

Department of Legislative Services  
Maryland General Assembly  
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 109 (Senator Stone)  
Judicial Proceedings

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**Real Property - Residential Leases - Required Mold Assessment and Remediation**

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This bill requires a residential landlord to assess a dwelling unit for the presence of mold at a tenant's request if (1) the dwelling unit has experienced severe water damage; and (2) the tenant provides the landlord with a physician's written certification that an authorized occupant or named party to the lease has a serious medical condition likely caused by mold exposure. If a landlord fails to perform the assessment or remediate the mold condition within a reasonable period, the tenant may deposit the rent in an escrow account with the clerk of the District Court where the dwelling is located.

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**Fiscal Summary**

**State Effect:** The bill's requirements can be handled with existing budgeted resources.

**Local Effect:** The bill does not directly affect local finances or operations.

**Small Business Effect:** Potential meaningful.

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**Analysis**

**Bill Summary:** Upon receiving notice of severe water damage and the tenant's or authorized occupant's mold-related medical condition, the landlord must visually inspect the premises and collect air and surface samples within a reasonable period of time. If the mold assessment indicates an abnormally high level of mold, the landlord must remove the mold and remediate any conditions contributing to the mold growth.

If a landlord fails to perform the mold assessment or remediate the premises within a reasonable period, a tenant may deposit the rent in an escrow account with the clerk of the District Court. A mold assessment has to be performed 30 days after receipt of the physician's certification; likewise, remediation must occur within 30 days after the mold assessment. There is a rebuttable presumption that a period exceeding 30 days is unreasonable. In a rent escrow action, it is a sufficient defense that:

- a tenant, occupant, or a guest of a tenant or occupant caused the severe water damage;
- a tenant knew, or should have known, of chronic water intrusion that caused the severe water damage and failed to notify the landlord within a reasonable time; or
- a tenant failed to provide the landlord or landlord's agent with sufficient access to the dwelling to assess the mold or remediate the condition.

A landlord may not retaliate against a tenant who elects to seek the remedies under the bill by increasing rent, evicting the tenant, or terminating the tenancy. Except for nonpayment of rent, retaliation is presumed if, within two months from a mold assessment or remediation, a landlord attempts to evict a tenant or terminate the tenancy. The bill does not preempt any local law or ordinance that is more stringent or imposes a higher standard on a landlord to remediate mold from a dwelling unit.

**Current Law:** A landlord generally must repair and eliminate conditions and defects that constitute, or if not promptly corrected will constitute, a fire hazard or a serious and substantial threat to the life, health, or safety of the occupants. A tenant must notify a landlord of the existence of the condition or defect, and the landlord has a reasonable time to make repairs. There is a rebuttable presumption that a period exceeding 30 days is unreasonable. If a landlord refuses to make repairs or correct the condition, the tenant may bring a rent escrow action to pay rent into court. In a rent escrow action, the court may make appropriate findings and make any order or orders that justice requires, including an order terminating the lease, dismissing the action, abating or reducing the rent, or requiring the landlord to make repairs. Money placed in a rent escrow account is distributed according to the rent escrow statute. (*See Real Property Article § 8-211.*)

**Small Business Effect:** Although it is difficult to quantify how many residential landlords may be affected by the bill, the costs associated with mold inspection and remediation are significant. A mold assessment performed by a certified member of the American Conference of Governmental Industrial Hygienists can cost as much as a few thousand dollars. The additional cost of remediation may exceed assessment costs but depends entirely on the extent of the mold-related damage. Residential landlords who do

not complete assessments and remediation in a reasonable period also may not have access to rental income while the rent is held in escrow.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Secretary of State; Department of Labor, Licensing, and Regulation; Indoor Air Quality Association; Department of Legislative Services

**Fiscal Note History:** First Reader - January 27, 2009  
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