

# The Rockbridge



# ADVOCATE

"INDEPENDENT AS A HOG ON ICE"

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## Subsidized apartment mold triggers testy tort

*It was one thing when mold attacked the lungs and property of a couple at Valley View. But the copperhead slithering into the bathroom was another thing entirely.*

"It appears that the residents [of Valley View Apartments] are happy with the improvements being made," says a year-old state housing development authority report on the subsidized apartment complex off Route 39 north of town.

But at least one couple has been decidedly unhappy — unhappy enough to have filed a \$1,850,000 lawsuit against the owner of the facility, the manager, and the Virginia Housing Development Authority, which helped finance the construction of the apartments and funnels federal subsidies to help pay the rents.

Mary E. and Randall S. Schnettler claim that mold in their apartment at the complex has damaged their health and their property. Because of the mold, says the suit, "Randy Schnettler experiences headaches and sinus infections. A granddaughter who lives with ... [the Schnettlers] has been diagnosed with mild asthma and takes many medications to control her respiratory condition.

"Mrs. Schnettler says she feels like she is dying." And she now requires oxygen in order to breathe comfortably.

Over the last two years, says Lorinda Gholar, the VHDA's senior asset manager, the owner of the apartments, Sam Koogler, has spent more than \$250,000 remediating

the mold problems in three of the buildings, and is working on a fourth one, building D. Building E is next on the list, Gholar says.

Mold problems at the complex led to several complaints beginning in the fall of 2009. They were detailed in this publication two years ago this month.

At the time, the owner said, "I could go in, shut the buildings, and put people on the street. But, I'm not going to do that." He vowed to fix the problems, but said it would take time and probably cost half a million dollars.

And at the time, a report from Gholar said, "My concern, is that we do not compromise the health of these residents and that legal action is not pursued."

The Schnettlers first moved to Valley View in October,

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2009. They moved into Apartment 4 of building E. At the time they moved in, Mrs. Schnettler suffered from Chronic Obstructive Pulmonary Disease — a disease the suit says has been exacerbated by the apartments at Valley View.

At the time they moved in, the suit says, the manager, Paula Irvine, did not reveal anything about mold or moisture in the apartment. But when they moved in, the Schnettlers saw mold on the window sills, “and Mrs. Schnettler made a note about the presence of mold on the apartment check-in form.

“An apartment staff person named Theresa told the ... [Schnettlers] that it wasn't mold, and crossed off “mold” and wrote “dirt” on the apartment check-in form.”

But unbeknownst to the Schnettlers, says the suit, Koogler had hired Rockbridge Environmental Consulting to investigate mold at the complex at about the same time they moved in.

The investigation was finished about a month after the Schnettlers moved in, but not shared with them. According to the suit, the report “revealed excessive mold contamination in the apartment itself, as well as in the attic and crawl space above and below the apartment.

In the five buildings inspected, including the one where the Schnettlers lived, “most residents reported wet, leaking, moldy window sills. Several reported mold under the kitchen cabinetry.

And, the suit says, “The investigation revealed multiple water intrusion and excessive moisture problems in all of the buildings, including and not limited to leaking roofs, improperly vented bathroom fans into the attic space, absence of vapor barriers and standing water in crawl spaces, improper draining around the buildings, ... and wet and

moldy window frames.”

Not long after they moved into their first apartment at Valley View, the Schnettlers reported that their toilet wouldn't drain. The maintenance folks “snaked out the toilet. Despite the effort to clear the drain, the toilet continued to be a problem and cause sewage to frequently back up into the bathtub, which at one time overflowed with sewage.”

After living in the apartment for about 10 months, the Schnettlers asked to be relocated to a handicapped accessible apartment on the ground floor. Climbing stairs was becoming a problem for Mrs. Schnettler.

The manager, Paula Irvine, told them they hadn't lived in the complex for a year, and would have to wait.

According to the suit, Mrs. Schnettler showed Irvine a pair of mold-covered shoes she'd found in her closet, and the Schnettlers were moved to Willow Springs, which Koogler also owns. The move, says the suit, was a bit of a disaster. The suit claims:

The couple had to throw out \$1,000 worth of clothing, including a leather coat.

When Mr. Schnettler was moving things out of the storage shed outside the apartment, the floor was so decayed that he fell through, and he could see water underneath.

After a week in Willow Springs, they were told to move back to Valley View — into a handicapped-accessible apartment in building D, where their stay began with leaking washing machine hoses. The lines were fixed, but the hole cut into the wall to fix the leak wasn't properly filled, and a big snake slithered from the hole behind the toilet. Mrs. Schnettler ran out of the bathroom. The snake scooted back into the hole in the wall. (The suit says it was a rattlesnake, but the Schnettler's lawyer, Tammy Belinsky, of the Environmental Law Group in Copper Hill, says it was really a copperhead. “I didn't get the snake ID right until I was driving to Lexington with the suit.” Because time was running out to file the suit, she couldn't fix it.)

