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ANNUAL PRO BONO HOUSING TRAINING

3 LEGAL AID PROGRAMS



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Pro Bono Triage Program

- Pick a case from JusticeServer or respond to Triage Champion's email request

Contact: Lisa@cvlas.org



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Housing Unit

- Commit to four appointment dates: Tuesdays/Thursdays from 4:00pm-5:30pm
- Advise and/or represent clients

Contact:
LaurenKing@justice4all.org



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No current opportunities as they revamp. Please reach out to Janae Craddock at Janae@vplc.org for updates on when VPLC will have pro bono opportunities available.

Central Virginia Legal Aid Society

- ▶ Offices in Richmond, Petersburg, and Charlottesville serving 5 cities and 15 counties
- ▶ Civil Legal Services (no traffic or personal injury)
- ▶ Eligible client households must be:
 - At or below 125% of the Federal Poverty Guidelines (less than \$16,100/year for 1 person); and advice only for 60 and older
 - extended eligibility up to 200% for Victims of Domestic Violence
 - United States Citizens or other Permanent Resident status
 - Living in our Service Area
 - Without Access to the Private Bar or Other Court Appointed Counsel



Priority for Full Representation by Staff- Landlord-Tenant Eviction, Consumer, Domestic Violence, Unemployment, Public Benefits

Priority for Extended Rep. by Pro Bono Triage Project- Consumer Auto Fraud, Chapter 7 Bankruptcies, No-Fault Divorce, Wage Claims, Housing Repair (Tenant's Assertion) & Security Deposits, Protective Orders & Wills, Powers of Attorney

Triage Champions in Housing Repair and Security Deposits

-Recruit, Train and Mentors Volunteers

-Assist in the Placement of Cases-

If you agree to be part of our virtual law firm and accept pro bono cases for representation, you'll be invited to view cases posted to the JusticeServer portal and receive an email from Triage Champions placing cases.

You (and your firm) can volunteer for a particular month or or notify Linnie that you are available to take the next available case.

Anticipate only 1 or 3 cases per month or 25-30 cases per year as they are screened very closely.

2023-2024 Champion:

Linnie Brugh- Lbrugh@williamsmullin.com

CVLAS Director of Pro Bono & Triage Programs- Lisa Bennett,
lisa@cvas.org, 804-200-6038

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- Copy image address
- Create QR Code for this image
- Search WiseGhost for image
- Inspect



REGISTER



LOGIN INFORMATION

Email *	<input type="text" value="Email"/>
Confirm Email *	<input type="text" value="Confirm Email"/>
Password *	<input type="password" value="Password"/>
Confirm Password *	<input type="password" value="Confirm Password"/>

EMAIL ADDRESS = USER ID

ⓘ Password must be at least min. 6 characters in length, minimum of 1 lower case, 1 upper case letter, 1 numeric and 1 special character without any space, special characters allowed @\$!%*#.&?.

CONTACT INFORMATION

First Name *	<input type="text" value="First Name"/>	Last Name *	<input type="text" value="Last Name"/>
Street *	<input type="text" value="Street"/>		
City *	<input type="text" value="City"/>	State *	<input type="text" value="--Select--"/>
Phone *	<input type="text" value="Phone"/>		
		Zip Code *	<input type="text" value="Postal Code"/>

BASIC CONTACT INFO

Create an Account

1. Login Information

2. Contact Information

3. Professional Experience

4. Bar License & Other

5. Select LSO

☑ Login Information

Email*

enter email

Confirm Email*

enter email

Password*

Password

Repeat Password*

Password

Password must be at least min. 6 characters in length, minimum of 1 lower case, 1 upper case letter, 1 numeric and 1 special character without any space, special characters allowed @\$!%*#.&?.

NEXT

Create an Account

1. Login Information

2. Contact Information

3. Professional Experience

4. Bar License & Other

5. Select LSO

☰ Select Legal Service Organizations

Great! Now select the Legal Service Organizations you would like to work with!

The list below will help you choose from Legal Service Organizations you might be interested in working with. When you select organizations, we will provide your information so they can reach out to you and also initiate approval so you can begin selecting cases. If you choose to skip this step, you can still continue and browse cases – but each time you express interest in a case from an organization you haven't worked with before, you will need to hold to receive approval.

SKIP THIS STEP

Legal Service Organizations in your state:

10 Legal Service Providers / 0 selected



Blue Ridge Legal Services (Harrisonburg, VA)

Harrisonburg, Virginia

SELECT



Central Virginia Legal Aid Society (Richmond, VA)

Richmond, Virginia

✓ SELECTED



Greater Richmond Bar Foundation (Richmond, VA)

Richmond, Virginia



✓ SELECTED

Back


CREATE ACCOUNT

Discover Your Next Volunteer Opportunity

 Calendar  List View

Location Select Location	Category Select Category	Type Select Type	Legal Service Organization Central Virginia Leg 	<input type="text" value="Search"/> 
------------------------------------	------------------------------------	----------------------------	--	--



6 active volunteer opportunities



Central Virginia Legal Aid Society

Expungement of Unlawful Detainers-

Assist Clients Removing the Scarlet "E" of Eviction from their credit

 Clinic  Richmond City

+30 days ago

[VIEW SCHEDULE](#)



Central Virginia Legal Aid Society


CVLAS Hotline

Provide advise and counsel by phone to clients in employment, consumer, housing and family law

 Clinic  Richmond City

+30 days ago

[VIEW SCHEDULE](#)




Central Virginia Legal Aid Society

CVLAS Will and Life Planning Documents

Attorneys will draft simple wills, powers of attorney, and health care directives for Central VA Legal Aid eligible clients in a 3 hours clinic session.

[+ See More](#)

 Clinic  Richmond City

+30 days ago

[VIEW SCHEDULE](#)

WORKING A CASE

CLOSE OR ABANDON CASE

<<Return To My Cases



Account Name	[REDACTED]	Contact Name	[REDACTED]
Client Type		Case Number	
Location of Issue		Location of Client (from contact)	
Status	Intake Completed	Subject	19--00144255-Wanette Wright-32-Divorce / Sep. / Annul.
# Household Members	1	Number of Adults	1
Number of Children	0	Mailing Address - Protected?	No
Client Address	[REDACTED]	Mailing Address - Safe?	Yes
Phone	[REDACTED]	Phone - Safe?	Yes
Mobile	[REDACTED]	Mobile - Safe?	No
Other Phone	[REDACTED]	Other Phone Safe?	No
Email	[REDACTED]	Approves email?	
Social Security	[REDACTED]	Gender	Female
Birthdate	[REDACTED]	Race	White
Age	[REDACTED]	Marital Status	Separated
Total Yearly Income	\$0,492		

VIEW/EDIT IMPORTANT DATES

Case Status

End Representation

Important Dates

New Important Date

No Records to display!

Hours

Start Stopwatch

Total Hours on Case: 0

Action	Date	Start Time	End Time	Hours
Add Hours				
View Full Report				

Case Details

Description

[REDACTED]

IMPORTANT RESOURCES

Resources

Title	Description
Uncontested No-Fault Divorce Flow Chart	FLOWCHART WITH LINKS TO TEMPLATES FOR ALL DOCUMENTS NEEDED TO PROCESS NO-FAULT DIVORCES FROM A-Z.
Basics of Uncontested No-Fault Divorce	CONCISE BULLET-POINT BASICS OF UNCONTESTED NO-FAULT DIVORCE.

Case Notes

New Note

Action	Date	Title	Text Preview
View Edit Delete	5/2/2019 2:15 PM	5/1/19 consult with Bud	Clients rights re: her children and the termination of her parental rights can be protected with the additional of language in the final decree.

ENTER CASE NOTES

Files

New File

Action	Title	Description
View Delete	Volunteer Guide to the Portal- access attachments by clicking the down arrow to the right and downloading	
View Delete	[REDACTED]	parental righ

Case Team

Name	Status
mahlion funk	Active

Ending Representation

Choose:

- ▶ “My role is complete”: You called but did not reach the client; indicates more work needs to be done
- ▶ “The case is complete”: You have achieved a settlement, court decision or perhaps some other benefit to the client.
 - Make a note of the service provided and the date.

Or you can upload a copy of the settlement agreement or decision.

Input the total number of hours spent! And Thank you!!



