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## SENATE BILL NO. 232

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice  
on February 4, 2008)

(Patron Prior to Substitute—Senator McDougle)

A BILL to amend the Code of Virginia by adding a section numbered 8.01-226.12, relating to landlord immunity for mold claims if in compliance with the Virginia Residential Landlord and Tenant Act.

**Be it enacted by the General Assembly of Virginia:****1. That the Code of Virginia is amended by adding a section numbered 8.01-226.12 as follows:**

§ 8.01-226.12. Duty of landlord and managing agent with respect to visible mold.

A. As used in this section, 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 residential 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 United States 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 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, or he received a verbal notice of it. 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 residential dwelling unit that is visible to the naked eye of the landlord or tenant at the time of the move-in inspection.

Any term not expressly defined herein shall have the same meaning as those defined in § 55-248.4.

B. Neither the landlord nor the managing agent shall be liable for civil damages in any personal injury or wrongful death action brought by a tenant, authorized occupant, or guest or invitee for exposure to mold arising from the condition within the interior of a dwelling unit, or for any property damage claims arising out of the landlord-tenant relationship, if the mold condition is caused solely by the negligence of the tenant.

C. A managing agent with no maintenance responsibilities shall not be liable for civil damages in

60 any personal injury or wrongful death action brought by the tenant, authorized occupant, or guest or  
61 invitee for exposure to mold, or for any property damage claims arising out of the residential  
62 landlord-tenant relationship, unless the managing agent fails to disclose the existence of a mold  
63 condition of which the managing agent has actual knowledge to the landlord and any prospective or  
64 actual tenants.

65 D. If the written move-in inspection report authorized under Chapter 13 (§ 55-217 et seq.) or 13.2  
66 (§ 55-248.2 et seq.) of Title 55 reflects that there is no visible evidence of mold in areas readily  
67 accessible within the interior of the dwelling unit, and the tenant does not object thereto in writing  
68 within five days after receiving the report, there shall be a rebuttable presumption that no mold existed  
69 at the time of the move-in inspection.

70 E. If visible evidence of mold occurs within the dwelling unit, the landlord or managing agent with  
71 the maintenance responsibilities shall, exercising ordinary care, perform mold remediation in  
72 accordance with professional standards.

73 F. The landlord or managing agent with maintenance responsibilities shall comply with any other  
74 applicable provisions of law.