The Basics of Landlord & Tenant Law

A Quick Reference Guide For Residential Rental Property In Virginia

By

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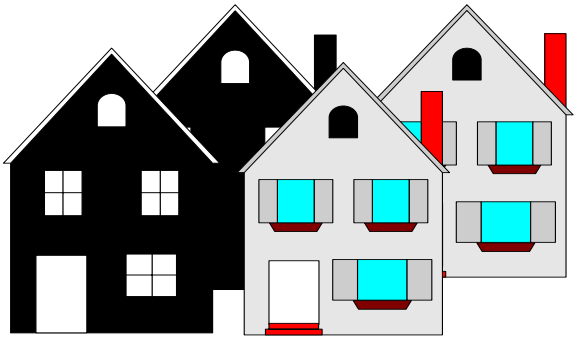
Attorney



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This Book has been annually updated since 1989

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Section 1:1 Warning about the recent and future changes

Section 1:2 Other Highlights of 2019-2020 changes

Section 1:3 Nonresidential tenancies defined.

Section 1:4 Code section conversion chart

Section 1:1 Warning about the recent and future changes

This book is about multifamily and single-family residential rentals only (including condo's & coops) but a brief discussion is included as to the applicable law for nonresidential rentals.

Beginning October 1, 2019, the Virginia Code Commission combined all residential rentals into the VRLTA for residential rentals. There are some rentals that are defined as non-residential and they are shown below. What makes this project interesting is that the Va. General Assembly amended some of the statutes which amendments are effective July 1, 2019 and will be included in the final Oct 1, 2019 printing of the new sections. Hopefully there will be no more changes to the code during this interim period.

*Please note that on October 1, 2019, all Title **55** code sections are being changed to and reorganized in new Title **55.1** so that the **section numbers will all be changed** as well with some of the material relocated within the title as part of that project.*

A CONVERSION CHART IS PROVIDED IN THIS BOOK SO YOU CAN LOCATE THE NEW NUMBERS USING THE OLD ONES.

- **VRLTA** in new Chapter 12 (*§ 55.1-1200 (§ 55.1-1201 (formerly § 55-248.3 & 3:1) § 55-248.4) et seq)*
- **MANUFACTURED HOME LOT RENTAL ACT** in new Chapter 13 (§ 55.1-1300 (formerly § 55-248.41) et seq)
- **NONRESIDENTIAL TENANCIES** will be found at new Chapter 14 (§ 55.1-1400 *et seq.*)
- **RESIDENTIAL GROUND RENT ACT** will be found at new Chapter 15 (§ 55.1-1500 *et seq.)*
- **DEEDS OF LEASE** will be found at new Chapter 16 (§ 55.1-1600 *et seq.*)
- **EMBLEMENTS** will be found at new Chapter 17 (§ 55.1-1700 *et seq.*)

All *non-residential tenancies* continue to be governed by what is referred to as the common law with its modifications by code.

All *residential tenancies* are governed by the VRLTA. There are no longer any exemptions from the VRLTA, only residential and nonresidential tenancies.

PLEASE NOTE THAT ON OCTOBER 1, 2019, ALL TITLE 55 CODE SECTIONS ARE BEING CHANGED TO AND REORGANIZED IN NEW TITLE 55.1. [ed insert fn: Chapter 712, Virginia Acts of Assembly, 2019 Session]

- **VRLTA** in new Chapter 12 (*§ 55.1-1200 (§ 55.1-1201 (formerly § 55-248.3 & 3:1) § 55-248.4) et seq)*
- **MANUFACTURED HOME LOT RENTAL ACT** in new Chapter 13 (§ 55.1-1300 (formerly § 55-248.41) et seq)
- **NONRESIDENTIAL TENANCIES** will be found at new Chapter 14 (§ 55.1-1400 *et seq.*)
- **RESIDENTIAL GROUND RENT ACT** will be found at new Chapter 15 (§ 55.1-1500 *et seq.)*
- **DEEDS OF LEASE** will be found at new Chapter 16 (§ 55.1-1600 *et seq.*)
- **EMBLEMENTS** will be found at new Chapter 17 (§ 55.1-1700 *et seq.*)

All *non-residential tenancies* continue to be governed by what is referred to as the common law with its modifications by code.

All *residential tenancies* are governed by the VRLTA. There are no longer any exemptions from the VRLTA, only residential and nonresidential tenancies.

Section 1:2 Other Highlights of 2019-2020 changes

- -Signature on lease longer than five years (that's counting the renewals) no longer has to be under seal and be a deed of lease in order to be valid and enforceable.
- -All single family and multi-family dwelling rental agreements are now controlled solely by the VRLTA. Hence, all exempt sections 55-225.01 through 55-225.50 are repealed. For the brief period from July 1, 2019 up to October 1, 2019 that they remained in effect they are identical to the VRLTA.
- -The landlord is now required to offer a <u>written</u> rental agreement to the tenant which agreement contains the terms and conditions effective on the date signed by the parties. If the landlord does not offer the written rental agreement the terms and conditions of the VRLTA will control for a term of 12-months; without an automatic renewal, unless the rental is month-to-month. The rent will be due and payable in 12 equal installments in an agreed to amount. If there is no amount agreed to, then it will be at the fair market rent.
- -Under 55-248.7:2 (new § 55.1-1206) is amended to reflect that if the rental agreement does not require tenant to obtain renter's insurance, the landlord must provide a written notice to the tenant, before signing the lease, that the landlord is not liable for damage to tenant's personal property if the landlord's insurance does not cover the tenant's personal property. If the tenant wants to protect his personal property, he should obtain renter's insurance. The notice must also disclose information about non-coverage of flood insurance and related mandatory disclosures and offer language translation, if requested, at no fee. This code section is being converted to § 55.1-1206 as of 10-1-19.
- -The redemption language under VRLTA was amended. In order for the tenant to redeem, the tenant must pay the landlord or landlord's attorney or pay into court

all of the rent that is due under the rental agreement and the charges and fees and late charges as agreed to in the rental agreement and reasonable attorney fees as contracted for in the rental agreement and the cost of the proceeding as provided by law. If the payment has not been made as of the return date the tenant may pay to the landlord or his attorney or to the court, no less than two business days before the date scheduled for eviction, all payments, by certified cashier's check or money order, for all amounts claimed on the summons, including rent damages, late fees and court costs, plus any civil recovery plus attorney fees.

- -Hearings on an unlawful detainer, while still required to be heard within 21 days of filing or as soon thereafter as is practical but the amendment says, in no event later than 30 days after the date of filing.
- -No order of possession in an unlawful detainer case filed under Code § 8.01-126 (general district court filing) allowed unless the plaintiff or plaintiff's attorney or agent has presented a copy of a proper termination notice that the court admitted into evidence. The definition of termination is set forth in code amendment.
- -Plaintiff may amend the amount sought in recovery to include such additional amounts that become due and owing prior to the final disposition of the unlawful detainer. The amendment prohibits a plaintiff from filing a subsequent action for such additional amount.
- -An Eviction Diversion Pilot Program was enacted to be effective July 1, 2020 in sections §§ 55-248.40:1 thru § 55-248.40:3 *(On 10-1-19 changed to §§ 55.1-1260 - 1262)*, expiring the next year. This program will not apply to a tenant who has exercised his right of redemption under § 55-248.34:1 (*(On 10-1-19 changed to § 55.1-1250* before July 1, 2020. The program is applicable to the cities of Danville, Hampton, Petersburg, and Richmond with the goal to reduce the number of evictions, displaced families and facilitating reasonable payment plans that provide the landlord with full rental payments and for the tenant to have the opportunity to bring his rental payments current and encourage those payments. See new section 21:23 of this book --for this enactment.
- -Additional information is included in the bankruptcy section dealing with abusive bankruptcy frequent filers, comfort orders and relief from stay in those situations.
- -Discussion under fair housing case on the theories of disparate impact and disparate treatment and the burden of proof shifting in each of those.
- The initial hearing on a summons for unlawful detainers filed in general district court must be heard within 21 days unless plaintiff asks for a later date, but no later than 30-days.
- -§16.1-107 was amended as to the requirements for posting the appeal in unlawful detainer cases for a residential unit where the indigent tenant is a former owner under foreclosure. The exception is if that tenant is indigent, the right to appeal without posting a bond does not apply, but, the indigent tenant is given 30-days to post the bond rather than 10-days.
- Servicemembers Civil Relief Act added protection of military allowing them to

cancel lease entered into after they were in the military when they receive a change of duty station or deployment of more than 90 days giving the landlord 30-days notice. There is no distance from the rental unit required under the federal law in comparison with the VRLTA's provisions.

- The Protection of Tenants in Foreclosure Act that sunset back in 2014 has been revived in 2018 and made permanent. It mandates, for foreclosures involving federally-related loans, that the new owner give any tenant a 90-day notice and if that tenant is at will or month to month, then the renal ends at the expiration of the term rental. If there is a term lease and the new owner is not planning to live in the house as his/her primary residence, then the tenant may stay under the lease until the expiration of its term, PROVIDED (1) that the tenancy was created before the foreclosure, and (2) the rent is not substantially less than fair market value, and (3) that the tenant is not the prior owner, his child or spouse or parent.

Section 1:3 **Nonresidential tenancies defined.**

Certain types of housing are defined as nonresidential tenancies. They are:

1. Residence at a public or private institution, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar services;

2. Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

3. Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

4. Occupancy in a campground as defined in § 35.1-1;

5. Occupancy by a tenant who pays no rent pursuant to a rental agreement; or

6. Occupancy by an employee of a landlord whose right to occupancy in a multifamily dwelling unit is conditioned upon employment in and about the premises or a former employee whose occupancy continues less than 60 days.

7. Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest.

In addition, the law governing occupancy in hotels, motels, extended stay facilities, and the like, is set forth in § 55-248.3:1(D)

Section 1:4 **Code section conversion chart**

CHAPTER 13. LANDLORD AND TENANT (former common law).	**NEW NONRESIDENTIAL RENTALS CHAPTER 14**
55-217. Applicability; right to terminate tenant.	55.1-1400

55-217.1. Grantees and assignees to have same rights against lessees as lessors, etc.	55.1-1406
55-218. Lessees, etc., to have same rights against grantees, etc., as against lessors.	55.1-1407
55-218.1. Appointment of resident agent by nonresident property owner; service of process, etc., on such agent or on Secretary of the Commonwealth.	§ 55.1-1211; § 55.1-1401
55-219. Apportionment on purchase of part of land by holder of rent, etc.	55.1-1402
55-220. What powers to pass to grantee or devisee; when attornment unnecessary.	55.1-1408
55-220.1. Perfection of lien or interest in leases, rents and profits.	55.1-1403
55-221. When attornment void.	55.1-1409
55-221.1. Community land trusts not considered landlords.	55.1-1200
55-222. Notice to terminate a tenancy in nonresidential premises; notice of change in use of multifamily residential building.	55.1-1410
55-222.1.	Repealed by Acts 1974, c. 680
55-223. Effect of failure of tenant in nonresidential premises to vacate premises at expiration of term.	55.1-1413
55-224. When tenant deserts nonresidential premises, how landlord may enter, etc.	55.1-1414
55-225. Failure to pay certain rents after five days' notice forfeits right of possession.	55.1-1415
55-225.01. Sections applicable only to certain residential tenancies.	Deleted
55-225.02. Definitions for residential dwelling units subject to this chapter.	Deleted
55-225.1. Recovery of possession limited.	Deleted
55-225.2. Remedies for landlord's unlawful ouster, exclusion or diminution of service.	Deleted
55-225.3. Landlord to maintain dwelling unit.	Deleted
55-225.4. Tenant to maintain dwelling unit.	Deleted
55-225.5. Access following entry of certain court orders.	Deleted

55-225.6. Inspection of dwelling unit.	Deleted
55-225.7. Disclosure of mold in dwelling units.	Deleted
55-225.8.	Repealed by Acts 2017, c. 730, cl. 2
55-225.9. Relocation of tenant where mold remediation needs to be performed in the dwelling unit.	Deleted
55-225.10. Notice to tenant in event of foreclosure.	Deleted
55-225.11. Required disclosures for properties with defective drywall; remedy for nondisclosure.	Deleted
55-225.11:1. Required disclosures for properties located adjacent to a military air installation; remedy for nondisclosure.	Deleted
55-225.12. Tenant's assertion; rent escrow; dwelling units.	Deleted
55-225.12:1. Wrongful failure to supply heat, water, hot water, or essential services.	Deleted
55-225.13. Noncompliance by landlord in the rental of a dwelling unit.	Deleted
55-225.13:1. Landlord's noncompliance as defense to action for possession for nonpayment of rent.	Deleted
55-225.14. Rent escrow required for continuance of tenant's case in the rental of a dwelling unit.	Deleted
55-225.15. Receipt required for certain rental payments; upon request.	Deleted
55-225.16. Early termination of rental agreements by victims of family abuse, sexual abuse, or criminal sexual assault.	Deleted
55-225.17. Required disclosures for property previously used to manufacture methamphetamine; remedy for nondisclosure.	Deleted
55-225.18. Retaliatory conduct prohibited.	Deleted
55-225.19. Security deposits.	Deleted
55-225.20. Notice.	Deleted
55-225.21. Application deposit and application fee.	Deleted
55-225.22. Terms and conditions of rental agreement; copy for tenant; rental payments.	Deleted
55-225.22:1. Prohibited provisions in rental agreements.	Deleted
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55-225.38. Periodic tenancy; holdover remedies.	Deleted
55-225.39. Remedies for absence, nonuse and abandonment.	Deleted
55-225.40. Disposal of property abandoned by tenants.	Deleted
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55-225.42. Disposal of property of deceased tenants.	Deleted
55-225.43. Noncompliance with rental agreement; monetary penalty.	Deleted
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55-225.46. Remedy by repair, etc.; emergencies.	Deleted
55-225.47. Landlord's acceptance of rent with reservation.	Deleted
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Chapter 2 Virginia Residential L-T Law

(VRLTA)

(This Act is printed in full in Chapter19 with the new numbers that are effective October 1, 2019.)

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Section 2:51 Tenant's absence, nonuse and abandonment (§ 55-248.33 (new § 55.1-1249))

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Section 2:59 Retaliatory Conduct Prohibited (§ 55-248.39 (now § 55.1-1258))

Section 2:60 Actions to enforce chapter (§ 55-248.40 (now § 55.1-1259))

Section 2:1 **Differences between VRLTA and <u>EARLIER</u> VRLTA-EXEMPT enactments**

There are no differences in the law for residential single-family home rentals, condominium rentals, cooperative rentals, and multi-family rentals. They are all governed by the VRLTA.

Section 2:2 **Highlights**

The Tenant's Remedies under the VRLTA:

1. Requires the landlord to provide the tenant with a written rental agreement and if not, then the term of the rental will be 12 months at market rent with the VRLTA providing all of the terms and conditions;
2. Initial 5-day right of inspection and possible termination of lease if there is visible evidence of mold;
3. Protects the tenant from the landlord's material breach which materially affects health and safety;
4. Protects the tenant from the landlord's wrongful failure to provide essential services...heat, etc. with the right to terminate the lease if the breach is not timely cured or to file a tenant assertion in court and pay the rent into escrow with the court the rights of the parties is adjudicated.
5. Protects the tenant from the landlord's ouster of a tenant, the exclusion or diminution of services; and
6. Protects the tenant from the landlord's abuse of access.
7. The Act gives the tenant the right to terminate the lease for the landlord's willful diminution of essential services or material breach affecting health, and safety, and also.
8. The Act gives the tenant the right to defend a suit for nonpayment of rent based on the landlord's material breach of the rental agreement.
9. The redemption language under VRLTA was amended. In order for the tenant to redeem, the tenant must pay the landlord or landlord's attorney or pay into court all of the rent that is due under the rental agreement and the charges and fees and late charges as agreed to in the rental agreement and reasonable attorney fees as contracted for in the rental agreement and the cost of the proceeding as provided by law. If the payment has not been made as of the return date the tenant may pay to the landlord or his attorney or to the court, no less than two business days before the date scheduled for eviction, all payments, by certified cashier's check or money order, for all amounts claimed on the summons, including rent damages, late fees and court costs, plus any civil recovery plus attorney fees.
10. The Act gives the right to obtain injunctive relief,
11. The Act provides for the right to recover actual damages;
12. The right to collect his attorney's fees for a willful breach by landlord; and also
13. The right to escrow rent under the right circumstances.
14. -An Eviction Diversion Pilot Program was enacted to be effective July 1, 2020 in sections §§ 55-248.40:1 thru § 55-248.40:3 (On 10-1-19 changed to §§ 55.1-1260 -

1262), expiring the next year. This program will not apply to a tenant who has exercised his right of redemption under § 55-248.34:1 (On 10-1-19 changed to § 55.1-1250 (formerly § 55-248.34:1)) before July 1, 2020. The program is applicable to the cities of Danville, Hampton, Petersburg, and Richmond with the goal to reduce the number of evictions, displaced families and facilitating reasonable payment plans that provide the landlord with full rental payments and for the tenant to have the opportunity to bring his rental payments current and encourage those payments.

15. -Hearings on an unlawful detainer, while still required to be heard within 21 days of filing or as soon thereafter as is practical but the amendment says, in no event later than 30 days after the date of filing.
16. -No order of possession in an unlawful detainer case filed under Code § 8.01-126 (general district court filing) allowed unless the plaintiff or plaintiff's attorney or agent has presented a copy of a proper termination notice that the court admitted into evidence. The definition of termination is set forth in code amendment.
17. Normally, where an indigent tenant qualifies for an appeal having to post an appeal bond, that exception was amended in the situation where the tenant is the former owner, the right to appeal without posting a bond does not apply, but, the indigent tenant is given 30-days to post the bond rather than 10-days.§16.1-107(c)

The Act protects the **LANDLORD** from:

1. The tenant's non-payment of rent;
2. The tenant's material non-compliance with lease;
3. The tenant's violation of his duty to maintain the property which violation materially affects health and safety; and
4. Allows the landlord to recover attorney's fees where the tenant's breach is willful.
5. The Act gives the Landlord:
6. The right to possession;
7. The right to recover actual damages; The right to attorney's fees; and
8. The right to obtain injunctive relief.

Section 2:3 **Purposes of chapter (§ 55-248.3)**

1. To simplify, clarify, modernize & revise the common law and to establish a single body of law on landlord and tenant law.
2. To encourage landlords and tenants to maintain and improve the quality of housing
3. The VRLTA supersedes all other local, county or municipal ordinances or regulations in reference to residential rentals.

4. Counties, etc., may enforce compliance with local property maintenance codes
5. Provided however:
6. Counties, cities & towns may establish a commission or designate an existing agency
7. Reconciliatory in nature only
    - To mediate conflicts between landlords and tenants arising out of the application of VRLTA
    - Upon mutual agreement of the parties

Section 2:4 Applicability and Exemptions (§ 55-248.3:1)

Local governments cannot waive or alter this law

A. This VRLTA chapter applies to all jurisdictions in the Commonwealth and may not be waived or otherwise modified, in whole or in part, by the governing body of any locality, its boards and commissions or other instrumentalities, or by the courts of the Commonwealth.

All single-family and multifamily residential dwellings

B. The provisions of this VRLTA chapter shall apply to occupancy in all single-family and multifamily residential dwelling units and multifamily dwelling unit located in the Commonwealth except where the dwelling is exempt from the VRLTA. This includes the rental of condominiums, which are no longer exempt from the VRLTA.

Single family exemption & opt out requirement.

Where the landlord is a natural person, an estate, or a legal entity that owns no more than two single-family residential dwelling units in its own name subject to a rental agreement, the VRLTA will not apply if the landlord opts out of the Virginia Residential Landlord and Tenant Act (§ 55–248.2 et seq.) by so stating in a rental agreement with a tenant. Such residential dwelling units shall be exempt from this VRLTA chapter and the provisions of the VRLTA-EXEMPT enactments found in §§ 55–225.01 through 55–225.48 shall be applicable.

Contract of sale exemption

The provisions of this VRLTA chapter will not apply to instances where occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest.

Non-residential tenancies

Tenancies and occupancies that are not considered residential tenancies are as follows:

1. Residence at a public or private institution, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar services;

2. Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

3. Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

4. Occupancy in a campground as defined in § 35.1–1;

5. Occupancy by a tenant who pays no rent pursuant to a rental agreement;

6. Occupancy by an employee of a landlord whose right to occupancy in a multifamily dwelling unit is conditioned upon employment in and about the premises or a former employee whose occupancy continues less than 60 days; or

7. Occupancy in a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development, if the provisions of this chapter are inconsistent with the regulations of the Department of Housing and Urban Development.

D. Occupancy in hotel, motel, and extended stay facility.

1. ***Not a resident.*** A **guest** who is an occupant of a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time–Share Act (§ 55–360 et seq.), boardinghouse, or similar transient lodging shall not be construed to be a tenant living in a dwelling unit if such person **does not reside in such lodging as his primary residence**. Such guest shall be exempt from the VRLTA, and the innkeeper or property owner, or his agent, **shall have the right to use self-help eviction under Virginia law**, without the necessity of the filing of an unlawful detainer action in a court of competent jurisdiction and the execution of a writ of possession issued pursuant to such action, which would otherwise be required under the VRLTA.

2. A hotel, motel, extended stay facility, vacation residential facility, boardinghouse, or similar transient lodging shall be exempt from the provisions of the VRLTA if overnight sleeping accommodations are furnished to a person **for consideration** if **such person does not reside in such lodging as his primary residence**.

a. ***Resident 90-days or less.*** If a person resides in a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time–Share Act (§ 55–360 et seq.), boardinghouse, or similar transient lodging as his primary residence **for fewer than 90 consecutive days,** such lodging shall not be subject to the provisions of this chapter. However, the owner of such lodging establishment **shall give a five-day written notice of nonpayment** to a person residing in such lodging and, upon the expiration of the five-day period specified in the notice, **may exercise self-help eviction** if payment in full has not been received.

b. ***Resident more than 90-days.*** If a person resides in a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time–Share Act (§ 55–360 et seq.), boardinghouse, or similar transient lodging **as his primary residence for more than 90 consecutive days** or is subject to a written lease for more than 90 days, such lodging **shall be subject to the provisions of** the VRLTA.

c. Nothing in these lodging provisions is to be construed to preclude the owner of a lodging establishment that uses self-help eviction pursuant to this section from pursuing any civil or criminal remedies under Virginia law.

Section 2:5 **Definitions (§ 55-248.4 (new § 55.1-1200))**

When used in this chapter, unless expressly stated otherwise:

"Action" means recoupment, counterclaim, set off, or other civil suit and any other proceeding in which rights are determined, including without limitation actions for possession, rent, unlawful detainer, unlawful entry, and distress for rent.

"Application deposit" means any refundable deposit of money, however denominated, including all money intended to be used as a security deposit under a rental agreement, or property, which is paid by a tenant to a landlord for the purpose of being considered as a tenant for a dwelling unit.

"Application fee" means any nonrefundable fee, which is paid by a tenant to a landlord or managing agent for the purpose of being considered as a tenant for a dwelling unit. An application fee shall not exceed $50, exclusive of any actual out-of-pocket expenses paid by the landlord to a third-party performing background, credit, or other pre-occupancy checks on the applicant. However, where an application is being made for a dwelling unit which is a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development, an application fee shall not exceed $32, exclusive of any actual out-of-pocket expenses paid to a third party by the landlord performing background, credit, or other pre-occupancy checks on the applicant.

"Assignment" means the transfer by any tenant of all interests created by a rental agreement.

"Authorized occupant" means a person entitled to occupy a dwelling unit with the consent of the landlord, but who has not signed the rental agreement and therefore does not have the financial obligations as a tenant under the rental agreement.

"Building or housing code" means any law, ordinance or governmental regulation concerning fitness for habitation, or the construction, maintenance, operation, occupancy, use or appearance of any structure or that part of a structure that is used as a home, residence or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

"Commencement date of rental agreement" means the date upon which the tenant is entitled to occupy the dwelling unit as a tenant.

"Dwelling unit" means a structure or part of a structure that is used as a home or residence by one or more persons who maintain a household, including, but not limited to, a manufactured home.

"Effective date of rental agreement" means the date upon which the rental agreement is signed by the landlord and the tenant obligating each party to the terms and conditions of the rental agreement.

"Facility" means something that is built, constructed, installed or established to perform some particular function.

"Good faith" means honesty in fact in the conduct of the transaction concerned.

"Guest or invitee" means a person, other than the tenant or person authorized by the landlord to occupy the premises, who has the permission of the tenant to visit but not to occupy the premises.

"Interior of the dwelling unit" means the inside of the dwelling unit, consisting of interior walls, floor, and ceiling, that enclose the dwelling unit as conditioned space from the outside air.

"Landlord" means the owner, lessor or sublessor of the dwelling unit or the building of which such dwelling unit is a part. "Landlord" also includes a managing agent of the premises who fails to disclose the name of such owner, lessor or sublessor. Such managing agent shall be subject to the provisions of § 16.1-88.03. Landlord shall not, however, include a community land trust as defined in § 55-221.1 (now § 55.1-1200).

"Managing agent" means a person authorized by the landlord to act on behalf of the landlord under an agreement.

"Mold remediation in accordance with professional standards" means mold remediation of that portion of the dwelling unit or premises affected by mold, or any personal property of the tenant affected by mold, performed consistent with guidance documents published by the United States Environmental Protection Agency, the U.S. Department of Housing and Urban Development, the American Conference of Governmental Industrial Hygienists (the Bioaerosols Manual), Standard Reference Guides of the Institute of Inspection, Cleaning and Restoration for Water Damage Restoration and Professional Mold Remediation, or any protocol for mold remediation prepared by an industrial hygienist consistent with said guidance documents.

“Multifamily dwelling unit” means more than one single-family dwelling unit located in a building. However, nothing in this definition shall be construed to apply to any nonresidential space in such building.

"Natural person," wherever the chapter refers to an owner as a "natural person," includes co-owners who are natural persons, either as tenants in common, joint tenants, tenants in partnership, tenants by the entirety, trustees or beneficiaries of a trust, general partnerships, limited liability partnerships, registered limited liability partnerships or limited liability companies, or any lawful combination of natural persons permitted by law.

"Notice" means notice given in writing by either regular mail or hand delivery, with the sender retaining sufficient proof of having given such notice, which may be either a United States postal certificate of mailing or a certificate of service confirming such mailing prepared by the sender. However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, he has received a verbal notice of it, or from all of the facts and circumstances known to him at the time in question, he has reason to know it exists. A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated

to inform another person whether or not the other person actually comes to know of it. If notice is given that is not in writing, the person giving the notice has the burden of proof to show that the notice was given to the recipient of the notice.

"Organization" means a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any combination thereof, and any other legal or commercial entity.

"Owner" means one or more persons, jointly or severally, in whom is vested:

1. All or part of the legal title to the property, or
2. All or part of the beneficial ownership and a right to present use and enjoyment of the premises, and the term includes a mortgagee in possession.

"Person" means any individual, group of individuals, corporation, partnership, business trust, association or other legal entity, or any combination thereof.

"Premises" means a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant.

"Processing fee for payment of rent with bad check" means the processing fee specified in the rental agreement, not to exceed $50, assessed by a landlord against a tenant for payment of rent with a check drawn by the tenant on which payment has been refused by the payor bank because the drawer had no account or insufficient funds.

"Readily accessible" means areas within the interior of the dwelling unit available for observation at the time of the move-in inspection that do not require removal of materials, personal property, equipment or similar items.

"Rent" means all money, other than a security deposit, owed or paid to the landlord under the rental agreement, including prepaid rent paid more than one month in advance of the rent due date.

"Rental agreement" or "lease agreement" means all agreements, written or oral, and valid rules and regulations adopted under § 55-248.17 (new § 55.1-1228) embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

"Rental application" means the written application or similar document used by a landlord to determine if a prospective tenant is qualified to become a tenant of a dwelling unit. A landlord may charge an application fee as provided in this chapter and may request a prospective tenant to provide information that will enable the landlord to make such determination. The landlord may photocopy each applicant's driver's license or other similar photo identification, containing either the applicant's social security number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342. However, a landlord shall not photocopy a U.S. government-issued identification so long as to do so is a violation of Title 18 U.S.C. Part I, Chapter 33, § 701. The landlord may require that each applicant provide a social security number issued by the U.S. Social Security Administration or an individual taxpayer identification number issued by the U.S. Internal Revenue Service, for the purpose

of determining whether each applicant is eligible to become a tenant in the landlord's dwelling unit.

"Roomer" means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility, in a structure where one or more major facilities are used in common by occupants of the dwelling unit and other dwelling units. Major facility in the case of a bathroom means toilet, and either a bath or shower, and in the case of a kitchen means refrigerator, stove, or sink.

"Security deposit" means any refundable deposit of money that is furnished by a tenant to a landlord to secure the performance of the terms and conditions of a rental agreement, as a security for damages to the leased premises, or as a pet deposit. However, such money shall be deemed an application deposit until the commencement date of the rental agreement. Security deposit shall not include a damage insurance policy or renter's insurance policy as those terms are defined in § 55-248.7:2 (new § 55.1-1206) purchased by a landlord to provide coverage for a tenant.

"Single-family residence" means a structure, other than a multi-family residential structure, maintained and used as a single dwelling unit or any dwelling unit which has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment nor any other essential facility or service with any other dwelling unit.

"Sublease" means the transfer by any tenant of any but not all interests created by a rental agreement.

"Tenant" means a person entitled only under the terms of a rental agreement to occupy a dwelling unit to the exclusion of others and shall include roomer. Tenant shall not include (i) an authorized occupant, (ii) a guest or invitee, or (iii) any person who guarantees or cosigns the payment of the financial obligations of a rental agreement but has no right to occupy a dwelling unit.

"Tenant records" means all information, including financial, maintenance, and other records about a tenant or prospective tenant, whether such information is in written or electronic form or other medium.

"Utility" means electricity, natural gas, water and sewer provided by a public service corporation or such other person providing utility services as permitted under § 56-1.2. If the rental agreement so provides, a landlord may use submetering equipment or energy allocation equipment as defined in § 56-245.2, or a ratio utility billing system as defined in § 55-226.2.

"Visible evidence of mold" means the existence of mold in the dwelling unit that is visible to the naked eye by the landlord or tenant in areas within the interior of the dwelling unit readily accessible at the time of the move-in inspection.

"Written notice" means notice given in accordance with § 55-248.6, including any representation of words, letters, symbols, numbers, or figures, whether

(i) printed in or inscribed on a tangible medium or

(ii) stored in an electronic form or other medium, retrievable in a perceivable form, and

regardless of whether an electronic signature authorized by Chapter 42.1 (§ 59.1-479 et seq.) of Title 59.1 is affixed. The landlord may, in accordance with a written agreement, delegate to a managing agent or other third party the responsibility of providing any written notice required by this chapter.

Section 2:6 **Notice (§ 55-248.6)**

"Notice" means notice given in writing by either regular mail or hand delivery, with the sender retaining sufficient proof of having given such notice, which may be either a United States postal certificate of mailing or a certificate of service confirming such mailing prepared by the sender.

Electronic

If the rental agreement so provides, the landlord and tenant may send notices in electronic form, however any tenant who so requests may elect to send and receive notices in paper form. If electronic delivery is used, the sender shall retain sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery

Actual notice

A person is deemed to have notice of a fact if he has actual knowledge of it, or he has received a verbal notice of it, or from all the facts and circumstances known to him at the time in question, he has reason to know it exists. Note the changes in the notice language for rent escrow and tenant assertions pertaining to the requirement for "written notice."—actual notice is recognized.

How to give notice

The VRLTA-EXEMPT section provides for how notice may be given. A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform another person whether or not the other person actually comes to know of it. If notice is given that is not in writing, the person giving the notice shall have the burden of proof to show that the notice was given to the recipient of the notice.

In the case of the landlord, notice is served on the landlord at his place of business where the rental agreement was made, or at any place held out by the landlord as the place for receipt of the communication.

In the case of the tenant, notice is served at the tenant's last known place of residence, which may be the dwelling unit.

Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the person conducting that transaction, or from the time it would have been brought to his attention if the organization had exercised reasonable diligence.

To serve notice

Service of notices in landlord tenant cases can be done by the landlord, or the landlord's duly authorized agent or by the sheriff or by a private processor.

The manner of service can be as stated in the VRLTA and VRLTA-EXEMPT code sections or as stated in Va. Code §8.01-296 which spells out the manner of serving process upon natural persons. "Process" as used in this service of process code section is defined in §8.01-285 to include "notices."

It can by personally delivering a copy to the party in person; or

If the party to be served is not found at his usual place of abode, then service can be by delivering a copy of such notice to any person found there, who is a member of his family, other than a temporary sojourner or guest, and who is of the age of 16 years or older; or

If no such person if found there, then by posting a copy of such notice at the front door or at such other door as appears to be the main entrance of such place of abode, and where posting is used, the party causing service or his attorney or agent mails to the party served a copy of such process and thereafter has a certificate of such mailing.

Public housing

No notice of termination of tenancy served upon a tenant by a public housing authority organized under the Housing Authorities Law (§ 36-1 et seq.) of Title 36 will be effective unless it contains on its first page, in type no smaller or less legible than that otherwise used in the body of the notice, the name, address and telephone number of the legal services program, if any, serving the jurisdiction wherein the premises are located.

Use of managing agent, attorney & electronic signatures

The landlord may, in accordance with a written agreement, delegate to a managing agent or other third party the responsibility of providing any written notice under this chapter. The landlord may also engage an attorney at law to prepare or provide any written notice under this chapter or legal process under Title 8.01. Nothing herein shall be construed to preclude use of an electronic signature as defined in § 59.1–480, or an electronic notarization as defined in § 47.1–2, in any written notice under this chapter or legal process under Title 8.01.

Here is a suggested form to certify service of

I hereby certify that I served the above notice upon the named Tenant(s) by **mailing a copy** of it to him at his dwelling unit **and** by **hand delivery** to his dwelling unit this___day of_____, 20___by

[ ] personal service on tenant;

[ ] personal service on a member of tenant's family who is over 16 years of age; [ ] by posting on the front door of the abode after first ascertaining that the person(s) to be served or a family member of suitable age for service was not available

_____landlord or landlord's agent.

Section 2:7 Application Fees & Application Deposits (§ 55-248.6:1 (new § 55.1-1203))

This section has been a source of confusion. It remains in the VRLTA but has been reorganized to other sections. A landlord may not take a "deposit" as part of the application process unless it is refundable should the lease not be signed. The nonrefundable "fee" that the landlord is allowed to collect may not exceed the $50 limit or what the landlord's actual costs of the application process. The term "deposit" is not a "fee" and it may not be forfeited should the tenant not sign a lease. The landlord who violates this section also faces the payment of the applicant's attorney's fees plus actual damages suffered by the applicant.

Here is the actual language of the code section:

Any landlord may require a refundable application deposit in addition to a nonrefundable application fee. If the applicant fails to rent the unit for which application was made, from the application deposit the landlord shall refund to the applicant within 20 days after the applicant's failure to rent the unit or the landlord's rejection of the application all sums in excess of the landlord's actual expenses and damages together with an itemized list of said expenses and damages. If, however, the application deposit was made by cash, certified check, cashier's check, or postal money order, such refund shall be made within 10 days of the applicant's failure to rent the unit if the failure to rent is due to the landlord's rejection of the application. If the landlord fails to comply with this section, the applicant may recover as damages suffered by him that portion of the application deposit wrongfully withheld and reasonable attorney fees.

Section 2:8 Terms and conditions of the lease (§ 55-248.7 (new § 55.1-1204))

A landlord and tenant **may include in a rental agreement**, terms and conditions which are not prohibited by VRLTA, or other rule of law, including

- Rent,
- Late payment of rent charges
- Term of the agreement,

Automatic renewal of the rental agreement with requirements for notice of intent to vacate or terminate the rental agreement—can now change the notice period for termination of month to month tenancies in the rental agreement, and

- Other provisions governing the rights and obligations of the parties.
- The landlord is required to offer a tenant a written rental agreement containing the terms and conditions of the landlord tenant relationship. It is effective when signed. If the landlord does not offer a written agreement, the tenancy exists by operation of law, consisting of the following terms and conditions:
    - Tenancy is by operation of law in which the VRLTA terms control as the terms of the rental;
    - The duration of the rental is 12 months without any right to renew, except in the event of a month-to-month rental;
    - Rent is to be paid in 12 equal periodic installments in an amount agreed upon by the landlord and tenant. **If no amount is agreed to, then the installment will be at fair market rent.**
    - Rent is to be paid on the 1st day of each month and will be considered late if not paid by the 5th of the month;
    - If rent is paid after the 5th day of the month, the landlord is entitled to charge a late fee as provided for in the VRLTA;
    - The landlord may collect a security deposit, but not more than for two months of rent; and
    - The parties may enter into a written rental agreement at any time during the 12-month tenancy created by this section of the VRLTA.
    - If the rental is a roomer who pays weekly rent, then unless there is a written rental agreement, the tenancy is week to week who pays rent weekly.

Rent is payable without demand or notice and at the time and place agreed upon by the parties.

Receipt & accounting the landlord must provide the tenant with written receipt, upon request of the tenant, whenever the tenant pays rent in the form of cash or a money order. If the landlord receives from a tenant a written request for a written statement of charges and payments, he must provide the tenant with a written statement showing all debits and credits over the tenancy

or the past 12 months, whichever is shorter. The landlord must also provide such written statement within 10 business days of receiving the request.

When not a fixed term. Unless the rental agreement fixes a definite term, the tenancy will be week to week in the case where a roomer pays his rent weekly and in all other cases month to month.

Terminations of tenancies shall be governed by §55-248.37 (now § 55.1-1253) unless the rental agreement provides for a different notice period. To illustrate, to terminate a month to month tenancy, a 30-day notice is required by §55-248.37 (now § 55.1-1253) but the rental agreement may change the number of notice days.

Subtenant or lease assignment may be restricted by landlord. If the rental agreement contains any provision whereby the landlord may approve or disapprove a sublessee or assignee of the tenant, the landlord must within 10 business days of receipt by him of the written application of the prospective sublessee or assignee on a form to be provided by the landlord, approve or disapprove the sublessee or assignee. Failure of the landlord to act within 10 business days will be deemed evidence of his approval.

A copy of any written rental agreement signed by both the tenant and the landlord shall be provided to the tenant within one month of the effective date of the written rental agreement. The failure of the landlord to deliver such a rental agreement shall not affect the validity of the agreement.

No unilateral change in the terms of a rental agreement by a landlord or tenant shall be valid unless (i) notice of the change is given in accordance with the terms of the rental agreement or as otherwise required by law and (ii) both parties consent in writing to the change.

Section 2:9 Prepaid rent (§ 55-248.7:1(new § 55.1-1205))

The landlord and tenant may agree in the rental agreement that the tenant pays prepaid rent but the prepaid rent is to be held by landlord in an escrow account in a federally insured depository authorized to do business in Virginia by the end of the fifth business day following receipt and taken out only when the rent becomes due or the landlord is otherwise entitled to it. Otherwise it stays in escrow unless tenant gives written consent to remove it.

Periodic rent is payable at the beginning of any term of one month or less and otherwise in equal installments at the beginning of each month.

Section 2:10 Landlord may obtain certain insurance for tenant (§ 55-248.7:2 (new § 55.1-1206))

Damage Insurance: A landlord may require that a tenant pay for the cost of premiums for commercial insurance coverage, obtained by the landlord, to secure the performance by the tenant of the terms and conditions of the rental agreement; generally known as "damage insurance." Such payments shall not be deemed a security deposit, but shall be rent the landlord cannot require a tenant to pay both security deposits and the cost of damage insurance premiums, if the amount of any security deposits and damage insurance premiums exceeds the amount of two months' periodic rent

The landlord is to notify a tenant in writing that the tenant may obtain a separate policy from the landlord's policy for damage insurance. If a tenant elects to obtain a separate policy, the tenant shall submit to the landlord written proof of such coverage and shall maintain such coverage at all times during the term of the rental agreement

Renter's Insurance: A landlord may require that a tenant pay for the cost of premiums for property and casualty insurance, obtained by the landlord, to provide liability coverage for the tenant and property coverage for the tenant's personal property in the dwelling unit which is generally known as "renter's insurance." As provided in Section 55-248.4 (new § 55.1-1200), such payments shall not be deemed a security deposit, but shall be rent. If the landlord requires that such premiums be paid prior to the commencement of the tenancy, the total amount of all security deposits and insurance premiums for damage insurance and renter's insurance shall not exceed the amount of two months' periodic rent. Otherwise, the landlord may add a monthly amount as additional rent to recover the costs of such insurance coverage. The landlord is to notify a tenant in writing that the tenant has the right to obtain a separate policy from the landlord's policy for renter's insurance. If a tenant elects to obtain a separate policy, the tenant shall submit to the landlord written proof of such coverage and shall maintain such coverage at all times during the term of the rental agreement

Where a landlord obtains either damage or renter's insurance for a tenant, the landlord must name the tenant as a "co-insured," so that the tenant will have privity of contract with the insurance company. Further, the landlord may only be reimbursed for the actual cost of such insurance coverage and is not entitled to recover administrative or other fees associated with the insurance coverage being provided to the tenant. If a landlord obtains either damage or renter's insurance for his tenants, the landlord must provide to each tenant, before signing of the rental agreement, a copy of the insurance policies, and a summary prepared by the insurer explaining the coverage being provided. Any failure of the landlord to provide such summary or certificate, or to make available a copy of the insurance policy, shall not affect the validity of the rental agreement.

If the rental agreement does not require the tenant to obtain renter's insurance, the landlord shall provide a written notice to the tenant, prior to the execution of the rental agreement, stating that (i) the landlord is not responsible for the tenant's personal property, (ii) the landlord's insurance coverage does not cover the tenant's personal property, and (iii) if the tenant wishes to protect his personal property, he should obtain renter's insurance. The notice shall inform the tenant that any such renter's insurance obtained by the tenant does not cover flood damage and advise the tenant to contact the Federal Emergency Management Agency (FEMA) or visit the websites for FEMA's National Flood Insurance Program or for the Virginia Department of Conservation and Recreation's Flood Risk Information System to obtain information regarding whether the property is located in a special flood hazard area. Any failure of the landlord to provide such notice shall not affect the validity of the rental agreement. If the tenant requests translation of the notice from the English

language to another language, the landlord may assist the tenant in obtaining a translator or refer the tenant to an electronic translation service. In doing so, the landlord shall not be deemed to have breached any of his obligations under this chapter or otherwise become liable for any inaccuracies in the translation. The landlord shall not charge a fee for such assistance or referral.

Nothing in this section § 55-248.7:2 (new § 55.1-1206) is to be construed to prohibit the landlord from recovering from the tenant the tenant's prorated share of the actual costs of other insurance coverage provided by the landlord relative to the premises, including the landlord's administrative or other fees associated with the administration of such coverage.

A landlord is allowed to establish a self-insurance program held in escrow, with the cost included in the rent.

Section 2:11 Effect of unsigned lease (§ 55-248.8 (new § 55.1-1207))

If the landlord does not sign and deliver a written rental agreement signed and delivered to him by the tenant, then acceptance of the rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.

If the tenant does not sign and deliver a written rental agreement signed and delivered to him by the landlord, then acceptance of possession or payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.

If a rental agreement, given effect by the operation of this section, provides for a term longer than one year, it is effective for only one year.

Section 2:12 Submetering language requirements expanded

Under section 55-226.2 the use of a math formula and ratio utility billing systems are permitted in addition to submetering equipment or energy allocation equipment. A utility package option can also be a part of rental agreement.

The fees are regulated with the late fee limited to $5.00.

Written authorization for submetering, etc., must be clearly stated in the lease in order for a landlord to undertake submetering or use energy allocation equipment which is not owned by a public utility or ratio billing.

Section 2:13 Prohibited Provisions in Rental Agreements (Section 55-248.9 (new § 55.1-1208))

The rental agreement SHALL NOT contain any provision by which the Tenant:

1. Agrees to waive or forego rights or remedies under VRLTA
2. Agrees to waive or forego rights or remedies pertaining to the 120-day conversion or rehabilitation notice required in the Condominium Act (§ 55-79.39 et seq.), the Virginia Real Estate Cooperative Act (§ 55-424 et seq.) or Chapter 13 (§ § et seq.) of this title;

3. Authorizes any person to confess judgment on a claim arising out of the rental agreement;
4. Agrees to pay the landlord's attorney's fees except as provided in this chapter;
5. Agrees to the exculpation or limitation of any liability of the landlord to the tenant arising under law or to indemnify the landlord for that liability or the costs connected therewith;
6. Agrees as a condition of tenancy in public housing to a prohibition or restriction of any lawful possession of a firearm within individual dwelling units unless required by federal law or regulation; or
7. Agrees to both the payment of a security deposit and the provision of a bond or commercial insurance policy purchased by the tenant to secure the performance of the terms and conditions of a rental agreement, if the total of the security deposit and the bond or insurance premium exceeds the amount of two months' periodic rent

Any provision prohibited by this section which is included in a rental agreement is unenforceable. If a landlord brings an action to enforce any of the prohibited provisions, the tenant may recover actual damages sustained by him and reasonable attorney's fees.

In addition, there may be sanctions against the landlord under the Virginia Consumer Protection Act as discussed in the following section.

Section 2:14 Virginia Consumer Protection Act

Warning. There is an opinion from the Virginia Attorney General that applies the Virginia Consumer Protection Act (VCPA) where a landlord's conduct amounts to a misrepresentation or fraudulent act or practice as defined by that law an injured tenant may recover his actual damages, civil penalties and reasonable attorney's fees.

This prohibits the use of a liquidated damage clause, a penalty clause, or a waiver of a tenant's defense or the attempt to collect any provision made illegal by some other law in Virginia. In addition, the use of any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction (which includes residential leasing) is prohibited. (§ 59.1-200 sub§§ 13-14).

Section 2:15 Confidentiality of Tenant Records (§55-248.9:1 (new § 55.1-1209))

No landlord or managing agent may release information about a tenant or prospective tenant in the possession of me landlord to a third party unless:

1. The tenant or prospective tenant has given prior written consent;

2. The information is a matter of public record as defined in § 2.2-3701;

3. The information is a summary of the tenant's rent payment record, including the amount of the tenant's periodic rent payment;

4. The information is a copy of a material noncompliance notice that has not been remedied or, termination notice given to the tenant under § 55-248.31 and the tenant did not remain in the premises thereafter;

5. The information is requested by a local, state, or federal law-enforcement or public safety official in the performance of his duties;

6. The information is requested pursuant to a subpoena in a civil case;

7. The information is requested by a local commissioner of the revenue in accordance with §58.1-3901;

8. The information is requested by a contract purchaser of the landlord's property; provided the contract purchaser agrees in writing to maintain the confidentiality of such information;

9. The information is requested by a lender of the landlord for financing or refinancing of the property;

10. The information is requested by the commanding officer, military housing officer, or military attorney of the tenant;

11. The third party is the landlord's attorney or the landlord’s collection agency;

12. The information is otherwise provided in the case of an emergency; or

13. The information is requested by the landlord to be provided to the managing agent, or a successor to the managing agent.

A tenant may designate a third party to receive duplicate copies of a summons that has been issued pursuant to §8.01-126 and of written notices from the landlord relating to the tenancy. Where such a third party has been designated by the tenant, the landlord shall mail the duplicate copy of any summons issued pursuant to §8.01-126 or notice to the designated third party at the same time the summons or notice is mailed to or served upon the tenant. Nothing in this subsection shall be construed to grant standing to any third party designated by the tenant to challenge actions of the landlord in which notice was mailed pursuant to this subsection. The failure of the landlord to give notice to a third party designated by the tenant shall not affect the validity of any judgment entered against the tenant.

A landlord or managing agent may enter into an agreement with a third-party service provider to maintain tenant records in electronic form or other medium. In such case, the landlord and managing agent shall not be liable under this section in the event of a breach of the electronic data of such third-party service provider, except in the case of gross negligence or intentional act. Nothing herein shall be construed to require a landlord or managing agent to indemnify such third-party service provider.

A tenant may request a copy of his tenant records in paper or electronic form. If the rental agreement so provides, a landlord may charge a tenant requesting more than one copy of his records the actual costs of preparing copies of such records. However, if the landlord makes available tenant records to each tenant by electronic portal, the tenant shall not be required to pay for access to such portal.

Section § 55-248.10 was repealed

Section 2:16 Landlord and tenant remedies for abuse of access (§ 55-248.10:1 (new § 55.1-1210))

If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access, or terminate the rental agreement. In either case, the landlord may recover actual damages and reasonable attorney's fees. If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct, or terminate the rental agreement. In either case, the tenant may recover actual damages and reasonable attorney's fees.

§ 55-248.11. Repealed by Acts 2000, c. 760, cl. 2

Section 2:17 Inspection of premises (§ 55-248.11:1 (new § 55.1-1214))

Effective: July 1, 2016

The landlord shall, within five days after occupancy of a dwelling unit, submit a written report to the tenant, for his safekeeping, itemizing damages to the dwelling unit existing at the time of occupancy, which record shall be deemed correct unless the tenant objects thereto in writing within five days after receipt thereof. The landlord may adopt a written policy allowing the tenant to prepare the written report of the move-in inspection, in which case the tenant shall submit a copy to the landlord, which record shall be deemed correct unless the landlord objects thereto in writing within five days after receipt thereof. Such written policy adopted by the landlord may also provide for the landlord and the tenant to prepare the written report of the

move-in inspection jointly, in which case both the landlord and the tenant shall sign the written report and receive a copy thereof, at which time the inspection record shall be deemed correct.

If any damages are reflected on the written report, a landlord is not required to make repairs to address such damages unless required to do so under § 55–248.11:2 or 55–248.13.

Section 2:18 **Disclosure of mold in dwelling units (§ 55-248.11:2 (new § 55.1-1215))**

Effective: July 1, 2008

As part of the written report of the move-in inspection required by § 55-248.11:1 (new § 55.1-1214), the landlord shall disclose whether there is any visible evidence of mold in areas readily accessible within the interior of the dwelling unit. If the landlord's written disclosure states that there is no visible evidence of mold in the dwelling unit, this written statement shall be deemed correct unless the tenant objects thereto in writing within five days after receiving the report. If the landlord's written disclosure states that there is visible evidence of mold in the dwelling unit, the tenant shall have the option to terminate the tenancy and not take possession or remain in possession of the dwelling unit. If the tenant requests to take possession, or remain in possession, of the dwelling unit, notwithstanding the presence of visible evidence of mold, the landlord shall promptly remediate the mold condition but in no event later than five business days thereafter and re-inspect the dwelling unit to confirm there is no visible evidence of mold in the dwelling unit and reflect on a new report that there is no visible evidence of mold in the dwelling unit upon re-inspection.

Section 2:19 **Disclosure (§ 55-248.12 (new § 55.1-1216))**

Effective: July 1, 2017

The landlord or any person authorized to enter into a rental agreement on his behalf must disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

1. The person or persons authorized to manage the premises; and

2. An owner of the premises or any other person authorized to act for and on behalf of the owner, for the purposes of service of process and receiving and receipting for notices and demands.

B. In the event of the sale of the premises, the landlord shall notify the tenant of such sale and disclose to the tenant the name and address of the purchaser and a telephone number at which such purchaser can be located.

C. With respect to a multifamily dwelling unit, if an application for registration of the rental property as a condominium or cooperative has been filed with the Real Estate Board, or if there is within six months an existing plan for tenant displacement resulting from (i) demolition or substantial rehabilitation of the property or (ii) conversion of the rental property to office, hotel or motel use or planned unit development, then the landlord or any person authorized to enter into a rental agreement on his behalf shall disclose that information in writing to any prospective tenant.

D. The information required to be furnished by this section shall be kept current and this section extends to and is enforceable against any successor landlord or owner. A person who fails to comply with this section becomes an agent of each person who is a landlord for the purposes of service of process and receiving and receipting for notices and demands.

Section 2:20 **Required disclosures for properties located adjacent to a military air installation; remedy for nondisclosure (§ 55-248.12:1 (new § 55.1-1217))**

Effective: July 1, 2017

The landlord of property in any locality in which a military air installation is located, or any person authorized to enter into a rental agreement on his behalf, must provide to a prospective tenant a written disclosure that the property is located in a noise zone or accident potential zone, or both, as designated by the locality on its official zoning map. Such disclosure must be provided prior to the execution by the tenant of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant. The disclosure must specify the noise zone or accident potential zone in which the property is located according to the official zoning map of the locality. A disclosure made pursuant to this section containing inaccurate information regarding the location of the noise zone or accident potential zone will be deemed as nondisclosure unless the inaccurate information is provided by an officer or employee of the locality in which the property is located.

