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**Frequently Asked Questions-Rental Building Radon Testing
Relating to 14 MRS §6030-D as amended by LD 328/PL 324
(Revised Jan 30, 2014)**

Q: Who can test a rental building for radon?

A: According to 14 MRS §6030-D, radon testing must be conducted by a Maine-registered radon tester, except landlords can test “simple” buildings, and tenants can test the residence they occupy and areas to which they have access.

Q: Do radon tests have to be done in every unit, or every room, of a rental building?

A: No. The protocols for testing multifamily buildings require testing in each unit that is in contact with the ground, or when there is a basement, crawl space, parking garage, or commercial space below the residential rental units, in each unit on the lowest level of residential units. The protocols also require testing in 10% of units on each upper floor. When there are fewer than 10 units on upper floors, the protocols require testing of at least one unit on each upper floor. There are additional radon testing protocol requirements for testing common areas and for buildings with complicated structures and ventilation systems.

Q: What are the radon testing protocols?

A: For multifamily buildings (buildings with three or more residences), the protocols are the ANSI/AARST Protocol for Conducting Radon and Radon Decay Product Measurements in Multifamily Buildings. (document designation: MAMF-2010.) For single family or duplex rental buildings, the protocols are the EPA Protocols For Radon And Radon Decay Product Measurements In Homes (EPA 402-R-93-003), Real Estate Testing Option. In addition to the protocols specific to multifamily or single family/duplex buildings, the EPA Indoor Radon And Radon Decay Product Measurement Device Protocols (EPA 402-R-92-004) must be followed for proper use of radon test devices. Note: 14 MRS §6030-D requires that ANYONE testing a rental building for radon must follow the protocols.

Q: Where can I get a copy of the protocols?

A: Both of the EPA protocols are available for download from the US EPA radon website, publications section (<http://www.epa.gov/radon/pubs/index.html>). The ANSI/AARST protocols can be purchased from AARST (the American Association of Radon Scientists and Technologists) online bookstore (<http://www.aarst.org/bookstore.shtml>). Currently, one free copy of the ANSI/AARST protocol can be ordered from the US EPA radon website, publications section.

Q: When does the radon testing requirement take effect?

A: The law that requires radon testing in residential rental buildings (14 MRSA §6030-D) took effect in September of 2009. All residential rental buildings must have completed radon testing by March 1, 2014.

Q: What happens if high radon is found in a residential rental building or apartment/unit?

A: As recently amended, 14 MRSA §6030-D gives the tenant or the landlord the option to terminate the lease if high radon is found and the landlord has decided not to mitigate (mitigate means take steps to reduce radon levels).

Q: How does a tenant find out what the radon levels are in the building or their apartment/unit?

A: 14 MRSA §6030-D requires the landlord to notify the tenant, in writing and within 30 days of receiving test results, of the radon levels. If high radon levels were found and the landlord has the radon levels mitigated before the 30 days is over, the landlord can notify the tenants of the post-mitigation radon levels within 30 days of receiving those. The model radon disclosure form can be downloaded from www.maineradiationcontrol.org, follow the link to the Radon Section, then download the Radon Disclosure Statement for Landlords.

Q: What is a “simple” building that can be tested by a landlord?

A: Under 14 MRSA §6030-D as recently amended, a landlord can test a building **which does not have any of the following**: an **elevator shaft**, an **unsealed utility chase or other open pathway** for air to move from the ground to upper levels of the building, a **forced hot air furnace or central air HVAC system**, or **private well water** unless the water has been tested for radon by a person registered under Title 22, chapter 165 (a Maine registered radon tester) and the results show a radon level acceptable to the Department of Health and Human Services. Additional limitations agreed upon by stakeholders are: **units which span multiple foundations** unless every room in the unit is tested (these can create complicated radon entry routes that require additional testing to locate); and **buildings or building complexes where more than nine units would be tested** when following the extended testing protocol (the required quality assurance plans, measurements and calculations when testing larger numbers of units per building make this no longer “simple”).

Q: I’ve heard that some landlords borrowed/rented a radon monitor to test their rental buildings “for their own information.” Can they use these results now that landlords are allowed to test simple rental buildings?

