

**Testimony of Beth Mellen Harrison
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**Before the Committee of the Whole & the Committee on Transportation & the
Environment
Council of the District of Columbia**

Public Hearing Regarding:

B23-0132 – “Indoor Mold Remediation Enforcement Amendment Act of 2019”

December 9, 2019

One in six District residents has asthma, a rate that is 50 percent higher than the national average.¹ Residents in Wards 5, 7, and 8 – and in particular low-income, children of color – are disproportionately affected.² Children living in these areas are approximately 20 times more likely to visit an emergency room and 10 times more likely to be hospitalized for asthma than children living in Northwest.³ Doctors have identified mold and other poor housing conditions as one of the primary factors contributing to the District’s asthma epidemic.⁴

Five years ago, a coalition of organizations that included the Legal Aid Society of the District of Columbia⁵ worked with the Council to enact one of the strongest mold statutes in the nation, the Air Quality Amendment Act of 2014.⁶ Unfortunately, the law relies on private enforcement, with no government agency charged with inspecting, citing violations, and enforcing the law. Legal Aid supports Bill 23-0132, the Indoor Mold Remediation Enforcement Amendment Act of 2019, which squarely addresses these gaps in current law by requiring the Department of

¹ D.C. Asthma Coalition, available at <http://www.asthmafreedc.org/>.

² Washington City Paper, “Doctors Blame D.C.’s High Asthma Rates in Part on Poor Housing” (May 22, 2019), available at <https://www.washingtoncitypaper.com/news/housing-complex/article/21069963/doctors-blame-dcs-high-asthma-rates-in-part-on-poor-housing>.

³ See *id.*

⁴ See *id.*

⁵ 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 87 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, immigration, and consumer protection. We also help individuals with the collateral consequences of their involvement with the criminal justice system. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

⁶ D.C. Code §§ 8-241.01, *et seq.*

Consumer & Regulatory Affairs (DCRA) to certify its inspectors in mold assessment and to issue notices of violation and impose penalties when landlords fail to comply with the mold law.

Indoor Mold Remains a Serious Public Health Problem Facing Many District Tenants

Legal Aid meets with thousands of low-income District tenants every year who are seeking our assistance to address poor conditions in their homes. Many of these tenants report – and our own investigations are able to confirm – that indoor mold is a primary concern. Legal Aid estimates that at least half of these tenants have issues with mold or mildew in their homes. The conditions that cause mold, including leaks and water damage, also are very common.

Recent enforcement actions by the Office of Attorney General likewise have found that mold is one of the top problems at slum properties. Legal Aid represented tenants and brought in a professional mold assessor at Terrace Manor (owned by Sanford Capital)⁷ and found problems with leaks, water damage, and mold that likely had festered for years. Tenants we have worked with at Oak Hill (Sanford Capital), Bennington Road and Astor Place (Mehrhad Valibeigi/Bennington Corporation and Astor Limited Partnership),⁸ and Forest Ridge/The Vistas (Joe Kisha/Vista Ridge Limited Partnership)⁹ similarly have experienced long-standing problems with mold.

Exposure to mold has been linked to upper respiratory tract symptoms, coughing, and wheezing in otherwise healthy people, and to asthma symptoms in people with asthma. Individuals exposed to both 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.¹⁰ Mold presents a particular health concern for individuals already suffering from asthma. In the District – where asthma rates are significantly higher than national averages and highest in low-income areas – the effects of mold growth can be expected to be even more serious.

The District’s Mold Statute Is A Powerful But Under-Utilized Tool

In 2014, the Council enacted one of the most protective laws in the nation addressing mold in residential housing, the Air Quality Amendment Act. The law requires landlords to inspect

⁷ *District of Columbia v. Terrace Manor, LLC*, 2016 CA 7767 (23rd Street & Savannah Street, SE).

⁸ *District of Columbia v. Bennington Corporation*, 2018 CA 007253 B (4559 – 4569 Benning Rd SE; 4480 C Street SE); *District of Columbia v. Astor Limited Partnership*, 2019 CA 001845 B (5058 Astor Pl SE).

⁹ *District of Columbia v. Vista Ridge Limited Partnership*, 2018 CA 007285 B (Forest Ridge and the Vistas).

¹⁰ See Centers for Disease Control and Prevention, “Facts About Mold and Dampness,” at http://www.cdc.gov/mold/dampness_facts.htm; see also World Health Organization, *WHO Guidelines for Indoor Air Quality: Dampness and Mold* (2009).

within 7 days of a tenant reporting suspected indoor mold and then to remediate any mold within 30 days of that inspection.¹¹ The Council charged the Department of Energy and the Environment (DOEE) with issuing standards for the level of indoor mold contamination that requires professional remediation, as well as guidelines and standards for mold assessment and remediation.¹² DOEE also is required to create a structure for licensing professional mold assessors and remediators. The law creates penalties for landlords that do not comply, including creating a presumption of a housing code violation and allowing tenants to recover reimbursement of assessment costs, attorney’s fees and court costs, and treble damages in certain circumstances.¹³ Finally, the law requires landlords to disclose prior indoor mold contamination to prospective tenants unless the mold was remediated by a professional.¹⁴

