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HB0361 - Mold Inspections and Remediation – Standards, Reporting, Penalties, and Tax Credit

**Hearing before the House Environment and Transportation Committee,
Feb. 9, 2022**

Position: SUPPORT (FAV)

The Public Justice Center (PJC) is a nonprofit public interest law firm that stands with tenants to protect and expand their rights to safe, habitable, affordable, and non-discriminatory housing. For our clients, HB0361 is game-changing legislation that will substantially improve their living conditions. Renters throughout Maryland are dealing with mold hazards in their homes largely without the aid of state and local agencies, which lack standards on the inspection and remediation of mold. As the Secretary of Housing and Urban Development said [last month in a visit to Maryland](#): “Children should never have to live in a place where they cannot breathe. When we transform houses, we transform people.”

We urgently need the General Assembly to mandate state action to address mold hazards in housing. Public Justice Center urges the Committee’s report of Favorable on HB0361.

HB0361 will answer fundamental policy gaps that weaken local housing agencies’ efforts to combat mold and allow rental property owners to skimp on remediation of mold hazards. This bill provides Maryland localities the framework for ensuring the availability of healthier housing.

Lack of inspection and remediation standards hurts renters and weakens code enforcement

Under HB0361, Maryland housing agencies would have the requisite legal tools to deal with mold hazards. Presently, under local adoption of the Maryland Building Performance Standards (COMAR 09.12.51), code enforcement agencies have no definition or other criteria to use in citing evidence of mold in a property. Housing inspectors therefore describe mold inconsistently in violation reports, using phrases such as “possible mold,” “appearance of mold,” or a “dark substance.” These euphemistic descriptions are also the product of Maryland’s failure to require mold-specific training for code enforcement inspectors. Without training, these inspectors are limited to inspecting only the visible surface of the problem. As a result of having no definitional

standard and no training requirements, code inspections lead to remedial steps that, while too weak to address the actual habitability of the property, are nonetheless sufficient to abate code violations.

Location of Violation: Address: 2520 HARLEM AVE Block: 2363 Lot: 015	Violation: Issued: 10/30/2019 Number: 1855970A
<p>A Housing Code Enforcement Official inspected the property listed above and determined the property was in violation of the Building, Fire and Related Codes of Baltimore City. You are hereby ORDERED to obtain all required permits and to correct all the items cited on this notice on or before November 29, 2019. Individual items on this notice may require earlier completion as noted.</p>	
Violation	
Item # 1:	Complete within 30 Days
<p>Location: BASEMENT STAIRS WITH RODENT HOLES Violation: Sec. 304.28 PMCBC - Rodent Infestation. Rectify By Securely Closing All Rodent Holes In Floors And Baseboards On Interior With 26 Gauge Non-corrosive Metal Or Replace Boards.</p>	
Item # 2:	Complete within 30 Days
<p>Location: BASEMENT POSSIBLE MOLD (ALONG WALL)RIGHT SIDE OF STAIRS Violation: Sec. 304.5, 304.6, 304.20 PMCBC Defective Wall. Repair.</p>	
Item # 3:	Complete within 30 Days
<p>Location: KITCHEN POSSIBLE MOLD (ON RIGHT SIDE WALL) Violation: Sec. 304.5, 304.6, 304.20 PMCBC Defective Wall. Repair.</p>	
Item # 4:	Complete within 30 Days
<p>Location: KITCHEN POSSIBLE MOLD INSIDE OF CABINETS(RIGHT SIDE) Violation: Sec. 304.5, 304.6, 304.20 PMCBC Defective Wall. Repair.</p>	
Item # 5:	Complete within 30 Days
<p>Location: DINING ROOM POSSIBLE MOLD (NEAR WINDOWS) Violation: Sec. 304.5, 304.6, 304.20 PMCBC Defective Wall. Repair.</p>	

Example of local agency Code Violation Notice and Order, citing "possible" mold

Unless there are visible signs of water damage or moisture, inspectors lack regulations or protocols to require a property owner to do more than cover up the mold. Literally, the accepted solution to mold hazards in Maryland rental housing is to paint over the problem. In the experience of Maryland housing advocates, including Public Justice Center, code enforcement inspectors are more likely than not to abate a mold-related violation when the defect has been surface-cleaned or occluded by paint or some other covering.

