

UF Student Legal Services Mold Legal Primer

- UF Resources
 - UF Student Legal Services (352) 392-5297
 - UF Environmental Health and Safety (352) 392-1591
 - UF IFAS (352) 392-1971

- Other Legal Resources
 - Three Rivers Legal Services (352) 372-0519
 - Santa Fe Student Legal Services (352) 395-5912

- Gainesville Code Enforcement (352) 334-5030

- Florida Department of Business and Professional Regulation (if 5 or more rental units) (850) 487-1395

- Mold Testing
 - Over the counter kits
 - Kit available at local hardware stores (average cost \$10.00)
 - If mold shows up as present after 48 hour incubation period, you can send the test in for lab analysis to determine if the mold is toxic. One lab offers this analysis for an additional \$40.
 - They use deposition plates and petri dishes to measure, but downside is that mold is naturally occurring everywhere, so likely to be present.

 - Mold Hygienist:
 - Check with Florida Department of Business and Professional Regulation to check licenses.
 - Can be certified by American Industrial Hygiene Association.
 - Can do initial assessment. Usually several hundred dollars.
 - Assessment and Remediation must be conducted by two non-related entities.

 - Mold Remediation Specialist
 - Check with Florida Department of Business and Professional Regulation to check licenses.
 - Can be very expensive.
 - Air duct cleaners are required to hold an air conditioning contractor or mechanical contractor's license through the DBPR Construction Industry Licensing Board.

- There are no national, state or local standards on mold

- Important to act quickly/take complaints seriously
 - Dangerous types of mold
 - Small percentage of population is hypersensitive to mold
 - There are individuals whose immune system is depressed

- Legal Avenues:

1. 83.51 Claim

If the tenant can find the source of the mold (a structural issue: i.e., plumbing leak or leaky roof), they can pursue an 83.51 (landlord's obligation to maintain premises) claim accordingly. If the mold is a result of some sort of faulty plumbing or leaky roof, then it is the landlord's duty to remedy. If the conditions for the mold were created by the tenant, then the landlord has no duty to remedy.

ss. 83.51 Landlord's obligation to maintain premises.

- (1) The landlord at all times during the tenancy shall:
 - (a) Comply with the requirements of applicable building, housing, and health codes; or
 - (b) Where there are no applicable building, housing, or health codes, maintain the roofs, windows, doors, floors, steps, porches, exterior walls, foundations, and all other structural components in good repair and capable of resisting normal forces and loads and the plumbing in reasonable working condition. The landlord, at commencement of the tenancy, must ensure that screens are installed in a reasonable condition. Thereafter, the landlord must repair damage to screens once annually, when necessary, until termination of the rental agreement.

The landlord is not required to maintain a mobile home or other structure owned by the tenant. The landlord's obligations under this subsection may be altered or modified in writing with respect to a single-family home or duplex.

- (2)
 - (a) Unless otherwise agreed in writing, in addition to the requirements of subsection (1), the landlord of a dwelling unit other than a single-family home or duplex shall, at all times during the tenancy, make reasonable provisions for:
 1. The extermination of rats, mice, roaches, ants, wood-destroying organisms, and bedbugs. When vacation of the premises is required for such extermination, the landlord is not liable for damages but shall abate the rent. The tenant must temporarily vacate the premises for a period of time not to exceed 4 days, on 7 days' written notice, if necessary, for extermination pursuant to this subparagraph.
 2. Locks and keys.
 3. The clean and safe condition of common areas.
 4. Garbage removal and outside receptacles therefor.
 5. Functioning facilities for heat during winter, running water, and hot water.

- Mold Addendums to Lease Agreements:

- Attempt to transfer some of the duties to tenant:
- Proper ventilation/Maintenance and Cleaning of the Interior
- Must report: evidence of water leak/moisture, evidence of mold/mildew/heating cooling malfunction/structural issues.
- Resident Responsible for damages for failure to act.

2. Contact Code Enforcement (Notice of Violation can be issued)

3. 7 day Letter to Cure

83.56 Termination of rental agreement.

(1) If the landlord materially fails to comply with s. 83.51(1) or material provisions of the rental agreement within 7 days after delivery of written notice by the tenant specifying the noncompliance and indicating the intention of the tenant to terminate the rental agreement by reason thereof, the tenant may terminate the rental agreement. If the failure to comply with s. 83.51(1) or material provisions of the rental agreement is due to causes beyond the control of the landlord and the landlord has made and continues to make every reasonable effort to correct the failure to comply, the rental agreement may be terminated or altered by the parties, as follows:

(a) If the landlord's failure to comply renders the dwelling unit untenable and the tenant vacates, the tenant shall not be liable for rent during the period the dwelling unit remains uninhabitable.

(b) If the landlord's failure to comply does not render the dwelling unit untenable and the tenant remains in occupancy, the rent for the period of noncompliance shall be reduced by an amount in proportion to the loss of rental value caused by the noncompliance.

Tenant Options:

1. If cured, then stay.
2. If not cured:
 - a. Terminate the lease
 - b. Stay/reduce rent
 - c. Do nothing/maintain the status quo
 - d. Attempt injunctive relief
3. Consider Personal Injury Lawsuit

4. Injunctive Relief

- Tenants may maintain an action in equity to enjoin maintenance by their landlord of a public nuisance on property which they occupy. F.S.A. §§ 60.05, 823.05.
- Tenants' complaint which alleged in detail factual matters which, if established by proof, would constitute serious dangers to the health of tenants and to the public generally concerning condition of apartment house stated a cause of action against landlord. F.S.A. §§ 60.05
- Statutes
- Section 823.05, Fla.Stat.[FN1], F.S.A., provides that one who maintains, owns, or leases a building which tends to annoy the community or injure the health of the community shall be deemed guilty of maintaining a nuisance. The statute further provides; '(a)ll such places or persons shall be abated or enjoined as provided in ss 60.05 and 60.06.'
- Section 60.05 provides that when any nuisance as defined in s 823.05 exists any citizen of the county may sue in the name of the state to enjoin the nuisance.
- The complaint is not precluded by the existence of an adequate remedy at law:
 - By enforcement of the punitive provisions of the county ordinance:
 - It is clear that punishment for a violation of law does not constitute a bar against an action for enjoining a public nuisance.

