

Virginia Housing Law Case Guide

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Credit and thanks to the Virginia Housing Law Listserv and the authors of the guides cited below

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To answer a housing question, it is usually best to consult the following resources in the following order: (1) the Code of Virginia; (2) the District Court Judges’ Benchbook; (3) legal guides and resources prepared by the legal aid community; (4) Virginia case law; (5) the National Housing Law Project’s HUD Housing Programs: Tenants’ Rights, which is available online through a NCLC digital library subscription; and (6) the Virginia Housing Law Listserv.

For cases on **standing**, consult Henry Woodward’s 2017 “Quick Guide to Dismissal of Unlawful Detainers for Lack of Standing.” While some of those cases appear in this guide, that guide highlights other cases and treats that subject in depth.

For guidance on **bed bugs**, consult Kelly Reimer and Dini Miller’s 2013 “Bed bugs! Tenant Remedies, Beyond Itching and Scratching.”

For guidance on **eviction defense**, consult Henry Woodward’s 2019 “Defending Against Tenant Eviction” and Martin Wegbreit’s “Basic Virginia Eviction Defenses.”

For guidance on **attorney’s fees**, consult Henry Woodward’s 2010 “Attorney’s Fees.”

For guidance on the **VCPA** and housing law, consult Thomas Domonoske and Palmer Heenan’s 2020 “The VCPA and Housing Law.”

For guidance on **rent-to-own** scenarios, consult Eric Dunn’s 2017 “Litigating Rent-to-Own Cases.”

Civil Procedure

Case	Rule	Decision Date	Issue/Holding	Court	Facts
<p><i>Power v. Tazewells</i></p> <p><i>Power v. Tazewells</i>, 66 Va. 786, 790 (1875).</p>	<p>Elements of unlawful detainer: In an unlawful detainer action, if the defendant enters unlawfully, the plaintiff is entitled to recover without any regard to his right of possession but must show that the defendants' entry was unlawful, and that he unlawfully withholds the possession.</p>	1875	<p>Did plaintiff have exclusive right to the use and occupancy of the premises when the summons was issued?</p> <p>Yes</p>	Supreme Court of Appeals of Virginia	-Old timey case about licenses to oyster beds, which were really in the nature of leases for the exclusive use of the oyster beds. Plaintiff has license to use oyster bed for one year and defendants used the oyster bed and violated their right to exclusive use of the oyster beds.
<p><i>Johnston v. Hargrove</i></p> <p><i>Johnston v. Hargrove</i>, 81 Va. 118, 1885 WL 4162 (1885).</p>	<p>Notice: Notice for unpaid rent/unlawful detainer proceeding must be for the <u>precise sum due</u>, delivered on the day due, before sunset, and on a notorious place of the premises</p> <p>Regardless of whether there is a clause of reentry for forfeiture of rent in the lease, notice still must be given for landlord to take possession.</p>	1885	<p>What notice required? If so, was notice proper?</p> <p>Yes, notice is required despite the right of reentry. But notice was not proper because precise sum due must be included.</p>	Supreme Court of Appeals of Virginia	<ul style="list-style-type: none"> - Johnson rented from Meredith - The lease included a reentry clause in the event of nonpayment of rent - Meredith died and left property in fee simple to Hargrove - Johnson failed to pay rent and Hargrove provided him notice rent was due - Johnson contends that the amount owed must be included in the notice and it was not
<p><i>Merryman v. Hoover</i></p> <p><i>Merryman v. Hoover</i>, 107 Va. 485, 59 S.E. 483 (1907).</p>	<p>Title/Standing: Plaintiff must have legal title at the time lawsuit is instituted or cannot recover.</p>	1907	<p>Does Plaintiff to an ejectment action have to hold title to the land at controversy? Or may they simply win because the</p>	Supreme Court of Appeals of Virginia	<ul style="list-style-type: none"> - Merryman owned land that Hoover occupied - Merryman sued Hoover to eject him

			<p>Defendant has no title themselves?</p> <p>Yes, Plaintiff must have legal title at the time the action is commenced: Merryman could not sue Hoover</p>		- Hoover argued that Merryman had no legal title over the land so he could not sue
<p><i>Norfolk Southern Railroad Co. v. Greenwich Corporation</i></p> <p><i>Norfolk S. R.R. Co. v. Greenwich Corp.</i>, 122 Va. 631, 95 S.E. 389 (1918).</p>	<p>Joinder: When a new plaintiff replaces the original, the case must be dismissed and refiled, even if original plaintiff was not dropped by an official order of the Court.</p>	1918	<p>If a Plaintiff is dropped without a formal order of the Court, does there have to be a new trial?</p> <p>Yes, the Court has no power to amend an existing pleading</p>	Supreme Court of Appeals of Virginia	<ul style="list-style-type: none"> - Greenwich sued Norfolk to recover damages allegedly caused by delay in transportation - Court rendered judgment against Norfolk - Norfolk alleges that there was misjoinder of the parties because the original Plaintiff was essentially ignored by the court and new Plaintiff added when it was discovered the original plaintiff was incorrect
<p><i>City of Norfolk v. Stephenson</i></p> <p><i>City of Norfolk v. Stephenson</i>, 185 Va. 305, 38 S.E.2d 570 (1946). <i>Similar to Phlegar v. Virginia Foods.</i></p>	<p>Business/fictitious name: Any person, partnership, limited liability company or corporation which transacts business in Virginia under an assumed or fictitious name must file a fictitious name certificate in the Circuit Court. This must be filed before judgment entered.</p>	1946		Supreme Court of Appeals of Virginia	
<p><i>Phlegar v. Virginia Foods</i></p>	<p>Business/fictitious name: Similar to <i>City of Norfolk v. Stephenson</i>. Any person, partnership,</p>	1949		Supreme Court of Appeals of Virginia	

