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HOUSE BILL NO. 580

Offered January 9, 2008

Prefiled January 8, 2008

A BILL to amend and reenact §§ 55-225.3, 55-225.4, 55-248.4, 55-248.6, 55-248.11:2, 55-248.13, 55-248.16, 55-248.41, 55-248.43, and 55-248.44 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 55-225.6, 55-225.7, 55-225.8, 55-225.9, 55-248.18:2, 55-248.41:1, 55-248.41:2, and 55-248.41:3, relating to mold conditions involving landlords and tenants.

Patrons—Cosgrove and Hull

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That §§ 55-225.3, 55-225.4, 55-248.4, 55-248.6, 55-248.11:2, 55-248.13, 55-248.16, 55-248.41, 55-248.43, and 55-248.44 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 55-225.6, 55-225.7, 55-225.8, 55-225.9, 55-248.18:2, 55-248.41:1, 55-248.41:2, and 55-248.41:3 as follows:

§ 55-225.3. Landlord to maintain dwelling unit.

A. The landlord shall:

1. Comply with the requirements of applicable building and housing codes materially affecting health and safety;

2. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

3. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, supplied or required to be supplied by him;

4. Supply running water and reasonable amounts of hot water at all times and reasonable air conditioning if provided and heat in season except where the dwelling unit is so constructed that heat, air conditioning or hot water is generated by an installation within the exclusive control of the tenant or supplied by a direct public utility connection; and

5. Maintain the premises in such a condition as to prevent the accumulation of moisture and the growth of mold and to promptly respond to any notices as provided in subdivision A 8 of § 55-225.4;

B. The landlord shall perform the duties imposed by subsection A in accordance with law; however, the landlord shall only be liable for the tenant's actual damages proximately caused by the landlord's failure to exercise ordinary care.

BC. If the duty imposed by subdivision A 1 is greater than any duty imposed by any other subdivision of that subsection, the landlord's duty shall be determined by reference to subdivision A 1.

CD. The landlord and tenant may agree in writing that the tenant perform the landlord's duties specified in subdivisions A 2, 3 and 4 and also specified repairs, maintenance tasks, alterations and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

§ 55-225.4. Tenant to maintain dwelling unit.

A. In addition to the provisions of the rental agreement, the tenant shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

2. Keep that part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;

3. Remove from his dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner;

4. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

5. Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances;

6. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person to do so whether known by the tenant or not;

7. Not remove or tamper with a properly functioning smoke detector, including removing any working batteries, so as to render the smoke detector inoperative;

8. Use reasonable efforts to maintain the dwelling unit and any other part of the premises that he

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occupies in such a condition as to prevent accumulation of moisture and the growth of mold and to promptly notify the landlord of any moisture accumulation that occurs or of any visible evidence of mold discovered by the tenant;

89. Be responsible for his conduct and the conduct of other persons on the premises with his consent whether known by the tenant or not, to ensure that his neighbors' peaceful enjoyment of the premises will not be disturbed; and

910. Abide by all reasonable rules and regulations imposed by the landlord.

B. If the duty imposed by subdivision A 1 is greater than any duty imposed by any other subdivision of that subsection, the tenant's duty shall be determined by reference to subdivision A 1.

§ 55-225.6. *Inspection of dwelling unit.*

The landlord may, within five days after occupancy of a dwelling unit, submit a written report to the tenant, for his safekeeping, itemizing damages to the dwelling unit existing at the time of occupancy, which record shall be deemed correct unless the tenant objects thereto in writing within five days after receipt thereof. The landlord may adopt a written policy allowing the tenant to prepare the written report of the move-in inspection, in which case the tenant shall submit a copy to the landlord, which record shall be deemed correct unless the landlord objects thereto in writing within five days after receipt thereof. Such written policy adopted by the landlord may also provide for the landlord and the tenant to prepare the written report of the move-in inspection jointly, in which case both the landlord and the tenant shall sign the written report and receive a copy thereof, at which time the inspection record shall be deemed correct.

