Federal & Illinois Policies Regarding Indoor Environmental Hazards

This document outlines federal and Illinois laws and programs that address indoor environmental hazards. The first section summarizes laws and programs that specifically govern indoor environmental hazards, categorized by hazard. These hazards include mold, lead, air quality, pesticides, carbon monoxide, and radon. There are varying degrees of regulation for each hazard. There are no federal or Illinois regulations regarding mold, but extensive educational information is provided. Conversely, there are several federal and Illinois regulations that protect children who are exposed to lead-based paint in their homes. There are both federal and Illinois regulations that set limits on certain air pollutants. Similarly, there is an Illinois regulation that restricts and prohibits the use of certain pesticides. Furthermore, federal regulations set air quality standards for carbon monoxide, and Illinois requires that most dwelling units have carbon monoxide alarms. Finally, there are federal grants available for radon risk reduction programs, and Illinois provides licensing requirements.

The second section summarizes laws and programs that, while not expressly regulating a specific health risk, could be applied to govern indoor environmental hazards. This section includes an overview of federal regulations, including the Fair Housing Act, which outlaws discrimination in the rental or purchase of a home; the Rehabilitation Act, which protects the rights of people with disabilities; and the Americans with Disabilities Act, which extends protections in the Fair Housing Act to cover disabled people. It also includes an overview of Illinois regulations, including the Residential Real Property Disclosure Act, which requires sellers to disclose certain conditions to potential buyers; and the Residential Tenants’ Right to Repair Act, which requires the landlord to make repairs under certain circumstances. Through creative lawyering, these regulations can be used to govern indoor environmental hazards.

1. Existing Laws & Policies that Govern Indoor Environmental Health Hazards

A. Mold

There are no federal regulations regarding mold, but the United States Environmental Protection Agency (EPA) does provide extensive education information on mold safety and remediation. Illinois does not have specific guidelines regarding the regulation of mold or mold remediation measures, but the state provides educational information.

* This document was created for the Healthy Homes Healthy Communities Initiative by law, medical and public health students enrolled in the Health Justice Project at Loyola University Chicago School of Law during spring 2014, including Emily Coffey, Ali Gross, Carlos Minaya, and Paige Steffen, under the supervision of Professor Emily Benfer, Professor Dhrubajyoti Bhattacharya, and Allyson Gold. The students built upon research completed during summer and fall 2013 by Loyola University Chicago School of Law student, Amanda Crews Slezak. Ms. Slezak received a stipend from Loyola University Chicago's Strategic Planning Initiative to undertake the work. Ms. Slezak's work product is available through Professor Anita Weinberg, Director of the ChildLaw Policy Institute, Loyola University Chicago School of Law.
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Federal Mold Guidance

Environmental Protection Agency, Mold and Moisture
This source provides educational information regarding the following: mold basics, mold clean up, clean up guidelines, testing and sampling for mold, mold image library, prevention and control tips, what to wear when cleaning mold, and floor clean up. The EPA also provides an online Mold course that is primarily designed for environmental and public health officials. The course is used for informational purposes only and no certificate is awarded. The materials and the course focus on how individuals can cure their mold problem. There are few references to outside assistance or legal remedies. More information is available at http://www.epa.gov/mold/index.html.

Environmental Protection Agency, Mold Remediation in Schools and Commercial Buildings
This source includes check-lists and resources for mold remediation that are intended for use by building managers, custodians, and others who are responsible for commercial buildings and school maintenance. Although the source focuses on schools and commercial buildings, the source is applicable to other building types. More information is available at http://www.epa.gov/mold/pdfs/moldremediation.pdf.

Environmental Protection Agency, A Brief Guide to Mold, Moisture, and Your Home
This source provides education information about mold and how to clean it up. More information is available at http://www.epa.gov/mold/pdfs/moldguide.pdf.

Environmental Protection Agency, Mold Cleanup Guidelines
This source provides suggestions on how to clean up mold. For example, it explains how to fix water leaks, what to wear when cleaning up mold, and when to consult a mold remediation specialist. More information is available at http://www.epa.gov/mold/moldguide.html#cleanupguidelines.