<p><i>Phlegar v. Virginia Foods</i>, 188 Va. 747, 751, 51 S.E.2d 227, 230 (1949).</p>	<p>limited liability company or corporation which transacts business in Virginia under an assumed or fictitious name must file a fictitious name certificate in the Circuit Court in order to maintain lawsuit.</p>				
<p><i>Manassas Park Dev. Co. v. Offutt</i> <i>Manassas Park Dev. Co. v. Offutt</i>, 203 Va. 382, 384, 124 S.E.2d 29, 31 (1962).</p>	<p>Receipt of Notice: The mailing of a letter, properly addressed and stamped, raises a presumption of receipt of the letter by the addressee, and a denial by the addressee of the receipt of the letter raises an issue of fact for the jury/factfinder.</p>	<p>1962</p>		<p>Supreme Court of Appeals of Virginia</p>	
<p><i>Johnson v. Goldberg</i> <i>Johnson v. Goldberg</i>, 207 Va. 487, 151 S.E.2d 368 (1966).</p>	<p>Notice: a notice to quit or demand of possession must be shown before an unlawful detainer action can be maintained and it must be accurate.</p>	<p>1966</p>	<p>What is appropriate notice for an unlawful detainer? Yes: Johnson received sufficient notice</p>	<p>Supreme Court of Appeals of Virginia</p>	<ul style="list-style-type: none"> - Goldberg filed UD against Johnson - Goldberg purchased property from trustees' sale and gave written notice to Johnson that he was claiming possession - Johnson alleged that he did not receive proper notice - Goldberg alleges that he attempted to contact Johnson but was not allowed to by Johnson - Goldberg instead gave notice to quit to Johnson's adult daughter

<p><i>Hurst v. Ballard, et al.</i></p> <p><i>Hurst v. Ballard</i>, 230 Va. 365, 337 S.E.2d 284 (1985).</p>	<p>Writ Tax: In all cases, the writ tax must be properly and timely posted or the case cannot be sent/heard by the Circuit Court.</p>	1985	<p>Is the writ tax required to perfect an appeal and be heard in the Circuit Court?</p> <p>Yes</p>	Supreme Court of Virginia	<ul style="list-style-type: none"> - Creditors obtained judgment against debtors in district court - Debtors appealed, but failed to pay the district court clerk to writ tax within 30 days
<p><i>Chesapeake House on the Bay v. Virginia National Bank</i></p> <p><i>Chesapeake House on the Bay v. Va. Nat'l Bank</i>, 231 Va. 440, 344 S.E.2d 913 (1986).</p>	<p>Standing for Condos: Pursuant Condominium and Horizontal Housing Acts, condominium associations/governing bodies may not sue third parties on behalf of individual owners.</p>	1986	<p>May a “condo council” sue third parties on behalf of the individual condo owners?</p> <p>No</p>	Supreme Court of Virginia	<ul style="list-style-type: none"> - Chesapeake House (CH) sued VINB upon discovery of defects in the condos they bought. VNB was the lender of the construction project - CH filed motion to amend and add parties (individual condo owners)
<p><i>Jones v. Dokos Enterprises Inc.</i></p> <p><i>Jones v. Dokos Enterprises</i>, 233 Va. 555, 357 S.E.2d 203 (1987).</p>	<p>Assignment: tenant remains liable on the original lease contract and maintains privity of contract with the lessor.</p> <p>Assignment & Security Deposits: security deposits of tenant/assignor are not automatically conveyed to the tenant-assignee but remain property of lessor unless the assignment specifically includes reference of transferring deposit to the assignee.</p>	1987	<p>Does a lessee who made a security deposit retain the right to those deposits after assigning the lease to another?</p> <p>Yes</p>	Supreme Court of Virginia	<ul style="list-style-type: none"> - Jones owned two McDonald’s franchises and the leases required \$15,000 security deposits each - Leases contained language “no assignment (with or without Lessor’s consent) shall release Lessee from any of its obligations hereunder” - Jones sold “all rights under the lease” for the franchises to Dokos -Despite the assignment, Jones remained liable to McDonalds for the performance of lease provisions

<p><i>Washington v. Anderson</i></p> <p><i>Washington v. Anderson</i>, 373 S.E.2d 712, 236 Va. 316 (1988).</p>	<p>Out of State Judgements: Must contest the foreign judgement, not the domestication proceeding or appeal of domestication proceeding to dispute the validity of a foreign judgment.</p>	<p>1988</p>	<p>Can a Virginia Court inquire into the validity of a foreign judgment?</p> <p>No</p>	<p>Supreme Court of Virginia</p>	<ul style="list-style-type: none"> - Anderson sued Washington for \$1772.42 in Maryland - Anderson sought to domesticate the judgment for Virginia - After delivering service in Virginia—at Washington’s home - Washington did not show up to court - Subsequently, Washington filed a motion to set aside a default judgment for improper service/notice - Claimed he received no notice for either action
<p><i>Dogwood Housing Limited Partnership v. Williams</i></p> <p><i>Dogwood Housing Limited Partnership v. Williams</i>, No. CL89004191, 1989 WL 1740031, at *1 (Va.Cir.Ct. May 02, 1989).</p>	<p>Notice not for precise sum due: application of <i>Johnson v. Hargrove</i> principal. Landlord cannot recover possession if 5DPOQ notice is defective because it stated an amount due for unpaid rent which was more than what the Defendant actually owed.</p>	<p>1989</p>	<p>Can landlord recover possession if 5DPOQ claims unpaid rent in excess of what defendant tenant actually owed?</p> <p>No</p>	<p>Charlottesville Circuit Court</p>	<p>-Legal aid case</p>
<p><i>Villwock v. Ins. Co. of N. Am./CIGNA</i></p> <p><i>Villwock v. Ins. Co. of N. Am./CIGNA</i>, 22 Va. App. 127, 468 S.E.2d 130 (1996).</p>	<p>Notice: Party with burden of proving notice was received raised a presumption of receipt of correspondence upon proof of mailing of correspondence, properly addressed and stamped in normal fashion with correspondence not returned.</p>	<p>1996</p>		<p>Court of Appeals of Virginia</p>	

