) Proof that the owner failed to respond to a complaint regarding the
23 affected property as required by § 6-819 of this subtitle.

24 (C) (1) AN ALLEGATION UNDER SUBSECTION (B)(1) OF THIS SECTION MUST
25 BE ACCOMPANIED BY AN AFFIDAVIT:

26 (I) MADE ON PERSONAL KNOWLEDGE BY AN AFFIANT COMPETENT
27 TO TESTIFY TO THE MATTERS STATED IN THE AFFIDAVIT; AND

28 (II) SETTING FORTH SPECIFIC FACTS THAT WOULD BE ADMISSIBLE
29 IN EVIDENCE WHICH SUPPORT THE BASIS FOR THE ALLEGATION.

30 (2) ON MOTION BY THE OWNER FOR A HEARING ON THE ALLEGATION,
31 THE COURT SHALL IMMEDIATELY:

32 (I) NOTIFY ALL AFFECTED PARTIES;

33 (II) ALLOW A PERIOD NOT TO EXCEED 90 DAYS FOR THE PARTIES
34 TO ENGAGE IN DISCOVERY; AND
35

1 (III) SCHEDULE AN EVIDENTIARY HEARING WITHIN 120 DAYS
2 AFTER THE NOTICE PROVIDED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH.

3 (3) A HEARING UNDER THIS SUBSECTION SHALL BE LIMITED TO THE
4 ISSUE OF WHETHER THE PARTY MAKING THE ALLEGATION CAN DEMONSTRATE A
5 REASONABLE LIKELIHOOD OF SUCCESS AT PROVING THE FACTS ESSENTIAL TO
6 SUPPORT THEIR CLAIM.

7 (4) IF THE COURT FINDS THAT THERE IS NO REASONABLE LIKELIHOOD
8 OF SUCCESS AT PROVING THE ALLEGATION THEN THE COURT SHALL ORDER THAT
9 THE REPORT:

10 (I) BE SUBMITTED TO THE DEPARTMENT UNDER SUBSECTION (A)
11 OF THIS SECTION; AND

12 (II) IS CONCLUSIVE PROOF THAT THE OWNER IS IN COMPLIANCE
13 WITH THE RISK REDUCTION STANDARDS FOR THE AFFECTED PROPERTY DURING
14 THE PERIOD FOR WHICH THE CERTIFICATION IS EFFECTIVE.

15 6-819.

16 (f) (1) An owner of an affected property shall verify satisfaction of the
17 modified risk reduction standard by submitting a statement of the work performed on
18 the property, verified by the tenant and an accredited supervisor or contractor, to the
19 Department on or before the tenth day of the month following the month in which the
20 work was completed.

21 (2) (i) If the tenant fails or refuses to verify the statement of work
22 performed on the affected property, the owner shall within 5 business days of the
23 failure or refusal, contact an inspector accredited under § 6-818(a) of this subtitle to
24 inspect the affected property.

25 (ii) The inspector's report shall either certify that the work required
26 to be performed under this section was satisfactorily completed or specify precisely
27 what additional work is required.

28 (iii) If additional work is required:

29 1. The owner shall have 20 days after receipt of the
30 inspector's report in which to perform the work, subject to a weather delay under the
31 provisions of subsection (j) of this section; and

32 2. The inspector shall reinspect the affected property after
33 the additional work is completed and:

34 A. Issue a report certifying that the work is complete; and

35 B. Mail a copy of the report to the tenant, the owner, and the
36 Department within 10 days after the inspection or reinspection.

1 (k) (1) The statement verified by the owner and the tenant of work
2 performed on the affected property in accordance with subsection (f)(1) of this section
3 or the final report of the inspector verifying that work was performed on the affected
4 property in accordance with subsection (f)(2) of this section shall create a rebuttable
5 presumption, that may be overcome by clear and convincing evidence, that the owner
6 is in compliance with the modified risk reduction standard for the affected property
7 unless there is:

8 (i) Proof of [actual fraud as to that affected property] THAT THE
9 REPORT CONTAINS A FALSE STATEMENT OF MATERIAL FACT THAT WAS
10 INTENTIONALLY MADE AS THE RESULT OF THE PAYMENT OR OFFERING OF MONEY
11 OR OTHER CONSIDERATION BY THE OWNER TO THE PERSON PERFORMING THE
12 INSPECTION OR THE PERSON SUBMITTING THE REPORT; or

13 (ii) Proof that the work performed on the affected property was not
14 performed by or under the supervision of personnel accredited under § 6-1002 of this
15 title.

16 (2) The statement verified by the owner and the tenant of work
17 performed on the affected property in accordance with subsection (f)(1) of this section
18 shall contain a statement:

19 (i) Describing the modified risk reduction standard required under
20 this subtitle;

21 (ii) That execution of this statement by the tenant can affect the
22 tenant's legal rights; and

23 (iii) That if the tenant is not satisfied that the modified risk
24 reduction standard has been met, the tenant should not execute the statement and
25 should inform the owner and that the owner will have the affected property inspected
26 by a certified inspector at the owner's expense.

27 (L) (1) AN ALLEGATION UNDER SUBSECTION (K)(1)(I) OF THIS SECTION
28 MUST BE ACCOMPANIED BY AN AFFIDAVIT:

29 (I) MADE ON PERSONAL KNOWLEDGE BY AN AFFIANT COMPETENT
30 TO TESTIFY TO THE MATTERS STATED IN THE AFFIDAVIT; AND

31 (II) SETTING FORTH SPECIFIC FACTS THAT WOULD BE ADMISSIBLE
32 IN EVIDENCE WHICH SUPPORT THE BASIS FOR THE ALLEGATION.

33 (2) ON MOTION BY THE OWNER FOR A HEARING ON THE ALLEGATION,
34 THE COURT SHALL IMMEDIATELY:

35 (I) NOTIFY ALL AFFECTED PARTIES;

36 (II) ALLOW A PERIOD NOT TO EXCEED 90 DAYS FOR THE PARTIES
37 TO ENGAGE IN DISCOVERY; AND

1 (III) SCHEDULE AN EVIDENTIARY HEARING WITHIN 120 DAYS
2 AFTER THE NOTICE PROVIDED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH.

3 (3) A HEARING UNDER THIS SUBSECTION SHALL BE LIMITED TO THE
4 ISSUE OF WHETHER THE PARTY MAKING THE ALLEGATION CAN DEMONSTRATE A
5 REASONABLE LIKELIHOOD OF SUCCESS AT PROVING THE FACTS ESSENTIAL TO
6 SUPPORT THEIR CLAIM.

7 (4) IF THE COURT FINDS THAT THERE IS NO REASONABLE LIKELIHOOD
8 OF SUCCESS AT PROVING THE ALLEGATION THEN THE COURT SHALL ORDER THAT
9 THE REPORT:

10 (I) BE SUBMITTED TO THE DEPARTMENT UNDER SUBSECTION (F)
11 OF THIS SECTION; AND

12 (II) SHALL CREATE A REBUTTABLE PRESUMPTION, THAT MAY BE
13 OVERCOME BY CLEAR AND CONVINCING EVIDENCE, THAT THE OWNER IS IN
14 COMPLIANCE WITH THE MODIFIED RISK REDUCTION STANDARDS FOR THE
15 AFFECTED PROPERTY DURING THE PERIOD FOR WHICH THE CERTIFICATION IS
16 EFFECTIVE.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be applied
18 to all cases pending before a court of competent jurisdiction in which a trial has not
19 commenced on or before June 1, 2004.

20 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
21 June 1, 2004.