State Mold Laws

Illinois House Joint Resolution 12
This resolution created a Joint Task Force on Mold in Indoor Environments, and requires the task force to make recommendations to the legislature regarding mold in indoor environments. In 2005, the Task Force issued its report, which discussed regulating mold remediation and testing providers. The committee represents the following stakeholders: local health authorities, medical experts, Illinois Association of School Boards, Illinois Association of Realtors, insurance industry, abatement contractors and consultants, industrial hygienists, certified safety, health, and environmental professionals, environmental health practitioners, employers, employees, tenants organizations, building owner organizations, home builders association, building owner organizations, Chemical Industry Council of Illinois, and the American Institute of Architects. More information is available at http://www.ilga.gov/legislation/fulltext.asp?DocName=09300HJ0012enr&GA=93&SessionId=3&DocTypeId=HJR&LegID=1701&DocNum=12&GAILD=3&Session=.
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Mold Remediation Registration Act
This Act requires the Illinois Department of Public Health to annually report to the General Assembly any federal research and regulations related to mold cleanup and to standards for mold remediation training. It also requires that parties providing mold remediation services in Illinois should be required to register with the state and provide proof of financial responsibility. Furthermore, it requires laboratories that perform tests to confirm mold contamination in buildings to be certified by the American Industrial Hygiene Association using nationally recognized accreditation standards. This act does not apply to home builders or remodelers performing work on any residential structure consisting of 4 or fewer residential units. More information is available at http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2931&ChapterID=35.

B. Lead

There are several federal lead regulations. These federal lead regulations provide guidelines for lead-based paint hazard evaluation and removal activities. Most of these policies provide greater protections for young children who are exposed to lead-based paint in their homes. Furthermore, providing notice to prospective and current tenants about lead-based hazards is central to these regulations. At the state level, the Illinois enacted several laws, including the Lead Poisoning Prevention Act, to reduce and prevent the occurrence of lead poisoning in children in Illinois through lead blood level tests, inspections, and window replacements.

Federal Lead Laws

Residential Lead-Based Paint Hazard Reduction Act
The purpose of this law is to build infrastructure necessary to eliminate lead-based paint hazards in all housing as expeditiously as possible, create program to evaluate and reduce LBP hazards the national housing stock, prevent childhood lead poisoning by establishing workable framework for LBP hazard evaluation and reduction, mobilize national resources through partnership among all levels of government, and to educate the public. The Act provides guidelines for lead-based paint hazard evaluation and reduction activities, and it requires disclosure of information concerning lead upon transfer of residential property. For example, before the purchaser or lessee is obligated under any contract to purchase or lease the housing, the seller or lessor shall provide the purchaser with a lead hazard information pamphlet, disclose all information regarding the presence of any known lead-based hazard, and permit the purchaser to conduct an inspection. Furthermore, every contract for the purchase or sale of any dwelling identified as target housing shall contain a Lead Warning Statement. There are also penalties for violation of the Act, including punitive fines and damages. More information is available at http://www.law.cornell.edu/uscode/text/42/4851.

Toxic Substances Control Act: Lead Exposure Reduction
In general, this Act directs the EPA to prevent and control risk of injury to health or environment by controlling toxic substances. This Act has a subchapter that addresses lead exposure reduction. The Lead Exposure Reduction subchapter aims to accelerate federal efforts to reduce risks to young children who are exposed to lead-based paint daily in their homes,
stimulate development of lead inspection and hazard abatement services in the private sector, and ensure that the services provided and any products employed are reliable and effective in reducing risk. The subchapter also directs the EPA to promulgate definitions of lead-contaminated dust, lead-contaminated soil, and lead-based paint hazards; ensure that people engaged in detection and control of lead hazards are properly trained and that contractors are certified; establish protocols, criteria, and minimum performance standards for laboratory analysis of lead in paint films, soil, and dust; and publish and distribute to the public a list of certified or accredited environmental sampling laboratories. More information is available at http://www.law.cornell.edu/uscode/text/15/chapter-53/subchapter-IV.

