

BREAK THE MOLD:



CLEANING UP NYCHA'S MESS



March 2018

Break the Mold
“Cleaning Up NYCHA’s Mess”

Introduction

NYCHA houses nearly 400,000 residents with more than 176,000 apartments. NYCHA is both the nation’s largest public housing authority and also the City’s largest landlord. Thousands of low income families and individuals depend on NYCHA to offer affordable housing options, yet these tenants are constantly ignored and left to live in deplorable conditions.¹ Time and time again, the Independent Democratic Conference has reported on the New York City Housing Authority and their slumlord tendencies. With the recent lead paint survey that the IDC administered to NYCHA residents, we also inquired about the presence of mold. As a follow up, we administered a second survey focused specifically on mold. This is not the first time, and likely not the last, that the IDC has revealed alarming facts about the presence of mold in NYCHA buildings. However, mold remediation has been yet another failure of the authority.

In our recent lead paint survey, the IDC also found that the presence of mold is an ongoing issue for NYCHA residents with no signs of relief. In that survey, we asked “If mold was found in your apartment, how did NYCHA address the issue?” and 166 people answered that mold was found in their homes. Of those, almost 70% responded that NYCHA “did nothing” to address the issue. In light of this egregious discovery, the IDC conducted a follow-up mold survey to collect a random sample of NYCHA residents across all five boroughs. The purpose of this was to further explore the apparent rampant neglect occurring in these homes.

In the random sample survey conducted across all five boroughs, we asked current NYCHA residents to participate in a short, three-minute survey about mold and remediation. Of the 202 people that participated, 119 residents reported that they have had mold in their homes. 43 of those people currently have mold plaguing their apartments. NYCHA continues to claim that they have fixed the problems with mold in its developments and they are working on solutions. However, it is apparent to the NYCHA residents and the IDC that mold is a reoccurring issue.

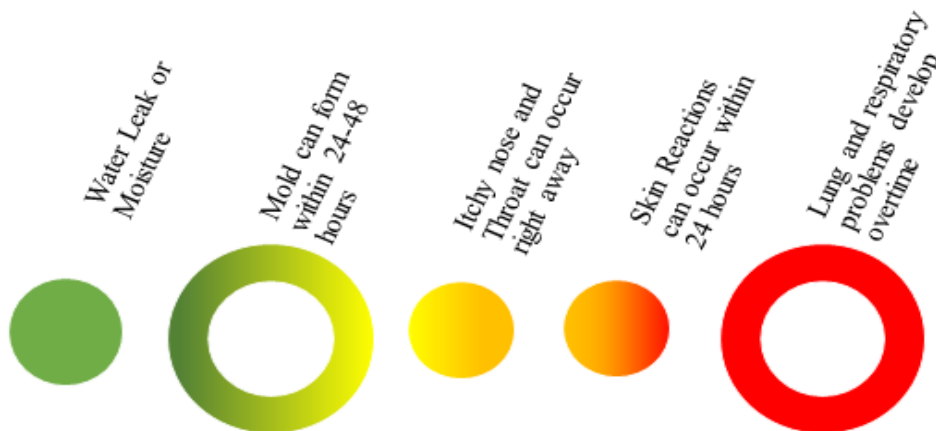
¹ <https://www1.nyc.gov/assets/nycha/downloads/pdf/factsheet.pdf>

Key Findings

- 59% of those surveyed reported that they have found mold in their apartment
- 56% reported that it took more than two weeks to respond, or never did respond
- 24% of those surveyed responded that it took management more than a month to remove the mold
- 24% responded that someone in their household suffers from asthma
- 52% responded that they have had or have leaking roofs, windows, or pipes that has caused water to leak into the apartment

The Dangers of Mold

Exposure to mold can result in severe health risks, yet it is often not treated with a sense of urgency. Mold and mildew can develop in 24-48 hours of being exposed to water.² Mold can then continue to grow, or not go away, until someone takes steps to address the source of the water or moisture. While cleaning the mold with bleach or disinfectant can work temporarily, if the source is not addressed mold will continue to grow in that area. Due to the fact that mold can infest your home so quickly, immediate repairs are necessary to protect human health. NYCHA takes weeks, sometimes months, to even respond to a complaint of mold if they respond at all. By that point, residents are already suffering from severe symptoms.



