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**Committee on the Environment, Public Works, and Transportation
Council of the District of Columbia**

Public Oversight Roundtable on Air Quality

The Legal Aid Society of the District of Columbia¹ welcomes this opportunity to comment on the issue of indoor air quality, and in particular on the effects on indoor mold growth on low-income residential tenants in the District of Columbia.

Legal Aid represents hundreds of low-income tenants every year, many of whom survive on incomes below the poverty line. Our clients are among the poorest and most vulnerable of the District's residents, who all too often struggle to maintain their housing and secure access to quality health care. As a result of the District's continuing loss and lack of affordable housing, persons living in poverty often are forced to accept poor housing conditions in order to maintain their tenancies, because lower-cost units with serious housing conditions are the only units they can afford. Accordingly, the harms from serious housing code violations - including indoor mold - disproportionately affect the most vulnerable of District residents, many of whom are elderly or have disabilities and who often struggle with lack of (or limited access to) quality, affordable health care.

Too many of these tenants report serious problems with indoor mold growth in their homes. These tenants are concerned about the effects on mold on their own health and the health of their families. In some cases, doctors or other health care providers have warned the tenants that the presence of mold in their homes may be exacerbating pre-existing health conditions such as asthma or causing new health problems. Tenants also are frustrated because District agencies are not prepared to inspect or cite for indoor mold, leaving them with few remedies to address this serious housing condition. My testimony today focuses on the adverse health effects of indoor mold on tenants, the lack of adequate remedies under existing District law, and suggestions about steps that the District can take to better address this critical public health issue.

Mold threatens indoor air quality and can have serious health effects.

Mold is a naturally-occurring substance that can be found both indoors and outdoors on a variety of surfaces. However, under certain conditions – particularly when concentrated in indoor environments – mold can lead to serious health effects. A 2004 study from the Institute

¹ The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Over the last 80 years, tens of thousands of the District’s neediest residents have been served by Legal Aid staff and volunteers. Legal Aid currently works in the areas of housing, family law, public benefits, and consumer law.

of Medicine found that exposure to indoor mold is linked to upper respiratory tract symptoms, cough, and wheezing in otherwise healthy people and to asthma symptoms in people with asthma. The same study found that individuals exposed to both indoor mold and damp conditions may experience shortness of breath or respiratory illness and are more likely to develop asthma. Individuals with mold allergies, with compromised immune systems, and with chronic lung illnesses can have more severe reactions.²

Mold presents a particular health concern for individuals already suffering from asthma. It is estimated that asthma affects 9.6 percent of adults and 12.6 percent of children in the District of Columbia. These prevalence levels are higher than the national averages.³ Over 3,000 children and 8,000 adults in the District visit emergency rooms every year for symptoms related to asthma.⁴ Again, these rates are significantly higher than national averages. Because of the relatively high prevalence of asthma in the District, the effects of indoor mold growth can be expected to be even more serious.

Detailed testing of the types of concentrations of mold in an indoor environment can be expensive.⁵ In addition, there are no widely-accepted standards about what types and levels of indoor mold should be considered unsafe. For these reasons, the Centers for Disease Control and Prevention, the Environmental Protection Agency, and other experts recommend that any visible mold growth within the home should be treated and removed immediately.

Current laws in the District do not adequately address indoor mold.

The District of Columbia does not have any statutes or regulations that directly address indoor mold in residential properties. In addition, there is no government agency available that can inspect or test for indoor mold. As a result, tenants living in homes with indoor mold cannot rely on the District of Columbia government for relief.

The Department of Consumer and Regulatory Affairs (DCRA) – the agency responsible for inspecting and citing housing conditions and enforcing the D.C. Housing Code – takes the position that it cannot evaluate or cite landlords for indoor mold. When dampness, water intrusion, or leaks are visibly present, DCRA inspectors will cite these conditions as housing

² See Centers for Disease Control and Prevention, “Facts About Mold and Dampness,” at http://www.cdc.gov/mold/dampness_facts.htm (last visited Nov. 4, 2012); see also World Health Organization, *WHO Guidelines for Indoor Air Quality: Dampness and Mould* (2009).

³ See Centers for Disease Control and Prevention, National Center for Environmental Health, Division of Environmental Hazards and Health Effects, *Asthma in the District of Columbia*, available at http://www.cdc.gov/asthma/stateprofiles/Asthma_in_DC.pdf.

⁴ See Impact DC, Children’s National Medical Center, *Asthma Surveillance in DC Emergency Departments*, available at <http://www.childrensnational.org/impactdc/>.