Clean Air Act
In general, this Act Requires the EPA to develop and enforce regulations to protect the public from airborne contaminants hazardous to human health. The Act specifically addresses lead as a component of gasoline and through metal processing, not through lead paint. The EPA is primarily concerned with high concentrations of lead in soil and sediments. There is a Lead Monitoring Network that moderates high lead areas. There are several guidelines outlining steps states must take in regulating lead exposure. More information is available at http://www.epa.gov/air/caa/text.html.

State Lead Laws

Illinois Lead Poisoning Prevention Act of 2006
The purpose of the Act is to reduce and prevent the occurrence of lead poisoning in children in Illinois. The Act prohibits the use or application of a lead bearing substance in any dwelling, prohibits the sale of items containing lead bearing substances, requires screening or risk assessment of all children six years of age and under, established criteria for elevated blood levels, and enacted a procedure for reporting lead poisoning and for follow-ups. The Act targets properties and owners most likely to have lead hazards. The Act also requires the Department of Public Health to inspect the dwelling of the child with a positive blood test of specified levels. There are also expedited mitigation processes when the dwelling’s occupants are pregnant or under six years of age. Furthermore, owners must give notice to potential lessees of lead hazards and post notice of lead in common areas of the building. There are penalties for violation of the Act. More information is available at http://www.leadsafeillinois.org/uploads/documents/benchbook-3-illinois-laws-with-summary.pdf.

Lead Poisoning Prevention Code
This law implements the Lead Poisoning Prevention Act, described above. More information is available at http://www.ilga.gov/commission/jcar/admincode/077/07700845sections.html.

Comprehensive Lead Education, Reduction, and Window Replacement Program Act
The purpose of this Act is to address the problem of lead poisoning of children by eliminating lead hazards in homes, providing training to encourage use of safe practices, and assisting in the maintenance of affordable lead-safe housing stock. The Act required the Illinois Department of Public Health to establish and operate the CLEAR-WIN Program in two pilot area
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communities based upon the prevalence of low-income families whose children are lead poisoned, the age of the housing stock, and other sources of funding available to the communities to address lead-based paint hazards. The CLEAR-WIN Program helps replace old windows with energy efficient windows. Old windows and window frames are a large source of lead paint poisoning. Opening and closing windows creates lead dust that is not safe. The two pilot communities chosen for the program were Peoria and Englewood. More information is available at http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2936&ChapterID=35.

C. Air Quality

The EPA sets limits on certain air pollutants, including (1) ozone; (2) particulate matter; (3) sulfur dioxide; (4) nitrogen dioxide; (5) carbon monoxide; and (6) lead. Illinois specifically addresses indoor air quality in the Indoor Air Quality Act, which requires the Illinois Board of Public Health to develop criteria and guidelines for acceptable indoor air quality. Illinois also addresses smoking and hazardous substances.

Federal Air Quality Laws

Clean Air Act

In general, this Act requires the EPA to develop and enforce regulations to protect the public from airborne contaminants that are hazardous to human health. Additionally, every state must develop its own regulations in order to be in compliance with the act. Some states have stronger regulations than the federal law. The EPA sets limits on certain air pollutants, including the maximum in any one place in the US. There are 6 specified contaminants: (1) ozone; (2) particulate matter; (3) sulfur dioxide; (4) nitrogen dioxide; (5) carbon monoxide; and (6) lead. More information is available at http://www.epa.gov/air/caa/text.html.

State Air Quality Laws

Indoor Air Quality Act

The Act requires the Illinois Board of Public Health to develop criteria for acceptable indoor air quality, which includes developing statewide indoor air quality guidelines. These guidelines include ventilation standards, source control, and occupancy control guidelines. More information is available at http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1535&ChapterID=35.