Any tenant who is not provided the disclosure required by the prior paragraph may terminate the lease agreement at any time during the first 30 days of the lease period by sending to the landlord by certified or registered mail, return receipt requested, a written notice of termination. Such termination will be effective as of (i) 15 days after the date of the mailing of the notice or (ii) the date through which rent has been paid, whichever is later. In no event, however, shall the effective date of the termination exceed one month from the date of mailing. Termination of the lease agreement will be the exclusive remedy for the failure to comply with the disclosure provisions of this section, and will not affect any rights or duties of the landlord or tenant arising under this chapter, other applicable law, or the rental agreement.

Section 2:21 **Required disclosures for properties with defective drywall; remedy for nondisclosure. (§ 55-248.12:1 (new § 55.1-1218))**

If the landlord of a dwelling unit has actual knowledge of the existence of defective drywall that has not been remediated, the landlord must give a prospective tenant a written disclosure that the property has defective drywall. The disclosure must be provided before the signing of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant. “Defective drywall" is defined in § 36-156.1.

If the notice is not given, a tenant can terminate the lease within 60 days of notice of discovery of the existence of defective drywall. Such termination will be effective as of (i) 15 days after the date of the mailing of the notice or (ii) the date through which rent has been paid, whichever is later. In no event, however, will the effective date of the termination exceed one month from the date of mailing. Termination of the lease agreement is the exclusive remedy for the failure to comply with the disclosure provisions of this section, and it will not affect any rights or duties of the landlord or tenant arising under applicable law or the rental agreement.

Section 2:22 **Required disclosures for property previously used to manufacture methamphetamine; remedy for nondisclosure (**§ 55-248.12:3 (new § 55.1-1219))

Effective: July 1, 2016

If the landlord of a residential dwelling unit has actual knowledge that the dwelling unit was previously used to manufacture methamphetamine and has not been cleaned up in accordance with the guidelines established pursuant to § 32.1-11.7 and the applicable licensing provisions of Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, the landlord must provide to a prospective tenant a written disclosure that so states. Such disclosure must be provided prior to the execution by the tenant of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant.

Any tenant who is not provided the disclosure required by the prior paragraph may terminate the lease agreement at any time within 60 days of discovery that the property was previously used to manufacture methamphetamine and has not been cleaned up in accordance with the guidelines established pursuant to § 32.1-11.7 by providing written notice to the landlord in accordance with the lease or as required by law. Such termination will be effective as of (i) 15 days after the date of the mailing of the notice or (ii) the date through which rent has been paid, whichever is later. In no event, however, shall the effective date of the termination exceed one month from the date of mailing. Termination of the lease agreement will be the exclusive remedy for the failure to comply with the disclosure provisions required by this section and will not affect any rights or duties of the landlord or tenant arising under this chapter, other applicable law, or the rental agreement.

Section 2:23 **Landlord to maintain fit premises (§ 55-248.13 (new § 55.1-1220))**

NOTE: 7/1/18 added paragraph A (8) below that requires the landlord to give the tenant a certificate that all smoke alarms are present, have been inspected, and are in good working order no more than once every 12 months. The inspection may be performed by the landlord, his employee or an independent contractor.

A. The landlord shall:

1. Comply with the requirements of applicable building and housing codes materially affecting health and safety;

2. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

3. Keep all common areas shared by two or more dwelling units of a multifamily premises in a clean and structurally safe condition;

4. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, supplied or required to be supplied by him;

5. Maintain the premises in such a condition as to prevent the accumulation of moisture and the growth of mold, and to promptly respond to any notices from a tenant as provided in subdivision A 10 of § 55-248.16 (new § 55.1-1227). Where there is visible evidence of mold, the landlord shall promptly remediate the mold conditions in accordance with the requirements of subsection E of § 8.01-226.12 *[see this statute quoted in full following]* and reinspect the dwelling unit to confirm that there is no longer visible evidence of mold in the dwelling unit. The landlord shall provide a tenant with a copy of a summary of information related to mold remediation occurring during that tenancy and, upon request of the tenant, make available the full package of such information and reports not protected by attorney-client privilege. Once the mold has been remediated in accordance with professional standards, the landlord shall not be required to make disclosures of a past incidence of mold to subsequent tenants;

6. Provide and maintain appropriate receptacles and conveniences for the collection, storage, and removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of dwelling units and arrange for the removal of same;

7. Supply running water and reasonable amounts of hot water at all times and reasonable air conditioning if provided and heat in season except where the dwelling unit is so constructed that heat, air conditioning or hot water is generated by an installation within the exclusive control of the tenant or supplied by a direct public utility connection; and

8. Provide a certificate to the tenant stating that all smoke alarms are present, have been inspected, and are in good working order no more than once every 12 months. The landlord, his employee, or an independent contractor may perform the inspection to determine that the smoke alarm is in good working order.

B. The landlord shall perform the duties imposed by subsection A in accordance with law; however, the landlord shall only be liable for the tenant's actual damages proximately caused by the landlord's failure to exercise ordinary care.

C. If the duty imposed by subdivision A 1 is greater than any duty imposed by any other subdivision of that subsection, the landlord's duty shall be determined by reference to subdivision A 1.

D. The landlord and tenant may agree in writing that the tenant perform the landlord's duties specified in subdivisions A 3, 6, and 7 and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord, and if the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

Section 2:24 **MOLD: Duty of landlord and managing agent with respect to visible mold (8.01-226.12).**

The following sections contain definitions and create liability for failure to disclose mold:

A. As used in this section, the following definitions apply:

"Authorized occupant" means a person entitled to occupy a dwelling unit with the consent of the landlord, but who has not signed the rental agreement and therefore does not have the rights and obligations as a tenant under the rental agreement.

"Dwelling unit" means a structure or part of a structure that is used as a home or residence by one or more persons who maintain a household, whether single family or multifamily, including, but not limited to, a manufactured home.

"Guest or invitee" means a person, other than the tenant or person authorized by the landlord to occupy the dwelling unit, who has the permission of the tenant to visit but not to occupy the premises.

"Interior of the dwelling unit" means the inside of the dwelling unit, consisting of interior walls, floor, and ceiling that enclose the dwelling unit as conditioned space from the outside air.

"Landlord" means the owner or lessor of the dwelling unit or the building of which such residential dwelling unit is a part. "Landlord" also includes a managing agent of the premises who

fails to disclose the name of such owner, lessor, or sublessor. Such managing agent shall be subject to the provisions of § 16.1-88.03.

"Managing agent" means a person authorized by the landlord to act on behalf of the landlord under an agreement.

"Mold remediation in accordance with professional standards" means mold remediation of that portion of the dwelling unit or premises affected by mold, or any personal property of the tenant affected by mold, performed consistent with guidance documents published by the United States Environmental Protection Agency, the United States Department of Housing and Urban Development, the American Conference of Governmental Industrial Hygienists (the Bioaerosols Manual), Standard Reference Guides of the Institute of Inspection, Cleaning and Restoration for Water Damage Restoration and Professional Mold Remediation, or any protocol for mold remediation prepared by an industrial hygienist consistent with said guidance documents.

"Notice" means notice given in writing by either regular mail or hand delivery, with sender retaining sufficient proof of having given such notice, which may be either a United States postal certificate of mailing or a certificate of service confirming such mailing prepared by the sender. However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, or he received a verbal notice of it. A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform another person whether or not the other person actually comes to know of it. If a notice given is not in writing, the person giving the notice has the burden of proof to show that the notice was given to the recipient of the notice.

"Readily accessible" means areas within the interior of the dwelling unit available for observation at the time of the move-in inspection that do not require removal of materials, personal property, equipment, or similar items.

"Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others. Tenant shall not include (i) an authorized occupant, (ii) a guest or invitee, or (iii) any person who guarantees or cosigns the payment of the financial obligations of a rental agreement but has no right to occupy a dwelling unit.

"Visible evidence of mold" means the existence of mold in the residential dwelling unit that is visible to the naked eye of the landlord or tenant at the time of the move-in inspection.

Any term not expressly defined herein shall have the same meaning as those defined in § 55-248.4 (new § 55.1-1200).

B. Neither the landlord nor the managing agent shall be liable for civil damages in any personal injury or wrongful death action brought by a tenant, authorized occupant, or guest or invitee for exposure to mold arising from the condition within the interior of a dwelling unit, or

for any property damage claims arising out of the landlord-tenant relationship, **if the mold condition is caused solely by the negligence of the tenant.**

C. **A managing agent with no maintenance responsibilities shall not be liable** for civil damages in any personal injury or wrongful death action brought by the tenant, authorized occupant, or guest or invitee for exposure to mold, or for any property damage claims arising out of the residential landlord-tenant relationship**, unless the managing agent fails to disclose the existence of a mold condition of which the managing agent has actual knowledge to the landlord and any prospective or actual tenants.**

D. If the written move-in inspection report reflects that there is no visible evidence of mold in areas readily accessible within the interior of the dwelling unit, and the tenant does not object thereto in writing within five days after receiving the report, there shall be a rebuttable presumption that no mold existed at the time of the move-in inspection.

E. If visible evidence of mold occurs within the dwelling unit, the landlord or managing agent with the maintenance responsibilities shall, exercising ordinary care, perform mold remediation in accordance with professional standards.

F. The landlord or managing agent with maintenance responsibilities shall comply with any other applicable provisions of law.

Section 2:25 Landlord's Duty to Provide Locks and Peepholes (§ 55-248.13 (new § 55.1-1220) :1)

Effective: July 1, 2017

The governing body of any locality may require by ordinance that any landlord who rents five or more dwelling units in any one multifamily building shall install:

1. Dead-bolt locks which meet the requirements of the Uniform Statewide Building Code (§ 36-97 et seq.) for new multifamily construction and peepholes in any exterior swinging entrance door to any such unit; however, any door having a glass panel shall not require a peephole.

2. Manufacturer's locks that meet the requirements of the Uniform Statewide Building Code and removable metal pins or charlie bars in accordance with the Uniform Statewide Building Code on exterior sliding glass doors located in a building at any level or levels designated in the ordinance.

3. Locking devices that meet the requirements of the Uniform Statewide Building Code on all exterior windows.

Any ordinance adopted pursuant to this section shall further provide that any landlord subject to the ordinance shall have a reasonable time as determined by the governing body in which to comply with the requirements of the ordinance.

Section 2:26 Access of tenant to cable, satellite & other TV facilities (§ 55-248.13:2 (new § 55.1-1222))

Effective: July 1, 2017

No landlord of a multifamily dwelling unit may demand or accept payment of any fee, charge or other thing of value from any provider of cable television service, cable modem service, satellite master antenna television service, direct broadcast satellite television service, subscription television service or service of any other television programming system in exchange for granting a television service provider mere access to the landlord's tenants or giving the tenants of such landlord mere access to such service. A landlord may enter into a service agreement with a television service provider to provide marketing and other services to the television service provider, designed to facilitate the television service provider's delivery of its services. Under such a service agreement, the television service provider may compensate the landlord for the reasonable value of the services provided, and for the reasonable value of the landlord's property used by the television service provider.

No landlord shall demand or accept any such payment from any tenants in exchange therefor unless the landlord is itself the provider of the service. Nor shall any landlord discriminate in rental charges between tenants who receive any such service and those who do not. Nothing contained herein shall prohibit a landlord from requiring that the provider of such service and the tenant bear the entire cost of the installation, operation or removal of the facilities incident thereto, or prohibit a landlord from demanding or accepting reasonable indemnity or security for any damages caused by such installation, operation or removal.

Section 2:27 Notice to tenants for Insecticide or pesticide use (§ 55-248.13:3 (new § 55.1-1223))

A. The landlord shall give written notice to the tenant no less than forty-eight hours prior to his application of an insecticide or pesticide in the tenant's dwelling unit unless the tenant agrees to a shorter notification period. If a tenant requests the application of the insecticide or pesticide, the forty-eight-hour notice is not required. Tenants who have concerns about specific insecticides or pesticides shall notify the landlord in writing no less than twenty-four hours before the scheduled insecticide or pesticide application. The tenant shall prepare the dwelling unit for the application of insecticides or pesticides in accordance with any written instructions of the landlord, and if insects or pests are found to be present, follow any written instructions of the landlord to eliminate the insects or pests following the application of insecticides or pesticides.

B. In addition, the landlord shall post notice of all insecticide or pesticide applications in areas of the premises other than the dwelling units. Such notice shall consist of conspicuous signs placed in or upon such premises where the insecticide or pesticide will be applied at least forty-eight hours prior to the application.

Section 2:28 Limitation of liability (§ 55-248.14 (new § 55.1-1224))

Unless otherwise agreed, a landlord who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser is relieved of

liability under the rental agreement and this chapter as to events occurring subsequent to notice to the tenant of the conveyance. Unless otherwise agreed, a managing agent of premises that include a dwelling unit is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of his management.

Section 2:29 Tenancy at will; effect of notice of change of terms or provisions of tenancy (§ 55-248.15 (new § 55.1-1225))

A notice of any change by a landlord or tenant in any terms or provisions of a tenancy at will shall constitute a notice to vacate the premises, and such notice of change shall be given in accordance with the terms of the rental agreement, if any, or as otherwise required by law.

Section 2:30 Security deposit (§ 55-248.15:1)

Effective: July 1, 2017

A. A landlord may not demand or receive a security deposit, however denominated, in an amount or value in excess of two months' periodic rent. Upon termination of the tenancy, such security deposit, whether it is property or money held by the landlord as security as hereinafter provided may be applied solely by the landlord (i) to the payment of accrued rent and including the reasonable charges for late payment of rent specified in the rental agreement; (ii) to the payment of the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with § 55-248.16 (new § 55.1-1227), less reasonable wear and tear; or (iii) to other damages or charges as provided in the rental agreement. The security deposit and any deductions, damages and charges shall be itemized by the landlord in a written notice given to the tenant, together with any amount due the tenant within 45 days after termination of the tenancy and delivery of possession.

Where there is more than one tenant subject to a rental agreement, unless otherwise agreed to in writing by each of the tenants, disposition of the security deposit shall be made with one check being payable to all such tenants and sent to a forwarding address provided by one of the tenants. The landlord shall make the security deposit disposition within the 45-day time period, but if no forwarding address is provided to the landlord, the landlord may continue to hold such security deposit in escrow. If a tenant fails to provide a forwarding address to the landlord to enable the landlord to make a refund of the security deposit, upon the expiration of one year from the date of the end of the 45-day time period, the landlord may remit such sum to the State Treasurer as unclaimed property on a form prescribed by the administrator that includes the name, social security number, if known, and the last known address of each tenant on the rental agreement. If the landlord or managing agent is a real estate licensee, compliance with this paragraph shall be deemed compliance with § 54.1-2108 and corresponding regulations of the Real Estate Board.

Nothing in this section shall be construed by a court of law or otherwise as entitling the tenant, upon the termination of the tenancy, to an immediate credit against the tenant's delinquent rent account in the amount of the security deposit. The landlord shall apply the security deposit in accordance with this section within the 45-day time period. However,

provided the landlord has given prior written notice in accordance with this section, the landlord may withhold a reasonable portion of the security deposit to cover an amount of the balance due on the water, sewer, or other utility account that is an obligation of the tenant to a third-party provider under the rental agreement for the dwelling unit, and upon payment of such obligations the landlord shall provide written confirmation to the tenant within 10 days thereafter, along with payment to the tenant of any balance otherwise due to the tenant. In order to withhold such funds as part of the disposition of the security deposit, the landlord shall have so advised the tenant of his rights and obligations under this section in (a) a termination notice to the tenant in accordance with this chapter, (b) a vacating notice to the tenant in accordance with this section, or (c) a separate written notice to the tenant at least 15 days prior to the disposition of the security deposit. Any written notice to the tenant shall be given in accordance with § 55-248.6.

The tenant may provide the landlord with written confirmation of the payment of the final water, sewer, or other utility bill for the dwelling unit, in which case the landlord shall refund the security deposit, unless there are other authorized deductions, within the 45-day period, or if the tenant provides such written confirmation after the expiration of the 45-day period, the landlord shall refund any remaining balance of the security deposit held to the tenant within 10 days following the receipt of such written confirmation provided by the tenant. If the landlord otherwise receives confirmation of payment of the final water, sewer, or other utility bill for the dwelling unit, the landlord shall refund the security deposit, unless there are other authorized deductions, within the 45-day period.

Nothing in this section shall be construed to prohibit the landlord from making the disposition of the security deposit prior to the 45-day period and charging an administrative fee to the tenant for such expedited processing, if the rental agreement so provides and the tenant requests expedited processing in a separate written document.

The landlord shall notify the tenant in writing of any deductions provided by this subsection to be made from the tenant's security deposit during the course of the tenancy. Such notification shall be made within 30 days of the date of the determination of the deduction and shall itemize the reasons in the same manner as provided in subsection B. Such notification shall not be required for deductions made less than 30 days prior to the termination of the rental agreement. If the landlord willfully fails to comply with this section, the court shall order the return of the security deposit to the tenant, together with actual damages and reasonable attorney fees, unless the tenant owes rent to the landlord, in which case, the court shall order an amount equal to the security deposit credited against the rent due to the landlord. In the event that damages to the premises exceed the amount of the security deposit and require the services of a third-party contractor, the landlord shall give written notice to the tenant advising him of that fact within the 45-day period. If notice is given as prescribed in this paragraph, the landlord shall have an additional 15-day period to provide an itemization of the damages and the cost of repair. This section shall not preclude the landlord or tenant from recovering other damages to which he may be entitled under this chapter. The holder of the landlord's interest in the premises at the time of the termination of the tenancy, regardless of how the interest is acquired or transferred, is bound by this section

and shall be required to return any security deposit received by the original landlord that is duly owed to the tenant, whether or not such security deposit is transferred with the landlord's interest by law or equity, regardless of any contractual agreements between the original landlord and his successors in interest.

B. The landlord shall:

1. Maintain and itemize records for each tenant of all deductions from security deposits provided for under this section which the landlord has made by reason of a tenant's noncompliance with § 55-248.16 (new § 55.1-1227) during the preceding two years; and

2. Permit a tenant or his authorized agent or attorney to inspect such tenant's records of deductions at any time during normal business hours.

C. Upon request by the landlord to a tenant to vacate, or within five days after receipt of notice by the landlord of the tenant's intent to vacate, the landlord shall provide written notice to the tenant of the tenant's right to be present at the landlord's inspection of the dwelling unit for the purpose of determining the amount of security deposit to be returned. If the tenant desires to be present when the landlord makes the inspection, he shall so advise the landlord in writing who, in turn, shall notify the tenant of the time and date of the inspection, which must be made within 72 hours of delivery of possession. Following the move-out inspection, the landlord shall provide the tenant with a written security deposit disposition statement, including an itemized list of damages. If additional damages are discovered by the landlord after the security deposit disposition has been made, nothing herein shall be construed to preclude the landlord from recovery of such damages against the tenant, provided, however, that the tenant may present into evidence a copy of the move-out report to support the tenant's position that such additional damages did not exist at the time of the move-out inspection.

D. If the tenant has any assignee or sublessee, the landlord shall be entitled to hold a security deposit from only one party in compliance with the provisions of this section

§ 55-248.15:2 repealed

Section 2:31 **Tenant to maintain dwelling (§55-248.16 (new § 55.1-1227))**

Effective: July 1, 2017

A. In addition to the provisions of the rental agreement, the tenant shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

2. Keep that part of the dwelling unit and the part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;

3. Keep that part of the dwelling unit and the part of the premises that he occupies free from insects and pests, as those terms are defined in § 3.2-3900, and to promptly notify the landlord of the existence of any insects or pests;

4. Remove from his dwelling unit all ashes, garbage, rubbish and other waste in a clean and safe manner and in the appropriate receptacles provided by the landlord;

5. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

6. Use in a reasonable manner all utilities and all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances including an elevator in a multifamily premise, and keep all utility services paid for by the tenant to the utility service provider or its agent on at all times during the term of the rental agreement;

7. Not deliberately or negligently destroy, deface, damage, impair or remove any part of the premises or permit any person to do so whether known by the tenant or not;

8. Not remove or tamper with a properly functioning smoke alarm installed by the landlord, including the removal of any working batteries, so as to render the alarm inoperative. The tenant shall maintain the smoke alarm in accordance with the uniform set of standards for maintenance of smoke alarms established in the Statewide Fire Prevention Code (§ 27-94 et seq.) and subdivision C 6 of § 36-105, Part III of the Uniform Statewide Building Code (§ 36-97 et seq.);

9. Not remove or tamper with a properly functioning carbon monoxide alarm installed by the landlord, including the removal any working batteries, so as to render the carbon monoxide alarm inoperative. The tenant shall maintain the carbon monoxide alarm in accordance with the uniform set of standards for maintenance of carbon monoxide alarms established in the Statewide Fire Prevention Code (§ 27-94 et seq.) and subdivision C 6 of § 36-105, Part III Uniform Statewide Building Code (§ 36-97 et seq.);

10. Use reasonable efforts to maintain the dwelling unit and any other part of the premises that he occupies in such a condition as to prevent accumulation of moisture and the growth of mold, and to promptly notify the landlord of any moisture accumulation that occurs or of any visible evidence of mold discovered by the tenant;

11. Not paint or disturb painted surfaces or make alterations in the dwelling unit without the prior written approval of the landlord, provided that (i) the dwelling unit was constructed prior to 1978 and therefore requires the landlord to provide the tenant with lead-based paint disclosures and (ii) the landlord has provided the tenant with such disclosures and the rental agreement provides that the tenant is required to obtain the landlord's prior written approval before painting, disturbing painted surfaces, or making alterations in the dwelling unit;

12. Be responsible for his conduct and the conduct of other persons on the premises with his consent whether known by the tenant or not, to ensure that his neighbors' peaceful enjoyment of the premises will not be disturbed;

13. Abide by all reasonable rules and regulations imposed by the landlord; and

14. Be financially responsible for the added cost of treatment or extermination due to the tenant's unreasonable delay in reporting the existence of any insects or pests and be financially responsible for the cost of treatment or extermination due to the tenant's fault in failing to prevent infestation of any insects or pests in the area occupied.

B. If the duty imposed by subdivision A 1 is greater than any duty imposed by any other

subdivision of that subsection, the tenant's duty shall be determined by reference to subdivision A 1.

Section 2:32 Rules and Regulations (§ 55-248.17 (new § 55.1-1228))

Effective: July 1, 2017

A. A landlord, from time to time, may adopt rules or regulations, however described, concerning the tenants' use and occupancy of the dwelling unit and premises. Any such rule or regulation is enforceable against the tenant only if: 1. Its purpose is to promote the convenience, safety or welfare of the tenants in the premises, preserve the landlord's property from abusive use or make a fair distribution of services and facilities held out for the tenants generally;

2. It is reasonably related to the purpose for which it is adopted;

3. It applies to all tenants in the premises in a fair manner;

4. It is sufficiently explicit in its prohibition, direction or limitation of the tenant's conduct to fairly inform him of what he must or must not do to comply;

5. It is not for the purpose of evading the obligations of the landlord; and

6. The tenant has been provided with a copy of the rules and regulations or changes thereto at the time he enters into the rental agreement or when they are adopted.

B. A rule or regulation adopted, changed, or provided to the tenant after the tenant enters into the rental agreement shall be enforceable against the tenant if reasonable notice of its adoption or change has been given to the tenant and it does not work a substantial modification of his bargain. If a rule or regulation is adopted or changed after the tenant enters into the rental agreement that does work a substantial modification of his bargain, it shall not be valid unless the tenant consents to it in writing.

C. Any court enforcing this chapter shall consider violations of the reasonable rules and regulations imposed under this section as a breach of the rental agreement and grant the landlord appropriate relief.

Section 2:33 Access; consent; correction of nonemergency conditions; relocation of tenant (§ 55-248.18 (new § 55.1-1229))

Effective: July 1, 2017

A. The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors. If, upon inspection of a dwelling unit during the term of a tenancy, the landlord determines there is a violation by the tenant of § 55-248.16 (new § 55.1-1227) or the rental agreement materially affecting health and safety that can be remedied by repair, replacement of a damaged item or cleaning in accordance with § 55-248.32 (now § 55.1-1248), the landlord may make such repairs

and send the tenant an invoice for payment. If, upon inspection of the dwelling unit during the term of a tenancy, the landlord discovers a violation of the rental agreement, this chapter, or other applicable law, the landlord may send a written notice of termination pursuant to § 55-248.31. If the rental agreement so provides and if a tenant without reasonable justification declines to permit the landlord or managing agent to exhibit the dwelling unit for sale or lease, the landlord may recover damages, costs, and reasonable attorney fees against such tenant.

The landlord may enter the dwelling unit without consent of the tenant in case of emergency. The landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or if it is impractical to do so, the landlord shall give the tenant notice of his intent to enter and may enter only at reasonable times. Unless impractical to do so, the landlord shall give the tenant at least 24-hours' notice of routine maintenance to be performed that has not been requested by the tenant. If the tenant makes a request for maintenance, the landlord is not required to provide notice to the tenant. During the pendency of an unlawful detainer filed by the landlord against the tenant, the landlord may request the court to enter an order requiring the tenant to provide the landlord with access to such dwelling unit.

B. Upon the sole determination by the landlord of the existence of a nonemergency property condition in the dwelling unit that requires the tenant to temporarily vacate the dwelling unit in order for the landlord to properly remedy such property condition, the landlord may, upon at least 30 days' written notice to the tenant, require the tenant to temporarily vacate the dwelling unit for a period not to exceed 30 days to a comparable dwelling unit, or hotel, as selected by the landlord and at no expense or cost to the tenant. The landlord shall not be required to pay for any other expenses of the tenant that arise after the temporary relocation period. The landlord and tenant may agree for the tenant to temporarily vacate the dwelling unit in less than 30 days. For purposes of this subsection, "nonemergency property condition" means (i) a condition in the dwelling unit that, in the determination of the landlord, is necessary for the landlord to remedy in order for the landlord to be in compliance with § 55-248.13 (new § 55.1-1220) ; (ii) the condition does not need to be remedied within a 24-hour period, with any condition that needs to be remedied within 24 hours being defined as an "emergency condition"; and (iii) the condition can only be effectively remedied by the temporary relocation of the tenant pursuant to the provisions of this subsection.

The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation. The landlord shall pay all costs of repairs or remediation required to address the property condition. Refusal of the tenant to cooperate with a temporary relocation pursuant to this subsection shall be deemed a breach of the rental agreement, unless the tenant agrees to vacate the unit and terminate the rental agreement within the 30-day notice period. If the landlord properly remedies the nonemergency property condition within the 30-day period, nothing herein shall be construed to entitle the tenant to terminate the rental agreement. Further, nothing herein shall be construed to limit the landlord from taking legal action against the tenant for any noncompliance that occurs during the period of any temporary relocation pursuant to this section. During the pendency of an unlawful detainer filed by the landlord against the tenant, the landlord may request the court to enter an order requiring the tenant to provide the landlord with access to such dwelling unit.

C. The landlord has no other right to access except by court order or that permitted by §§ 55-248.32 (now § 55.1-1248) and 55-248.33 (new § 55.1-1249) or if the tenant has abandoned or surrendered the premises.

D. The tenant may install, within the dwelling unit, new burglary prevention, including chain latch devices approved by the landlord, and fire detection devices, that the tenant may believe necessary to ensure his safety, provided:

1. Installation does no permanent damage to any part of the dwelling unit.

2. A duplicate of all keys and instructions of how to operate all devices are given to the landlord.

3. Upon termination of the tenancy, the tenant shall be responsible for payment to the landlord for reasonable costs incurred for the removal of all such devices and repairs to all damaged areas.

E. Upon written request of a tenant in a dwelling unit, the landlord shall install a carbon monoxide alarm in the tenant's dwelling unit within 90 days. The landlord may charge the tenant a reasonable fee to recover the costs of the equipment and labor for such installation. The landlord's installation of a carbon monoxide alarm shall be in compliance with the Uniform Statewide Building Code (§ 36-97 et seq.).

Section 2:34 **Relocation of tenant for mold remediation (§ 55-248.18:2 (new § 55.1-1231))**

Effective: July 1, 2017

Where a mold condition in the dwelling unit materially affects the health or safety of any tenant or authorized occupant, the landlord may require the tenant to temporarily vacate the dwelling unit in order for the landlord to perform mold remediation in accordance with professional standards as defined in § 55-248.4 (new § 55.1-1200) for a period not to exceed 30 days. The landlord shall provide the tenant with either (i) a comparable dwelling unit, as selected by the landlord, at no expense or cost to the tenant, or (ii) a hotel room as selected by the landlord, at no expense or cost to the tenant. The landlord shall not be required to pay for any other expenses of the tenant that arise after the relocation period. The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation and for the remainder of the term of the rental agreement following the remediation. Nothing in this section shall be construed as entitling the tenant to a termination of a tenancy where or when the landlord has remediated a mold condition in accordance with professional standards as defined in § 55-248.4. The landlord shall pay all costs of the relocation and the mold remediation, unless the mold is a result of the tenant's failure to comply with § 55-248.16 (new § 55.1-1227).

Section 2:35 **Use by tenant (§55-248.19 (new § 55.1-1232))**

The premise's use is limited to that of a residence unless the landlord agrees otherwise. This is important where a tenant occupies an apartment for a commercial or business purpose that is not approved by the lease.

Section 2:36 **Tenant to surrender possession (§ 55-248.20 (new § 55.1-1233))**

At the end of the term the tenant is to:

promptly vacate;

remove all personal property; and

leave it in good and clean order (reasonable wear and tear excepted).

If the tenant does NOT leave, he is:

subject to suit for possession;

liable for damages;

including reasonable attorney's fees.

Section 2:37 **Noncompliance by landlord (§ 55-248.21 (new § 55.1-1234))**

If there is a material noncompliance by the landlord with the rental agreement or a noncompliance with any provision of VRLTA, which materially affects health and safety, the tenant may serve a written notice on the landlord specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if such breach is not remedied in 21 days.

If the landlord commits a breach which is not remediable, the tenant may serve a written notice on the landlord specifying the acts and omissions constituting the breach, and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice.

If the landlord has been served with a prior written notice which was remedied but the landlord intentionally commits a subsequent breach of alike nature as the prior breach, the tenant may serve a written notice on the landlord specifying the acts and omissions constituting the subsequent breach, make reference to the prior breach of a like nature, and state that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice.

If the breach is remediable by repairs and the landlord adequately remedies the breach prior to the date specified in the notice, the rental agreement will not terminate.

The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, a member of his family or other person on the premises with his consent whether known by the tenant or not.

In addition, the tenant may recover damages and obtain injunctive relief for noncompliance by the landlord with the provisions of the rental agreement or of VRLTA.

The tenant may recover reasonable attorneys' fees unless the landlord proves by a preponderance of the evidence that the landlord's actions were reasonable under the circumstances. If the rental agreement is terminated due to the landlord's noncompliance, the

landlord shall return the security deposit in accordance with section 55-248.15:1 (new § 55.1-1226).

A landlord is not liable for personal injury arising from a premises defect under the VRLTA where the property was within the control of the tenant and the personal injuries did not arise from the landlord's negligence manner of making the repairs. The Va. Supreme Court concluded that the General Assembly did not intend to abrogate the common law rule that a landlord is not liable in tort for a tenant's personal injuries sustained as a result of the landlord's failure to repair premises under the tenant's possession and control.

Nowhere in the Act is there express language creating a cause of action in tort for a landlord's breach of duties imposed by the Act. Nor is a cause of action for personal injury necessarily implied by the Act's language. *Isbell v. Commercial Investment Assoc*., 273 Va. 605 (2007) and also *Steward ex re. Steward v. Holland Family Properties*, 284 Va. 282 (2012) which dealt with a right to sue for personal injuries arising from the landlord's failure to remediate lead-based paint.

What does this mean? If the landlord undertook repairs but performed them in a negligently manner resulting in personal injury, then a claim for personal injury by the tenant may lie against the landlord under the common law tort of negligence, but without the landlord's negligence, there is no tort action for personal injury; only for a breach of contract which does not allow the tenant to recover for personal injury damages.

Section 2:38 Early termination of rental agreement by military personnel (§ 55-248.21:1 (new § 55.1-1235) & federal law)

IMPORTANT NOTE:

Virginia originally enacted the VRLTA provisions, which remains in effect, before the federal Servicemembers Civil Relief Act was amended to now be in conflict with the VRLTA. Where there is a conflict between federal and state law, federal law will most certainly prevail.

Under the current Servicemembers Civil Relief Act, a servicemember can terminate a lease in one of two situations. In the **First situation**, if the lease was entered into before entering active duty in the military and the servicemember remains on active duty for a minimum of 90-days, then with 30-days' notice, the servicemember can terminate the lease. In the **Second situation**, if the lease was signed after the member began active-duty service, he/she is still able to terminate the lease without penalty if the member receives permanent change of station (PCS) or deployment orders that will last more than 90-days and provides a written notice of this to the landlord with a copy of the orders, at least 30-days in advance. There is no distance from the rental set forth in the federal statute – which is in contrast to the VRLTA language putting a distance requirement in play.

The VRLTA provision reads as follows:

A. Any member of the armed forces of the United States or a member of the National Guard serving on full-time duty or as a Civil Service technician with the National Guard may, through the procedure detailed in subsection B, terminate his rental agreement if the member (i)

has received permanent change of station orders to depart 35 miles or more (radius) from the location of the dwelling unit, (ii) has received temporary duty orders in excess of three months' duration to depart 35 miles or more (radius) from the location of the dwelling unit, (iii) is discharged or released from active duty with the Armed Forces of the United States or from his full-time duty or technician status with the National Guard, or (iv) is ordered to report to government-supplied quarters resulting in the forfeiture of basic allowance for quarters.

B. Tenants who qualify to terminate a rental agreement pursuant to subsection A shall do so by serving on the landlord a written notice of termination to be effective on a date stated therein, such date to be not less than 30 days after the first date on which the next rental payment is due and payable after the date on which the written notice is given. The termination date shall be no more than 60 days prior to the date of departure necessary to comply with the official orders or any supplemental instructions for interim training or duty prior to the transfer. Prior to the termination date, the tenant shall furnish the landlord with a copy of the official notification of the orders or a signed letter, confirming the orders, from the tenant's commanding officer.

The landlord may not charge any liquidated damages.

C. Nothing in this section shall affect the tenant's obligations established by § 55-248.16.

Section 2:39 **Early termination of rental agreements by victims of family abuse, sexual abuse, or criminal sexual assault. (§55-248.21:2 (new § 55.1-1236))**

A. Any tenant who is a victim of (i) family abuse as defined by § 16.1-228, (ii) sexual abuse as defined by § 18.2-67.10, or (iii) other criminal sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 may terminate such tenant's obligations under a rental agreement under the following circumstances:

1. The victim has obtained an order of protection pursuant to § 16.1-279.1 and has given written notice of termination in accordance with subsection B during the period of the protective order or any extension thereof; or

2. A court has entered an order convicting a perpetrator of any crime of sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, sexual abuse as defined by § 18.2-67.10, or family abuse as defined by § 16.1-228 against the victim and the victim gives written notice of termination in accordance with subsection B. A victim may exercise a right of termination under this section to terminate a rental agreement in effect when the conviction order is entered and one subsequent rental agreement based upon the same conviction.

B. A tenant who qualifies to terminate obligations under a rental agreement pursuant to subsection A shall do so by serving on the landlord a written notice of termination to be effective on a date stated therein, such date to be not less than 30 days after the first date on which the next rental payment is due and payable after the date on which the written notice is given. When the tenant serves the termination notice on the landlord, the tenant shall also provide the landlord with a copy of (i) the order of protection issued or (ii) the conviction order.

C. The rent shall be payable at such time as would otherwise have been required by the terms of the rental agreement through the effective date of the termination as provided in subsection B.

D. The landlord may not charge any liquidated damages.

E. The victim's obligations as a tenant under § 55-248.16 (new § 55.1-1227) shall continue through the effective date of the termination as provided in subsection B. Any co-tenants on the lease with the victim shall remain responsible for the rent for the balance of the term of the rental agreement. If the perpetrator is the remaining sole tenant obligated on the rental agreement, the landlord may terminate the rental agreement and collect actual damages for such termination against the perpetrator pursuant to §55-248.35 (now § 55.1-1251).

Section 2:40 **Failure to deliver possession to tenant (§ 55-248.22 (new § 55.1-1238))**

Where the landlord WILLFULLY fails to deliver possession to a tenant:

The rent abates until delivery is made;

The tenant may terminate the lease with 5 days' notice and he:

gets back all prepaid rent, and

gets back his security deposit

The tenant may launch court action to gain possession from anyone else in possession PLUS recover his damages.

The tenant may recover reasonable attorney fees as well as ACTUAL damages.

Section 2:41 **Landlord's failure to supply heat, water, hot water, or essential services (§ 55-248.23 (new § 55.1-1239))**

This is a remedy choice that the tenant has where the landlord WILLFULLY or NEGLIGENTLY fails to provide

Heat,

Running water,

Hot water,

Electricity,

Gas; or

Other essential services,

A condition precedent to this remedy is that the tenant MUST SERVE WRITTEN NOTICE ON TIIE LANDLORD, specifying the breach, and allow the landlord a reasonable time to correct it.

This remedy does not terminate the lease, and it may not be used in addition to the remedy to terminate under § 55-248.21 (new § 55.1-1234).

If damaged, the tenant may:

Get damages based on diminished fair rental value; or

Get reasonable substitute housing during noncompliance time (this will excuse the tenant for rent during the landlord's breach), AS DETERMINED BY THE COURT;

The tenant SHALL get reasonable attorney fees but he cannot seek relief under Section 55-248.21 (new § 55.1-1234) (right to terminate) also. HE MUST CHOOSE which remedy he will seek.

The tenant's OWN DELIBERATE OR NEGLIGENT ACT will bar recovery under this act (including members of his family or other persons on the premises with consent).

Section 2:42 **Fire or casualty damage (§ 55-248.24 (new § 55.1-1240))**

Effective: July 1, 2017

If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that the tenant’s enjoyment of the dwelling unit is substantially impaired or required repairs can only be accomplished if the tenant vacates the dwelling unit, either the tenant or the landlord may terminate the rental agreement. The tenant may terminate the rental agreement by vacating the premises and within 14 days thereafter, serve on the landlord a written notice of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or if continued occupancy is lawful, § 55-226 (new § 55.1-1411) shall apply.

The landlord may terminate the rental agreement by giving the tenant 14 days’ notice of his intention to terminate the rental agreement based upon the landlord’s determination that such damage requires the removal of the tenant and the use of the premises is substantially impaired, in which case the rental agreement terminates as of the expiration of the notice period.

If the rental agreement is terminated, the landlord shall return all security deposits in accordance with § 55-248.15:1 (new § 55.1-1226) and prepaid rent, plus accrued interest, recoverable by law unless the landlord reasonably believes that the tenant, tenant’s guests, invitees or authorized occupants were the cause of the damage or casualty, in which case the landlord shall provide a written statement to the tenant for the security and prepaid rent, plus accrued interest based upon the damage or casualty, and may recover actual damages sustained pursuant to § 55-248.35 (now § 55.1-1251). Proration for rent in the event of termination or apportionment shall be made as of the date of the casualty.

Section 2:43 **Landlord's noncompliance as defense (§ 55-248.25 (new § 55.1-1241))**

The defenses available to a tenant who is sued for rent and/or possession are any condition which constitutes or will constitute a:

- fire hazard;
- a serious threat to life, health or safety,
- including (but not limited to):
- - lack of heat;
- - running water;
- - light;
- - electricity;
- - adequate sewage disposal facility;
- - infestation of rodents;
- - material non-compliance by landlord of the lease or law.

Conditions for the defenses

These defenses are conditioned upon the tenant giving the landlord a reasonable notice to cure. A landlord who takes more than 30 days to fix the problem is presumed to have acted in an unreasonable period of time. What is unreasonable, however, is left to the discretion of the court.

The tenant in possession must have paid his rent into the court pending a decision on the defenses.

How to overcome these defenses

The landlord can overcome these defenses by showing that the:

Condition does not exist;

Condition has been removed or remedied;

Condition was caused by the tenant, his family or guest;

The tenant has unreasonably refused entry to the landlord to make the corrections.

The tenant did not give the required notice and did not pay his rent to the landlord or to the court.

What Can the Court Do?

Set-off rent in some equitable sum;

Terminate the lease and order possession;

Refer the case to a state or municipal agency for investigation and report-grant a continuance pending receipt of such investigation and report.

The court can award the tenant's reasonable attorney fees if the tenant prevails.

Where rents to be paid and how may be used

The rents are to be paid into court and the court may use them to cover the mortgage payments in order to stop a foreclosure, to pay a creditor to prevent a mechanic's lien or materialman's lien or to remedy a condition described above.

Defenses made in bad faith

If the tenant raised a defense in bad faith, caused the condition, or refused access the landlord to make the repair, the court may impose on the tenant, the reasonable costs of the landlord, including court costs, the costs of repair where the court finds that the tenant has caused the violation, and reasonable attorney fees.

Section 2:44 Rent escrow required for continuance of tenant's case (§ 55-24 .25:1)

A. Where a landlord has filed an unlawful detainer action seeking possession of the premises as provided by this chapter and the tenant seeks to obtain a continuance of the action or to set It for a contested trial, the court, upon request of the landlord, shall order the tenant to pay an amount equal to the rent that is due as of the initial court date into the court escrow account prior to granting the tenant's request for a delayed court date. However, if the tenant asserts a good faith defense, and the court so finds, the court shall not require the rent to be escrowed.

If it is the landlord who requests a continuance or to set the case for a contested trial, the court shall not require the rent to be escrowed.

B. If the court finds that the tenant has not asserted a good faith defense, the tenant shall be required to pay an amount determined by the court to be proper into the court escrow account in order for the case to be continued or set for contested trial. To meet the ends of justice, however, the court may grant the tenant a continuance of no more than one week to make full payment of the court-ordered amount into the court escrow account. If the tenant falls to pay the entire amount ordered, the court shall, upon request of the landlord, enter judgment for the landlord and enter an order of possession of the premises.

C. The court shall further order that should the tenant fall to pay future rents due under the rental agreement into the court escrow account, the court shall, upon the request of the landlord, enter judgment for the landlord and enter an order of possession of the premises.

D. Upon motion of the landlord, the court may disburse the moneys held in the court escrow account to the landlord for payment of his mortgage or other expenses relating to the dwelling unit.

E. Except as provided in subsection D, no rent required to be escrowed under this section shall be disbursed within 10 days of the date of the judgment unless otherwise agreed to by the parties. If an appeal is taken by the plaintiff, the rent held in escrow shall be transmitted to the clerk of the circuit court to be held in such court escrow account pending the outcome of the appeal.

If the tenant prevails, the tenant may recover the tenant's reasonable attorney fees.

Section 2:45 **Tenant's remedies for unlawful ouster, exclusion or diminution of service (§ 55-248.26 (new § 55.1-1243))**

If the landlord UNLAWFULLY

- removes the tenant from the premises,
- excludes the tenant from the premises, or
- willfully diminishes services of
    - water,
    - gas or
    - other essential services,
- THEN the tenant may
    - obtain an order from a general district court to recover possession,
    - require the landlord to resume any such interrupted utility service, or
    - terminate the lease and recover his security deposit and accrued interest
    - AND recover ACTUAL damages plus reasonable attorney fees.

Section 2:46 **Tenant's assertion; rent escrow (§ 55-248.27 (new § 55.1-1244))**

Effective: July 1, 2017

A. The tenant may assert that there exists upon the leased premises, a condition or conditions which constitute a material noncompliance by the landlord with the rental agreement or with provisions of law, or which if not promptly corrected, will constitute a fire hazard or serious threat to the life, health or safety of occupants thereof, including but not limited to, a lack of heat or hot or cold running water, except if the tenant is responsible for payment of the utility charge and where the lack of such heat or hot or cold running water is the direct result of the tenant's failure to pay the utility charge; or of light, electricity or adequate sewage disposal facilities; or an infestation of rodents; or of the existence of paint containing lead pigment on surfaces within the dwelling, provided that the landlord has notice of such paint. The tenant may file such an assertion in a general district court wherein the premises are located by a declaration setting forth such assertion and asking for one or more forms of relief as provided for in subsection D.

B. Prior to the granting of any relief, the tenant shall show to the satisfaction of the court that:

1. Prior to the commencement of the action the landlord was served a written notice by the tenant of the conditions described in subsection A, or was notified of such

conditions by a violation or condemnation notice from an appropriate state or municipal agency, and that the landlord has refused, or having a reasonable opportunity to do so, has failed to remedy the same. For the purposes of this subsection, what period of time shall be deemed to be unreasonable delay is left to the discretion of the court except that there shall be a rebuttable presumption that a period in excess of 30 days from receipt of the notification by the landlord is unreasonable; and

2. The tenant has paid into court the amount of rent called for under the rental agreement, within five days of the date due thereunder, unless or until such amount is modified by subsequent order of the court under this chapter.

C. It shall be sufficient answer or rejoinder to a declaration pursuant to subsection A if the landlord establishes to the satisfaction of the court that the conditions alleged by the tenant do not in fact exist, or such conditions have been removed or remedied, or such conditions have been caused by the tenant or members of his family or his or their invitees or licensees, or the tenant has unreasonably refused entry to the landlord to the premises for the purpose of correcting such conditions.

D. Any court shall make findings of fact on the issues before it and shall issue any order that may be required. Such an order may include, but is not limited to, any one or more of the following:

1. Terminating the rental agreement upon the request of the tenant or ordering the premises surrendered to the landlord if the landlord prevails on a request for possession pursuant to an unlawful detainer properly filed with the court;

2. Ordering all moneys already accumulated in escrow disbursed to the landlord or to the tenant in accordance with this chapter;

3. Ordering that the escrow be continued until the conditions causing the complaint are remedied;

4. Ordering that the amount of rent, whether paid into the escrow account or paid to the landlord, be abated as determined by the court in such an amount as may be equitable to represent the existence of the condition or conditions found by the court to exist. In all cases where the court deems that the tenant is entitled to relief under this chapter, the burden shall be upon the landlord to show cause why there should not be an abatement of rent;

5. Ordering any amount of moneys accumulated in escrow disbursed to the tenant where the landlord refuses to make repairs after a reasonable time or to the landlord or to a contractor chosen by the landlord in order to make repairs or to otherwise remedy the condition. In either case, the court shall in its order ensure that moneys thus disbursed will be in fact used for the purpose of making repairs or effecting a remedy;

6. Referring any matter before the court to the proper state or municipal agency for investigation and report and granting a continuance of the action or complaint pending receipt of such investigation and report. When such a continuance is granted,

the tenant shall deposit with the court rents within five days of date due under the rental agreement, subject to any abatement under this section, which become due during the period of the continuance, to be held by the court pending its further order;

7. In its discretion, ordering escrow funds disbursed to pay a mortgage on the property in order to stay a foreclosure; or

8. In its discretion, ordering escrow funds disbursed to pay a creditor to prevent or satisfy a bill to enforce a mechanic's or materialman's lien.

Notwithstanding any provision of this subsection, where an escrow account is established by the court and the condition or conditions are not fully remedied within six months of the establishment of such account, and the landlord has not made reasonable attempts to remedy the condition, the court shall award all moneys accumulated in escrow to the tenant. In such event, the escrow shall not be terminated, but shall begin upon a new six-month period with the same result if, at the end thereof, the condition or conditions have not been remedied.

E. The initial hearing on the tenant's assertion filed pursuant to subsection A shall be held within fifteen calendar days from the date of service of process on the landlord as authorized by § 55-248.12 (new § 55.1-1216), except that the court shall order an earlier hearing where emergency conditions are alleged to exist upon the premises, such as failure of heat in winter, lack of adequate sewage facilities or any other condition which constitutes an immediate threat to the health or safety of the inhabitants of the leased premises. The court, on motion of either party or on its own motion, may hold hearings subsequent to the initial proceeding in order to further determine the rights and obligations of the parties. Distribution of escrow moneys may only occur by order of the court after a hearing of which both parties are given notice as required by law or upon motion of both the landlord and tenant or upon certification by the appropriate inspector that the work required by the court to be done has been satisfactorily completed. If the tenant proceeds under this subsection, he may not proceed under any other section of this article as to that breach.

Sections § 55-248.28 through § 55-248.30 were repealed.

Section 2:47 **Landlord's remedies for tenant noncompliance with rental agreement; monetary penalties (§ 55-248.31 (new § 55.1-1245))**

Effective: July 1, 2017

A. Except as provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a violation of § 55-248.16 (new § 55.1-1227) materially affecting health and safety, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 21 days, and that the rental agreement shall terminate as provided in the notice.

B. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate.

C. If the tenant commits a breach which is not remediable, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding anything to the contrary contained elsewhere in this chapter, when a breach of the tenant's obligations under this chapter or the rental agreement involves or constitutes a criminal or a willful act, which is not remediable and which poses a threat to health or safety, the landlord may terminate the rental agreement immediately and proceed to obtain possession of the premises. For purposes of this subsection, any illegal drug activity involving a controlled substance, as used or defined by the Drug Control Act (§ 54.1-3400 et seq.), or any activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety, by the tenant, the tenant's authorized occupants, or the tenant's guests or invitees shall constitute an immediate nonremediable violation for which the landlord may proceed to terminate the tenancy without the necessity of waiting for a conviction of any criminal offense that may arise out of the same actions. In order to obtain an order of possession from a court of competent jurisdiction terminating the tenancy for illegal drug activity or for any other activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety, the landlord shall prove any such violations by a preponderance of the evidence. However, where the illegal drug activity or any activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety is engaged in by a tenant's authorized occupants, or guests or invitees, the tenant shall be presumed to have knowledge of such activities unless the presumption is rebutted by a preponderance of the evidence. The initial hearing on the landlord's action for immediate possession of the premises shall be held within 15 calendar days from the date of service on the tenant; however, the court shall order an earlier hearing when emergency conditions are alleged to exist upon the premises which constitute an immediate threat to the health or safety of the other tenants. After the initial hearing, if the matter is scheduled for a subsequent hearing or for a contested trial, the court, to the extent practicable, shall order that the matter be given priority on the court's docket. Such subsequent hearing or contested trial shall be heard no later than 30 calendar days from the date of service on the tenant. During the interim period between the date of the initial hearing and the date of any subsequent hearing or contested trial, the court may afford any further remedy or relief as is necessary to protect the interests of parties to the proceeding or the interests of any other tenant residing on the premises. Failure by the court to hold either of the hearings within the time limits set out herein shall not be a basis for dismissal of the case.

D. If the tenant is a victim of family abuse as defined in § 16.1-228 that occurred in the dwelling unit or on the premises and the perpetrator is barred from the dwelling unit pursuant to § 55-248.31:01 (new § 55.1-1246) based upon information provided by the tenant to the landlord, or by a protective order from a court of competent jurisdiction pursuant to § 16.1-253.1, 16.1-279.1, or subsection B of § 20-103, the lease shall not terminate due solely to an act of family abuse against the tenant. However, these provisions shall not be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's status as a victim of family abuse and

the exclusion from the dwelling unit of the perpetrator no later than 21 days from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises, in violation of a bar notice, and the tenant fails promptly to notify the landlord within 24 hours thereafter that the perpetrator has returned to the dwelling unit or the premises, unless the tenant proves by a preponderance of the evidence that the tenant had no actual knowledge that the perpetrator violated the bar notice, or it was not possible for the tenant to notify the landlord within 24 hours, in which case the tenant shall promptly notify the landlord, but in no event more than 7 days thereafter. If the provisions of this subsection are not applicable, the tenant shall remain responsible for the acts of the other co-tenants, authorized occupants or guests or invitees pursuant to § 55-248.16 (new § 55.1-1227), and is subject to termination of the tenancy pursuant to the lease and this chapter.

E. If the tenant has been served with a prior written notice which required the tenant to remedy a breach, and the tenant remedied such breach, where the tenant intentionally commits a subsequent breach of a like nature as the prior breach, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the subsequent breach, make reference to the prior breach of a like nature, and state that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice.

F. If rent is unpaid when due, and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the rental agreement if the rent is not paid within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55-248.35 (now § 55.1-1251). If a check for rent is delivered to the landlord drawn on an account with insufficient funds, or if an electronic funds transfer has been rejected because of insufficient funds or a stop-payment order has been placed in bad faith by the authorizing party, and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment and of the landlord's intention to terminate the rental agreement if the rent is not paid by cash, cashier's check, certified check, or a completed electronic funds transfer within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55-248.35 (now § 55.1-1251). Nothing shall be construed to prevent a landlord from seeking an award of costs or attorney fees under § 8.01-27.1 or civil recovery under § 8.01-27.2, as a part of other damages requested on the unlawful detainer filed pursuant to § 8.01-126, provided the landlord has given notice in accordance with § 55-248.6, which notice may be included in the five-day termination notice provided in accordance with this section.

