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HOUSE BILL NO. 221

Offered January 9, 2008

Prefiled December 28, 2007

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.*

Patron—Kilgore

Referred to Committee for Courts of Justice

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. Landlord and managing agent immunity for mold claims if in compliance with the provisions of the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq.).

A. As used in this section, unless the context requires a different meaning:

"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.

"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.

"Landlord" means the owner or lessor of the residential dwelling unit or the building of which such residential dwelling unit is a part.

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

"Residential 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.

"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.

B. A landlord shall not 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 of a residential dwelling unit provided that:

1. The landlord has complied with § 55-248.11:1 by disclosing to the tenant as part of the move-in inspection report that there is no visible evidence of mold in the dwelling unit, and the tenant does not object thereto in writing within five days after receiving the report;

2. The landlord has complied with subdivision A 5 of § 55-248.13 and used reasonable efforts to maintain the residential dwelling unit and the premises in such a condition as to prevent the accumulation of moisture and the growth of mold, and promptly responded to any written notices from a tenant as provided in subdivision A 8 of § 55-248.16; and

3. The tenant has complied with subdivision A 8 of § 55-248.16 and used 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 promptly notified the landlord in writing of any moisture accumulation that occurred or of any visible evidence of mold discovered by the tenant.

C. A managing agent shall not 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 of a residential dwelling unit provided that:

1. The managing agent provided written disclosure in the lease agreement or other document that the managing agent was the disclosed agent of the landlord;

2. The landlord or managing agent complied with the provisions of subsection B; and

3. The managing agent did not breach the standard of care by committing an affirmative act of negligence.

D. The provisions of this section may be applicable to dwelling units subject to the provisions of Chapter 13 (§ 55-217 et seq.) of Title 55, if the landlord or managing agent complies with the provisions of this section.

E. A landlord or managing agent claiming immunity under this section may assert such immunity in responsive pleadings and request a hearing, after discovery on issues related to immunity, before the

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59 *court to determine entitlement to such immunity prior to further proceedings in the case.*