<p><i>Kone v. Wilson</i></p> <p><i>Kone v. Wilson</i>, 272 Va. 59, 630 S.E.2d 744 (2006).</p>	<p>Signature: When an initial pleading not signed by proper party or attorney, it is not valid instrument and is without legal effect.</p>	<p>2006</p>	<p>May an administrator of an estate file a claim for the decedent pro se and sign on behalf of the decedent?</p> <p>No—cause of action only existed for decedent and may not personally sign as he is a representative that is not an attorney</p>	<p>Supreme Court of Virginia</p>	<p>- Kane, administrator of decedent’s estate filed a wrongful death action against doctor of decedent and other medical professionals involved - Defendant argued this was an invalid signature because it was held in <i>Nerri v. Adu-Gyanfi</i> that a signature on a pleading by someone acting in a representative capacity, but is not a licensed attorney is invalid</p>
<p><i>Architectural Stone v. Wolcott Center</i></p> <p><i>Architectural Stone v. Wolcott Center</i>, 274 Va. 519, 649 S.E.2d 670 (2007).</p>	<p>Appeal and Motions to Set Aside Default Judgment: Denying a default judgment does not dispose of the underlying possessory action on its merits that would allow parties to appeal the decision.</p>	<p>2007</p>	<p>Does a motion to set aside the default judgement denied subsequently to the original judgment dispose of the underlying possessory action on its merits and allow the opportunity for appeal?</p> <p>No</p>	<p>Supreme Court of Virginia</p>	<p>- Wolcott filed an unlawful detainer and won a default judgment against Architectural Stone - Several months later Architectural Stone filed a motion to set aside the default judgment, which they lost - Architectural Stone then tried to file an appeal based on the decision of the motion</p>
<p><i>Aguilera v. Christian</i></p> <p><i>Aguilera v. Christian</i>, 280 Va. 486, 699 S.E.2d 517 (2010).</p>	<p>Signature on pleading: Pleading must be signed by attorney or self-representing client.</p>	<p>2010</p>	<p>Do § 8.01-271.1 and Supreme Court Rule 1:4 mean that ONLY an attorney representing a party or the named party may sign pleadings?</p> <p>Yes: only parties to the suit or their attorneys may sign pleadings</p>	<p>Supreme Court of Virginia</p>	<p>- Aguilera, pro se, filed complaint against Christian for personal injuries in a car accident - Christian did not sign the complaint himself, but asked a friend to sign for him (signed Aguilera’s name and initialed in their own) -Christian contested signature/complaint’s validity</p>

<p><i>Seitz v. Fed. Nat'l Mortg. Ass'n</i></p> <p><i>Seitz v. Fed. Nat'l Mortg. Ass'n</i>, 909 F. Supp. 2d 490, 496 (E.D. Va. 2012).</p>	<p>Nature of unlawful detainer: An unlawful Detainer is "purely a statutory action," and its purpose is "merely to restore the possession to one from whom it has been forcibly taken, or to give possession to one from whom it is being unlawfully withheld." A decision in an Unlawful Detainer action only resolves "whether the plaintiff is entitled to possession as against the defendant."</p>	2012	Unlawful detainer action was an action quasi in rem, supporting application of prior exclusive jurisdiction doctrine.	Eastern District of Virginia	-Plaintiff filed suit against mortgage company to quiet title after property had been foreclosed upon and while an unlawful detainer action was on appeal in a circuit court.
<p><i>Parrish v. Fannie Mae</i></p> <p><i>Parrish v. Fed. Nat'l Mortg. Ass'n</i>, 292 Va. 44, 787 S.E.2d 116 (2016).</p>	<p>Title in GDC: The General District Court does not have authority to determine the validity of title, but it can determine whether there is a valid disputed issue of title and then dismiss the case without prejudice.</p>	2016	<p>Was Parish entitled to a notice to vacate in the unlawful detainer action where title was disputed?</p> <p>Court does not answer this question, instead holding that it cannot rule on an issue of title</p>	Supreme Court of Virginia	<ul style="list-style-type: none"> - Parish owned property which he conveyed by deed of trust to Stevens to secure the principal amount of \$206,100 - Lender foreclosed on Parish and Fannie Mae purchased at foreclosure sale - Fannie Mae sought possession and filed unlawful detainer against Parish
<p><i>World Telecom Exch. Commc'ns, LLC v. Sidya</i></p> <p><i>World Telecom Exch. Commc'ns, LLC v. Sidya</i>, No. 160666, 2017 WL 3084091 (Va. July 20, 2017)</p>	<p>SCC Certificate/Standing: Foreign corporations transacting business in Virginia must have a SCC certificate to litigate actions in Virginia courts.</p>	2017	<p>Does a foreign corporation transacting business in Virginia need to obtain a SCC certificate prior to the entry of a final judgement order?</p> <p>Yes</p>	Supreme Court of Virginia	<ul style="list-style-type: none"> - Tulynet sued Sidya, Sidya moved to dismiss because Tulynet was not registered with the State Corporation Commission (which it must pursuant to VA Code §§13.1-758(A), 13.1-1057(A) - Tulynet based in UAE and parent company to World Telecom which

