



November 11, 2014

The Honorable Donzella James
Chair, Senate Study Committee on Mold and Mildew Remediation Contractors
304-B Coverdell Legislative Office Building
Atlanta, GA 30334

Senator James,

Thank you for the opportunity to address the Senate Study Committee on Mold and Mildew Remediation Contractors on the important and complicated issue of mold.

The Georgia Apartment Association (GAA) has more than 410 member companies that own and manage over 410,000 apartments across the state, providing homes to more than 1.2 million Georgians. Our professional apartment management members directly employ more than five thousand Georgians, and the businesses that support the industry provide more than one hundred thousand jobs. Our members contribute more than \$1.45 billion in taxes and other revenue for local governments, and every hundred new apartment homes developed generates an additional \$384,000 in taxes and 47 local jobs.

Throughout the hearings, you have learned something that our industry knows all too well – mold is a complicated issue and there are few easy answers. This letter expands on our earlier testimony and presents the perspective of a professional apartment property owner and manager. Our members work to mitigate risk, protect and maintain the investment, and most importantly, address the concerns and needs of our residents.

INDUSTRY OPERATIONS AND MAINTENANCE PLANS

Due to concerns surrounding mold testing and remediation in the late 1990s and early 2000s, the National Apartment Association developed a protocol for handling mold claims that included the production of a Mold Action Kit for apartment owners and managers.

Since then, most companies have developed and now operate under their own *Operations and Maintenance Plan for Mold and Moisture Control*. These *Plans* provides specific ongoing guidance regarding leak identification, air quality, condensation, and other precautions to control moisture and quickly respond to water-related events. They are reviewed and revised at annual Mold Awareness Update meetings, which are attended by property management and on-site service staff. They focus on three key areas: property maintenance, staff training, and resident education.

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PROPERTY MAINTENANCE

Our members own and manage over 410,000 apartment homes. Owners spend hundreds of millions of dollars annually to maintain these investments. Naturally, they are motivated to address any threat to the building—including moisture—and the potential for subsequent property damage, which is why water intrusion issues are prioritized.

To this end, *Operations and Maintenance Plans* recommend:

- Frequent inspections of buildings and units
- Prioritized response when service staff or a resident discovers moisture or mold
- Identifying the source and fixing plumbing leaks, condensation problems, wet spots and other moisture problems as soon as possible
- A systematic protocol that details specific remediation procedures
- Preventing condensation-related moisture by increasing surface temperature or reducing moisture levels in the air (humidity)
- Venting moisture-generating appliances, like clothes dryers, to the outside where possible and ensuring that the vents are unobstructed
- Maintaining relative humidity below sixty percent, ideally thirty to fifty percent when possible

Further the *Plans* recommend preventative maintenance and routine assessment of building systems, including:

- Inspecting insulation for evidence of physical damage, water damage, or mold growth
- Inspecting and scheduling replacement of filters to ensure proper fit and efficiency
- Inspecting cool surfaces (like cold water pipes, uninsulated ducts in plenum space) for evidence of condensation
- Inspecting outside air intakes for intact bird screens or evidence of freestanding water or mold growth proximate to the intake
- Inspecting kitchen and bathroom exhaust fans and any other exhausts utilized to remove airborne moisture from the units

STAFF TRAINING

Onsite maintenance staff are EPA certified and trained in basic air conditioning, heating, and a variety of other indoor air quality disciplines. Further, section 608 of the Federal Clean Air Act requires that anyone who maintains, services, repairs, or disposes of appliances that contain regulated refrigerant be certified in proper refrigerant handling techniques.

In addition to various industry designations, such as the ANSI-approved Certified Apartment Maintenance Technician (CAMT) and EPA certification related to HVAC, *Operations and Maintenance Plans* require that service staff be adequately trained. Typical training includes:

- The fundamentals of mold and its health effects
- Basic assessment and identification techniques
- Water intrusion recognition, prevention and response
- Preventative maintenance and inspection procedures

- Maintenance service request procedures
- Construction and renovation concerns
- Procedures for the use of drying equipment
- Knowledge of mold remediation equipment and procedures

RESIDENT EDUCATION

Residents are critical partners in moisture control and help to reduce the potential for mold. Our members address the importance of moisture and climate control at the beginning of the relationship with their residents by using a lease addendum specifically related to mold and mildew. In it, both management and resident acknowledge their roles in keeping the apartment home properly maintained. The resident is responsible for:

- Providing appropriate climate control by adequately heating and cooling the home
- Keeping the unit clean
- Taking basic measures to retard and prevent mold and mildew from accumulating, including removing visible moisture from windows, walls, floors, ceilings and other surfaces in a reasonable time
- Not blocking heating, ventilation or air conditioning ducts
- Using the thermostat's "auto" setting, rather than the "on" setting, which can increase humidity levels

Importantly, residents agree to immediately report to the management office in writing any evidence of a water leak or excessive moisture, any evidence of mold or mildew-like growth that cannot be removed by cleaning with a common household product, and any failure or malfunction in the heating, ventilation or air conditioning system.

Onsite staff may take corrective action if the resident fails to comply with the addendum. For example, if a resident does not run adequate air conditioning during the summer, staff will explain its importance related to humidity levels and increased likeliness of mold growth, and advise the resident that the addendum requires its use. In many instances, staff provide written notice to the resident to ensure they are complying with the addendum.

ADDRESSING POTENTIAL MOLD

Even with proper maintenance, training, and resident education, mold is a natural occurrence and is everywhere. The EPA does not set standards as to what is considered "high" and "low" levels of mold. Below is typically what happens once moisture is found or suspected by a resident or service staff:

- **Prioritize and Confirm.** Service calls regarding moisture and mold are prioritized. The initial response includes a visual inspection of the affected area.
- **Address Moisture.** If moisture is present, service staff will either address the problem directly or request assistance from appropriate contractors. The area is dried as quickly and completely as possible.

- **Eliminate Mold.** If mold is present, the response will vary based on the size of the affected area. Per the operation and maintenance plan, service staff is trained to handle mold situations either directly or with the help of outside contractors.
- **Communicate.** Management is committed to keeping residents informed throughout the remediation process.
- **False Alarms.** In the event that a resident alerts management to a potential moisture or mold issue and service staff do not find evidence of a problem, management communicates their response and findings to the resident and follows up to ensure their satisfaction.

RESIDENT REMEDIES

During the October 14 meeting, Mike Williams, Esq., provided oral testimony regarding various remedies available to rental residents should they encounter mold in their home. Mike is an attorney with over twenty years of experience in landlord/tenant law and an expert in handling toxic tort cases, like mold-related claims.

Despite management's best efforts, residents occasionally remain unsatisfied and ask to be moved or released from their lease agreement. There are a variety of remedies available to residents in this situation, including two provisions in the Landlord-Tenant code that address repairs (§44-7-13 and §44-7-14). The resident can also bring a general Tort claim of negligence codified at §51-1-2 et seq. and breach of contract claim found at §13-3-1 et seq. In this section, we use the terms management/landlord and resident/tenant interchangeably simply to stay consistent with terminology in Georgia code.

To pursue a remedy, the landlord must fail to adequately address the issue in a reasonable time after notice is provided. At that point, the tenant has these options:

- **Vacate.** The tenant can vacate the premises and deem it uninhabitable. This defense is a failure of consideration defense that terminates the lease and cuts off any future rental liability of the tenant. There are several Georgia cases on this issue.
- **Repair.** The tenant can choose to remediate the problem him or herself if the landlord has failed to repair the issue within a reasonable time after notice is provided. In this instance, the tenant would make the repair and deduct the expenses from the rental payment.

Most dispossessory (eviction) actions are filed in the Magistrate Court in Georgia. When a tenant wishes to continue living in the home and alleges the failure of the landlord to address a reported problem, the courts routinely order the landlord to make the repairs while the tenant pays rent into the court registry. The court then resets the case to ensure the repairs are made.

- **Report.** The tenant can contact the local code enforcement office or the health department, which will issue a warning notice, thereby giving the landlord ten days to make needed repairs. Code enforcement will subsequently re-inspect the premises after the ten days has expired to ensure repairs are complete. If they are not complete, code enforcement will cite the landlord for failure to comply with the code and remediate the problem. The county or city court handling the code enforcement proceedings always ensure that repairs are made prior to closing out a housing code violation case. The landlord is subject to significant fines and multiple trips to court until repairs are complete.

If the tenant receives public housing assistance (such as Section 8 or a subsidy), the unit is inspected annually by regulation and the tenant can request re-inspection at any time by contacting the agency. If the agency finds a deficiency and it is not corrected, the assistance will go into abatement, and the landlord will not receive their government assistance until the property passes inspection.