G. Except as provided in this chapter, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or § 55-248.16 (new § 55.1-1227). In the event of a breach of the rental agreement or noncompliance by the tenant, the landlord shall be entitled to recover from the tenant the following, regardless of whether or not a lawsuit is filed or an order obtained from a court: (i) rent due and owing as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, (v) costs of the proceeding as

contracted for in the rental agreement or as provided by law only if court action has been filed, and (vi) damages to the dwelling unit or premises as contracted for in the rental agreement.

H. In a case where a lawsuit is pending before the court upon a breach of the rental agreement or noncompliance by the tenant and the landlord prevails, the court shall award a money judgment to the landlord and against the tenant for the relief requested, which may include the following: (i) rent due and owing as of the court date as contracted for in the rental agreement; (ii) other charges and fees as contracted for in the rental agreement; (iii) late charges contracted for in the rental agreement; (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, unless in any such action the tenant proves by a preponderance of the evidence that the tenant's failure to pay rent or vacate was reasonable; (v) costs of the proceeding as contracted for in the rental agreement or as provided by law; and (vi) damages to the dwelling unit or premises.

Section 2:48 **Landlord may bar guest or invitee of tenants (§ 55-248.31:01 (new § 55.1-1246))**

Under this section, the conduct of a tenant's guest or invitee that violates the terms and conditions of the rental agreement, local ordinance or state or federal law, the landlord may bar the tenant's guest or invitee from the property by personally serving the guest or invitee with a notice. The notice must contain a description of the offending acts.

Under this section, the landlord may apply to the magistrate for an arrest warrant for trespass which is authorized by this code section, provided the guest or invitee has been served with the notice described above.

If the tenant is unhappy with this, the tenant may file an assertion in accordance with section 55-asking that the general district court review the landlord's action to bar the guest or invitee.

Section 2:49 **Sheriff Authorized to Serve Certain Notices (§ 55-248.31:1)**

The sheriff of any county or city can, on request, deliver any notice to a tenant on behalf of a landlord under

- § 55-248.31 of VRLTA, which is the 21/30-day notice or 5-day notice.

The Sheriff shall be paid a fee of no more than $12.00

Section 2:50 **Remedy by repair, etc.; emergencies (§ 55-248.32 (new § 55.1-1248))**

If there is a violation by the tenant of § 55-248.16 (new § 55.1-1227) or the rental agreement materially affecting health and safety that can be remedied by repair, replacement of a damaged item or cleaning, the landlord shall send a written notice to the tenant specifying the breach and stating that the landlord will enter the dwelling unit and perform the work in a workmanlike manner, and submit an itemized bill for the actual and reasonable cost therefore to

the tenant, which shall be due as rent on the next rent due date, or if the rental agreement has terminated, for immediate payment.

In case of emergency the landlord may, as promptly as conditions require, enter the dwelling unit, perform the work in a workmanlike manner, and submit an itemized bill for the actual and reasonable cost therefore to the tenant, which shall be due as rent on the next rent due date, or if the rental agreement has terminated, for immediate payment.

The landlord may perform the repair, replacement, or cleaning, or may engage a third party to do so.

Section 2:51 Tenant's absence, nonuse and abandonment (§ 55-248.33)

A landlord can recover ACTUAL damages suffered where a tenant has been away more than 7 days from the unit and did not notify the landlord of the extended trip, *PROVIDED that the lease contains such a notice provision.*

If a tenant is away more than 7 days, the landlord may enter the unit to protect "his" possessions and property.

If the unit is abandoned, and the landlord rents it out, then, if there was still time left on the first lease, the first lease will be deemed terminated as of the date of the new tenancy, or

If the landlord accepts the abandonment it will be deemed terminated as of the date of the landlord's notice of acceptance.

If the landlord cannot determine whether the premises has been abandoned by the tenant, the landlord is to serve a written notice on the tenant requiring that the tenant give written notice to the landlord within seven days that the tenant intends to remain in occupancy of the premises. If the tenant gives such written notice to the landlord, or if the landlord otherwise determines that the tenant remains in occupancy of the premises, the landlord shall not treat the premises as having been abandoned.

Unless the landlord receives written notice from the tenant or otherwise determines the that tenant remains in occupancy of the premises, upon the expiration of seven days from the date of the landlord's notice to the tenant, there is a presumption that the premises have been abandoned by the tenant and the rental agreement will be deemed terminated on that date. The landlord is required to mitigate his damages.

§ 55-248.34 repealed

Section 2:52 Landlord's acceptance of rent with reservation (§ 55-248.34:1)

If the landlord has not reserved his rights in accordance with the provisions of this section, then the court will deem the landlord to have waived his right to evict the tenant by accepting the rent in the presence of a breach by the tenant.

Where the landlord has accepted the full or partial payment of the rent with reservation in

accordance with this section the landlord reserves to himself the right to proceed in court to evict the tenant.

This section allows the landlord to exercise this right in two manners.

One is to put reservation of rights language in the notice to pay or to cure and quit given to the tenant – which will be effective for the payment due under that notice.

The second is put reservation of rights language in a separate written notice given by the landlord to the tenant within five business days of receipt of payment of such money judgment, attorney's fees and court costs.

If payment tendered is by check without the landlord requiring payment in some other form, then "payment" will include the tender of the check. If the landlord does not want payment by regular check, then the notice to cure must indicate otherwise; such as "payment must be by cash, certified check, cashier's check or money order."

Right of redemption

In cases of unlawful detainer a tenant may pay the landlord or his attorney or pay into court all (i) rent due and owing as of the court date as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, and (v) costs of the proceeding as provided by law, at which time the unlawful detainer proceeding shall be dismissed. A tenant may invoke the rights granted in this section no more than one time during any 12–month period of continuous residency in the dwelling unit regardless of the term of the rental agreement or renewal thereof. If the tenant has been delinquent and redeemed the lease using this code section, then the tenant's right to remain in the property is automatic and must be honored.

Redemption tender

In lieu of payment, the tenant may present a "redemption tender", which is a written commitment by a local government or nonprofit entity to pay all rent due and owing as of the return date, including late charges, attorney fees, and court costs within 10 days of said return date.

If the tenant presents a redemption tender to the court at the return date, the court must continue the unlawful detainer for 10 days following the return date for payment to the landlord of all rent due and owing as of the return date, including late charges, attorney fees, and court costs and dismissal of the action upon such payment. Should the landlord not receive full payment of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, within 10 days of the return date, the court shall, without further evidence, grant to the landlord judgment for all amounts due and immediate possession of the premises.

Post judgment payments

Prior to eviction a landlord may accept all amounts owed to the landlord including full payment of such money judgment, attorneys' fees and court costs and all subsequent rents

that may be paid prior to eviction and proceed with eviction provided that a notice has been given in a separate written notice given by the landlord within five business days of receipt of post judgment payments; except in public housing where the notice includes the reservation language. If the dwelling unit is a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development, the landlord shall be deemed to have accepted rent with reservation pursuant to this subsection if the landlord gives the tenant the written notice required herein for the portion of the rent paid by the tenant. Writs of possession in cases of unlawful entry and detainer are otherwise subject to §8.01–471.

Section 2:53 Remedy after termination (§ 55-248.35 (now § 55.1-1251))

If the rental agreement is terminated, the landlord may have a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement, reasonable attorney's fees as provided in § 55-248.31 (new § 55.1-1245), and the cost of service of any notice under § 55-248.31 (new § 55.1-1245) or process by a sheriff or private process server which cost shall not exceed the amount authorized by § 55-248.31:1, which claims may be enforced, without limitation, by the institution of an action for unlawful entry or detainer.

Actual damages for breach of the rental agreement may include a claim for such rent as would have accrued until the expiration of the term thereof or until a tenancy pursuant to a new rental agreement commences, whichever first occurs; provided that nothing herein contained shall diminish the duty of the landlord to **mitigate actual damages** for breach of the rental agreement. In obtaining post-possession judgments for actual damages as defined herein, the landlord shall not seek a judgment for accelerated rent through the end of the term of the tenancy.

Section 2:54 Recovery of possession limited (Self Help) (§ 55-248.36 (now § 55.1-1252))

This is the no self-help provision. A landlord may not recover or take possession of a unit by; willful diminution of services to the tenant such as interrupting electricity, gas, water, or other essential services required by the lease refusal to permit the tenant access to a unit without a court order for possession.

Section 2:55 Periodic tenancy; holdover remedies (§ 55-248.37 (now § 55.1-1253))

Notice to terminate

Notice to terminate a week-to-week tenancy, either the landlord or tenant may serve a written notice on the other at least seven days prior to the next rent due date unless the parties have modified the period for the notice in a written rental agreement.

To terminate a month-to-month tenancy, either the landlord or tenant may serve a written notice on the other at least 30 days prior to the next rent due date unless the parties have modified the period for the notice in a written rental agreement.

Holdover tenant—liquidated damages

If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and may also recover actual damages, reasonable attorneys' fees, and court costs, unless the tenant proves by a preponderance of the evidence that the failure of the tenant to vacate the dwelling unit as of the termination date was reasonable.

The landlord may include in the rental agreement a reasonable liquidated damage penalty, not to exceed an amount equal to 150 percent of the per diem of the monthly rent, for each day the tenant remains in the dwelling unit after the termination date specified in the landlord's notice.

However, if the dwelling unit is a public housing unit or other housing unit subject to regulation by the Department of Housing and Urban Development, any liquidated damage penalty shall not exceed an amount equal to the per diem of the monthly rent set out in the lease agreement. If the landlord consents to the tenant's continued occupancy, § 55-248.7 (new § 55.1-1204) applies.

In the event of termination of a rental agreement and the tenant remains in possession with the agreement of the landlord either as a hold-over tenant or a month-to-month tenant and no new rental agreement is entered into, the terms of the terminated agreement shall remain in effect and govern the hold-over or month-to-month tenancy, except that the amount of rent shall be either as provided in the terminated rental agreement or the amount set forth in a written notice to the tenant, provided that such new rent amount shall not take effect until the next rent due date coming 30 days after the notice.

§ 55-248.38 repealed

Section 2:56 Disposal of property abandoned by tenants (§ 55-248.38:1 (now § 55.1-1254))

Effective: July 1, 2017

If any items of personal property are left in the dwelling unit, the premises, or in any storage area provided by the landlord, after the rental agreement has terminated and delivery of possession has occurred, the landlord may consider such property to be abandoned. The landlord may dispose of the property so abandoned as the landlord sees fit or appropriate, provided he has: (i) given a termination notice to the tenant in accordance with this chapter, which includes a statement that any items of personal property left in the dwelling unit or the premises would be disposed of within the 24-hour period after termination, (ii) given written notice to the tenant in accordance with § 55-248.33, which includes a statement that any items of personal property left in the dwelling unit or the premises would be disposed of within the 24-hour period after expiration of the seven-day notice period, or (iii) given a separate written notice to the tenant, which includes a statement that any items of personal property left in the dwelling unit or the premises would be disposed of within 24 hours after expiration of a 10-day period from the date such notice was given to the tenant. Any written notice to the tenant shall be given in accordance with § 55-248.6. The tenant shall have the right to remove his personal property from the dwelling unit or the premises at reasonable times during the 24-hour period after termination or at such

other reasonable times until the landlord has disposed of the remaining personal property of the tenant.

During the 24-hour period and until the landlord disposes of the remaining personal property of the tenant, the landlord shall not have any liability for the risk of loss for such personal property. If the landlord fails to allow reasonable access to the tenant to remove his personal property as provided in this section, the tenant shall have a right to injunctive or other relief as provided by law. If the landlord received any funds from any sale of abandoned property as provided in this section, the landlord shall pay such funds to the account of the tenant and apply same to any amounts due the landlord by the tenant, including the reasonable costs incurred by the landlord in selling, storing or safekeeping such property. If any such funds are remaining after application, the remaining funds shall be treated as a security deposit under the provisions of § 55-248.15:1 (new § 55.1-1226). The provisions of this section shall not be applicable if the landlord has been granted a writ of possession for the premises in accordance with Title 8.01 and execution of such writ has been completed pursuant to § 8.01-470.

Nothing herein shall affect the right of a landlord to enforce an inchoate or perfected lien of the landlord on the personal property of a tenant in a dwelling unit or on the premises leased to such tenant and the right of a landlord to distress, levy, and seize such personal property as otherwise provided by law.

Section 2:57 Sheriff Authorized to Store Tenants Goods (§ 55-248.38:2 (now § 55.1-1255))

Effective 2013

In execution of a writ of possession, the sheriff is to oversee the removal of the tenant's property from the dwelling, the premises or from a storage area provided by the landlord, and its placement into the public way. The tenant has 24-hours to retrieve it. After 24-hours have passed without its retrieval by the tenant, the landlord is directed to remove and dispose of it. The sheriff's only duty is to "oversee the removal" of the tenant’s (or any other occupant’s) personal property.

At the eviction, the landlord may request the sheriff to oversee the placement of the tenant’s property into a storage area designated by the landlord. The tenant will then have the right to retrieve it at reasonable times during the 24-hour period or at such other reasonable times until the landlord disposes of it.

The code section gives the landlord and the sheriff immunity from liability for the risk of loss for such personal property. The tenant is given injunctive or other relief if the landlord refuses the tenant access.

If the tenant does not retrieve his property within the 24-hour period, the landlord may dispose of the property as he sees fit, applying the proceeds to any sum due and owing to the landlord including the reasonable cost of the storage and selling the property. Any excess proceeds are treated as a security deposit.

The eviction notices given by the sheriff are to include an advisement to the tenants of their rights under this code section.

Section 2:58 **Disposal of property of deceased tenants (§ 55-248.38:3 (now § 55.1-1256))**

Effective: July 1, 2017

A. If a tenant who is the sole tenant under a written rental agreement still residing in the dwelling unit dies, and there is no person authorized by order of the circuit court to handle probate matters for the deceased tenant, the landlord may dispose of the personal property left in the dwelling unit or upon the premises. However, the landlord shall give at least 10 days' written notice to (i) the person identified in the rental application, lease agreement, or other landlord document as the authorized person to contact in the event of the death or emergency of the tenant or (ii) the tenant in accordance with § 55-248.6 if no such person is identified in the rental application, lease agreement, or other landlord document as the authorized contact person. The notice given under clause (i) or (ii) shall include a statement that any items of personal property left in the premises would be treated as abandoned property and disposed of in accordance with the provisions of § 55-248.38:1 (now § 55.1-1254), if not claimed within 10 days. Authorized occupants, or guests or invitees, are not allowed to occupy the dwelling unit after the death of the sole remaining tenant and shall vacate the dwelling unit prior to the end of the 10-day period.

B. The landlord may request that such authorized contact person provide reasonable proof of identification. Thereafter, the authorized contact person identified in the rental application, lease agreement, or other landlord document may (i) have access to the dwelling unit or the premises and to the tenant records maintained by the landlord and (ii) rightfully claim the personal property of the deceased tenant and otherwise handle the affairs of the deceased tenant with the landlord.

C. The rental agreement is deemed to be terminated by the landlord as of the date of death of the tenant who is the sole tenant under a written rental agreement still residing in the dwelling unit, and the landlord shall not be required to seek an order of possession from a court of competent jurisdiction. The estate of the tenant shall remain liable for actual damages under § 55-248.35 (now § 55.1-1251), and the landlord shall mitigate damages as provided thereunder.

Section 2:59 **Retaliatory Conduct Prohibited (§ 55-248.39 (now § 55.1-1258))**

Effective July 1, 2015

A landlord may not retaliate against a tenant by:

- Increasing the rent;
- Decreasing any services;
- Bringing or threatening to bring an action for possession; or
- Causing a termination of the lease by giving a notice to terminate a month-to-month, or year-to-year tenancy after he has knowledge that:

- The tenant has complained to a government agency that enforces housing and building codes, of a violation which materially affects health or safety;
- The tenant has complained to or filed a suit against the landlord for violation of the VRLTA;
- The tenant has organized or joined a tenant's association; or
- The tenant testified in court against the landlord.

NOTE: the provisions of this section §55-248.39 (now § 55.1-1258) are not to be construed to prevent the landlord from increasing rents to market rents nor decreasing services equally to all tenants.

If the landlord violated this section,

The tenant is entitled to all remedies under this chapter, including recovery of actual damages, and may assert retaliation as a defense in any action against him for possession;

The BURDEN of proving intent to retaliate is on the tenant.

In spite of the above, the landlord may terminate a month to month lease with a 30-day notice to quit and sue for possession if:

(1) The violation of the applicable housing or building code was caused PRIMARILY by lack of reasonable care by the tenant, his family, member, or a guest;

(2) The tenant is in default on his rent;

(3) Compliance with code violation requires alteration, remodeling or demolition which would effectively deprive the tenant of the use of the unit;

(4) The tenant is in default of a provision of the lease MATERIALLY affecting health and safety of himself or others.

Even though the landlord can maintain an action for possession he is not excused from liability for the security deposit under section 55-248.15:1 (new § 55.1-1226).

The landlord can also terminate the lease for any other reason not prohibited by law unless the court finds that **the** reason for termination was retaliation; as opposed to "a reason."

Note that prior to July 1, 2015, the law read "unless the court finds that the primary reason was retaliatory."

Section 2:60 Actions to enforce chapter (§ 55-248.40 (now § 55.1-1259))

In addition to any other remedies in this chapter, any person adversely affected by an act or omission prohibited under the VRLTA may institute an action for injunction and damages against the person responsible for such act or omission in the circuit court in the county or city in which such act or omission occurred.

If the court finds that the defendant was responsible for such act or omission, it shall enjoin the defendant from continuance of such practice, and in its discretion, award the plaintiff damages as herein provided.

Chapter 3 Who May Go to Court to Recover Rent or Possession?

In any court an individual owner may always represent himself. This is known as being "pro Se".

Anyone who represents another (even a spouse or child) is practicing law without a license. This is a crime. An agent for a corporation is in the same situation even where he is the sole owner, stockholder and officer.

There are several laws that allow limited representation without being a lawyer.

§ 16.1-88.03 is a code section that deals with certain entities, including their managing agent, being allowed to prepare and file certain pleadings without using an attorney, so long as the plaintiff is not a firm that took over the debt as a collection agent by assignment.

A code section was added July 1, 2009 (16.1-81.1) which allows the officer of a closely held corporation to represent the corporation without an attorney in certain small cases in the general district court. The corporation must be owned by no more than 5 persons (which can include an entity as an owner) and is not a publicly held corporation nor one that is planned to go public. The cases in which the officer can represent the corporation without an attorney must be less than $25OO, exclusive of interest, and the officer has the unanimous consent of all of the shareholders. I suggest this language be used and presented by the officer to the court to qualify.

"Pursuant §16.1-81.1 Va. Code, we, the undersigned shareholders of the corporation, are the sole owners of the corporation, and there are no more than 5 persons who are owners (shareholders) of the corporation and that the corporation is not a publicly held corporation nor is there any plan to go public, and all of the shareholders join in this consent to have who is an officer of this corporation, to represent the corporation without having to engage an attorney."

The existing rules that allow an agent to appear and take default in the general district court in any other cases are as follows:

Rule 78:7 and also Rule 78:9 Rules of the Supreme Court Here, the plaintiff, or the plaintiff's regular and bona fide employee may appear in court on the first return of a case in the general district court and where the defendant does not appear and is in default, the plaintiff or his employee may ask for and obtain default judgment without having to hire an attorney to do so.

Under Va. Code § 16.1-88.03, the general district court suits can be prepared and filed by the plaintiff, or plaintiff's employee. A non-attorney cannot prepare and file a bill of particulars or grounds of defense or file motions, issue subpoenas and other pleadings and activities in the general district court unless authorized by §55-246.1 (new § 55.1-1257 & 55,1-1417) below.

Under section 55-246.1 (new § 55.1-1257 & 55,1-1417) Va. Code the landlord's real estate broker or salesperson or property manager or managing agent who is authorized by the landlord or any employee, who is authorized in writing by a corporate officer with the approval

of the board of directors, or by a manager, a general partner or a trustee, of a partnership, association, corporation, limited liability company, limited partnership, professional corporation, professional limited liability company, registered limited liability partnership, registered limited liability limited partnership or business trust to sign pleadings as the agent of the business entity may obtain a judgment (a) for possession in the general district court for the county or city wherein the premises, or part thereof, is situated or (b) for rent or damages, including actual damages for breach of the rental agreement, in any general district court where venue is proper under § 8.01-259, against any defendant who fails to appear in person or by counsel and is in default if the person seeking such judgment had a contractual agreement with the landlord to manage the premises for which rent or possession is due and may prepare, execute, file, and have served on other parties in any general district court a warrant in debt, suggestion for summons in garnishment, garnishment summons, writ of possession, or writ of fiery facias arising out of a landlord tenant relationship.

This person may not do more than prepare and file the suit and present ex parte proof if the defendant is in default. More than that requires an attorney to represent the landlord.

Chapter 4 Appointment of Resident Agent

Section §55-218.1 Va. Code

(This section is now 55.1-1211 and also 55.1-1401)

An owner of rental property who is a "non-resident of Virginia" and who owns and leases residential or commercial real property consisting of four or more units within a county or city in the Commonwealth must designate and maintain an agent who is a resident of Virginia maintaining a business office in Virginia. The owner, by definition, is not limited to a flesh and bones person, but any legally recognized entity in Virginia.

Every lease executed by or on behalf of nonresident property owners regarding any such real property must specifically designate the agent and the agent's office address for the purpose of service of any process, notice, order or demand required or permitted by law to be served upon the property's owner.

If a nonresident property owner fails to appoint or maintain an agent, as required by this code section, or if the agent cannot with reasonable diligence be found, then the Secretary of the Commonwealth is designated as the agent of the nonresident property owner upon whom may be served any process, notice, order or demand. Service of process.

Chapter 5 Fair Housing

Section 5:1 Protected classes

Section 5:2 Exemptions from fair housing

Section 5:3 Familial status

Section 5:4 Group Homes

Section 5:5 Elderly or All Adult Building Exemption

Section 5:6 Occupancy standard

Section 5:7 Handicap

Section 5:8 Reasonable accommodations

Section 5:9 Comfort or assistance animal accommodation

Section 5:10 Inquires

Section 5:11 Administration enforcement provisions

Section 5:12 Virginia disability act

The fair housing laws (federal and state), local human rights ordinances and Virginia's Disability Act are an integral part of residential housing and all of the laws that govern it. The following review of the current fair housing laws and disability act is offered to aid in understanding the rights and remedies in this area of the law.

Section 5:1 **Protected classes**

The protected classes at the federal and state level are

Race - both

Color - both

Religion - both

National Origin - both

Sex-both

Familial status -both

Elderliness – Only in Virginia

Landlords also must be aware that **cities and counties may have their own human rights ordinances** that have additional protected classes. Care should be taken to know what classes of people are protected in the local jurisdiction where your rental is located.

Section 5:2 **Exemptions from fair housing**

The federal and state fair housing act does not apply in the following situations

NOTE: Virginia Disabilities Act governs exemption for persons with disabilities— which is discussed below:

Federal Exemptions from FHA	Virginia Exemptions from VFHA
PRIVATE CLUB A private club, not open to the public, which provides lodgings incidental to its primary purpose, may limit the rental or occupancy of such units to its members or give members preference.	A bona fide private membership club, exempt from taxation under § 501(c) of the IRC
NUMBER OF OCCUPANTS Nothing prevents the applicability of any reasonable local, state or federal restrictions in reference to the maximum number of occupants permitted to occupy a dwelling. VIRGINIA HAS ENACTED AN OCCUPANCY STANDARD THAT MAY BE FOLLOWED. Some jurisdictions, like Fairfax county, have occupancy standards that may be followed	Number of Occupants Nothing prevents the applicability of any reasonable local, state or federal restrictions in reference to the maximum number of occupants permitted to occupy a dwelling. VIRGINIA HAS ENACTED AN OCCUPANCY STANDARD THAT MAY BE FOLLOWED. Some jurisdictions, like Fairfax county, have occupancy standards that may be followed.
CONVICTION OF DRUG CRIME. Nothing prohibits conduct against a person because he/ she has been convicted of the illegal manufacture or distribution of a controlled substance as defined in the Controlled Substances Act (21 U.S.C. 802). A ‘‘handicap’’ does not include current, illegal use of or addiction to a controlled substance.	In addition to the federal exemption Virginia’s FHA provides that a rental application may require disclosure by applicant of <u>any</u> criminal convictions and <u>may require permission</u> to do a criminal record check.
THREAT TO PEOPLE OR DWELLING. A dwelling does not have to be made available to an individual whose tenancy would constitute a direct threat to the health or safety of others or the property.	An owner may deny or limit rental to anyone who poses a clear and present threat of substantial harm to themselves, to others, or to the dwelling itself.

Federal Exemptions from FHA	Virginia Exemptions from VFHA
ALL ADULT BUILDINGS An exception to familial status is all elderly or all adult housing under the Virginia & Federal housing law. This exception is where the property is used 100% for 62 years or older; or 80% for 55 years or older and significant facilities for elderly and service	An exception to familial status is all elderly or all adult housing under the Virginia & Federal housing law. This exception is where the property is used 100% for 62 years or older; or 80% for 55 years or older and significant facilities for elderly and service
CERTAIN SINGLE-FAMILY HOMES The rules prohibiting discriminatory conduct do not apply to sale or rental of single family house by its owner, so long as the owner does not own, or have an interest in more than 3 single family houses at any one time, does not use a professional real estate person or facility is and does not use discriminatory advertisement;	Same as federal exemption provided however, this exemption will not apply to or for the benefit of a person licensed by the Virginia Fair Housing Board or regulant of the Fair Housing Board (whether active or inactive). This means licensed real estate salespersons or brokers whether active or inactive are not allowed to claim this exemption.
OWNER LIVES IN ONE ROOM OR UNIT OF 4 UNIT FACILITY (Mrs. Murphy's Exemption) The rules prohibiting discriminatory conduct do not apply where the owner actually occupies one of the rooms or units in a dwelling as his/her own residence, which dwelling is occupied by or intended to be occupied by no more than 4 independent families. No discriminatory advertising is permitted	Same as federal exemption

Section 5:3 **Familial status**

Covers the following:

- Families with children under the age of 18 living with parents or legal custodians;
- Pregnant women; and
- People securing custody of children under the age of 18

Examples of familial status discrimination include:

- Housing advertisements stating that children are not wanted
    - Charging families higher rent or related fees because they have a child
    - Restricting families with children to one area of a building or complex
- Denying housing to families or evicting them because they have a child

- Administer rules and procedures that unfairly target Denying families with children a mortgage because a person is pregnant or takes maternity leave

- Charging a higher interest rate because a person is pregnant or takes maternity leave

Section 5:4 Group Homes

These are defined in Virginia Code § 36-96.6(C) to means a home in which physically handicapped, mentally ill, mentally retarded, or developmentally disabled persons reside, with one or more resident counselors or other staff persons, shall be considered for all purposes residential occupancy by a single family whether title family-care home, foster-home or group-home. This is applied to covenants that restrict to use to single family use and where zoning limits the use of a property to single family use.

Section 5:5 Elderly or All Adult Building Exemption

There is a narrow exemption in the law for housing for elderly persons. To qualify as housing for elderly persons, 100% of the residents in an apartment community would have to be 62 years of age or old, or 80% of the residents would have to be 55 years of age or older and significant facilities and services for the elderly would have to be provided. In certain cases, the Department of Housing and Urban Development (HUD) can determine that the services and facilities are not practicable or necessary. HUD will issue regulations defining this aspect of the bill.

Section 5:6 Occupancy standard

Virginia has adopted an important modification of the 2 per bedroom rule of thumb. It reads as follows (Va. Code §36.105.4) The owner or managing agent of a residential dwelling unit may develop and implement occupancy standards restricting the maximum number of occupants permitted to occupy a dwelling unit to two persons per bedroom which is presumed to be reasonable. For purposes of [Virginia's Fair Housing Code] such occupancy standard is subject to the provisions of applicable state and federal laws and regulations.

Under the Uniform Statewide Building Code, each bedroom shall contain at least 70 square feet of floor area, and each bedroom occupied by more than one person shall contain at least 50 square feet of floor area for each occupant. Reasonable occupancy standards of an owner or managing agent shall not be enforceable under the Uniform Statewide Building Code.

Section 5:7 Handicap

The Act defines "handicap" to mean *"(1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of such an impairment, or (3) being regarded as having such an impairment but such term does not include current, illegal use of or addition to a controlled substance..."* This therefore includes the mentally and physically handicapped as a protected class.

It will be illegal to refuse to rent to a mentally or physically handicapped person who otherwise meets the eligibility criteria. Handicap'' under both the federal and state fair housing statutes means:

Under the Code of Federal Regulations as well as The Americans with Disabilities Act of 1990,1 the term ''handicap' 'includes, but is not limited to such diseases and conditions as:

Drug addiction, other than addiction caused by current, illegal use of a controlled substance, is a handicap. The definition of ‘‘handicap’’ under The Americans with Disabilities Act of 1990 has been made applicable to the Fair Housing Act. A refusal to accept the rental application based on the applicant’s past criminal conduct is not discrimination. An applicant’s prior criminal convictions for possession of cocaine and unlawful use of a weapon were not handicaps and may be used as a basis to deny the rental application.

Alcoholism. The fact that alcoholism may be a handicap does not mean that housing providers must ignore this condition in determining whether an applicant for housing is qualified. On the contrary, a housing provider may hold an alcoholic to the same standard of performance and behavior (e.g., tenant selection criteria) to which it holds others, even if any unsatisfactory performance or behavior is related to applicant’s alcoholism.

Hoarding. The American Psychiatric Association has added hoarding to its list of mental disorders that is a protected class. The Virginia Fair Housing Board agrees.

Section 5:8 Reasonable accommodations

It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

The application of this section may be illustrated by the following examples:

Example 1: A blind applicant for rental housing wants to live in a dwelling unit with a seeing-eye dog. The building has a “no pets” policy. It is a violation of Section 100.204 of the CFR for the owner or manager of the apartment complex to refuse to permit the applicant to live in the apartment with a seeing-eye dog because, without the seeing-eye dog, the blind person will not have an equal opportunity to use and enjoy a dwelling.

Example 2: Progress Gardens is a 300-unit apartment complex with 450 parking spaces which are available to tenants and guests of Progress Gardens on a "first come first served" basis. John applies for housing in Progress Gardens. John is mobility impaired and is unable to walk more than a short distance and therefore request that a parking space near his unit be reserved for him so he will not have to walk very far to get to his apartment. It is a violation of Section 100.204 of the DFR for the owner or manager of Progress Gardens to refuse to make this accommodation. Without a reserved space, John might be unable to live in Progress Gardens at all or, when he has to park in a space for from his unit, might have great difficulty getting from his car to his apartment unit. The accommodation therefore is necessary to afford John an equal opportunity to use and enjoy a dwelling. The accommodation is reasonable because it is feasible and practical under the circumstances.

Section 5:9 Comfort or assistance animal accommodation

Virginia has added a definition of an “assistance animal” to the Virginia Fair Housing law § 36-96.1:1. Its key points are that the assistance animal can be one that (1) provides emotional support that alleviates one or more identified symptoms or effects of a person’s disability – with a disability-related need for such support; (2) does not have to be individually trained or certified; and (3) such an animal is not a pet.

Rights and Responsibilities

The rights and responsibilities with respect to the use of an assistance animal in a dwelling and explained in Virginia Code §36-96.3:1. A "therapeutic relationship" is defined to be medical care, program care, or personal care services, in good faith, to the person with a disability by (i) a mental health service provider as defined in § 54.1–2400.1; (ii) an individual or entity with a valid, unrestricted state license, certification, or registration to serve persons with disabilities; (iii) a person from a peer support or similar group that does not charge service recipients a fee or impose any actual or implied financial requirement and who has actual knowledge about the requester's disability; or (iv) a caregiver, reliable third party, or government entity with actual knowledge of the requester's disability.

A person receiving a request for a reasonable accommodation to maintain an assistance animal in a dwelling shall evaluate the request and any reliable supporting documentation to verify the disability and the disability-related need for the reasonable accommodation regarding an assistance animal.

A person with a disability, or a person associated with such person, who maintains an assistance animal in a dwelling must comply with the rental agreement or any rules and regulations of the property owner applicable to all residents that do not interfere with an equal opportunity to use and enjoy the dwelling and any common areas of the premises.

Such person shall not be required to pay a pet fee or deposit or any additional rent to maintain an assistance animal in a dwelling, but shall be responsible for any physical damages to the dwelling if residents who maintain pets are responsible for such damages in accordance with such documents or state law. Nothing herein shall be construed to affect any cause of action against any resident for other damages under the laws of the Commonwealth.

A person with a disability, or a person associated with such person, may submit a request for a reasonable accommodation to maintain an assistance animal in a dwelling. The person receiving the request may ask the requester to provide reliable documentation of the disability and the disability-related need for an assistance animal, including documentation from any person with whom the person with a disability has or has had a therapeutic relationship, but if a person's disability is obvious or otherwise known to the person receiving a request, or if the need for a requested accommodation is readily apparent or known to the person receiving a request, the person receiving a request for reasonable accommodation may not request any additional verification about the requester's disability. If a person's disability is readily apparent or known to the person receiving the request but the disability-related need is not readily apparent or known, the person receiving the request may ask for additional verification to evaluate the requester's disability-related need.

Factors

When a request for a reasonable accommodation establishes that such accommodation is necessary to afford a person with a disability, and who has a disability-related need, an equal opportunity to use and enjoy a dwelling and does not impose either (i) an undue financial and administrative burden or (ii) a fundamental alteration to the nature of the operations of the person receiving the request, the request for the accommodation is reasonable and should be granted.

When a request for a reasonable accommodation may impose either (i) an undue financial and administrative burden or (ii) a fundamental alteration to the nature of the operations of the person receiving the request, the person receiving the request shall offer to engage in a good-faith interactive process to determine if there is an alternative accommodation that would effectively address the disability-related needs of the requester.

The various factors to be considered for determining whether an accommodation imposes an undue financial and administrative burden include (a) the cost of the requested accommodation, including any substantial increase in the cost of the owner's insurance policy; (b) the financial resources of the person receiving the request; (c) the benefits that the accommodation would provide to the person with a disability; and (d) the availability of alternative accommodations that would effectively meet the requester's disability-related needs.

A request for a reasonable accommodation shall be determined on a case-by-case basis and may be denied if (i) the person on whose behalf the request for an accommodation was submitted is not disabled; (ii) there is no disability-related need for the accommodation; (iii) the accommodation imposes an undue financial and administrative burden on the person receiving the request; or (iv) the accommodation would fundamentally alter the nature of the operations of the person receiving the request. With respect to a request for reasonable accommodation to maintain an assistance animal in a dwelling, the requested assistance animal shall (a) work, provide assistance, or perform tasks or services for the benefit of the requester or (b) provide emotional support that alleviates one or more of the identified symptoms or effects of such requester's existing disability. In addition, as determined by the person receiving the request, the requested assistance animal shall not pose a clear and present threat of substantial harm to others or to the dwelling itself that is not solely based on breed, size, or type or cannot be reduced or eliminated by another reasonable accommodation.

Section 5:10 **Inquires**

It is unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in that dwelling after it is sold, rented or made available, or any person associated with that person, has a handicap or to make inquiry as to the nature or severity of a handicap of such a person. However, this paragraph does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have handicaps:

- Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;
- Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with handicaps or to persons with a particular type of handicap;
- Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with handicaps or to persons with a particular type of handicap.
- Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance;
- Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance; under Virginia's statute, inquiry may be made as to the conviction of any crime.

- Nothing requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

Section 5:11 Administration enforcement provisions

An administrative law judges within HUD may decide the fair housing cases, unless one of the parties demands a jury trial or HUD refers the matter to the Virginia Fair Housing Board for resolution. Awards to victims of discrimination include actual damages, injunctive relief and attorney's fees, and civil fines. The civil fines would be up to $10,000 if there has been no previous violation, $25,000 if there has been a prior offense within the last 5 years, and $50,000 if there have been two or more violations in the last 7 years.

Section 5:12 Virginia disability act

Virginia has its own disability enactment dealing with public accommodations, rentals, etc. Va. Code § 51.5-45 Va. Code sets forth the rights of persons with disabilities as to housing accommodations. All persons with disabilities in Virginia shall have the right to full and equal opportunity to acquire any housing accommodation offered for sale, rent, lease or compensation. The only exemption to this law is a single-family residence in which the occupant or owner rents, leases or furnishes for compensation not more than one room therein.

Every visually impaired person who has a guide dog, every hearing-impaired person who has a hearing dog and every mobility-impaired person who has a service dog is entitled to full housing accommodations. *"He shall not be required to pay extra compensation for such dog but shall be liable for any damage done to the premises by such dog.*"

A question that is often asked is whether a landlord can charge a pet deposit for a seeing-eye-dog, etc. The Virginia disability law does not use the term pet. The dog is a ''service'' dog and a needed accommodation to enable the disabled person to fully enjoy the dwelling. Since the dog is not a pet, it would appear to be a violation of the state and federal law to put a precondition on the disabled person's admission with the dog.

It has been argued that a landlord is entitled to set a restoration deposit to cover the cost of restoring property renovated to accommodate the requirements of a handicapped person. It would be difficult to set a deposit to cover damage that may or may not ever exist. Accordingly, a landlord who charges a deposit for a service dog for a disabled person may find himself facing claims under both the state and federal Fair Housing Acts and the Virginia Disability Act for placing an obstacle to the full enjoyment of the property in the path of the applicant.

Chapter 6 Did You Calculate Your 30-Day Notice Correctly?

Section 6:1 The first type

Section 6:2 How to count the days

Section 6:3 The second type of 30-day notice

You gave a 30-day notice to quit to a month-to-month tenant on February 1st and the notice expired on February 28th. On March 1st, the tenant is still there and he says to you, "Your 30-day notice is no good". Did you do it right? No, you did not.

There are two types of 30-day notices.

Section 6:1 The first type

The first type is the notice to terminate a month to month tenancy. The Codes that apply to termination of a month-to-month tenancy provide that the tenancy can be terminated "by serving a written notice on the other at least 30 days prior to the next rent due date" § 55-248.37 (now § 55.1-1253)

The notice to quit a month to month is found in the VRLTA at § 55-248.37 (now § 55.1-1253).

This notice may not be built into the terms of the lease but must be done only with a separate writing. If, of course, the lease is for a specific term (e.g. a year) it is not a month-to-month lease. Hence, no notice to terminate a term lease is required unless there is a provision to the contrary written into the lease.

The Code does not provide for a "one month" notice; it reads "thirty days". If you are terminating a year-to-year lease, you would give a "three months' notice". But where you are terminating a month-to-month tenancy, the notice must be thirty-days.

Accordingly, a notice given to terminate a month-to-month lease which notice begins on February 1st and ends February 28th, would be insufficient under this Code section because it is not thirty days *"prior to the next rent due date"*. The notice to terminate a lease at the end of February must, therefore on or before January 29th to include a full thirty days' notice – this makes January 30th day #1 of the notice; unless February has 29 days in which case on or before January 30th will do the job.

Here is a common question. ***"I gave a 30-day notice from the 10th to the 10th of the following month. Is it all right?"*** If the rent due date is the 10th, and it is not February with only 28 or 29 days, then this notice would be fine because it was given 30-days prior to the next rent due date. If, however, the 10th is not the rent due date, then it was insufficient.

Assuming that the rent due date is the 1st of the month, then the notice must be 30-days prior to the1st. I recommend that if you want to give a notice on the10th or the 15th or during the midst of the month, you need to be sure to include the entire next month so that your notice will include the 30-days prior to the next rent due date.

Example, the landlord decides to evict the tenant on the 15th of June, but the rent due date is the 1st. If he gives him a notice from June 15th to July 15, he has not given 30-days before July 1st or before August 1. The notice must be June 15th through July 31st to end the tenancy on August 1st.

Section 6:2 How to count the days

The question that often arises is how does one compute the time for the 30-day notice?

I have been asked, "Do you count the day that it is served as one of the thirty days or for a 5-day notice?" "When an act of the General Assembly or rule of court requires that an act be performed within a prescribed amount of time after any event or judgment, the day on which the event or judgment occurred [such as the giving of a notice to cure] shall not be counted against the time allowed."

My answer is therefore "no" for the following reason. The 5-day notice statute defaults the tenant if he *"…fails to pay rent within five days after written notice is served on him."* The 30-day notice statutes (VRLTA & VRLTA-EXEMPT) both require that the notice be 30-days PRIOR to the next rent due date. [1]

Certainly, if the giving of the notice is the "event" required by law, then the day that the notice is served may not be count as one of the days.

Clearly, if a tenant has 5-days to cure the missed payment of rent, then the landlord cannot limit him to 4½ days or 4¾ days by serving it at midday and then count that day as a full day.

Section 6:3 The second type of 30-day notice

There is a second type of 30-day notice to terminate the lease if the non-monetary breach is not cured within 21-days of the notice; hence it is called the 21/30-day notice. This is found in

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[1] § 1-210. **Computation of time.** A. When an act of the General Assembly or rule of court requires that an act be performed a prescribed amount of time before a motion or proceeding, the day of such motion or proceeding shall not be counted against the time allowed, but the day on which such act is performed may be counted as part of the time. When an act of the General Assembly or rule of court *requires that an act be performed within a prescribed amount of time after any event or judgment, the day on which the event or judgment occurred shall not be counted against the time allowed.*

Section 55-248.31 (new § 55.1-1245) (Landlord's remedies) and Section 55-248.21 (new § 55.1-1234) (Tenant's remedies).

The second type of 30-day notice under the Virginia Residential Landlord/Tenant Act appears in the code sections dealing with the curing of non-monetary breaches. For nonpayment of rent a 5-day notice to pay and cure is given. In the situation where the breach (by the landlord or by the tenant) is non-monetary, a 21-day notice is given to cure the breach, and in the event the breach is not cured, then within thirty days from the receipt of the notice, the lease terminates.

The question then becomes: Must this 30-day notice be given parallel with the monthly period, or can it be given at any time? It may be given at any time.

The Code is very clear in that it does not contain the “prior to the next rent due date” language such as is required terminate a month to month tenancy. Thus, it can be given when the breach is committed and the time starts from service of the notice.

What if the breach bas not been remedied? The 30 days run from receipt of the notice, and the 21 days runs concurrently with the 30-days. If the breach has been timely cured but there is a subsequent breach of a like nature, then an additional 30-day notice to quit may be served. Again, there is no requirement in this section that the 30-day notice run “30 days prior to the next rent due date.” Since there is no such qualifying language, this 30-day notice could be given immediately upon realization by the landlord or the tenant of the need to give the notice.

Chapter 7 Compromise, Accord & Satisfaction -

Section 7:1 If "In full settlement" written on check

Section 7:2 Check retention

Section 7:1 If "In full settlement" written on check

The Virginia Uniform Commercial Code (§8.3A-311) controls the acceptance of a rental check on which the sender has conspicuously written "PAID IN FULL" OR "IN FULL PAYMENT" or the like. If you deposit or cash that check, you will have accepted in full settlement of your claims. You cannot scratch out those words and then deposit it. That will not avoid the effect of this law.

Should you receive such a check, you should write a letter advising the sender that you have received the check, that you reject their offer to compromise.

If you are an organization, the code section offers some protections against this. If you are but you have accidentally accepted the check, then you must return the tendered amount in accordance with this code section.

It is recommended that the check be simply returned to the sender.

Here is the controlling code section:

§ 8.3A-311. Accord and satisfaction by use of instrument.

(a) If a person against whom a claim is asserted proves that (i) that person in good faith **tendered an instrument to the claimant as full satisfaction of the claim,** (ii) the amount of the claim was unliquidated or subject to a bona fide dispute, and (iii) the claimant obtained payment of the instrument, the following subsections apply. For purposes of this subsection, a person does not act in good faith when tendering a check in full satisfaction of an obligation under a loan if (i) such check is for less than the amount due under the terms of the loan agreement and (ii) such check is tendered to a person without knowledge of a dispute concerning the loan.

(b) Unless subsection (c) applies, the claim is discharged if the person against whom the claim is asserted proves that the instrument or an accompanying written communication **contained a conspicuous statement to the effect that the instrument was tendered as full satisfaction of the claim.**

(c) Subject to subsection (d), a claim is not discharged under subsection (b) if either of the following applies:

(1) The claimant, if an organization, proves that (i) within a reasonable time before the tender, the claimant sent a conspicuous statement to the person against whom the claim is asserted that communications concerning disputed debts, including an instrument tendered as full satisfaction of a debt, are to be sent to a designated person, office, or place, and (ii) the instrument or accompanying communication was not received by that designated person, office, or place.

(2) The claimant, whether or not an organization, proves that within ninety days after payment of the instrument, the claimant tendered repayment of the amount of the instrument to the person against whom the claim is asserted. *This paragraph does not apply if the claimant is an organization that sent a statement complying with paragraph (1) (i).*

(d) A claim is discharged if the person against whom the claim is asserted proves that within a reasonable time before collection of the instrument was initiated, the claimant, or an agent of the claimant having direct responsibility with respect to the disputed obligation, knew that the instrument was tendered in full satisfaction of the claim.

Compare this situation with the inadequate amount of check that does not contain the restrictive language with the waiver provisions of the VRLTA which makes the acceptance of periodic rent payments with knowledge of a default by tenant or acceptance of performance by a tenant that varies from the terms of the rental agreement or rules and regulations a waiver of the breach and the landlord's right to terminate the rental agreement for the breach occurring during that period.

This code section 55-248.34:1 (new § 55.1-1250), however, has a saving provision that if the landlord accepts the rent "with reservation" and gives a written notice to the tenant of such acceptance, then the landlord does not waive the right to obtain possession. If rent is accepted with reservation, the landlord can "accept all of the rental payment, damages, and other fees and still be entitled to receive an order of possession terminating the rental agreement."

Acceptance with reservation of right does not solve the problem where the tenant has written the words on the check that it is in "full and final payment." If that happens, then the rule stated in the above quoted §8.3A-311 Va. Code applies.

Section 7:2 **Check retention**

What happens if the check is merely delivered to you and you do not return it? Is there a presumption that you accepted that check? This problem arises often in the landlord- tenant relationship and as a practical matter the court views your silent retention for an unreasonable length of time of the check offered as a waiver, especially if you do not notify the tenant that the check was rejected. Where the payee intends to refuse a check tendered in full payment of a disputed claim, the Courts generally hold that it is the payee's duty to return the check without unreasonable delay.

As a practical matter, therefore, should you receive a tenant's check which you do not intend to keep, especially one that is marked "in full and final payment" or words of like import, it is recommended that you make a copy of it and return it promptly, or at least write a letter to the tenant telling him you have received his check but will not be cashing it.

Chapter 8 Bad Checks

Section 8:1 Applicable law

Section 8:2 Additional recovery in certain civil actions concerning checks (§ 8.01-27.1)

Section 8:3 Civil recovery for giving bad check (§ 8.01-27.2)

Section 8:1 Applicable law

The civil remedy for bad checks is governed by these two code sections.

Section 8:2 Additional recovery in certain civil actions concerning checks (§ 8.01-27.1)

A. Except as otherwise provided in the Virginia code sections that govern the rental agreements that are exempt and those that are governed by the VRLTA, in any civil claim or action made or brought against the maker of a check, draft or order, payment of which has been refused by the bank because of lack of funds in or credit with such bank, or because the person issuing the check put a stop payment on it in bad faith, the holder or his agent is entitled to claim, in addition to the face amount of the check (i) legal interest from the date of the check, (ii) the protest or bad check return fee, if any, charged to the holder by his bank or other depository, (iii) a processing charge of $50, and (iv) reasonable attorney's fees if awarded by the court.

B. Except as otherwise provided in the Virginia code sections that govern the rental agreements that are exempt and those that are governed by the VRLTA, any holder of a check, draft or order, payment of which has been refused by the bank for insufficient funds or credit, or because of a stop payment order placed in bad faith, who charges the drawer amounts in excess of those authorized in subsection A (written above) on account of payment being so refused shall, upon demand, be liable to the drawer for the lesser of (i) $50 plus the excess of the authorized amount or (ii) twice the amount charged in excess of the authorized amount.

If an electronic funds transfer has been rejected because of insufficient funds or a stop-payment order has been placed in bad faith by the authorizing party, the authorizing party and the payee shall have the same rights and remedies as if the drawer had issued a bad check under this subsection B. For purposes of this subsection, "electronic funds transfer" has the same meaning as provided in 15 U.S.C. § 1693 (a).

Section 8:3 Civil recovery for giving bad check (§ 8.01-27.2)

The rules for a bad check under the VRLTA and VRLTA-EXEMPT differ from back rent checks.

Except as otherwise provided in the VRLTA sections and non-residential rental provisions of the code, in the event a check, draft or order, the payment of which has been refused by the drawee because of lack of funds in or credit with such drawee, is not paid in full within thirty days after receipt by the drawer of (i) written notice by registered, certified, or regular mail with the sender retaining an affidavit of service of mailing or other sufficient proof of mailing, which may be a U.S. Postal Certificate of Mailing or (ii) if for nonpayment of rent under § 55-248.31

(new § 55.1-1245), written notice in accordance therewith, from the payee that the check, draft or order has been returned unpaid, the payee may recover from the drawer in a civil action brought by the filing of a warrant in debt, the lesser of $250 or three times the amount of the check, draft or order. The amount recovered as authorized by this section shall be in addition to the amounts authorized for recovery under § 8.01-27.1. No action may be initiated under this section if any criminal action has been initiated under § 18.2-181. The drawer shall be obligated to pay the cost of service and the cost of mailing, as applicable.

If an electronic funds transfer has been rejected because of insufficient funds or a stop-payment order has been placed in bad faith by the authorizing party, the authorizing party and the payee shall have the same rights and remedies as if the drawer had issued a bad check under § 8.01-27.1. For purposes of this subsection, "electronic funds transfer" has the same meaning as provided in 15 U.S.C. § 1693a. (definitions set forth in subchapter Electronic Fund Transfers)

There is a third section but it has to do with admissible evidence that can be used in a civil proceeding on a bad check. § 8.01-27.3.

Chapter 9 Bankruptcy-a Simplified View

Section 9:1 Automatic stay

Section 9:2 Landlord is controlled by the stay·

Section 9:3 Status of lease

Section 9:4 Failure to pay rent after the bankruptcy is filed.

Section 9:5 Abusive filings – the serial filer

Section 9:6 Waiver of default

Section 9:7 What about termination clauses in lease

Section 9:8 Guarantors are not relieved under bankruptcy

Section 9:9 Landlord's lien in danger

Section 9:10 Landlord secure as to deposit

Section 9:1 Automatic stay

When a petition for bankruptcy is filed there is an automatic stay upon all creditors or claimants. This provision of federal law prohibits claimants and creditors from taking any legal action against the debtor ·unless the action is taken in the bankruptcy case itself or with the permission of the bankruptcy judge.

Section 9:2 Landlord is controlled by the stay·

The rights of the landlord will be subject to the rulings of the bankruptcy judge.

Where a landlord of a residential tenant has obtained a judgment for possession prior to the filing of the bankruptcy petition, and the debtor has identified the judgment in his petition, the stay remains in effect to enable the tenant/debtor to file, under penalty of perjury, a certification within 30-days of filing the petition.

This certification states that there are nonbankruptcy law that allows the debtor to cure the entire monetary default that gave rise to the judgment for possession, after the judgment was entered and the debtor, or an adult dependent of debtor, has deposited with the clerk of court any rent that would become due during the 30-day period after the petition filing and another certificate under oath that the entire monetary default that gave rise to the judgment has been cured. 11 U.S.C.A. §362(a)(22) and §362(l).

What nonbankruptcy law in Virginia will allow a tenant under a judgment of possession the right of redemption? Newly enacted effective July 1, 2019 permits a tenant to "…*pay to the landlord, the landlord's attorney, or the court all amounts claimed on the summons in unlawful detainer, including current rent, damages, late fees, costs of court, any civil recovery, attorney fees, and sheriff fees, no less than two business days before the date scheduled by the officer*

to whom the writ of eviction has been delivered to be executed."§55-248.34:1 (new § 55.1-1250) changed to §55.1-1250 Oct 2019)

If the landlord files an objection to the certification, the court will hold a hearing on it within 10-days of service on the debtor to determine if the certification is true. If the court finds the objection to be well taken, then the court will immediately grant relief from the stay without the need for more action by landlord in order to proceed with the eviction.

If the debtor does not file a certification within the 30-day period, then the stay is automatically lifted and the landlord is free to proceed with the eviction.

Bankruptcy courts will enter an order confirming this lifting of the stay without the requirement of a formal filing for relief of the stay.

Section 9:3 **Status of lease**

A. Where lease terminated before bankruptcy filed.

In the situation where the lease has been validly terminated by the landlord prior to the debtor filing his bankruptcy petition, the bankruptcy court will permit the landlord to proceed to regain possession. This action should be taken through the bankruptcy court first.