⁵ Legal Aid has been able to retain experts to engage in detailed testing for indoor mold, using special grant funds. These initial tests can run to the hundreds of dollars. Obviously, most low-income tenants do not have access to this kind of testing.

code violations.⁶ While this is helpful and often can be used to address the root causes of mold growth, it is not a direct response to the mold itself. The Department of the Environment (DOE) similarly takes the position that its authority does not extend to indoor mold growth in residential properties. Equally problematic, neither DCRA nor DOE has the budgetary resources to devote to the issue. While both agencies recognize that indoor mold is a serious health problem for tenants,⁷ they lack either clear legal authority or the necessary resources to take on the issue.

As a result of the lack of District law on point or any clear response from government agencies, tenants have few legal remedies to address indoor mold in their homes. Legal Aid and other legal services providers have represented many tenants with indoor mold growth in their homes in cases in D.C. Superior Court raising this issue, either in the Housing Conditions Calendar (where tenants can sue their landlords affirmatively) or in the Landlord and Tenant Branch (where tenants can raise housing conditions as a defense in eviction suits). Unfortunately, because neither DCRA nor DOE will inspect or cite for mold, too many judges also refuse to recognize mold as a housing code violation or to grant relief to tenants with this problem. Due to this lack of clarity in the law, landlords too often ignore indoor mold growth or apply slipshod repairs that cover up the problem but do not eliminate it.

The District can take additional steps to address indoor mold.

1. Clarify that the D.C. Housing Code covers visible mold growth

It is the position of Legal Aid and other providers representing tenants that visible indoor mold growth violates current provisions in the D.C. Housing Code. The Code broadly requires that “[a]ll premises occupied for residential purposes shall be kept in a clean, safe, and sanitary condition”⁸ and that portions of a residential premises not specifically listed in the Code nonetheless “shall be kept clean, and in a safe and sanitary condition.”⁹ Visible indoor mold growth renders a home unclean, unsanitary, and – because of the potential health effects outlined above – unsafe.

⁶ The Housing Code requires that “[a]ll floors and interior wall surfaces of residential buildings shall be maintained reasonably free of dampness” and that “[i]n any habitable room where any wall or floor surface is damp, that condition shall be corrected, and the wall or floor shall be maintained in a corrected condition.” 14 D.C.M.R. §§ 706.5, .6.

⁷ For example, the City’s website notes that tenants with potential indoor mold problems should contact DCRA for a home inspection and points to a brochure published by DCRA with tips on prevention, control, and remediation of mold based on standards published by the International Code Council. *See Mold: Tips on Prevention and Control*, available at <http://hc.rrc.dc.gov/hc/frames.asp?doc=/hc/lib/hc/img/mold/2008moldmrii.pdf>. Similarly, DOE has identified indoor mold as one of many issues potentially affecting indoor air quality in the District of Columbia. *See* District Department of the Environment, *Strategic Plan for Lead-Safe and Healthy Homes 2011-2014*, at 17 (“Action (e): Train inspectors in the importance of addressing moisture, mold . . . and other asthma triggers; Action (f): Clarify and enforce code requirements that prevent exposure to moisture, mold . . . and other asthma triggers.”)

⁸ *Id.* § 800.1.

⁹ *Id.* at § 800.6.

Despite these provisions, not all judges or landlords agree that indoor mold growth is a condition that must be abated under the Housing Code. At least part of the confusion stems from DCRA's position that it will not inspect or cite for mold itself. But DCRA's position itself is based on the lack of clarity in the existing provisions in the Housing Code.

The District – either through legislation or regulations – should clarify that visible mold growth is an unsafe and unsanitary condition which violates the D.C. Housing Code. This will allow DCRA to inspect and cite for indoor mold growth when it is visible to the naked eye. This change in the law also will help to clarify that tenants may raise visible mold growth in D.C. Superior Court, either as a defense to a landlord's action for nonpayment of rent or affirmatively in order to obtain an order for a landlord to abate the condition. While there is ongoing debate within the scientific community about how to establish maximum exposure limits that would include non-visible mold, there is no debate that visible mold growth is an unsafe and unsanitary condition that threatens public health.

2. Provide resources and authority to a D.C. government agency to regulate indoor mold in residential properties.

DCRA has expressed to Legal Aid and other advocates that it is willing to inspect and cite for indoor mold in residential properties if the agency is given both clear legislative authority and new resources for this purpose. If authority is to rest with DCRA, the agency also would need resources to provide training to its inspectors and to develop protocols and policies for handling indoor mold issues. Alternatively, DOE – which already has some expertise on the issues of indoor air quality and mold generally – could be granted authority and resources to handle indoor mold in residential properties.

The Council should enact legislation to provide either DCRA or DOE with both legislative authority and sufficient resources to take responsibility for inspecting and citing for indoor mold in residential properties in the District of Columbia. At a minimum, this legislation should allow the responsible agency to cite any visible mold growth in a residential property as a violation of the Housing Code and to require the landlord to abate the violation as provided under the existing regulatory and enforcement scheme established by the Housing Code. As discussed below, we also urge the Council to consider and adopt more comprehensive legislation to set forth landlord and tenant rights, responsibilities, and remedies with respect to indoor mold in residential properties and to create a task force focused on the more difficult question of establishing maximum exposure limits that would include non-visible mold.