Smoke-free Illinois Act

This Act prohibits smoking indoors and within 15 feet of an entrance to any public facility, including hotels, college dormitories, and privately owned businesses. The Act specifically exempts private dwelling residences unless the dwelling is used as a childcare, adult day care, or healthcare facility, or any other home-based business open to the public. More information can is available at http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2893&ChapterID=35.
Environmental Toxicology Act

This Act requires the Illinois Department of Public Health (IDPH) to establish a program to investigate threats or potential threats to the public health related to exposure of hazardous substances and to assess and study the human health effects associated with the exposure. IDPH must also respond to all requests by citizens and investigate complaints dealing with public health concerns that may be related to environmental hazards and refer to appropriate agencies for remedial action. The IDPH must determine when a Comprehensive Health Study is necessary, and IDPH is required to work with the Illinois Environmental Protect Agency to assess the relationship between the health problems and exposure to hazardous substances. More information is available at http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1599&ChapterID=36.

D. Pesticides

State Pesticide Law

Structural Pest Control Act

This Act prohibits the use of certain pesticides, or restricts them to use only by those certified in accordance with the act. The Act also provides for integrated pest management, which identifies pests, establishes ongoing monitoring and recordkeeping systems for regular sampling and assessment of the pests, and determines pest population levels and whether remedial action is required. The Illinois Department of Public Health provides licenses and controls all aspects of the licensing process and it also conducts inspections to determine compliance with the Act. The Act also creates a public education program regarding pesticide misuse, including, at a minimum, the dissemination of information on the requirements of the Act and the Illinois Pesticide Act and the methods of reporting cases of improper pesticide application and use. There are penalties for violation of this Act. More information is available at http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1339&ChapterID=24.

Lawn Care Products Application and Notice Act

This Act requires school districts to notify parents and guardians at least four days prior to pesticide application on school grounds. Daycares are also required to notify parents and guardians of pesticide use. The Act makes the Illinois Department of Public Health responsible for informing school boards and day care centers of their obligations and issuing fines for violations. More information is available at http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1597&ChapterID=36.

E. Carbon Monoxide

The EPA sets and enforces air quality standards for carbon monoxide. Illinois requires every dwelling unit to have a carbon monoxide alarm, although there are some exemptions.
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Federal Carbon Monoxide Law

Clean Air Act
In general, the Act Requires the EPA to develop and enforce regulations to protect the public from airborne contaminants hazardous to human health. The Act specifically addresses carbon monoxide. The Act requires the EPA to set national air quality standards for carbon monoxide. The Act also requires the EPA to periodically review the standards to ensure that they provide adequate health and environmental protection. More information is available at http://www.epa.gov/air/caa/text.html.

State Carbon Monoxide Law

Carbon Monoxide Detector Alarm Act
The Act requires every dwelling unit to have a carbon monoxide alarm within 15 feet of every bedroom. The dwelling’s owner must provide an alarm, and the tenant is responsible for upkeep of the alarm (e.g. batteries). The owner must give a tenant written information about the alarm, and the tenant must notify the landlord if the detector is beyond repair. There are exceptions to the Act. For example, units that do not rely on combustion of fossil fuels for heat, ventilation, or hot water and are not connected to a garage are is not close enough to any ventilated source of carbon monoxide, as determined by the local building commissioner. There are penalties for violation of this Act. More information is available at http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2786&ChapterID=39.

F. Radon

The EPA’s Federal Radon Action Plan demonstrates the importance of radon risk reduction. The EPA also provides grant funds to states to help finance radon risk reduction programs. Illinois requires licensure of persons selling radon detecting devices, performing radon detection, or performing radon reduction services. Illinois also has requirements for providing information about radon during residential real property sales and it also requires that all new residential construction include passive radon-resistant construction techniques.

Federal Radon Laws and Programs

United States Environmental Protection Agency, Federal Radon Action Plan
The Federal Radon Action Plan is a collaboration involving nine federal agencies, led by the EPA. The other agencies involved include the U.S. Departments of Health and Human Services, Agriculture, Defense, Energy, Housing and Urban Development, Interior, Veterans Affairs, and the General Services Administration. The primary intent of this Plan is to demonstrate the importance of radon risk reduction; address finance and incentive issues to drive testing and mitigation; and build demand for services from the professional nationwide industry. The Plan focuses on reducing radon risk in homes, schools, daycares, and in new construction. The Plan also provides economic incentives to encourage radon risk reduction and provides support for those who do not have the resources to do so. More information is available at http://www.epa.gov/radon/pdfs/Federal_Radon_Action_Plan.pdf.
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Environmental Protection Agency, State Indoor Radon Grant (SIRG) Program

This Program provides grant funds from EPA to finance radon risk reduction programs. Recipients of the grants must provide a minimum of 40% in matching funds. By law, these SIRG funds are not available to individuals or homeowners. Those receiving SIRG funds must align their projects and activities with the Agency's strategic goal and demonstrate, capture, and report results. The EPA provides a template to measure the state programs. The Chicago Regional Office was allocated $1,760,000 in SIRG funds in 2013. More information is available at http://www.epa.gov/radon/sirgprogram.html.