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EVICTIONS: WHY THEY HAPPEN & DEFENSES



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The Virginia Eviction Crisis & Its Causes



Virginia cities lead the nation in eviction rates

Virginia has **5** of the **top 10** highest eviction rates among **large U.S. cities**:



Richmond
(11.44%)



Hampton
(10.49%)



Newport News
(10.23%)



Norfolk
(8.65%)



Chesapeake
(7.90%)

Virginia has **3** of the **top 5** highest eviction rates among **mid-size U.S. cities**:



Petersburg
(17.56%)



Hopewell
(15.69%)



Portsmouth
(15.07%)

Virginia's high eviction rates are driven by a number of factors



Lack of affordable housing



Poverty



Unfavorable landlord-tenant laws



Archaic legal terminology



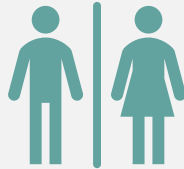
High cost of living



Gentrification



Older housing stock



Government sponsored segregation



Foreclosure aftermath



Little support for tenants

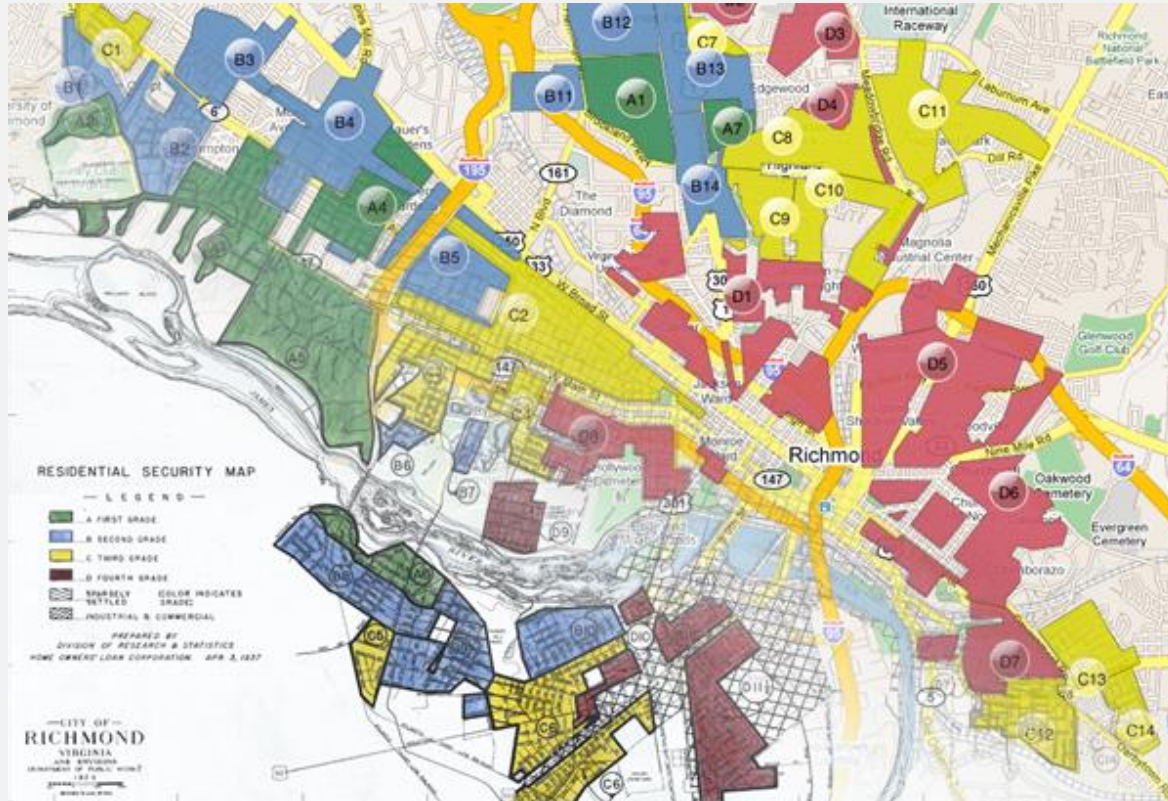


5 years without Medicaid expansion

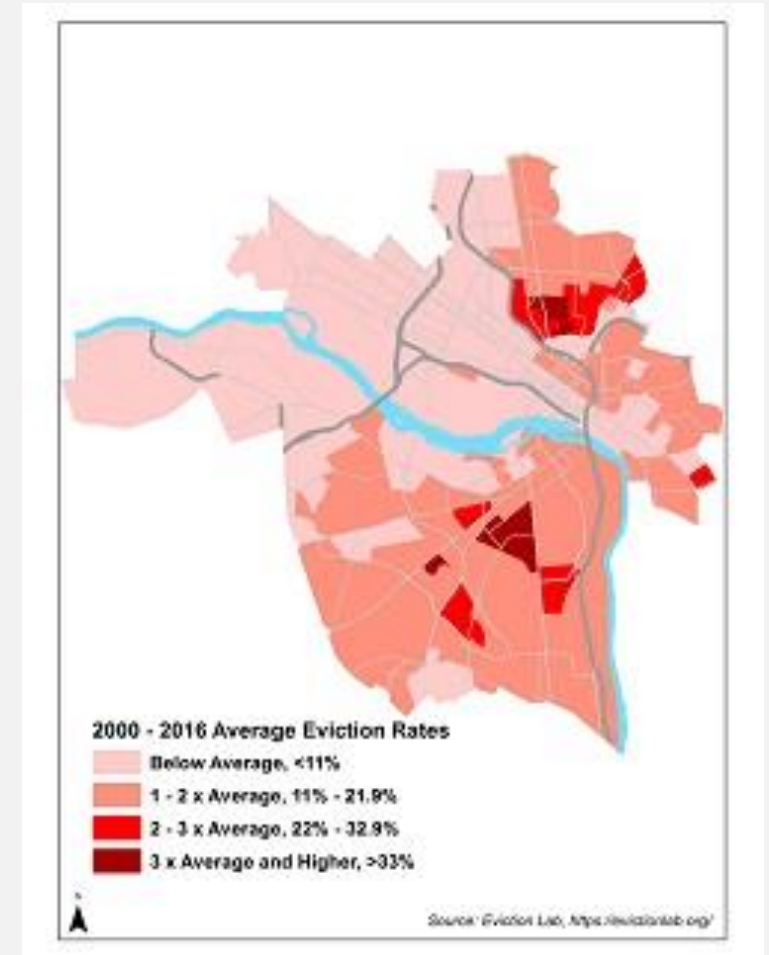


Low wages

1937 Richmond Residential Security Map



2016 Richmond Eviction Map



Where to find the law to help fight our eviction crisis?

- Virginia Residential Landlord Tenant Act (VRLTA) starts at § 55.1-1200. Most of landlord/tenant law is statutory since Virginia lower courts are not courts of record.
- Virginia procedural law is located under Title 8.01 for civil remedies and procedure, but also under Title 16.1 for courts not of record.
- Federally subsidized properties and tenants have additional protections but are also governed by the VRLTA. The best resource for the additional protections is “the green book” published by the National Housing Law Project. The more tenant-protective law governs if Virginia law conflicts.

*FYI: VRLTA statute numbers may show up as 55-200+ when googling.

The statute numbers were renumbered in October 2019.



Five Steps of an Eviction

Each type of eviction, whether non-payment of rent or another type, follows the same general process:



There are two general categories of evictions

Each type of eviction has different defenses. It is important to understand which issue led to your client's eviction so you can formulate an effective defense:

1

Non-payment of rent

2

Other types of evictions:

- Criminal activity
- Lease violations (i.e. pets, smoking, guests)
- Foreclosure
- Sale
- Health and safety



Eviction Process

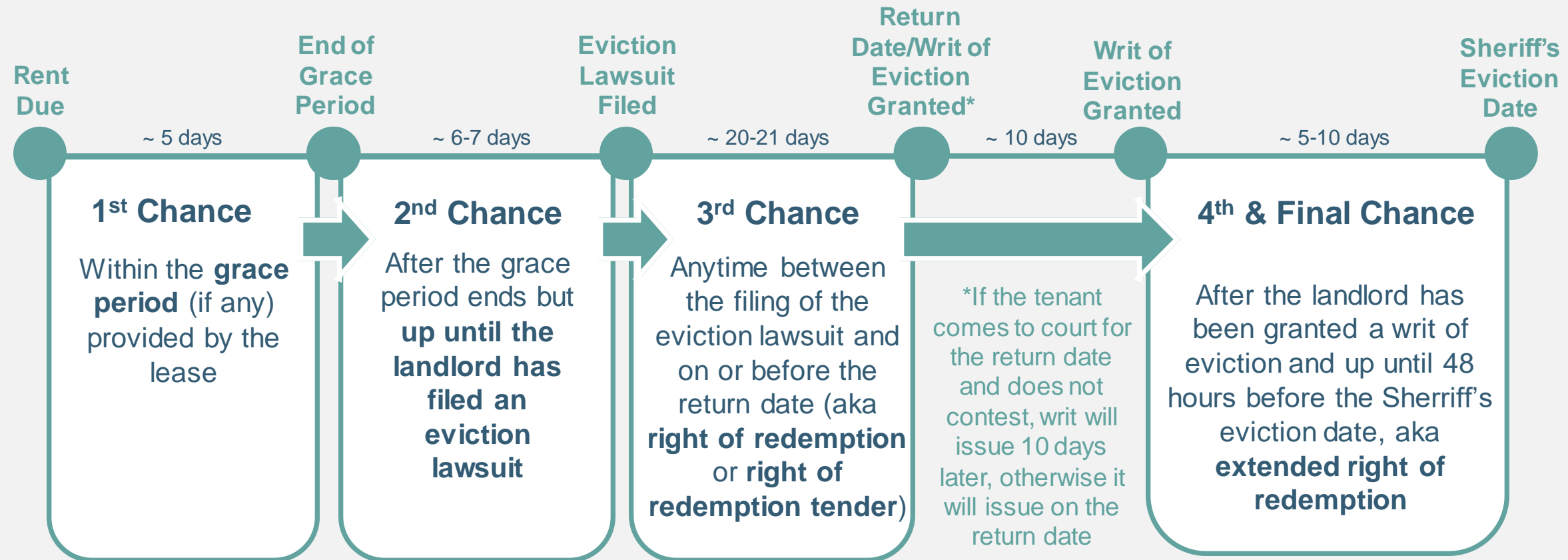
Non-payment of Rent

General Timeline for Evictions in Virginia

Non-payment of rent evictions	Month 1				Month 2			
	Wk 1	Wk 2	Wk 3	Wk 4	Wk 5	Wk 6	Wk 7	Wk 8
Day 1 - Rent is due	◆							
Day 5 - Last day to pay to avoid late fee	■▲							
Day 6 - Landlord gives <i>written</i> 5 day Pay or Quit notice.		◆						
Day 12 or 13 - Landlord files Summons for Unlawful Detainer (eviction lawsuit).		■▲						
Day 33 or 34 - First court date (return date). <ul style="list-style-type: none"> • If tenant pays all rent, late fees, court costs and attorney's fees – on or before return date – case dismissed. • If tenant does not come to court, judgment for possession and rent. Writ of Eviction may issue immediately. • If tenant comes to court and no contest, judgment for possession and rent. Writ of Eviction after 10 days. If contest, trial set for 5-10 days later. 			■	■	■	▲		
Day 38-44 - Trial. <ul style="list-style-type: none"> • If landlord wins, judgment for possession and rent. • Writ of Eviction may issue after 10 days. • Tenant may appeal within 10 days, but only by posting appeal bond. 					■	■	▲	
Day 33-55 - Writ of Eviction. Sheriff gives Writ stating eviction date to Tenant. Must give at least 72 hours before eviction. Usually gives 5-10 days.							■	▲
Day 38-60 - Last day for tenant to move or be put out by Sheriff (unless extended redemption) <ul style="list-style-type: none"> • Only the Sheriff may actually evict the tenant. • Payments to LL after court date not stop eviction, unless extended redemption. 								■▲