3. Adopt comprehensive legislation regarding the regulation, inspection, and abatement of indoor mold in residential properties.

Other states have enacted legislation aimed at indoor mold in residential properties, including requiring landlords to disclose any known mold to prospective tenants,¹⁰ establishing

¹⁰ California, Michigan, Montana, and Virginia all have provisions requiring landlords to disclose any known indoor mold conditions. See Cal. Health & Safety Code § 26140; Mich. Comp. Laws § 565.975; Mont. Code Ann. § 70-16-703; Va. Code Ann. § 55-248.11:2.

professional standards for the remediation of mold,¹¹ and creating task forces to research existing scientific literature and adopt statewide maximum limits for indoor mold growth.¹² Among other jurisdictions, our neighboring state of Virginia has one of the most comprehensive legislative schemes to address indoor mold in residential properties. The Virginia law, along with elements of the laws in other jurisdictions, could serve as a model for comprehensive legislation in the District of Columbia.

The Virginia law is aimed at “visible evidence of mold,” which is defined as 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.”¹³ Landlords must (1) disclose the presence of mold to prospective tenants, (2) maintain the premises in such a condition as to prevent the accumulation of moisture and the growth of mold, (3) remediate mold or moisture accumulation in accordance with professional mold remediation standards when the mold is determined to “materially affect the health or safety” of the tenant, and (4) cover the costs of tenant relocation where necessary to remediate mold and moisture accumulation.¹⁴

The law also imposes responsibilities on tenants, who are required to (1) maintain the dwelling unit in such a condition as to prevent the accumulation of moisture and the growth of mold, (2) promptly notify the landlord of any moisture accumulation or of any visible evidence of mold, and (3) temporarily vacate the dwelling unit if the landlord determines relocation is necessary to remediate mold or moisture accumulation.¹⁵

Finally, the Virginia law incorporates remedies for a tenant where the landlord refuses to remediate mold or fails to do so in a timely manner, allowing the tenant to terminate the lease with the landlord or to recover damages and attorney’s fees and obtain injunctive relief. The law also specifically authorizes a tenant to assert a defense of landlord noncompliance with the new mold requirements in non-payment of rent cases.¹⁶

¹¹ Maryland and Texas have laws providing standards and/or licensing requirements for mold remediation. *See* Md. Code Ann. Bus. Reg. § 8-703, *et seq.*; Tex. Occ. Code § 1958.01, *et seq.*; 25 Tex. Admin. Code §§295.301-38. The New York City Department of Health and Mental Hygiene also has published detailed standards for remediation, which have been cited by the District DOE as helpful guidelines. *See* Program of Env’tl. & Occupational Disease Epidemiology, N.Y.C. Dep’t of Health & Mental Hygiene, *Guidelines on Assessment and Remediation of Fungi in Indoor Environments* (2000), available at <http://www.nyc.gov/html/doh/html/epi/moldrpt1.shtml>.

¹² California, Maryland, and Texas have created such task forces. *See* Cal. Health & Safety Code § 26122; Tex Prop. Code § 430.003; Maryland State Task Force on Indoor Air Quality, *Final Report* at 3-5 (July 1, 2002), <http://www.dllr.state.md.us/labor/indoorairfinal/iaqfinalreport.pdf>.

¹³ *See* Va. Code Ann. § 55-248.4.

¹⁴ *Id.* §§ 55-248.11:2, .13(A)(5), .18:2.

¹⁵ *Id.* §§ 55-248.16(A)(10), .18:2.

¹⁶ *Id.* §§ 55-248.21, .25.

The Council should consider and ultimately adopt comprehensive legislation addressing mold in residential properties that includes all of the elements of the Virginia law: a focus on visible mold growth, clear responsibilities for both landlords and tenants, and remedies for tenants when their landlords fail to abate mold. Those parts of the law relating to the temporary relocation of tenants living with indoor mold hazards could be modeled on the District's similar law addressing lead paint hazards. In addition, as noted above, any legislation should assign primary responsibility for implementation of the law either to DCRA or DOE and should ensure that the responsible agency has sufficient resources to carry out the law fully. Finally, the Council should consider allocating some budgetary authority to a task force to consider the available scientific evidence and determine whether the District should adopt any other maximum exposure limits on indoor mold that would extend beyond visible mold growth to certain types of mold, certain concentrations, or other indicators detectable by more advanced testing.

This type of comprehensive legislation would go a long way toward ensuring that low-income residential tenants in the District are not forced to endure indoor mold growth that threatens their health and the health of their families and that the District government is available to provide much-needed relief.

Thank you for this opportunity to testify before the Council.