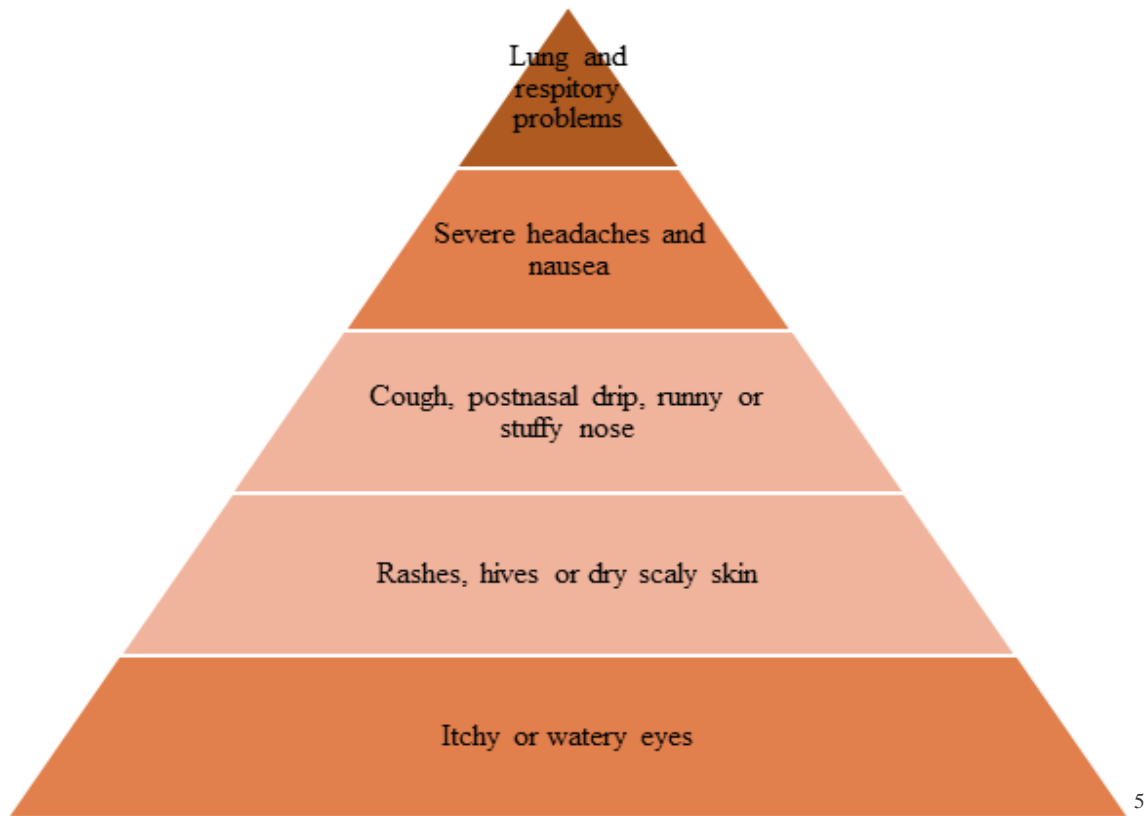
² https://www.fema.gov/pdf/rebuild/recover/fema_mold_brochure_english.pdf

Exposure to mold may cause various health effects, particularly in people with chronic lung illnesses. According to the Centers for Disease Control and Prevention (CDC), mold can cause nasal stuffiness, throat irritation, coughing, eye irritation, and skin irritation. Some of these reactions can begin immediately once mold is in an apartment. More severe reactions can occur for those with obstructive lung disease and they may get serious infections when exposed to mold.³ People with asthma are the most likely to face serious health issues because of mold. According to an Office of the New York City Public Advocate report, “in addition to aggravating conditions associated with asthma, studies have established that mold exposure can be a contributing factor in the development of asthma.”⁴