This is a typical eviction timeline. Number of days can vary depending on court's schedule and local practice. 22

Under Virginia law, tenants get four chances to pay rent late and stay



There are different rules that govern tenant outcomes depending on when the tenant pays

1st
Chance

Grace Period

- Tenant pays rent between the initial due date and the final payment date, per the lease agreement
- Tenant may do this any number of times

2nd
Chance

Before Eviction is Filed

- Usually this is the time during which the landlord has given tenant a 5 day pay or quit notice
- Tenant must pay rent and late fee
- Tenant may do this any number of times

3rd
Chance

Right of Redemption or Redemption Tender

- **Redemption:** Lawsuit must be dismissed as paid if tenant pays landlord, landlord's attorney or court all amounts owed as of the court date: all rent (including new month's rent if due), all late fees in a written lease (including new month's late fee if due), court costs and reasonable attorney's fees (if any)
- **Redemption Tender:** Tenant comes to court on first court date and shows judge a written commitment from a local government or non-profit agency to pay all or part of redemption amount
- Judge must postpone case ten days and allow tenant to come back with the full redemption amount on that day
- Whether redemption or redemption tender is used, tenant must get receipts and come to court with them to be sure case dismissed as "paid"

4th & Final
Chance

Right of Extended Redemption

- If landlord wins the lawsuit, judge issues an order of possession
- Next, the landlord may ask the court to issue a Writ of Eviction which authorizes the Sheriff to evict the tenant on a specific date
- The Writ of Eviction is sent to the both the Sheriff and the tenant
- Sheriff must give tenant **at least 72 hours** advance notice of the eviction, but usually gives about 7-10 days
- Tenant can pay landlord, landlord's attorney or court all amounts owed as of 48 hours before Sheriff's scheduled eviction date: all rent (including new month's rent if due), all late fees in a written lease (including a new month's late fee if due), court costs, Sheriff's fees, and reasonable attorney's fees (if any).
- Payment can be made by cashier's check, certified check or money order
- If completed, Sheriff's eviction is cancelled
- Confirm with both landlord and Sheriff that the eviction is cancelled

Right of Redemption § 55.1-1250:

- Tenants have unlimited opportunities to **exercise the right of redemption** unless the landlord owns 4 or fewer units (in which case, it can only be used once per lease period).
- Failure of a landlord to cancel an eviction once redeemed (all amounts paid 48 hours before the sheriff) is an **unlawful exclusion (§ 55.1-1243.1)**

**Upon tenant's written request, the landlord must provide a statement of the exact amounts owed so that the tenant may properly redeem. Payments made by the tenant shall be by cashier's check, certified check, or money order.

One Case at a Time and Required Evidence – Code of Virginia § 8.01-126

If nonpayment of rent is the only issue, a landlord may file **only one lawsuit** at a time

On request of landlord, judge **must allow lawsuit to be amended** to cover all rent and fees claimed as of the trial date

To get judgment of possession and start the Sheriff's eviction process, **landlord must present court with a proper termination notice** that the court enters into evidence

Failure to do so may be grounds **to set aside a judgment of possession**

Defenses Against Evictions

Non-payment of Rent

Five Steps of an Eviction



Defenses at Step 1: Written notice from landlord to tenant

In a non-payment of rent case, the first written notice from the landlord to the tenant is a 5 day Pay-or-Quit Notice (14 days for public housing).

Notice Errors



Notice was not received. There is a presumption of receipt only if notice was properly addressed and mailed. *Johnson v. Goldberg, 207 Va. 487 (1966)*- no jurisdiction to hear UD if no notice.



If tenant receives tenant-based rental assistance, the notice must include the statewide legal aid telephone number. Termination notices are not effective without this information (§ 55.1-1202).



Landlord's initial notice (i.e. Pay-or-Quit Notice) gave the tenant less than 5 days to respond (§ 55.1-1245).



The 5 Day Pay-or-Quit notice did not give tenant the option of paying instead of leaving (§ 55.1-1245).



Notice was not for "the precise sum due." The notice must state exactly how much is owed and cannot have incorrect amounts on the notice of termination. *Johnston v. Hargrove, 81 Va. 118 (1885)*, see also District Court Judges' Benchbook.

Defenses at Step 1: Written notice from landlord to tenant, cont'd

Fees & Payments



Notice included late fees that were not authorized by lease and/or were more than 10% of *amount owed*. (§ 55.1-1204).



Notice included court costs which had not yet been incurred. A 5-day pay or quit that includes court costs prior to the landlord filing should be defective under *Johnston v. Hargrove* (see prior slide).



Notice included attorneys' fees that were not authorized by lease and/or were not earned. Once again, a landlord should not charge attorney fees on the initial pay or quit since the tenant needs to have the 5-day period to redeem without having to pay court related fees.



Tenant paid to landlord all sums due (§ 55.1-1250).



Any fee unauthorized by the lease and/or law can be remedied under the *Virginia Consumer Protection Act*. Each unauthorized fee constitutes a separate violation, entitling the tenant to recover either actual damages, or \$500, whichever is greater. If "willful," the penalty is \$1,000. (§ 59.1-204).



Defenses at Step 2: Unlawful detainer filed

Proper Party



Assumed name defense - landlord improperly sued under assumed name (§ 59.1-69).



Proper party did not sue. Suit must be filed in the name of a plaintiff who is entitled to possession of the premises (not the property manager for example).

Other



Either the landlord or tenant did not sign the statement of tenants' rights and responsibilities that the landlord was required to give the tenant according to (§ 55.1-1204).



Landlord filed unlawful detainer prior to expiration of notice period and had no present right to possession at the time of commencement of action- even if the landlord gave a proper 5 day pay or quit, the landlord cannot file a case until *after* the 5th day. (§ 55.1-1245).



Defenses at Step 3: Judgement of possession, i.e. landlord goes to court

Rent Payments



Landlord refused tender of rent or other payment (§ 55.1-1250).



Tenant has redeemed tenancy by paying all rent and arrears due as of the return date, including late fees, other charges, reasonable attorney's fees in the lease and court costs (§ 55.1-1250).



Tenant presents a redemption tender – a written commitment from a local government or nonprofit entity to pay all rent due and owing as of the return date including late fees, attorney's fees and court costs within 10 days of the return date (§ 55.1-1250).



Tenant has properly withheld rent from landlord due to poor housing conditions (tenant must have full amount claimed by the landlord and pay into court) (§ 55.1-1241).



Defenses at Step 3: Judgement of possession, i.e. landlord goes to court

If the tenant **has a voucher**, they may be covered by these additional defenses:



Landlord did not properly calculate federally subsidized housing tenant's share of rent. Changes in income entitles voucher recipient to change rent portion.



Landlord is suing for subsidized portion of rent (the housing authority is at fault) (**24 CFR § 982.310**).



Landlord is suing federally subsidized housing tenant for rent that is unauthorized (suing for “under the table” payments). Rent is based on income, so the landlord is not authorized to charge higher rent than what was authorized in the “HAP contract” with the housing authority.

Vouchers



Defenses at Steps 4 & 5: Post-Judgment

Rent



- Landlord **accepted rent** without giving a proper notice, i.e. accepting rent “with reservation.” (This creates a new lease, see below). Notice must say two things:
 - ☑ Payment accepted with reservation
 - ☑ Payment does not constitute a waiver of the landlord's right to evict the tenant from the dwelling unit (§ 55.1-1250). (This argument works at unlawful detainer hearing too).
- Tenant has **redeemed tenancy** by paying current rent, damages, late charges, costs of court, any civil recovery, attorney fees, and sheriff fees, no less than 48 hours before the date scheduled by the officer (§ 55.1-1250). Notice must be given to tenant of this right (also a potential defense).

New Lease



Landlord entered new written lease post-judgment. Automatic renewals constitute a new lease. (§ 55.1-1250). You can file a motion to quash the writ.

See *Mullins v. Sturgill*, 192 Va. 653 (1951): any recognition by LL of tenancy after notice of termination waives right to terminate.



Default Judgment



- Within **10 days** of judgment, tenant may appeal to circuit court, but must post full appeal bond if the judgment is for nonpayment of rent (§ 16.1-107).
- Within **30 days** of judgment, tenant may file a motion to rehear. The judge has the discretion to determine whether it is worth reopening (§ 16.1-97.1).
- If tenant is **outside of 30-day** window, the only way to set aside judgment is by challenging service or arguing that the judgment was void (§ 8.01-428).