A: In most cases, no because testing usually was not done according to required protocols and violated several laws. However, a determination can be made on a case-by-case basis when the landlord can provide documentation to prove all of the following: 1) the monitor they used has successfully passed a device approval process and was on the list of approved radon test devices maintained by the National Radon Proficiency program (NRPP) or the National Radon Safety Board (NRSB); 2) any testing they did was conducted in accordance with the correct building protocols; 3) the radon monitor was placed according to the requirements of the correct building protocols and the device protocols; 4) the monitor was used according to the device protocols and manufacturers guidelines; 5) the monitor was calibrated at least as often as required by the protocols and the manufacturer; 6) the monitor had background checks at least as often as required by the protocols and the manufacturer; 7) the monitor had periodic device intercomparisons at least as often as required by the protocols and the manufacturer; and 8) device performance checks were done on the monitor by the landlord using it before each test (and maybe after each test, if required by the protocols or the manufacturer). *Note: due to the necessary record keeping and other quality assurance requirements associated with use of continuous radon monitors, stakeholders have agreed that landlord testing must be done with radon test devices which must be sent to a laboratory for analysis.*

Additional Facts

- The landlord or lessor of a residential rental property must provide written notice about radon hazards and disclose the results of the required radon testing to each tenant. This information must be told to potential tenants if they ask. The forms on radon hazards and for radon results disclosure can be downloaded from the Radon Section website (www.maineradiationcontrol.org, follow the link to the Radon Section)

- If a landlord does radon testing in their rental building(s), they must report that testing to the Department on forms approved by the Department. The approved forms can be downloaded from the Radon Section website (www.maineradiationcontrol.org, follow the link to the Radon Section)
- The reporting forms landlords must use to report radon testing to the Department; and the disclosure statement and radon hazard statement are on the Department's radon website (www.maineradiationcontrol.org, follow the link to the Radon Section).
- The tenant will have to sign an acknowledgment that they have received this disclosure.
- If a rental building/apartment/unit has high radon, and the landlord chooses not to mitigate, the tenant can terminate the lease when they give at least 30 day's notice.
- If a rental building/apartment/unit has high radon, and the landlord chooses not to mitigate, he landlord can terminate the lease when they give at least 30 day's notice.
- A tenant can request a re-test of radon in the building 10 years after the building was last tested, when the building does not have a mitigation system installed or if a mitigation system is installed but it is not functioning.
- If a tenant tests for radon in the residence they occupy, or hires a radon tester to do so, a copy of the results must be given to the landlord within 30 days after the tenant receives them.
- If a tenant does a radon test, the landlord cannot retaliate against them.
- When a tenant radon test finds radon levels of 4.0 pCi/l or higher, the landlord can choose to accept the tenant results and disclose them on the required disclosure forms; or can hire a registered radon tester to re-test and disclose the results of that test on the required disclosure forms. The landlord cannot re-test themselves.
- If a landlord or a person acting on behalf of a landlord does not provide the required radon notification, it is a breach of the implied warranty of fitness for human habitation in accordance with section 6021.
- If a landlord or person acting on behalf of a landlord falsifies a radon test result, it is a breach of the implied warranty of fitness for human habitation in accordance with section 6021.
- If a landlord or person acting on behalf of a landlord falsifies a radon test by testing in violation of radon protocols, it is a breach of the implied warranty of fitness for human habitation in accordance with section 6021.
- A person testing on behalf of the landlord can only be a payroll employee of the landlord. A property manager who wants to do radon testing must first become a registered radon tester.
- Due to the nature of mobile homes, radon testing is not required in mobile homes which are on public water **and** have wheels under them **and** do not have permanent, durable skirting (which creates the equivalent to a basement or crawlspace under the mobile home). Un-insulated wood planking or un-insulated plastic affixed to framing is not considered permanent or durable when determining the need for radon testing. A mobile home with poured concrete or masonry block foundation walls; or one with air-tight and insulated skirting, must be tested.

- If a landlord chooses to have mitigation done to reduce radon levels, mitigation must be conducted by a person registered with DHHS to conduct radon mitigation pursuant to Title 22, chapter 165 (the Maine Radon Registration Act).
- After mitigation has been successful, the landlord or lessor must disclose the new radon levels to tenants. It is not necessary to disclose high radon levels from before the radon mitigation occurred, only the lower radon levels from after the mitigation.
- Title 22, chapter 165 requires reporting to the Department of addresses for all rental buildings that are tested or mitigated for radon. This allows the Department to develop a database to help track which residential rental buildings have been tested as required.
- Residential rental buildings include college dormitories, nursing homes, or any other building containing residences which are rented; except seasonal rentals of 100 days or less where no lease extension can occur.