Those who are most vulnerable to mold are: infants and children, the elderly, immunocompromised patients, pregnant women, individuals with asthma and other existing respiratory conditions. Importantly, indoor air quality is constantly at risk because mold can enter the home multiple ways. For example, mold can come in through open doorways, windows, vents, and heating and air conditioning systems. In addition, outdoor mold can attach itself to clothing, shoes, bags, and pets and then brought into the home. Because mold can grow virtually anywhere moisture is present, timely remediation and abatement is key to protecting residents from health hazards. However, as we know, NYCHA continuously drags its feet when it comes to simple repairs in developments that can prevent mold from growing.

³ https://www.cdc.gov/mold/dampness_facts.htm

⁴ http://rhicenter.org/wp-content/uploads/2016/10/ImpactofMold_RHI_-FINALREPORT_10.27.16.pdf



New York Law and Mold

In New York State, there is an implied warranty of habitability, meaning that landlords are required to keep apartments and the building safe and livable at all times.⁶ This right to habitability is implied since even if it is not expressed directly in your lease, a tenant still has this right. On top of that, a lease or landlord cannot make an individual give this up. Since mold can have serious health effects on individuals and can negatively impact the habitability of an apartment, many individuals suffering from extreme mold exposure may have a case under this precedent.

As to specific regulations regarding mold, according to New York City's website "[i]t is your landlord's responsibility to fix a mold problem in your apartment"⁷ The City empowers local tenants to also use 311 to file mold related complaints with the City, and then the City tracks the progress of those complaints. The City Council also passed and signed Local Law 6 of 2013, which authorizes the Department of Housing Preservation and Development (HPD) to issue an "Order to

⁵ See <https://healthfully.com/long-feel-effects-black-mold-5049866.html>

⁶NYS Real Property § 235-b

⁷ <http://www1.nyc.gov/nyc-resources/faq/461/how-do-i-report-mold-in-my-apartment>

Correct” the underlying conditions that cause mold or water leak violations.⁸ HPD may also bring civil penalties against a landlord if they fail to comply with these orders.

Yet even with all these protections through 311 and HPD, none of these are extended to residents of NYCHA. This is because NYCHA is not subject to HPD inspections or regulations, leaving NYCHA residents with very little recourse other than complaining back to NYCHA.

NYCHA’s History with Mold

In 2013, Manhattan Together, South Bronx Churches, the Natural Resources Defense Council, and National Center for Law and Economic Justice brought a class-action lawsuit against NYCHA accusing the agency of violating the Americans with Disabilities Act (ADA) by not remediating mold in apartments. The claim alleged that because thousands of NYCHA residents suffer from asthma, the conditions exacerbated their respiratory ailments and thus, violated the ADA. The authority agreed to fix problems with mold more expeditiously in order to settle the case.

Another horrific result of Superstorm Sandy was the increased amount of mold found in public housing. However, even before the storm, residents complained that NYCHA’s maintenance workers failed to actually fix the leaks that caused the mold. Rather, the workers would clean walls or paint over the affected areas, allowing the mold to easily return. NYCHA conceded that Sandy increased the likelihood of mold in apartments and claimed that dealing with it was a priority.



In addition to faster remediation, the settlement required housing officials to recognize asthma as a disability. More importantly, the authority became required to make reasonable accommodations for tenants that have asthma—even relocating tenants if necessary. The agreement also included monitoring provisions with reports and mold samplings. Finally, an unprecedented aspect of the agreement allowed judicial oversight of the mold remediation.

⁸ http://www1.nyc.gov/portal/apps/311_literatures/HPD/ABCs-housing-singlepg.pdf

Under the settlement, NYCHA must remediate within 15 days, and if not, any NYCHA tenants with asthma can request that the judge impose fines on the authority. Notably, the federal court recently extended this judicial oversight through April 2018.⁹ However, here we are, five years later, and the same problems persist. Furthermore, the settlement completely failed to recognize the long-time loophole in state law regarding mold assessments and remediation.