Expired



- No writ can issue if the **judgment** is more than **180 days old**. (§ 8.01-471). You can file a motion to quash the writ if it was issued past that deadline.
- Likewise, a **writ** must be executed by a sheriff within **30 days** of issuance and otherwise automatically is vacated as a matter of law. (§ 8.01-471).

Eviction Process

Other Types



The Eviction Process in Virginia

Other types of evictions

	Month 1				Month 2				Month 3				
	Wk	Wk	Wk	Wk	Wk	Wk	Wk	Wk	Wk	Wk	Wk	Wk	Wk
	1	2	3	4	5	6	7	8	9	10	11	12	13
<p>Day 1: Landlord gives <i>written</i> 21/30 day Notice to Vacate. If tenant fixes problem, lease continues. If not, lease ends in 30 days.</p> <p>Landlord also may give <i>written</i> 30 day Notice to Vacate if problem cannot be fixed. Lease ends in 30 days.</p> <p>Notice period may be shorter if threat to health or safety.</p>													
<p>Day 32 or 33: Landlord files Summons for Unlawful Detainer (eviction lawsuit).</p>													
<p>Day 53 or 54: Return date. If tenant does not come to court, judgment for possession (and rent, if sued for). Writ of Eviction may issue immediately. If tenant comes to court and no contest, judgment for possession (and rent). Writ of Eviction after 10 days. If contest, trial set for 20-30 days later.</p>													
<p>Day 73 to 84: Trial. If landlord wins, judgment for possession (and rent). Writ of Eviction may issue after 10 days. Tenant may appeal within 10 days, by posting appeal bond, unless indigent.</p>													
<p>Day 53 to 95: Writ of Eviction. Sheriff gives Writ stating eviction date to Tenant. Must give at least 72 hours before eviction. Usually gives 5-10 days.</p>													
<p>Day 58 to 100: Last day for tenant to move or be put out by Sheriff, unless extended redemption. Only the Sheriff may actually evict the tenant.</p>													

This is a typical eviction timeline. Number of days can vary depending on court's schedule and local practice. Payments to landlord after court date do not stop eviction, unless extended redemption is used

Defenses Against Evictions

Other Types



Different defenses occur based on the type of property being rented.



- House- Governed by the VRLTA, but also subject to foreclosure and sale concerns (the VRLTA used to distinguish small landlords that only rented 4 or less units, but that distinction no longer exists).



- Mobile Home- Governed by the Manufactured Home Lot Rental Act. There are distinctions between people who own their trailer but rent the lot vs rent their trailer.



- Hotel- Governed by the VRLTA if stayed there longer than 90 days. Otherwise, five day notice still required before self help.



- Apartment- Governed by the VRLTA



- Subsidized Housing- Governed by the VRLTA and Federal Statutes

Guidelines for rental units that are FORECLOSED

The Protecting Tenants at Foreclosure Act



- New owners must honor existing leases
- Tenants with more than 90 days remaining on the lease may not be evicted until the end of their lease
- The sole exception is for a new owner who seeks to occupy the unit as a primary residence and may end the lease with at least 90 days notice
- For tenants with less than 90 days remaining on the lease, 90 days notice is also required
- Tenants must keep paying rent and should deposit rent into a separate bank account to use later
- ***Tenants do not have to vacate at foreclosure!***

12 USC § 5220 note

Guidelines for rental unit that are SOLD



- Sale only affects who owns property, not who occupies property
- Lease runs with the land and not with the property owner
- Lease is as binding on new owner as it was on old owner
- New owner takes ownership subject to the lease with prior owner
- New owner steps into the shoes of the old owner and has the same rights and duties under the lease that the old owner had
- If new owner wants possession, new owner must file unlawful detainer in court
- ***Tenants do not have to vacate at sale!***

See § 55.1-1216 for disclosure of sale requirements

Five Steps of an Eviction



Defenses at Step 1: Written notice from landlord to tenant

Timing



- Violation of a Lease Term that Can be Corrected: requires notice that gives **21 days** to fix the problem, and **30 days** for the lease to terminate if the the violation is not fixed.
- Violation that Cannot be Corrected: requires a **30-day** notice prior to filing.
- If the activity is drug related or threatens health or safety, landlord can terminate **immediately**.

(§ 55.1-1245)

Missing Information



Notice was not received. There is a presumption of receipt only if notice was properly addressed and mailed. *Johnson v. Goldberg, 207 Va. 487 (1966)*- no jurisdiction to hear UD if no notice.



If tenant receives tenant-based rental assistance, the notice must include the statewide legal aid telephone number. Termination notices are not effective without this information (§ 55.1-1202).



Notice of termination not specific enough (§ 55.1-1245). If the notice just cites to lease provisions without specifying the acts that constitute violations of those provisions, it is deficient.

Defenses at Step 1: Written notice from landlord to tenant, cont'd

Wrong Type of Notice



Landlord gave “non-remediable violation” notice when violation was fixable (§ 55.1-1245).



Notice for immediate termination for threat to health or safety was not actually a threat to health or safety, thus the notice should have been a 30-day notice (§ 55.1-1245).



Hotel did not give proper notice to tenant in a hotel/motel staying there less than 90 days (§ 55.1-1201).



Hotel did not give proper notice to tenant in a hotel/motel staying there more than 90 days (§ 55.1-1201).



Defenses at Step 2: Unlawful detainer filed

Proper Party



Assumed name defense - landlord improperly sued under assumed name (§ 59.1-69).



Proper party did not sue. Suit must be filed in the name of a plaintiff who is entitled to possession of the premises (not the property manager for example).

Other



Either the landlord or tenant did not sign the statement of tenants' rights and responsibilities that the landlord was required to give the tenant according to (§ 55.1-1204).



Landlord filed unlawful detainer prior to expiration of notice period and had no present right to possession at the time of commencement of action- even if the landlord gave a proper 5 day pay or quit, the landlord cannot file a case until *after* the 5th day. (§ 55.1-1245).

New Lease



Landlord waives the right to evict if a new lease is created after notice of termination. A new notice must be issued after new lease is created. (§ 55.1-1250). You can file a motion to quash the writ. See *Mullins v. Sturgill*, 192 Va. 653 (1951): any recognition by LL of tenancy after notice of termination waives right to terminate.

Defenses at Step 3: Judgment of possession, i.e. landlord goes to court

Lease Violations



Alleged remediable breach has been cured (§ 55.1-1245).



Lease breach is not material noncompliance with the lease or a noncompliance materially affecting health or safety (§ 55.1-1245).



“**Innocent tenant defense**” for criminal activity: 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 (§ 55.1-1245).






Tenants are responsible for their guest’s activities, but if you can show that the tenant could not have known about the guest’s actions, you may be able to rebut the presumption of knowledge.



Defenses at Step 3: Judgment of possession, i.e. landlord goes to court, cont'd

Virginia Fair Housing Law (Va Code § 36-96.1 et seq.)

Discrimination

-  Landlord's eviction is discrimination based upon race, color, religion, national origin, gender, age (elderliness), familial status (having minor children) or disability.
-  Landlord is not accommodating a disability and is not making a reasonable accommodation in rules, policies, practices, or services, necessary to afford equal opportunity to use and enjoy a dwelling. A reasonable accommodation request must be made first.
-  Landlord is not accommodating victim of domestic violence.



Defenses at Steps 4 & 5: Writ of possession and sheriff eviction

Rent



- Landlord **accepted rent** without giving a proper notice, i.e. accepting rent “with reservation.” (This creates a new lease, see below). Notice must say two things:
 - ☑ Payment accepted with reservation
 - ☑ Payment does not constitute a waiver of the landlord's right to evict the tenant from the dwelling unit (§ 55.1-1250). (This argument works at unlawful detainer hearing too).

New Lease



Landlord waives the right to evict if a new lease is created after notice of termination. A new notice must be issued after new lease is created. (§ 55.1-1250). You can file a motion to quash the writ. See *Mullins v. Sturgill*, 192 Va. 653 (1951): any recognition by LL of tenancy after notice of termination waives right to terminate. Can file a motion to quash.



Default Judgment



- Within **10 days** of judgment, tenant may appeal to circuit court, but must post full appeal bond if the judgment is for nonpayment of rent (§ 16.1-107).
- Within **30 days** of judgment, tenant may file a motion to rehear. The judge has the discretion to determine whether it is worth reopening (§ 16.1-97.1).
- If tenant is **outside of 30-day** window, the only way to set aside judgment is by challenging service or arguing that the judgment was void (§ 8.01-428).

Expired



- No writ can issue if the **judgment** is more than **180 days old**. (§ 8.01-471). You can file a motion to quash the writ if it was issued past that deadline.
- Likewise, a **writ** must be executed by a sheriff within **30 days** of issuance and otherwise automatically is vacated as a matter of law. (§ 8.01-471).

§ 55.1-1303- New Law as of July 2021

Park owners must provide residents with a written statement of tenant rights and responsibilities within one month of the effective date of the rental agreement. The landlord cannot file or maintain an action against the tenant for any alleged lease violation until the landlord has provided the statement to the tenant. (this was required the prior year for landlord/tenant law as well)



[statement-of-tenant-rights-and-responsibilities-vmlrha
\(virginia.gov\)](https://www.vmlrha.org/tenant-rights-responsibilities-statement)

Evictions & Mobile Homes



The Manufactured Home Lot Rental Act governs mobile home eviction cases

§55.1-1300 – §55.1-1319

- Unlike apartments, rental homes, hotels and motels that are governed by the Virginia Residential Landlord-Tenant Act (VRLTA), mobile homes have their own set of rules.
- The Mobile Home Lot Rental Act governs the rental of the land the mobile home sits on, rather than the mobile home itself, since most mobile home renters own their mobile home, but rent the plot of land and hook up utilities to a centralized utility generator that the landowner provides.