§ 55-225.7. *Disclosure of mold in dwelling units.*

As part of the written report of the move-in inspection pursuant to § 55-225.6, the landlord shall disclose whether there is any visible evidence of mold in areas readily accessible within the interior of the dwelling unit. If the landlord's written disclosure states that there is no visible evidence of mold in the dwelling unit, this written statement shall be deemed correct unless the tenant objects thereto in writing within five days after receiving the report. If the landlord's written disclosure states that there is visible evidence of mold in the dwelling unit, the tenant shall have the option to terminate the tenancy and not take possession or remain in possession of the dwelling unit. If the tenant requests to take possession, or remain in possession of the dwelling unit, notwithstanding the presence of visible evidence of mold, the landlord shall promptly remediate the mold condition but in no event later than five business days thereafter and re-inspect the dwelling unit to confirm there is no visible evidence of mold in the dwelling unit and reflect on a new report that there is no visible evidence of mold in the dwelling unit upon re-inspection.

§ 55-225.8. *Definitions for residential dwelling units subject to this chapter.*

As used in this chapter, the following definitions apply:

"Authorized occupant" means a person entitled to occupy a dwelling unit with the consent of the landlord, but who has not signed the rental agreement and therefore does not have the rights and obligations as a tenant under the rental agreement.

"Dwelling unit" means a structure or part of a structure that is used as a home or residence by one or more persons who maintain a household, whether single family or multifamily, including, but not limited to, a manufactured home.

"Guest or invitee" means a person, other than the tenant or person authorized by the landlord to occupy the dwelling unit, who has the permission of the tenant to visit but not to occupy the premises.

"Interior of the dwelling unit" means the inside of the dwelling unit, consisting of interior walls, floor, and ceiling, that enclose the dwelling unit as conditioned space from the outside air.

"Landlord" means the owner or lessor of the dwelling unit or the building of which such dwelling unit is a part. "Landlord" also includes a managing agent of the premises who fails to disclose the name of such owner, lessor, or sublessor. Such managing agent shall be subject to the provisions of § 16.1-88.03.

"Managing agent" means a person authorized by the landlord to act on behalf of the landlord under an agreement.

"Mold remediation in accordance with professional standards" means mold remediation of that portion of the dwelling unit or premises affected by mold, or any personal property of the tenant affected by mold, performed consistent with guidance documents published by the United States Environmental Protection Agency, the U.S. Department of Housing and Urban Development, the American Conference of Governmental Industrial Hygienists (the Bioaerosols Manual), Standard Reference Guides of the Institute of Inspection, Cleaning and Restoration for Water Damage Restoration and Professional Mold Remediation, or any protocol for mold remediation prepared by an industrial hygienist consistent with said guidance documents.

"Notice" means notice given in writing by either regular mail or hand delivery, with the sender retaining sufficient proof of having given such notice, which may be either a United States postal certificate of mailing or a certificate of service confirming such mailing prepared by the sender.

However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, he has received a verbal notice of it, or from all of the facts and circumstances known to him at the time in question, he has reason to know it exists. A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform another person whether or not the other person actually comes to know of it. If a notice given is not in writing, the person giving the notice has the burden of proof to show that the notice was given to the recipient of the notice.

"Readily accessible" means areas within the interior of the dwelling unit available for observation at the time of the move-in inspection that do not require removal of materials, personal property, equipment, or similar items.

"Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others. Tenant shall not include (i) an authorized occupant, (ii) a guest or invitee, or (iii) any person who guarantees or cosigns the payment of the financial obligations of a rental agreement but has no right to occupy a dwelling unit.

"Visible evidence of mold" means 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 inspection.

For any term not expressly defined herein, terms shall have the same meaning as those defined in § 55-248.4.

§ 55-225.9. Relocation of tenant where mold remediation needs to be performed in the dwelling unit.

Where a mold condition in a dwelling unit materially affects the health or safety of any tenant or authorized occupant, the landlord may require the tenant to temporarily vacate the dwelling unit in order for the landlord to perform mold remediation in accordance with professional standards as defined in § 55-225.8 for a period not to exceed 30 days. The landlord shall provide the tenant with either (a) a comparable dwelling unit, as selected by the landlord, at no expense or cost to the tenant, or (b) a hotel room, as selected by the landlord, at no expense or cost to the tenant. The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation. The landlord shall pay all costs of the mold remediation, unless the tenant is at fault for the mold condition.