Currently, the law requires that mold assessments and remediation be conducted by licensed professionals to ensure that abatement is completed properly. However, NYCHA is exempted from this law. This is an egregious oversight based on a faith in the authority to act accordingly, which it clearly does not. The IDC has pushed legislation that would correct this error (S.5696 Savino).

NYCHA is currently facing another lawsuit brought by the Citywide Council of Presidents and the At-Risk Community Services, Inc. The lawsuit alleges that NYCHA has persistently failed to protect tenants as is their legal obligation including exposing tenants to toxic lead, mold and, other moisture problems. The group is asking the court to impose an independent monitor over the authority, which is currently a bill carried by Senator Klein.

NYCHA Next Generation Report

In May of 2015, NYCHA recognized some of its shortcomings by issuing a report, “Next Generation NYCHA.” The 118-page report mentions mold 11 times. The report outlines various strategies for NYCHA to implement to upgrade facilities. However, we have seen little about how the program is actually progressing.



NYCHA launched a pilot program, Mold Busters, to combat mold. The plan “empowers front line staff with the knowledge and equipment to find and fix the source of mold.” In addition, the plan includes a “comprehensive mold response initiative.” Yet, there is no timeline or system for current residents

struggling with mold issues to report.

⁹ Final Stipulation and Order in Baez et al vs. New York City Housing Authority

Also, the plan includes training and new tools. However, the plan fails to address the fact that they are training staff for mold remediation who are not certified professionals. Notably, during the pilot program and research, the authority has been using the same broken system for responding to complaints and remediating problems. Further, one of the largest complaints raised by NYCHA is the response time regarding mold, which new tools won't specifically address. The IDC carries various legislative solutions to handle these issues, including a new 311 hotline, requiring workers to be certified in mold remediation, and incentivizing private contractors to fix NYCHA developments.



The Department of Health Responds

During the 2018 budget hearings, Dr. Howard Zucker, the state health commissioner, agreed to investigate NYCHA and the complaints filed against it. The Department of Health is going to investigate the ever-multiplying number of complaints regarding lead-paint, mold, and heat. During the hearing, the commissioner said, “Like you, I have been following this very closely and I am very concerned as a physician, as a parent, as a New Yorker. The situation there is particularly worrisome for the health of children, the well-being of children.”¹⁰

No action has been taken by the department yet. The IDC believes, as does that state's health commissioner, that it is time for the state to get involved. Something is fundamentally wrong with how the authority is handling tenant complaints and addressing these serious issues. The IDC proposes to take the complaint center out of NYCHA's hands and sending them to a new 311 hotline. That way, someone is responding to these New Yorkers concerns.

Survey Methodology

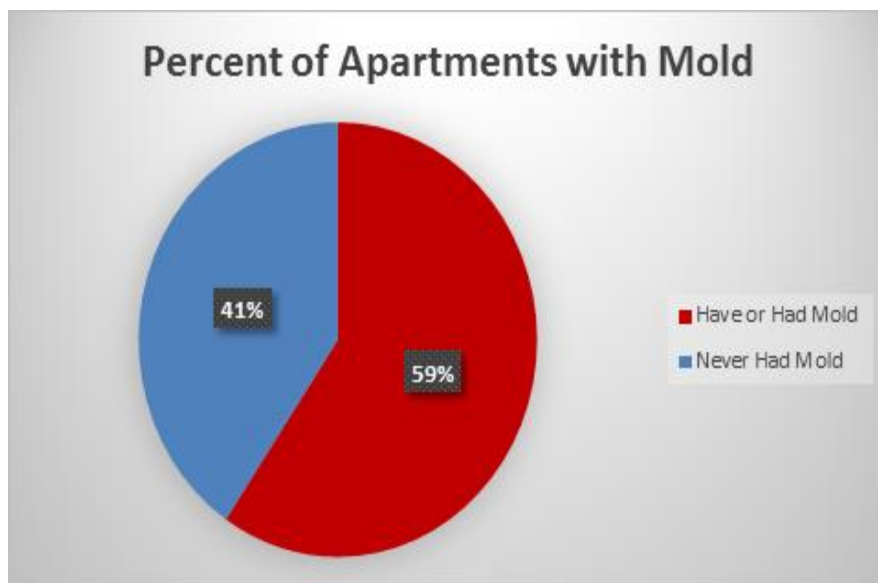
The IDC conducted a survey in January and February focusing on lead paint in NYCHA buildings, but we also included a follow-up old question to see whether NYCHA had been cleaning up their act regarding mold abatement. Through that question staff discovered that 70% of our respondents indicated they had or have had mold in their apartment. This shocking number made staff want to