- Refer to Virginia Code §55.1-1300 – §55.1-1319 for information regarding lease termination, eviction procedures, injunctive relief and more for mobile home cases

Notice of Sale to Mobile Home Park Residents

§§ 55.1-1308,
55.1-1308.1



Before posting park for sale, MHP Owner must give 90 days advance written notice to residents and DHCD (to post on website)



If owner receives offer, must provide 60 days written notice before accepting offer and must consider offer from resident group representing at least 25% of park residents



Notice must include the asking price/proposed purchase price

Rent out Mobile Home after Eviction

§ 55.1-1316(B)



Currently, when MHP resident is evicted, resident only has 90 days to move or sell the home



Resident can rent the home to someone else



Contingent upon landlord's approval of the subtenant's rental application



Resident must also pay all accrued rent

Relocation Expenses for Mobile Home Owners

§ 55.1-1308.1



MHP Owner who sells or redevelops the park for another use must—within the 180 notice period—give each resident home owner \$2,500 in relocation expenses



In Planning District 8 (NOVA), the amount is \$3,500



Relocation expenses are subject to agreement between owner and resident that the resident will remove the home from the park

Five Steps of an Eviction



There are some defenses that are unique to mobile homes

Defense at Step 1: Written notice from landlord to tenant



Landlord did not give 60 day notice to tenant in mobile home park with lease of 60 days or longer (§ 55.1-1308).

Defense at Step 3: Judgment of possession, i.e. landlord goes to court



Tenancy in mobile home park not terminated for one of five statutory reasons: **(1)** nonpayment of rent; **(2)** violation of building and housing code caused by tenant; **(3)** violation of federal, state or local ordinance detrimental to health, safety or welfare of other residents; **(4)** violation of any rule materially affecting health, safety or welfare; **(5)** two or more violations of lease or rule within a six month period (§ 55.1-1315).

General guidelines that
apply to ALL evictions



Landlords cannot resort to certain tactics to force an eviction § 55.1-1243.1



Lock tenant out



Cut off utilities



Use self-help

If the landlord takes any of these actions, the tenant can submit a **Petition for Relief from Unlawful Exclusion (Form DC-431)** – tenant may ask for recovery of possession, resumption of interrupted utility, termination of rental agreement, **statutory damages of \$5,000 or four months' rent**, actual damages and reasonable attorney's fees.

When a tenant files as the *plaintiff*, the petition must name the true owner:

- Fill in name and physical address of true owner of the property as “Defendant-Landlord”
- You may need to conduct a real property search → Google “real property search and county/city name”
- If true owner is not a natural person (i.e. the owner is a corporation or a limited liability company (LLC)), you should instead provide the name and physical address of the registered agent of the company
 - Fill in the name of the company as the “Defendant-Landlord” and the name and physical address of their registered agent
 - If you need assistance finding this information, call VA State Corporation Commission at 804-371-9733 or 866-722-2551.

Court Proceedings & the Unlawful Exclusion hearing

§ 55.1-1243.1



The judge has the discretion to hear lock-out cases *ex parte*. Initial hearing must be w/in 5 days.



Tenant can get temporary relief when filing a Petition for Relief from Unlawful Exclusion even if the landlord is not in court

statutory damages of \$5,000 or four months' rent



Tenant must make good faith effort to notify landlord of the petition.



If temporary relief granted, judge must hold full hearing within 10 days

Appeal: The Rule, the Exception, the Exception to the Exception § 16.1-107



Appealing party must post appeal bond

Indigents do not have to post appeal bond

In nonpayment of rent cases, even indigents must post appeal bond

To appeal an eviction judgment based on nonpayment of rent, tenant still must post an appeal bond for the money judgment for rent, within 10 days of judgment. But after that, tenant must only pay ongoing rent as it comes due

Expunging Dismissed Eviction Lawsuits

§ 8.01-130.01



Starting January 1, 2022, the tenant can petition the court to expunge the court record.

<https://www.vacourts.gov/forms/district/dc425.pdf>

Tenant will file petition in the General District Court where the underlying UD filed

Upon finding that the UD nonsuited or dismissed and action expired (180 days) and no order of possession granted, court is to expunge the record without a hearing.

“Low-income tenants do not have any right to counsel in civil courts, unlike in criminal courts. So in many housing courts, potentially 90 percent of tenants are unrepresented while landlords by and large have attorneys. If we invested in a public legal service for indigent tenants in housing court facing the rich, that would curb frivolous evictions, make sure that we stopped illegal evictions and allow a tenant's case to be made — unlike in the majority of cases today”

— **Matthew Desmond, Associate Professor of Sociology, Princeton University**



Appendix

Sample Eviction Forms & Documents

5 Day Pay-or-Quit Notice

PAY OR QUIT NOTICE

Tenant's Name

TAKE NOTICE, THAT YOU ARE JUSTLY INDEBTED TO **Property Manager/Landlord**

IN THE SUM OF \$1,554.00 DOLLARS, FOR THE RENT OF THE FOLLOWING PREMISES
IN THE COUNTY OF CHESTERFIELD TO-WIT:

Tenant's Address

Charges Due Summary

Due Date	Description	Amount	Amount Due
09/01/2019	Rent Income	\$895.00	\$480.00
10/01/2019	Rent Income	\$895.00	\$895.00
09/02/2019	Late Fee	\$89.50	\$89.50
10/06/2019	Late Fee	\$89.50	\$89.50
Total			\$1,554.00

Monthly Charges

Rent Income \$895.00
Total \$895.00

BEING THUS IN DEFAULT MORE THAN FIVE DAYS PAST DUE.

I HEREBY REQUIRE AND DEMAND POSSESSION OF THE AFORESAID
PREMISES OR THE PAYMENT OF SAID RENT WITHIN FIVE DAYS AFTER SERVICE
OF THIS NOTICE: IN DEFAULT OF WHICH WE SHALL PROCEED BY DUE PROCESS
OF THE LAW TO RECOVER POSSESSION OF SAID PREMISES.

GIVEN UNDER MY HAND THIS **10/07/2019**

I CERTIFY THAT I DELIVERED THIS NOTICE ON 10/07/2019 TO THE ABOVE
TENANT.

21/30-Day Notice Remediable Breach

VIRGINIA 21/30-DAY NOTICE TO QUIT

To: _____

All residents (tenants and subtenants) in possession and all other in possession

The premises herein referred to are located in the City of _____,
County of _____ State of _____, Zip Code _____
designated by the number and street as _____

Apt. _____. In accordance with your lease agreement signed on the ____ day of _____,
20____ and the laws in the State of _____

WITHIN TWENTY-ONE (21) DAYS after service on you of this notice, you are hereby
required to remedy the violation described as _____

as it is in non-compliance with your lease agreement. You shall notify the landlord within
the notice period that the violation has been cured or quit and deliver the possession of the
premises. If the violation has not been cured within the initial twenty-one (21) day period,
then the lease shall terminate with the tenant required to vacate along with all their
possessions within thirty (30) days ending on the the ____ day of _____,
20____.

YOU ARE FUTHER NOTIFIED THAT, the owner/landlord does hereby elect to declare that
forfeiture of your lease or rental agreement under which you hold possession of the above
described premises and if you fail to perform or otherwise comply, will institute legal
proceedings to recover rent and possession of said premises which would result in a
judgment against you including costs and necessary disbursements together with possible
statutory damages as allowed by law for such unlawful detention.

Landlord/Agent Signature _____

CERTIFICATE OF SERVICE

I certify that on the ____ day of _____, 20____ I served this notice to
_____ by

- delivering it personally to the person in possession.
- delivering it on the premises to a member of his/her family or household or an employee of suitable age and discretion with a request that it be delivered to the person in possession.
- first-class mail addressed to the person in possession.

30-Day Notice – Non-Remedial Breach

Virginia Lease Termination Letter

Notice Date: _____ Address of Premises: _____

To: _____

- This notice is to inform my intentions as Landlord that the lease dated the ____ day of _____, 20__ will be terminated in accordance with § 55.1-1253(A). As Tenant, you shall have thirty (30) days to vacate the Premises along with all your possessions.

- This notice is to inform my intentions as Tenant that the lease dated the ____ day of _____, 20__ will be terminated in accordance with § 55.1-1253(A). As Landlord, this request shall provide you with thirty (30) days for me to vacate the Premises along with all my possessions.

The Security Deposit, minus any deductions, shall be returned to the following address:

PROOF OF SERVICE

I, the undersigned, being at least 18 years of age, declare under penalty of perjury that I served the above notice, of which this is a true copy, on the following tenant(s) in possession in the manner(s) indicated below:

- On _____, I handed the notice to the tenant(s) personally.

- On _____, after attempting personal service, I handed the notice to a person of suitable age and discretion at the residence/business of the tenant(s), AND I deposited a true copy in the _____ [Name of Your Postal Service], in a sealed envelope with postage fully prepaid, addressed to the tenant(s) at his/her/their place of residence.

- On _____, after attempting service in both manners described above I placed the notice in a conspicuous place at the residence of the tenant(s) AND I deposited a true copy in the _____ [Name of Your Postal Service] in a sealed envelop with postage fully prepaid, addressed to the tenant(s) at his/her/their place of residence.