B. Where lease was still in effect when bankruptcy is filed.

In the situation where the lease had not expired or been terminated by proper notice by the landlord before the bankruptcy petition is filed, then the trustee in bankruptcy will look at the lease to determine whether to accept or reject it.

If the lease is accepted, then all arrearage must be brought current and the bankruptcy court will order that the lease continue on in full force and effect. Why would someone do this? In commercial situations, it is easy to understand that some leases have very low rent and the trustee can sell them to a third person and thus benefit the bankruptcy estate and pay off some creditors. In residential situations, a place for the bankrupt to live is obviously an important reason to accept the lease and have it continue on. The right to sell a lease is granted by law to the trustee and controls even when the lease says that it cannot be transferred without the landlord's consent.

If the lease is rejected, then all arrearages stand as unsecured claims against the bankrupt and the lease stands terminated. The landlord can proceed to remove the tenant at this time. Why would a trustee reject the lease? This would take place if the bankrupt's estate did not have the funds to accept it and pay off all of the arrears and if there was no real value to the estate in the lease. To illustrate, if the rent is $10 per square foot, but the fair market rental value that the lease could be sold for is $40 per square foot, then there is $30 per square foot equity in this lease, provided it has a sufficient period of lease term left in it.

Section 9:4 **Failure to pay rent after the bankruptcy is filed.**

A landlord can recover "reasonable rents" while the case is in bankruptcy. This does not necessarily equate with the rent payments set forth in the lease, but it usually is the case.

Although the automatic stays holds the landlord still about past due rents, the bankrupt tenant has a duty to pay current rent payments that arise after the filing of the bankruptcy petition. A

failure to pay the current rent is grounds to obtain relief from the automatic stay from the bankruptcy judge and file a civil suit for possession based on the non-payment. Prompt action in this situation can save the landlord money where the tenant has failed to keep his rent current after the bankruptcy petition was filed.

Section 9:5 Abusive filings – the serial filer

Landlords may face the abusive and serial bankruptcy filers. Under §362(c)(3), if a single or joint bankruptcy case is filed by or against a bankruptcy debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed,[2] then the stay with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case unless a party in interest files a motion to continue the stay within that 30-day period and overcomes the presumption that the filing was not in good faith. See 11 U.S.C.A. §362(c)(3)(B).

If a single or joint case is filed by or against a debtor and if two or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under chapter 11 or 13, but not chapter 7, after dismissal under section 707(b), the stay under §362(a) shall not go into effect upon the filing of the later case. On request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect.

Section 9:6 Waiver of default

Where a tenant is in default and checks are tendered to the landlord by a "Trustee" or "DIP" (which means "debtor in possession"), then the landlord should send a letter of reservation of rights to the tenant right away under the provision of § 55-248.34 Va. Code. (VRLTA).

Section 9:7 What about termination clauses in lease

In many leases, there is a standard clause that provides that if the tenant files a petition for bankruptcy then the landlord may declare a default and terminate the lease. Prior to 1979 this lease provision was very effective. Under the current bankruptcy law, that provision may be disregarded by the bankruptcy judge. Under the new code, the unexpired portion of the lease may not be terminated solely because the tenant is insolvent or filed bankruptcy.

Section 9:8 Guarantors are not relieved under bankruptcy

Lease guarantors remain liable on the lease in the event the tenant files bankruptcy, but co-

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[2] This does not include a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)11 U.S.C.A, which section reads in part, “After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, trustee (or bankruptcy administrator, if any), or any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts, or, with the debtor’s consent, convert such a case to a case under chapter 11 or 13 of this title, if it finds that the granting of relief would be an abuse of the provisions of this chapter…”.

signers in a Chapter 13 can get some protection.

Section 9:9 Landlord's lien in danger

The landlord is a priority debtor but his lien may be avoided by the Trustee or DIP (Debtor In Possession).

Section 9:10 Landlord secure as to deposit

To the extent the landlord holds a security deposit he is deemed a "secured creditor. This may be of some help.

TIPS

--DO NOT TRY TO HANDLE A BANKRUPTCY CLAIM YOURSELF

--MOVE QUICKLY WHEN YOU LEARN OF A BANKRUPTCY FILING

--IF A DEFAULT EXISTS, DO NOT ACCEPT ANY CHECKS FROM TRUSTEE OR DIP (DEBTOR IN POSSESSION) WITHOUT A LETTER OF RESERVATION, AND

--FILE IMMEDIATELY FOR RELIEF FROM THE STAY

--IMMEDIATELY PRESSURE THE GUARANTORS

--IMMEDIATELY STOP ALL PENDING NON-BANKRUPTCY COURT ACTION

Chapter 10 Diplomats

There are five levels of diplomats as defined by the international treaty and U.S. Diplomatic Relations Act which incorporates the provisions of the U.N International Convention on Foreign Relations.

The levels are:

Head of the mission

Family of the head of the mission

Diplomatic staff

Administrative staff

Servants

A diplomatic agent of a foreign nation state, accredited to and accepted by another state, is immune:

1. From the exercise by the receiving state of jurisdiction to prescribe in respect of acts or omissions in the exercise of the agent's official functions, as well as from other regulation that would be incompatible with the agent's diplomatic status; and
2. From arrest, detention, criminal process, and, in general, civil process in the receiving state [the US is the receiving state for a foreign diplomat].

Landlord tenant relations are civil matters. The distinction between civil immunity and criminal immunity is quite large.

The civil immunity that a diplomat may have depends on their level.

Article 1 of the Convention on Diplomatic Relations defines a “diplomatic agent” as the head of a diplomatic mission or a member of the diplomatic staff of the mission.

The “diplomatic staff” is distinguished from “the administrative and technical staff” and the “service staff” of the mission. The head of the mission, family members of the head of the mission, and members of the mission’s diplomatic staff enjoy civil immunity with regard to the leasing of their personal residence, unless they are also U.S. citizens.

Administrative staff and service staff who are not U.S. nationals or permanent residents of the U.S. are afforded immunity from legal process only in respect of their official acts or omissions.

The next question is. HOW DO YOU EVICT HIM OR COLLECT THE JUDGMENT?

The answer is not good. The diplomatic convention provides that

“…no measures of execution [to enforce a judgment] may be taken in respect of a diplomatic agent except in [the case of an action involving real property or in the case of professional or commercial activities], and provided that THE MEASURES CONCERNED CAN BE TAKEN WITHOUT INFRINGING THE INVIOLABILITY OF HIS PERSON OR HIS RESIDENCE.”

This seems to mean that you can get a judgment against the diplomat for unpaid rent and for possession but you cannot attach his pay or have the sheriff evict him from his home.

WHAT DO YOU DO NOW? There is a solution. Actually, there are several possible solutions.

An important thing to remember is that most diplomats are sensitive to embarrassing situations. If you have a diplomat who is not paying his rent or is otherwise violating the lease and he is not responding to the landlord's attempts to straighten the situation out, then the first thing to do is to contact the Ambassador of his country (assuming of course that the diplomat in question is not the ambassador). This will often bring about a prompt resolution of the problem.

If you find that you have to sue, then you should be aware that in order for the diplomat to establish that he is a diplomat entitled to immunity, there must be confirmation of this through the U.S. State Department. Of course, when the appropriate officials at the State Department get involved, the situation will usually become a lot stickier for the diplomat. He might even be asked to leave the country if the situation is too extreme.

For this reason, you should always keep in mind the power of the Department of State and the person at the State Department "desk" of the particular country in question.

Another solution is to avoid this dilemma in the first place. One way is to not rent to diplomats and the second way is to HAVE THE SENDING STATE (i.e., Chile, Korea, France) WAIVE THEIR IMMUNITY in the lease.

Unfortunately, Article 32 of the Convention provides that the waiver must be by the "sending State" and must be separate from the waiver for execution of judgments. This makes the likelihood of an "effective" waiver remote.

If you put waiver" language in the lease, the diplomat will have to raise the defense in court and the odds are that the diplomat and his mission will not want the publicity and adverse reaction from the State Department.

Accordingly, I suggest the following language. With it, at least, you have an argument you can make.

Diplomats: The Tenant represents to the Landlord that he [ ] IS or [ ] IS NOT the head of a diplomatic mission or a member of the diplomatic staff of a mission, nor a family member of a diplomatic staff nor administrative and technical staff or their family which entitles them to the diplomatic immunity accorded to such persons under the Vienna Convention on Diplomatic Relations of April 18, 1961 (T.I.A.S. numbered 7502; 23 U.S.T. 3227); 22 U.S.C.A. § 254a. If the Tenant has indicated that he/she is such a person, then this rental agreement is void unless the diplomatic immunity accorded by law has been waived by an authorized representative of the sending government.

Chapter 11 Parents' Liability for Property Damage by Minor Child

Section 11:1 **Statutory limit on parent' liability**

Section 8.01-44 of the Virginia Code provides:

The owner of any property may institute an action and recover from the parents, or either of them, of any minor living with such parents, or either of them, for damages suffered by reason of the willful or malicious destruction of, or damage to, such property by such minor. No more than $2,500 may be recovered from such parents, or either of them, as a result of any incident or occurrence on which such action is based. Any recovery from the parent or parents of such minor shall not preclude full recovery from such minor except to the amount of the recovery from such parent or parents. The provisions of this statute shall be in addition to, and not in lieu of, any other law imposing upon a parent liability for the acts of his minor child.

Chapter 12 Lead Based Paint Disclosure Requirements

Section 12:1 In general

Section 12:2 The lead-based paint warning

Section 12:3 Exclusions

Section 12:4 Impairment of contract rights

Section 12:5 Pre-renovation requirements

Section 12:6 Landlord's Immunity from liability

Section 12:1 **In general**

Federal regulations carry out the requirements of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992.

Target Housing is defined to include all housing constructed prior to 1978 except housing for the elderly or persons with disabilities (unless a child who is less than 6 years of age resides there or is expected to reside there) or any -0- bedroom dwelling. A "-0- bedroom" dwelling is one in which the living area is not separated from the sleeping area. It includes efficiencies, studio apartments, dormitory housing, military barracks and rentals of individual rooms in residential dwellings.

The regulation puts requirements on sellers and landlords of targeted housing as well. These requirements include:

A provision in every lease, or as an attachment to each such lease which includes:

Section 12:2 **The lead-based paint warning**

A Lead Warning Statemen with the following language in it:

> *Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead- based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.*

A statement from lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing, as well as any additional information available about the present of lead-based paint or hazard, such as the basis for believing the lead-based paint exists in the house, its location and its condition.

A list of any records or reports available to the landlord pertaining to the lead-based paint and/or lead-based paint hazards. If no such records exist, then the landlord must so indicate.

A statement from the tenant affirming receipt of the information set out in the paragraphs above.

When there is an agent involved, there must be a statement that the agent has informed the landlord of the landlord's obligations under the lead-paint laws (42 U.S.C. § 4852d); and the agent is

aware of his/her duty to ensure compliance with the requirements of the lead-based paint regulations. All of which is signed and certified by the landlord as well as the agent.

Section 12:3 Exclusions

The regulations exclude the following:

Sale of target housing at foreclosure

Leases of target housing that have been found to be lead free under a federally certified program;

Short term leases of 100-days or less where no renewal or extension can occur;

Renewals of existing leases in target housing where the proper disclosures have been made;

The civil penalties for a violation can go up to $10,000 for each violation as well as costs, injunctive relief and treble damages.

Section 12:4 Impairment of contract rights

These lead-based paint disclosure requirements do not impair title nor contracts that are not in compliance. This means, that if the notices are not done in accordance with the federal disclosure requirements, the contract still remains in effect. The remedy for the failure is between the owner/landlord and the EPA.

Section 12:5 Pre-renovation requirements

A pre-renovation regulation at EPA requires renovators, working for compensation, to distribute a pamphlet to owners and occupants of most housing built prior to 1978 before commencing renovation activity. The booklet, Protect Your Family from Lead in Your Home, discusses ways in which individuals can protect themselves and their families from lead-based paint hazards. Sanding, scraping, and other surface preparation activities that disrupt paint and generate dust are the two key sources of lead exposure during renovation. Routine maintenance or repair is excluded from this notice requirement.

A "renovator" is any person who performs a renovation for compensation. This is distinguished from routine repairs and maintenance and focuses on activities which will disturb existing paint on the property. The prime renovator is the independent contractor, but the owner and property manager may be the renovator in a given situation.

The pre-renovation lead information rule will also require that before renovating common areas in multi-family housing, a renovator must inform building residents about the nature and extent of the renovations and make the pamphlet available in a central location.

A sample form is found on line

Visit: www.epa.gov/lead

Section 12:6 Landlord's Immunity from liability

An owner or agent of a residential dwelling (single or multi-family) who has complied with the requirements of the United States Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 et seq.) will not be liable for civil damages in a personal injury or wrongful death action for lead poisoning arising from the condition of the residential dwelling. § 8.01-226.7 Va. Code.

The disclosure requirements under this law continue during the term of the tenancy for any new information in the possession of the owner or his agent or about which the owner or his agent has actual knowledge concerning the presence of lead-based paint or lead-based paint hazards.

In general, compliance with the federal lead-based paint law at the beginning means that before a purchaser or tenant signs a contract to purchase or lease, the owner or agent provides (a) the purchaser or tenant with an EPA-approved lead hazard information pamphlet, (b) makes all known information or reports about lead-based paint or hazards available to the purchaser or tenant at the beginning and throughout the tenancy (c) the purchaser or tenant signs a written statement acknowledging these disclosures and receipt of the information. In addition, the premises are to have been maintained in accordance with the Uniform Statewide Building Code and applicable state and federal regulations with regard to the lead-based paint and lead-based paint hazards.

Chapter 13 Virginia Consumer Protection Act

Section 13:1 In general

Section 13:2 Prohibited actions

Section 13:3 Penalties

Section 13:1 **In general**

A number of years ago the General Assembly specified that a lease cannot be voided because of the application of the Va. Consumer Protection Act. It did not, however, give 100% protection from that law.

Section 13:2 **Prohibited actions**

§59.1-200 reads in part:

A. "The following fraudulent acts or practices committed by a supplier in connection with a consumer transaction are hereby declared unlawful:

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13. Using in any contract or lease any liquidated damage clause, penalty clause, or waiver of defense, or attempting to collect any liquidated damages or penalties under any clause, waiver, damages, or penalties that are void or unenforceable under any otherwise applicable laws of the Commonwealth, or under federal statutes or regulations.

***

14. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction…."

Section 13:3 **Penalties**

Under §59.1-204, any person who suffers loss as the result of a violation of the consumer protection act is entitled to initiate an action to recover actual damages, or $500, whichever is greater. If the trier of fact finds that the violation was willful, it may increase damages to an amount not exceeding three times the actual damages sustained, or $1,000, whichever is greater.

Any person who accepts a cure offer under this chapter may not initiate or maintain any other or additional action based on any cause of action arising under any other statute or common law theory if such other action is substantially based on the same allegations of fact on which the action initiated under this chapter is based.

Notwithstanding any other provision of law to the contrary, in addition to any damages awarded, such person also may be awarded reasonable attorneys' fees and court costs.

Chapter 14 The Fair Debt Collection Practices Act

(15 USC §1692)

Section 14:1 In general.

Section 14:2 Consumer Debts.

Section 14:3 Are Attorneys & Property Managers Debt Collectors?

Section 14:4 Prohibited conduct

Section 14:5 Unfair practices which are violations.

Section 14:6 Information about debt.

Section 14:7 Creditor is not a Debt Collector

Section 14:8 Five-day notices, law suits or unlawful detainer?

Section 14:9 Conclusions.

UNDER CURRENT CASE LAW, PROPERTY MANAGERS WHO HAVE A WRITTEN MANAGEMENT AGREEMENT THAT WAS ENTERED INTO BEFORE THE RENT BECAME IN DEFAULT ARE EXEMPT FROM THE REQUIREMENTS OF THIS FEDERAL CONSUMER LAW.

Section 14:1 **In general.**

This is a federal law designed to stop unfair collection practices of those engaged in the practice of collecting the debts owed to another. Congress has made a determination that many collectors are abusive, deceptive and use unfair debt collections practices. Further, that these unfair practices contribute to personal bankruptcies, marital instability, loss of jobs and invasions of individual privacy.

Section 14:2 **Consumer Debts.**

The debts protected by the Fair Debt Collection Practices Act (FDCPA) are "consumer" debts. By definition they include transactions which are primarily for personal, family or household purposes, whether or not such obligations have been reduced to judgment. A consumer is a natural person only.

For purposes of definition prohibited communications, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor or administrator.

Section 14:3 **Are Attorneys & Property Managers Debt Collectors?**

A creditor (or his employee or officer) may collect his/her own debts and is not a "debt collector" unless the creditor, in the process of collecting his own debts, uses any

name other than his/her own which would indicate that a third person is collecting or attempting to collect such debts.

A lawyer who regularly tries to obtain payment of consumer debts through legal proceedings meets the Act's definition of a "debt collector" even where that activity consists of litigation. That is one who "regularly collects or attempts to collect, directly or indirectly, [consumer] debts owed another." So says the U.S. Supreme Court.

A property manager poses a different question. A U.S. District Court Judge in New York has ruled that a property manager who had a written contract to manage the properties before the rent became unpaid, is not a debt collector and is exempt from this law. Title 15 U.S.C. §1692a(6)(F)(iii) of the Fair Debt law exempts "...any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such authority... (iii) concerns a debt which was not in default at the time it was obtained by such person." Since the management agreement was entered into before the rent became in default, the management agent agreement is one of those situations which specifically exempts the agent from being a debt collector. The management agreement gave the management agent the right and responsibility to use "due diligence in collecting the rents and other income therefrom." This gave the agent the obligation to collect rent both before and after the tenant's rent was in default.

The Court cited the Congressional legislative history to support its conclusion. S. Rep. No. 95-382 (1977) reprinted in 1977 U.S.C.C.A.N. 1695, 1698. *Franceschi v. Mautner-Glick Corp*., 22 F. Supp. 2d 250, 1998 U.S. Dist. LEXIS 15859 (1998). The congressional record stated that this law was intended to protect loan servicers who engaged to collect and manage the payment of loans before the loans every became in default. They were exempted. The court construed the exemption to property managers. The Court also cited the appellate decision of *Wadlington v. Credit Acceptance Corp*. 76 F.3d 103, 106-107 (6th Cir., 1996) which held that an assignee of the plaintiff's installment contract for a car purchase as not a debt collector because the loan was assigned prior to the default - even if the car dealership remain the real owner of the debt, the defendant in that case had only obtained it from the deal as a servicer and not as an assignee and would be exempt from the FDCPA. Other cases cited included *Perzy v. Stewart*, 756 F.2d at 1208 which involved a mortgage servicer who was exempt; *Jones v. Intuition, Inc*. 12 F. Supp. 2d 775 (W.D. Tenn, 1998) which exempted a mortgage servicing company; and in *Azar v. Hayter*, 874 F. Supp. 1314, 1319 (N.D. Fla 1995), exempted a management company responsible for collection of condominium fees; and several other cases exempting student loan servicers.

While the decision of the New York federal trial court is not binding on any Virginia judge, the decision of the 6th Circuit U.S. Court of Appeals with regard to the installment contract for a car purchase is a strong authority that supports the Congressional intent and findings of several other courts in a like manner.

This decision has been followed more recently by *Alexander v. Omega Management, Inc*., 67 F. Supp. 2d 1052, 1999 U.S. Dist. LEXIS 15003 (D.C. Minn. 1999).

Section 14:4 Prohibited conduct

The following, in summary form, are the type of conduct that a debt collector is prohibited from doing under this federal law: Communicate with the consumer without his prior consent given directly to the debt collector or the consent of a court at any unusual time or place or which is known to be inconvenient; if the debtor is represented by an attorney; at the debtor's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication; to a third person other than debtor's attorney, consumer reporting agency, the creditor or creditor's attorney or the attorney for the debt collector.

A debt collector must cease communication with the debtor if the consumer tells the debt collector in writing that the consumer refuses to pay a debt; or that the consumer wants the debt collector to cease further communication except that the debt collector can tell the consumer that the debt collector's efforts are terminated, to notify the consumer that other remedies may be invoked.

A debt collector may not engage in conduct, the natural consequences of which, is to harass, oppress, or abuse someone. The following are listed in the code as illustrations of such conduct: the use or threat to use violence or other criminal means to harm a person, a reputation or property of any person; 'the use of obscene or profane language; the publication of a list of consumers who allegedly refuse to pay debts, other than a consumer reporting agency or other permitted persons; to advertise for sale the debt to coerce payment; causing a phone to ring or engaging anyone in repeated or continuous telephone calls with the intent to annoy, abuse or harass anyone at the called number; placing telephone calls without meaningful disclosure of the caller's identity. False or misleading representations about •the bonded or vouched nature of the debt collector; The nature of the legal status of a debt and what may be collected in the legal proceedings; representing oneself as an attorney when it is not true; stating or implying that one could be imprisoned for nonpayment of a debt; to threaten that the transfer of a debt to another will cause the consumer to lose a defense, claim or right; use of any other false or deceptive practice the purpose of which is to deceive the consumer as a tool to collect the debt.

Section 14:5 Unfair practices which are violations.

The collection of any amount (interest, fee, charge or expense) which is not expressly authorized by the agreement creating the debt or permitted by law; the acceptance of a check post-dated more than 5 days unless the payor is told in writing that the debt collector intends to deposit such check "not more than nor less than three business days prior to such deposit"; the solicitation of a post-dated check for the purpose of threatening or instituting criminal prosecution; depositing or threatening to deposit a post-dated check before the date on it; causing charges for communication such as collect calls without fully disclosing the purpose.

Section 14:6 Information about debt.

A debt collector's failure to disclose in a collection letter that any information obtained would be used to collect the debt violates the Fair Debt Collection Practices Act even though the debt collector sent the letter after a valid judgment had been obtained

against the consumer. The Act requires that all communications between the debtor and debt collector contain such disclosure (this means each and every).

The required language on communications by a debt collector is

THIS IS A COMMUNICATION TO COLLECT A DEBT OR TO OBTAIN INFORMATION ABOUT YOU. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

A debt collector is also required to provide notice of the debt within 5 days after the initial communication containing the following information, unless the initial communication already contains that information: The amount of the debt; The name of the creditor to whom the debt is owed; A statement that unless the consumer, within 30 days from receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector; There are other notifications to be included, but if the letter or notice clearly identifies the creditor and the amount of the claim, then the other notifications will be not be required.

Section 14:7 Creditor is not a Debt Collector

The Act does not apply to a creditor, or his officer or employee acting in the creditor's name, collecting his/her own debt.

Section 14:8 Five-day notices, law suits or unlawful detainer?

Unpaid rent is a debt for which a 5-day rent demand notice is considered a communication by a debt collector if the landlord's attorney signs it for the landlord (even if the landlord's name is typed on it); this assumes that the attorney is regularly engaged in consumer debt collection activity through litigation.

If a 5-day notice is signed by an attorney who is a debt collector, without the mandatory warning and verification language required by FDCPA, the notice is invalid and will not support a possessory action. The verification language will not be required if there had been a prior advisement on this past due rent as requirement for verification. A 5-day notice which does not include the appropriate FDCPA language would support the possessory action if (1) it was signed by the landlord without the use of a debt collector on the grounds that the creditor is exempt from FDCPA, or (2) if the attorney who signs it is not a debt collector within the meaning of FDCPA. Since the FDCPA requires a showing that the attorney is regularly engaged in consumer debt collection activity through litigation to establish that the attorney is a "debt collector", a written rent demand or 5-day notice is not per se defective by the simple fact that it has been signed by an attorney. Accordingly, in the absence of a showing of facts that the attorney is a debt collector, a court is not free to deny an application for a judgment of possession or rent on the unelaborated ground that the rent demand is signed by an attorney.

Does an unlawful detainer have to contain the federal warning language? It is an official document issued by the clerk of court and therefore not a communication from the debt collector but by the court and exempted. In *Heredia v. Green*, 667 F.2d 392 (3rd Cir., 1981), the court exempted the court appointed landlord's agent who sent out a notice to pay or quit.

Section 14:9 **Conclusions.**

Five-day notices are communications which, if from a debt collector, need to have the required disclosures.

If it is from the creditor or his employee or officer, then no disclosures are needed.

If it is their attorney and he qualify as a debt collector (because he regular collects the debts of others), then the notice language is required.

If, however, the notice is signed by a property manager for the owner, then the question is whether one should follow the findings of the U.S. District Court Judge in New York and not provide it, or wait until some appellate court rules on the issue in order to give one more security. A conservative approach would be to provide the language on the notice. It does not cost anything, and it does not harm anything.

If an appellate court rules, someday, that the property manager is a debt collector, then you are safe. if the communication to the debtor is from the creditor, or his officer or employee, the creditor is not required to add the required warning to the communication. If the communication is not from the creditor or the creditor's officer or employee, is the person that it is from a debt collector. An attorney who regularly engages in litigation or other debt collecting activities is a debt collector within the meaning of the Act. Under court decisions, a five-day notice is not "per se" void simply because an attorney signed the five-day notice which did not contain the required language.

There is no presumption that every attorney is a debt collector. But if it is shown that the lawyer regularly engages in the collection of the debts of others, then the notice may be declared void. For this reason, every five-day notice signed by an attorney should contain the required disclosure language in order to protect the client from the notice being declared void. This is true even if the attorney writes a letter for his client on the attorney's letter head to the debtor.

A property manager who obtained the written management contract before the rent was due is exempt from the FDCPA and may draft a 5-day notice to pay or quit using the name of the client and signing it as the agent, or write a letter to the debtor without having to make the disclosure. The court decisions seem to support this firmly. If the manager is nervous without an opinion directly on property managers from a Virginia federal court, then adding the disclosure language will not hurt anything and will provide assurance to the agent that the notice will be valid.

Chapter 15 Landlord's Liability For 3rd Person Crimes

The landlord is not an insurer of his tenant's safety and as a general rule does not owe a tenant a duty to protect the tenant from an intentional, deliberate or criminal act by a third person. The landlord, in the exercise of reasonable care and prudence, was not on notice that there was reasonable probability of the injury that occurred.

In North Ridge Apts. v. Ruffin, 257 Va. 481, 514 S.E.2d 759 (1999·) the tenant claimed constructive eviction by the landlord as a result of criminal activity on the premises, as well as non-criminal activity such as trash in hallways, open security doors, and unruly tenants. The Court held that the landlord had no duty to control the criminal conduct of third parties and therefore there was no finding of an intentional act or omission on the landlord's part, in addition, the record showed that the landlord had promptly responded to tenant's complaints regarding non-criminal conduct.

On March 19, 1983, Laura Jean Deem, resident manager of the Windsor Towers apartment complex in Arlington was attacked and raped while walking from the parking area behind her building. She filed suit against Charles E. Smith Management, Inc., which suit was dismissed by the Federal trial Judge.

The Fourth Circuit Court of Appeals agreed and followed the Virginia Supreme Court decision in Gulf Reston v. Rogers which held that the 1974 landlord's duty to maintain safe conditions does not include a duty of care to tenants for the criminal acts of unknown third parties. In the Gulf Reston case, a tenant was on his apartment patio when an unknown trespasser on the roof threw paint on him.

Laura Jean Deem unsuccessfully argued that the Virginia Resident Landlord and Tenant Act requires the landlord to "comply with the requirements of applicable building and housing codes materially affecting health and safety," and also the tenant may recover damages and obtain injunctive relief for noncompliance by the landlord with the provisions of the rental agreement" and of VRLTA.

The Arlington Circuit Court interpreted the Gulf decision to say that the landlord is not negligent unless there is some degree of foreseeability, that is, the apartment is in a high crime area, or there have been other break-ins. The trial Judge in the Klingbeil case told the jury that the landlord's failure to comply with the deadbolt lock ordinance amounted to negligence per se. Klingbeil Management appealed the $150,000 verdict awarded against it. On appeal, the Virginia Supreme Court (at 223 Va. 445) vacated the jury award and ruled that there was no liability upon the landlord in this situation in two regards. The Court said: There is no "special relationship" existing between the landlord and tenant which would give rise to a duty on the landlord to protect the tenant from the intentional criminal act committed by an unknown third person. The special relationship necessary to give rise to that duty would be a common carrier and its passengers, a business proprietor and its invitees, and innkeepers and their guests.

The Court ruled that the Arlington dead bolt lock ordinance that then existed was inconsistent with the state law and it was therefore preempted by the State law.

Section 55-248.13 (new § 55.1-1220) :1 has been amended to reflect that the landlord's duty to maintain his property in a clean and safe condition means to maintain the property in a "structurally" safe condition to follow the Court's decision.

Arguments still exist to impose liability on the landlord if it can be shown that the landlord had notice of the potential danger, its likelihood of occurrence, and the opportunity and duty on the landlord to act to protect the tenant

Chapter 16 Recover Possession of Foreclosed Property

Section 16:1 Possessory action against former owner

Section 16:2 Where prior owner claims defect in new owner's title

Section 16:3 Protection of Tenants after Foreclosure on Landlord

Section 16:4 Comparison of Federal and Virginia

Section 16:5 Federal Law

Section 16:6 Virginia Law

Section 16:1 Possessory action against former owner

Under § 8.01-126(C)(4), if on the date of a foreclosure sale of a single-family residential unit, the former owner remains in possession of such dwelling unit, such former owner becomes a tenant at sufferance. Such tenancy may be terminated by a written termination notice from the successor owner given to such tenant at least three days prior to the effective date of termination. Upon the expiration of the three-day period, the successor owner may file an unlawful detainer under this section. Such tenant shall be responsible for payment of fair market rental from the date of such foreclosure until the date the tenant vacates the dwelling unit, as well as damages, and for payment of reasonable attorney fees and court costs.

Section 16:2 Where prior owner claims defect in new owner's title

There was a famous case from the Va. Supreme Court in 2016 which dealt with a claim by the owner whose property was taken by foreclosure that the foreclosure sale was defective and that the new owner did not really have title. See Parrish v. Federal Nat'l Mgt Assn, 292 Va. 44 (2016).

The court held that the general district court does not have jurisdiction to try title to real estate. If a suit is brought by the new owner against the former owner for possession and the former owner claims he still has title and hence the right to remain, then the general district court judge will make a determination of whether the former owner's claim is made in good faith and is sufficient to state a legitimate title claim. If so, then the judge is to dismiss the general district court unlawful detainer (without prejudice) so that the new owner must file a suit in the circuit court for possession in order to try the title claim there.

Section 16:3 Protection of Tenants after Foreclosure on Landlord

The rules governing the rights of a tenant in a residential dwelling where the owner has been foreclosed upon are now found in both state and federal law. The problem with this is that the two laws are different and the practitioner needs to determine which is to be applied.

Section 16:4 Comparison of Federal and Virginia

Federal	Virginia
The foreclosing loan must be federally related or recipient of assistance under this act.	No requirement as to who is lender
If there is a tenant with a term lease for the premises • The term lease must have been entered into before the notice of foreclosure; and • The tenant is not the debtor on the foreclosing loan nor the child, spouse, or parent of the debtor; and • The lease was entered into at arm's length; and • The rent is not substantially less than fair market rent or if the rent is reduced or subsidized due to a Federal, State, or local subsidy In this case, the tenant must be given a 90-day notice to terminate the lease and then the tenant may elect to remain under the lease until the expiration of the lease term unless the purchaser at the foreclosure sale is going to reside at the property as his/her primary residence; in which event the right to remain as a tenant ends at the end of the 90-day notice.	If there is a term lease for the premises then the tenancy is terminated by the foreclosure and the tenant becomes a month to month tenant at the time of the foreclosure The new owner must give tenant notice of the change of ownership in order to recover the rent from the tenant
If there is no term lease, then the tenant is to be given a 90-day notice to terminate their right to remain as a tenant.	Tenancy can be terminated with normal 30-day notice to terminate a month to month tenancy.
Subsidized tenant remains as a subsidized tenant.	

Section 16:5 Federal Law

In General

The Protection of Tenants in Foreclosure Act of 2009, (Public Law 111-22; 12 USCA §5220) was revived in 2018. It had sunset back in 2014 but on May 24, 2018 President Trump signed a statute that revived it to be effective 30 days after he signed it. (The United States Housing Act of 1937, 42 USCA §1437f; Pub. L. 115-174).

It provides:

[702] EFFECT OF FORECLOSURE ON PREEXISTING TENANCY

(a) IN GENERAL - In the case of any foreclosure on a federally-related mortgage loan <u>or on any dwelling or residential real property</u> [3] after the date of enactment of this title, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to—

(1) the provision, by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and

(2) the rights of any bona fide tenant, as of the date of such notice of foreclosure—

(A) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90 day notice under paragraph (1); or

(B) without a lease or with a lease terminable at will under state law, subject to the receipt by the tenant of the 90 day notice under subsection (1), except that nothing under this section shall affect the requirements for termination of any federal– or State subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.

(b) BONA FIDE LEASE OR TENANCY - For purposes of this section, a lease or tenancy shall be considered bona fide only if—

(1) the mortgagor or the child, spouse, or parent of the mortgagor under the contract is not the tenant;

(2) the lease or tenancy was the result of an arms-length transaction; and

(3) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property or the unit's rent is reduced or subsidized due to a Federal, State, or local subsidy.

(c) DEFINITION.--For purposes of this section, the term "federally-related mortgage loan" has the same meaning as in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602).

For Section 8 tenancies, Section 8(o)(7) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(7)) was amended to add, the following before the semicolon in subparagraph (C):

"and in the case of an owner who is an immediate successor in interest pursuant to foreclosure during the term of the lease vacating the property prior to sale shall not constitute other good cause, except that the owner may terminate the tenancy effective on the date of transfer of the unit to the owner if the owner-- "(i) will occupy the unit as a primary residence; and "(ii) has provided the tenant a notice to vacate at least 90 days before the effective date of such notice.";

and [BY INSERTING AT THE END OF SUBPARAGRAPH (F) THE FOLLOWING:]

"In the case of any foreclosure on any federally-related mortgage loan (as that term is defined in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602) or on any residential real property in which a recipient of assistance under this subsection resides, the immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to the lease between the prior owner and the tenant and to the housing assistance payments contract between the

---

[3] This language is underlined because there is a serious question as to how the federal government gets jurisdiction over any residential real estate in the state of Virginia unless it is federally related.

prior owner and the public housing agency for the occupied unit, except that this provision and the provisions related to foreclosure in subparagraph (C) shall not shall not affect any State or local law that provides longer time periods or other additional protections for tenants."

A **federally related loan** is defined by *12 U.S.C. 2602* as follows:

> *"(1) the term* ***"federally related mortgage loan"*** *includes any loan (other than temporary financing such as a construction loan) which--*
> *(A) is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families, including any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property; and*
> *(B)(i) is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is regulated by any agency of the Federal Government, or (ii) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary or any other officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary or a housing or related program administered by any other such officer or agency; or (iii) is intended to be sold by the originating lender to the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a financial institution from which it is to be purchased by the Federal Home Loan Mortgage Corporation; or (iv) is made in whole or in part by any "creditor", as defined in section 1602(f) of Title 15, who makes or invests in residential real estate loans aggregating more than $1,000,000 per year, except that for the purpose of this chapter, the term "creditor" does not include any agency or instrumentality of any State."*

Section 16:6 Virginia Law

Virginia code section 55-248.21:3 (new § 55.1-1237) deals with the right of a new purchaser of the dwelling at foreclosure. This code section was changed when the federal law originally expired in2014, but the Virginia General Assembly wanted to keep some of its protections. It may be amended in the upcoming General Assembly sessions.

That statute provides in part:

***

> *C. If there is in effect at the date of the foreclosure sale a tenant in a residential dwelling unit foreclosed upon, the foreclosure shall act as a termination of the rental agreement by the owner. In such case, the tenant may remain in possession of such dwelling unit as a month-to-month tenant on the terms of the terminated rental agreement until the successor owner gives a notice of termination of such month-to-month tenancy. If the successor owner elects to terminate the month-to-month tenancy, written notice of such*

termination shall be given in accordance with the rental agreement or the provisions of § 55-222 (new § 55.1-1410) or 55-248.6 (new § 55.1-1202), as applicable.

D. Unless or until the successor owner terminates the month-to-month tenancy, the terms of the terminated rental agreement remain in effect except that the tenant shall make rental payments (i) to the successor owner as directed in a written notice to the tenant in this subsection; (ii) to the managing agent of the owner, if any, or successor owner; or (iii) into a court escrow account pursuant to the provisions of § 55-248.27 (new § 55.1-1244); however, there is no obligation of a tenant to file a tenant's assertion and pay rent into escrow. Where there is not a managing agent designated in the terminated rental agreement, the tenant shall remain obligated for payment of the rent but shall not be held to be delinquent or assessed a late charge until the successor owner provides written notice identifying the name, address, and telephone number of the party to which the rent should be paid.

E. The successor owner may enter into a new rental agreement with the tenant in the dwelling unit, in which case, upon the commencement date of the new rental agreement, the month-to-month tenancy shall terminate.

Chapter 17 How to Obtain Possession

Section 17:1 Court system

Section 17:2 The procedures

Section 17:3 Appeal Process

Section 17:4 How to Collect Your Judgment for Unpaid Rent

Section 17:5 Judgment for Possession with Separate Action for Rent

Section 17:1 **Court system**

Virginia Supreme Court
Direct appeal from circuit court
For landlord tenant actions

Virginia Intermediate Court of Appeals

Only hears appeals of
Criminal cases
Divorce cases
Administrative law cases

Circuit Court

Unlimited jurisdiction
Tries appeals from general district

General District Court

$25,000 jurisdiction limit
Unlawful detainer, no limit on amount
Appeals as of right to Circuit Court for new trial
Small claims court is subpart of general district court with $5,000 limit

Section 17:2 **The procedures**

STEP #1:

Make a mistake in selecting your tenant. Under current law, if you are suing a residential tenant or a commercial tenant, the general district has jurisdiction to award a judgment for any amount of money. If you are not suing for possession, but are simply filing a warrant in debt for money owed, then the jurisdiction of the general district court is limited to $25,000.

STEP #2:

Give the tenant the appropriate notice to cure the breach as required by the statute and lease.

STEP #3:

After the period to cure has passed and the tenant's right to possession has been terminated by the notice, then prepare and file an action for possession in the local general district court, using the form "Summons for Unlawful Detainer." Remember, there is no self-help permitted in any residential rental.

The judgment for possession can only be in the general district court where the property is located, but the judgment for rent can be in a general district court where the defendant now resides, or if he left Virginia, where the plaintiff resides.

Choices you have to file the unlawful detainer. You can file it simply as written or you can an affidavit to it so that you can take judgment on the affidavit at the first return date if the defendant does not appear and is in default. Some courts all want the claim to be on an affidavit, such as Prince William County. I have attached in the forms an affidavit form that I recommend be used along with the unlawful detainer.

STEP #4

HOW TO FILL OUT THE SUMMONS FOR UNLAWFUL DETAINER (See form DC 421)

Attached to the form is an instruction sheet talking about each section to be completed.

The following are some important tips for completing the form.

1. **Landlord's name and address**. Do not put the managing agent's name here unless the agent is named in the lease as the landlord. Use the owner's real name. **and note that the last name is written first, then first name and then middle. Putting them out of order could cause many problems for you down the road because the judgment may be in the wrong name**

Defendant's name and address. Be sure to name all named tenants that appear on the lease, guarantors do not have to be named here, but under the current law in effect, guarantors can also be named in a summons for unlawful detainer in order to take a

money judgment against them. Note that there is no limit on the jurisdiction of the general district court in residential or commercial possessory actions. **and note that the last name is written first, then first name and then middle. Putting them out of order could cause many problems for you down the road because the judgment may be in the wrong name**

The Return Date is the date that you will first appear in court after the papers have been served on the defendants. Be sure to include the time that court begins.

Address of the leased property. Be careful here that the description is correct. A mistake could result in dismissal.

Indicate the reason that you are suing for possession. If you are suing for unpaid rent, then simply check that box. If the reason is something else, such as a 30-day notice to terminate a month to month tenancy, then so indicate in the place indicated on the form.

Amount of rent that is claimed to be due at the time are signing the unlawful detainer. If only May rent is due because June rent date has not yet arrived, do not include June rent. There is a box to check to claim rent at the hearing date that is due up to then.

The amount does not include credit for the security deposit. It is for the entire unpaid amount of rent and damages and the security deposit is credited against the final judgment.

Here you indicate the months for which the rent is due and owing.

The remaining blocks are self-explanatory. The judgment **interest** rate is now 6%, but you simply say "Jd" rate and the date of interest is from the date the rent was due or simply put, where the time is spread over a period of time, put "D/JD" or "date of Jd" or "jd date"

Court costs includes the amount you are paying to file the UNLAWFUL DETAINER and for service of process fees you pay the sheriff or the private process server.

Attorney's fees are not applicable unless you are hiring an attorney, in which case, write in "reasonable" unless a specific amount is sought.

Here you indicate the **capacity in which you are signing** this unlawful detainer under oath. Remember, it is under oath and needs to be correct.

These boxes are to tell the Defendant **what is going to happen on the first return** date. In Northern Virginia, the trials are set down on a separate date. Learn what your particular court procedures are.

Back of form, certifying that a copy was mailed to Defendants. This box must be signed indicating that a copy of the unlawful detainer has been mailed to the Defendant as well as served by the appropriate authority, Sheriff or private process server. If this box has not been checked and this mailing not made, the case will be dismissed.

Determine the correct return date for your jurisdiction. Always call the clerk to be sure what the correct filing date is for your situation. Each year they may change. Of course, the filing fees are changed by the Virginia General Assembly on a regular basis.

Example: In Fairfax County, the return date for unlawful detainers is each Friday, about 4 weeks out from the filing date.

STEP #5:

On the return date, you appear in court as the landlord, or its representative. This person needs to have personal knowledge of the facts of the case or be the property manager or resident manager for this property.

HOW DO YOU TAKE JUDGMENT IF THE DEFENDANT DOES NOT SHOW UP?

One method is to have filed the suit using an affidavit. If the defendant does not appear, you can take judgment on the affidavit, provided you have filed the appropriate Servicemembers civil relief affidavit form, filed the original of the lease or a copy that you certified is a true copy, a copy of the 5-day notice that was served with evidence of its service on the defendant, and if payments have been made by the tenant before coming to court, then a copy of your letter of reservation unless the 5-day notice contains a reservation of your rights to accept rent without waiving your claims.

Where you did not file an affidavit with the suit, a qualified witness will need to testify. This is called *ex-parte* proof.

To present *ex-parte* proof, you must identify the original lease or a true copy of it, and that the tenants named in it are those named in the law suit. You must identify what rent is due and owing and for what periods of time, plus identify the giving of an appropriate notice to cure and produce a copy of it with evidence of its service on the defendant. Because the defendant has not appeared, if the defendant is an individual and not a company, you will also need to have filed a Servicemember's civil relief affidavit along with the suit or give it to the judge at the time of the ex-parte proof.

If the defendant has paid any rent after receiving the notice to quit, then you will need to provide a copy of your letter of reservation that you sent within 5 business days of receiving that post notice rent unless that language reserving your rights is contained in the notice you served on the defendant.

In 2011 courts were authorized to accept an affidavit a copy of the lease or a paper printout of an electronically stored document, provided that the plaintiff presents an affidavit or sworn testimony that the copy of such document is a true and accurate copy of the original lease. An attorney or agent of the landlord or managing agent may present such affidavit into evidence. Otherwise, the original lease in the file must be presented to the court.

Suppose you used an affidavit, but it had a defect and the judge did not accept it, and you do not have the knowledge sufficient to present ex-parte proof, then the Plaintiff is entitled to a continuance under code section 8.01-28.

The Plaintiff or Plaintiff's agent or attorney may sign the affidavit.

Where the tenant does not appear, the affidavit may include a statement of the amount of outstanding rent, late charges, attorney fees, and any other charges or damages due as of the date of the hearing. The court can accept the affidavit to enter judgment for the

money due as well as judgment for possession.

Where attorney fees are being sought, the location in the lease where that provision authorizing attorney's fees can be found should be pointed out to the judge. Without such a provision, then the judge will have to with your entitlement under the provisions of the applicable statute.

If the tenant has already moved out, you can ask the judge to enter judgment for the unpaid rent only. You do not need a judgment for possession.

Until recently, the rent was to be apportioned up to the date of judgment, but not all courts require that. Recent changes in the statutes allows the judge to award the rent for the entire month that is due and owing. To illustrate, if the rent sued for was May, but June arrived at the hearing but the June rent was not paid, and the rent was due on the 1st of the month, then the judge can award the entire month's rent for June without apportioning it for the days of June up to the date of the hearing.

NOTE that some jurisdictions have their own order form that they require be used. For example, the City of Alexandria and Fairfax County each uses its own special order form that you are required to have prepared and present to the court. It includes the authorization for the issuance of the writ of possession already.

Recently added is the requirement that no order of possession may be entered unless the plaintiff or the plaintiff's attorney has presented a copy of a proper termination notice that the court admits into evidence.

The amounts owed can be amended as of the date of the hearing. If the sums you seek could have been included (because they were already due and owing), then a failure to amend what you are seeking could preclude a later recovery for the amount you could and should have added.

WHAT IS A NONSUIT?

This is a dismissal of a case but it is without prejudice to the landlord's right to refile the same suit again. This happens when the plaintiff learns that the notice was defect and they have to start over.

STEP #6:

Once you have a judgment, wait 10-days after the judge enters judgment for possession while the defendant's statutory right of appeal passes. You may ask the court to authorize an immediate eviction if the judge grants judgment for possession; In cases where the court's order permits immediate processing of a writ of execution in order to schedule an eviction date, in no case shall such eviction be executed (a) until expiration of the tenant's 10-day appeal period or (b) if the tenant perfects an appeal pursuant to this section. See § 8.01-129 Va. Code.

STEP #7:

When the time for a writ of possession (now called an order of possession) has arrived, the plaintiff files a paper with the clerk asking that the writ of possession be issued. This

is called a “praecipe”

This is issued by the clerk and given to the sheriff to serve on the defendant. The eviction will include all named defendants and their authorized occupants, guests or invitees and any trespassers in the property. The sheriff will give the defendant notice of when the sale is set and call the landlord to arrange for his move out crew. If immediate possession was authorized, the notice of sale will be after the 10-day appeal period has expired. Without immediate possession authorized, you must wait the 10-day appeal period before filing the praecipe to issue the writ of possession.

Remember that if the tenant pays you any money after the judgment has been entered, you will have been deemed to have waived your right to possession unless you have given the tenant a written letter reserving your rights after receiving the rent. This letter of reservation must be given within 5 business days of receipt of the rent.

You have up to 180-days from the date of the judgment to issue the writ of possession. If a writ is issued but not executed upon within 30-days, then the issuance of it shall be vacated as a matter of law without further order of the court. If the landlord enters into a new lease after a judgment against that tenant has been taken, then no writ shall thereafter be issued on that judgment.

STEP #8:

NO SELF HELP is allowed by the landlord. – wait for the sheriff to set up the eviction.

It used to be the case where you would be required to provide the crew to actually remove the belongings from the property and put them on the street, under the supervision of the sheriff.

Now, the sheriff will allow you to simply lock the doors and the goods are then treated as being in storage at the property without any right of the tenant to enter the property except that during the next 24-hours, the tenant has the right to recover their property.

You should cooperate in allowing them to recover their goods.

If the tenant does not remove the goods within the 24-hours, then you may dispose of them by putting them in the public way or disposed of them by sale or otherwise. If the disposal includes the sale of any of the goods, then the money received must be applied against the judgment entered against the defendant. In this situation, file a statement of satisfaction on a court provided form which becomes part of the court file and says how much money the judgment for rent is credited with as being paid. This also includes the security deposit which is to credited against the judgment.

STEP #9:

If the tenant has already vacated before you filed your unlawful detainer, but has left unpaid rent or other damages, then you would file a “warrant in debt.” This form is completed in a manner similar to the unlawful detainer. The selection of the return date is the same. Check with the clerk as to the correct dates that will be available for your warrant in debt.

The collection of a judgment is different. You should consult with an attorney to determine the best method to collect the judgment in your particular case.

Section 17:3 Appeal Process

If the tenant wants to appeal an adverse decision to the circuit court, the judge of the general district court has the discretion under § 8.01-129 to require the tenant to pay "all rent which has accrued and may accrue upon the premises, but not more than one year's rent, and also for all damages that have accrued or may accrue from the unlawful use and occupation of the premises for a period not exceeding three months" as security before the appeal will go through. This is good for the landlord because his money is now in the court and easy to get if the landlord wins at the circuit court level.

Section 17:4 How to Collect Your Judgment for Unpaid Rent

"What do I do next to make them pay me?" Do you have the social security number of your tenant? This is the usual question asked after a judgment for rent is obtained either in the unlawful detainer action, or in a separate suit on a Warrant in Debt. The following is not going to be a detailed treatise on debt collection, but simply a basic outline which may serve as a guide.

After the 10-day appeal time has passed from the entry of the judgment for unpaid rent or damage in the general district court, you are ready to take your next step. The next step depends on how much information you have about the debtor.

If your debtor works and his job is not exempt from garnishment (attachment of his wages), then your collection may turn out to be easy assuming that he works within Virginia or the company he works for does business in Virginia so that you can get jurisdiction over the company in Virginia. If you have to go outside of Virginia then you will need professional help.

The clerk has a garnishment form which you can fill out and file (by the way, it is not easy). The co- defendant is the employer. If you get service on the debtor's current employer, then under federal law, you are entitled to collect 25% of the debtor's net disposable income –- this means his net pay after taxes. You will select a return date on the garnishment of not less than 30-days and no longer than 90-days. The employer must withhold the 25% of the employee's net pay beginning from the date of service on the employer of the garnishment and stopping on the return date.

In addition, the employer must file a written answer, under oath, with the court stating how much is being withheld. If the employee does not properly withhold or file an answer, the employer may be held liable to you for the un-withheld money.

If you know where the debtor banks, you can try to garnish his bank accounts, using the same garnishment form. If your judgment is only against him and the accounts are joint, with survivorship, with his wife, you are going to have a problem getting the attachment to stick depending on how title to the account is held.

Another method is to obtain from the Division of Motor Vehicles a listing of the vehicles, if any, that your debtor has in his name. If you can locate a car, then obtain a levy on the

car by the Sheriff. This will usually get your money quickly. The procedure for this is as follows, but you will need to have the clerk of your court work with you to guide you.

You will need to file a writ of Fiera Facias with the clerk on court forms. The clerk will then direct the sheriff to levy on the car. The sheriff will require a statement of the car's value, and a list of all liens on it as shown by DMV and will require that you post a sheriff's indemnity bond for twice the value of the car.

Once levied, the sheriff will schedule a sale. You may or may not be able to get your money out of the sale. You may have to buy the car in yourself. If there's a lien, the lienholder will come before you and may prevent you benefitting from the sale.

If the debtor has other assets you can find, you will want the sheriff to levy on them too.

This becomes problematic if the debtor has filed a homestead exemption deed declaring protecting specified assets.

There are exemptions from attachment and garnishments that you may encounter.

If you do not have useful information about the debtor's assets or sources of money or property he owns, then you can issue an interrogatory summons to bring him to court to answer questions about his assets. If he is properly served with the summons but fails to appear, then you may obtain contempt of court proceedings against him, which may result in jail time. If this does not work, then a Capias may be issued by the court under the right circumstances to have him arrested and brought before the court.

If you cannot find him, then a detective or a very good knowledge of locating people on the internet. A collection agency may be your best bet here.

Section 17:5 **Judgment for Possession with Separate Action for Rent**

§8.01-128

Section 8.01-128 allows a landlord to split the relief he is seeking from a tenant.

Rather than obtaining judgment at one time for the rent, damages and possession, the landlord may in the alternative, receive a final, appealable judgment for possession of the property and be issued a writ of possession, and the judge will continue the case for up to 120 days to establish final rent and damages. If the plaintiff elects to proceed under this section, the judge will hear evidence as to the issue of possession on the initial court date and shall hear evidence on the final rent and damages at the hearing set on the continuance date, unless the landlord requests otherwise or the judge rules otherwise. Nothing in this section shall preclude a defendant who appears in court at the initial court date from contesting an unlawful detainer action as otherwise provided by law.

If the tenant undertakes an appeal as to the possession judgment, the entire case shall be considered appealed.

If the plaintiff elects to continue the case under this code section in order to establish his final damages and rent, he must mail to the defendant at the defendant's last known address at least 15 days prior to the continuance date a notice advising of (i) the continuance

date; (ii) the amounts of final rent and damages; and (iii) that the plaintiff is seeking judgment for additional sums. A copy of such notice must also be filed with the court. A form for this is provided in the book.