- **File Suit.** The tenant can independently sue the landlord for damages, including diminution in value, property damages, personal injuries or other losses as a result of the landlord's failure to repair. The tenant can file the action in Magistrate Court if they want to handle it *pro se* (on their own without an attorney), or they can retain counsel and file suit in Magistrate, State or Superior Court.

It should be noted that to pursue these remedies, the tenant must report issues in a timely manner and give the landlord the opportunity to correct the problem within a reasonable period of time. They are also responsible for maintaining the property as agreed to in the mold and moisture addendum, which includes adequately running air conditioning and other air quality equipment.

HVAC MAINTENANCE AND SERVICE

Professional, onsite service staffs are qualified in HVAC maintenance and repair as well as mold and moisture-specific training. These well-trained, full-time employees are authorized to work exclusively on their employer's equipment. Their education and experience equips them to recognize when a problem is severe enough to warrant a commercially licensed contractor.

During the course of this Study Committee, a representative of the heating and air contractors repeatedly suggested that mold problems are the result of failed HVAC systems and underqualified onsite service staff. We understand that his proposal would require these employees to be licensed or, more likely, mandate that companies like his be hired to service these systems. This proposal is deeply flawed in concept and practice:

- **Failed Systems Are Not To Blame.** The failure of mechanical systems are rarely the cause of mold and moisture control incidents. Rather, it is the failure to properly use the air conditioning equipment that is often the cause. Particularly during Georgia summers, running the air conditioner is the only way to keep humidity—and the risk of mold—at a minimum. The premise that the installation and maintenance of equipment

is a leading cause of moisture problems is incorrect.

- **Contractors Cannot Meet Volume Demands.** The current pool of licensed HVAC contractors is insufficient to meet the projected volume of service calls. As an example, one of our members provided information on two properties, one built in 1984 and the other in 1994. Both contain 250 units. In the past twelve months, the 1984 property had 480 HVAC work orders; the 1994 property had almost 300.

Based on this small sample and estimating a conservative one service call per unit, per year, Association members alone would account for more than 410,000 service calls per year. The probability is that it would be closer to 800,000 per year. Are the state's 4,300 non-restricted licensed contractors prepared to field an additional 1,120 to 2,200 calls per day?

The industry often employs licensed contractors. Our members use licensed contractors whenever the scope of work or code regulations require it.

- **Costs of Delayed Service.** Any barrier to immediately addressing indoor air quality matters related to moisture and mold will exacerbate the matter. Delaying service while waiting for an outside contractor will increase indoor humidity, which creates an environment ripe for mold growth.

Said one property owner: *"In the middle of the summer, it is not uncommon to have twenty HVAC work orders in a day. There is no way we could afford to hire a contractor for that, and even if we did, I do not believe they could handle that kind of volume."*

If we were not able to give our residents air conditioning in the summer, they would have the right to terminate their lease agreement, and in some cases, have cause for legal action. In addition to the potential loss of revenue, there would be a health risk associated with the increased likeliness of mold due to blocked condensation drains and/or frozen lines."

- **Staggering Cost Impact.** Even if there were enough outside contractors available, minimum charges for their service calls range from \$50 to \$200 per visit. Based on the average number of work orders per property, the added cost of maintenance would be insurmountable for property owners and would not benefit the owner or resident.

CONTINUED INDUSTRY LEADERSHIP

In addition to the professional training, management, and maintenance that is an everyday occurrence within our industry, GAA is working with the Georgia Healthy Home Initiative, which focuses on indoor air quality, including mold and lead. They have plans to partner with Healthy Homes (EPD/EPA staff) and the Fulton County Health Staff to host a health summit to promote education on mold and asthma and to provide information for apartment communities to distribute to residents.

As professionals who provide homes to 1.2 million Georgians, our members have every reason to anticipate and address resident concerns. Our members know that unchecked, moisture creates mold, and mold and moisture problems may lead to health issues, structural damage, and costly repairs. The industry takes the issue of mold and moisture control very seriously.

Again, thank you for the opportunity to address the Committee. Please let us know if you would like additional information on this or any issue that impacts the apartment industry and our residents who choose apartment living.

Sincerely,

A handwritten signature in black ink, appearing to be 'Tom Wilkes', with a long horizontal flourish extending to the right.

Tom Wilkes
President of the Georgia Apartment Association

cc: Office of the Lieutenant Governor
Senate Research Office