Landlord's Signature: _____ Date: _____

Print Name: _____

Summons for Unlawful Detainer – page 1

Clear All Data

SUMMONS FOR UNLAWFUL DETAINER (CIVIL CLAIM FOR EVICTION)

Commonwealth of Virginia

VA. CODE § 8.01-126

.....
CITY OR COUNTY General District Court

.....
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

..... to answer this civil claim.
RETURN DATE AND TIME

DATE ISSUED [] CLERK [] DEPUTY CLERK [] MAGISTRATE

CLAIM AND AFFIDAVIT: That Defendant(s) unlawfully detains and withholds from Plaintiff(s):

ADDRESS DESCRIPTION OF DETAINED PROPERTY
and that the Defendant should be removed from possession based on the following:

unpaid rent

and further that rent is due and owing and damages have been incurred as follows:

\$ rent due for and \$ late fee
RENT PERIOD

and \$ damages for with interest
RATE(S) AND BEGINNING DATE(S)

and \$ costs and \$ civil recovery and \$ attorney's fees.

Plaintiff requests judgment for all amounts due as of the date of the hearing.

This summons is filed to terminate a tenancy not governed by the Virginia Residential Landlord and Tenant Act, § 55.1-1200 *et seq.* of the Code of Virginia.

All required notices have been given.

Subscribed and sworn to before me this day of, 20

My commission expires:
NOTARY REGISTRATION NO. [] CLERK [] DEPUTY CLERK [] MAGISTRATE [] NOTARY PUBLIC

[] City [] County of

CASE DISPOSITION

[] JUDGMENT that Plaintiff(s) recover against { []
[] named DEFENDANT(S).

[] possession of the premises described above pursuant to § 8.01-128.

[] A hearing shall be held on to establish final rent and damages.
DATE AND TIME

[] Immediate writ of eviction [] ordered pursuant to Va. Code § 8.01-129 upon request of Plaintiff.

[] granted pursuant to Va. Code § 55.1-1250(C).

DEFENDANT(S) PRESENT? [] YES [] NO

DATE JUDGE

[] Rent, in the sum of \$ and \$ late fee
and \$ damages with interest and
RATE(S) AND BEGINNING DATE(S)

\$ costs and \$ civil recovery and \$ attorney's fees

[] and \$ costs for Servicemembers Civil Relief Act counsel fees.

HOMESTEAD EXEMPTION WAIVED? [] YES [] NO [] CANNOT BE DEMANDED

[] JUDGMENT FOR [] NAMED DEFENDANT(S) []

\$ costs and \$ attorney fees

awarded to Defendant(s)

[] NON-SUIT [] DISMISSED DEFENDANT(S) PRESENT? [] YES [] NO

DATE JUDGE

FORM DC-421 FRONT 10/19

CASE NO.

PLAINTIFF(S) NAME(S) (LAST, FIRST, MIDDLE)
.....
.....
.....
TELEPHONE NUMBER

V.

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.

[] 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 eviction may be issued immediately for possession of the premises.

Bill of Particulars ordered
DUE DATE

Grounds of Defense ordered
DUE DATE

ATTORNEY FOR PLAINTIFF(S)
.....
.....
TELEPHONE NUMBER

ATTORNEY FOR DEFENDANT(S)
.....
.....
TELEPHONE NUMBER

DISABILITY ACCOMMODATIONS for loss of vision, hearing, mobility, etc. Contact the court ahead of time.

HEARING DATE AND TIME

[] Redemption tender presented; continued to:
.....
HEARING DATE AND TIME

[] Defendant must pay:
\$
RENT OWED

into the court to be held in escrow by
.....
DATE
and any rents coming due prior to the next hearing date must also be paid into the court.

JUDGE'S INITIALS

MONEY JUDGMENT PAID OR SATISFIED PURSUANT TO ATTACHED NOTICE OF SATISFACTION
.....
DATE

CLERK

Summons for Unlawful Detainer – page 2

To the Defendant(s):

- (1) The preferred location for an Unlawful Detainer (Civil Claim for Eviction) 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 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, this unlawful detainer action will be dismissed pursuant to Virginia Code § 55.1-1250. 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 § 55.1-1209.

I certify that I mailed a copy of this document to the defendants named therein at the address show therein on

DATE PLAINTIFF PLAINTIFF'S ATTORNEY PLAINTIFF'S AGENT

Fi. Fa. issued on

Interrogatories issued on

Garnishment issued on

RETURNS: Each defendant was served according to law, as indicated below, unless not found.

Name	Address
<input type="checkbox"/> Personal Service	Tel. No.
<input type="checkbox"/> Being unable to make personal service, a copy was delivered in the following manner:	
<input type="checkbox"/> 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.	
.....	
<input type="checkbox"/> 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.)	
<input type="checkbox"/> Served on the Secretary of the Commonwealth	
<input type="checkbox"/> Not found SERVING OFFICER
..... for	
DATE	
Name	Address
<input type="checkbox"/> Personal Service	Tel. No.
<input type="checkbox"/> Being unable to make personal service, a copy was delivered in the following manner:	
<input type="checkbox"/> 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.	
.....	
<input type="checkbox"/> 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.)	
<input type="checkbox"/> Served on the Secretary of the Commonwealth	
<input type="checkbox"/> Not found SERVING OFFICER
..... for	
DATE	



www.cvlas.org



www.justice4all.org



www.vplc.org

OTHER HOUSING LAWS: TENANT ON THE OFFENSE

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Fair Housing	pg. 21



TENANT AS PLAINTIFF

Petition to Waive Fees

§ 17.1-606

- Circuit court form to waive fees in filing any general district case (form CC1414)
- If recipient of a state or federally funded public assistance program for the indigent or is represented by a legal aid society, **including pro bono**, such person shall be presumed unable to pay such fees or costs.
- Circuit court judge must rule on the issue, not automatic



Sue the Correct Defendant

- Do a **property search** in the jurisdiction through the city/county's Real Estate Assessor to find the owner of the building.
- If true owner is not a natural person (i.e. the owner is a corporation or a limited liability company (LLC)), you should instead provide the **name and physical address of the registered agent** of the company.
- **Sue the landlord**, but put the registered agent's address on the court filing for service purposes. You can find the **registered agent** on the **SCC website**.
- If the individual defendant is listed as being out of Virginia, they are also required to have a registered agent in Virginia.
- If you need assistance finding this information, call VA State Corporation Commission at 804-371-9733 or 866-722-2551.
- Service can be done through the court or a private process server

RVA PROPERTY SEARCH
RICHMOND VIRGINIA REAL ESTATE ASSESSOR

Print Entire Report | Print This Page
Map It | New Search

Property: 1900 E Cary St Parcel ID: E0000165001

Detail | Land | Assessments | Transfers | Planning | Services | Government | Extensions | Images | Sketches

Parcel

Street Address: 1900 E Cary St Richmond, VA 23223-
Alternate Street Addresses: 1918 E Cary St
: 1912 E Cary St
: 3 S 19th St
: 1914 E Cary St
: 1916 E Cary St

Owner: CANAL WALK LOFTS LLC
Mailing Address: 1553 E MAIN ST, RICHMOND, VA 23219
Subdivision Name: NONE
Parent Parcel ID:
Assessment Area: 503 - MF Downtown
Property Class: 325 - R Apartments 100+ Units
Zoning District: B-5 - Business (Central Business)
Exemption Code: -
Unit Count: 89

Current Assessment

Effective Date: 01/01/2020
Land Value: \$1,350,000
Improvement Value: \$8,933,000
Total Value: \$10,283,000
Area Tax: \$520
Special Assessment District: None

Land Description

Parcel Square Feet: 37548
Acreage: 0.862
Property Description 1: CANAL WALK LOFTS
Property Description 2: 0156.41X0256.10 IRG0000.862 AC
State Plane Coords(?): X= 11794091.431033 Y= 3718807.499067
Latitude: 37.53149682 , Longitude: -77.42730922

Richmond City Assessor's Office | 900 E. Broad St, Rm 802 | Richmond, VA 23219 | Phone: (804) 646-7500 | Fax: (804) 646-5686
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CONDITIONS & REPAIRS



Tenant Assertion

§ 55.1-1244

Tenant Assertion is for remedying Landlord's *violation of the lease*, it does not need to be a health hazard, so long as the violation is a material violation of the lease

- **Material Noncompliance of Lease OR** something that is a serious threat to the life, health, or safety of occupants of the premises
- **1st Tenant** must provide **Written Notice with Reasonable Opportunity to Remedy** (excess of 30 days is rebuttably unreasonable)
- **2nd Tenant** pays rent into court in escrow and files tenant assertion in GDC (Form DC 429)
- **3rd Judge** holds hearing and can order LL to remedy, order money owed to tenant, including reasonable attorney fees and court costs



TENANT REPAIR REQUEST TO LANDLORD
(SOLICITUD DE REPARACIÓN DEL INQUILINO AL ARRENDADOR)

There exists at my Apartment the following conditions which constitute a material non-compliance with my lease and/or with applicable provisions of law (specifically, the Virginia Residential Landlord and Tenant Act, Va. Code § 55.1-1200 et seq.) and/or which if not promptly corrected will constitute a fire hazard or serious threat to the life, health or safety of the occupants of the Apartment.