Chapter 18 FORMS

Section 18:1 VRLTA residential lease

Section 18:2 5-day notice to pay

Section 18:3 30-day notice quit

Section 18:4 21/30 Notice to cure

Section 18:5 30-day notice re: recurring breach after 21/30

Section 18:6 Notice by landlord reference unpaid utilities

Section 18:7 Affidavit in support of unlawful detainer

Section 18:8 Affidavit/copy/balance due

Section 18:9 Letter of reservation (non-waiver letter)

Section 18:10 Summon for unlawful detainer (Form DC-421)

Section 18:11 Bill of particulars (Form DC-441)

Section 18:12 Itemization of damages (Form DC-443)

Section 18:13 Notice of hearing to establish final rent and damages. (Form DC-422)

Section 18:14 Request for writ of possession (Form DC 469).

Section 18:15 Affidavit- default judgment servicemembers civil relief act.

Section 18:1 **VRLTA residential lease**

THIS LEASE AGREEMENT is made this ____ day of _____, 20_____,by and between _____,Landlord, and _____,Tenant(s).

This Lease is governed by the Virginia Residential Landlord and Tenant Act which is incorporated herein by reference. Failure to comply with any requirement of this Lease or of the Virginia Residential Landlord & Tenant Act or of any applicable law is a breach of this lease.

The property *[Check the correct box]* ☐ **is** ☐ **is not** the subject of this Lease is Target Housing within the meaning of the Residential Lead-Based Paint Hazard Reduction Act of 1992. Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

For and in consideration of the rent herein agreed to be paid, and the rights, and obligations of the respective parties agreed to herein, the Landlord hereby leases to the Tenant above named, and the Tenant leases from the Landlord, the following rental unit on the terms and conditions as stated in this Lease. Where ''you'' or ''yours'' appears in this lease, they refer to the Tenant.

The agent appointed by the Landlord for the purpose of service of process, notice, order or demand required or permitted by law to be served upon the Landlord is _____. The agent's business address in Virginia is _____.

2. **Property Address:**_____

3. **Term of Lease:** Tenant leases the rental unit for the period of twelve (12) months beginning _____and continuing until _____,at which time the Lease term ends and the Landlord is entitled to the return of the rental unit as more fully described later in this Lease. [OPTIONAL] This rental agreement shall automatically renew at the end of its term for an additional term upon the same terms and conditions unless the Tenant has given the Landlord a 30-day written notice in advance that the Tenant will vacate at the expiration of the stated term.

4. **Rent to Be Paid:** The rent that the Tenant agrees to pay is $ __ for the entire term, which is to be paid in monthly payments of $ _____ each month. The monthly payments are to be paid to the Landlord on the first day of each month.

   Due Without Demand. The monthly rent is due without any prior demand from the Landlord to pay it and is to be received by the Landlord on the first day of each month. This means that you owe the rent without any type of billing, invoicing or notice from the Landlord. It is Tenant's sole responsibility to ensure that the money is in the Landlord's possession on the 1st of each month. Failure to pay your rent when due is a breach of this Lease.

   Additional Rent. If this Lease requires the Tenant to pay any money to anyone other than the Landlord, then the money that is to be paid to someone else is part of the rent obligation under this Lease and is accordingly defined as additional rent. Failure to pay any additional rent is also a breach of this Lease.

   Method of Payment. The rent shall be paid by check ormoney order at the office of the Landlord at _____or at such other address as the Landlord shall direct. If the Landlord directs you to pay the money in some other way, such as certified check, cashier's check or money order only, then you will comply with that directive. A failure to comply with that directive is also a breach of the lease.

   Due Without Reduction or Offset. The rent is due without any reduction or deduction from it. If you reduce your rental payment to the Landlord, you will be in breach of this Lease and subject to eviction by the Landlord, unless you are permitted to do so under the Virginia Residential Landlord & Tenant Act. You place your right to remain in possession at risk should you reduce the rent or make a deduction from it without the right to do so under the Virginia Residential Landlord & Tenant Act.

Proration First Month. The first rent payment is due at the time you sign this Lease and covers the first month of the Lease. If you sign the Lease on a date other than the first day of the month, then the rent you will pay for the first month will be in an amount representing the number of days remaining in the month from the date you signed. The next rent payment will be due on the first day of the next month for the full amount of the monthly rental payments.

5. **Occupancy:** The rental unit may only be used as a dwelling unit. The Tenant agrees that he will not permit more than ____ persons to occupy the rental unit. Failure to comply with this promise as well as any other promise you have made in this Lease is a breach of the Lease. If any occupant is not a member of Tenant's immediate family, then approval by the Landlord for that person to live there must be first obtained. This is so even if that person's presence on the rental unit does not make the total number of people living there exceed the limit on the number of people permitted by this Lease to live there.

6. **Security Deposit:** Tenant hereby gives to Landlord a security deposit in the sum of $ _____.The Landlord shall hold this as security until the end of this Lease and until the unit is vacated. After it is vacated, the Landlord may inspect the rental unit to determine if it has been damaged in any way. You are liable to the Landlord for any damage to the unit other than reasonable wear and tear. If the Landlord determines that there is any damage in the unit for which you are liable, any unpaid rent due to the Landlord, or if there are any other damages or charges which the Landlord asserts you are liable for, he may apply the security deposit plus any accrued interest to cover those items. This deposit may not be used as the last month's rent. Any attempt to use the deposit as the last month's rent is a breach of the Lease.

   The Tenant may inspect Landlord's records of deductions to the security deposit during Landlord's normal business hours.

   The Landlord has up to 72 hours after Tenant vacates to inspect the rental unit. Tenant has the right to be present at any inspection of the rental unit by the Landlord. If Tenant wants to be present at the inspection, Tenant must notify the Landlord in writing of his desire to be present, and the Landlord will then notify Tenant of the date and time so that Tenant may be present. When the Tenant moves, he should give the Landlord an address that the Landlord can reach him at. Otherwise, the Landlord may send the notice to Tenant's last known address.

   After the inspection, Landlord shall provide Tenant with an itemized list of any deductions from the security deposit which Landlord claims. The security deposit or any unused portion thereof, plus any accrued interest thereon, due to Tenant, shall be returned to Tenant in accordance with the law.

   In addition, the Landlord may withhold a reasonable sum for unpaid utilities that the tenant is obligated to pay. This is the written notice to Tenant required by § 55-248.15:1(C) Va. Code. The Landlord will release the escrowed utility funds within 10-days of receipt from Tenant of written evidence that the utilities were paid.

If the Tenant vacates the rental unit before the end of the term or any extensions thereof, the Tenant shall be liable to the Landlord for all damages, including the costs of re-decoration, including painting and cleaning, plus all damages which the law permits including Landlord's loss of rent and the costs associated with obtaining a new Tenant until the apartment is re-rented.

If this Lease is assigned or the entire balance of it is sublet, with the consent of the Landlord as required in this Lease, the security deposit will be paid to assignee or sub-tenant.

7. **Good Condition:** Within five days after taking possession, the Landlord shall give the Tenant a written report, for his safe- keeping, which itemizes damages to the rental unit, if any, including any visible evidence of mold in the interior of the dwelling. If the Tenant objects to any of the listed items, then he shall notify the Landlord, in writing, of his objections, within five days of receipt of that list. If Tenant does not object to the items on the list, then the list shall be deemed correct and the Tenant shall be bound to it. Other than what is written in this Lease, the Tenant acknowledges that the Landlord has not made any promises as to the condition of the rental unit or as to any specific repairs, alterations or improvements.

8. **Deliver of Possession:** Possession shall be delivered to Tenant upon execution of this Lease. If the Landlord willfully fails to deliver possession, then the Tenant may terminate the Lease on five days written notice to the Landlord, or he may abate the rent until delivery takes place. The Tenant may have such other remedies as are provided in the Virginia Residential Landlord & Tenant Act.

   If the Landlord permits the Tenant to take possession before the beginning date of this Lease, then the Tenant agrees to be bound to the terms of this Lease for such period of time and to pay such rent as represents the prorated amount for the period actually in possession.

9. **Representations to The Landlord:** The Tenant has made certain representations to the Landlord about his credit history, rental history, financial affairs, and other relevant information, in order to induce the Landlord to rent this rental unit to the Tenant. This Lease has been entered into in reliance by the Landlord on this information. In the event any of that Information is untrue or misleading or incomplete then the Landlord reserves unto himself the right to cancel this Lease within a reasonable time after discovery by the Landlord of the truth. Under this circumstance, the Tenant shall immediately vacate the rental unit and shall be liable to the Landlord for all of his costs, expenses and damages that he may suffer by reason of the Tenant's misrepresentation, including Landlord's reasonable attorney's fees incurred.

10. **Late Charges, Grace Period:** If Tenant fails to pay his rent on or before the 5th day of the month the Tenant shall pay as additional rent, a late charge of $ _____ ____.Tenant's failure to pay the late charge when it is due is a breach of the Lease. The failure of a Landlord to insist on the payment of a late fee when the rent is

late, shall not be deemed a waiver by the Landlord of any late charge, whether then due and owing or any future late charge.

11. **Assignment and Subletting**: Tenant may not, without the prior written consent of the Landlord, assign this Lease or sublet the property or any part thereof or give accommodation to any roomer, lodger or other person not herein set forth, nor permit the use of the property for any purposes other than as a private dwelling solely for the use of Tenant and Tenant's family consisting of the following named persons: _____.

    If Tenant is a corporation, limited liability company or a partnership of any type, the liquidation, termination, or dissolution or discontinuance in business of such organization shall be deemed a termination of this Lease by the Tenant and a breach hereof. If Tenant is a corporation, limited liability company or a partnership, general or limited, then the transfer by any owner of any shares of stock, membership interest or partnership interest to anyone else shall be deemed an assignment of this Lease requiring prior Landlord's approval. This applies regardless of whether the transfer is of a controlling interest or not. If the Tenant is a limited liability company, any event which terminates the company or transfers controlling interest in the company shall be deemed an assignment of this Lease.

    Where the Landlord sells the property to another, the buyer shall become liable under this Lease for all of its terms and conditions and the selling Landlord shall be relieved of liability under the Lease after giving notice of the conveyance to the Tenant.

12. **Rules and Regulations:** The Tenant understands and agrees that any Rules and Regulations that are in effect now or that may be adopted at a later time by the Landlord are a part of this Lease as if they were written into it, and that the Tenant is obligated to comply with all of them. A failure by the Tenant to comply with any of such Rules and Regulations is a breach of this Lease. The duty to comply with the Rules and Regulations binds not only the Tenant, but his family, his guests, and any person on the premises with his consent.

    The Landlord has the right to change these Rules and Regulations and the modified Rules and Regulations are also fully binding on the Tenant, his family, his guests, or persons in the rental unit with his consent.

13. **Noise and Nuisance:** The Tenant shall conduct himself, and require other persons on the premises with his consent, whether known by Tenant or not, to conduct themselves in a manner that will not disturb his neighbor's peaceful enjoyment of the premises. The Tenant will not conduct any unlawful activity on the premises. The Tenant will not conduct any business on the premises, including, but not limited to baby-sitting.

    The Tenant will be deemed in breach of this provision of the Lease if he or anyone else in his rental unit performs or permits any vocal activity, or plays or permits the playing any musical instrument, radio, television, stereo, cd, tape player, or any other sound emitting device in such a manner as to disturb the peace and quiet of

any neighbor. Failure to comply with this promise as well as any other promise you have made in this Lease is a breach of the Lease.

In addition, Tenant, any member of his family, guests, or any other person on the premises with his consent, shall not conduct himself in an objectionable or improper manner causing annoyance to other Tenants in the building or on the project. Such conduct shall be a breach of this Lease.

14. **Pets:** Tenant may not keep, maintain, or permit the visit on the premise for any period of time (regardless of how long a visit it is), any pet of any kind, without the express consent of the Landlord.

    Fish tanks which hold more than five gallons of water are prohibited unless approved by the Landlord in advance. Tenant will be liable for any and all water damage to the rental unit caused by the presence of the fish tank even if the Tenant is without fault in causing the damage.

    If this box is checked, [ ], then this paragraph will be applicable to the Lease; otherwise, it is not. The Tenant is permitted to keep the following described pet on the premises: _____. If the pet dies or is otherwise removed from the premises, then the Tenant must first obtain additional permission from the Landlord to bring another pet unto the premises. The Tenant is liable for any and all damages caused by the pet. The Tenant must pay a non-refundable sum of $ _____ to the Landlord as a Pet Fee.

15. **Clean and Neat**: The Tenant shall keep the rental unit he is occupying clean and safe. He will remove from the unit all ashes, garbage, rubbish and other waste in a clean and safe manner and in the appropriate receptacles provided by the Landlord, if such disposal is provided by the Landlord. If not provided by the Landlord, then the Tenant is responsible to arrange for trash pickup and removal at his own expense.

    The Tenant will keep all plumbing fixtures clean as their condition permits.

    The Tenant will use the utilities, and all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, if any, in a reasonable manner.

    Tenant will use windows and vents to prevent buildup of mold in the unit and report any mold in the unit as soon as it isnoticed, or residue moisture is noticed.

16. **Damage by Tenant:** The Tenant, any member of his family, guests, or any other person on the premises with his consent, will not deliberately, negligently, or otherwise destroy, deface, damage, impair or remove any part of the premises or permit any person to do so, whether known by the Tenant or not. If any such damage occurs, then the Tenant shall be liable to the Landlord for the cost of repair or maintenance to any such damaged part of the premises, including appliances, equipment and fixtures.

    Tenant agrees to return the rental unit to the Landlord at the end of the Lease in the same condition as received, reasonable wear and tear excepted.

17. **Local Codes:** The Tenant shall comply with all obligations primarily imposed upon Tenants by applicable provisions of building and housing codes materially affecting health and safety.

18. **Access:** The Tenant shall not unreasonably withhold consent to the Landlord to enter into the rental unit at reasonable times, in order to inspect it, make necessary or agreed-upon repairs, decorations, alterations or improvements, supply necessary services or exhibit the rental unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors. In an emergency, the Landlord may enter the rental unit without the consent of the Tenant.

    The Landlord will not abuse this right of access or use it to harass the Tenant. Unless there is an emergency, or it is not practicable to do so, the Landlord shall give the Tenant reasonable notice of his intent to enter.

    If the Tenant has abandoned or surrendered the premises, the Landlord has the right of access.

    The Tenant must provide the Landlord with a duplicate key for any and all locks on the doors and windows. Failure to comply with this promise as well as any other promise you have made in this Lease is a breach of the Lease.

19. **Alterations, etc.:** The Tenant shall not make any alterations or modifications to the unit, including painting or wallpapering, installation of bookcases, shelves, cabinets, or structures of any kind, without the express written consent of the Landlord obtained in advance.

    The Tenant may install, within his apartment, new burglary prevention and fire detection device(s) that the Tenant believes may be necessary to insure his safety, provided, however, that (1) the installation does no permanent damage to any part of the apartment, (2) a duplicate set of all keys and instructions of how to operate all devices are given to the Landlord or Landlord's agent, and (3) upon termination of the tenancy, the Tenant shall, upon request of the Landlord, remove all such devices and repair all damage.

    The Tenant may hang pictures and place picture hooks in the walls so long as the Tenant repairs all such holes prior to leaving the rental unit at the end of the tenancy.

20. **Notice of Damage:** The Tenant must immediately notify the Landlord when there is a malfunction of any appliance, fixture or any plumbing problem or other defect or damage in or to the premises.

21. **Utilities:** The rent includes all utilities and real estate taxes which are paid by the Landlord.

22. **Military Personnel:** If the Tenant is a member of the armed forces of the United States, or a member of the Virginia National Guard serving on full-time duty or as a Civil Service technician with a National Guard unit, he may terminate this Lease if he:

a. Has received permanent change of station orders to depart 35 miles or more from the location of the rental unit; or

b. Has received temporary duty orders to be 35 or more miles from the location of the rental unit in excess of three month's duration; or

c. Has been discharged or released from active duty with the armed forces of the United States or from his full-time duty or technician status with the Virginia National Guard; or

d. Has been ordered to report to government-supplied quarters resulting in the forfeiture of basic allowance for quarters.

Tenant must, however, serve a written notice of termination on the Landlord, which is to be effective no less than 30 days from the first date on which the next rental payment is due and payable after the date on which the written notice is given, and no greater than 60 days before the date of departure. The Tenant shall furnish the Landlord with official notification of the orders or a letter signed by the Tenant's commanding officer confirming the change of status.

Until the Lease is terminated, Tenant is not relieved of any of his other duties under the Lease or the Virginia Residential Landlord & Tenant Act. Any willful or intentional misrepresentation by the Tenant to the Landlord under this early termination provision or in providing the Landlord with false discharge or anticipated retirement dates on the application will render you liable to the Landlord for breach of this Lease, as well as fraud and deceit thereby entitling the Landlord to claim not only his damages under the Virginia Residential Landlord & Tenant Act, but also punitive damages under Virginia's tort law.

23. **Carpeting:** In the event that carpeting is not provided by the Landlord, and in order to eliminate any noise caused or occasioned within the unit, Tenant shall install and maintain rugs or carpeting along with padding covering 85% of the floor area in the unit (excluding the kitchen, bathrooms and closets). Said carpeting is to be installed within 30 days of Tenant's first occupancy of the unit. If Tenant elects to install wall to wall carpeting, its installation must be without the use of nails, staples, brads or tacks; i.e., the tackless method. Molding in the unit is not to be removed. Any damage to the floor as a result of the installation or placement of carpeting or padding shall be paid entirely by the Tenant.

In the event that carpeting is provided by the Landlord, then the Tenant shall have the carpeting cleaned before returning the unit to the Landlord at the expiration of the term, regardless of whether Lease termination has been voluntary or involuntary and regardless of the reason for termination. Any damage to the carpet which is not repaired, or stains which are not cleaned before returning the unit to Landlord shall be items of damage assessed against the Tenant, and Tenant shall also be liable for the Landlord's cost to replace the carpet in the event it cannot be repaired or cleaned.

24. **Abandonment:** If Tenant is to be away from the unit for a period of more than seven days, then Tenant must notify Landlord in advance. In the absence of such

a notice, the Landlord may enter the unit to protect the rental unit or may deem the rental unit to be abandoned.

If the Tenant shall abandon, be removed from the unit for cause, quit or vacate the same, voluntarily or involuntarily, the Landlord may enter the rental unit to re-let same as the Landlord deems appropriate. The Tenant will be liable to the Landlord for any damages that the Landlord may suffer by reason of the abandonment or vacation of the unit.

25. **Landlord's Lien:** The Landlord has a Landlord's Lien upon all of Tenant's belongings and property within the rental unit which lien secures the Landlord for any unpaid rent. This lien exists automatically upon the signing of the Lease and continues until all obligations of the Lease are paid, as provided by Virginia law. This lien may be enforced by distress or by any other action provided by law to obtain the sale of the Tenant's property to satisfy any unpaid rent. Removing the property by the Tenant will not defeat the Landlord's Lien. As provided by statutes, the Landlord's Lien will follow the Tenant's belongings.

26. **Hazards:** The Tenant may not permit any act or thing to be done that will increase the risk of fire or that will increase the rate of insurance on the rental unit, such as for example, keeping of gasoline or other combustible materials on the rental unit. Failure to comply with this promise as well as any other promise you have made in this Lease is a breach of the Lease.

27. **Damage to Rental Unit:** In the event there is damage to the rental unit which is not caused by a deliberate act or through the negligence of the Tenant, member of his family, guest, roomer, or any other person on the rental unit with his consent, then said damage shall be repaired by the Landlord.

    In the event the damage is caused by wind, water, snow, ice, or any combination of them, or any other act of nature, war, arson, terrorism, vandalism or any intentional act of someone other than the Landlord or his employee, only the damage to the building and the structure of the rental unit will be repaired. The Landlord will not be liable for any damage that may befall the Tenant's personal property unless said damage was caused by the negligence or willful conduct of the Landlord or of an employee of Landlord. The Landlord expects the Tenant to maintain his own hazard insurance policy to protect against such possible losses. This is not an obligation undertaken by the Landlord.

    For example, if the water pipes freeze and burst, the resulting damage to the contents of Tenant's rental unit will not be the responsibility of the Landlord unless the Landlord or his employee has been negligent or willful.

    In the event the rental unit becomes uninhabitable by reason of extensive damage, then the rent shall abate until such time as the rental unit shall be restored to habitable condition. Landlord shall have the right, however, to restore the unit or to terminate the Lease. If the cause of the casualty is not the fault or negligence of the Tenant, then the Tenant may elect to vacate the unit and terminate the Lease with a 14-day written notice to Landlord. If the Tenant or the Landlord elects to

terminate the Lease under these conditions, then the accounting for the rent and deposit shall be as of the date of the vacancy of the unit.

28. **Notice at End of Lease, Holdover Tenant:** Tenant shall give the Landlord at least 30 days' written notice prior to the end of the term of this Lease of his intent to vacate the property at the expiration date of the Lease in order to avoid the automatic renewal of the lease. If this Lease has not been renewed, and if Tenant has failed to vacate at the end of his term, then Tenant shall be a holdover Tenant on a month to month basis under the same terms and conditions of this Lease but the holdover tenant shall be liable for 150% of the then current rent until tenant vacates. Thereafter, either party may terminate the Lease by giving the other a [ ] 30-day [ ] _____ -day [check the applicable box] written notice to terminate, which notice must be the specified number of days prior to the next rent due date.

    Landlord may give the Tenant a written 30-day notice to vacate at the expiration date of the Lease. In the event Tenant fails to vacate after receiving such notice, then Tenant shall be in breach of the Lease and Landlord shall be entitled to recover possession without further notice to quit.

29. **Motor Vehicles:** Repair of motor vehicles, or any part thereof, within the rental unit or anywhere on the Landlord's property which is part of the project of which the rental unit is a part, is strictly forbidden. Oil changes and lubrication of any kind, including changing of the radiator fluid, brake fluid, transmission fluid, windshield washer fluid, or any type or kind of fluid in the vehicle is strictly prohibited. In addition to being a breach of the Lease and subjecting the Tenant to dispossession and damages, the Tenant may be held liable for any breach of applicable environmental laws.

    No motor vehicle of any kind, may be stored in any rental unit, any storage area, hallway or any location other than the parking area, if any is provided, designated by the Landlord.

30. **Landlord's Duty To Maintain Fit Premises:** The Landlord will comply with all applicable building and housing codes which materially affect health and safety, make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition, keep all common areas shared by two or more rental units of the premises in a clean and structurally safe condition, maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances, including elevators, supplied by him. If the Tenant is obligated under another provision of this Lease to provide his own utility, then the duty to maintain same shall be upon the Tenant and not the Landlord.

    The Landlord shall supply running water and reasonable amounts of hot water.

31. **Default:** In the event the Tenant fails to pay the agreed upon rent when it is due, then the Landlord may terminate the Lease and obtain a judgment for possession, costs and damages, plus all reasonable attorney's fees, after having given the Tenant a five-day notice to pay and the Tenant has failed to cure the nonpayment

in full within the said five-day period. Failure by the Tenant to cure the default in full within said five-day period shall operate to terminate the Lease.

In the event the Tenant pays his rent with a check which is returned for any reason, then the Tenant shall be in breach of the Lease and the Landlord shall be entitled to terminate the Lease and recover possession and all damages and reasonable attorney's fees unless the Tenant cures said breach within 5 days of receipt of a written notice to cure from the Landlord.

In the event the Tenant fails to perform any promise or obligation contained in this Lease other than payment of the rent, he shall be in breach of this Lease. In the event the Tenant's breach is a material non-compliance or a violation of the Tenant's duty to maintain the property set forth in the Lease or under § 55-248.16 (new § 55.1-1227) of the Virginia Residential Landlord & Tenant Act, then the Landlord may serve a written 21-day notice to cure said breach. If said breach is cured within said 21 days, then the Lease will not terminate. If the breach is not cured within said 21-day period, then the Lease will terminate at the expiration of 30 days from the receipt by the Tenant of the 21-day notice to cure. If a breach by Tenant occurs but is cured after receipt of the 21-day notice to cure, but then a similar breach thereafter takes place, then the Landlord may terminate the Lease by giving a 30- day notice to terminate the Lease without any additional opportunity to cure by the Tenant.

In the event the conduct of the Tenant involves criminal or willful conduct which cannot be remedied and which poses a threat to health or safety, the Landlord may terminate the Lease without notice and proceed to obtain possession. In the event the Tenant has been arrested, or convicted as a principal, in a crime, whether felony or misdemeanor, involving the sale, manufacture or distribution of illegal drugs of any kind, then there shall be a strong, but rebuttal, presumption in any civil proceeding for possession of the property brought against the Tenant, that he has been involved in criminal or willful conduct as defined and proscribed in § 55-248.31 (new § 55.1-1245) of the Virginia Code and that the Landlord is entitled to possession in the absence of satisfactory proof by the Tenant to the contrary.

The Landlord may recover any and all damages, costs and reasonable attorney's fees as provided for under the provisions of the Virginia Residential Landlord & Tenant Act.

32. **Jury Trial:** The Tenant hereby waives trial by jury in any proceeding between the parties for whatever cause.

33. **Waiver:** No waiver of any breach by the Tenant shall be deemed a waiver of any future breach of the Tenant. In the event there is a breach by not paying the rent and the time to cure has passed, the Landlord will not be deemed to have waived the breach or his right to obtain possession, damages, or fees, in the event he accepts the rent in full, or rent for a future period, damages, and other fees provided that the Landlord shall notify the Tenant in writing that he has accepted the rent ''with reservation'' or words to like effect.

34. **Subordination:** This Lease is subject to all present and future mortgages, deeds of trust, and security agreements put in place by the Landlord, which affect the premises. The Tenant shall execute and deliver, upon the request of the Landlord, any and all necessary documents to subordinate this Lease to any such mortgage, deed of trust, or security agreement.

35. **Condemnation:** In the event the rental unit and/or the premises on which it is a part is taken, in whole or in part, by governmental condemnation, this Lease shall terminate. The Tenant hereby specifically waives any claim to any portion of any award for compensation or damages made for the taking of the property. Any fixtures installed or erected on the leased premises shall remain the property of the Landlord and shall not be removable by the Tenant at the expiration of or termination of this Lease, nor may they be the subject of any award to the Tenant arising out of any condemnation.

36. **Diplomats:** The Tenant represents to the Landlord that he [ ] IS or [ ] IS NOT the head of a diplomatic mission or a member of the diplomatic staff of a mission, nor a family member of a diplomatic staff nor administrative and technical staff or their family which entitles them to the diplomatic immunity accorded to such persons under the Vienna Convention on Diplomatic Relations of April 18, 1961 (T.I.A.S. numbered 7502; 23 U.S.T. 3227); 22 U.S.C.A. § 254a. If the Tenant has indicated that he/she is such a person, then this rental agreement is void unless the diplomatic immunity accorded by law has been waived by an authorized representative of the sending government.

37. **Guarantors:** Any persons signing this Lease, not as a Tenant, but as a guarantor, hereby unconditionally guarantee to the Landlord the payment of all rent, additional rent, damages, fees, costs, and the performance of any and all obligations of the Tenant under this Lease and any extensions and modifications thereof as well as liability under any holdover provisions. All guarantors hereby waive notice from the Landlord of any breach by Tenant, extension of the Lease, modification of the Lease, or any change to the rental agreement between the Tenant and Landlord. Guarantors also waive notice of any breach, notice to cure, cure, waiver, notice to quit, forbearance by Landlord, or forgiveness by Landlord between the Tenant and Landlord. Guarantors are liable for all costs, damages, and reasonable attorney's fees incurred by the Landlord in collecting under the Lease, as well as collecting against the guarantors hereunder. Should the landlord and tenant enter into a new lease for a new term, this guaranty remains in effect and applies to that new lease.

    Guarantors may not terminate this guaranty without the express written consent of the Landlord.

38. **Locks:** No additional locks shall be permitted upon any doors without the consent of the Landlord. Should any additional lock be placed on the rental unit, a duplicate key thereto must be provided to the Landlord.

39. **Gender, Context**: Where the context of the Lease requires, the words in the singular shall be substituted for the plural and vice versa, and words in the masculine shall be substituted by any gender.

40. **Virginia Residential Landlord and Tenant Act:** Where the terms of this Lease are inconsistent with the terms of the Virginia Residential Landlord & Tenant Act and by the terms of the Act, the Act controls, then this Lease shall be deemed to be amended to comply with said Act.

41. **Death and Binding Effect:** This Lease and all of its covenants, conditions, terms and provisions are binding upon and shall inure to the benefit of the successors and assigns of Landlord, his heirs, executors, administrators and where permitted, the assigns of the Tenant. The Tenant's death terminates this Lease unless a spouse is also on the Lease, in which case the Lease may be continued by said spouse if he/she so chooses.

42. **Condominium, etc.:** In the event this rental unit is part of a condominium regime or some other form of a home owners' association, the Tenant agrees to be bound to all of the terms and conditions of the Declaration, the Associations By-laws, and all of the rules and regulations promulgated by said Association and/or Board of Directors. A breach by Tenant of any terms and conditions of such regimes shall be deemed a breach of this Lease. It is the duty of the Tenant to obtain a copy of said rules and regulations and abide by them. Any fines imposed on the Landlord under said condominium regime documents or home owners' regime documents by reason of the Tenant's conduct shall be due and owing by the Tenant upon billing or notification from the association or its agent.

    Tenant further agrees to pay all monthly condominium dues or other home owner association dues as they become due. This is additional rent, and a breach hereof is a breach of the Lease.

43. **Parking:** Parking is limited at the rental property. Therefore, the Tenant, including all family members and guests, may only park vehicles on the Landlord's property. All other vehicles for the Tenant's household must park off site. A violation of this provision is a breach of the lease.

    Any vehicle that Tenant may wish to park on the property must be registered with the Landlord in accordance with the then existing requirements of the Landlord for the registration and control of Tenants' vehicles. The Landlord has complete discretion to modify the registration requirements from time to time as the Landlord, in its sole discretion, deems appropriate. Including in the registration process, the Landlord may charge a reasonable administrative fee for the processing of registration for Tenant's vehicle.

44. **Storage Facilities:** If storage facilities are provided to the Tenant, such storage facility is solely as an accommodation to the Tenant. Its use, time of entry, and contents are subject to the rules and regulations of the Landlord. Any person using such a storage facility does so as such person's sole risk. The Landlord does not promise that the belongings stored there will be safe or free from harm, theft,

damage or loss. The Landlord is not responsible for anything that happens to such person's belongings in the storage area.

45. **Representations:** The parties acknowledge that the Landlord and his agents have not made any promises, or representations other than those contained in this agreement. The Tenant understands that if a promise, or representation by the Landlord is made before signing this Residential Lease but is not written into this Residential Lease, then such promise, or representation is not binding on the Landlord.

46. **Submetering and/or Energy Allocation Equipment or Ratio Billing:** The parties hereto agree that in order to fairly allocate the Tenant's share of the electric and/or natural gas utility, the Landlord will be installing and maintaining submetering equipment or energy allocation equipment or ratio utility billing system or water and/or sewer. Submetering equipment will give the actual usage of the Tenant. Energy allocation equipment will provide the Landlord with an approximation for apportioning the Tenant's share of the utility. Ratio Utility Billing System will provide a mathematic formula for allocating the actual utilities among the tenants. This arrangement for allocation is agreeable to the Tenant.

    The Landlord shall bill the Tenant using the same billing period as the utility bills to the Landlord.

    The Landlord shall charge to the Tenant the cost and charges billed to the Landlord by the utility, including, but not limited to, all sales, local utility, or other taxes. The Landlord may charge the Tenant a monthly charge of $2.00 per month per rental unit to cover administrative costs and billing or such sum as may be hereafter permitted by law or regulation.

    The Landlord shall maintain records of the readings and billings for the Tenant's rental unit, which are available to the Tenant for inspection at a convenient location within the building at reasonable business hours. If the Tenant wants copies, then the Tenant shall prepay a reasonable fee to cover the materials and labor per copy.

    The Landlord shall maintain the submetering or energy allocation equipment and test it periodically.

    The Landlord, at the Tenant's request, shall inspect the equipment and provide the Tenant with a written report of the results of the inspection within ten working days after the inspection. An inspection based on the request of the Tenant shall not be required of the Landlord more than once in a twenty-four-month period for the same Tenant. The Tenant or his designated representative may be present during the testing.

    The rights of the parties are governed by the following submetering code provisions where in conflict with the provisions of this lease: § 55-226.2 (new § 55.1-1212 & 55,1-1404), and §§ 56-245.2 to 56-245.3 Va. Code (1950)

IF TENANT WANTS A PRIOR PROMISE TO BE BINDING ON THE LANDLORD, THEN SUCH PROMISE MUST BE WRITTEN INTO THIS

RESIDENTIAL LEASE. IF NOT WRITTEN HEREIN, THEN IT IS NOT BINDING ON THE LANDLORD.

Witness our hands and seals, the date, month and year above stated.

_____ Landlord

_____ Tenant

_____ Tenant

_____ Guarantor

Any person signing as Guarantor agrees to the provisions pertaining to Guarantors, including but not limited to paragraph 36 above.5-day notice to pay

To: Mr. John Doe Date_____

1234 Washington Street

Apartment #1

Arlington, VA

5-Day Notice of Non-compliance by Not Paying Rent

YOU ARE HEREBY NOTIFIED that you are in non-compliance of your rental agreement and law. You are in arrears in the payment of rent for the above premises in the sum of $————, this arrearage covering the calendar month(s) of ————, 20—, at the rate of $———— per month, payable on the first day of said month.

Unless you make payment of the aforesaid rent due on or before five (5) days from the receipt of this notice, your right to possession shall be forfeited and your landlord may, at his option, deem your possession unlawful and require you to vacate and deliver possession of said premises to the undersigned and/or pay the rent in arrears in accordance with existing law, plus his costs and reasonable attorney's fees.

The landlord hereby gives notice to the tenant that any rent paid outside of the five-day cure period, or which is paid within the 5-day cure period but does not include the full amount due and owing, will be accepted with reservation of all of landlord's rights to obtain possession of the property and recover all of his costs and attorney's fees.

Any items of personal property left in the premises would be disposed of within the twenty-four hour period after termination.

You shall have the right to remove your personal property from the premises at reasonable times during the twenty-four hour period after termination or at such other reasonable times until the landlord has disposed of the remaining personal property of the tenant.

The landlord has the right to withhold a reasonable sum for unpaid utilities for which you are liable from the security deposit.

If you have paid the utilities up to the time you have vacated the premises, then you

must provide the landlord with written proof of such payment. Upon receiving such evidence, then that sum will be returned to you in 10-days unless there are other rents and damages that are being withheld from the deposit.

[REQUIRED BY THE Federal Debt Collection Act] This is a communication to collect a debt or to obtain information about you. Any information obtained will be used for that purpose. Federal law provides that if you do not dispute this debt within 30 days from receipt of this notice, or any portion of it, the debt will be assumed to be valid by the debt collector. If you dispute the debt within 30 days from receipt of this notice, the debt collector will cease attempts to collect from you. The landlord (who is not a debt collector) retains the right to file an unlawful detainer or other legal proceeding against you in the event you have failed to pay as provided above without having to wait 30 days.

CAVEAT: This last paragraph is not necessary if the Landlord is sending this Notice under his/her own name or signed by an employee or officer or affiliated representative. Otherwise, this language is required for a ''debt collector'' to sign as ''agent.''

By ————————————

Option 1—If sheriff serves it.

SHERIFF:

After service please return the original copy of this notice together with your return thereon, to:

ABC Apartments

123 Washington Street

Arlington, VA 22201

or

Option 2—Where sheriff does not serve it and it is for residential rentals only.

I hereby certify that I served the above notice upon the named Tenant by mailing a copy of it to him at his dwelling unit **and** by hand delivery to his dwelling unit by

[ ] personal service on tenant

[ ] delivery to member of family over 16 years

[ ] by posting on the front door after first ascertaining that the person(s) to be served or a family member of suitable age for service was not available for service.

the ——— day of ————, 20—.

By ———————————— (Agent)

or

Option 3—For general use.

Served this ——— day of ————, 20—

By ——————————

Section 18:2 **30-day notice quit**

To: Mr. John Doe

1234 Washington Street

Apartment #1

Arlington, VA

30-Day Notice to Quit

YOU ARE HEREBY GIVEN 30-day's notice to vacate the premises. You must vacate no later than ——————, 20—. Failure to vacate will result in legal action to recover possession, plus all costs, damages and attorney's fees permitted by law. The landlord hereby gives notice to the tenant that any rent after receipt of this notice will be accepted with reservation of all of landlord's rights to obtain possession of the property and recover all of his costs and attorney's fees. Any items of personal property left in the premises would be disposed of within the twenty-four hour period after termination. You shall have the right to remove your personal property from the premises at reasonable times during the twenty-four hour period after termination or at such other reasonable times until the landlord has disposed of the remaining personal property of the tenant.

The landlord has the right to withhold a reasonable sum for unpaid utilities for which you are liable from the security deposit. If you have paid the utilities up to the time you have vacated the premises, then you must provide the landlord with written proof of such payment. Upon receiving such evidence, then that sum will be returned to you in 10-days unless there are other rents and damages that are being withheld from the deposit.

[REQUIRED BY THE Federal Debt Collection Act] This is a communication to collect a debt or to obtain information about you. Any information obtained will be used for that purpose. Federal law provides that if you do not dispute this debt within 30 days from receipt of this notice, or any portion of it, the debt will be assumed to be valid by the debt collector. If you dispute the debt within 30 days from receipt of this notice, the debt collector will cease attempts to collect from you. The landlord (who is not a debt collector) retains the right to file an unlawful detainer or other legal proceeding against you in the event you have failed to pay as provided above without having to wait 30 days.

CAVEAT: This last paragraph is not necessary if the Landlord is sending this Notice under his/her own name or signed by an employee or officer or affiliated representative. Otherwise, this language is required for a ''debt collector'' to sign as ''agent.''

By: ——————————

Landlord

Use service options listed in Section 19:2

Section 18:3 21/30 Notice to cure

(FIRST BREACH)

Date:

TO: Mr. James Tenant

Apartment #2

1600 Pennsylvania Avenue

Arlington, VA 22201

YOU ARE HEREBY NOTIFIED that you are in breach of Section _____ of your rental agreement dated ————, 20— in the following respects. *You played your television too loudly and shouting was heard after eleven o'clock p.m. and before seven o'clock a.m.*

You must cure this breach within twenty-one (21) days of receipt of this notice. If you fail to cure the breach within said twenty-one (21) days, then you are hereby put on notice that the lease will terminate on ———— [This date must be at least 30 days after service of the Notice].

If the breach is cured within the twenty-one (21) days then the lease will not terminate. If, however, you fail to cure within the time prescribed, the lease will terminate on the date above indicated and you must vacate the property. If you fail to vacate at the termination of the lease, then you will be subject to a suit for eviction and be held responsible for all costs and damages incurred by landlord by reason of your breach and failing to vacate, including the landlord's reasonable attorney's fees. The landlord hereby gives notice to the tenant that any rent paid after receipt of this notice will be accepted with reservation of all of landlord's rights to obtain possession of the property and recover all of his costs and attorney's fees. Any items of personal property left in the premises would be disposed of within the twenty-four-hour period after termination. You shall have the right to remove your personal property from the premises at reasonable times during the twenty-four-hour period after termination or at such other reasonable times until the landlord has disposed of the remaining personal property of the tenant. The landlord has the right to withhold a reasonable sum for unpaid utilities for which you are liable from the security deposit. If you have paid the utilities up to the time you have vacated the premises, then you must provide the landlord with written proof of such payment. Upon receiving such evidence, then that sum will be returned to you in 10-days unless there are other rents and damages that are being withheld from the deposit.

[REQUIRED BY THE Federal Debt Collection Act] This is a communication to collect a debt or to obtain information about you. Any information obtained will be used for that purpose. Federal law provides that if you do not dispute this debt within 30 days

from receipt of this notice, or any portion of it, the debt will be assumed to be valid by the debt collector. If you dispute the debt within 30 days from receipt of this notice, the debt collector will cease attempts to collect from you. The landlord (who is not a debt collector) retains the right to file an unlawful detainer or other legal proceeding against you in the event you have failed to pay as provided above without having to wait 30 days.

CAVEAT: This last paragraph is not necessary if the Landlord is sending this Notice under his/her own name or signed by an employee or officer or affiliated representative. Otherwise, this language is required for a ‘‘debt collector’’ to sign as ‘‘agent.’’

By: ——————————— Landlord

See service options in Section 19:2

Section 18:4 30-day notice re: recurring breach after 21/30

Date____

TO: Mr. James Tenant

Apartment #2

1600 Pennsylvania Avenue

Arlington, VA 22201

YOU ARE HEREBY NOTIFIED that you are in breach of Section ____ of your rental agreement dated _____ in the following respects: You have failed to comply with the lease by playing your television too loudly and shouting was heard after eleven o’clock p.m. and before seven o’clock a.m.

You were earlier served with a 21-day notice to stop the above described conduct, but you have again breached the lease in the same or similar manner. Since you have again committed a breach of a like nature, you are hereby notified that your lease will terminate 30 days after receipt by you of this notice. If you fail to vacate within 30 days from service of this notice upon you, then you will be subject to a suit for eviction and be held responsible for all costs and damages incurred by landlord by reason of your breach and failure to vacate, including reasonable attorney’s fees.

The landlord hereby gives notice to the tenant that any rent after receipt of this notice will be accepted with reservation of all of landlord’s rights to obtain possession of the property and recover all of his costs and attorney’s fees. Any items of personal property left in the premises would be disposed of within the twenty-four-hour period after termination. You shall have the right to remove your personal property from the premises at reasonable times during the twenty-four-hour period after termination or at such other reasonable times until the landlord has disposed of the remaining personal property of the tenant.

The landlord has the right to withhold a reasonable sum for unpaid utilities for which you are liable from the security deposit. If you have paid the utilities up to the time you

have vacated the premises, then you must provide the landlord with written proof of such payment. Upon receiving such evidence, then that sum will be returned to you in 10-days unless there are other rents and damages that are being withheld from the deposit.

[REQUIRED BY THE Federal Debt Collection Act] This is a communication to collect a debt or to obtain information about you. Any information obtained will be used for that purpose. Federal law provides that if you do not dispute this debt within 30 days from receipt of this notice, or any portion of it, the debt will be assumed to be valid by the debt collector. If you dispute the debt within 30 days from receipt of this notice, the debt collector will cease attempts to collect from you. The landlord (who is not a debt collector) retains the right to file an unlawful detainer or other legal proceeding against you in the event you have failed to pay as provided above without having to wait 30 days.

CAVEAT: This last paragraph is not necessary if the Landlord is sending this Notice under his/her own name or signed by an employee or officer or affiliated representative. Otherwise, this language is required for a ‘‘debt collector’’ to sign as ‘‘agent.’’

By_____ Landlord

See service options in Section 19:2

Section 18:5 Notice by landlord reference unpaid utilities

Date____

TO: Mr. James Tenant

Apartment #2

1600 Pennsylvania Avenue

Arlington, VA 22201

The landlord has the right to withhold a reasonable sum for unpaid utilities for which you are liable from the security deposit. If you have paid the utilities up to the time you have vacated the premises, then you must provide the landlord with written proof of such payment. Upon receiving such evidence, then that sum will be returned to you in 10-days unless there are other rents and damages that are being withheld from the deposit

By_____-- Landlord

See service options in Section 19:2

Section 18:6 Affidavit in support of unlawful detainer

AFFIDAVIT IN SUPPORT OF UNLAWFUL DETAINER ACTION

§8.01-28

(NON-PAYMENT OF RENT) (COPY OF LEASE) (MILITARY AFFIDAVIT)

Personally appeared the undersigned Affiant, who, upon oath states as follows:

1. That Affiant is over 18 years of age and otherwise competent to make this Affidavit;

2. That Affiant is the _____ of_____, and is duly authorized as such officer, agent and representative to make this affidavit on its/their behalf;

3. That, _____, referred to as the Landlord herein, and _____, referred to as Tenant and/or Defendant herein, entered into a (oral) (written) lease for the rental by Tenant/Defendant(s) from the Landlord/Plaintiff(s) of the premises known as _____

   _____,
   situated in the (County)(City) of _____, Virginia. Said rental is for a (commercial)(residential) use.

4. The term of said rental began _____ and expire(s)(d) _____.

5. That the Tenant/Defendant(s) is(are) in default under said lease by reason of his/her/their failure to timely pay the rent as called for by the lese or under the law as follows:

Date Due	Rent Due	Late Fee	Other Due	Total Due

Less Amount Paid:

Date of payments	Amount paid

Total amount of payments:

Balance due and owing (total due less total paid) as of _____(date)

[Note to Reader: this can now include rent prorated up to the hearing date]

FROM THE DATE SHOWN HEREIN UNTIL JUDGMENT IS ENTERED, THE LANDLORD CLAIMS ANY ACCRUED AND UNPAID RENT, LATE FEES, AND ALL O THER COSTS, DAMAGES, AND UNPAID UTILITIES CHARGEABLE UNDER THE LEASE, AT ABOVE MONTHLY RENT RATE WHICH SUM, ON THE DAY OF JUDGMENT WILL BE PRO-RATED FOR THAT MONTH.

6. That Landlord has served the Tenant with a 5-day notice to pay as prescribed in:

[ ] §55-248.31 (new § 55.1-1245) of the VRLTA;

[ ] In accordance with paragraph ___ of the Lease Agreement where different than code requirement.

A **copy of the notice** is attached hereto as **Exhibit A**. Said notice was served on the Tenant on _____, 20____, by

[ ] personal delivery on Tenant(s);

[ ] upon personal delivery on a family member of Tenant residing the Subject Property with Tenant;

[ ] posting on the door of the residence there being no person on whom it could be served there at the time, plus a copy was mailed, by regular mail, postage prepaid, to the Tenant;

[ ] other means _____.

7. [ ] *(check if applicable)* Tenant(s) has failed to pay the rent as aforesaid within said 5-day period following service of the said notice upon Tenant(s).

47. [ ]*(check if applicable)* After the 5-day period to cure passed, Landlord accepted rent payments indicated above, reserving in writing all of Landlord's right to proceed for possession and a judgment for any balance that is due and owing as stated above.

8. Attorney's fees are provided for in paragraph _____ of the lease. The amount requested is $_____.

9. That to the best of Affiant's belief, the sums set forth above are justly due and payable to the Landlord without offset, counterclaim or grounds of defense.

10. [ ] *(check if applicable)* Affidavit under Servicemembers Civil Relief Act is attached.

    a. If no affidavit is attached, then the following:

    b. [ ] *(check if applicable)*The Tenant (is) (is not) a member of the military service of the U. S.; The facts that support that statement are: _____

    c. [ ] *(check if applicable)* Affiant is unable to determine whether or not the Tenant/Defendant is in military service.

11. The **copy of the lease** that is attached hereto as **Exhibit B** is a true and accurate copy of the original lease.
    a. [ ] *(check if applicable)* a photocopy of a properly executed paper document; or
    b. [ ] *(check if applicable)* a paper printout of an electronically stored document including a copy of the original lease; or
    c. [ ] *(check if applicable)* other documents described as _____

Pursuant to §8.01-4.3 Va. Code, Affiant declares, certifies and states under penalty of perjury that the foregoing is true and correct.

_____

Date _____

[ ] Plaintiff

[ ] Attorney for Plaintiff

[ ] Agent for Plaintiff

Section 18:7 **Affidavit/copy/balance due**

Affidavit to Submit a Copy of Lease & Amount Due as of Court Date

Pursuant to §8.01-126(B) Va. Code, the undersigned plaintiff in this unlawful detainer takes oath that the copy of such document is a true and accurate copy of the original lease.

The submission is:

❒ a photocopy of a properly executed paper document or

❒ a paper printout of an electronically stored document including a copy of the original lease or

❒ other document(s) described as _____;

❒ Pursuant to §8.01-126(C), [where the defendant does not appear in court] the affiant states that the amount of outstanding rent, late charges, attorney fees and any other charges or damages due as of _____ ("Court Date") are:

Rent _____

Late Charges _____

Attorney Fees _____

Other Charges or Damages _____

Total _____

Pursuant to §8.01-4.3 Va. Code, I declare, certify and state under penalty of perjury that the foregoing is true and correct.

Dated_____ _____

❒ Plaintiff

❒ Attorney for Plaintiff

❒ Agent for Plaintiff

Section 18:8 Letter of reservation (non-waiver letter)

Re: Acceptance of rent with reservation

Dear Tenant:

You recently presented us with a payment of $_____, by (check) (money order) (cash), representing unpaid rent for the period of _____.

This (did) (did not) pay your arrears in full, leaving a balance of $____ now due and owing.

We gave you a 5-day notice to pay on _____. Since you did not cure the full amount of the unpaid balance within the 5-days of the notice, your right to possession has terminated.

This letter is written to inform you that we accept your rent payment with full reservation of all of our rights and without prejudice to any right to proceed against you in court.

This means that we still have the right to proceed in court against you for the unpaid rent, damages, and also to recover possession of the subject property. We are not waiving any of our rights in this regard.

ED NOTE: Remember to send this within 5 business days of receipt of the rent unless this reservation was included in the notice to cure.

By _____ Landlord

Section 18:9 Summon for unlawful detainer (Form DC-421)

Form modified 7/19 follows

Using This Revisable PDF Form

1. Copies

    a. Original – to court.

    b. First copy – to defendant. If more than one defendant, provide a copy for *each* defendant.

    c. Second copy – to plaintiff.

2. All but Case Disposition prepared by plaintiff (claim, parties, and court name and address) and clerk (Data Element Nos. 3, 4, 5, and 19). Case Disposition, orders regarding bill of particulars and grounds of defense and order for payment of rent into court prepared by judge.

3. Attachments

    a. Form DC-413, CERTIFICATE OF MAILING POSTED SERVICE, or its equivalent – if filed by plaintiff.

    b. Form DC-325, REQUEST FOR WITNESS SUBPOENA – if completed before this form is issued.

    c. Form DC-422, NOTICE OF HEARING TO ESTABLISH FINAL RENT AND DAMAGES.

    d. Copy of five-day notice to pay or quit, or other notice of unlawful detainer, if required by statute.

4. Preparation details

    a. This form merges the application (claim) and affidavit and civil warrant onto one form so that all but a few data elements needed for issuing the civil warrant are prepared by the plaintiff.

    b. For Data Element No. 17, notices, such as the five-day notice to pay or quit, do not have to be attached to this form when issued, but such notice must be presented in court at trial either by attachment to this form or by being presented to the judge.

    c. The data elements for service of process on the reverse of the SUMMONS FOR UNLAWFUL DETAINER are to be completed for each defendant who is served.

    d. In lieu of a separate certificate of mailing, the plaintiff, the plaintiff's attorney, or the plaintiff's agent may complete Data Elements Nos. 10 and 11 on the back of the form if the mailing to defendants occurs at or prior to filing of the warrant.

    e. On the reverse, Data Element Nos. 12, 13 and 14 are for optional use by clerks in tracking the issuance of post-judgment process. This data is added when such post-judgment process is prepared because the clerk's staff has to use the warrant in preparing and issuing post-judgment process.

    f. This form contains a provision for the clerk to note that a Notice of Satisfaction for this judgment has been received and is attached.

SUMMONS FOR UNLAWFUL DETAINER

(CIVIL CLAIM FOR EVICTION)

VA. CODE § 8.01-126
Commonwealth of Virginia

1 General District Court
CITY OR COUNTY

2
STREET ADDRESS OF COURT

TO ANY AUTHORIZED OFFICER: Summon the Defendant(s) as provided below:
TO THE DEFENDANT(S): You are commanded to appear before this Court on

3 to answer this civil claim.
RETURN DATE AND TIME

4 DATE ISSUED

5 [ ] CLERK [ ] DEPUTY CLERK [ ] MAGISTRATE

CLAIM AND AFFIDAVIT: That Defendant(s) unlawfully detains and withholds from Plaintiff(s):

6
ADDRESS/DESCRIPTION OF DETAINED PROPERTY

and that the Defendant should be removed from possession based on the following:

7 [ ] unpaid rent [ ]

and further that rent is due and owing and damages have been incurred as follows:

$ 8 rent due for 9 and $ 10 late fee
RENT PERIOD

and $ 11 damages for 12 with interest 13
RATE(S) AND BEGINNING DATE(S)

and $ 14 costs and $ 15 civil recovery and $ 16 attorney's fees.

17 [ ] Plaintiff requests judgment for all amounts due as of the date of the hearing.

18 [ ] This summons is filed to terminate a tenancy pursuant to the Virginia Residential Landlord and Tenant Act, § 55-248.2 *et seq.* of the Code of Virginia.

All required notices have been given. 19
[ ] PLAINTIFF(S) [ ] PLAINTIFF'S ATTORNEY [ ] PLAINTIFF'S AGENT

Subscribed and sworn to before me this 20 day of , 20

My commission expires: 22 21
NOTARY REGISTRATION NO. 23 [ ] CLERK [ ] DEPUTY CLERK [ ] MAGISTRATE [ ] NOTARY PUBLIC
[ ] City [ ] County of 24

CASE DISPOSITION

25 { [ ] [ ] named DEFENDANT(S).