§ 55-248.4. Definitions.

When used in this chapter, unless expressly stated otherwise:

"Action" means recoupment, counterclaim, set off, or other civil suit and any other proceeding in which rights are determined, including without limitation actions for possession, rent, unlawful detainer, unlawful entry, and distress for rent.

"Application fee" means any deposit of money, however denominated, including all money intended to be used as a security deposit under a rental agreement, or property, which is paid by a tenant to a landlord, lessor, or agent of a landlord for the purpose of being considered as a tenant for a dwelling unit.

"Assignment" means the transfer by any tenant of all interests created by a rental agreement.

"Authorized occupant" means a person entitled to occupy a dwelling unit with the consent of the landlord, but who has not signed the rental agreement and therefore does not have the rights and obligations as a tenant under the rental agreement.

"Building or housing code" means any law, ordinance or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use or appearance of any structure or that part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

"Dwelling unit" means a structure or part of a structure that is used as a home or residence by one or more persons who maintain a household, including, but not limited to, a manufactured home.

"Facility" means something that is built, constructed, installed or established to perform some particular function.

"Good faith" means honesty in fact in the conduct of the transaction concerned.

"Guest or invitee" means a person, other than the tenant or person authorized by the landlord to occupy the premises, who has the permission of the tenant to visit but not to occupy the premises.

"Interior of the dwelling unit" means the inside of the dwelling unit, consisting of interior walls, floor, and ceiling, that enclose the dwelling unit as conditioned space from the outside air.

"Landlord" means the owner, lessor or sublessor of the dwelling unit or the building of which such dwelling unit is a part. "Landlord" also includes a managing agent of the premises who fails to disclose the name of such owner, lessor or sublessor. Such managing agent shall be subject to the provisions of § 16.1-88.03.

"Managing agent" means a person authorized by the landlord to act on behalf of the landlord under an agreement.

"Mold remediation in accordance with professional standards" means mold remediation of that

182 *portion of the dwelling unit or premises affected by mold, or any personal property of the tenant*
183 *affected by mold, performed consistent with guidance documents published by the United States*
184 *Environmental Protection Agency, the U.S. Department of Housing and Urban Development, the*
185 *American Conference of Governmental Hygienists (the Bioaerosols Manual), Standard Reference Guides*
186 *of the Institute of Inspection, Cleaning and Restoration for Water Damage Restoration and Professional*
187 *Mold Remediation, or any protocol for mold remediation prepared by an industrial hygienist consistent*
188 *with said guidance documents.*

189 "Natural person," wherever the chapter refers to an owner as a "natural person," includes co-owners
190 who are natural persons, either as tenants in common, joint tenants, tenants in partnership, tenants by the
191 entirety, trustees or beneficiaries of a trust, general partnerships, limited liability partnerships, registered
192 limited liability partnerships or limited liability companies, or any lawful combination of natural persons
193 permitted by law.

194 "Notice" means notice given in writing by either regular mail or hand delivery, with the sender
195 retaining sufficient proof of having given such notice, which may be either a United States postal
196 certificate of mailing or a certificate of service confirming such mailing prepared by the sender.
197 However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, he has
198 received a verbal notice of it, or from all of the facts and circumstances known to him at the time in
199 question, he has reason to know it exists. A person "notifies" or "gives" a notice or notification to
200 another by taking steps reasonably calculated to inform another person whether or not the other person
201 actually comes to know of it. If a notice given is not in writing, the person giving the notice has the
202 burden of proof to show that the notice was given to the recipient of the notice.

203 "Organization" means a corporation, government, governmental subdivision or agency, business trust,
204 estate, trust, partnership or association, two or more persons having a joint or common interest, or any
205 combination thereof, and any other legal or commercial entity.