1. Tenant's Information

(Información del inquilino)

Tenant's Name: _____
(Nombre del inquilino)

Tenant's Address: _____
(Dirección del inquilino)

2. Issues to Address

(Problemas a arreglar)

Please address the following problems with my apartment/house:
(Por favor arregle los siguientes problemas de mi apartamento/casa)

Repairs Needed

(Reparaciones necesarias)

Plumbing/ Water (describe)
(Plomería/ Agua)



Window(s)
(Ventana[s])



Walls
(Paredes)

Floor(s)
(Piso[s])



Appliances (describe)
(Electrodomésticos; describa)



Heat or air conditioning
(Calefacción o aire acondicionado)



Roof/ceiling
(Techo)



Electrical system
(Sistema eléctrico)



Treatments Needed

(Tratamientos necesarios)

Bed bugs
(Chinches)



Rodents
(Roedores)



Insects
(Insectos)



Mold
(Moho)



Other
(Otro)

Other problems (describe)
(Otros problemas; describir)

Description: _____
(Descripción)

3. Signature

(Firma)

Tenant Sign Here: _____
(Inquilino firmar aquí)

4. Delivery of Request

(Entrega de esta solicitud)

Date this request is mailed or delivered: ____/____/____
(Fecha de envío o entrega de esta solicitud) (MM / DD / YY)

U.S. Mail
(Correo)



Hand-delivered to landlord's office
(Entregado personalmente a la oficina del arrendador)



Other (describe)
(Otra manera; describir)

Landlord Address Where Delivered (Dirección del propietario donde se entrega): _____

TENANT (INQUILINO): Deliver the white sheet to the landlord. Keep the yellow sheet for your records. (Entregue la hoja blanca al propietario. Guarde la hoja amarilla para sus registros.)

Notice



Assertion



Clear All Data

TENANT'S ASSERTION AND COMPLAINT
Commonwealth of Virginia VA. CODE § 55.1-1244

_____ General District Court

_____ STREET ADDRESS OF COURT

TO ANY AUTHORIZED OFFICER:
You are hereby commanded to summon the Defendant(s) to appear on _____ before this court to answer. _____ DATE AND TIME

_____ DATE [] CLERK [] DEPUTY CLERK [] MAGISTRATE

I, the undersigned Tenant, this day assert that Plaintiff(s) executed a lease as indicated with Defendant(s) for the rental of the dwelling unit or premises indicated.

DATE LEASE EXECUTED	DATE RENTAL PERIOD COMMENCED	DATE RENTAL PERIOD ENDS
_____	_____	_____
AMOUNT OF RENT		PERIOD AND CONDITIONS OF PAYMENT
_____ due each _____		_____

The following conditions, for which relief is sought, currently exist in the dwelling unit or premises:

constitute material non-compliance by Defendant(s) – Landlord(s) with the rental agreement as indicated below; [or]

constitute material non-compliance by Defendant(s) – Landlord(s) with the provisions of law, as indicated below; [or]

will constitute a fire hazard or serious threat to the life, health, or safety of occupant, if not properly corrected, as indicated below;

_____ LIST PERTINENT SECTION OF RENTAL AGREEMENT [OR] SECTION OF THE CODE OF VIRGINIA [OR] TYPE OF HAZARD. EXPLAIN.

Plaintiff(s) – Tenant(s) therefore requests that the Court grant the following specific relief:

_____, and any other appropriate relief.

I certify that all prerequisite conditions for relief, as shown on the reverse of this form, have been met.

_____ DATE _____ TENANT

CASE DISPOSITION
Judgment: [] Plaintiff(s) \$ _____ [] Defendant(s) \$ _____
\$ _____ costs and \$ _____ attorney fees awarded to [] Plaintiff(s) [] Defendant(s)
Distribution of funds held in escrow in the court:
[] \$ _____ Plaintiff(s) [] \$ _____ Defendant(s)
Other: _____
[] NON-SUIT [] DISMISSED Defendant(s) present? [] Yes [] No

RETURN DATE	CASE NO.	HEARING DATE AND TIME
TENANT'S ASSERTION AND COMPLAINT		
PLAINTIFF(S) – TENANT(S)		
V.		
DEFENDANT(S) – LANDLORD(S)		
ADDRESS/LOCATION OF DWELLING UNIT OR PREMISES SUBJECT TO THIS ACTION		
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 page two about requesting a change of trial location.		
[] To dispute this claim, you <u>must</u> appear on the return date to try this case.		
[] To dispute this case, you <u>must</u> appear on the return date for the judge to set another date for trial. See additional notice on page two.		

Bill of Particulars	ORDERED	DUE
Grounds of Defense	ORDERED	DUE
ATTORNEY FOR PLAINTIFF(S)		
ATTORNEY FOR DEFENDANT(S)		

Repair and Deduct

§ 55.1-1244.1



If landlord fails to make repairs affecting health and safety, tenant can contract with licensed contractor to get work done and deduct the cost from the rent.



Tenant must first provide written notice to landlord and allow landlord **14 days** to initiate the repairs.



Tenant can deduct up to \$1,500 or one month's rent, whichever is higher.



Tenant must provide landlord with itemized statement and receipt for the work.

Repair & Deduct is only for violations affecting *health and safety* or *material noncompliance with the lease*

This statute allows the tenant to withhold rent in the amount that it cost to repair the safety violation or lease violation **without** paying rent into escrow as part of a tenant assertion.

Repair & Deduct

§ 55.1-1244.1

- **Emergency Conditions include:**
 - *Fire hazard or serious threat to the life*
 - *Threat to health, or safety of occupants of the premises*
 - *Infestation of rodents*
 - *Lack of heat*
 - *Lack of hot or cold running water*
 - *Lack of light, electricity*
 - *Inadequate sewage disposal facilities*



Bed Bugs

§ § 55.1-1227; 55.1-1244

- Tenant has a duty to promptly notify landlord of insects or pests, otherwise, landlord can hold tenant financially responsible.
- Likewise, if the tenant is held at fault for failing to prevent the infestation of pests, they may be held liable for the cost of extermination
- In ALL other cases, the landlord is responsible to pay the cost to remedy the pest situation and the same tenant assertion & repair/deduct statutes listed previously apply
- Landlord must give 48 hours notice of insecticide or pesticide use



Conditions can be a basis to **defend an eviction** action, but tenant still must be able to **pay full rent** at the date of court. This defense is for any violation that threatens health or safety OR a **material noncompliance** of the landlord.



Conditions as Defense

§ 55.1-1241

■ Defense to Eviction Requires:

- *Written notice of condition to landlord with reasonable opportunity to cure*
- *Threat to health, or safety of occupants of the premises OR material noncompliance of lease*
- *Tenant must pay full rent owed into court in order to assert this defense. Tenant cannot withhold rent without paying into court UNLESS the condition was an emergency (see Repair & Deduct slide)*

Who's responsible for Natural Disasters?

§ § 55.1-1206; 55.1-1220

- Landlord is still obligated to make repairs
- Tenant is responsible for personal property damaged (renter's insurance is expected), see *Isbell v. Commercial Inv. Assoc.*, 273 Va. 605 (2007).
- If the damage cannot be fixed reasonably quickly, the tenant may be eligible to be transferred or terminate the lease early





MOVEOUT
RIGHTS



Early Termination of Lease by Tenant

§§ 55.1-1234; 55.1-1235; 55.1-1236

- The tenant may terminate a lease early in much the same fashion as a landlord evicting if the landlord violates the lease (send a 21/30 for remediable violations, a 30 day notice for non-remediable violations).
- If there is no basis for terminating the lease early, the tenant may still terminate it early but will incur some damages (usually 2 months rent). However, if the landlord rents out the unit quickly, there is an argument to be made that the tenant should only owe actual damages for early termination.
- Victims of domestic violence and military personnel have additional rights to terminate the lease early



Uninhabitable Dwelling at Move-In

§ 55.1-1234.1

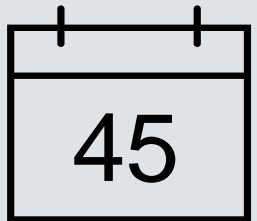
- When the tenant first moves in, if a condition exists that is "a fire hazard or a serious threat to the life, health, or safety of the tenants, including an infestation of rodents or a lack of heat, hot or cold running water, electricity, or adequate sewage disposal facilities," the tenant has the right to terminate the rental agreement and get a full refund of all deposits and rent paid to the landlord.
 - The tenant has to provide notice to the landlord within seven days of when the tenant received possession from the landlord.
 - The landlord has fifteen business days to refund the rent and deposit(s) paid from the date the tenant delivered the termination notice or the date the tenant vacated the unit, whichever is later.
- The landlord can challenge this with written notice to the tenant of their refusal to accept the termination notice with reasons why they are doing so within fifteen business days from when the tenant delivered the termination notice to the landlord.
- The tenant can file an action with a court of competent jurisdiction to contest the landlord's refusal to accept the termination notice if the tenant did not take possession or has moved out the dwelling. This action would also be for the recovery of any deposit(s) and rent paid to the landlord. Whichever party prevails in court will be entitled to judgment for their reasonable attorney's fees.

Security Deposits

§ 55.1-1226



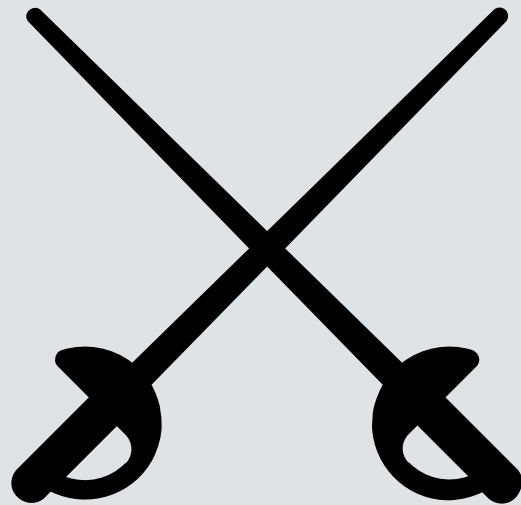
- Security deposit cannot be more than 2 months rent which is owed back to the tenant.
- Any deduction of the deposit during the tenancy must be done with a 30 day notice to the tenant. Otherwise, the tenant is entitled to the deposit.
- Itemized list of what the security deposit was used for must be delivered to tenant w/in 45 days of moveout. If not, you can claim full security deposit owed.