¹⁰ <https://nypost.com/2018/02/12/state-health-department-to-investigate-nycha-scandals/>

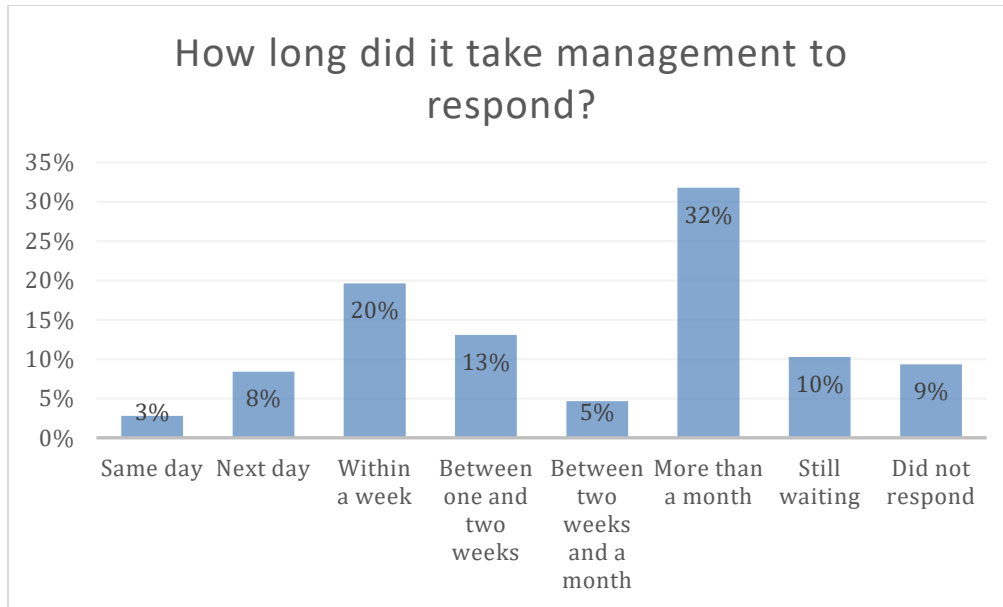
explore the issue further. The IDC therefore designed a new ten question survey for NYCHA residents about the conditions of mold in their apartment. The survey also asked about NYCHA’s responsiveness to complaints. Staff administered this survey by reaching out to a small sample size across all five boroughs to see just how bad the mold issue was in these apartments. In total, we had a sample size of 202 NYCHA residents.