[ ] JUDGMENT that Plaintiff(s) recover against

26 [ ] possession of the premises described above pursuant to § 8.01-128.

27 [ ] A hearing shall be held on to establish final rent and damages.
DATE AND TIME

28 [ ] Immediate writ of possession authorized pursuant to Virginia Code
[ ] § 8.01-129 with a judgment [ ] of default [ ] arising out of a trustee's deed following foreclosure
29 [ ] for the nonpayment of rent [ ] for immediate non-remediable termination.
[ ] § 55-243(C) or § 55-248.34:1(D).

DEFENDANT(S) PRESENT? [ ] YES 30 [ ] NO

31 DATE 32 JUDGE

[ ] Rent, in the sum of $ 33 and $ 34 late fee

and $ 35 damages with interest 36 and
RATE(S) AND BEGINNING DATE(S)

$ 37 costs and $ 38 civil recovery and $ 39 attorney's fees.

40 HOMESTEAD EXEMPTION WAIVED? [ ] YES [ ] NO [ ] CANNOT BE DEMANDED

41 [ ] JUDGMENT FOR [ ] NAMED DEFENDANT(S) [ ]

42 [ ] NON-SUIT [ ] 43 DISMISSED DEFENDANT(S) PRESENT? [ ] 44 YES [ ] NO

45 DATE 46 JUDGE

FORM DC-421 FRONT 10/17

CASE NO. 47

48
PLAINTIFF(S) NAME(S) (LAST, FIRST, MIDDLE)

TELEPHONE NUMBER

v. 49
DEFENDANT(S) NAME(S) (LAST, FIRST, MIDDLE)

TELEPHONE NUMBER

TO DEFENDANT: You are not required to appear; however, if you fail to appear, judgment may be entered against you. See the additional notice on the reverse about requesting a change of trial location and your right to prevent this unlawful detainer action through payment of amounts owed.

50 [ ] To dispute this case, you must appear on the return date to try this case
[ ] To dispute this case, you must appear on the return date for the judge to set another date for trial.

If you fail to appear and a default judgment is entered against you, a writ of possession may be issued immediately for possession of the premises.

Bill of Particulars ordered 51
DUE DATE

Grounds of Defense ordered 52
DUE DATE

ATTORNEY FOR PLAINTIFF(S)
53
TELEPHONE NUMBER

ATTORNEY FOR DEFENDANT(S)
54
TELEPHONE NUMBER

DISABILITY ACCOMMODATIONS for loss of vision, hearing, mobility, etc. Contact the court ahead of time.

HEARING DATE AND TIME

55

56 [ ] Redemption tender presented; continued to:
HEARING DATE AND TIME

[ ] Defendant must pay:

$ 57
RENT OWED

into the court to be held in escrow by

58
DATE

and any rents coming due prior to the next hearing date must also be paid into the court.

59
JUDGE'S INITIALS

MONEY JUDGMENT PAID OR SATISFIED PURSUANT TO ATTACHED NOTICE OF SATISFACTION

60
DATE

61
CLERK

Data Elements, *front*

1. Court name.
2. Court street address.

To be completed by court personnel:

3. Return date and time (date and time of scheduled appearance).
4. Date of issuance of this SUMMONS.
5. Signature of person issuing this SUMMONS. Check the appropriate title box below the signature line.

6. Insert street address and apartment number, if any; otherwise, give best location and description of property (such as "State Route 611, Box 72-A, Any place Co., Va."--2 bedroom white frame house).
7. Check and, if needed, insert reason why defendants allegedly are unlawfully detaining the property.
8. Total amount of unpaid rent to date.
9. Rental period for which rent is unpaid.
10. Amount of late fee, if applicable.
11. Damages, if any, caused by unlawful detainer.
12. Reasons for claiming damages.
13. Interest claimed, if applicable.
14. Amount of court costs claimed in this case.
15. Amount of civil recovery claimed.
16. Attorney's fee (if any) claimed.
17. Check this box if plaintiff requests judgment for all amounts due as of the date of the hearing.
18. Check this box if the case falls under the Virginia Residential Landlord and Tenant Act.

To be completed by person taking acknowledgement:

19. Signature of person filing the claim, stating notice has been given if required. Check the appropriate title box below the signature line.
20. Date of attestation.
21. Signature of person taking the attestation. Check the appropriate title box and, if appropriate, insert the status data of the signer below the signature line.
22. If notary public taking the attestation, insert notary's commission expiration date.
23. If notary public taking the attestation, insert notary's registration number.
24. Locality in which attestation taken. Check the appropriate box.

To be completed by the judge:

25. Check the box at margin to indicate that a judgment was given to plaintiff and check the correct box to indicate if judgment is entered against less than all defendants or judgment is entered against all defendants.
26. Check box if possession granted to plaintiff.
27. Check box if plaintiff requested time to establish final rent and damages and insert date and time of hearing.
28. Check if immediate writ of possession is authorized.
29. Check reason immediate writ of possession is authorized.
30. Check the applicable box. If there are multiple defendants and not all were present, list names of those present.
31. Date of entry of judgment for possession.
32. Signature of judge.
33. Amount of judgment for rent.
34. Late fee awarded.
35. Amount of damages awarded.
36. Interest rate in annual percentage rate and date from which interest runs.
37. Court costs assessed against the defendant.
38. Amount awarded for civil recovery.
39. Attorney's fees awarded by court.
40. Check applicable box.
41. Check the box on margin to indicate that judgment was for the one or more defendants and then check the first box if judgment for all defendants is entered. If judgment is for less than all defendants, name the defendants for whom judgment is entered.
42. Check if a nonsuit is entered.
43. Check if the case is dismissed as to all defendants. If dismissal is for less than all defendants, name the defendants for whom the case is dismissed.
44. Check box indicating if defendant(s) were present.
45. Date of entry of judgment for rent and damages.
46. Signature of judge.

47. Court case number.
48. Names and addresses of plaintiffs.
49. Names and addresses of defendants.

To be completed by the judge or clerk:

50. Check applicable box.
51. If judge orders filing of bill of particulars, insert the appropriate date.
52. If judge orders filing of grounds of defense, insert the appropriate date.

53. Name and address of plaintiff's attorney.
54. Name and address of defendant's attorney.

To be completed by judge or clerk

55. Return date. Space is left for adding continuance dates.
56. Check if redemption tender presented. Enter hearing date and time.
57. If continuance granted and judge orders defendant to pay rent to be held in escrow by the court, insert amount of rent owed.
58. Date by which rent owed must be paid into the court.
59. Judge's initials.
60. Date NOTICE OF SATISFACTION received and attached to SUMMONS.
61. Signature of clerk.

To the Defendant(s):

(1) The preferred location for an Unlawful Detainer action is the city or county where the property is located. If the plaintiff has filed this case in a city or county other than where the property you rent is located, you may object to the location. The court may transfer the case to the preferred location, if the court agrees with you. The court may award costs and attorney's fees to you if the court agrees with your objection. To object to the location of the suit, you must do the following:

- Prepare a written request which contains (a) this court's name, (b) the case number and the "return date" as shown on the other side of this form in the left column under the words "TO THE DEFENDANT(S)," (c) Plaintiff(s)' name(s) and your name(s), (d) "I move to object to venue of this case in this court because" and state the reasons for your objection and also state in which city or county the case should be tried, and (e) your signature and mailing address.
- File the written request in the clerk's office before the trial date (use the mail at your own risk) or give it to the judge when your case is called on the return date. Also send or deliver a copy to the plaintiff.
- If you mail your written request to the court, the clerk will notify you of the judge's decision.

(2) If you pay the landlord or his attorney or pay into court all (i) rent due and owing as of the court date as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, and (v) costs of the proceeding as provided by law, this unlawful detainer action will be dismissed pursuant to Virginia Code § 55-243 or 55-248.34:1. You may exercise this right only once every 12 months that you continue to live in the same place, regardless of the term of the rental agreement or any renewal term.

(3) You may tell your landlord that you want another person to receive a copy of this summons, and the landlord shall send a copy to that person. However, the person you identify will not, by receiving a copy of the summons, become a party to the case or be able to challenge the landlord's actions on your behalf. Virginia Code § 55-248.9:1

I certify that I mailed a copy of this document to the defendants named therein at the address show therein on

10 ..... DATE

11 _____ [ ] PLAINTIFF [ ] PLAINTIFF'S ATTORNEY [ ] PLAINTIFF'S AGENT

Fi. Fa. issued on 12 .....

Interrogatories issued on 13 .....

Garnishment issued on 14 .....

RETURNS: Each defendant was served according to law, as indicated below, unless not found.

Name 1 .....

Address 2 .....

.....

[3] Personal Service Tel. No. .....

4 [ ] Being unable to make personal service, a copy was delivered in the following manner:

[ ] Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above.

5 .....

.....

[ ] Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)

[ ] Served on the Secretary of the Commonwealth

[6] Not found 7 _____ SERVING OFFICER

8 ..... DATE for 9 _____

Name .....

Address .....

.....

[ ] Personal Service Tel. No. .....

[ ] Being unable to make personal service, a copy was delivered in the following manner:

[ ] Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above.

.....

.....

[ ] Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)

[ ] Served on the Secretary of the Commonwealth

[ ] Not found _____ SERVING OFFICER

..... DATE for _____

Data Elements, *reverse*

1. Name of person to be summoned. If person is a corporation's officer, designated agent, managing employee or registered agent, show name of corporation on second line.

2. Address and telephone number of person to be summoned.

To be completed by serving officer:

3. Check this box if personal service obtained.

4. Serving officer to check the appropriate box to designate type of substitute service.

5. If served by leaving the subpoena with a family member age 16 or older, check appropriate box and insert required information.

6. Check this box if unable to serve process.

7. Signature of serving officer.

8. Date of signature.

9. Name of sheriff if served by deputy sheriff.

10. Date that plaintiff, plaintiff's attorney, or plaintiff's agent mailed copy of pleading to defendant.

11. Signature of person mailing the pleading. Check the appropriate title box below the signature line.

For use by clerk:

12. Date(s) writ of fieri facias was issued.

13. Date(s) summons to answer interrogatories was issued.

14. Date(s) garnishment summons was issued.

Section 18:10 **Bill of particulars (Form DC-441)**

Using This Revisable PDF Form

1. Copies

    a. Original – to court.

    b. Copy – to defendant.

2. Prepared by plaintiff.

3. Attachments

    a. Additional sheets with written statements explaining details of claims (optional).

    b. Form DC-443, ITEMIZED LIST OF DAMAGES (optional).

4. Preparation details

    a. Form DC-411, BILL OF PARTICULARS is designed to primarily to assist *pro se* litigants in complying with a court's order to produce a bill of particulars.

    b. Form DC-411, BILL OF PARTICULARS may be submitted voluntarily or pursuant to court order for compliance with defendant's demand for particulars.

BILL OF PARTICULARS
Commonwealth of Virginia Rule 7B:2

Case No. .....1.....

.....2.....
TRIAL DATE AND TIME

.....3..... General District Court
CITY OR COUNTY

.....4.....
STREET ADDRESS OF COURT

.....5..... v. .....
PLAINTIFF DEFENDANT

TO THE PLAINTIFF:
You are required to file with the court, and serve by mailing, a written BILL OF PARTICULARS by .....6.....
DATE

The defendant's written GROUNDS OF DEFENSE is due to be filed with the court and served by mailing by .....7.....
DATE

You are further required to fully state, in the numbered paragraphs below, each of the reasons/grounds why you think the defendant owes you the money or property claimed. You may attach additional paper if needed.

1. _____

_____8_____

_____

2. _____

_____

_____

3. _____

_____

_____

4. _____

_____

_____

5. _____

_____

_____

9 [ ] See continuation sheet.

NOTICES: Failure to comply with this order may be grounds for awarding summary judgment in favor of the adverse party. Both parties must be prepared, at trial, to prove their case with admissible evidence. Upon trial, the judge may exclude evidence as to matters not described in this pleading.

.....10.....
DATE

_____11_____
[ ] PLAINTIFF [ ] PLAINTIFF'S ATTORNEY

.....12.....
PRINT NAME

.....13.....
ADDRESS /TELEPHONE NUMBER OF SIGNATOR

PLAINTIFF'S CERTIFICATE

I certify that I delivered or mailed a completed copy of this BILL OF PARTICULARS to the clerk of this court and mailed to each attorney for the defendant, or to the defendant if not represented,
this .....14..... day of ..... , 20..... .

_____15_____
SIGNATURE OF [ ] PLAINTIFF [ ] PLAINTIFF'S ATTORNEY

Data Elements

1. Case number.
2. Date and time trial scheduled.
3. Name of court.
4. Street address of court.
5. Style of case.
6. Date plaintiff ordered by court to file and serve bill of particulars.
7. Date opposing party is required to file and serve grounds of defense.
8. Written statements concerning specific nature of plaintiff's claims.
9. Check box if plaintiff's statements are continued on additional sheet(s).
10. Date of signing of bill of particulars.
11. Signature of *pro se* plaintiff or plaintiff's attorney. Check appropriate box below signature line.
12. Printed name of signatory in Data Element No. 11.
13. Address and telephone number of signatory.
14. Date of certification of delivery or mailing of bill of particulars.
15. Signature of *pro se* plaintiff or plaintiff's attorney. Check appropriate box below signature line.

Section 18:11 **Itemization of damages (Form DC-443)**

Using This Revisable Form

1. Copies

   a. Original – to court.

   b. Copy – to opposing party.

2. Prepared by plaintiff.

3. Attachments

   a. Form DC-441, BILL OF PARTICULARS or Form DC-442, GROUNDS OF DEFENSE.

4. Preparation details

   a. This form serves as a supplement to Forms DC-441, BILL OF PARTICULARS and DC-442, GROUNDS OF DEFENSE. These forms were designed primarily to assist pro se litigants in comply with a court's order to produce relevant pleadings.

ITEMIZED LIST OF DAMAGES
Commonwealth of Virginia Rule 7B:2

Case No. .....1.....

.....2.....
HEARING DATE AND TIME

.....3..... v. .....
PLAINTIFF DEFENDANT

Attach to a bill of particulars or grounds of defense as appropriate. You may attach additional paper if needed.

	ITEM(S) (Describe)	AMOUNT $ Claimed
1.	4	5
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
	Total $	6

7 [ ] See continuation sheet.

Data Elements

1. Case number.
2. Date and time hearing or trial scheduled.
3. Style of case.
4. Description of item alleged to be damaged (e.g., brand name, serial number, quantity, age of item, purchase price, date of purchase).
5. Insert dollar amount claimed.
6. Insert total dollar amount claimed.
7. Check box if additional sheet(s) attached.

Section 18:12 **Notice of hearing to establish final rent and damages. (Form DC-422)**

Using This Revisable PDF Form

1. Copies

    a. Original – to defendant/respondent.

    b. First copy – to district court and filed with case papers.

2. Prepared by plaintiff.

3. Attachments – none.

4. Preparation details

    This form is to be used to provide notice to a defendant/respondent of the hearing to establish final rent and damages in an unlawful detainer action where the court granted a continuance after granting possession to determine final rent and damages due. The plaintiff should provide the defendant/respondent the amounts requested. The notice must be mailed at least 15 days prior to the date of the hearing.

NOTICE OF HEARING TO ESTABLISH FINAL RENT AND DAMAGES

Commonwealth of Virginia VA. CODE § 8.01-128

Case No. 1

2
CITY OR COUNTY

[ ] Circuit Court
[ ] General District Court

3
COURT ADDRESS

This notice is filed in connection with Case No. 4

5
PLAINTIFF

v.

6
DEFENDANT

The plaintiff hereby gives notice to the defendant/respondent that, because of a hearing on 7 (DATE) upon a Summons for Unlawful Detainer for 8 (ADDRESS/DESCRIPTION OF DETAINED PROPERTY) at which the above named court granted a final, appealable judgment for possession of the property unlawfully entered or detained, a writ of possession for the premises, and upon the continuance of the case, **another hearing will be held on** 9 (DATE) **at** ____ (TIME) **to establish final rent and damages in the following amount(s):**

$ 10 (RENT) rent due for 11 (PERIOD OF TIME)

and $ 12 late fee and $ 13 damages for 14,

with interest 15 (RATE(S) AND BEGINNING DATE(S)) and $ 16 costs and $ 17 civil recovery

and $ 18 attorney's fees.

19 [ ] See attached sheet for itemized damages.

Total rent and damages claimed $ 20

The plaintiff further notifies the defendant/respondent that the plaintiff seeks judgment in the amount(s) specified above.

The undersigned hereby certifies to mailing this notice to the defendant at the defendant's last known address of

21
ADDRESS

on 22 (DATE OF MAILING) (must be at least 15 days prior to the continuance date specified above).

A copy of this notice has been filed with the court.

23
DATE

24
[ ] PLAINTIFF [ ] PLAINTIFF'S ATTORNEY

25
PRINT NAME

ADDRESS/TELEPHONE NUMBER OF SIGNATOR

Data Elements

1. Court case number.
2. Jurisdiction name. Check the appropriate box to indicate the court.
3. Street address of court.
4. Case number of unlawful detainer action.
5. Name and address of plaintiff.
6. Name and address of defendant.
7. Date of hearing at which possession was granted.
8. Address and/or description of the property at issue.
9. Date and time of hearing on the issue of rent and damages.
10. Amount of rent requested.
11. Rental period for which rent is unpaid.
12. Amount of late fee, if applicable.
13. Damages, if any, caused by unlawful detainer.
14. Reasons for claiming damages.
15. Interest claimed, if applicable.
16. Amount of court costs claimed in this case.
17. Amount of civil recovery claimed, if any.
18. Attorney's fee, if any, claimed.
19. Check box if attaching sheet detailing itemized damages.
20. Amount of total rent and damages claimed.
21. Address to which the notice was mailed.
22. Date notice was mailed to defendant.
23. Date of signature.
24. Signature of plaintiff or plaintiff's attorney.
25. Printed name, address and phone number of person signing the notice.

Section 18:13 **Request for writ of possession (Form DC 469).**

Using This Revisable PDF Form

1. Copies

    a. Original – to court after execution by sheriff.

    b. First copy – to defendant.

    c. Additional copies as dictated by local practice.

2. Data Element Nos. 1-5 and 10-11 prepared by the plaintiff. Data Element Nos. 6-9 prepared by clerk or judge. Data Element Nos. 12-16 are prepared by the deputy sheriff or sheriff who executes the writ.

3. Attachments – Itemized list of credits and dates of payment for purpose of calculating the total interest due.

4. Preparation details – Use district court form DC-467, WRIT OF FIERI FACIAS, to recover the rent, damages, profit and costs. See Va. Code §§ 8.01-470 and 8.01-472.

REQUEST FOR WRIT OF POSSESSION IN UNLAWFUL DETAINER PROCEEDINGS

Commonwealth of Virginia Va. Code § 8.01-471

[ ] General District Court
[ ] Circuit Court

1
CITY OR COUNTY

TO THE COURT:

I/we, the plaintiff(s) in this proceeding, request that this court issue a writ of possession against the defendants with regard to the following premises: 2

This request is made upon a judgment for possession dated: 3

I/we represent that, following the entry of the judgment for possession, the landlord has not accepted rent payments without reservation, and has provided the required notice set forth in Virginia Code § 55-225.47 or § 55-248.34:1.

4
DATE

5
[ ] PLAINTIFF [ ] PLAINTIFF'S ATTORNEY [ ] PLAINTIFF'S AGENT

CASE NO. 9

10
PLAINTIFF(S) (LAST NAME, FIRST NAME, MIDDLE INITIAL)

v.

11
DEFENDANT(S) (LAST NAME, FIRST NAME, MIDDLE INITIAL)

WRIT OF POSSESSION

Va. Code §§ 8.01-470, 8.01-472

TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth to cause the Plaintiff(s) to have possession of the following premises from the defendant(s): 6

You are further commanded to make a return before me within 30 days of this date as to the day and manner of executing this writ.

7
DATE

8
[ ] CLERK [ ] JUDGE

CAME TO HAND

12
DATE AND TIME

13, SHERIFF

EXECUTED by taking into possession the within-named premises and delivering possession of it to the plaintiff(s).

14
DATE

15, SHERIFF

by 16
DEPUTY SHERIFF

Data Elements

1. Jurisdiction name and check appropriate box for court.
2. Description of judgment of possession.
3. Date of judgment of possession.
4. Date plaintiff, plaintiff's attorney, or plaintiff's agent signed request.
5. Signature of plaintiff, plaintiff's attorney, or plaintiff's agent.
6. Description of premises whose possession is to be recovered.
7. Date of issuance of writ.
8. Signature of issuing official. Check the appropriate title box below the signature line.
9. Court case number.
10. Names of plaintiffs.
11. Names of defendants.
12. Date and time of receipt by sheriff's office.
13. Signature of sheriff.
14. Date on which writ was executed.
15. Signature of sheriff (type or print if executed by deputy sheriff).
16. Signature of deputy sheriff if served by deputy sheriff.

Section 18:14 **Affidavit- default judgment servicemembers civil relief act.**

Using This Revisable PDF Form

1. Copies

    a. If affidavit only, original – to court.

    b. If used to appoint counsel, a copy should be provided to the attorney and the servicemember, if possible.

2. Affidavit prepared by plaintiff. Appointment of counsel and/or stay of proceedings section(s) prepared by clerk or judge and signed by judge.

3. Possible Attachments – Any document initiating a civil proceeding.

4. Preparation details

    a. This form is for use in complying with the requirements of the Servicemembers Civil Relief Act. It should be completed by the plaintiff in every civil proceeding before a court in the Commonwealth of Virginia.

    b. This form may used by the court to appoint counsel for the service member.

    c. While this form may also be used to stay the proceedings if a stay is required under federal law, 50 U.S.C. §§ 3931 or 3932, please use form DC-417, ORDER FOR STAY – SERVICEMEMBERS CIVIL RELIEF ACT, for more detailed judicial findings.

AFFIDAVIT – DEFAULT JUDGMENT
SERVICEMEMBERS CIVIL RELIEF ACT

Commonwealth of Virginia VA. CODE § 8.01-15.2

Case No. 1

2
RETURN DATE AND TIME

[ ] Circuit Court [ ] General District Court
[ ] Juvenile and Domestic Relations District Court

3
CITY OR COUNTY

4 v./*In re:*

I, 5, the undersigned affiant, states the following under oath:
PRINT NAME

6 [ ] The defendant/respondent [ ] is in military service. [ ] is not in military service.

7

The following facts support the statement above:

8

9 [ ] The affiant is unable to determine whether or not the defendant/respondent is in military service.
Pursuant to 50 U.S.C. § 3931, if the court is unable to determine whether the defendant/respondent is in military service based upon the affiant's statement, the court, before entering judgment, may require the plaintiff/petitioner to file a bond in an amount approved by the court.

10 DATE

11 AFFIANT'S SIGNATURE

The above-named affiant personally appeared this day before the undersigned, and upon duly being sworn, made oath that the facts stated in this affidavit are true to the best of his or her knowledge, information and belief.

12 DATE

13
[ ] CLERK [ ] DEPUTY CLERK [ ] MAGISTRATE [ ] JUDGE [ ] INTAKE OFFICER

FOR NOTARY PUBLIC'S USE ONLY: 14

State of [ ] City [ ] County of

Acknowledged, subscribed and sworn to before me this day of , 20 .

NOTARY REGISTRATION NUMBER

NOTARY PUBLIC
(My commission expires:)

NOTICE REGARDING APPOINTMENT OF COUNSEL TO REPRESENT ABSENT SERVICEMEMBER:
Where appointment of counsel is required pursuant to 50 U.S.C. § 3931 or § 3932 or another section of the Servicemembers Civil Relief Act, the court may assess reasonable attorney fees and costs against any party as the court deems appropriate, including a party aggrieved by a violation of the Act, and shall direct in its order which of the parties to the case shall pay such fees and costs, except the Commonwealth unless it is the party that obtains the judgment. Further, counsel appointed pursuant to the Servicemembers Civil Relief Act shall not be selected by the plaintiff or have any affiliation with the plaintiff.

FOR COURT USE ONLY:

15 [ ] **ORDER OF APPOINTMENT OF COUNSEL**
I find that appointment of counsel is required pursuant to 50 U.S.C. § 3931 or § 3932 or another section of the Servicemembers Civil Relief Act and therefore, I appoint the lawyer indicated below to represent the absent servicemember named as defendant/respondent above.

NAME, ADDRESS OF COURT APPOINTED LAWYER 15

16
NEXT HEARING DATE AND TIME

17
DATE

18
JUDGE

[ ] STAY OF PROCEEDINGS

19 I find that a stay of proceedings is required pursuant to 50 U.S.C. § 3931 and, therefore, such a stay, for a minimum period of 90 days, is ordered until
NEXT HEARING DATE AND TIME

20 DATE

21 JUDGE

Data Elements

1. Case number.
2. Return date and time.
3. Court name. Check the box for the type of court.
4. Case Name.
5. Name of plaintiff in civil case/person completing the affidavit.
6. Check the box if affiant was able to determine if the defendant is in military service.
7. Check applicable box.
8. Provide information that supports the information provided in the Data Element no. 7.
9. Check if the affiant was not able to determine if the defendant was in military service.
10. Date of signature
11. Signature of affiant.
12. Date of taking oath.
13. Signature of person acknowledging affidavit. Check the appropriate title box.
14. If acknowledged by a notary public, all enclosed fields must be completed including notary's registration number and date of commission expiration.
15. Check if attorney appointed to represent servicemember. Name and address of court appointed lawyer, if applicable.
16. Insert date and time of next hearing.
17. Insert date of judge's signature.
18. Signature of judge making appointment.
19. Check this box if order for stay of proceedings is entered. Include next hearing date.
20. Insert date of order for stay of proceedings.
21. Insert judge's signature.

Chapter 19 **VRLTA Code**

WITH NEW TITLE 55.1 NUMBERS CROSS REFERENCED WITH OLD TITLE 55 NUMBERS

§ 55.1-1200 (formerly § 55-248.4). Definitions.

As used in this chapter, unless the context requires a different meaning:

"Action" means any recoupment, counterclaim, setoff, or other civil action and any other proceeding in which rights are determined, including actions for possession, rent, unlawful detainer, unlawful entry, and distress for rent.

"Application deposit" means any refundable deposit of money, however denominated, including all money intended to be used as a security deposit under a rental agreement, or property, that is paid by a tenant to a landlord for the purpose of being considered as a tenant for a dwelling unit.

"Application fee" means any nonrefundable fee that is paid by a tenant to a landlord or managing agent for the purpose of being considered as a tenant for a dwelling unit.

"Assignment" means the transfer by any tenant of all interests created by a rental agreement.

"Authorized occupant" means a person entitled to occupy a dwelling unit with the consent of the landlord, but who has not signed the rental agreement and therefore does not have the financial obligations as a tenant under the rental agreement.

"Building or housing code" means any law, ordinance, or governmental regulation concerning fitness for habitation or the construction, maintenance, operation, occupancy, use, or appearance of any structure or that part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

"Commencement date of rental agreement" means the date upon which the tenant is entitled to occupy the dwelling unit as a tenant.

"Community land trust" means a community housing development organization whose (i) corporate membership is open to any adult resident or organization of a particular geographic area specified in the bylaws of the organization and (ii) board of directors includes a majority of members who are elected by the corporate membership and are composed of tenants, corporate members who are not tenants, and any other category of persons specified in the bylaws of the organization and that:

1. Is not sponsored by a for-profit organization;

2. Acquires parcels of land, held in perpetuity, primarily for conveyance under long-term ground leases;

3. Transfers ownership of any structural improvements located on such leased parcels to the tenant; and

4. Retains a preemptive option to purchase any such structural improvement at a price determined by formula that is designed to ensure that the improvement remains affordable to low-income and moderate-income families in perpetuity.

"Dwelling unit" means a structure or part of a structure that is used as a home or residence by one or more persons who maintain a household, including a manufactured home, as defined in § 55.1-1300 (formerly § 55-248.41).

"Effective date of rental agreement" means the date on which the rental agreement is signed by the landlord and the tenant obligating each party to the terms and conditions of the rental agreement.

"Essential service" includes heat, running water, hot water, electricity, and gas.

"Facility" means something that is built, constructed, installed, or established to perform some particular function.

"Good faith" means honesty in fact in the conduct of the transaction concerned.

"Guest or invitee" means a person, other than the tenant or an authorized occupant, who has the permission of the tenant to visit but not to occupy the premises.

"Interior of the dwelling unit" means the inside of the dwelling unit, consisting of interior walls, floor, and ceiling, that enclose the dwelling unit as conditioned space from the outside air.

"Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which such dwelling unit is a part. "Landlord" also includes a managing agent of the premises who fails to disclose the name of such owner, lessor, or sublessor. Such managing agent shall be subject to the provisions of § 16.1-88.03. "Landlord" does not include a community land trust.

"Managing agent" means the person authorized by the landlord to act as the property manager on behalf of the landlord pursuant to the written property management agreement.

"Mold remediation in accordance with professional standards" means mold remediation of that portion of the dwelling unit or premises affected by mold, or any personal property of the tenant affected by mold, performed consistent with guidance documents published by the U.S. Environmental Protection Agency, the U.S. Department of Housing and Urban Development, or the American Conference of Governmental Industrial Hygienists (Bioaerosols: Assessment and Control); Standard and Reference Guides of the Institute of Inspection, Cleaning and Restoration Certification (IICRC) for Professional Water Damage Restoration and Professional Mold Remediation; or any protocol for mold remediation prepared by an industrial hygienist consistent with such guidance documents.

"Multifamily dwelling unit" means more than one single-family dwelling unit located in a building. However, nothing in this definition shall be construed to apply to any nonresidential space in such building.

"Natural person," wherever the chapter refers to an owner as a "natural person," includes co-owners who are natural persons, either as tenants in common, joint tenants,

tenants in partnership, tenants by the entirety, trustees or beneficiaries of a trust, general partnerships, limited liability partnerships, registered limited liability partnerships or limited liability companies, or any other lawful combination of natural persons permitted by law.

"Notice" means notice given in writing by either regular mail or hand delivery, with the sender retaining sufficient proof of having given such notice in the form of a certificate of service confirming such mailing prepared by the sender. However, a person shall be deemed to have notice of a fact if he has actual knowledge of it, he has received a verbal notice of it, or, from all of the facts and circumstances known to him at the time in question, he has reason to know it exists. A person "notifies" or "gives" a notice or notification to another by taking steps reasonably calculated to inform another person, whether or not the other person actually comes to know of it. If notice is given that is not in writing, the person giving the notice has the burden of proof to show that the notice was given to the recipient of the notice.

"Organization" means a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, or association; two or more persons having a joint or common interest; any combination thereof; and any other legal or commercial entity.

"Owner" means one or more persons or entities, jointly or severally, including a mortgagee in possession, in whom is vested:

1. All or part of the legal title to the property; or

2. All or part of the beneficial ownership and a right to present use and enjoyment of the premises.

"Person" means any individual, group of individuals, corporation, partnership, business trust, association, or other legal entity, or any combination thereof.

"Premises" means a dwelling unit and the structure of which it is a part, facilities and appurtenances contained therein, and grounds, areas, and facilities held out for the use of tenants generally or whose use is promised to the tenant.

"Processing fee for payment of rent with bad check" means the processing fee specified in the rental agreement, not to exceed $50, assessed by a landlord against a tenant for payment of rent with a check drawn by the tenant on which payment has been refused by the payor bank because the drawer had no account or insufficient funds.

"Readily accessible" means areas within the interior of the dwelling unit available for observation at the time of the move-in inspection that do not require removal of materials, personal property, equipment, or similar items.

"Rent" means all money, other than a security deposit, owed or paid to the landlord under the rental agreement, including prepaid rent paid more than one month in advance of the rent due date.

"Rental agreement" or "lease agreement" means all rental agreements, written or oral, and valid rules and regulations adopted under § 55.1-1228 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

"Rental application" means the written application or similar document used by a landlord to determine if a prospective tenant is qualified to become a tenant of a dwelling unit.

"Residential tenancy" means a tenancy that is based on a rental agreement between a landlord and a tenant for a dwelling unit.

"Roomer" means a person occupying a dwelling unit that lacks a major bathroom or kitchen facility, in a structure where one or more major facilities are used in common by occupants of the dwelling unit and other dwelling units. "Major facility" in the case of a bathroom means a toilet and either a bath or shower and in the case of a kitchen means a refrigerator, stove, or sink.

"Security deposit" means any refundable deposit of money that is furnished by a tenant to a landlord to secure the performance of the terms and conditions of a rental agreement, as a security for damages to the leased premises, or as a pet deposit. However, such money shall be deemed an application deposit until the commencement date of the rental agreement. "Security deposit" does not include a damage insurance policy or renter's insurance policy, as those terms are defined in § 55.1-1206 (formerly § 55-248.7:2), purchased by a landlord to provide coverage for a tenant.

"Single-family residence" means a structure, other than a multifamily residential structure, maintained and used as a single dwelling unit, condominium unit, or any other dwelling unit that has direct access to a street or thoroughfare and does not share heating facilities, hot water equipment, or any other essential facility or essential service with any other dwelling unit.

"Sublease" means the transfer by any tenant of any but not all interests created by a rental agreement.

"Tenant" means a person entitled only under the terms of a rental agreement to occupy a dwelling unit to the exclusion of others and includes a roomer. "Tenant" does not include (i) an authorized occupant, (ii) a guest or invitee, or (iii) any person who guarantees or cosigns the payment of the financial obligations of a rental agreement but has no right to occupy a dwelling unit.

"Tenant records" means all information, including financial, maintenance, and other records about a tenant or prospective tenant, whether such information is in written or electronic form or any other medium.

"Utility" means electricity, natural gas, or water and sewer provided by a public service corporation or such other person providing utility services as permitted under § 56-1.2. If the rental agreement so provides, a landlord may use submetering equipment or energy allocation equipment as defined in § 56-245.2 or a ratio utility billing system as defined in § § 55.1-1212 (formerly § 55-226.2).

"Visible evidence of mold" means the existence of mold in the dwelling unit that is visible to the naked eye by the landlord or tenant in areas within the interior of the dwelling unit readily accessible at the time of the move-in inspection.

"Written notice" means notice given in accordance with § 55.1-1202 (formerly § 55-248.6) , including any representation of words, letters, symbols, numbers, or figures, whether (i) printed in or inscribed on a tangible medium or (ii) stored in an electronic form or any other medium, retrievable in a perceivable form, and regardless of whether an electronic signature authorized by the Uniform Electronic Transactions Act (§ 59.1-479 et seq.) is affixed.

1974, c. 680, § 55-248.4; 1977, c. 427; 1987, c. 428; 1990, c. 55; 1991, c. 205; 1999, cc. 77, 258, 359, 390; 2000, cc. 760, 816; 2002, c. 531; 2003, cc. 355, 425, 855; 2004, c. 123; 2007, c. 634; 2008, cc. 489, 640; 2010, cc. 180, 550, § 55-221.1; 2012, c. 788; 2013, c. 563; 2014, c. 651; 2015, c. 596; 2016, c. 744; 2017, c. 730; 2019, cc. 5, 45, 477, 712.

§ 55.1-1201 (formerly § 55-248.3 & 3:1). Applicability of chapter; local authority.

A. This chapter shall apply to all jurisdictions in the Commonwealth and may not be waived or otherwise modified, in whole or in part, by the governing body of any locality or its boards or commissions or other instrumentalities or by the courts of the Commonwealth. Occupancy in a public housing unit or other housing unit that is a dwelling unit is subject to this chapter; however, if the provisions of this chapter are inconsistent with the regulations of the U.S. Department of Housing and Urban Development, such regulations shall control.

B. The provisions of this chapter shall apply to occupancy in all single-family and multifamily dwelling units and multifamily dwelling units located in the Commonwealth.

C. The following tenancies and occupancies are not residential tenancies under this chapter:

1. Residence at a public or private institution, if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar services;

2. Occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

3. Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

4. Occupancy in a campground as defined in § 35.1-1;

5. Occupancy by a tenant who pays no rent pursuant to a rental agreement;

6. Occupancy by an employee of a landlord whose right to occupancy in a multifamily dwelling unit is conditioned upon employment in and about the premises or a former employee whose occupancy continues less than 60 days; or

7. Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the occupant is the purchaser or a person who succeeds to his interest.

D. The following provisions apply to occupancy in a hotel, motel, extended stay facility, etc.:

1. A guest who is an occupant of a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), boardinghouse, or similar transient lodging shall not be construed to be a tenant living in a dwelling unit if such person does not reside in such lodging as his primary residence. Such guest shall be exempt from this chapter, and the innkeeper or property owner, or his agent, shall have the right to use self-help eviction under Virginia law, without the necessity of the filing of an unlawful detainer action in a court of competent jurisdiction and the execution of a writ of eviction issued pursuant to such action, which would otherwise be required under this chapter.

2. A hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), boardinghouse, or similar transient lodging shall be exempt from the provisions of this chapter if overnight sleeping accommodations are furnished to a person for consideration if such person does not reside in such lodging as his primary residence.

3. If a person resides in a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), boardinghouse, or similar transient lodging as his primary residence for 90 consecutive days or less, such lodging shall not be subject to the provisions of this chapter. However, the owner of such lodging establishment shall give a five-day written notice of nonpayment to a person residing in such lodging and, upon the expiration of the five-day period specified in the notice, may exercise self-help eviction if payment in full has not been received.

4. If a person resides in a hotel, motel, extended stay facility, vacation residential facility, including those governed by the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), boardinghouse, or similar transient lodging as his primary residence for more than 90 consecutive days or is subject to a written lease for more than 90 days, such lodging shall be subject to the provisions of this chapter.

5. Nothing herein shall be construed to preclude the owner of a lodging establishment that uses self-help eviction pursuant to this section from pursuing any civil or criminal remedies under the laws of the Commonwealth.

E. Nothing in this chapter shall prohibit a locality from establishing a commission, reconciliatory in nature only, or designating an existing agency, which upon mutual agreement of the parties may mediate conflicts that may arise out of the application of this chapter, nor shall anything in this chapter be deemed to prohibit an ordinance designed to effect compliance with local property maintenance codes. This chapter shall supersede all other local ordinances or regulations concerning landlord and tenant relations and the leasing of residential property.

1974, c. 680, § 55-248.3; 1977, c. 427; 2000, c. 760, § 55-248.3:1; 2001, c. 416; 2017, c. 730; 2018, cc. 50, 78, 221; 2019, cc. 180, 700, 712.

§ 55.1-1202 (formerly § 55-248.6). Notice.

A. If the rental agreement so provides, the landlord and tenant may send notices in electronic form; however, any tenant who so requests may elect to send and receive notices in paper form. If electronic delivery is used, the sender shall retain sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery.

B. In the case of the landlord, notice is served on the landlord at his place of business where the rental agreement was made or at any place held out by the landlord as the place for receipt of the communication.

In the case of the tenant, notice is served at the tenant's last known place of residence, which may be the dwelling unit.

C. Notice, knowledge, or a notice or notification received by an organization is effective for a particular transaction from the time it is brought to the attention of the person conducting that transaction, or from the time it would have been brought to his attention if the organization had exercised reasonable diligence.

D. No notice of termination of tenancy served upon a tenant by a public housing authority organized under the Housing Authorities Law (§ 36-1 et seq.) shall be effective unless it contains on its first page, in type no smaller or less legible than that otherwise used in the body of the notice, the name, address, and telephone number of the legal services program, if any, serving the jurisdiction in which the premises is located.

E. The landlord may, in accordance with a written agreement, delegate to a managing agent or other third party the responsibility of providing any written notice under this chapter. The landlord may also engage an attorney at law to prepare or provide any written notice under this chapter or legal process under Title 8.01. Nothing herein shall be construed to preclude use of an electronic signature as defined in § 59.1-480, or an electronic notarization as defined in § 47.1-2, in any written notice under this chapter or legal process under Title 8.01.

1974, c. 680, § 55-248.6; 1982, c. 260; 1993, c. 754; 1998, c. 260; 2000, c. 760; 2008, cc. 489, 640; 2017, c. 730; 2019, c. 712.

§ 55.1-1203 (formerly § 55-248.6:1). Application deposit and application fee.

A. Any landlord may require a refundable application deposit in addition to a nonrefundable application fee. If the applicant fails to rent the unit for which application was made, from the application deposit the landlord shall refund to the applicant within 20 days after the applicant's failure to rent the unit or the landlord's rejection of the application all sums in excess of the landlord's actual expenses and damages together with an itemized list of such expenses and damages. If, however, the application deposit was made by cash, certified check, cashier's check, or postal money order, such refund shall be made within 10 days of the applicant's failure to rent the unit if the failure to rent is due to the landlord's rejection of the application. If the landlord fails to comply with this section, the applicant may recover as damages suffered by him that portion of the application deposit wrongfully withheld and reasonable attorney fees.

B. A landlord may request that a prospective tenant provide information that will enable the landlord to determine whether each applicant may become a tenant. The landlord may photocopy each applicant's driver's license or other similar photo identification, containing either the applicant's social security number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342. However, a landlord shall not photocopy a U.S. government-issued identification so long as to do so is a violation of 18 U.S.C. § 701. The landlord may require, for the purpose of determining whether each applicant is eligible to become a tenant in the landlord's dwelling unit, that each applicant provide a social security number issued by the U.S. Social Security Administration or an individual taxpayer identification number issued by the U.S. Internal Revenue Service.

C. An application fee shall not exceed $50, exclusive of any actual out-of-pocket expenses paid by the landlord to a third party performing background, credit, or other pre-occupancy checks on the applicant. However, where an application is being made for a dwelling unit that is a public housing unit or other housing unit subject to regulation by the U.S. Department of Housing and Urban Development, an application fee shall not exceed $32, exclusive of any actual out-of-pocket expenses paid to a third party by the landlord performing background, credit, or other pre-occupancy checks on the applicant.

1977, c. 427, § 55-248.6:1; 1985, c. 208; 1993, c. 382; 2000, c. 760; 2003, c. 416; 2008, c. 489; 2011, c. 766; 2013, c. 563; 2019, c. 712.

§ 55.1-1204 (formerly § 55-248.7). Terms and conditions of rental agreement; payment of rent; copy of rental agreement for tenant.

A. A landlord and tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule of law, including rent, charges for late payment of rent, the term of the agreement, automatic renewal of the rental agreement, requirements for notice of intent to vacate or terminate the rental agreement, and other provisions governing the rights and obligations of the parties.

B. The landlord shall offer the tenant a written rental agreement containing the terms governing the rental of the dwelling unit and setting forth the terms and conditions of the landlord tenant relationship. Such written rental agreement shall be effective upon the date signed by the parties.

C. If a landlord does not offer a written rental agreement, the tenancy shall exist by operation of law, consisting of the following terms and conditions:

1. The provision of this chapter shall be applicable to the dwelling unit that is being rented;

2. The duration of the rental agreement shall be for 12 months and shall not be subject to automatic renewal, except in the event of a month-to-month lease as otherwise provided for under subsection C of § 55.1-1253 (formerly § 55-248.37);

3. Rent shall be paid in 12 equal periodic installments in an amount agreed upon by the landlord and the tenant and if no amount is agreed upon, the installments shall be at fair market rent;

4. Rent payments shall be due on the first day of each month during the tenancy and shall be considered late if not paid by the fifth of the month;

5. If the rent is paid by the tenant after the fifth day of any given month, the landlord shall be entitled to charge a late charge as provided in this chapter;

6. The landlord may collect a security deposit not to exceed an amount equal to two months of rent; and

7. The parties may enter into a written rental agreement at any time during the 12-month tenancy created by this subsection.

D. Except as provided in the written rental agreement or, as provided in subsection C if no written agreement is offered, rent shall be payable without demand or notice at the time and place agreed upon by the parties. Except as provided in the written rental agreement, rent is payable at the place designated by the landlord, and periodic rent is payable at the beginning of any term of one month or less and otherwise in equal installments at the beginning of each month. If the landlord receives from a tenant a written request for a written statement of charges and payments, he shall provide the tenant with a written statement showing all debits and credits over the tenancy or the past 12 months, whichever is shorter. The landlord shall provide such written statement within 10 business days of receiving the request.

E. Except as provided in the written rental agreement or, as provided in subsection C if no written agreement is offered, the tenancy shall be week-to-week in the case of a tenant who pays weekly rent and month-to-month in all other cases. Terminations of tenancies shall be governed by § 55.1-1253 (formerly § 55-248.37) unless the rental agreement provides for a different notice period.

F. If the rental agreement contains any provision allowing the landlord to approve or disapprove a sublessee or assignee of the tenant, the landlord shall, within 10 business days of receipt of the written application of the prospective sublessee or assignee on a form to be provided by the landlord, approve or disapprove the sublessee or assignee. Failure of the landlord to act within 10 business days is evidence of his approval.

G. The landlord shall provide a copy of any written rental agreement signed by both the tenant and the landlord to the tenant within one month of the effective date of the written rental agreement. The failure of the landlord to deliver such a rental agreement shall not affect the validity of the agreement.

H. No unilateral change in the terms of a rental agreement by a landlord or tenant shall be valid unless (i) notice of the change is given in accordance with the terms of the rental agreement or as otherwise required by law and (ii) both parties consent in writing to the change.

I. The landlord shall provide the tenant with a written receipt, upon request from the tenant, whenever the tenant pays rent in the form of cash or money order.

1974, c. 680, § 55-248.7; 1977, c. 427; 1983, c. 39; 1988, c. 68; 2000, c. 760; 2003, c. 424; 2012, cc. 464, 503; 2013, c. 563; 2017, c. 730; 2019, cc. 5, 45, 712.

§ 55.1-1205 (formerly § 55-248.7:1). Prepaid rent; maintenance of escrow account.

A landlord and a tenant may agree in a rental agreement that the tenant pay prepaid rent. If a landlord receives prepaid rent, it shall be placed in an escrow account in a federally insured depository authorized to do business in Virginia by the end of the fifth business day following receipt and shall remain in the account until such time as the prepaid rent becomes due. Unless the landlord has otherwise become entitled to receive any portion of the prepaid rent, it shall not be removed from the escrow account required by this section without the written consent of the tenant.

2002, c. 531, § 55-248.7:1; 2015, c. 596; 2017, c. 730; 2019, c. 712.

§ 55.1-1206 (formerly § 55-248.7:2). Landlord may obtain certain insurance for tenant.

A. A landlord may require as a condition of tenancy that a tenant have commercial insurance coverage as specified in the rental agreement to secure the performance by the tenant of the terms and conditions of the rental agreement and pay for the cost of premiums for such insurance coverage obtained by the landlord, generally known as "damage insurance." As provided in *§ 55.1-1200 (§ 55.1-1201 (formerly § 55-248.3 & 3:1) § 55-248.4)*, such payments shall not be deemed a security deposit, but shall be rent. However, as provided in § 55.1-1208 (formerly § 55-248.9), the landlord shall not require a tenant to pay both a security deposit and the cost of damage insurance premiums, if the total amount of any security deposit and damage insurance premiums exceeds the amount of two months' periodic rent. The landlord shall notify a tenant in writing that the tenant has the right to obtain a separate policy from the landlord's policy for damage insurance. If a tenant elects to obtain a separate policy, the tenant shall submit to the landlord written proof of such coverage and shall maintain such coverage at all times during the term of the rental agreement. Where a landlord obtains damage insurance coverage on behalf of a tenant, the insurance policy shall provide coverage for the tenant as an insured. The landlord shall recover from the tenant the actual costs of such insurance coverage and may recover administrative or other fees associated with administration of a damage insurance policy, including a tenant opting out of the insurance coverage provided by the landlord pursuant to this subsection. If a landlord obtains damage insurance for his tenants, the landlord shall provide to each tenant, prior to execution of the rental agreement, a summary of the insurance policy or certificate evidencing the coverage being provided and upon request of the tenant make available a copy of the insurance policy.

B. A landlord may require as a condition of tenancy that a tenant have renter's insurance as specified in the rental agreement that is a combination multi-peril policy containing fire, miscellaneous property, and personal liability coverage insuring personal property located in dwelling units not occupied by the owner. A landlord may require a tenant to pay for the cost of premiums for such insurance obtained by the landlord, in order to provide such coverage for the tenant as part of rent or as otherwise provided in this section. As provided in *§ 55.1-1200 (§ 55.1-1201 (formerly § 55-248.3 & 3:1) § 55-248.4)*, such payments shall not be deemed a security deposit but shall be rent. The landlord shall

notify a tenant in writing that the tenant has the right to obtain a separate policy from the landlord's policy for renter's insurance. If a tenant elects to obtain a separate policy, the tenant shall submit to the landlord written proof of such coverage and shall maintain such coverage at all times during the term of the rental agreement. If a tenant allows his renter's insurance policy required by the rental agreement to lapse for any reason, the landlord may provide any landlord's renter's insurance coverage to such tenant. The tenant shall be obligated to pay for the cost of premiums for such insurance as rent or as otherwise provided herein until the tenant has provided written documentation to the landlord showing that the tenant has reinstated his own renter's insurance coverage.

C. If the landlord requires that such premiums be paid prior to the commencement of the tenancy, the total amount of all security deposits and insurance premiums for damage insurance and renter's insurance shall not exceed the amount of two months' periodic rent. Otherwise, the landlord may add a monthly amount as additional rent to recover the costs of such insurance coverage.

D. Where a landlord obtains renter's insurance coverage on behalf of a tenant, the insurance policy shall provide coverage for the tenant as an insured. The landlord shall recover from the tenant the actual costs of such insurance coverage and may recover administrative or other fees associated with the administration of a renter's insurance program, including a tenant opting out of the insurance coverage provided to the tenant pursuant to this subsection. If a landlord obtains renter's insurance for his tenants, the landlord shall provide to each tenant, prior to execution of the rental agreement, a summary of the insurance policy prepared by the insurer or certificate evidencing the coverage being provided and upon request of the tenant make available a copy of the insurance policy. Such summary or certificate shall include a statement regarding whether the insurance policy contains a waiver of subrogation provision. Any failure of the landlord to provide such summary or certificate, or to make available a copy of the insurance policy, shall not affect the validity of the rental agreement.

If the rental agreement does not require the tenant to obtain renter's insurance, the landlord shall provide a written notice to the tenant, prior to the execution of the rental agreement, stating that (i) the landlord is not responsible for the tenant's personal property, (ii) the landlord's insurance coverage does not cover the tenant's personal property, and (iii) if the tenant wishes to protect his personal property, he should obtain renter's insurance. The notice shall inform the tenant that any such renter's insurance obtained by the tenant does not cover flood damage and advise the tenant to contact the Federal Emergency Management Agency (FEMA) or visit the websites for FEMA's National Flood Insurance Program or for the Virginia Department of Conservation and Recreation's Flood Risk Information System to obtain information regarding whether the property is located in a special flood hazard area. Any failure of the landlord to provide such notice shall not affect the validity of the rental agreement. If the tenant requests translation of the notice from the English language to another language, the landlord may assist the tenant in obtaining a translator or refer the tenant to an electronic translation service. In doing so, the landlord shall not be deemed to have breached any of his obligations under this chapter or otherwise become liable for any inaccuracies in the translation. The landlord shall not charge a fee for such assistance or referral.

E. Nothing in this section shall be construed to prohibit the landlord from recovering from the tenant, as part of the rent, the tenant's prorated share of the actual costs of other insurance coverages provided by the landlord relative to the premises, or the tenant's prorated share of a self-insurance program held in an escrow account by the landlord, including the landlord's administrative or other fees associated with the administration of such coverages. The landlord may apply such funds held in escrow to pay claims pursuant to the landlord's self-insurance plan.

2004, c. 123, § 55-248.7:2; 2005, c. 285; 2010, c. 550; 2012, c. 788; 2015, c. 596; 2018, c. 221; 2019, cc. 386, 394, 712.

§ 55.1-1207 (formerly § 55-248.8). Effect of unsigned or undelivered rental agreement.

If the landlord does not sign and deliver a written rental agreement signed and delivered to him by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord. If the tenant does not sign and deliver a written rental agreement signed and delivered to him by the landlord, acceptance of possession or payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant. If a rental agreement given effect pursuant to this section provides for a term longer than one year, it is effective for only one year.

1974, c. 680, § 55-248.8; 2019, c. 712.

§ 55.1-1208 (formerly § 55-248.9). Prohibited provisions in rental agreements.