206 "Owner" means one or more persons, jointly or severally, in whom is vested:

- 207 1. All or part of the legal title to the property, or
- 208 2. All or part of the beneficial ownership and a right to present use and enjoyment of the premises,
209 and the term includes a mortgagee in possession.

210 "Person" means any individual, group of individuals, corporation, partnership, business trust,
211 association or other legal entity, or any combination thereof.

212 "Premises" means a dwelling unit and the structure of which it is a part and facilities and
213 appurtenances therein and grounds, areas and facilities held out for the use of tenants generally or whose
214 use is promised to the tenant.

215 "Processing fee for payment of rent with bad check" means the processing fee specified in the rental
216 agreement, not to exceed \$50, assessed by a landlord against a tenant for payment of rent with a check
217 drawn by the tenant on which payment has been refused by the payor bank because the drawer had no
218 account or insufficient funds.

219 "Readily accessible" means areas within the interior of the dwelling unit available for observation at
220 the time of the move-in inspection that do not require removal of materials, personal property,
221 equipment or similar items.

222 "Rent" means all money, other than a security deposit, owed or paid to the landlord under the rental
223 agreement, including prepaid rent paid more than one month in advance of the rent due date.

224 "Rental agreement" or "lease agreement" means all agreements, written or oral, and valid rules and
225 regulations adopted under § 55-248.17 embodying the terms and conditions concerning the use and
226 occupancy of a dwelling unit and premises.

227 "Rental application" means the written application or similar document used by a landlord to
228 determine if a prospective tenant is qualified to become a tenant of a dwelling unit. A landlord may
229 charge an application fee as provided in this chapter and may request a prospective tenant to provide
230 information that will enable the landlord to make such determination. The landlord may photocopy each
231 applicant's driver's license or other similar photo identification, containing either the applicant's social
232 security number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342.
233 The landlord may require that each applicant provide a social security number issued by the U.S. Social
234 Security Administration or an individual taxpayer identification number issued by the U.S. Internal
235 Revenue Service, for the purpose of determining whether each applicant is eligible to become a tenant in
236 the landlord's dwelling unit.

237 "Roomer" means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility,
238 in a structure where one or more major facilities are used in common by occupants of the dwelling unit
239 and other dwelling units. Major facility in the case of a bathroom means toilet, and either a bath or
240 shower, and in the case of a kitchen means refrigerator, stove or sink.

241 "Security deposit" means any refundable deposit of money that is furnished by a tenant to a landlord
242 to secure the performance of the terms and conditions of a rental agreement, as a security for damages
243 to the leased premises, or as a pet deposit. However, such money shall be deemed an application fee

until the effective date of the rental agreement. Security deposit shall not include a commercial insurance policy purchased by a landlord on behalf of a tenant to secure the performance by the tenant of the terms and conditions of a rental agreement, generally known as damage insurance. Further, security deposit shall not include a commercial insurance policy purchased by a landlord to provide property and casualty insurance coverage for a tenant, generally known as renter's insurance.

"Single-family residence" means a structure, other than a multi-family residential structure, maintained and used as a single dwelling unit or any dwelling unit which has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment nor any other essential facility or service with any other dwelling unit.

"Sublease" means the transfer by any tenant of any but not all interests created by a rental agreement.

"Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others and shall include roomer. Tenant shall not include (i) an authorized occupant, (ii) a guest or invitee, or (iii) any person who guarantees or cosigns the payment of the financial obligations of a rental agreement but has no right to occupy a dwelling unit.

"Utility" means electricity, natural gas, water and sewer provided by a public service corporation or such other person providing utility services as permitted under § 56-1.2. If the rental agreement so provides, a landlord may use submetering equipment or energy allocation equipment as defined in § 56-245.2, or a ratio utility billing system as defined in § 55-226.2.

§ 55-248.6. Notice.