We should not accept mold hazards simply because they are not visible. Renters expect more to be done, and their health, stability, productivity, and educational outcomes require it.

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HB0361 defines “mold hazard” both in scientific terms and with due regard for occupants’ health. This bill then requires state agencies to create publish standards for inspection, testing, and remediation of mold. Under HB0361, we expect local agencies will hasten toward new measures to ensure habitability of rental housing.

Clarifying the remedy in HB0361’s rent escrow provisions

This bill will also strengthen the position of renters who use legal actions to compel landlords to remediate mold or compensate them for hazardous living conditions and relocation. HB0361 includes rent escrow and anti-retaliation provisions specific to mold hazards. These provisions should support and bolster the existing rent escrow law in Real Property Art. § 8-211, whereby a tenant may pay some or all rent into a court account, compel repairs of the rental property, and receive an equitable distribution of escrowed funds after repairs are completed.

The existing rent escrow law is weakened by the absence of standards and enforcement regarding mold, as described above. Based on vague inspection reports and the inspecting agencies’ inability to require more than surface-level remediation, rent escrow has been a limited mechanism for renters to seek court-ordered resolutions of mold defects. These cases often fail to ensure mold remediation and fair compensation to the tenant because of the lack of standards. **For instance, courts may conclude that because a code violation was abated after the landlord painted over the mold, the tenant has no legal grounds to seek further repairs or compensation.** HB0361 would bring clarity in this area by creating the standards for mold remediation and providing a mold-specific basis for rent escrow actions.

However, the rent escrow provisions in HB0361 create a more restrictive remedy for tenants compared to the provisions of Real Property § 8-211. Furthermore, HB0361 includes preemption language that weakens the stronger provisions of Baltimore City’s rent escrow law (Public Local Law of Baltimore City § 9-9, 9-9A) and Baltimore County’s (Baltimore County Code § 35-4-101). Specifically, HB0361 does not permit courts, in a mold-related action, to abate rent or to factor money damages (for example, for loss of tenant’s use of the property or cost of the tenant’s temporary relocation) into the distribution of escrowed funds. Additionally, this bill specifies a presumptive retaliation period of 2 months – far shorter than the 6-month presumption in the Baltimore City and Baltimore County rent escrow laws.

Public Justice Center recommends that procedural elements of HB0361’s rent escrow provision (proposed § 8-211.2 on p. 8-9) should conform and include reference to the existing state and local rent escrow laws.

Maryland's clock is ticking when it comes to mold hazards in rental housing

The threat to tenant health and safety posed by the presence of mold in the home is clear. In the anecdotal experience Public Justice Center, the elderly and those with existing respiratory problems suffer the worst, and in some cases have been hospitalized as a suspected result of unmitigated mold growth. Many renter families also suspect domestic mold to be the cause of their children's asthma development. [A 2009 review of existing literature](#) on the health effects of dampness and mold by the **World Health Organization found a substantial body of evidence of an association with upper respiratory tract symptoms, coughing, wheezing, asthma development in otherwise healthy children, and exacerbation of already diagnosed asthma.** Maryland law should protect renter families from the potentially long-term adverse health outcomes resulting from negligent property management.

The standards called for in HB0361 cannot wait any longer. Throughout the COVID-19 pandemic, Maryland renters who live in mold-affected homes have faced the dual risk of coronavirus outside the home and respiratory illness inside it. They have had nowhere to turn, and, in absence of a law that prescribes how mold defects in housing should be assessed and remediated, renters had little if any recourse to compel property owners to remove mold from their units.

HB0361 is a first, crucial step toward a comprehensive solution to mold in rental housing.

Public Justice Center is a member of the Renters United Maryland coalition and asks that the Committee **issue a FAVORABLE report on HB0361.** If you have any questions, please contact Zafar Shah, shahz@publicjustice.org, (410) 625-9409 Ext. 237.