Survey Results and Data

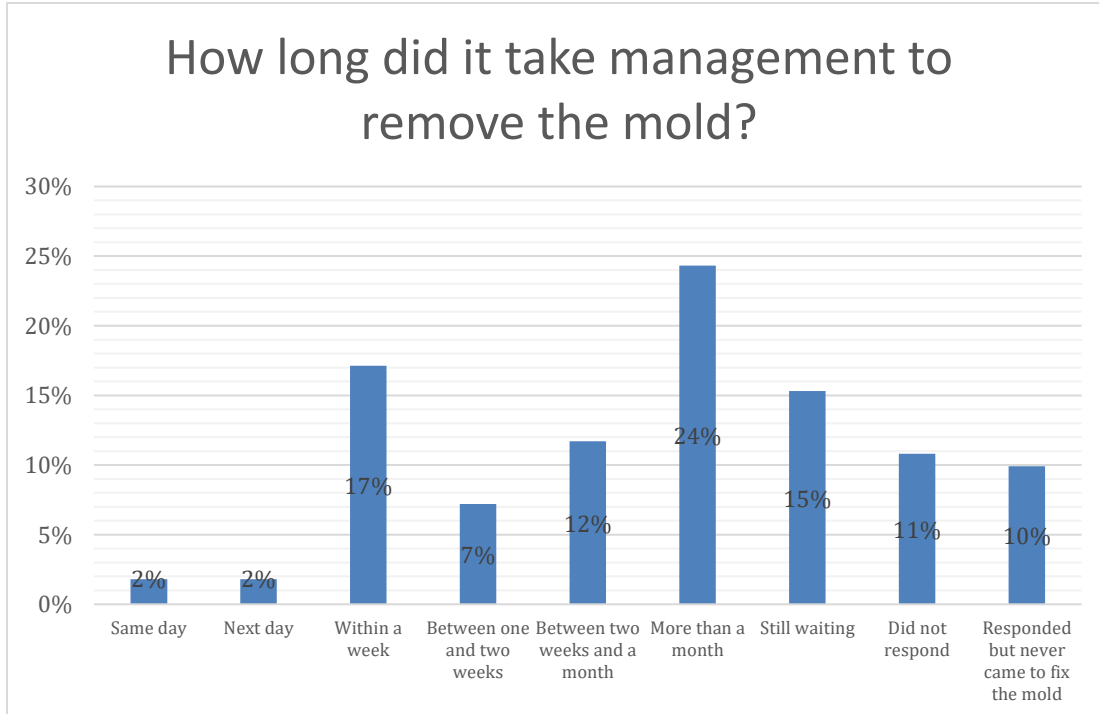
Staff asked respondents whether they have ever found mold or have had mold in the past in their NYCHA apartment. Of those surveyed, 59% of respondents indicated they have had or have had mold at some point. Further, of those surveyed 21.5% indicated they had mold “right now.”



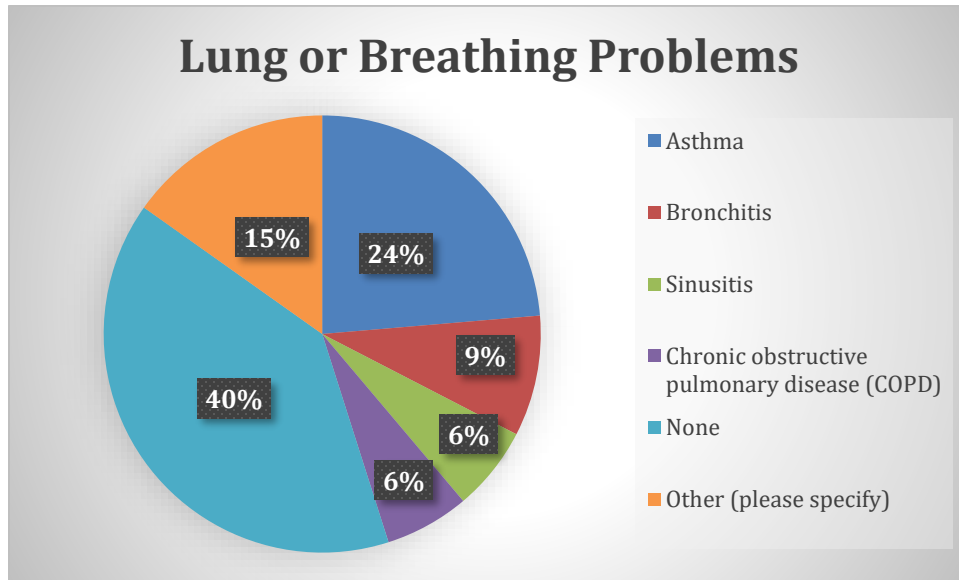
When a NYCHA resident files a report about mold, management must both respond to the complaint as well as hopefully address the complaint. Staff therefore asked residents: **“If you have had mold and reported it, how long did it take management to respond to your complaint?”** Of those who had mold, 32 percent had to wait over a month just for management to even be able to respond.