A. A person shall be deemed to have notice of a fact if he has actual knowledge of it; he has received a notice or notification of it; or, from all the facts and circumstances known to him at the time in question he has reason to know that it exists. *"Notice" means notice given in writing by either regular mail or hand delivery, with the sender retaining sufficient proof of having given such notice, which may be either a United States postal certificate of mailing or a certificate of service confirming such mailing prepared by the sender. However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, he has received a verbal notice of it, or from all the facts and circumstances known to him at the time in question, he has reason to know it exists. A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform another person whether or not the other person actually comes to know of it. If a notice is given is not in writing, the person giving the notice has the burden of proof to show that the notice was given to the recipient of the notice.*

B. A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform another person whether or not the other person actually comes to know of it. A person "receives" a notice or notification when it:

1. Comes to his attention;
2. Is served upon the recipient by regular mail, postage prepaid, and there is sufficient proof of mailing which may be either a United States postal certificate of mailing or a certificate of service confirming such mailing prepared by the sender; or

3. Is served upon the recipient by hand delivery in accordance with Chapter 8 (§ 8.01-285 et seq.) of Title 8.01, which provides for personal or substituted service, with the exception that the sender, whether landlord, tenant or sender's agent, may serve notices hereunder, when the sender retains a certificate of mailing prepared by him.

C. In the case of the landlord, notice is served on the landlord at his place of business where the rental agreement was made, or at any place held out by the landlord as the place for receipt of the communication.

DC. In the case of the tenant, notice is served at the tenant's last known place of residence, which may be the dwelling unit.

ED. Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the person conducting that transaction, or from the time it would have been brought to his attention if the organization had exercised reasonable diligence.

EE. No notice of termination of tenancy served upon a tenant by a public housing authority organized under the Housing Authorities Law (§ 36-1 et seq.) of Title 36 shall be effective unless it contains on its first page, in type no smaller or less legible than that otherwise used in the body of the notice, the name, address and telephone number of the legal services program, if any, serving the jurisdiction wherein the premises are located.

§ 55-248.11:2. Disclosure of mold in dwelling units.

As part of the written report of the move-in inspection required by § 55-248.11:1, the landlord shall disclose whether there is any visible evidence of mold in *areas readily accessible within the interior of* the dwelling unit. If the landlord's written disclosure states that there is no visible evidence of mold in the dwelling unit, this written statement shall be deemed correct unless the tenant objects thereto in

305 writing within five days after receiving the report. If the landlord's written disclosure states that there is
306 visible evidence of mold in the dwelling unit, the tenant shall have the option to terminate the tenancy
307 or to accept the dwelling unit in an "as is" condition. For purposes of this chapter, "visible evidence of
308 mold" means the existence of mold in the dwelling unit that is visible to the naked eye of the landlord
309 or tenant at the time of the move-in inspection and not take possession or remain in possession of the
310 dwelling unit. If the tenant requests to take possession, or remain in possession, of the dwelling unit,
311 notwithstanding the presence of visible evidence of mold, the landlord shall promptly remediate the mold
312 condition but in no event later than five business days thereafter and re-inspect the dwelling unit to
313 confirm there is no visible evidence of mold in the dwelling unit and reflect on a new report that there
314 is no visible evidence of mold in the dwelling unit upon re-inspection.

315 55-248.13 Landlord to maintain fit premises.

316 A. The landlord shall:

317 1. Comply with the requirements of applicable building and housing codes materially affecting health
318 and safety;

319 2. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable
320 condition;

321 3. Keep all common areas shared by two or more dwelling units of the premises in a clean and
322 structurally safe condition;

323 4. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating,
324 ventilating, air-conditioning and other facilities and appliances, including elevators, supplied or required
325 to be supplied by him;

326 5. Maintain the premises in such a condition as to prevent the accumulation of moisture and the
327 growth of mold, and to promptly respond to any written notices from a tenant as provided in
328 subdivision A 8 of § 55-248.16;

329 6. Provide and maintain appropriate receptacles and conveniences, in common areas, for the
330 collection, storage, and removal of ashes, garbage, rubbish and other waste incidental to the occupancy
331 of two or more dwelling units and arrange for the removal of same; and

332 7. Supply running water and reasonable amounts of hot water at all times and reasonable air
333 conditioning if provided and heat in season except where the dwelling unit is so constructed that heat,
334 air conditioning or hot water is generated by an installation within the exclusive control of the tenant or
335 supplied by a direct public utility connection.