Implementing regulations issued by DOEE further strengthened the law. Landlords must use professional remediation whenever visible mold exceeds 10 square feet.¹⁵ For mold below this level, landlords still must follow standards issued by DOEE for proper remediation.¹⁶ The initial mold inspection must be performed before the landlord scrapes, cleans, or paints over any mold and also must include a search for any hidden mold.¹⁷ Perhaps most important, the regulations make clear that a landlord must identify and fix the underlying causes of the mold “so that it is reasonably certain that the mold will not return from these same causes”, a critical preventive step.¹⁸

Despite these robust protections, the law has not been fully effective for one key reason: no agency currently has the budgetary resources or legal authority to inspect, cite violations, and issue penalties such as fines. While DCRA is authorized to rely on a professional mold assessment to issue a notice of violation for a defective surface, in violation of the Housing or Property Maintenance Code,¹⁹ the agency has refused to use this authority. DOEE performs limited inspections under its Healthy Homes program, but this option is only available to qualifying families with children with underlying health conditions or pregnant women who are lucky enough to get connected to the agency.²⁰ The resulting inspections are not performed by licensed professionals, and DOEE does not have authority to issue citations, impose fines, or

¹¹ D.C. Code § 8-241.04(a).

¹² *Id.* § 8-241.03(b).

¹³ *Id.* § 8-241.05.

¹⁴ *Id.* § 42-3502.22(b)(1)(K).

¹⁵ 20 DCMR §§ 3200.2, 3299.1.

¹⁶ D.C. Code § 8-241.04(b). DOEE’s “Mold Guidance Document” is available at <http://doee.dc.gov/moldlicensureregs>.

¹⁷ 20 DCMR § 3206.3.

¹⁸ *Id.* § 3205.1(h)(4).

¹⁹ D.C. Code § § 8-241.05(b).

²⁰ <https://doee.dc.gov/service/dc-partnership-healthy-homes>. Several years ago, DOEE established a direct referral relationship with Legal Aid for tenants whom we identify through our intake process. We are grateful to DOEE for working with us and other providers to make these services available, but we worry about tenants who never make it through our doors.

otherwise penalize landlords that do not remediate. In addition, a tenant facing multiple housing conditions will be required to undergo separate inspections by DOEE and DCRA.

Private enforcement has its own challenges. Professional mold assessments start at \$500, an amount too high for most low-income tenants to afford. Taking a landlord to court is difficult, if not impossible, without the help of an attorney, and the overwhelming majority of low-income tenants cannot get access to free legal services. Tenants in the District have the option of suing their landlord to get a court order for repairs in the Housing Conditions Calendar of D.C. Superior Court or withholding their rent and defending against an eviction case in the Landlord and Tenant Branch. The just-released report by the D.C. Access to Justice Commission, *Delivering Justice*, finds that 75 percent of tenants in Housing Conditions cases and 88 percent of tenants in Landlord Tenant cases are unrepresented.²¹

As a result, tenants living with unabated indoor mold and facing landlords who refuse to remediate have few options. Even when a tenant is lucky enough to receive free legal services, private enforcement can be a lengthy and taxing process. Legal Aid has represented several tenants at slum properties identified by the Office of Attorney General for priority enforcement where mold is a pervasive problem. Our attorneys often have to file emergency motions and make multiple appearances in Superior Court to ensure that professional mold remediation occurs and that, where necessary, families are temporarily relocated and able to return to their units promptly.

Tenants also continue to come to Legal Aid for help when their landlords have failed to follow the law. Some tenants are fighting just to have their landlords respond at all, following major floods that have damaged their property and left behind soaked carpet and mold. Others have been temporarily relocated from damaged apartments with no clear timeframe for when they can return home. Still others are dealing with landlords who have remediated mold improperly, creating unnecessary health risks. In one recent case, a well-known, small-time slumlord “remediated” mold in our client’s unit by simply removing and replacing a large section of drywall, without professional services, despite visible mold of more than 10 square feet.

Bill 23-0132 Should Be Strengthened to Add Similar Requirements for Lead

Requiring DCRA inspectors to be certified in mold assessment and to inspect and cite for mold has another practical advantage: tenants can request a single inspection from one agency that will cover both housing code violations and mold. For the same reason, Legal Aid supports amending the bill to require DCRA inspectors to be certified to inspect for and identify violations of DC’s lead hazard law. DCRA could be granted similar authority to issue notices of violation and administrative orders relating to lead-based paint hazards and to enforce these orders through its fine process, or to turn over those cases to DOEE for enforcement. Tenants living with different types of housing conditions problems should not have to contact and

²¹ D.C. Access to Justice Comm’n, *Delivering Justice: Addressing Civil Legal Needs in the District of Columbia* 4 (Dec. 2019) (2017 figures). The figure for the Landlord and Tenant Branch is for designated parties.

coordinate with multiple agencies to obtain relief. Instead, DCRA inspectors should be qualified and authorized to inspect, cite, and enforce violations of the housing code, the mold law, and the lead hazard law.²²

Conclusion

Thank you for this opportunity to testify in support of Bill 23-0132, the Indoor Mold Remediation Enforcement Amendment Act of 2019. We look forward to working with members of the Committees of the Whole and of Transportation and the Environment, staff, and other advocates to ensure that this legislation can move forward this Council period.

²² Legal Aid also supports Bill 23-0407, the Lead Hazard Prevention and Elimination Amendment Act of 2019, which lowers acceptable levels for lead exposure, extends the law's protections to all tenants, creates a fund to help landlords bring properties occupied by low-income tenants into compliance, and provides tenants with a private right of action if their landlord does not comply.