Since the tenant has moved out once security deposits are at issue, the correct action for this is a **Warrant in Debt**, not a Tenant's Assertion.



COUNTERCLAIMS



Procedure

§ 16.1-88.01

- File it with your answer or at the return date to avoid filing fees
- When filing a counterclaim, you are the plaintiff
- It's a good tactic for settlement negotiations to avoid eviction
- Once filed, landlord can't nonsuit eviction without you dismissing counterclaim
- Common housing counterclaims include:
 - *Virginia Consumer Protection Act Violation*
 - *Fair Housing Violation*

Virginia Consumer Protection Act

§ § 59.1-196 et seq.

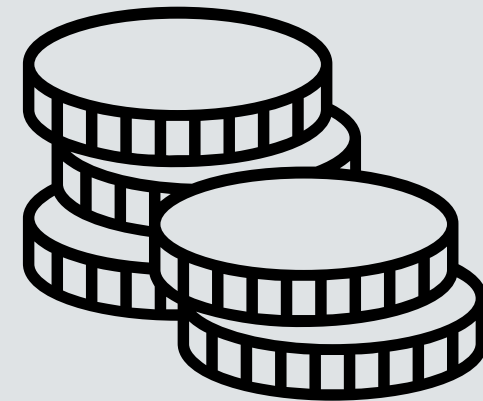
- Protects against deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction
- Excludes VRLTA *UNLESS* the act or practice of a landlord constitutes a misrepresentation or fraudulent act or practice under § 59.1-200.
- **Common landlord violations include:**
 - *Charging attorney fees & court costs prior to when they accrued (these costs should not be owed on the 5 day notice to pay or quit)*
 - *Charging fees unauthorized by law (ex: charging late fees in excess of 10% of amount owed)*



Virginia Consumer Protection Act

§ § 59.1-196 et seq.

- Each violation entitles the victim to actual damages, or \$500, whichever is greater
- If the violation is “willful,” the damages go up to \$1000 per violation (per fraudulent fee charged)
- Also allows for recovery of reasonable attorney fees and court costs



FAIR HOUSING LAW



Virginia & Federal Fair Housing are Substantially the Same

- Virginia Laws located at §§ 36-96.1, et seq.
- Federal Laws located at Sec. 801. [42 U.S.C. 3601]
- Disparate Impact was upheld in *Texas Dept. of Housing and Community Affairs v. Inclusive Communities Project Inc*, 576 U.S. ____ (2015),

Elements of a FH case

- 1 In a housing transaction,
- 2 it is illegal to discriminate against
- 3 someone because of
- 4 their membership in a protected class.

Disparate Impact Standard



1. **Plaintiff** shows **effect of neutral policy** (statistics)

- Disparate impact on protected class and/or
- Perpetuates segregation



2. Defendant proves **substantial, legitimate, nondiscriminatory interest**



3. **Plaintiff** proves **less discriminatory alternative** achieves defendants' interests

Protected Classes



1. Race
2. Color
3. Religion
4. National origin
5. Sex
6. Sexual Orientation
6. Gender
7. Familial status
8. Disability
9. Elderliness
10. Source of funds
11. Military status

Race & Criminal Background



- Having a criminal record not a protected category under fair housing

- Criminal history barriers violate fair housing if, without justification, burden falls more often on one race or nationality than another (disparate impact)
 - *Use of an arrest record, without a conviction, likely violates fair housing*
 - *Blanket use of a criminal conviction – no matter when, for what, or what has happened since – likely violates fair housing*
 - *Use of a criminal conviction must be tailored to serve a significant, legitimate, nondiscriminatory interest*
 - *Use of a criminal conviction must accurately distinguish between criminal conduct indicating a demonstrable risk and criminal conduct that does not*
 - *An individualized assessment of criminal conviction likely is required to comply with fair housing*

National Origin/Race & Immigration Status



- Requiring all occupants to provide **documentation of legal immigration status** to renew a lease may violate Fair Housing. See *Giron de Reyes v. Waples Mobile Home Park LP*, No. 17-1723 (4th Cir. 2018)
- A landlord is allowed to contact ICE, but using **immigration status to harass** the tenant is arguably a violation of Fair Housing
- A private landlord does not need to provide **language access**, but some subsidized properties are required to provide language access if the language is common enough in the area under Title VI (not fair housing). Nevertheless, a housing provider cannot require the tenant to speak a certain language.

Familial Status



- Increasing rent by **number of people** in the household (or requiring **extra fees** per person) violates Fair Housing
- Rules/regulations that **disproportionately affect kids** (banning kiddie pools, curfews for kids under 18, rules against unsupervised kids) likely violates Fair Housing
- Landlords can have maximum occupancy standards if they are reasonable
- Putting all families in one section of an apartment complex may also violate Fair Housing

Disability



- A physical or mental **impairment** that **substantially limits** one or more **major life activities**
 - *A record of having such impairment*
 - *Being regarded as having such an impairment*
- **Substantially limits** = “to a large degree,” not minor or temporary; consider duration, severity, long-term impact
- **Major life activities** = caring for self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, etc.

Disability Examples

- *Physical or mental impairments*
 - Orthopedic,
 - visual,
 - speech and hearing impairments,
 - cerebral palsy,
 - autism,
 - epilepsy,
 - muscular dystrophy,
 - multiple sclerosis,
 - cancer,
 - heart disease,
 - diabetes,
 - HIV/AIDS,
 - developmental delays,
 - emotional illness,
 - drug addiction (other than addiction caused by current, illegal use of a controlled substance), alcoholism, etc (if receiving treatment)

Proving Disability + Need

- Need only disclose that which is necessary
- Sources of verification
 - *The individual him/herself (e.g. proof receiving SSI or SSDI)*
 - *Note from doctor, therapist, other medical professional*
 - *peer support group, non-medical service agency, or a reliable 3rd party with knowledge of the disability*

Right to Request a Reasonable Accommodation/Modification

- Only applies to disabilities
- IF The RA or RM is related to the disability and full use and enjoyment of the housing, and...
- It isn't an undue financial burden, and...
- It isn't a fundamental alteration

The housing provider must grant the request

Modifications = Physical Structure Change

- Common requests
 - *Ramps*
 - *Installation of grab bars*
 - *Changes to environmental controls*
 - *Installation of carpeting or acoustic tile to reduce noise*
 - *Removal of carpet to facilitate wheelchair use*
 - *Widened doorways*

Modifications

■ Who pays?

- *Private market housing – the tenant*
- *Federally assisted housing – the housing provider (Sec 504)*
- *Multi-family housing built after 1991 that should have been accessible – the housing provider pays!*

Reasonable Accommodations = Change in Policy

- Changes, exceptions, or adjustment to rules, policies, practices or services
- Necessary to use and enjoy a dwelling
- Includes unit and public and common use areas
- No limitation on number or type of requests
- Applies to applying for housing, during tenancy, or termination of tenancy

Accommodations



■ Common requests

- *Parking – proximity, assigned space, caretakers*
- *Animals – service, support, therapeutic, companion*
- *Waiver of fees – “pet” fees, guest or parking fees, late fees because social security payment comes at a certain time each month*
- *Request not to evict for behavior closely linked to disability*
- *Appeal of application denial related to disability*
- *Transfer to another unit*

Interactive Process



- Make the request to housing provider
- Both sides have to work the process in good faith
- Provider can offer reasonable alternative

What is reasonable?

■ NOT if undue financial burden

- *Mentally ill tenant requesting daily call to tenant to confirm not hospitalized v. call two days prior to rent due day to remind to pay rent.*

■ NOT if fundamental alteration in nature of services

- *Asking landlord to send someone to read all mail to blind tenant v. asking landlord to read only notices from landlord to blind tenant.*

Fair Housing Enforcement

Forum

■ Court

- *state or federal*

■ Administrative

- *Virginia Fair Housing Office or Federal HUD Complaint*

Remedies

- Actual damages
 - Lost housing opportunity
 - Emotional distress
- Punitive damages
- Civil penalties
- Injunctive relief
- Attorneys fees

Source of Funds Discrimination

§§ 36-96.1:1,
36-96.3

Voucher Holders!

Starting July 1, 2020, sources of funds was added to the reasons why a person may not be denied housing under the Virginia Fair Housing Law.

Protects prospective home buyers and renters.

Source of funds = “any source that lawfully provides funds to or on behalf of a renter or buyer of housing, including any assistance, benefit, or subsidy program, whether such program is administered by a governmental or nongovernmental entity.”

Exceptions to Source of Funds Protection:



Does not apply to owners of four or fewer rental units in Virginia, or those who own a 10% or less interest in four or more units.



Does not apply if the source of funds is not approved within 15 days of submitting the request to approve the tenancy.

3 LEGAL AID PROGRAMS



www.cvlas.org



www.justice4all.org



www.vplc.org

Central Virginia Legal Aid

- ***Pro Bono Triage Program***
- Pick Cases from Case Server

Contact:

Lisa@CVLAS.org

Legal Aid Justice Center

- ***Housing Unit***
- 4 Appointment Dates:
Tuesdays/Thursdays
4-5:30pm
- Advice or Represent

Contact:

LaurenKing@justice4all.org

Virginia Poverty Law

- ***Please reach out for future pro bono opportunities***

Contact:

Janae@vplc.org