336 B. The landlord shall perform the duties imposed by subsection A in accordance with law; however,
337 the landlord shall only be liable for the tenant's actual damages proximately caused by the landlord's
338 failure to exercise ordinary care.

339 C. If the duty imposed by subdivision 1 of subsection A is greater than any duty imposed by any
340 other subdivision of that subsection, the landlord's duty shall be determined by reference to subdivision
341 1 of subsection A.

342 D. The landlord and tenant may agree in writing that the tenant perform the landlord's duties
343 specified in subdivisions 3, 6 and 7 of subsection A and also specified repairs, maintenance tasks,
344 alterations and remodeling, but only if the transaction is entered into in good faith and not for the
345 purpose of evading the obligations of the landlord, and if the agreement does not diminish or affect the
346 obligation of the landlord to other tenants in the premises.

347 § 55-248.16. Tenant to maintain dwelling unit.

348 A. In addition to the provisions of the rental agreement, the tenant shall:

349 1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building
350 and housing codes materially affecting health and safety;

351 2. Keep that part of the premises that he occupies and uses as clean and safe as the condition of the
352 premises permit;

353 3. Remove from his dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe
354 manner and in the appropriate receptacles provided by the landlord pursuant to § 55-258.13, if such
355 disposal is on the premises;

356 4. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition
357 permits;

358 5. Use in a reasonable manner all utilities and all electrical, plumbing, sanitary, heating, ventilating,
359 air-conditioning and other facilities and appliances including elevators in the premises, and keep all
360 utility services paid for by the tenant to the utility service provider or its agent on at all times during the
361 term of the rental agreement;

362 6. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises
363 or permit any person to do so whether known by the tenant or not;

364 7. Not remove or tamper with a properly functioning smoke detector, including removing any
365 working batteries, so as to render the smoke detector inoperative;

366 8. Use reasonable efforts to maintain the dwelling unit and any other part of the premises that he

occupies in such a condition as to prevent accumulation of moisture and the growth of mold, and to promptly notify the landlord in writing of any moisture accumulation that occurs or of any visible evidence of mold discovered by the tenant.

9. Be responsible for his conduct and the conduct of other persons on the premises with his consent whether known by the tenant or not, to ensure that his neighbors' peaceful enjoyment of the premises will not be disturbed; and

10. Abide by all reasonable rules and regulations imposed by the landlord pursuant to § 55-248.17 If the duty imposed by subdivision 1 of subsection A is greater than any duty imposed by any other subdivision of that subsection, the tenant's duty shall be determined by reference to subdivision 1.

§ 55-248.18:2. *Relocation of tenant where mold remediation needs to be performed in the dwelling unit.*

Where a mold condition in the dwelling unit materially affects the health or safety of any tenant or authorized occupant, the landlord may require the tenant to temporarily vacate the dwelling unit in order for the landlord to perform mold remediation in accordance with professional standards as defined in § 55-248.4 for a period not to exceed 30 days. The landlord shall provide the tenant with either (a) a comparable dwelling unit, as selected by the landlord, at no expense or cost to the tenant, or (b) a hotel room, at no expense or cost to the tenant. The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation. The landlord shall pay all costs of the mold remediation.

§ 55-248.41 Definitions.

For the purposes of this chapter, unless expressly stated otherwise:

"Abandoned manufactured home" means a manufactured home occupying a manufactured home lot pursuant to a written agreement under which the tenant has defaulted in rent or if the landlord has the right to terminate the lease pursuant to § 55-248.33;

"Interior of the dwelling unit" means the inside of the dwelling unit, consisting of interior walls, floor, and ceiling, that enclose the dwelling unit as conditioned space from the outside air.