					<p>does business in Virginia (found to be interrelated companies)</p> <ul style="list-style-type: none"> - Trial court dismissed, claiming Tulynt only need to get SCC certificate prior to final judgement - Tulynt won, but never got SCC certificate -Sidya appeals
<p><i>Robert & Bertha Robinson Family, LLC v. Allen</i></p> <p><i>Robert & Bertha Robertson Family, LLC v. Allen, 295 Va. 130, 810 S.E.2d 48 (2018).</i></p>	<p>Appeal: a party may appeal a single adverse disposition of a multiclaim case. (ex: LL appealing that they were not awarded monetary damages, only possession). The appeal of the monetary claim by the Landlord may result in an enforceable judgment for possession in the General District Court and an enforceable money judgment.</p>	2018	<p>May individual parts of a judgment be appealed for a multiclaim case?</p> <p>Yes</p>	Supreme Court of Virginia	<ul style="list-style-type: none"> - Robinson Family filed a warrant in debt alleging breach of lease agreement - The Allens filed a counterclaim for their security deposit - GDC ruled against both parties and dismissed all claims - Robinson Family appealed but later withdrew appeal - Circuit Court placed sanctions on Robinson Family and awarded damages to the Allens
<p><i>FCRHA Cedar Ridge v. Boler</i></p> <p><i>FCRHA Cedar Ridge LP v. Boler, 104 Va. Cir. 132 (2020).</i></p>	<p>Indigency and Appeal Bond: Indigent appellants are not required to post appeal bond to perfect their appeal.</p> <p>Notice: landlord must comply with the notice provisions as stipulated in the lease.</p>	2020	<p>(1) Whether the Court has jurisdiction in this appeal in light of Boler’s failure to post bond as required to perfect the appeal?</p> <p>Yes: because Boler was indigent, she is not required to pay the appeal bond</p> <p>(2) Did Cedar Ridge comply with the requisite legal notices to Boler in order to maintain</p>	<p>Fairfax County Circuit Court</p> <p>19th Judicial Circuit of Virginia</p>	<ul style="list-style-type: none"> - Boler lost an unlawful detainer action - She attempted to appeal and have the bond waived due to her indigent status, but clerk’s office rebuffed her efforts - Kelly approached the court pro se and requested an emergency hearing to stay her eviction

			successfully an unlawful detainer action?		
			No		

Personal Injuries, Torts, VCPA, and Breach of Contract (Non VRLTA remedies):

Case	Rule	Decision Date	Issue/Holding	Court	Facts
<p><i>Caudill v. Gibson Fuel Co.</i></p> <p><i>Caudill v. Gibson Fuel Co.</i>, 185 Va. 233, 38 S.E.2d 465 (1946).</p>	<p>Personal injury caused by property under the tenant's exclusive control/failure to repair: In the absence of fraud or concealment, the Landlord has no duty to maintain the premises under the exclusive control of the tenant so no action in tort can be maintained for failure to maintain the property under the tenant's control.</p>	1946	<p>Is the landlord liable for personal injuries caused due to the condition of the property that is in the exclusive control of the tenant?</p> <p>No</p>	Supreme Court of Virginia	<ul style="list-style-type: none"> - Caudill filed action against Gibson to recover for personal injuries sustained due to the defective condition of the house she rented - She alleged the porch was decaying which caused her to fall through -She alleges Gibson was aware of the property's condition -Caudill and her husband had complete control of the house and the porch
<p><i>Payton v. Rowland</i></p> <p><i>Payton v. Rowland</i>, 208 Va. 24, 155 S.E.2d 36 (1967).</p>	<p>Personal Injuries/Duty of Care: Landlord has a personal duty to maintain the reasonably safe condition of any part of the leased premises that was reserved to the common use of all tenants.</p>	1967	<p>Do landlords have a duty of care in common areas?</p> <p>Yes</p>	Supreme Court of Appeals of Virginia	<ul style="list-style-type: none"> - Payton fell through an allegedly rotten porch shared by co-tenants on leased premises - Dispute over whether it was communal or under the exclusive possession of tenant
<p><i>Sales v. Kecoughtan Housing Co.</i></p> <p><i>Sales v. Kecoughtan Housing Co.</i>, 279 Va. 475, 690 S.E.2d 91 (2010).</p>	<p>Personal Injury/negligence claims: If landlord undertakes a repair, a negligence claim may be maintained for injuries arising from a defective condition arising from the repairs.</p>	2010	<p>Is a landlord liable for personal injuries caused by repairs they undertook that were not completed sufficiently?</p> <p>Yes</p>	Supreme Court of Virginia	<ul style="list-style-type: none"> - Sales rented an apartment from Kecoughtan - Sales informed the apartment manager that there was mold in the property and asked for repair - The property manager told Kecoughtan that he repaired the mold - Subsequently, mold began growing in Sales's eye and he sued

<i>See Tingler v. Graystone Homes, Inc.</i>					Kecoughtan for damages, alleging the mold was only painted over and not repaired properly
<i>Isbell v. Commercial Investment Assoc.</i> <i>Isbell v. Commercial Investment Assocs. Inc.</i> , 273 Va. 605, 644 S.E.2d 72 (2007).	Personal Injuries and VRLTA: The VRLTA does not make landlord responsible for personal injuries caused by breach of landlord's duties under VRLTA	2007	Does the VRLTA create a statutory cause of action against landlords responsible for injuries caused by a breach of landlord's duties under VRLTA? No	Supreme Court of Virginia	- Isbell fell down slippery stairs inside apartment he rented - Alleges the stairs were in disrepair and in violation of VRLTA
<i>Yong Su Park, et al. v. Gates Hudson & Assoc., Inc., et al.</i> <i>Yong Su Park, et al. v. Gates Hudson & Assoc., Inc., et al.</i> , 83 Va. Cir. 45, 2011 Va. Cir. LEXIS 76 (Fairfax County Circuit Court, May 24, 2011).	Conditions and VCPA and breach of contract: A landlord's concealment of a bedbug infestation can constitute a deceptive trade practice under the Virginia Consumer Protection Act and support a breach of contract claim.	2011	Does concealment of the bed bug infestation constitute a deceptive trade practice under the Virginia Consumer Protection Act, Virginia Code § 59.1-200(A)(14), as well as counts for breach of contract and for fraud? Yes	Fairfax County Circuit Court	-Plaintiffs alleged negligence, gross negligence, intentional infliction of emotional distress, fraud, breach of contract and deceptive trade practices. The causes of the action sought liability and damages resulting primarily from bed bug bites suffered by the tenants. The defendants filed a demurrer which was sustained for most of the tort claims.
<i>Steward v. Holland Family Properties</i> <i>Steward v. Holland Fam. Prop.</i> , 284 Va. 282, 726 S.E.2d 251 (2012).	Landlord liability for failure to repair property: Limited rights of reentry do not displace the tenant's full possession and does not make the landlord liable for the conditions under the possession of the tenant.	2012	Is Landlord liable for personal injuries on premises when lease terms stipulate a right of entry to the landlord to inspect and repair property? No	Supreme Court of Virginia	- Tenant's child, via mother, brought action for exposure to lead paint on property - Lease included a right to reentry for the landlord - Tenant alleged that the lease terms abrogated the tort duty to repair on the landlord because they allowed landlord to enter the property to repair the premises