A. A rental agreement shall not contain provisions that the tenant:

1. Agrees to waive or forgo rights or remedies under this chapter;

2. Agrees to waive or forgo rights or remedies pertaining to the 120-day conversion or rehabilitation notice required in the Virginia Condominium Act (§ 55.1-1900 et seq.) or the Virginia Real Estate Cooperative Act (§ 55.1-2100 et seq.) or under § 55.1-1410;

3. Authorizes any person to confess judgment on a claim arising out of the rental agreement;

4. Agrees to pay the landlord's attorney fees except as provided in this chapter;

5. Agrees to the exculpation or limitation of any liability of the landlord to the tenant arising under law or to indemnify the landlord for that liability or any associated costs;

6. Agrees as a condition of tenancy in public housing to a prohibition or restriction of any lawful possession of a firearm within individual dwelling units unless required by federal law or regulation; or

7. Agrees to both the payment of a security deposit and the provision of a bond or commercial insurance policy purchased by the tenant to secure the performance of the terms and conditions of a rental agreement, if the total of the security deposit and the bond or insurance premium exceeds the amount of two months' periodic rent.

B. Any provision prohibited by subsection A that is included in a rental agreement is unenforceable. If a landlord brings an action to enforce any such provision, the tenant may recover actual damages sustained by him and reasonable attorney fees.

1974, c. 680, § 55-248.9; 1977, c. 427; 1987, c. 473; 1991, c. 720; 2000, c. 760; 2002, c. 531; 2003, c. 905; 2016, c. 744; 2019, c. 712.

§ 55.1-1209 (formerly § 55-248.9:1). Confidentiality of tenant records.

A. No landlord or managing agent shall release information about a tenant or prospective tenant in the possession of the landlord or managing agent to a third party unless:

1. The tenant or prospective tenant has given prior written consent;

2. The information is a matter of public record as defined in § 2.2-3701;

3. The information is a summary of the tenant's rent payment record, including the amount of the tenant's periodic rent payment;

4. The information is a copy of a material noncompliance notice that has not been remedied or a termination notice given to the tenant under § 55.1-1245 (formerly § 55-248.31) and the tenant did not remain in the premises after such notice was given;

5. The information is requested by a local, state, or federal law-enforcement or public safety official in the performance of his duties;

6. The information is requested pursuant to a subpoena in a civil case;

7. The information is requested by a local commissioner of the revenue in accordance with § 58.1-3901;

8. The information is requested by a contract purchaser of the landlord's property, provided that the contract purchaser agrees in writing to maintain the confidentiality of such information;

9. The information is requested by a lender of the landlord for financing or refinancing of the property;

10. The information is requested by the commanding officer, military housing officer, or military attorney of the tenant;

11. The third party is the landlord's attorney or the landlord's collection agency;

12. The information is otherwise provided in the case of an emergency;

13. The information is requested by the landlord to be provided to the managing agent or a successor to the managing agent; or

14. The information is requested by an employee or independent contractor of the United States to obtain census information pursuant to federal law.

B. A tenant may designate a third party to receive duplicate copies of a summons that has been issued pursuant to § 8.01-126 and of written notices from the landlord relating to the tenancy. Where such a third party has been designated by the tenant, the landlord

shall mail the duplicate copy of any summons issued pursuant to § 8.01-126 or notice to the designated third party at the same time the summons or notice is mailed to or served upon the tenant. Nothing in this subsection shall be construed to grant standing to any third party designated by the tenant to challenge actions of the landlord in which notice was mailed pursuant to this subsection. The failure of the landlord to give notice to a third party designated by the tenant shall not affect the validity of any judgment entered against the tenant.

C. A landlord or managing agent may enter into an agreement with a third-party service provider to maintain tenant records in electronic form or other medium. In such case, the landlord and managing agent shall not be liable under this section in the event of a breach of the electronic data of such third-party service provider, except in the case of gross negligence or intentional act. Nothing in this section shall be construed to require a landlord or managing agent to indemnify such third-party service provider.

D. A tenant may request a copy of his tenant records in paper or electronic form. If the rental agreement so provides, a landlord may charge a tenant requesting more than one copy of his records the actual costs of preparing copies of such records. However, if the landlord makes available tenant records to each tenant by electronic portal, the tenant shall not be required to pay for access to such portal.

1985, c. 567, § 55-248.9:1; 2000, c. 760; 2003, c. 426; 2006, cc. 491, 667; 2008, c. 489; 2010, c. 550; 2015, c. 596; 2016, c. 744; 2018, c. 221; 2019, c. 712.

§ 55.1-1210 (formerly § 55-248.10:1). Landlord and tenant remedies for abuse of access.

If the tenant refuses to allow lawful access, the landlord may obtain injunctive relief to compel access, or terminate the rental agreement. In either case, the landlord may recover actual damages and reasonable attorney fees. If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry that is otherwise lawful but that have the effect of unreasonably harassing the tenant, the tenant may obtain injunctive relief to prevent the recurrence of the conduct, or terminate the rental agreement. In either case, the tenant may recover actual damages and reasonable attorney fees.

2000, c. 760, § 55-248.10:1; 2019, c. 712.

§ 55.1-1211 (formerly § 55-218.1). Appointment of resident agent by nonresident property owner; service of process, etc., on such agent or on Secretary of the Commonwealth.

A. As used in this section, "nonresident property owner" means any nonresident individual or group of individuals who owns and leases residential real property.

B. Every nonresident property owner shall appoint and continuously maintain an agent who (i) if such agent is an individual, is a resident of the Commonwealth, or if such

agent is a corporation, limited liability company, partnership, or other entity, is authorized to transact business in the Commonwealth and (ii) maintains a business office within the Commonwealth. Every lease executed by or on behalf of nonresident property owners regarding any such real property shall specifically designate such agent and the agent's office address for the purpose of service of any process, notice, order, or demand required or permitted by law to be served upon such nonresident property owner.

C. Whenever any nonresident property owner fails to appoint or maintain an agent, as required in this section, or whenever his agent cannot with reasonable diligence be found, then the Secretary of the Commonwealth shall be an agent of the nonresident property owner upon whom may be served any process, notice, order, or demand. Service may be made on the Secretary of the Commonwealth or any of his staff at his office who shall forthwith cause it to be sent by registered or certified mail addressed to the nonresident property owner at his address as shown on the official tax records maintained by the locality where the property is located.

D. The name and office address of the agent appointed as provided in this section shall be filed in the office of the clerk of the court in which deeds are recorded in the county or city in which the property lies. Recordation shall be in the same book as certificates of fictitious names are recorded as provided by § 59.1-74, for which the clerk shall be entitled to a fee of $10.

E. No nonresident property owner shall maintain an action in the courts of the Commonwealth concerning property for which a designation is required by this section until such designation has been filed.

1973, c. 301, § 55-218.1; 1987, c. 360; 2006, c. 318; 2008, c. 119; 2019, cc. 365, 712.

§ 55.1-1212 (formerly § 55-226.2). Energy submetering, energy allocation equipment, sewer and water submetering equipment, and ratio utility billing systems; local government fees.

A. As used in this section:

"Energy allocation equipment" means the same as that term is defined in § 56-245.2.

"Energy submetering equipment" has the same meaning ascribed to "submetering equipment" in § 56-245.2.

"Local government fees" means any local government charges or fees assessed against a residential building, including charges or fees for stormwater, recycling, trash collection, elevator testing, fire or life safety testing, or residential rental inspection programs.

"Ratio utility billing system" means a program that utilizes a mathematical formula for allocating, among the tenants in a residential building, the actual or anticipated water, sewer, electrical, oil, or natural gas billings billed to the residential building owner from a third-party provider of the utility service. Permitted allocation methods may include

formulas based on square footage, occupancy, number of bedrooms, or some other specific method agreed to by the residential building owner and the tenant in the rental agreement or lease.

"Residential building" means all of the individual units served through the same utility-owned meter within a residential building that is defined in § 56-245.2 as an apartment building or house or all of the individual dwelling units served through the same utility-owned meter within a manufactured home park as defined in § 55.1-1300 (formerly § 55-248.41) .

"Water and sewer submetering equipment" means equipment used to measure actual water or sewer usage in any residential building when such equipment is not owned or controlled by the utility or other provider of water or sewer service that provides service to the residential building.

B. Energy submetering equipment, energy allocation equipment, water and sewer submetering equipment, or a ratio utility billing system may be used in a residential building if clearly stated in the rental agreement or lease for the residential building. All energy submetering equipment and energy allocation equipment shall meet the requirements and standards established and enforced by the State Corporation Commission pursuant to § 56-245.3.

C. If energy submetering equipment, energy allocation equipment, or water and sewer submetering equipment is used in any residential building, the owner, manager, or operator of such residential building shall bill the tenant for electricity, oil, natural gas, or water and sewer for the same billing period as the utility serving the residential building, unless the rental agreement or lease expressly provides otherwise. The owner, manager, or operator of such residential building may charge and collect from the tenant additional service charges, including monthly billing fees, account set-up fees, or account move-out fees, to cover the actual costs of administrative expenses and billing charged to the residential building owner, manager, or operator by a third-party provider of such services, provided that such charges are agreed to by the residential building owner and the tenant in the rental agreement or lease. The residential building owner may require the tenant to pay a late charge of up to $5 if the tenant fails to make payment when due, which shall not be less than 15 days following the date of mailing or delivery of the bill sent pursuant to this section.

D. If a ratio utility billing system is used in any residential building, in lieu of increasing the rent, the owner, manager, or operator of such residential building may employ such a program that utilizes a mathematical formula for allocating, among the tenants in a residential building, the actual or anticipated water, sewer, electrical, oil, or natural gas billings billed to the residential building owner from a third-party provider of the utility service. The owner, manager, or operator of the residential building may charge and collect from the tenant additional service charges, including monthly billing fees, account set-up fees, or account move-out fees, to cover the actual costs of administrative expenses and billings charged to the residential building owner, manager, or operator by a third-party provider of such services, provided that such charges are agreed to by the residential building owner and the tenant in the rental agreement or lease. The residential building

owner may require the tenant to pay a late charge of up to $5 if the tenant fails to make payment when due, which shall not be less than 15 days following the date of mailing or delivery of the bill sent pursuant to this section. The late charge shall be deemed rent (i) as defined in *§ 55.1-1200 (§ 55.1-1201 (formerly § 55-248.3 & 3:1) § 55-248.4)* if a ratio utility billing system is used in a residential multifamily dwelling unit subject to this chapter or (ii) as defined in § 55.1-1300 (formerly § 55-248.41) if a ratio utility billing system is used in a manufactured home park subject to the Manufactured Home Lot Rental Act (§ 55.1-1300 (formerly § 55-248.41) et seq.).

E. Energy allocation equipment shall be tested periodically by the owner, manager, or operator of the residential building. Upon the request by a tenant, the owner shall test the energy allocation equipment without charge. The test conducted without charge to the tenant shall not be conducted more frequently than once in a 24-month period for the same tenant. The tenant or his designated representative may be present during the testing of the energy allocation equipment. A written report of the results of the test shall be made to the tenant within 10 working days after the completion of the test.

F. The owner of any residential building shall maintain adequate records regarding energy submetering equipment, energy allocation equipment, water and sewer submetering equipment, or a ratio utility billing system. A tenant may inspect and copy the records for the leased premises during reasonable business hours at a convenient location within or serving the residential building. The owner of the residential building may impose and collect a reasonable charge for copying documents, reflecting the actual costs of materials and labor for copying, prior to providing copies of the records to the tenant.

G. Notwithstanding any enforcement action undertaken by the State Corporation Commission pursuant to its authority under § 56-245.3, tenants and owners shall retain any private right of action resulting from any breach of the rental agreement or lease terms required by this section or § 56-245.3, if applicable, to the same extent as such actions may be maintained for breach of other terms of the rental agreement or lease under this chapter, if applicable. The use of energy submetering equipment, energy allocation equipment, water and sewer submetering equipment, or a ratio utility billing system is not within the jurisdiction of the Department of Agriculture and Consumer Services under Chapter 56 (§ 3.2-5600 et seq.) of Title 3.2.

H. In lieu of increasing the rent, the owner, manager, or operator of a residential building may employ a program that utilizes a mathematical formula for allocating the actual or anticipated local government fees billed to the residential building owner among the tenants in such residential building if clearly stated in the rental agreement or lease. Permitted allocation methods may include formulas based upon square footage, occupancy, number of bedrooms, or some other specific method agreed to by the residential building owner and the tenant in the rental agreement or lease. Such owner, manager, or operator of a residential building may also charge and collect from each tenant additional service charges, including monthly billing fees, account set-up fees, or account move-out fees, to cover the actual costs of administrative expenses for administration of such a program. If the building is residential and is subject to (i) this chapter, such local government fees and administrative expenses shall be deemed to be rent as defined in *§ 55.1-1200 (§ 55.1-1201*

(formerly § 55-248.3 & 3:1) § 55-248.4) or (ii) the Manufactured Home Lot Rental Act (§ 55.1-1300 (formerly § 55-248.41) et seq.), such local government fees and administrative expenses shall be deemed to be rent as defined in § 55.1-1300 (formerly § 55-248.41) .

I. Nothing in this section shall be construed to prohibit an owner, manager, or operator of a residential building from including water, sewer, electrical, natural gas, oil, or other utilities in the amount of rent as specified in the rental agreement or lease.

1992, c. 766, § 55-226.2; 2003, c. 355; 2005, c. 278; 2010, c. 550; 2012, c. 338; 2014, c. 501; 2015, c. 596; 2017, c. 730; 2019, c. 712.

§ 55.1-1213 (formerly § 55-507). Transfer of deposits upon purchase.

The current owner of rental property shall transfer any security deposits and any accrued interest on the deposits in his possession to the new owner at the time of the transfer of the rental property. If the current owner has entered into a written property management agreement with a managing agent in accordance with the provisions of subsection E of § 54.1-2135, the current owner shall give written notice to the managing agent requesting payment of such security deposits to the current owner prior to settlement with the new owner. Upon receipt of the written notice, the managing agent shall transfer the security deposits to the current owner and provide written notice to each tenant that his security deposit has been transferred to the new owner in accordance with this section.

1984, c. 281, § 55-507; 2017, cc. 63, 402; 2019, c. 712.

Article 2. Landlord Obligations

§ 55.1-1214 (formerly § 55-248.11:1). Inspection of dwelling unit; report.

A. The landlord shall, within five days after occupancy of a dwelling unit, submit a written report to the tenant itemizing damages to the dwelling unit existing at the time of occupancy, and the report shall be deemed correct unless the tenant objects to it in writing within five days after receipt of the report.

B. The landlord may adopt a written policy allowing the tenant to prepare the written report of the move-in inspection, in which case the tenant shall submit a copy to the landlord, and the report shall be deemed correct unless the landlord objects thereto in writing within five days after receipt of the report. Such written policy adopted by the landlord may also provide for the landlord and the tenant to prepare the written report of the move-in inspection jointly, in which case both the landlord and the tenant shall sign the written report and receive a copy of the report, at which time the inspection report shall be deemed correct.

C. If any damages are reflected on the written report, a landlord is not required to make repairs to address such damages unless required to do so under § § 55.1-1215 (formerly § 55-248.11:2) or 55.1-1220.

1977, c. 427, § 55-248.11:1; 1992, c. 451; 2000, c. 760; 2016, c. 744; 2019, c. 712.

§ 55.1-1215 (formerly § 55-248.11:2). Disclosure of mold in dwelling units.

As part of the written report of the move-in inspection required by § § 55.1-1214 (formerly § 55-248.11:1), the landlord shall disclose whether there is any visible evidence of mold in areas readily accessible within the interior of the dwelling unit. If the landlord's written disclosure states that there is no visible evidence of mold in the dwelling unit, this written statement shall be deemed correct unless the tenant objects to it in writing within five days after receiving the report. If the landlord's written disclosure states that there is visible evidence of mold in the dwelling unit, the tenant shall have the option to terminate the tenancy and not take possession or remain in possession of the dwelling unit. If the tenant requests to take possession, or remain in possession, of the dwelling unit, notwithstanding the presence of visible evidence of mold, the landlord shall promptly remediate the mold condition but in no event later than five business days after the tenant's request to take possession or decision to remain in possession, reinspect the dwelling unit to confirm that there is no visible evidence of mold in the dwelling unit, and prepare a new report stating that there is no visible evidence of mold in the dwelling unit upon reinspection.

2004, c. 226, § 55-248.11:2; 2008, c. 640; 2019, c. 712.

§ 55.1-1216 (formerly § 55-248.12). Disclosure of sale of premises.

A. For the purpose of service of process and receiving and issuing receipts for notices and demands, the landlord or any person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing at or before the beginning of the tenancy the name and address of:

1. The person authorized to manage the premises; and

2. An owner of the premises or any other person authorized to act for and on behalf of the owner.

B. In the event of the sale of the premises, the landlord shall notify the tenant of such sale and disclose to the tenant the name and address of the purchaser and a telephone number at which such purchaser can be located.

C. With respect to a multifamily dwelling unit, if an application for registration of the rental property as a condominium or cooperative has been filed with the Real Estate Board, or if there is within six months an existing plan for tenant displacement resulting from (i) demolition or substantial rehabilitation of the property or (ii) conversion of the rental property to office, hotel, or motel use or planned unit development, the landlord or any person authorized to enter into a rental agreement on his behalf shall disclose that information in writing to any prospective tenant.

D. The information required to be furnished by this section shall be kept current, and the provisions of this section extend to and are enforceable against any successor landlord or owner. A person who fails to comply with this section becomes an agent of each person who is a landlord for the purposes of service of process and receiving and issuing receipts for notices and demands.

1974, c. 680, § 55-248.12; 1983, c. 257; 2000, c. 760; 2017, c. 730; 2019, c. 712.

§ 55.1-1217 (formerly § 55-248.12:1). Required disclosures for properties located adjacent to a military air installation; remedy for nondisclosure.

A. The landlord of property in any locality in which a military air installation is located, or any person authorized to enter into a rental agreement on his behalf, shall provide to a prospective tenant a written disclosure that the property is located in a noise zone or accident potential zone, or both, as designated by the locality on its official zoning map. Such disclosure shall be provided prior to the execution by the tenant of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant. The disclosure shall specify the noise zone or accident potential zone in which the property is located according to the official zoning map of the locality. A disclosure made pursuant to this section containing inaccurate information regarding the location of the noise zone or accident potential zone shall be deemed as nondisclosure unless the inaccurate information is provided by an officer or employee of the locality in which the property is located.

B. Any tenant who is not provided the disclosure required by subsection A may terminate the lease agreement at any time during the first 30 days of the lease period by sending to the landlord by certified or registered mail, return receipt requested, a written notice of termination. Such termination shall be effective as of (i) 15 days after the date of the mailing of the notice or (ii) the date through which rent has been paid, whichever is later. In no event, however, shall the effective date of the termination exceed one month from the date of mailing. Termination of the lease agreement shall be the exclusive remedy for the failure to comply with the disclosure provisions of this section, and shall not affect any rights or duties of the landlord or tenant arising under this chapter, other applicable law, or the rental agreement.

2005, c. 511, § 55-248.12:1; 2017, c. 730; 2019, c. 712.

§ 55.1-1218 (formerly § 55-248.12:2). Required disclosures for properties with defective drywall; remedy for nondisclosure.

A. If the landlord of a dwelling unit has actual knowledge of the existence of defective drywall in such dwelling unit that has not been remediated, the landlord shall provide to a prospective tenant a written disclosure that the property has defective drywall. Such disclosure shall be provided prior to the execution by the tenant of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant. For purposes of this section, "defective drywall" means all defective drywall as defined in § 36-156.1.

B. Any tenant who is not provided the disclosure required by subsection A may terminate the lease agreement at any time within 60 days of discovery of the existence of defective drywall by providing written notice to the landlord in accordance with the lease or as required by law. Such termination shall be effective as of (i) 15 days after the date of the mailing of the notice or (ii) the date through which rent has been paid, whichever is

later. In no event, however, shall the effective date of the termination exceed one month from the date of mailing. Termination of the lease agreement shall be the exclusive remedy for the failure to comply with the disclosure provisions of this section, and shall not affect any rights or duties of the landlord or tenant arising under this chapter, other applicable law, or the rental agreement.

2011, cc. 34, 46, § 55-248.12:2; 2019, c. 712.

§ 55.1-1219 (formerly § 55-248.12:3). Required disclosures for property previously used to manufacture methamphetamine; remedy for nondisclosure.

A. If the landlord of a dwelling unit has actual knowledge that the dwelling unit was previously used to manufacture methamphetamine and has not been cleaned up in accordance with the guidelines established pursuant to § 32.1-11.7 and the applicable licensing provisions of Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1, the landlord shall provide to a prospective tenant a written disclosure that states such information. Such disclosure shall be provided prior to the execution by the tenant of a written lease agreement or, in the case of an oral lease agreement, prior to occupancy by the tenant.

B. Any tenant who is not provided the disclosure required by subsection A may terminate the lease agreement at any time within 60 days of discovery that the property was previously used to manufacture methamphetamine and has not been cleaned up in accordance with the guidelines established pursuant to § 32.1-11.7 by providing written notice to the landlord in accordance with the lease or as required by law. Such termination shall be effective as of (i) 15 days after the date of the mailing of the notice or (ii) the date through which rent has been paid, whichever is later. In no event, however, shall the effective date of the termination exceed one month from the date of mailing. Termination of the lease agreement shall be the exclusive remedy for the failure to comply with the disclosure provisions required by this section and shall not affect any rights or duties of the landlord or tenant arising under this chapter, other applicable law, or the rental agreement.

2013, c. 557, § 55-248.12:3; 2016, c. 527; 2019, c. 712.

§ 55.1-1220 (formerly § 55-248.13). Landlord to maintain fit premises.

A. The landlord shall:

1. Comply with the requirements of applicable building and housing codes materially affecting health and safety;

2. Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

3. Keep all common areas shared by two or more dwelling units of a multifamily premises in a clean and structurally safe condition;

4. Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him;

5. Maintain the premises in such a condition as to prevent the accumulation of moisture and the growth of mold and promptly respond to any notices from a tenant as provided in subdivision A 10 of § 55.1-1227 (formerly § 55-248.16). Where there is visible evidence of mold, the landlord shall promptly remediate the mold conditions in accordance with the requirements of subsection E of § 8.01-226.12 and reinspect the dwelling unit to confirm that there is no longer visible evidence of mold in the dwelling unit. The landlord shall provide a tenant with a copy of a summary of information related to mold remediation occurring during that tenancy and, upon request of the tenant, make available the full package of such information and reports not protected by attorney-client privilege. Once the mold has been remediated in accordance with professional standards, the landlord shall not be required to make disclosures of a past incidence of mold to subsequent tenants;

6. Provide and maintain appropriate receptacles and conveniences for the collection, storage, and removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of dwelling units and arrange for the removal of same;

7. Supply running water and reasonable amounts of hot water at all times and reasonable air conditioning if provided and heat in season except where the dwelling unit is so constructed that heat, air conditioning, or hot water is generated by an installation within the exclusive control of the tenant or supplied by a direct public utility connection; and

8. Provide a certificate to the tenant stating that all smoke alarms are present, have been inspected, and are in good working order no more than once every 12 months. The landlord, his employee, or an independent contractor may perform the inspection to determine that the smoke alarm is in good working order.

B. The landlord shall perform the duties imposed by subsection A in accordance with law; however, the landlord shall only be liable for the tenant's actual damages proximately caused by the landlord's failure to exercise ordinary care.

C. If the duty imposed by subdivision A 1 is greater than any duty imposed by any other subdivision of that subsection, the landlord's duty shall be determined by reference to subdivision A 1.

D. The landlord and tenant may agree in writing that the tenant perform the landlord's duties specified in subdivisions A 3, 6, and 7 and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord and if the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

1974, c. 680, § 55-248.13; 1987, cc. 361, 636; 2000, c. 760; 2004, c. 226; 2007, c. 634; 2008, cc. 489, 640; 2009, c. 663; 2014, c. 632; 2015, c. 274; 2017, c. 730; 2018, cc. 41, 81; 2019, c. 712.

§ 55.1-1221 (formerly § 55-248.13:1). Landlord to provide locks and peepholes.

The governing body of any locality may require by ordinance that any landlord who rents five or more dwelling units in any one multifamily building shall install:

1. Dead-bolt locks that meet the requirements of the Uniform Statewide Building Code (§ 36-97 et seq.) for new multifamily construction and peepholes in any exterior swinging entrance door to any such unit; however, any door having a glass panel shall not require a peephole;

2. Manufacturer's locks that meet the requirements of the Uniform Statewide Building Code (§ 36-97 et seq.) and removable metal pins or Charlie bars in accordance with the Uniform Statewide Building Code on exterior sliding glass doors located in a building at any level designated in the ordinance; and

3. Locking devices that meet the requirements of the Uniform Statewide Building Code (§ 36-97 et seq.) on all exterior windows.

Any ordinance adopted pursuant to this section shall further provide that any landlord subject to the ordinance shall have a reasonable time as determined by the governing body in which to comply with the requirements of the ordinance.

1977, c. 464, § 55-248.13:1; 1988, c. 500; 2017, c. 730; 2019, c. 712.

§ 55.1-1222 (formerly § 55-248.13:2). Access of tenant to cable, satellite, and other television facilities.

No landlord of a multifamily dwelling unit shall demand or accept payment of any fee, charge, or other thing of value from any provider of cable television service, cable modem service, satellite master antenna television service, direct broadcast satellite television service, subscription television service, or service of any other television programming system in exchange for granting a television service provider mere access to the landlord's tenants or giving the tenants of such landlord mere access to such service. A landlord may enter into a service agreement with a television service provider to provide marketing and other services to the television service provider designed to facilitate the television service provider's delivery of its services. Under such a service agreement, the television service provider may compensate the landlord for the reasonable value of the services provided and for the reasonable value of the landlord's property used by the television service provider.

No landlord shall demand or accept any such payment from any tenants in exchange for such service unless the landlord is itself the provider of the service, nor shall any landlord discriminate in rental charges between tenants who receive any such service and those who do not. Nothing contained in this section shall prohibit a landlord from (i) requiring that the provider of such service and the tenant bear the entire cost of the installation, operation, or removal of the facilities incident to such service or (ii) demanding or accepting reasonable indemnity or security for any damages caused by such installation, operation, or removal.

1982, c. 323, § 55-248.13:2; 2000, c. 760; 2003, cc. 60, 64, 68; 2017, c. 730; 2019, c. 712.

§ 55.1-1223 (formerly § 55-248.13:3). Notice to tenants for insecticide or pesticide use.

A. The landlord shall give written notice to the tenant no less than 48 hours prior to his application of an insecticide or pesticide in the tenant's dwelling unit unless the tenant agrees to a shorter notification period. If a tenant requests the application of the insecticide or pesticide, the 48-hour notice is not required. Tenants who have concerns about specific insecticides or pesticides shall notify the landlord in writing no less than 24 hours before the scheduled insecticide or pesticide application. The tenant shall prepare the dwelling unit for the application of insecticides or pesticides in accordance with any written instructions of the landlord and, if insects or pests are found to be present, follow any written instructions of the landlord to eliminate the insects or pests following the application of insecticides or pesticides.

B. In addition, the landlord shall post notice of all insecticide or pesticide applications in areas of the premises other than the dwelling units. Such notice shall consist of conspicuous signs placed in or upon such premises where the insecticide or pesticide will be applied at least 48 hours prior to the application.

C. A violation by the tenant of this section may be remedied by the landlord in accordance with § 55.1-1248 (formerly § 55-248.32) or by notice given by the landlord requiring the tenant to remedy in accordance with § 55.1-1245 (formerly § 55-248.31), as applicable.

2000, c. 760, § 55-248.13:3; 2009, c. 663; 2018, c. 221; 2019, c. 712.

§ 55.1-1224 (formerly § 55-248.14). Limitation of liability.

Unless otherwise agreed, a landlord who conveys premises that include a dwelling unit subject to a rental agreement in a good faith sale to a bona fide purchaser is relieved of liability under the rental agreement and this chapter as to events occurring subsequent to notice to the tenant of the conveyance. Unless otherwise agreed, a managing agent of premises that includes a dwelling unit is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of his management.

1974, c. 680, § 55-248.14; 1987, c. 313; 2000, c. 760; 2019, c. 712.

§ 55.1-1225 (formerly § 55-248.15). Tenancy at will; effect of notice of change of terms or provisions of tenancy.

A notice of any change by a landlord or tenant in any terms or provisions of a tenancy at will shall constitute a notice to vacate the premises, and such notice of change

shall be given in accordance with the terms of the rental agreement, if any, or as otherwise required by law.

1974, c. 680, § 55-248.15; 2000, c. 760; 2019, c. 712.

§ 55.1-1226 (formerly § 55-248.15:1). Security deposits.

A. No landlord may demand or receive a security deposit, however denominated, in an amount or value in excess of two months' periodic rent. Upon termination of the tenancy, such security deposit, whether it is property or money held by the landlord as security as provided in this section, may be applied by the landlord solely to (i) the payment of accrued rent, including the reasonable charges for late payment of rent specified in the rental agreement; (ii) the payment of the amount of damages that the landlord has suffered by reason of the tenant's noncompliance with § 55.1-1227 (formerly § 55-248.16) , less reasonable wear and tear; (iii) other damages or charges as provided in the rental agreement; or (iv) actual damages for breach of the rental agreement pursuant to § 55.1-1251 (formerly § 55-248.35) . The security deposit and any deductions, damages, and charges shall be itemized by the landlord in a written notice given to the tenant, together with any amount due to the tenant, within 45 days after the termination date of the tenancy. As of the date of the termination of the tenancy or the date the tenant vacates the dwelling unit, whichever occurs last, the tenant shall be required to deliver possession of the dwelling unit to the landlord. If the termination date is prior to the expiration of the rental agreement or any renewal thereof, or the tenant has not given proper notice of termination of the rental agreement, the tenant shall be liable for actual damages pursuant to § 55.1-1251 (formerly § 55-248.35) , in which case, the landlord shall give written notice of security deposit disposition within the 45-day period but may retain any security balance to apply against any financial obligations of the tenant to the landlord pursuant to this chapter or the rental agreement. If the tenant fails to vacate the dwelling unit as of the termination of the tenancy, the landlord may file an unlawful detainer action pursuant to § 8.01-126.

B. Where there is more than one tenant subject to a rental agreement, unless otherwise agreed to in writing by each of the tenants, disposition of the security deposit shall be made with one check being payable to all such tenants and sent to a forwarding address provided by one of the tenants. The landlord shall make the security deposit disposition within the 45-day time period required by subsection A, but if no forwarding address is provided to the landlord, the landlord may continue to hold such security deposit in escrow. If a tenant fails to provide a forwarding address to the landlord to enable the landlord to make a refund of the security deposit, upon the expiration of one year from the date of the end of the 45-day time period, the landlord may remit such sum to the State Treasurer as unclaimed property on a form prescribed by the administrator that includes the name; social security number, if known; and last known address of each tenant on the rental agreement. If the landlord or managing agent is a real estate licensee, compliance with this subsection shall be deemed compliance with § 54.1-2108 and corresponding regulations of the Real Estate Board.

C. Nothing in this section shall be construed by a court of law or otherwise as entitling the tenant, upon the termination of the tenancy, to an immediate credit against the tenant's delinquent rent account in the amount of the security deposit. The landlord shall apply the security deposit in accordance with this section within the 45-day time period required by subsection A. However, provided that the landlord has given prior written notice in accordance with this section, the landlord may withhold a reasonable portion of the security deposit to cover an amount of the balance due on the water, sewer, or other utility account that is an obligation of the tenant to a third-party provider under the rental agreement for the dwelling unit, and upon payment of such obligations the landlord shall provide written confirmation to the tenant within 10 days, along with payment to the tenant of any balance otherwise due to the tenant. In order to withhold such funds as part of the disposition of the security deposit, the landlord shall have so advised the tenant of his rights and obligations under this section in (i) a termination notice to the tenant in accordance with this chapter, (ii) a written notice to the tenant confirming the vacating date in accordance with this section, or (iii) a separate written notice to the tenant at least 15 days prior to the disposition of the security deposit. Any written notice to the tenant shall be given in accordance with § 55.1-1202 (formerly § 55-248.6).

The tenant may provide the landlord with written confirmation of the payment of the final water, sewer, or other utility bill for the dwelling unit, in which case the landlord shall refund the security deposit, unless there are other authorized deductions, within the 45-day period required by subsection A. If the tenant provides such written confirmation after the expiration of the 45-day period, the landlord shall refund any remaining balance of the security deposit held to the tenant within 10 days following the receipt of such written confirmation provided by the tenant. If the landlord otherwise receives confirmation of payment of the final water, sewer, or other utility bill for the dwelling unit, the landlord shall refund the security deposit, unless there are other authorized deductions, within the 45-day period.

D. Nothing in this section shall be construed to prohibit the landlord from making the disposition of the security deposit prior to the 45-day period required by subsection A and charging an administrative fee to the tenant for such expedited processing, if the rental agreement so provides and the tenant requests expedited processing in a separate written document.

E. The landlord shall notify the tenant in writing of any deductions provided by this section to be made from the tenant's security deposit during the course of the tenancy. Such notification shall be made within 30 days of the date of the determination of the deduction and shall itemize the reasons in the same manner as provided in subsection F. No such notification shall be required for deductions made less than 30 days prior to the termination of the rental agreement. If the landlord willfully fails to comply with this section, the court shall order the return of the security deposit to the tenant, together with actual damages and reasonable attorney fees, unless the tenant owes rent to the landlord, in which case the court shall order an amount equal to the security deposit credited against the rent due to the landlord. In the event that damages to the premises exceed the amount of the security deposit and require the services of a third-party contractor, the landlord shall give written notice to the tenant advising him of that fact within the 45-day period required by subsection A. If

notice is given as prescribed in this subsection, the landlord shall have an additional 15-day period to provide an itemization of the damages and the cost of repair. This section shall not preclude the landlord or tenant from recovering other damages to which he may be entitled under this chapter. The holder of the landlord's interest in the premises at the time of the termination of the tenancy, regardless of how the interest is acquired or transferred, is bound by this section and shall be required to return any security deposit received by the original landlord that is duly owed to the tenant, whether or not such security deposit is transferred with the landlord's interest by law or equity, regardless of any contractual agreements between the original landlord and his successors in interest.

F. The landlord shall:

1. Maintain and itemize records for each tenant of all deductions from security deposits provided for under this section that the landlord has made by reason of a tenant's noncompliance with § 55.1-1227 (formerly § 55-248.16), or for any other reason set out in this section, during the preceding two years; and

2. Permit a tenant or his authorized agent or attorney to inspect such tenant's records of deductions at any time during normal business hours.

G. Upon request by the landlord to a tenant to vacate, or within five days after receipt of notice by the landlord of the tenant's intent to vacate, the landlord shall provide written notice to the tenant of the tenant's right to be present at the landlord's inspection of the dwelling unit for the purpose of determining the amount of security deposit to be returned. If the tenant desires to be present when the landlord makes the inspection, he shall, in writing, so advise the landlord, who in turn shall notify the tenant of the date and time of the inspection, which must be made within 72 hours of delivery of possession. Following the move-out inspection, the landlord shall provide the tenant with a written security deposit disposition statement, including an itemized list of damages. If additional damages are discovered by the landlord after the security deposit disposition has been made, nothing in this section shall be construed to preclude the landlord from recovery of such damages against the tenant, provided, however, that the tenant may present into evidence a copy of the move-out report to support the tenant's position that such additional damages did not exist at the time of the move-out inspection.

H. If the tenant has any assignee or sublessee, the landlord shall be entitled to hold a security deposit from only one party in compliance with the provisions of this section.

2000, cc. 760, 761, § 55-248.15:1; 2001, c. 524; 2003, c. 438; 2007, c. 634; 2010, c. 550; 2013, c. 563; 2014, c. 651; 2015, c. 596; 2017, c. 730; 2018, c. 221; 2019, c. 712.

Article 3. Tenant Obligations

§ 55.1-1227 (formerly § 55-248.16). Tenant to maintain dwelling unit.

A. In addition to the provisions of the rental agreement, the tenant shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

2. Keep that part of the dwelling unit and the part of the premises that he occupies and uses as clean and safe as the condition of the premises permit;

3. Keep that part of the dwelling unit and the part of the premises that he occupies free from insects and pests, as those terms are defined in § 3.2-3900, and promptly notify the landlord of the existence of any insects or pests;

4. Remove from his dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner and in the appropriate receptacles provided by the landlord;

5. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

6. Use in a reasonable manner all utilities and all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including an elevator in a multifamily premises, and keep all utility services paid for by the tenant to the utility service provider or its agent on at all times during the term of the rental agreement;

7. Not deliberately or negligently destroy, deface, damage, impair, or remove any part of the premises or permit any person, whether known by the tenant or not, to do so;

8. Not remove or tamper with a properly functioning smoke alarm installed by the landlord, including removing any working batteries, so as to render the alarm inoperative. The tenant shall maintain the smoke alarm in accordance with the uniform set of standards for maintenance of smoke alarms established in the Statewide Fire Prevention Code (§ 27-94 et seq.) and subdivision C 6 of § 36-105, Part III of the Uniform Statewide Building Code (§ 36-97 et seq.);

9. Not remove or tamper with a properly functioning carbon monoxide alarm installed by the landlord, including the removal of any working batteries, so as to render the carbon monoxide alarm inoperative. The tenant shall maintain the carbon monoxide alarm in accordance with the uniform set of standards for maintenance of carbon monoxide alarms established in the Statewide Fire Prevention Code (§ 27-94 et seq.) and subdivision C 6 of § 36-105, Part III of the Uniform Statewide Building Code (§ 36-97 et seq.);

10. Use reasonable efforts to maintain the dwelling unit and any other part of the premises that he occupies in such a condition as to prevent accumulation of moisture and the growth of mold and promptly notify the landlord of any moisture accumulation that occurs or of any visible evidence of mold discovered by the tenant;

11. Not paint or disturb painted surfaces or make alterations in the dwelling unit without the prior written approval of the landlord, provided that (i) the dwelling unit was constructed prior to 1978 and therefore requires the landlord to provide the tenant with lead-based paint disclosures and (ii) the landlord has provided the tenant with such disclosures and the rental agreement provides that the tenant is required to obtain the landlord's prior written approval before painting, disturbing painted surfaces, or making alterations in the dwelling unit;

12. Be responsible for his conduct and the conduct of other persons, whether known by the tenant or not, who are on the premises with his consent, to ensure that his neighbors' peaceful enjoyment of the premises will not be disturbed;

13. Abide by all reasonable rules and regulations imposed by the landlord;

14. Be financially responsible for the added cost of treatment or extermination due to the tenant's unreasonable delay in reporting the existence of any insects or pests and be financially responsible for the cost of treatment or extermination due to the tenant's fault in failing to prevent infestation of any insects or pests in the area occupied; and

15. Use reasonable care to prevent any dog or other animal in possession of the tenant, authorized occupants, or guests or invitees from causing personal injuries to a third party in the dwelling unit or on the premises, or property damage to the dwelling unit or the premises.

B. If the duty imposed by subdivision A 1 is greater than any duty imposed by any other subdivision of that subsection, the tenant's duty shall be determined by reference to subdivision A 1.

1974, c. 680, § 55-248.16; 1987, c. 428; 1999, c. 80; 2000, c. 760; 2003, c. 355; 2004, c. 226; 2008, cc. 489, 617, 640; 2009, c. 663; 2011, c. 766; 2014, c. 632; 2016, c. 744; 2017, cc. 262, 730; 2018, cc. 41, 81, 221; 2019, c. 712.

§ 55.1-1228 (formerly § 55-248.17). Rules and regulations.

A. A landlord, from time to time, may adopt rules or regulations, however described, concerning the tenant's use and occupancy of the dwelling unit and premises. Any such rule or regulation is enforceable against the tenant only if:

1. Its purpose is to promote the convenience, safety, or welfare of the tenants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

2. It is reasonably related to the purpose for which it is adopted;

3. It applies to all tenants in the premises in a fair manner;

4. It is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform him of what he is required to do or is prohibited from doing to comply;

5. It is not for the purpose of evading the obligations of the landlord; and

6. The tenant has been provided with a copy of the rules and regulations or changes to such rules and regulations at the time he enters into the rental agreement or when they are adopted.

B. A rule or regulation adopted, changed, or provided to the tenant after the tenant enters into the rental agreement shall be enforceable against the tenant if reasonable notice of its adoption or change has been given to the tenant and it does not constitute a substantial modification of his bargain. If a rule or regulation adopted or changed after the tenant enters into the rental agreement does constitute a substantial modification of his bargain, it shall not be valid unless the tenant consents to it in writing.

C. Any court enforcing this chapter shall consider violations of the reasonable rules and regulations imposed under this section as a breach of the rental agreement and grant the landlord appropriate relief.

1974, c. 680, § 55-248.17; 2000, c. 760; 2017, c. 730; 2019, c. 712.

§ 55.1-1229 (formerly § 55-248.18). Access; consent; correction of nonemergency conditions; relocation of tenant; security systems.

A. The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises; make necessary or agreed-upon repairs, decorations, alterations, or improvements; supply necessary or agreed-upon services; or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors. If, upon inspection of a dwelling unit during the term of a tenancy, the landlord determines there is a violation by the tenant of § 55.1-1227 (formerly § 55-248.16) or the rental agreement materially affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning in accordance with § 55.1-1248 (formerly § 55-248.32) , the landlord may make such repairs and send the tenant an invoice for payment. If, upon inspection of the dwelling unit during the term of a tenancy, the landlord discovers a violation of the rental agreement, this chapter, or other applicable law, the landlord may send a written notice of termination pursuant to § 55.1-1245 (formerly § 55-248.31). If the rental agreement so provides and if a tenant without reasonable justification declines to permit the landlord or managing agent to exhibit the dwelling unit for sale or lease, the landlord may recover damages, costs, and reasonable attorney fees against such tenant.

The landlord may enter the dwelling unit without consent of the tenant in case of emergency. The landlord shall not abuse the right of access or use it to harass the tenant. Except in case of emergency or if it is impractical to do so, the landlord shall give the tenant notice of his intent to enter and may enter only at reasonable times. Unless impractical to do so, the landlord shall give the tenant at least 24 hours' notice of routine maintenance to be performed that has not been requested by the tenant. If the tenant makes a request for maintenance, the landlord is not required to provide notice to the tenant. During the pendency of an unlawful detainer filed by the landlord against the tenant, the landlord may request the court to enter an order requiring the tenant to provide the landlord with access to such dwelling unit.

B. Upon the sole determination by the landlord of the existence of a nonemergency property condition in the dwelling unit that requires the tenant to temporarily vacate the dwelling unit in order for the landlord to properly remedy such property condition, the landlord may, upon at least 30 days' written notice to the tenant, require the tenant to temporarily vacate the dwelling unit for a period not to exceed 30 days to a comparable dwelling unit, or hotel, as selected by the landlord and at no expense or cost to the tenant. The landlord shall not be required to pay for any other expenses of the tenant that arise after the temporary relocation period. The landlord and tenant may agree for the tenant to temporarily vacate the dwelling unit in less than 30 days. For purposes of this subsection, "nonemergency property condition" means (i) a condition in the dwelling unit that, in the

determination of the landlord, is necessary for the landlord to remedy in order for the landlord to be in compliance with § 55.1-1220 (formerly § 55-248.13) ; (ii) the condition does not need to be remedied within a 24-hour period, with any condition that needs to be remedied within 24 hours being defined as an "emergency condition"; and (iii) the condition can only be effectively remedied by the temporary relocation of the tenant pursuant to the provisions of this subsection.

The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation. The landlord shall pay all costs of repairs or remediation required to address the nonemergency property condition. Refusal of the tenant to cooperate with a temporary relocation pursuant to this subsection shall be deemed a breach of the rental agreement, unless the tenant agrees to vacate the unit and terminate the rental agreement within the 30-day notice period. If the landlord properly remedies the nonemergency property condition within the 30-day period, nothing in this section shall be construed to entitle the tenant to terminate the rental agreement. Further, nothing in this section shall be construed to limit the landlord from taking legal action against the tenant for any noncompliance that occurs during the period of any temporary relocation pursuant to this subsection. During the pendency of an unlawful detainer filed by the landlord against the tenant, the landlord may request the court to enter an order requiring the tenant to provide the landlord with access to such dwelling unit.

C. The landlord has no other right to access except by court order or that permitted by §§ 55.1-1248 (formerly § 55-248.32) and 55.1-1249 or if the tenant has abandoned or surrendered the premises.

D. The tenant may install within the dwelling unit new security systems that the tenant may believe necessary to ensure his safety, including chain latch devices approved by the landlord and fire detection devices, provided that:

1. Installation does no permanent damage to any part of the dwelling unit;

2. A duplicate of all keys and instructions for the operation of all devices are given to the landlord; and

3. Upon termination of the tenancy, the tenant is responsible for payment to the landlord for reasonable costs incurred for the removal of all such devices and repairs to all damaged areas.

E. Upon written request of a tenant in a dwelling unit, the landlord shall install a carbon monoxide alarm in the tenant's dwelling unit within 90 days. The landlord may charge the tenant a reasonable fee to recover the costs of the equipment and labor for such installation. The landlord's installation of a carbon monoxide alarm shall be in compliance with the Uniform Statewide Building Code (§ 36-97 et seq.).

1974, c. 680, § 55-248.18; 1993, c. 634; 1995, c. 601; 1999, c. 65; 2000, c. 760; 2001, c. 524; 2004, c. 307; 2008, cc. 489, 617; 2009, c. 663; 2011, c. 766; 2014, c. 632; 2015, c. 596; 2016, c. 744; 2017, c. 730; 2018, cc. 41, 81; 2019, c. 712.

§ 55.1-1230 (formerly § 55-248.18:1). Access following entry of certain court orders.

A. A tenant or authorized occupant who has obtained an order from a court pursuant to § 16.1-279.1 or subsection B of § 20-103 granting such tenant possession of the premises to the exclusion of one or more co-tenants or authorized occupants may provide the landlord with a copy of that court order and request that the landlord either (i) install a new lock or other security devices on the exterior doors of the dwelling unit at the landlord's actual cost or (ii) permit the tenant or authorized occupant to do so, provided that:

1. Installation of the new lock or security devices does no permanent damage to any part of the dwelling unit; and

2. A duplicate copy of all keys and instructions for the operation of all devices are given to the landlord.

Upon termination of the tenancy, the tenant shall be responsible for payment to the landlord of the reasonable costs incurred for the removal of all such devices installed and repairs to all damaged areas.

B. A person who is not a tenant or authorized occupant of the dwelling unit and who has obtained an order from a court pursuant to § 16.1-279.1 or subsection B of § 20-103 granting such person possession of the premises to the exclusion of one or more co-tenants or authorized occupants may provide a copy of such order to the landlord and submit a rental application to become a tenant of such dwelling unit within 10 days of the entry of such order. If such person's rental application meets the landlord's tenant selection criteria, such person may become a tenant of such dwelling unit under a written rental agreement. If such person submits a rental application and does not meet the landlord's tenant selection criteria, such person shall vacate the dwelling unit no later than 30 days after the date the landlord gives such person written notice that his rental application has been rejected. If such person does not provide a copy of the protective order to the landlord and submit a rental application to the landlord within 10 days as required by this section, such person shall vacate the dwelling unit no later than 30 days after the date of the entry of such order. Such person shall be liable to the landlord for failure to vacate the dwelling unit as required in this section.

Any tenant obligated on a rental agreement shall pay the rent and otherwise comply with any and all requirements of the rental agreement and any applicable laws and regulations. The landlord may pursue all of its remedies under the rental agreement and applicable laws and regulations, including filing an unlawful detainer action pursuant to § 8.01-126 to obtain a money judgment and to evict any persons residing in such dwelling unit.

C. A landlord who has received a copy of a court order in accordance with subsection A shall not provide copies of any keys to the dwelling unit to any person excluded from the premises by such order.

D. This section shall not apply when the court order excluding a person was issued ex parte.

2005, cc. 735, 825, § 55-248.18:1; 2016, c. 595; 2019, c. 712.

§ 55.1-1231 (formerly § 55-248.18:2). Relocation of tenant where mold remediation needs to be performed in the dwelling unit.

Where a mold condition in the dwelling unit materially affects the health or safety of any tenant or authorized occupant, the landlord may require the tenant to temporarily vacate the dwelling unit in order for the landlord to perform mold remediation in accordance with professional standards as defined in *§ 55.1-1200 (§ 55.1-1201 (formerly § 55-248.3 & 3:1) § 55-248.4)* for a period not to exceed 30 days. The landlord shall provide the tenant with either (i) a comparable dwelling unit, as selected by the landlord, at no expense or cost to the tenant or (ii) a hotel room, as selected by the landlord, at no expense or cost to the tenant. The landlord shall not be required to pay for any other expenses of the tenant that arise after the relocation period. The tenant shall continue to be responsible for payment of rent under the rental agreement during the period of any temporary relocation and for the remainder of the term of the rental agreement following the remediation. Nothing in this section shall be construed as entitling the tenant to a termination of a tenancy where the landlord has remediated a mold condition in accordance with professional standards as defined in *§ 55.1-1200 (§ 55.1-1201 (formerly § 55-248.3 & 3:1) § 55-248.4)*. The landlord shall pay all costs of the relocation and the mold remediation, unless the mold is a result of the tenant's failure to comply with § 55.1-1227 (formerly § 55-248.16).

2008, c. 640, § 55-248.18:2; 2009, c. 663; 2011, c. 779; 2016, c. 744; 2017, c. 730; 2019, c. 712.

§ 55.1-1232 (formerly § 55-248.19). Use and occupancy by tenant.

Unless otherwise agreed, the tenant shall occupy his dwelling unit only as a residence.

1974, c. 680, § 55-248.19; 2000, c. 760; 2019, c. 712.

§ 55.1-1233 (formerly § 55-248.20). Tenant to surrender possession of dwelling unit.

At the termination of the term of tenancy, whether by expiration of the rental agreement or by reason of default by the tenant, the tenant shall promptly vacate the premises, removing all items of personal property and leaving the premises in good and clean order, reasonable wear and tear excepted. If the tenant fails to vacate, the landlord may bring an action for possession and damages, including reasonable attorney fees.

1974, c. 680, § 55-248.20; 2000, c. 760; 2019, c. 712.

Article 4. Tenant Remedies

§ 55.1-1234 (formerly § 55-248.21). Noncompliance by landlord.

Except as provided in this chapter, if there is a material noncompliance by the landlord with the rental agreement or a noncompliance with any provision of this chapter, materially affecting health and safety, the tenant may serve a written notice on the landlord specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if such breach is not remedied in 21 days.

If the landlord commits a breach that is not remediable, the tenant may serve a written notice on the landlord specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice.

If the landlord has been served with a prior written notice that required the landlord to remedy a breach, and the landlord remedied such breach, where the landlord intentionally commits a subsequent breach of a like nature as the prior breach, the tenant may serve a written notice on the landlord specifying the acts and omissions constituting the subsequent breach, make reference to the prior breach of a like nature, and state that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice.

If the breach is remediable by repairs and the landlord adequately remedies the breach prior to the date specified in the notice, the rental agreement will not terminate. The tenant may not terminate for a condition caused by the deliberate or negligent act or omission of the tenant, an authorized occupant, or a guest or invitee of the tenant. In addition, the tenant may recover damages and obtain injunctive relief for noncompliance by the landlord with the provisions of the rental agreement or of this chapter. The tenant shall be entitled to recover reasonable attorney fees unless the landlord proves by a preponderance of the evidence that the landlord's actions were reasonable under the circumstances. If the rental agreement is terminated due to the landlord's noncompliance, the landlord shall return the security deposit in accordance with § 55.1-1226 (formerly § 55-248.15:1).

1974, c. 680, § 55-248.21; 1982, c. 260; 1987, c. 387; 2000, c. 760; 2003, c. 363; 2019, c. 712.

§ 55.1-1235 (formerly § 55-248.21:1). Early termination of rental agreement by military personnel.

A. Any member of the Armed Forces of the United States or a member of the National Guard serving on full-time duty or as a civil service technician with the National Guard may, through the procedure detailed in subsection B, terminate his rental agreement if the member (i) has received permanent change of station orders to depart 35 miles or more (radius) from the location of the dwelling unit, (ii) has received temporary duty orders in excess of three months' duration to depart 35 miles or more (radius) from the location of the dwelling unit, (iii) is discharged or released from active duty with the Armed Forces of the United States or from his full-time duty or technician status with the National Guard, or (iv) is ordered to report to government-supplied quarters resulting in the forfeiture of basic allowance for quarters.

B. Tenants who qualify to terminate a rental agreement pursuant to subsection A shall do so by serving on the landlord a written notice of termination to be effective on a date stated in such written notice, such date to be not less than 30 days after the first date on which the next rental payment is due and payable after the date on which the written notice is given. The termination date shall be no more than 60 days prior to the date of departure necessary to comply with the official orders or any supplemental instructions for interim training or duty prior to the transfer. Prior to the termination date, the tenant shall furnish the landlord with a copy of the official notification of the orders or a signed letter, confirming the orders, from the tenant's commanding officer.