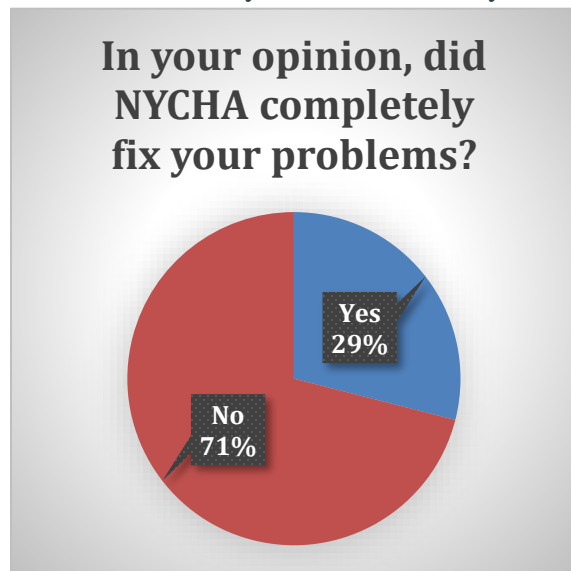
Residents report that NYCHA is not only slow to respond to complaints about mold but that they also provide inadequate remediation. Staff followed up the question concerning response time inquiring **“How long did it take management to come to remove the mold?”**



Of the survey respondents, 24% stated that it took over one month for NYCHA management to come and remove the mold; 15% are still waiting for it to be abated; 10% stated that while NYCHA responded, nobody addressed the problem; and 11% still have not even heard a response from NYCHA. With mold being able to form in hours and given the seriousness of mold issues and related health impacts, these findings are frightening and unacceptable. When compounded with our question about whether anyone in the household had a breathing or lung conditions, the results are even more concerning. The survey found that individuals had some type of breathing or lung problem; specifically, 24% had asthma.



Lastly, staff asked whether **“in your opinion, did NYCHA completely fix your problems”**. 71% of residents surveyed stated that they did not believe that NYCHA fully fixed their problems.



Residents raised the fact that many of them still had the mold coming back because the source of the mold was not fixed, or even when it was addressed the part of the house that had mold was left in disrepair. One elderly woman even stated that NYCHA removed her security handles around her tub while addressing the mold problem, yet they still after weeks have not come back to re-attach these necessary railings. Showing once again, that these residents are fed up with the lack of action on NYCHA’s part to address their needs.

Tenant Profile: Lakeisha Bowers

During our multiple rounds of surveys, the IDC met Lakeisha Bowers. Lakeisha and her family live in a NYCHA development in Brooklyn. Lakeisha's son suffers from and asthma and she recently returned from the doctor after suffering from breathing problems. Lakeisha has had trouble breathing for weeks, chest pain, and is unable to breathe through her nose at night. Shockingly, she has had multiple instances of mold in her apartment. When NYCHA eventually arrived to remediate the mold previously, they merely painted over it or wiped it away. Because of these forms of "remediation" the mold continues to come back. Unfortunately, because NYCHA refused to fix the underlying problem in Lakeisha's home, a part of her moldy ceiling fell and hit her son. Situations like this are commonplace in NYCHA developments and it is exceedingly dangerous to residents. Photos below are from her apartment.



Legislative Solutions

Mold Remediation Standards

The IDC is committed to protecting NYCHA residents from the harmful effects of mold. Current labor law mandates that mold assessments and remediation be conducted by licensed professionals to ensure that abatement is completed properly. These laws have established standards and the individuals performing the abatement are held accountable to them. Incomprehensibly, the law exempts mold assessment and remediation work done by public entities, like NYCHA, from the

licensing requirement. Consequently, this loophole allows NYCHA to employ individuals who are not licensed to assess and abate mold.