	<p>Personal Injuries: No statutory right under VRLTA for action of tort or negligence per se action for landlord’s violation of VRLTA.</p> <p>See Caudill v. Gibson and Isbell v. Commercial Inv. Assoc, Inc.</p>				
<p><i>Jenkins v. ICAFS, Inc.</i></p> <p><i>Jenkins v. ICAFS, Inc.</i>, 84 Va. Cir. 515 (2012)</p>	<p>Personal Injuries/Negligence: A tort claim may be brought in the case of concealment by the landlord as to some defect in the premises known or if landlord undertakes to make a repair and performs in negligently.</p>	2012	<p>Can tenant sue a landlord for damages for conditions fraudulently concealed or that were a defect known to the landlord?</p> <p>Yes— however here there was no proof of fraud in this instance</p>	Richmond City Circuit Court	- Jenkins was injured when he used a pull-down stairway to an attic on the property
<p><i>Cotten v. JumpStart University, et. al.</i></p> <p>Unreported - see CVLAS Archives. Available here</p>	<p>VCPA: When a landlord’s lease provisions violate the VRLTA and the landlord charges tenant for services that are never provided that gives rise to actionable VCPA claims.</p>	2021	<p>Did plaintiff tenant state a claim under VPCA when she alleged Landlord’s lease provisions which violated the VRLTA and practice of charging for services that were never provided?</p> <p>Yes.</p>	Richmond City Circuit Court	<p>-Landlord filed demurrer to plaintiff’s VCPA claim. Demurrer was overruled.</p> <p>-Palmer Heenan briefed this issue so contact CVLAS if you need a copy of the related memorandums.</p>

Condition of the Premises

Case	Rule	Decision Date	Issue/Holding	Court	Facts
Buchanan v. Orange <i>Buchanan v. Orange</i> , 118, Va. 551, 88 S.E. 52 (1916).	Constructive eviction: Constructive evictions occur when landlord deprives tenant of the free enjoyment of the premises for the purpose for which it was rented. Landlord's intent to evict tenant/remove quiet enjoyment may be inferred from their actions.	1916	Does the behavior of the defendant constitute constructive eviction, relieving her from obligation to pay rent? Yes	Supreme Court of Appeals of Virginia	<ul style="list-style-type: none"> - Orange rented facilities upon promise landlord would supply furnace and electric lighting - Orange agreed to heat stove on condition it would not interfere with her business, but it did - Landlord would not provide heat as promised in lease
Miller v. Southern Railway Co. <i>Miller v. Southern Railway Co.</i> , 131 Va. 239, 108 S.E. 838 (1921).	Must pay rent: Landlord breaching the covenant to repair does not provide a legal excuse for tenant's refusal to pay rent as neither covenant is dependent upon the other. Instead tenant must recover damages for the unmade repairs. But VRLTA now makes lack of repairs a defense under certain conditions.	1921	Does a tenant have to continue to pay rent if landlord fails to keep maintain the conditions of the premises? Yes	Supreme Court of Virginia	<ul style="list-style-type: none"> - Railroad company sued lessees for failure to pay rent - Lessees asserted as a defense that Southern Railway failed to maintain the tracks so they were not obligated to pay rent
Cherry v. Lawson Realty Corp. <i>Cherry v. Lawson Realty Corp.</i> , 295 Va.	Mold: The enactment of § 8.01-226 does not repeal or modify any common law causes of action beyond the plain language of the statute.	2018	Does the enactment of § 8.01-226 prohibit common law actions regarding mold in rented dwelling units? No	Circuit Court of Newport News	<ul style="list-style-type: none"> - Mold in apartment from severe leak in HVAC and landlord's failure to properly remedy the issue.

369, 812 S.E.2d 775 (2018).					
<p><i>S & J Housing LLC v. Dickerson</i></p> <p>Unpublished—see CVLAS archives Copy available here</p>	<p>Bed bugs: Landlord may not stipulate a condition in the lease the tenant is strictly liable for extermination of bed bugs found in the premises.</p>	2020	<p>In other words, does VA Code § 55.1-1227(A)(14) create a right that cannot be abridged via contract or lease?</p> <p>Yes</p>	23 rd Judicial district of Virginia	<ul style="list-style-type: none"> - Lease provision that stated that “resident is responsible for all pest control on an as-needed basis”? - Bed bugs were found on the premises—uncontested that defendant was unaware of the bedbugs - Landlord sued defendant to recover the costs of an exterminator

Damages Calculations

Case	Rule	Decision Date	Issue/Holding	Court	Facts
<p><i>Tunis v. Grandy</i></p> <p><i>Tunis v. Grandy</i>, 63 Va. 109, 22 Gratt. 109 (1872).</p>	<p>No rent due after an illegal eviction: Landlord cannot collect rent for the time after an illegal eviction.</p> <p>See <i>Buchannan v. Orange</i> for a discussion of when conditions create an illegal eviction.</p>	1872	<p>Is tenant liable for rent due after they have been illegally evicted/constructive eviction?</p> <p>No</p>	Supreme Court of Appeals of Virginia	<ul style="list-style-type: none"> - Tunis owned a warehouse, lumber yard, office space, and shed on a wharf - In 1865, leased use of wharf and lumber yard etc. to H for 5 years but stipulated H could not receive “wharfage” fares - In 1867, T rents property to Grandy with condition that H shall have permission to use wharf, but H cannot allow anything to remain on the wharf - H uses wharf and piles lumber on it so Grandy cannot use, H refuses to pay wharfage - Grandy does not tell Tunis, but upon rent due, refuses to pay
<p><i>Hannan v. Dusch</i></p> <p><i>Hannan v. Dusch</i>, 154 Va. 356, 153 S.E. 824 (1930).</p>	<p>Failure to Mitigate: Plaintiff may only recover for the damages directly and necessarily caused by the conduct of the defendant. Plaintiff has a duty to minimize their injury and Defendant is not liable for injuries that could have been avoided by Plaintiff’s reasonable care.</p>	1930	<p>Is there a responsibility for landlords to mitigate damages?</p> <p>Yes—lessee failed to mitigate by allowing the trespasser to remain on the property and not taking action</p>	Supreme Court of Virginia	<ul style="list-style-type: none"> - Dusch leased to Hannan - Hannan claimed that Dusch failed to put him in possession and remove the existing occupants of the leased land at the start of Hannan’s lease term - Dusch alleges he had no duty to keep the premises open for the tenant - Court held there is an implied covenant that the landlord should keep the premises open
<p><i>Horner v. Hardy</i></p> <p>Unpublished—see CVLAS archives</p>	<p>Damages Claims: the failure to conduct a move-in/move-out inspection is fatal to a claim for</p>	1993	<p>Is a move-in/move-out inspection required to successfully recover</p>	Richmond General District Court	<ul style="list-style-type: none"> - Horner, landlord, filed claim for damages to property allegedly caused by tenant