- The various conditions enumerated in § 823.05 are all unlawful. The apparent purpose of the section is to provide an additional and it is hoped a more expeditious remedy against the maintenance of a public nuisance.
- By suit upon the rental contract:
 - The courts may take judicial notice of the fact that such a procedure is both cumbersome and unlikely to be adequate.
 - The various conditions enumerated in § 823.05 are all unlawful. The apparent purpose of the section is to provide an additional and it is hoped a more expeditious remedy against the maintenance of a public nuisance.

5. Personal Injury Lawsuit:

Possible parties:

- Previous homeowners – failure to disclose
- Contractors and subcontractors – faulty building methods
- Manufacturers and material suppliers
- Apartment Complex or Landlord that owns the apartment you live in
- Remediation companies that didn't properly clean your property after a loss

Possible damages:

- Medical – testing and treatment, depending on the extent of your illness
 - Clean-up – ventilation systems may need to be cleaned or replaced
 - Repair – structural damage
- Mold Pamphlet (from www.cityofgainesville.org International Code Council)
 1. There must be proper ventilation of all interior habitable and occupiable areas along with specific concealed spaces.
 - Section 1203 of the *International Building Code*
 - Section R303 of the *International Residential Code for One- and Two-Family Dwellings*
 - Chapter 4 of the *International Mechanical Code*
 2. The exterior envelope of all buildings must be provided with vapor retarders, water-resistive barriers, and the necessary flashing.
 - Chapter 14 of the *International Building Code*
 - Section R703 of the *International Residential Code for One- and Two-Family Dwellings*
 3. The maintenance of existing buildings and structures is of the utmost importance. This includes not only the exterior of the structure but also its plumbing and mechanical systems
 - Sections 304, 403, and 504 of the *International Property Maintenance Code*
 - Gainesville Municipal Code
 - Housing Code
 - Sec. 13-16. Findings of fact and declaration of necessity
 - *Existence of conditions.* Premises exist within the city containing blighted dwellings or other structures intended for human habitation,

and such dwellings or other structures are blighted because of faulty design or construction or failure to keep them in a proper state of repair or lack of proper sanitary facilities or lack of adequate heat, light or ventilation, or improper management or any combination of these factors as a result of which such buildings or structures have become deteriorated, dilapidated, neglected, overcrowded with occupants or unsanitary as to be unfit for human habitation, thereby imperiling the health, safety or welfare of the occupants thereof or the inhabitants of the surrounding area.

- *Necessity to protect public health, safety and welfare.* The enactment of this chapter is necessary to protect the public health, safety and welfare of the people of the city by establishing minimum standards governing the facilities, utilities, occupancy, repair and maintenance of buildings and grounds used for human habitation. This chapter is declared to be remedial and essential to the public interest and welfare, and to this extent it is intended that this housing code be liberally construed to effectuate the purposes stated herein.
 - Sec. 13-19. Definitions
Major, multiple-minors, minor violations.
 - *Major violation* shall mean a defect existing on a premises that is immediately dangerous to the health or safety of the occupants or passersby, or persons in contiguous areas.
 - Sec. 13-20. Occupancy of dwellings, rooming units, etc., containing major violations.
 - Sec 13-20 :(a) No owner shall let for occupancy by any person other than the owner of any premises, any dwelling, dwelling unit or rooming unit which contains major violations as defined in this division. For additional procedures, see section 13-41(c).
 - Sec. 13-181- Hazardous Conditions Generally
 - It shall be unlawful for the owner or occupant to create, maintain, keep or allow the existence of any hazardous condition, equipment, facility, fixture, premises or building. Failure to comply with this section shall be a major violation.
- Dangerous Building and Hazardous Land Code
 - Sec. 16-16 – Declaration of Intent and Purpose
 - ...It is the intent of this article to provide for protection from dangerous conditions created or maintained on privately-owned properties within the city to the public generally and to the occupants of such lands...
 - Sec. 16-17 – Definitions
 - *Dangerous buildings* shall mean all buildings or structures which have any or all of the following defects:
 - (4) Those which have become so...unsafe [or] unsanitary... that they are unfit for human habitation, or are likely to cause sickness or disease, so as to work injury to the health, safety or general welfare of those living therein;

- Sec. 16-19 - Creating, keeping, maintaining, allowing the existence of dangerous buildings or hazardous lands unlawful
 - It shall be unlawful for any owner of real property within the city to create, keep, maintain, or allow the existence of any dangerous building or hazardous land, as defined in this article, in or on such real property.
- Hazardous Material Incident Cost Recovery
 - Sec. 11.5-29 – Intent and Purpose
 - This article is intended to provide for recovery by the city of costs incurred in the response and recovery efforts related to hazardous material incidents. This article is also intended to provide for recovery of costs incurred by entities other than the city, which are requested by the city to assist during a hazardous material incident. In addition, it is intended to provide for cost recovery for damages to government-owned properties.
 - Sec. 11.5-30 – Rules of Construction
 - The provisions of this article shall be liberally construed so as to effectively carry out its purpose in the interest of the public health, safety and welfare of the citizens and residents of the city.
 - Sec. 11.5-31 – Definitions
 - *Hazardous material* shall mean any substance or material in any form or quantity that poses an unreasonable risk to safety, health, or property.