C. The landlord may not charge any liquidated damages.

D. Nothing in this section shall affect the tenant's obligations established by § 55.1-1227 (formerly § 55-248.16).

1977, c. 427, § 55-248.21:1; 1978, c. 104; 1982, c. 260; 1983, c. 241; 1986, c. 29; 1988, c. 184; 2000, c. 760; 2002, c. 760; 2005, c. 742; 2006, c. 667; 2007, c. 252; 2017, c. 730; 2019, c. 712.

§ 55.1-1236 (formerly § 55-248.21:2). Early termination of rental agreements by victims of family abuse, sexual abuse, or criminal sexual assault.

A. Any tenant who is a victim of (i) family abuse as defined by § 16.1-228, (ii) sexual abuse as defined by § 18.2-67.10, or (iii) other criminal sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 may terminate such tenant's obligations under a rental agreement under the following circumstances:

1. The victim has obtained an order of protection pursuant to § 16.1-279.1 and has given written notice of termination in accordance with subsection B during the period of the protective order or any extension thereof; or

2. A court has entered an order convicting a perpetrator of any crime of sexual assault under Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, sexual abuse as defined by § 18.2-67.10, or family abuse as defined by § 16.1-228 against the victim and the victim gives written notice of termination in accordance with subsection B. A victim may exercise a right of termination under this section to terminate a rental agreement in effect when the conviction order is entered and one subsequent rental agreement based upon the same conviction.

B. A tenant who qualifies to terminate such tenant's obligations under a rental agreement pursuant to subsection A shall do so by serving on the landlord a written notice of termination to be effective on a date stated in such written notice, such date to be not less than 30 days after the first date on which the next rental payment is due and payable after the date on which the written notice is given. When the tenant serves the termination notice on the landlord, the tenant shall also provide the landlord with a copy of (i) the order of protection issued or (ii) the conviction order.

C. The rent shall be payable at such time as would otherwise have been required by the terms of the rental agreement through the effective date of the termination as provided in subsection B.

D. The landlord may not charge any liquidated damages.

E. The victim's obligations as a tenant under § 55.1-1227 (formerly § 55-248.16) shall continue through the effective date of the termination as provided in subsection B. Any co-tenants on the lease with the victim shall remain responsible for the rent for the balance of the term of the rental agreement. If the perpetrator is the remaining sole tenant obligated on the rental agreement, the landlord may terminate the rental agreement and collect actual damages for such termination against the perpetrator pursuant to § 55.1-1251 (formerly § 55-248.35).

2013, c. 531, § 55-248.21:2; 2019, c. 712.

§ 55.1-1237 (formerly § 55-248.21:3). Notice to tenant in event of foreclosure.

A. The landlord of a dwelling unit used as a single-family residence shall give written notice to the tenant or any prospective tenant of such dwelling unit that the landlord has received a notice of a mortgage default, mortgage acceleration, or foreclosure sale relative to the loan on the dwelling unit within five business days after written notice from the lender is received by the landlord. This requirement shall not apply (i) to any managing agent who does not receive a copy of such written notice from the lender or (ii) if the tenant or prospective tenant provides a copy of the written notice from the lender to the landlord or the managing agent.

B. If the landlord fails to provide the notice required by this section, the tenant shall have the right to terminate the rental agreement upon written notice to the landlord at least five business days prior to the effective date of termination. If the tenant terminates the rental agreement, the landlord shall make disposition of the tenant's security deposit in accordance with law or the provisions of the rental agreement, whichever is applicable.

C. If there is in effect at the date of the foreclosure sale a tenant in a dwelling unit foreclosed upon, the foreclosure shall act as a termination of the rental agreement by the owner. In such case, the tenant may remain in possession of such dwelling unit as a month-to-month tenant on the terms of the terminated rental agreement until the successor owner gives a notice of termination of such month-to-month tenancy. If the successor owner elects to terminate the month-to-month tenancy, written notice of such termination shall be given in accordance with the rental agreement or the provisions of § 55.1-1202 (formerly § 55-248.6) or 55.1-1410, as applicable.

D. Unless or until the successor owner terminates the month-to-month tenancy, the terms of the terminated rental agreement remain in effect except that the tenant shall make rental payments (i) to the successor owner as directed in a written notice to the tenant in this subsection; (ii) to the managing agent of the owner, if any, or successor owner; or (iii) into a court escrow account pursuant to the provisions of § 55.1-1244 (formerly § 55-248.27) ; however, there is no obligation of a tenant to file a tenant's assertion and pay rent into

escrow. Where there is not a managing agent designated in the terminated rental agreement, the tenant shall remain obligated for payment of the rent but shall not be held to be delinquent or assessed a late charge until the successor owner provides written notice identifying the name, address, and telephone number of the party to which the rent should be paid.

E. The successor owner may enter into a new rental agreement with the tenant in the dwelling unit, in which case, upon the commencement date of the new rental agreement, the month-to-month tenancy shall terminate.

2018, c. 221, § 55-248.21:3; 2019, c. 712.

§ 55.1-1238 (formerly § 55-248.22). Failure to deliver possession.

If the landlord willfully fails to deliver possession of the dwelling unit to the tenant, then rent abates until possession is delivered, and the tenant may (i) terminate the rental agreement upon at least five days' written notice to the landlord, upon which termination the landlord shall return all prepaid rent and security deposits, or (ii) demand performance of the rental agreement by the landlord. If the tenant elects, he may file an action for possession of the dwelling unit against the landlord or any person wrongfully in possession and recover the damages sustained by him. If a person's failure to deliver possession is willful and not in good faith, an aggrieved person may recover from that person the actual damages sustained by him and reasonable attorney fees.

1974, c. 680, § 55-248.22; 2000, c. 760; 2019, c. 712.

§ 55.1-1239 (formerly § 55-248.23). Wrongful failure to supply an essential service.

A. If contrary to the rental agreement or provisions of this chapter the landlord willfully or negligently fails to supply an essential service, the tenant shall serve a written notice on the landlord specifying the breach, if acting under this section, and, in such event and after allowing the landlord reasonable time to correct such breach, may:

1. Recover damages based upon the diminution in the fair rental value of the dwelling unit; or

2. Procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance, as determined by the court.

B. If the tenant proceeds under this section, he shall be entitled to recover reasonable attorney fees; however, he may not proceed under § 55.1-1234 (formerly § 55-248.21) as to that breach. The rights of the tenant under this section shall not arise until he has given written notice to the landlord; however, no rights arise if the condition was caused by the deliberate or negligent act or omission of the tenant, an authorized occupant, or a guest or invitee of the tenant.

1974, c. 680, § 55-248.23; 1982, c. 260; 2000, c. 760; 2019, c. 712.

§ 55.1-1240 (formerly § 55-248.24). Fire or casualty damage.

If the dwelling unit or premises is damaged or destroyed by fire or casualty to an extent that the tenant's enjoyment of the dwelling unit is substantially impaired or required repairs can only be accomplished if the tenant vacates the dwelling unit, either the tenant or the landlord may terminate the rental agreement. The tenant may terminate the rental agreement by vacating the premises and within 14 days thereafter, serving on the landlord a written notice of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating. If continued occupancy is lawful, § 55.1-1411 shall apply.

The landlord may terminate the rental agreement by giving the tenant 14 days' notice of his intention to terminate the rental agreement on the basis of the landlord's determination that such damage requires the removal of the tenant and that the use of the premises is substantially impaired, in which case the rental agreement terminates as of the expiration of the notice period.

If the rental agreement is terminated, the landlord shall return all security deposits in accordance with § 55.1-1226 (formerly § 55-248.15:1) and prepaid rent, plus accrued interest, recoverable by law unless the landlord reasonably believes that the tenant, an authorized occupant, or a guest or invitee of the tenant was the cause of the damage or casualty, in which case the landlord shall provide a written statement to the tenant for the security and prepaid rent, plus accrued interest based upon the damage or casualty, and may recover actual damages sustained pursuant to § 55.1-1251 (formerly § 55-248.35) . Proration for rent in the event of termination or apportionment shall be made as of the date of the casualty.

1974, c. 680, § 55-248.24; 1982, c. 260; 2000, c. 760; 2005, c. 807; 2011, c. 766; 2015, c. 596; 2016, c. 744; 2017, c. 730; 2019, c. 712.

§ 55.1-1241 (formerly § 55-248.25). Landlord's noncompliance as defense to action for possession for nonpayment of rent.

A. In an action for possession based upon nonpayment of rent or in an action for rent by a landlord when the tenant is in possession, the tenant may assert as a defense that there exists upon the leased premises a condition that constitutes, or will constitute, a fire hazard or a serious threat to the life, health, or safety of the occupants of the dwelling unit, including (i) a lack of heat, running water, light, electricity, or adequate sewage disposal facilities; (ii) an infestation of rodents; or (iii) a condition that constitutes material noncompliance on the part of the landlord with the rental agreement or provisions of law. The assertion of any defense provided for in this section shall be conditioned upon the following:

1. Prior to the commencement of the action for rent or possession, the landlord or his agent refused or, having a reasonable opportunity to do so, failed to remedy the condition for which he was served a written notice of the condition by the tenant or was notified of

such condition by a violation or condemnation notice from an appropriate state or local agency. For the purposes of this subsection, what period of time shall be deemed to be unreasonable delay is left to the discretion of the court, except that there shall be a rebuttable presumption that a period in excess of 30 days from receipt of the notification by the landlord is unreasonable; and

2. The tenant, if in possession, has paid into court the amount of rent found by the court to be due and unpaid, to be held by the court pending the issuance of an order under subsection C.

B. It shall be a sufficient answer to such a defense provided for in this section if the landlord establishes that (i) the conditions alleged in the defense do not in fact exist; (ii) such conditions have been removed or remedied; (iii) such conditions have been caused by the tenant, his guest or invitee, members of the family of such tenant, or a guest or invitee of such family member; or (iv) the tenant has unreasonably refused entry to the landlord to the premises for the purposes of correcting such conditions.

C. The court shall make findings of fact upon any defense raised under this section or the answer to any defense and shall issue any order as may be required, including any one or more of the following:

1. Reducing rent in such amount as the court determines to be equitable to represent the existence of any condition set forth in subsection A;

2. Terminating the rental agreement or ordering the surrender of the premises to the landlord; or

3. Referring any matter before the court to the proper state or local agency for investigation and report and granting a continuance of the action or complaint pending receipt of such investigation and report. When such a continuance is granted, the tenant shall deposit with the court any rents that will become due during the period of continuance, to be held by the court pending its further order, or, in its discretion, the court may use such funds to (i) pay a mortgage on the property in order to stay a foreclosure, (ii) pay a creditor to prevent or satisfy a bill to enforce a mechanic's or materialman's lien, or (iii) remedy any condition set forth in subsection A that is found by the court to exist.

D. If it appears that the tenant has raised a defense under this section in bad faith or has caused the violation or has unreasonably refused entry to the landlord for the purpose of correcting the condition giving rise to the violation, the court may impose upon the tenant the reasonable costs of the landlord, including court costs, the costs of repair where the court finds the tenant has caused the violation, and reasonable attorney fees.

E. If the court finds that the tenant has successfully raised a defense under this section and enters judgment for the tenant, the court, in its discretion, may impose upon the landlord the reasonable costs of the tenant, including court costs, and reasonable attorney fees.

1974, c. 680, § 55-248.25; 1982, c. 260; 2000, c. 760; 2019, cc. 324, 712.

§ 55.1-1242 (formerly § 55-248.25:1). Rent escrow required for continuance of tenant's case.

A. Where a landlord has filed an unlawful detainer action seeking possession of the premises as provided by this chapter and the tenant seeks to obtain a continuance of the action or to set it for a contested trial, the court shall, upon request of the landlord, order the tenant to pay an amount equal to the rent that is due as of the initial court date into the court escrow account prior to granting the tenant's request for a delayed court date. However, if the tenant asserts a good faith defense, and the court so finds, the court shall not require the rent to be escrowed. If the landlord requests a continuance or to set the case for a contested trial, the court shall not require the rent to be escrowed.

B. If the court finds that the tenant has not asserted a good faith defense, the tenant shall be required to pay an amount determined by the court to be proper into the court escrow account in order for the case to be continued or set for contested trial. The court may grant the tenant a continuance of no more than one week to make full payment of the court-ordered amount into the court escrow account. If the tenant fails to pay the entire amount ordered, the court shall, upon request of the landlord, enter judgment for the landlord and enter an order of possession of the premises.

C. The court shall further order that should the tenant fail to pay future rents due under the rental agreement into the court escrow account, the court shall, upon the request of the landlord, enter judgment for the landlord and enter an order of possession of the premises.

D. Upon motion of the landlord, the court may disburse the moneys held in the court escrow account to the landlord for payment of his mortgage or other expenses relating to the dwelling unit.

E. Except as provided in subsection D, no rent required to be escrowed under this section shall be disbursed within 10 days of the date of the judgment unless otherwise agreed to by the parties. If an appeal is taken by the plaintiff, the rent held in escrow shall be transmitted to the clerk of the circuit court to be held in such court escrow account pending the outcome of the appeal.

1999, cc. 382, 506, § 55-248.25:1; 2009, c. 137; 2019, c. 712.

§ 55.1-1243 (formerly § 55-248.26). Tenant's remedies for landlord's unlawful ouster, exclusion, or diminution of service.

If a landlord unlawfully removes or excludes a tenant from the premises or willfully diminishes services to the tenant by interrupting or causing the interruption of an essential service to the tenant, the tenant may obtain an order from a general district court to recover possession, require the landlord to resume any such interrupted essential service, or terminate the rental agreement and, in any case, recover the actual damages sustained by him and reasonable attorney fees. If the rental agreement is terminated, the landlord shall return all of the security deposit in accordance with § 55.1-1226 (formerly § 55-248.15:1).

1974, c. 680, § 55-248.26; 2000, c. 760; 2013, c. 110; 2019, c. 712.

§ 55.1-1244 (formerly § 55-248.27). Tenant's assertion; rent escrow.

A. The tenant may assert that there exists upon the leased premises a condition that constitutes a material noncompliance by the landlord with the rental agreement or with provisions of law or that, if not promptly corrected, will constitute a fire hazard or serious threat to the life, health, or safety of occupants of the premises, including (i) a lack of heat or hot or cold running water, except where the tenant is responsible for payment of the utility charge and where the lack of such heat or hot or cold running water is the direct result of the tenant's failure to pay the utility charge; (ii) a lack of light, electricity, or adequate sewage disposal facilities; (iii) an infestation of rodents; or (iv) the existence of paint containing lead pigment on surfaces within the dwelling, provided that the landlord has notice of such paint. The tenant may file such an assertion in a general district court in which the premises is located by a declaration setting forth such assertion and asking for one or more forms of relief as provided for in subsection D.

B. Prior to the granting of any relief, the tenant shall show to the satisfaction of the court that:

1. Prior to the commencement of the action, the landlord or his agent refused or, having a reasonable opportunity to do so, failed to remedy the condition for which he was served a written notice of the condition by the tenant or was notified of such condition by a violation or condemnation notice from an appropriate state or local agency. For the purposes of this subsection, what period of time shall be deemed to be unreasonable delay is left to the discretion of the court, except that there shall be a rebuttable presumption that a period in excess of 30 days from receipt of the notification by the landlord is unreasonable; and

2. The tenant has paid into court the amount of rent called for under the rental agreement, within five days of the date due under the rental agreement, unless or until such amount is modified by subsequent order of the court under this chapter.

C. It shall be sufficient answer or rejoinder to an assertion made pursuant to subsection A if the landlord establishes to the satisfaction of the court that (i) the conditions alleged by the tenant do not in fact exist; (ii) such conditions have been removed or remedied; (iii) such conditions have been caused by the tenant, his guest or invitee, members of the family of such tenant, or a guest or invitee of such family member; or (iv) the tenant has unreasonably refused entry to the landlord to the premises for the purpose of correcting such conditions.

D. Any court shall make findings of fact on the issues before it and shall issue any order that may be required. Such an order may include any one or more of the following:

1. Terminating the rental agreement upon the request of the tenant or ordering the surrender of the premises to the landlord if the landlord prevails on a request for possession pursuant to an unlawful detainer properly filed with the court;

2. Ordering all moneys already accumulated in escrow disbursed to the landlord or to the tenant in accordance with this chapter;

3. Ordering that the escrow be continued until the conditions causing the complaint are remedied;

4. Ordering that the amount of rent, whether paid into the escrow account or paid to the landlord, be abated as determined by the court in such an amount as may be equitable to represent the existence of any condition found by the court to exist. In all cases where the court deems that the tenant is entitled to relief under this chapter, the burden shall be upon the landlord to show cause why there should not be an abatement of rent;

5. Ordering any amount of moneys accumulated in escrow disbursed to the tenant where the landlord refuses to make repairs after a reasonable time or to the landlord or to a contractor chosen by the landlord in order to make repairs or to otherwise remedy the condition. In either case, the court shall in its order insure that moneys thus disbursed will be in fact used for the purpose of making repairs or effecting a remedy;

6. Referring any matter before the court to the proper state or local agency for investigation and report and granting a continuance of the action or complaint pending receipt of such investigation and report. When such a continuance is granted, the tenant shall deposit with the court, within five days of date due under the rental agreement, subject to any abatement under this section, rents that become due during the period of the continuance, to be held by the court pending its further order;

7. Ordering escrow funds disbursed to pay a mortgage on the property in order to stay a foreclosure; or

8. Ordering escrow funds disbursed to pay a creditor to prevent or satisfy a bill to enforce a mechanic's or materialman's lien.

E. Notwithstanding any provision of subsection D, where an escrow account is established by the court and the condition is not fully remedied within six months of the establishment of such account, and the landlord has not made reasonable attempts to remedy the condition, the court shall award all moneys accumulated in escrow to the tenant. In such event, the escrow shall not be terminated, but shall begin upon a new six-month period with the same result if, at the end of the period, the condition has not been remedied.

F. The initial hearing on the tenant's assertion filed pursuant to subsection A shall be held within 15 calendar days from the date of service of process on the landlord as authorized by § 55.1-1216 (formerly § 55-248.12) , except that the court shall order an earlier hearing where emergency conditions are alleged to exist upon the premises, such as failure of heat in winter, lack of adequate sewage disposal facilities, or any other condition that constitutes an immediate threat to the health or safety of the inhabitants of the leased premises. The court, on motion of either party or on its own motion, may hold hearings subsequent to the initial proceeding in order to further determine the rights and obligations of the parties. Distribution of escrow moneys may only occur by order of the court after a hearing of which both parties are given notice as required by law or upon motion of both the landlord and tenant or upon certification by the appropriate inspector that the work required by the court to be done has been satisfactorily completed. If the tenant proceeds under this subsection, he may not proceed under any other section of this article as to that breach.

G. In cases where the court deems that the tenant is entitled to relief under this section and enters judgment for the tenant, the court, in its discretion, may impose upon the

landlord the reasonable costs of the tenant, including court costs, and reasonable attorney fees.

1974, c. 680, § 55-248.27; 2000, c. 760; 2001, c. 524; 2016, cc. 384, 459; 2017, c. 730; 2019, cc. 324, 712.

Article 5. Landlord Remedies

§ 55.1-1245 (formerly § 55-248.31). Noncompliance with rental agreement; monetary penalty.

A. Except as otherwise provided in this chapter, if there is a material noncompliance by the tenant with the rental agreement or a violation of § 55.1-1227 (formerly § 55-248.16) materially affecting health and safety, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 21 days and that the rental agreement shall terminate as provided in the notice.

B. If the breach is remediable by repairs or the payment of damages or otherwise and the tenant adequately remedies the breach prior to the date specified in the notice, the rental agreement shall not terminate.

C. If the tenant commits a breach that is not remediable, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the breach and stating that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice. Notwithstanding anything to the contrary, when a breach of the tenant's obligations under this chapter or the rental agreement involves or constitutes a criminal or a willful act that is not remediable and that poses a threat to health or safety, the landlord may terminate the rental agreement immediately and proceed to obtain possession of the premises. For purposes of this subsection, any illegal drug activity involving a controlled substance, as used or defined by the Drug Control Act (§ 54.1-3400 et seq.), or any activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety, by the tenant, an authorized occupant, or a guest or invitee of the tenant shall constitute an immediate nonremediable violation for which the landlord may proceed to terminate the tenancy without the necessity of waiting for a conviction of any criminal offense that may arise out of the same actions. In order to obtain an order of possession from a court of competent jurisdiction terminating the tenancy for illegal drug activity or for any other activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety, the landlord shall prove any such violations by a preponderance of the evidence. However, where the illegal drug activity or any activity that involves or constitutes a criminal or willful act that also poses a threat to health and safety is engaged in by an authorized occupant or a guest or invitee of the tenant, the tenant shall be presumed to have knowledge of such activities unless the presumption is rebutted by a preponderance of the evidence. The initial hearing on the landlord's action for immediate possession of the premises shall be held within 15 calendar days from the date of service on the tenant;

however, the court shall order an earlier hearing when emergency conditions are alleged to exist upon the premises that constitute an immediate threat to the health or safety of the other tenants. After the initial hearing, if the matter is scheduled for a subsequent hearing or for a contested trial, the court, to the extent practicable, shall order that the matter be given priority on the court's docket. Such subsequent hearing or contested trial shall be heard no later than 30 calendar days from the date of service on the tenant. During the interim period between the date of the initial hearing and the date of any subsequent hearing or contested trial, the court may afford any further remedy or relief as is necessary to protect the interests of parties to the proceeding or the interests of any other tenant residing on the premises. Failure by the court to hold either of the hearings within the time limits set out in this section shall not be a basis for dismissal of the case.

D. If the tenant is a victim of family abuse as defined in § 16.1-228 that occurred in the dwelling unit or on the premises and the perpetrator is barred from the dwelling unit pursuant to § 55.1-1246 (formerly § 55-248.31:01) on the basis of information provided by the tenant to the landlord, or by a protective order from a court of competent jurisdiction pursuant to § 16.1-253.1 or 16.1-279.1 or subsection B of § 20-103, the lease shall not terminate solely due to an act of family abuse against the tenant. However, these provisions shall not be applicable if (i) the tenant fails to provide written documentation corroborating the tenant's status as a victim of family abuse and the exclusion from the dwelling unit of the perpetrator no later than 21 days from the alleged offense or (ii) the perpetrator returns to the dwelling unit or the premises, in violation of a bar notice, and the tenant fails to promptly notify the landlord within 24 hours that the perpetrator has returned to the dwelling unit or the premises, unless the tenant proves by a preponderance of the evidence that the tenant had no actual knowledge that the perpetrator violated the bar notice, or it was not possible for the tenant to notify the landlord within 24 hours, in which case the tenant shall promptly notify the landlord, but in no event later than seven days. If the provisions of this subsection are not applicable, the tenant shall remain responsible for the acts of the other co-tenants, authorized occupants, or guests or invitees pursuant to § 55.1-1227 (formerly § 55-248.16) and is subject to termination of the tenancy pursuant to the lease and this chapter.

E. If the tenant has been served with a prior written notice that required the tenant to remedy a breach, and the tenant remedied such breach, where the tenant intentionally commits a subsequent breach of a like nature as the prior breach, the landlord may serve a written notice on the tenant specifying the acts and omissions constituting the subsequent breach, make reference to the prior breach of a like nature, and state that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice.

F. If rent is unpaid when due, and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment, and of the landlord's intention to terminate the rental agreement if the rent is not paid within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55.1-1251 (formerly § 55-248.35) . If a check for rent is delivered to the landlord drawn on an account with insufficient funds, or if an electronic funds transfer has been rejected because of insufficient funds or a stop-payment order has been placed in bad faith by the authorizing party, and the tenant fails to pay rent within five days after written notice is served on him notifying the tenant of his nonpayment and of the landlord's

intention to terminate the rental agreement if the rent is not paid by cash, cashier's check, certified check, or a completed electronic funds transfer within the five-day period, the landlord may terminate the rental agreement and proceed to obtain possession of the premises as provided in § 55.1-1251 (formerly § 55-248.35) . Nothing shall be construed to prevent a landlord from seeking an award of costs or attorney fees under § 8.01-27.1 or civil recovery under § 8.01-27.2, as a part of other damages requested on the unlawful detainer filed pursuant to § 8.01-126, provided that the landlord has given notice in accordance with § 55.1-1202 (formerly § 55-248.6) , which notice may be included in the five-day termination notice provided in accordance with this section.

G. Except as otherwise provided in this chapter, the landlord may recover damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or § 55.1-1227 (formerly § 55-248.16). In the event of a breach of the rental agreement or noncompliance by the tenant, the landlord shall be entitled to recover from the tenant the following, regardless of whether a lawsuit is filed or an order is obtained from a court: (i) rent due and owing as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, (v) costs of the proceeding as contracted for in the rental agreement or as provided by law only if court action has been filed, and (vi) damages to the dwelling unit or premises as contracted for in the rental agreement.

H. In a case where a lawsuit is pending before the court upon a breach of the rental agreement or noncompliance by the tenant and the landlord prevails, the court shall award a money judgment to the landlord and against the tenant for the relief requested, which may include the following: (i) rent due and owing as of the court date as contracted for in the rental agreement; (ii) other charges and fees as contracted for in the rental agreement; (iii) late charges contracted for in the rental agreement; (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, unless in any such action the tenant proves by a preponderance of the evidence that the tenant's failure to pay rent or vacate was reasonable; (v) costs of the proceeding as contracted for in the rental agreement or as provided by law; and (vi) damages to the dwelling unit or premises.

1974, c. 680, § 55-248.31; 1978, c. 378; 1980, c. 502; 1982, c. 260; 1984, c. 78; 1987, c. 387; 1988, c. 62; 1989, c. 301; 1995, c. 580; 2000, c. 760; 2003, c. 363; 2004, c. 232; 2005, cc. 808, 883; 2006, cc. 628, 717; 2007, c. 273; 2008, c. 489; 2013, c. 563; 2014, c. 813; 2017, c. 730; 2019, c. 712.

§ 55.1-1246 (formerly § 55-248.31:01). Barring guest or invitee of a tenant.

A. A guest or invitee of a tenant may be barred from the premises by the landlord upon written notice served personally upon the guest or invitee of the tenant for conduct on the landlord's property where the premises are located that violates the terms and conditions of the rental agreement, a local ordinance, or a state or federal law. A copy of the notice shall be served upon the tenant in accordance with this chapter. The notice shall describe the conduct of the guest or invitee that is the basis for the landlord's action.

B. In addition to the remedies against the tenant authorized by this chapter, a landlord may apply to the magistrate for a warrant for trespass, provided that the guest or invitee has been served in accordance with subsection A.

C. The tenant may file a tenant's assertion, in accordance with § 55.1-1244 (formerly § 55-248.27), requesting that the general district court review the landlord's action to bar the guest or invitee.

1999, cc. 359, 390, § 55-248.31:01; 2000, c. 760; 2019, c. 712.

§ 55.1-1246 (formerly § 55-248.31:01). Sheriffs authorized to serve certain notices; fee for service.

The sheriff of any county or city, upon request, may deliver any notice to a tenant on behalf of a landlord or lessor under the provisions of § 55.1-1245 (formerly § 55-248.31) or 55.1-1415. For this service, the sheriff shall be allowed a fee not to exceed $12.

1981, c. 148, § 55-248.31:1; 1995, c. 51; 2019, c. 712.

§ 55.1-1248 (formerly § 55-248.32). Remedy by repair, etc.; emergencies.

If there is a violation by the tenant of § 55.1-1227 (formerly § 55-248.16) or the rental agreement materially affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning, the landlord shall send a written notice to the tenant specifying the breach and stating that the landlord will enter the dwelling unit and perform the work in a workmanlike manner and submit an itemized bill for the actual and reasonable cost for such work to the tenant, which shall be due as rent on the next rent due date or, if the rental agreement has terminated, for immediate payment.

In case of emergency the landlord may, as promptly as conditions require, enter the dwelling unit, perform the work in a workmanlike manner, and submit an itemized bill for the actual and reasonable cost for such work to the tenant, which shall be due as rent on the next rent due date or, if the rental agreement has terminated, for immediate payment.

The landlord may perform the repair, replacement, or cleaning or may engage a third party to do so.

1974, c. 680, § 55-248.32; 2000, c. 760; 2009, c. 663; 2019, c. 712.

§ 55.1-1249 (formerly § 55-248.33). Remedies for absence, nonuse, and abandonment.

If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of seven days and the tenant fails to do so, the landlord may recover actual damages from the tenant. During any absence of the tenant in excess of seven days, the landlord may enter the dwelling unit at times reasonably necessary to protect his possessions and property. The rental agreement is deemed to be terminated by the landlord as of the date of abandonment by the tenant. If the landlord cannot determine

whether the premises has been abandoned by the tenant, the landlord shall serve written notice on the tenant in accordance with § 55.1-1202 (formerly § 55-248.6) requiring the tenant to give written notice to the landlord within seven days that the tenant intends to remain in occupancy of the premises. If the tenant gives such written notice to the landlord, or if the landlord otherwise determines that the tenant remains in occupancy of the premises, the landlord shall not treat the premises as having been abandoned. Unless the landlord receives written notice from the tenant or otherwise determines that the tenant remains in occupancy of the premises, upon the expiration of seven days from the date of the landlord's notice to the tenant, there shall be a rebuttable presumption that the premises has been abandoned by the tenant, and the rental agreement shall be deemed to terminate on that date. The landlord shall mitigate damages in accordance with § 55.1-1251 (formerly § 55-248.35).

1974, c. 680, § 55-248.33; 2002, c. 761; 2019, c. 712.

§ 55.1-1250 (formerly § 55-248.34:1). Landlord's acceptance of rent with reservation.

A. The landlord may accept full or partial payment of all rent and receive an order of possession from a court of competent jurisdiction pursuant to an unlawful detainer action filed under Article 13 (§ 8.01-124 et seq.) of Chapter 3 of Title 8.01 and proceed with eviction under § 55.1-1255 (formerly § 55-248.38:2) , provided that the landlord has stated in a written notice to the tenant that any and all amounts owed to the landlord by the tenant, including payment of any rent, damages, money judgment, award of attorney fees, and court costs, would be accepted with reservation and would not constitute a waiver of the landlord's right to evict the tenant from the dwelling unit. Such notice may be included in a written termination notice given by the landlord to the tenant in accordance with § 55.1-1245 (formerly § 55-248.31), and if so included, nothing herein shall be construed by a court of law or otherwise as requiring such landlord to give the tenant subsequent written notice. If the dwelling unit is a public housing unit or other housing unit subject to regulation by the U.S. Department of Housing and Urban Development, nothing in this section shall be construed to require that written notice be given to any public agency paying a portion of the rent under the rental agreement. If a landlord enters into a new written rental agreement with the tenant prior to eviction, an order of possession obtained prior to the entry of such new rental agreement is not enforceable.

B. The tenant may pay or present to the court a redemption tender for payment of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, at or before the first return date on an action for unlawful detainer. For purposes of this section, "redemption tender" means a written commitment to pay all rent due and owing as of the return date, including late charges, attorney fees, and court costs, by a local government or nonprofit entity within 10 days of such return date.

C. If the tenant presents a redemption tender to the court at the return date, the court shall continue the action for unlawful detainer for 10 days following the return date for payment to the landlord of all rent due and owing as of the return date, including late

charges, attorney fees, and court costs, and dismiss the action upon such payment. Should the landlord not receive full payment of all rent due and owing as of the return date, including late charges, attorney fees, and court costs, within 10 days of the return date, the court shall, without further evidence, grant to the landlord judgment for all amounts due and immediate possession of the premises.

D. In cases of unlawful detainer, a tenant may pay the landlord or the landlord's attorney or pay into court all (i) rent due and owing as of the court date as contracted for in the rental agreement, (ii) other charges and fees as contracted for in the rental agreement, (iii) late charges contracted for in the rental agreement, (iv) reasonable attorney fees as contracted for in the rental agreement or as provided by law, and (v) costs of the proceeding as provided by law, at which time the unlawful detainer proceeding shall be dismissed. If such payment has not been made as of the return date for the unlawful detainer, the tenant may pay to the landlord, the landlord's attorney, or the court all amounts claimed on the summons in unlawful detainer, including current rent, damages, late fees, costs of court, any civil recovery, attorney fees, and sheriff fees, no less than two business days before the date scheduled by the officer to whom the writ of eviction has been delivered to be executed. Any payments made by the tenant shall be by cashier's check, certified check, or money order. A tenant may invoke the rights granted in this section no more than one time during any 12-month period of continuous residency in the dwelling unit, regardless of the term of the rental agreement or any renewal term of the rental agreement.

2003, c. 427, § 55-248.34:1; 2006, c. 667; 2008, c. 489; 2010, c. 793; 2012, c. 788; 2013, c. 563; 2014, c. 813; 2018, cc. 220, 233; 2019, cc. 28, 43, 712.

§ 55.1-1251 (formerly § 55-248.35). Remedy after termination.

If the rental agreement is terminated, the landlord may have a claim for possession and for rent and a separate claim for actual damages for breach of the rental agreement, reasonable attorney fees as provided in § 55.1-1245 (formerly § 55-248.31) , and the cost of service of any notice under § 55.1-1245 (formerly § 55-248.31) or 55.1-1415 or process by a sheriff or private process server, which cost shall not exceed the amount authorized by § 55.1-1246 (formerly § 55-248.31:01) , and such claims may be enforced, without limitation, by initiating an action for unlawful entry or detainer. Actual damages for breach of the rental agreement may include a claim for rent that would have accrued until the expiration of the term of the rental agreement or until a tenancy pursuant to a new rental agreement commences, whichever occurs first, provided that nothing contained in this section shall diminish the duty of the landlord to mitigate actual damages for breach of the rental agreement. In obtaining post-possession judgments for actual damages as defined in this section, the landlord shall not seek a judgment for accelerated rent through the end of the term of the tenancy.

In any unlawful detainer action brought by the landlord, this section shall not be construed to prevent the landlord from being granted by the court a simultaneous judgment for money due and for possession of the premises without a credit for any security deposit. Upon the tenant vacating the premises either voluntarily or by a writ of eviction, security

deposits shall be credited to the tenant's account by the landlord in accordance with the requirements of § 55.1-1226 (formerly § 55-248.15:1).

1974, c. 680, § 55-248.35; 1981, c. 539; 1988, c. 68; 1989, c. 383; 1996, c. 326; 2000, c. 760; 2001, c. 524; 2019, cc. 180, 700, 712.

§ 55.1-1252 (formerly § 55-248.36). Recovery of possession limited.

A landlord may not recover or take possession of the dwelling unit (i) by willful diminution of services to the tenant by interrupting or causing the interruption of an essential service required by the rental agreement or (ii) by refusal to permit the tenant access to the unit unless such refusal is pursuant to a court order for possession.

1974, c. 680, § 55-248.36; 1978, c. 520; 2019, c. 712.

§ 55.1-1253 (formerly § 55-248.37). Periodic tenancy; holdover remedies.

A. The landlord or the tenant may terminate a week-to-week tenancy by serving a written notice on the other at least seven days prior to the next rent due date. The landlord or the tenant may terminate a month-to-month tenancy by serving a written notice on the other at least 30 days prior to the next rent due date, unless the rental agreement provides for a different notice period. The landlord and the tenant may agree in writing to an early termination of a rental agreement. In the event that no such agreement is reached, the provisions of § 55.1-1251 (formerly § 55-248.35) shall control.

B. If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession and may also recover actual damages, reasonable attorney fees, and court costs, unless the tenant proves by a preponderance of the evidence that the failure of the tenant to vacate the dwelling unit as of the termination date was reasonable. The landlord may include in the rental agreement a reasonable liquidated damage penalty, not to exceed an amount equal to 150 percent of the per diem of the monthly rent, for each day the tenant remains in the dwelling unit after the termination date specified in the landlord's notice. However, if the dwelling unit is a public housing unit or other housing unit subject to regulation by the U.S. Department of Housing and Urban Development, any liquidated damage penalty shall not exceed an amount equal to the per diem of the monthly rent set out in the lease agreement. If the landlord consents to the tenant's continued occupancy, § 55.1-1204 (formerly § 55-248.7) applies.

C. In the event of termination of a rental agreement where the tenant remains in possession with the agreement of the landlord either as a hold-over tenant or a month-to-month tenant and no new rental agreement is entered into, the terms of the terminated agreement shall remain in effect and govern the hold-over or month-to-month tenancy, except that the amount of rent shall be either as provided in the terminated rental agreement or the amount set forth in a written notice to the tenant, provided that such new rent amount shall not take effect until the next rent due date coming 30 days after the notice.

1974, c. 680, § 55-248.37; 1977, c. 427; 1982, c. 260; 2004, c. 123; 2005, c. 805; 2009, c. 663; 2013, c. 563; 2019, c. 712.

§ 55.1-1254 (formerly § 55-248.38:1). Disposal of property abandoned by tenants.

If any items of personal property are left in the dwelling unit, the premises, or any storage area provided by the landlord after the rental agreement has terminated and delivery of possession has occurred, the landlord may consider such property to be abandoned. The landlord may dispose of the property so abandoned as the landlord sees fit or appropriate, provided that he has given (i) a termination notice to the tenant in accordance with this chapter, including a statement that any items of personal property left in the dwelling unit or the premises would be disposed of within the 24-hour period after termination; (ii) written notice to the tenant in accordance with § 55.1-1249 (formerly § 55-248.33) , including a statement that any items of personal property left in the dwelling unit, the premises, or the storage area would be disposed of within the 24-hour period after expiration of the seven-day notice period; or (iii) a separate written notice to the tenant, including a statement that any items of personal property left in the dwelling unit, the premises, or the storage area would be disposed of within 24 hours after expiration of a 10-day period from the date such notice was given to the tenant. Any written notice to the tenant shall be given in accordance with § 55.1-1202 (formerly § 55-248.6). The tenant shall have the right to remove his personal property from the dwelling unit, the premises, or the storage area at reasonable times during the 24-hour period after termination or at such other reasonable times until the landlord has disposed of the remaining personal property of the tenant.

During the 24-hour period and until the landlord disposes of the remaining personal property of the tenant, the landlord shall not have any liability for the risk of loss for such personal property. If the landlord fails to allow reasonable access to the tenant to remove his personal property as provided in this section, the tenant shall have a right to injunctive or other relief as provided by law. If the landlord received any funds from any sale of abandoned property as provided in this section, the landlord shall pay such funds to the account of the tenant and apply the funds to any amounts due the landlord by the tenant, including the reasonable costs incurred by the landlord in selling, storing, or safekeeping such property. If any such funds are remaining after application, the remaining funds shall be treated as a security deposit under the provisions of § 55.1-1226 (formerly § 55-248.15:1). The provisions of this section shall not be applicable if the landlord has been granted an order of possession for the premises in accordance with Title 8.01 and execution of a writ of eviction has been completed pursuant to § 8.01-470.

Nothing in this section shall affect the right of a landlord to enforce an inchoate or perfected lien of the landlord on the personal property of a tenant in a dwelling unit or on the premises leased to such tenant and the right of a landlord to distress, levy, and seize such personal property as otherwise provided by law.

1984, c. 741, § 55-248.38:1; 1995, c. 228; 1998, c. 461; 2000, c. 760; 2002, c. 762; 2013, c. 563; 2017, c. 730; 2019, cc. 180, 700, 712.

§ 55.1-1255 (formerly § 55-248.38:2). Authority of sheriffs to store and sell personal property removed from residential premises; recovery of possession by owner; disposition or sale.

Notwithstanding the provisions of § 8.01-156, when personal property is removed from a dwelling unit, the premises, or any storage area provided by the landlord pursuant to an action of unlawful detainer or ejectment, or pursuant to any other action in which personal property is removed from the dwelling unit in order to restore the dwelling unit to the person entitled to such dwelling unit, the sheriff shall oversee the removal of such personal property to be placed into the public way. The tenant shall have the right to remove his personal property from the public way during the 24-hour period after eviction. Upon the expiration of the 24-hour period after eviction, the landlord shall remove, or dispose of, any such personal property remaining in the public way.

At the landlord's request, any personal property removed pursuant to this section shall be placed into a storage area designated by the landlord, which may be the dwelling unit. The tenant shall have the right to remove his personal property from the landlord's designated storage area at reasonable times during the 24 hours after eviction or at such other reasonable times until the landlord has disposed of the property as provided in this section. During that 24-hour period and until the landlord disposes of the remaining personal property of the tenant, the landlord and the sheriff shall not have any liability for the risk of loss for such personal property. If the landlord fails to allow reasonable access to the tenant to remove his personal property as provided in this section, the tenant shall have a right to injunctive or other relief as otherwise provided by law.

Any property remaining in the landlord's storage area upon the expiration of the 24-hour period after eviction may be disposed of by the landlord as the landlord sees fit or appropriate. If the landlord receives any funds from any sale of such remaining property, the landlord shall pay such funds to the account of the tenant and apply the funds to any amounts due the landlord by the tenant, including the reasonable costs incurred by the landlord in the eviction process described in this section or the reasonable costs incurred by the landlord in selling or storing such property. If any funds are remaining after application, the remaining funds shall be treated as a security deposit under the provisions of § 55.1-1226 (formerly § 55-248.15:1).

The notice posted by the sheriff with the writ of eviction setting the date and time of the eviction, pursuant to § 8.01-470, shall provide notice to the tenant of the rights afforded to tenants in this section and shall include a copy of this statute attached to, or made a part of, the notice.

2001, c. 222, § 55-248.38:2; 2006, c. 129; 2013, c. 563; 2019, cc. 180, 700, 712.

§ 55.1-1256 (formerly § 55-248.38:3). Disposal of property of deceased tenants.

A. If a tenant who is the sole tenant under a written rental agreement still residing in the dwelling unit dies, and there is no person authorized by order of the circuit court to handle probate matters for the deceased tenant, the landlord may dispose of the personal property left in the dwelling unit or upon the premises. However, the landlord shall give at

least 10 days' written notice to (i) the person identified in the rental application, lease agreement, or other landlord document as the authorized person to contact in the event of the death or emergency of the tenant or (ii) the tenant in accordance with § 55.1-1202 (formerly § 55-248.6) if no such person is identified in the rental application, lease agreement, or other landlord document as the authorized contact person. The notice given under clause (i) or (ii) shall include a statement that any items of personal property left in the premises would be treated as abandoned property and disposed of in accordance with the provisions of § 55.1-1254 (formerly § 55-248.38:1), if not claimed within 10 days. Authorized occupants, or guests or invitees, are not allowed to occupy the dwelling unit after the death of the sole remaining tenant and shall vacate the dwelling unit prior to the end of the 10-day period.

B. The landlord may request that such authorized contact person provide reasonable proof of identification. Thereafter, the authorized contact person identified in the rental application, lease agreement, or other landlord document may (i) have access to the dwelling unit or the premises and to the tenant records maintained by the landlord and (ii) rightfully claim the personal property of the deceased tenant and otherwise handle the affairs of the deceased tenant with the landlord.

C. The rental agreement is deemed to be terminated by the landlord as of the date of death of the tenant who is the sole tenant under a written rental agreement still residing in the dwelling unit, and the landlord shall not be required to seek an order of possession from a court of competent jurisdiction. The estate of the tenant shall remain liable for actual damages under § 55.1-1251 (formerly § 55-248.35), and the landlord shall mitigate such damages.

2006, c. 820, § 55-248.38:3; 2010, c. 550; 2011, c. 766; 2014, c. 813; 2017, c. 730; 2019, c. 712.

§ 55.1-1257 (formerly § 55-246.1). Who may recover rent or possession.

Notwithstanding any rule of court to the contrary, (i) any person licensed under the provisions of § 54.1-2106.1, (ii) any property manager or the managing agent of a landlord as defined in *§ 55.1-1200 (§ 55.1-1201 (formerly § 55-248.3 & 3:1) § 55-248.4)* pursuant to the written property management agreement, or (iii) any employee, who is authorized in writing by a corporate officer with the approval of the board of directors, or by a manager, a general partner, or a trustee, of a partnership, association, corporation, limited liability company, limited partnership, professional corporation, professional limited liability company, registered limited liability partnership, registered limited liability limited partnership, business trust, or family trust to sign pleadings as the agent of the business entity may obtain a judgment (a) for possession in the general district court for the county or city in which the premises, or part thereof, is situated or (b) for rent or damages, including actual damages for breach of the rental agreement, or for final rent and damages under § 8.01-128, in any general district court where venue is proper under Chapter 5 (§ 8.01-257 et seq.) of Title 8.01, against any defendant if the person seeking such judgment had a contractual agreement with the landlord to manage the premises for which rent or

possession is due and may prepare, execute, file, and have served on other parties in any general district court a warrant in debt, suggestion for summons in garnishment, garnishment summons, order of possession, writ of eviction, or writ of fieri facias arising out of a landlord-tenant relationship. However, the activities of any such person in court shall be limited by the provisions of § 16.1-88.03. However, nothing shall be construed as preventing a nonlawyer from requesting relief from the court as provided by law or statute when such nonlawyer is before the court on one of the actions specified herein.

1983, c. 8, § 55-246.1; 1989, c. 612; 1998, c. 452; 2003, cc. 665, 667; 2004, cc. 338, 365; 2010, c. 550; 2013, c. 563; 2015, c. 190; 2018, c. 221; 2019, cc. 180, 477, 700, 712.

Article 6. Retaliatory Action

§ 55.1-1258 (formerly § 55-248.39). Retaliatory conduct prohibited.

A. Except as provided in this section or as otherwise provided by law, a landlord may not retaliate by increasing rent or decreasing services or by bringing or threatening to bring an action for possession or by causing a termination of the rental agreement pursuant to § 55.1-1253 (formerly § 55-248.37) or 55.1-1410 after he has knowledge that (i) the tenant has complained to a governmental agency charged with responsibility for enforcement of a building or housing code of a violation applicable to the premises materially affecting health or safety, (ii) the tenant has made a complaint to or filed an action against the landlord for a violation of any provision of this chapter, (iii) the tenant has organized or become a member of a tenant's organization, or (iv) the tenant has testified in a court proceeding against the landlord. However, the provisions of this subsection shall not be construed to prevent the landlord from increasing rent to that which is charged for similar market rentals nor decreasing services that apply equally to all tenants.

B. If the landlord acts in violation of this section, the tenant is entitled to the applicable remedies provided for in this chapter, including recovery of actual damages, and may assert such retaliation as a defense in any action against him for possession. The burden of proving retaliatory intent shall be on the tenant.

C. Notwithstanding subsections A and B, a landlord may terminate the rental agreement pursuant to § 55.1-1253 (formerly § 55-248.37) or 55.1-1410 and bring an action for possession if:

1. Violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, an authorized occupant, or a guest or invitee of the tenant;

2. The tenant is in default in rent;

3. Compliance with the applicable building or housing code requires alteration, remodeling, or demolition that would effectively deprive the tenant of use of the dwelling unit; or

4. The tenant is in default of a provision of the rental agreement materially affecting the health and safety of himself or others. The maintenance of the action provided in this

section does not release the landlord from liability under § 55.1-1226 (formerly § 55-248.15:1).

D. The landlord may also terminate the rental agreement pursuant to § 55.1-1253 (formerly § 55-248.37) or 55.1-1410 for any other reason not prohibited by law unless the court finds that the reason for the termination was retaliation.

1974, c. 680, § 55-248.39; 1983, c. 396; 1985, c. 268; 2000, c. 760; 2015, c. 408; 2019, c. 712.

§ 55.1-1259 (formerly § 55-248.40). Actions to enforce chapter.

In addition to any other remedies in this chapter, any person adversely affected by an act or omission prohibited under this chapter may institute an action for injunction and damages against the person responsible for such act or omission in the circuit court in the county or city in which such act or omission occurred. If the court finds that the defendant was responsible for such act or omission, it shall enjoin the defendant from continuance of such practice, and in its discretion award the plaintiff damages as provided in this section.

1974, c. 680, § 55-248.40; 2013, c. 110; 2019, c. 712.

Article 7. Eviction Diversion Pilot Program

§ 55.1-1260. (Effective July 1, 2020; Expires July 1, 2023) Establishment of Eviction Diversion Pilot Program; purpose; goals.

A. There is hereby established the Eviction Diversion Pilot Program (the Program) within the existing structure of the general district courts for the cities of Danville, Hampton, Petersburg, and Richmond. The purpose of the Program shall be to reduce the number of evictions of low-income persons. Notwithstanding any other provision of law, no eviction diversion court or program shall be established except in conformance with this section.

B. The goals of the Program shall include (i) reducing the number of evictions of low-income persons from their residential dwelling units for the failure to pay small amounts of money under the rental agreement, in particular when such persons have experienced an event that adversely affected financial circumstances such as the loss of employment or a medical crisis in their immediate family; (ii) reducing displacement of families from their homes and the resulting adverse consequences to children who are no longer able to remain in the same public school after eviction; (iii) encouraging understanding of eviction-related processes and facilitating the landlord's and tenant's entering into a reasonable payment plan that provides for the landlord to receive full rental payments as contracted for in the rental agreement and for the tenant to have the opportunity to make current such rental payments; and (iv) encouraging tenants to make rental payments in the manner as provided in the rental agreement.

2019, cc. 355, 356, § 55-248.40:1.

§ 55.1-1261. (Effective July 1, 2020; Expires July 1, 2023) Eviction Diversion Pilot Program; administration.

Administrative oversight of the implementation of the Program and training for judges who preside over general district courts participating in the Program shall be conducted by the Executive Secretary of the Supreme Court of Virginia (Executive Secretary).

2019, cc. 355, 356, § 55-248.40:2.

§ 55.1-1262. (Effective July 1, 2020; Expires July 1, 2023) Eviction Diversion Pilot Program; process; court-ordered payment plan.

A. A tenant in an unlawful detainer case shall be eligible to participate in the Program if he:

1. Appears in court on the first docket call of the case and requests to have the case referred into the Program;

2. Pays to the landlord or into the court at least 25 percent of the amount due on the unlawful detainer as amended on the first docket call of the case;

3. Provides sworn testimony that he is employed and has sufficient funds to make the payments under the court payment plan, or otherwise has sufficient funds to make such payments;

4. Provides sworn testimony explaining the reasons for being unable to make rental payments as contracted for in the rental agreement;

5. Has not been late within the last 12 months in payment of rent as contracted for in the rental agreement at the rate of either (i) more than two times in six months or (ii) more than three times in 12 months;

6. Has not exercised the right of redemption pursuant to § 55.1-1250 (formerly § 55-248.34:1) within the last six months; and

7. Has not participated in an eviction diversion program within the last 12 months.

B. The court shall direct an eligible tenant pursuant to subsection A and his landlord to participate in the Program and to enter into a court-ordered payment plan. The court shall provide for a continuance of the case on the docket of the general district court in which the unlawful detainer action is filed to allow for full payment under the plan. The court-ordered payment plan shall be based on a payment agreement entered into by the landlord and tenant, on a form provided by the Executive Secretary, and shall contain the following provisions:

1. All payments shall be (i) made to the landlord; (ii) paid by cashier's check, certified check, or money order; and (iii) received by the landlord on or before the fifth day of each month included in the plan;

2. The remaining payments of the amounts on the amended unlawful detainer after the first payments made on the first docket call of the case shall be paid on the following

schedule: (i) 25 percent due by the fifth day of the month following the initial court hearing date, (ii) 25 percent due by the fifth day of the second month following the initial court hearing date, and (iii) the final payment of 25 percent due by the fifth day of the third month following the initial court hearing date; and

3. All rental payments shall continue to be made by the tenant to the landlord as contracted for in the rental agreement within five days of the due date established by the rental agreement each month during the course of the court-ordered payment plan.

C. If the tenant makes all payments in accordance with the court-ordered payment plan, the judge shall dismiss the unlawful detainer as being satisfied.

D. If the tenant fails to make a payment under the court-ordered payment plan or to keep current any monthly rental payments to the landlord as contracted for in the rental agreement within five days of the due date established by the rental agreement, the landlord shall submit to the general district court clerk a written notice, on a form provided by the Executive Secretary, that the tenant has failed to make payments in accordance with the plan. A copy of such written notice shall be given to the tenant in accordance with § 55.1-1202 (formerly § 55-248.6).

The court shall enter an order of possession without further hearings or proceedings, unless the tenant files an affidavit with the court within 10 days of the date of such notice stating that the current rent has in fact been paid and that the landlord has not properly acknowledged payment of such rent. A copy of such affidavit shall be given to the landlord in accordance with § 55.1-1202 (formerly § 55-248.6).

The landlord may seek a money judgement for final rent and damages pursuant to subsection B of § 8.01-128.

E. Nothing in this section shall be construed to limit (i) the landlord from filing an unlawful detainer for a non-rent violation against the tenant while such tenant is participating in the Program or (ii) the landlord and tenant from entering into a voluntary payment agreement outside the provisions of this section.

2019, cc. 355, 356, § 55-248.40:3.