<p>Available here</p> <p><i>Crabtree v. Cypress</i> is also helpful.</p>	<p>damages if there is conflict in the evidence regarding the damages.</p>		<p>damages when conflict in the evidence?</p> <p>Yes</p>		<ul style="list-style-type: none"> - Tenant disputed that she was responsible for damage - No inspection conducted
<p><i>Shirland Arms Corp. v. Hall Construction</i></p> <p><i>Shirland Arms Corp. v. Hall Const., Inc.</i>, 67 Va. Cir. 299 (2005)</p>	<p>Late Fees: Late fees grossly in excess of actual damages are deemed to be an unenforceable penalty, not liquidated damages.</p>	<p>2005</p>	<p>When a contract uses the term “penalty” to describe a late fee, whether this fee is liquidated damages instead of an unenforceable penalty?</p> <p>No—the word “penalty” is not determinative itself, rather the question is whether the stipulated amount grossly in excess of actual damages</p>	<p>Circuit Court for City of Norfolk</p>	<ul style="list-style-type: none"> - Shirland contracted with Hall to fix storm/water damage to apartment unites post-hurricane - Contracted an estimated completion date of February 1, 2004 - Shirland sued, alleging that Hall did not complete in timely manner
<p>Galdamez v. I.Q. Data International, Inc.</p> <p><i>Galdamez v. I.Q. Data Int’l, Inc.</i>, 170 F.Supp. 3d 890 (E.D. Va. 2016).</p>	<p>Interest Accrual on Debt to Landlord: Unless explicitly waived in the lease agreement, interest cannot be accrued pre-judgment on sums owed to the landlord.</p>	<p>2016</p>	<p>Virginia law does not allow a LL, or its debt collector, to assess 6% interest on post-moveout rent balances, absent a judgment in its favor or a specific contractual provision in the lease.</p> <p>VLTA section 55-227 does not apply to a VRLTA tenancy; it is superseded by 55-248.31(F).</p> <p>Under Virginia law, pre-judgment interest is always at the discretion of the trial court; therefore, a debt collector violates the FDCPA by seeking to</p>	<p>United States District Court for the Eastern District of Virginia</p>	<ul style="list-style-type: none"> - Plaintiffs sued IQ for misleading representations in the amount of debt and unfair debt collection practices for their residential lease agreement - After Plaintiffs moved out, IQ sent them a bill for \$3,276 in utilities, damages, rent and late fees - Plaintiffs contest that they owed anything to LL - LL sent plaintiffs to collections and they received a letter that outlined both Plaintiff’s right to dispute the debt and that the outstanding balance would accrue interests at 6% -Plaintiffs contest that VA does not allow debt collectors to impute an interest on unpaid rent, instead it

			collect pre-judgment interest, absent litigation. Where a lease does not provide for interest, there's no interest.		must be explicitly stated in the lease agreement
Copperpen v. Gioscio <i>Copperpen, LC v. Gioscio</i> , 99 Va. Cir. 286 (2018)	Move-in Inspection: failure by landlord to provide move-in inspection is not an absolute bar to the landlord's recovery of damages, BUT it is a bar if there are reasonably disputed damages that would have been clearly identified with a move-in inspection that landlord failed to conduct	2018	Does the landlord's failure to conduct a move-in inspection prohibit them from recovering damages upon tenant's moving out? No, unless disputed damages that would have been revealed during inspection	Circuit Court for City of Harrisonburg	- Landlord and tenant had tense relationship - At one point a grill tipped over, causing a fire outside the house, damaging landscaping and siding - Tenants allegedly called landlord to report fire and pay damages but never heard back -Tenants moved out, Landlord paid to fix the damage and landlord sued tenants to recover for costs -Landlord also believed the tenants had caused other damage, but had not conducted a move in inspection
Bahta v. Mohammed <i>Bahta v. Mohammed</i> , No. 1625-18-4, 2019 WL 2589806, at *1 (Va. Ct. App. June 25, 2019)	Attorney's Fees: Pro bono legal organizations can recover attorney's fees for clients' cases in which they charge no fee to their client.	2019	Can a pro bono legal aid organizations recover attorney's fees? Yes Circuit court erroneously determined that Code § 16.1-278.19 precludes an award of attorney's fees when a party is represented by a non-profit legal organization that does not charge fees.	Court of Appeals of Virginia	- Custody dispute filed by Father on August 1, 2019 - Father lost the case - Father subsequently filed an emergency motion to change the children's school enrollment - Judge said the motion was frivolous, threw it out and ordered father to pay attorney's fees - At the final order for the August 1 hearing, motion asked for attorney's fees -Mother was represented by Legal Services of Northern Virginia