Then the downstairs toilet overflowed, and continued to do so for four months before the maintenance people showed up, removed the toilet, and found a disconnected

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waste line. When they took up the toilet, the Schnettlers saw the crawl space "saturated with sewage."

Then the upstairs toilet overflowed.

Then they noticed the windows were leaking and mold was growing around them, and again the Schnettler's possessions stored in a closet began getting moldy.

Another mold consultant was called in, and the day they went to the Schnettler's apartment, "readings of the living room floor showed that the floor had a 65% moisture content. Mrs. Schnettler's bedroom floor has a 40% moisture content."

"The gorilla in the room is the absence of vapor barrier, which permits uncontrolled moisture in the crawl space."

The moisture in the crawl space is so bad, claims the suit, that "ones' feet get wet walking on the carpet."

(VHDA officials say that Koogler has installed vapor barriers under three of the buildings, and plans to install them under the rest of the buildings that have had mold problems.)

Belinsky says that she knows of other residents of the complex who have problems with mold. But none so bad as the Schnettlers. "We're trying to help someone who is physically ill."

And the Schnettlers are sort of stuck.

The suit notes, "The Rockbridge County area has very limited availability of low income housing. The voucher program that allows the tenant to locate housing of their choice has no openings; in fact, even the waiting list is closed. ... Mrs. Schnettler's condition requires access to first

floor accommodations. Valley View Apartments is the only local subsidized housing that has apartments with a first floor bathroom and the necessary number of bedrooms. The other subsidized apartment complexes all have waiting lists."

And Shawna Cheney, one of the attorneys at the local Legal Aid office, says that while the number of complaints they've heard about the complex has declined over the past few years, they are still coming in. Most of the recent ones aren't about mold, she says, but about "bizarre" behavior on the part of the manager, including eviction notices that appear to be coming out of left field.

The suit doesn't mention eviction notices. But the Schnettlers have never been evicted. But it does claim Valley View and the manager violated the Virginia Residential Landlord and Tenant Act through shoddy maintenance that "allowed leaks to repeatedly occur ... and allowing moisture and mold to proliferate beneath and within the ... [Schnettlers'] apartment.

The Schnettlers also claim breach of contract, negligence — "failing to perform with reasonable care any repairs undertaken to address mold growth, plumbing defects, window leaks and condensation, and water intrusion and moisture conditions, resulting in the proliferation of unreasonably dangerous mold ... ."

And they claim the owner of the complex violated the state's consumer protection act by failing to renew the state registration of his limited partnership, Valley View Apartments, L. P., that holds title to the apartments.



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Valley View has also been late in its financial reporting to the state.

The latest review of the complex by the VHDA, dated October 14, notes, "Financial reporting for the property has not been timely." An audit due on March 31, 2011, had not been submitted by the time of the review.

And the October 14 report from the state does mention mold.

Unit D1 — The window seals are broken and there is evidence of mold in the unit.

Unit D4: The window seals are broken and there is evidence of mold in the bedrooms.

Unit D5: — The window seals are broken and there is evidence of mold in the bedrooms.

Building 4 [D]: — The crawl spaces need remediation and dehumidification due to a mold and moisture problem.

There is no mention in the report of mold in any of the other buildings.

Lorinda Gholar says of the mold problems in the buildings, "They can be fixed and they are being fixed."

The October 14 report notes that the apartment complex's "reserve account funds are low due to withdrawals for remediation of mold issues at the property over the past two years."

And, it says, "Cash flow at the property is limited. The property is, at best, in a break-even position."

As the mold problem has been addressed, Gholar says, "People were moved out of buildings. They were moved to Willow Springs at Mr. Koogler's expense. Their

personal belongings were cleaned and sanitized at his expense."

Asked if she would be willing to live in one of the apartments at Valley View, Gholar says, "Yes, I would."

In the first eleven months of this year, the 64-unit apartment complex has received \$388,000 in federal HUD subsidies for the low-income renters.

The 30-year-old apartment complex was built with the help of a \$1.7 million HUD loan.

From the recent inspections reports, it appears that Sam Koogler has had a lot of work done to try to alleviate the problems in some of the buildings in the complex.

For instance, a VHDA inspection report from October 2010 says, "The physical condition of the development continues to improve. Management has been doing mold remediation, as well as making other improvements to the site, on an as-needed basis. ... Crawl spaces to the buildings have been dried out, and dehumidifiers and new insulation installed. Several trees have been removed and new windows, along with new HVAC units, have been installed to help prevent the return of the mold problem."

Still, the report says, "A couple of residents have retained an attorney to represent them concerning their complaints against the owner in reference to the mold problems. ..."

The Schnettlers' suit asks for \$400,000 in compensatory damages, plus treble damages for the alleged violation of the Virginia Consumer Protection Act, plus \$250,000 in punitive damages.

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