"Landlord" means the manufactured home park owner, lessor or sublessor, or a manager who fails to disclose the name of such owner, lessor or sublessor as provided in § 55-248.12;

"Manufactured home" means a structure, transportable in one or more sections, which in the traveling mode is 8 body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein;

"Manufactured home lot" means a parcel of land within the boundaries of a manufactured home park provided for the placement of a single manufactured home and the exclusive use of its occupants;

"Manufactured home park" means a parcel of land under single or common ownership upon which ten or more manufactured homes are located on a continual, nonrecreational basis together with any structure, equipment, road or facility intended for use incidental to the occupancy of the manufactured homes, but shall not include premises used solely for storage or display of uninhabited manufactured homes, or premises occupied solely by a landowner and members of his family;

"Mold remediation in accordance with professional standards" means mold remediation of that portion of the dwelling unit or premises affected by mold, or any personal property of the tenant affected by mold, performed consistent with guidance documents published by the United States Environmental Protection Agency, the U.S. Department of Housing and Urban Development, the American Conference of Governmental Hygienists (the Bioaerosols Manual), Standard Reference Guides of the Institute of Inspection, Cleaning and Restoration for Water Damage Restoration and Professional Mold Remediation, or any protocol for mold remediation prepared by an industrial hygienist consistent with said guidance documents.

"Notice" means notice given in writing by either regular mail or hand delivery, with the sender retaining sufficient proof of having given such notice, which may be either a United States postal certificate of mailing or a certificate of service confirming such mailing prepared by the sender. However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, he has received a verbal notice of it, or from all the facts and circumstances known to him at the time in question, he has reason to know it exists. A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform another person whether or not the other person actually comes to know of it. If a notice given is not in writing, the person giving the notice has the burden of proof to show that the notice was given to the recipient of the notice.

"Owner" means one or more persons, jointly or severally, in whom is vested (i) all or part of the legal title to the property, or (ii) all or part of the beneficial ownership and right to present use and enjoyment of the premises, and the term includes a mortgagee in possession;

"Readily accessible" means areas within the interior of the dwelling unit available for observation at

428 *the time of the move-in inspection that do not require removal of materials, personal property,*
429 *equipment or similar items.*

430 "Rent" means payments made by the tenant to the landlord for use of a manufactured home lot and
431 other facilities or services provided by the landlord;

432 "Rental agreement" means any agreement, written or oral, and valid rules and regulations adopted in
433 conformance with § 55-248.17 embodying the terms and conditions concerning the use and occupancy of
434 a manufactured home lot and premises and other facilities or services provided by the landlord; and

435 "Tenant" means a person entitled as under a rental agreement to occupy a manufactured home lot to
436 the exclusion of others.

437 "Visible evidence of mold" means the existence of mold in the dwelling unit that is visible to the
438 naked eye by the landlord or tenant in areas within the interior of the dwelling unit readily accessible
439 at the time of the move-in inspection.

440 § 55-248.41:1. *Inspection of dwelling unit.*

441 *The landlord may, within five days after occupancy of a dwelling unit, submit a written report to the*
442 *tenant, for his safekeeping, itemizing damages to the dwelling unit existing at the time of occupancy,*
443 *which record shall be deemed correct unless the tenant objects thereto in writing within five days after*
444 *receipt thereof. The landlord may adopt a written policy allowing the tenant to prepare the written*
445 *report of the move-in inspection, in which case the tenant shall submit a copy to the landlord, which*
446 *record shall be deemed correct unless the landlord objects thereto in writing within five days after*
447 *receipt thereof. Such written policy adopted by the landlord may also provide for the landlord and the*
448 *tenant to prepare the written report of the move-in inspection jointly, in which case both the landlord*
449 *and the tenant shall sign the written report and receive a copy thereof, at which time the inspection*
450 *record shall be deemed correct.*