Subleases, Assignments, and Successors in Interest

Case	Rule	Decision Date	Issue/Holding	Court	Facts
<p><i>Stanley's Cafeteria Inc. v. Abramson</i></p> <p><i>Stanley's Cafeteria, Inc. v. Abramson</i>, 226 Va. 68, 306 S.E.2d 870 (1983).</p>	<p>Lease Modification: All successors in interest may be bound by an implied modification by the original parties of the lease if</p> <p>(1) the contracting parties demonstrate “mutual intention” through clear, unequivocal, and convincing evidence; and</p> <p>(2) successors in interest have knowledge of the modification.</p>	1983	<p>Can a lease agreement be modified, and can the modified obligation bind successors in interest?</p> <p>Yes—a lease agreement may be modified by an implied modification</p>	Supreme Court of Virginia	<ul style="list-style-type: none"> - Stanley's cafeteria sublet from Abramson (owner), Hot Shoppes (original lessee) - Prior to this, Hot Shoppes had leased from a previous owner, who allowed Hot Shoppes to install a steam meter instead of a central boiler system - Original lease had a utilities clause that made all utilities except fuel oil, gas, electricity, water and telephones the responsibility of the lessor - Hot Shoppes had been purchasing the steam from the owner - When Abramson bought the property, he began charging at a higher rate - Abramson pointed to the lease clause that says the lessee is responsible for purchasing all “fuel” from the lessor when Stanley's did not want to pay more
<p><i>Tidewater Investors Ltd. v. Union Dominion Realty Trust</i></p> <p><i>Tidewater Invs. v. Union Dominion Realty Tr.</i>, 804 F.2d 293 (4th Cir. 1986).</p>	<p>Sublease: Subtenant has standing to sue the landlord for breach of the original lease and the landlord can sue to subtenant for breach of the original lease.</p>	1986	<p>Can a subtenant sue their landlord for violation of the original lease agreement with the initial tenant?</p> <p>Yes</p>		<ul style="list-style-type: none"> - Tidewater sued its landlord (Union Dominion) for breach of the covenant of quiet enjoyment - District court dismissed the claim, finding Tidewater had no standing as a subtenant to sue the landlord for breach of the original lease

Contract Principals and Interpretation

Case	Rule	Decision Date	Issue/Holding	Court	Facts
<p><i>Whitt v. Godwin</i></p> <p><i>Whitt v. Godwin</i>, 205 Va. 797, 800, 139 S.E.2d 841, 844 (1965)</p>	<p>Interfering with the other party performing: An implied condition of every contract is that one party will not prevent performance by the other party. If one of the contracting parties prevents the other party from performing under a contract, he cannot prevail in an action for nonperformance of the contract which he himself has brought about.</p>	1966	*Useful to establish that landlords cannot refuse to accept rent.	Supreme Court of Virginia	
<p><i>Crabtree v. Cypress</i></p> <p>Unpublished—See CVLAS archives Available here</p> <p>Upadhyay v. Anderson comes to a similar conclusion</p>	<p>Move- in Inspection: Tenant may not waive their right to a move-in inspection if lease states that tenant acknowledges the premises are in good repair—failure to conduct a move-in inspection is fatal to a landlord’s damages claim.</p>	1984	<p>Does lease stipulation that “tenant acknowledges that the premises are in good order and repair” comply with the Virginia Residential Landlord Tenant Act to have a move-in inspection of the premises?</p> <p>No</p>	The Circuit Court of the City of Petersburg	<ul style="list-style-type: none"> - Parties entered into month-to-month lease agreement - Crabtree filed suit to recover damages after Cypress vacates premises - Lease stipulated “tenant acknowledges that premises are in good order and repair”
<p><i>Marina Shores Ltd. v. Cohn Phillips Ltd.</i></p> <p><i>Marina Shores Ltd. v. Cohn Phillips Ltd.</i>, 246 Va. 222, 435 S.E.2d 136 (1993).</p>	<p>Waiving rights in the lease: The parties’ contract becomes the law of the case unless it is violative of some rule of law or against public policy (in other words,</p>	1993	Is a clause in a lease that deems nonpayment of rent to be default on the lease be valid and allow landlord to terminate the lease without 5-day pay or quit notice?	Supreme Court of Virginia	<ul style="list-style-type: none"> - Restaurant owner filed unlawful detainer against lessee to obtain possession of restaurant premises for lessee nonpayment of rent - Under the lease, nonpayment of rent was default and breach of lease that entitled lessor to terminate

	parties may waive certain rights or remedies).		Yes—no notice required to terminate lease and demand possession		- Cohn contested that that Marina still needed to issue 5-day-pay-or-quit notice
<i>Martin & Martin Inc. v. Bradley Enterprises Inc.</i> <i>Martin & Martin Inc. v. Bradley Enters.,</i> 256 Va. 288, 504 S.E.2d 849 (1998).	Contract Ambiguity: if a written contract is ambiguous, then such ambiguity is construed against the drafter of the agreement.	1998	May parol evidence be used to explain ambiguity in a contract? No	Supreme Court of Virginia	- Martin & Martin (M&M) filed motion for judgement alleging that Bradley breached contract and fraudulently induced plaintiff to execute the agreement -Bradley agreed to sell frozen yogurt store to M&M - M&M intended to keep selling yogurt there - Bradley claimed the store was worth \$168,000 when it was lower than that - M&M attempted to bring in evidence of the lower price through parol evidence that would undermine the contract
<i>Newman v. L & H Co.</i> <i>Newman v. L & H Co.,</i> 86 Va. Cir. 48 (2012)	Unenforceable Clauses: clauses that release landlord for all liability resulting from the condition of the premises are contrary to public policy, unconscionable, and contracts of adhesion so they are unenforceable.	2012	Is language releasing landlord from all liability for harm caused by condition of premises enforceable? No	Circuit Court of Virginia Roanoke County	- Husband and wife signed a residential lease - Provision in lease holding the landlord harmless and indemnified the landlord for any and all liability, claims, loss, damages or expenses that the landlord might incur for injury to person or property because of the condition of the premises - The Newmans built a fire in the fireplace to which the landlord had recently covered a apparatus where ashes could be swept in a flammable material - The house caught fire and the Newmans's belongings were destroyed