Toxic Substances Control Act

In general, this Act directs the EPA to prevent and control risk of injury to health or environment by controlling toxic substances. This Act has a subchapter that addresses indoor radon abatement. The basic purpose of this subchapter is to provide financial and technical assistance to the states that choose to support radon monitoring and control. Neither monitoring nor abatement of radon is required by the act. The Act also requires the EPA to create a national database on radon organized by state. More information is available at http://www.law.cornell.edu/uscode/text/15/chapter-53/subchapter-III.

State Radon Laws

Radon Industry Licensing Act

This Act authorizes the state to undertake a variety of radon-related activities, including radon measurement, surveys, monitoring, education, and technical assistance. The Act requires the licensure of persons selling radon detection devices, performing radon detection, or performing radon reduction services. The Act also requires state approval of radon sampling and measurement devices and authorizes the state to establish minimum qualifications for licensure. Furthermore, persons testing for radon are required to report results of testing within 45 days. Regulations adopted under the law establish procedures and requirements for obtaining a license as a radon mitigator or tester, and set forth protocols for radon measurement and mitigation. There are penalties for violation of this Act. More information is available at http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1624&ChapterID=37.

Illinois Radon Awareness Act

This Act establishes requirements for providing information about radon during residential real property sales. The Act requires sellers to provide buyers with: disclosure of known elevated radon levels in the home; a state-developed pamphlet on radon testing; and a general warning statement recommending radon testing prior to all home purchases. If the information is not disclosed to a buyer before his offer, the landlord must mitigate the hazard, disclose the hazard to the buyer, and allow the buyer to amend his offer. The Act also requires landlords of residential units below the third story to notify current and prospective tenants of any radon hazard revealed by landlord's testing of the property, unless landlord mitigates the property and eliminates the hazard. Furthermore, the Act requires landlord to disclose to prospective tenants any radon hazard revealed by current tenants' testing, unless landlord's testing demonstrates that a hazard does not exist. More information is available at http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2913&ChapterID=37.
Radon Resistant Construction Act

This Act requires that all new residential construction include passive radon-resistant construction techniques. The Act also provides that radon contractors must carry out installation of active radon mitigation systems, including installation of a radon vent fan or upgrade of a passive system. The Illinois Emergency Management Agency has responsibility for coordination, oversight, and implementation of all State functions in matters concerning the presence, effects, measurement, and mitigation of risks of radon and radon progeny in dwellings and other buildings. The Department of Natural Resources, the Environmental Protection Agency, the Department of Public Health, and other State agencies shall consult and cooperate with the Agency as requested and as necessary to fulfill the purposes of this Act. More information is available at http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=3422&ChapterID=37.

2. Federal & Illinois Laws That May Be Applied to Indoor Environmental Hazards

Federal Laws

Fair Housing Act

This Act outlaws discrimination in the rental or purchase of a home. The Act is designed to protect a tenant or homeowner from discrimination by a landlord, mortgagee, realtor, or another person selling a home. Protected classes include race, color, religion, sex, national origin, familial status (presence of children in the household), and disability. Although there are some exceptions, such as allowing familial status discrimination in retirement communities, the Act applies to all home sales and to all landlords except those who occupy the residence as a primary dwelling and who have 3 or fewer families living in the building. The Act is enforced by the US Department of Justice in the federal courts, and through individual litigants in the Department of Housing and Urban Development (HUD) administrative process. The Act defines discrimination as: (1) refusal to sell or rent a dwelling to a person because of their status as a member of a protected class; (2) discrimination based on status as a member of a protected class in the terms, conditions, or privileges of the sale or rental of a dwelling; (3) advertising the sale or rental of a dwelling indicating a preference based on a protected class; and (4) coercing, threatening, intimidating, or interfering with a person’s enjoyment or exercise of their housing rights based on discriminatory reasons or retaliating against a person or organization that aids or encourages the exercise or enjoyment of fair housing rights.