451 § 55-248.41:2. *Disclosure of mold in dwelling units.*

452 *As part of the written report of the move-in inspection pursuant to § 55-248.41.1, the landlord shall*
453 *disclose whether there is any visible evidence of mold in the dwelling unit. If the landlord's written*
454 *disclosure states that there is no visible evidence of mold in areas readily accessible within the interior*
455 *of the dwelling unit, this written statement shall be deemed correct unless the tenant objects thereto in*
456 *writing within five days after receiving the report. If the landlord's written disclosure states that there is*
457 *visible evidence of mold in the dwelling unit, the tenant shall have the option to terminate the tenancy*
458 *and not take possession or remain in possession of the dwelling unit. If the tenant requests to take*
459 *possession, or remain in possession, of the dwelling unit, notwithstanding the presence of visible*
460 *evidence of mold, the landlord shall promptly remediate the mold condition but in no event later than*
461 *five business days thereafter and re-inspect the dwelling unit to confirm there is no visible evidence of*
462 *mold in the dwelling unit, and reflect on a new report that there is no visible evidence of mold in the*
463 *dwelling unit upon re-inspection.*

464 § 55-248.41:3. *Relocation of tenant where mold remediation needs to be performed in the dwelling*
465 *unit.*

466 *Where a mold condition in a dwelling unit materially affects the health or safety of any tenant or*
467 *authorized occupant, the landlord may require the tenant to temporarily vacate the dwelling unit in*
468 *order for the landlord to perform mold remediation in accordance with professional standards as*
469 *defined in § 55-248.41 for a period not to exceed 30 days. The landlord shall provide the tenant with*
470 *either (a) a comparable dwelling unit, as selected by the landlord, at no expense or cost to the tenant,*
471 *or (b) a hotel room, as selected by the landlord, at no expense or cost to the tenant. The tenant shall*
472 *continue to be responsible for payment of rent under the rental agreement during the period of any*
473 *temporary relocation. The landlord shall pay all costs of the mold remediation, unless the tenant is at*
474 *fault for the mold condition.*

475 § 55-248.43. *Landlord's obligations.*

476 A. The landlord shall:

477 1. Comply with applicable laws governing health, zoning, safety and other matters pertaining to
478 manufactured home parks;

479 2. Make all repairs and do whatever is necessary to put and keep the manufactured home park in a
480 fit and habitable condition, including, but not limited to, maintaining in a clean and safe condition all
481 facilities and common areas provided by him for the use of tenants of two or more manufactured home
482 lots;

483 3. Maintain in good and working order and condition all electrical, plumbing, sanitary, heating,
484 ventilating, air conditioning and other facilities and appliances supplied or required to be supplied by
485 him;

486 4. Provide and maintain appropriate receptacles as a manufactured home park facility, except when
487 door to door garbage and waste pickup is available within the manufactured home park for the
488 collection and storage of garbage and other waste incidental to the occupancy of the manufactured home
489 park, and arrange for the removal of same; and

5. Provide reasonable access to electric, water and sewage disposal connections for each manufactured home lot. In the event of a planned disruption by the landlord in electric, water or sewage disposal services, the landlord shall give written notice to tenants no less than forty-eight hours prior to the planned disruption in service.

6. *Maintain the premises in such a condition as to prevent the accumulation of moisture and the growth of mold, and to promptly respond to any notices from a tenant as provided in subdivision A 8 of § 55-248.44.*

B. *The landlord shall perform the duties imposed by subsection A in accordance with law; however, the landlord shall only be liable for the tenant's actual damages proximately caused by the landlord's failure to exercise ordinary care.*

§ 55-248.44. Tenant's obligations.

In addition to the provisions of the rental agreement, the tenant shall:

1. Comply with applicable laws affecting manufactured home owners and lessors;

2. Keep and maintain the exterior of his manufactured home and his manufactured home lot as clean and safe as conditions permit;

3. Place all garbage and other waste in the appropriate receptacles, which shall be provided by the tenant when door to door garbage and waste pickup is provided;

4. Use in a reasonable and orderly manner all facilities and appliances in the manufactured home park, and require other persons on the premises with his consent to do so;

5. Conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises;

6. Abide by all reasonable rules and regulations imposed by the landlord; and

7. In the absence of express written agreement to the contrary, occupy his manufactured home only as a dwelling unit.

8. *Use reasonable efforts to maintain the dwelling unit and any other part of the premises that he occupies in such a condition as to prevent accumulation of moisture and the growth of mold, and to promptly notify the landlord of any moisture accumulation that occurs or any visible evidence of mold discovered by the tenant.*