The fact that NYCHA properties have hundreds of documented cases of mold while simultaneously allowing remediation to be performed by untrained and unlicensed workers puts residents at risk for serious health issues. Scientists recommend never to clean mold on your own and to let the professionals take care of it because it is a dangerous task. To address this issue, the IDC has introduced **S.5696** (Savino). The bill would close the existing licensing loophole by extending the licensing requirements for mold assessment and remediation to NYCHA. This measure would build on NYCHA's own internal efforts by mandating that all mold related repairs on its properties be completed in accordance with the same standards imposed on private sector assessment and remediation efforts.

Important to note, the City requested that NYCHA be exempted from this law because they felt their internal training was sufficient, if not superior to the requirements set by the state. Clearly, that assumption was false.

Repair Certificate Program

The IDC's proposal, **S.1990**, by Senator Klein, allows for private developers to conduct repairs directly at NYCHA, leveraging their expertise and efficiency with construction contracts. A NYCHA RFP takes 20 months on average, whereas private real-estate firms could complete the necessary service in a fraction of that time. How much money is raised for NYCHA repairs using this program would depend on how widely it was used, and the value of the increased development rights that developers would have access to. The IDC will also work with developers to identify training opportunities for NYCHA residents so that they can pursue meaningful careers.

NYCHA 311 Hotline

Senator Klein introduced legislation, **S.7798**, to require 311 to accept calls from NYCHA residents to report housing violations and other complaints. Currently, NYCHA administers its own hotline for tenant complaints. However, there is not easy access to these complaints and it is unclear how the complaints are processed. By requiring 311 to establish a NYCHA hotline, residents will have a better opportunity to report issues, such as chipped or peeling paint, and the process will be recorded with public access. In addition, the complaints will be filed within the appropriate agency in a timely manner to ensure faster remedial efforts. Finally, by filing with 311, there will be an accessible public record of all NYCHA complaints.

Independent Monitor

The IDC believes that it is critical for NYCHA to submit itself to greater oversight. The IDC believes it is obvious that there needs to be an independent monitor put in place to oversee the city public housing authority. Clearly, the current system is failing. An Independent Monitor at the state level would provide the necessary checks and balances on NYCHA and would ensure that they are fulfilling their obligations to the public (**S.5788/Klein**).

On February 28, 2018, we passed S.5788 out of the Senate. It is time for the state to intervene and protect NYCHA residents from the abhorrent conditions the authority is subjecting them to.

City Council Oversight

The IDC supports giving the New York City Council the power to demand and receive information from NYCHA, ensuring that the Authority's operations remain transparent (**S.1989/Klein**). With NYCHA providing homes to nearly 400,000 New Yorkers, local elected officials should have powers to protect their residents. Currently, the Mayor has complete control over NYCHA and he is constantly leaving residents behind. NYCHA ostensibly acts as an agency, therefore it should be treated as one. This bill would grant the NYC Council the same power to review the operations of NYCHA on a continuous basis that it has over city agencies. The legislation would also give the NYC council the power to mandate reporting by NYCHA through the passage of a local law. This type of oversight is paramount for the City Council to protect their citizens. S.1989 passed the Senate on February 28, 2018 and is currently reported to the Assembly housing committee.

Conclusion

In conclusion, yet again the IDC has discovered the extreme shortcomings of NYCHA. Mold is present in the homes of the majority of residents who we spoke to, yet NYCHA continues to have no sense of urgency on mold abatement. Our survey results show that even with the media watching NYCHA, the wait times for repairs are still far longer than is reasonable. Mold is something that can appear within hours and can have immediate health risks, yet still it can take weeks, months, or even years for NYCHA to act on these complaints. Even with these constant complaints, very little coming from the authority to show us that they are even close to a solution nor have they taken any steps to become more responsive to the needs of their residents. As NYCHA continues to drag its feet with fixing their problems, the state is going to step in to protect these residents.