The Department of Housing and Urban Development (HUD) is the agency tasked with administering and enforcing the Act. Fair housing complaints can be filed at HUD’s Office of Fair Housing and Equal Opportunity (FHEO). FHEO has agreements with many state and local government agencies that have similar fair housing laws in place. Additionally, HUD works with and funds nonprofit fair housing advocacy groups that, among other things, send fair housing testers to investigate violations of the FHA.
One type of discrimination prohibited by the FHA is the refusal to grant reasonable accommodations and modifications to tenants with disabilities to allow for the full use and enjoyment of housing. Under the FHA, tenants with disabilities have the right to reasonable accommodations in rules, policies, practices, or services so they may be able to use and enjoy their housing. Further, tenants have the right to make reasonable modifications, such as structural changes to their housing, at their expense. More information is available at http://www.law.cornell.edu/uscode/text/42/chapter-45, http://www.hud.gov/offices/fheo/library/huddojstatement.pdf, http://www.hud.gov/offices/fheo/library/huddojstatement.pdf

Section 504 of the Rehabilitation Act

Section 504 prohibits discrimination against people with disabilities in federally funded programs, such as public housing authorities and owners of project-based Section 8. It defines a person with a disability as someone with a physical or mental impairment that substantially limits one or more major life activities. Under Section 504, housing providers may not refuse to make repairs or provide other services that are available to non-disabled residents. Further, housing providers must make reasonable accommodations—changes, adaptations, or modifications to a policy, program or service—that allows disabled residents the full use of their housing. The accommodation is at the expense of the provider. For example, a federally assisted housing provider must pay for a ramp as a reasonable accommodation for a tenant in a wheelchair. For more information, see: http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/disabilities/sect504faq#anchor272118

Americans with Disabilities Act

The Americans with Disabilities Act extends the protections of Section 504 to private business relationships and in state and local governments. Under Title II of the ADA, public entities, such as public housing authorities, are prohibited from discriminating against persons with disabilities in any programs, services, or activities provided or made available. Title III of the ADA prohibits discrimination in public and common use areas of housing developments when these public areas are open to the general public. Discrimination includes failure to provide a reasonable accommodation or modification to housing conditions.

State Regulations

Residential Real Property Disclosure Act

This Act applies to the transfer of title of all residential property with one to four residential dwelling units, co-ops, or condos. It applies to residential leases only if it includes an option to purchase. The Act requires sellers to complete a Residential Property Conditions Disclosure form, but the Act does not require the seller to repair the condition. The seller is only responsible for disclosing reasonably known conditions in good faith. The seller must disclose information about the home’s appliances, defects in or malfunctions in the structural or mechanical components of the home, and whether certain listed conditions affect the home (which includes environmental hazards). Sellers are not required to enlist an inspector for purposes of this form. A seller may, however, opt out of the disclosure if the seller provides a
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Residential Tenants’ Right to Repair Act

If a repair is required under a residential lease agreement or required under a law, and the reasonable cost of the repair does not exceed the lesser of $500 or ½ monthly rent, the tenant may notify the landlord in writing the tenant’s intention to have the repair made at the landlord’s expense. If the landlord fails to make the repair within 14 days after being notified (or as promptly as required in case of an emergency), the tenant may have the repair made in accordance with the appropriate law. After submitting to the landlord a paid bill from the repairman, the tenant may deduct the amount of the bill from his or her rent. The tenant must also provide to the landlord in writing, at the time of submission of the bill, the name, address, and number for the repairman. A tenant may not repair at the landlord’s expense if the condition was caused by the deliberate or negligent act or omission of the tenant, a member of the tenant’s family, or another person on the premises with the tenant’s consent. More information is available at http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2605&ChapterID=62.