Benefits

Case	Rule	Decision Date	Issue/Holding	Court	Facts
<p><i>Goldberg v. Kelly</i></p> <p><i>Goldberg v. Kelly, 397 U.S. 254 (1970).</i></p>	<p>Termination of benefits: Due process requires an adequate hearing before termination of welfare benefits.</p>	1970	<p>May a State terminate public assistance payments to a particular recipient without affording them an opportunity for an evidentiary hearing without violating the due process clause?</p> <p>No</p>	Supreme Court of the United States	<ul style="list-style-type: none"> - Kelly, received benefits under the Aid to Families with Dependent Children - Kelly’s benefits were terminated without prior notice or hearing
<p>Young v. Va. Birth-Related Neurological Injury Compensation Program</p> <p><i>Young v. Va. Birth-Related Neurological Inj. Comp. Program, 46 Va. App. 558, 620 S.E.2d 131 (2005).</i></p>	<p>Housing Benefits: To obtain benefits to a program a person has the right to obtain, a person must satisfy the condition precedent of applying to the program.</p>	2005	<p>Is there a condition precedent to receiving benefits that Ms. Young had to apply prior to the termination of the program, or was the interest vested when Tommy was born?</p> <p>There was a condition precedent that was not met, so Young cannot get benefits</p>	Court of Appeals of Virginia, Salem	<ul style="list-style-type: none"> - Mother, whose son participated in the Birth-Related Neurological Injury Program appeals the decision of the Workers’ Compensation Commission denying her request on son’s behalf for grant related to housing benefits
<p><i>Rutland Court Owners, Inc. v. Taylor</i></p> <p><i>Rutland Ct. Owners, Inc., v. Taylor, 997 A.2d 706 (D.C. 2010).</i></p>	<p>Reasonable Accommodation: Landlords must make reasonable accommodations in rules, policies, practices, or services for tenants with disabilities in order to evict such tenants.</p>	2010	<p>What constitutes reasonable accommodation for tenant?</p> <p>Tenant provided sufficient evidence to support the conclusion that reasonable accommodation he requested was denied by the landlord—his request for</p>	DC Court of Appeals	<ul style="list-style-type: none"> - Rutland sued for possession of cooperative apartment occupied by Taylor because it revoked his shares due to dispute over bedbug treatment - Taylor suffers from several mental health disorders - Taylor and others discovered bedbugs, coop made plan to exterminate

			additional time to clean was reasonable considering the circumstances.	<ul style="list-style-type: none">- Taylor's unit was not cleaned enough to make the extermination- Building hired cleaning company, discovered serious sanitation issues (roaches, open food) in Taylor's unit- Eventually he complied with cleaning/extermination under court order- Taylor was covered by the Federal Fair Housing Act and alleged he had been evicted as a result of his disability and denied reasonable accommodation because his disability contributed to the condition of the apartment, and he needed more time to clean it
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Other Tenant Rights

Case	Rule	Decision Date	Issue/Holding	Court	Facts
<p><i>Mullins v. Sturgill</i></p> <p><i>Mullins v. Sturgill</i>, 191 Va. 653, 66 S.E.2d 483 (1951).</p>	<p>Waiver: Any recognition of tenancy by lessor after right of entry gained/forfeiture constitutes a waiver of the termination.</p>	1951	<p>If a landlord acknowledges the tenancy after a lease violation that would forfeit the lease, does the landlord waive their right to terminate the lease?</p> <p>Yes—recognition of a tenancy waives forfeiture</p>	Supreme Court of Appeals of Virginia	<ul style="list-style-type: none"> - Mary Riner leased to Leedy and Wilfong all the coal in a tract of land unless mining was discontinued for over 30 days - After termination, lessees were allowed 30 days to remove all equipment etc. - Leedy sublet to Martin and Crabtree who had no mining experience, so they hired Mullins and Browning - Mullins and Browning were unable to turn a profit and shut down the mine - After 30 days, Riner leased the premises to Sturgill - Riner and Sturgill did not let Mullins and Browning gather their equipment from the property - Based on conversations between the parties, the Court held that Ms. Riner acknowledged the lease with Mullins after the alleged forfeiture
<p><i>Hubbard v. Henrico Limited Partnership</i></p> <p><i>Hubbard v. Henrico Ltd. P'ship</i>, 255 Va. 335, 497 S.E.2d 335 (1998).</p>	<p>Right to Redemption: There is an <u>automatic</u> one-time annual right to terminate eviction case (pursuant § 55-243) when a tenant pays all overdue rent and related charges owed before the first court date.</p>	1998	<p>If a tenant pays all charges owed to landlord pursuant to § 55-243, is the one-time annual right to redemption automatically invoked?</p> <p>Yes—no express acknowledgement required to invoke so Hubbard</p>	Supreme Court of Virginia	<ul style="list-style-type: none"> - Hubbard fell behind on her rent - Landlord followed the legal eviction process - The day before the unlawful detainer hearing, Hubbard paid all amounts owed and Henrico dismissed the summons as paid - Hubbard again fell behind on rent - Again, she paid full amount owed before return date, but Henrico did

	*This is a good case for principals of statutory construction.		already used her one-time right		not drop the action alleging she had used her one-time right previously
<p><i>Taylor v. Bishop</i></p> <p><i>Taylor v. Bishop</i>, CL21-1630 (Roanoke Cir. Ct. 2021).</p> <p>Unpublished. See CVLAS archives. Also available from LASRV.</p>	<p>Notice required to terminate a month-to-month lease: 55.1-1253(A) requires for either party to give a notice of termination at least 30 days before the next rent due date to terminate a month-to-month lease.</p>	2021	<p>If a landlord files an unlawful detainer after a 30-day notice to terminate but before the date required by 55.1-1253(A) to terminate a month-to-month lease, the unlawful detainer must be dismissed.</p>	<p>Circuit Court for the City of Roanoke</p>	<p>Landlord gave a 30 day notice to terminate a MTM lease on May 11 effective June 11. When tenant didn't move out, LL filed UD.</p> <p>Court held lease didn't terminate until June 30 so UD filed early.</p>