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7 NEW LAWS THAT ARE MORE FAIR, FAVORABLE & FRIENDLY TO TENANTS

Starting July 1, 2019, seven new laws will take effect in Virginia. All seven are more fair, favorable and friendly to tenants. They all were passed as a response to the high rate of evictions in Virginia, which are more than two times the national average. In many cities in Virginia, evictions are more than four times the national average. These are the seven new laws:

(1) Written Leases Required. Under current law, a lease may be oral or written. An oral lease leaves both landlords and tenants uncertain about their rights and duties. Starting July 1, 2019, landlords must offer written leases. If the landlord does not do that, the law sets out a specific lease that will apply. This lease has these rules:

- The lease is 12 months with no automatic renewal.
- Rent is paid in 12 monthly payments.
- Rent is due on the first of the month and late after the fifth of the month.
- A reasonable late fee may be charged.
- The security deposit can be no more than two months' rent.
- The landlord and tenant still may enter into a written lease.

Code of Virginia §55-248.7.

(2) One Case at a Time and Required Evidence. Under current law, a landlord may file an unlawful detainer (eviction) lawsuit due to nonpayment of rent for each month rent is claimed to be overdue. A landlord can file these lawsuits one after the other even if prior lawsuits are still undecided. This leads to increased fees – multiple court filing fees, and multiple attorney fees if an attorney is involved. Starting July 1, 2019, if nonpayment of rent is the only issue, a landlord may file only one lawsuit at a time. On request of the landlord, the judge must allow the lawsuit to be amended to cover all rent and fees claimed as of the trial date.

Under current law, a landlord is not required to have the court admit into evidence the notice that terminated or ended the tenancy. This means many tenants do not know the exact reason the landlord wants to evict them. Starting July 1, 2019, to get a judgment of possession and start the Sheriff's eviction process, the landlord must present the court with a proper termination notice that the court enters into evidence.

Code of Virginia §8.01-126.

(3) Pilot Eviction Diversion Program. Under current law, in a nonpayment of rent case a tenant must pay all amounts due as of the court date, no later than the court date, to avoid a

judgment of possession. These judgments of possession stay on a tenant's record for ten years. They are a barrier for future rentals even if the tenant later pays current and is able to stay. Starting July 1, 2020, tenants in Richmond, Petersburg, Hampton, and Danville will be eligible for a mandatory pilot Eviction Diversion Program (EDP). Tenants must meet these rules:

- Nonpayment of rent must be the only issue between the landlord and the tenant.
- The tenant comes to court on the return date (1st court date) and asks to be in the EDP.
- The landlord and tenant must agree on the amount due on the return date.
- On or before the return date, the tenant has paid the landlord or the court at least 25% of the amount due on the return date.
- The tenant testifies he or she has sufficient funds to make payments under the EDP.
- The tenant testifies why he or she fell behind in rent.
- In the past 12 months, the tenant has not been late in rent more than two times in a 6 month period or more than three times in a 12 month period.
- The tenant has not used the right of redemption – had an unlawful detainer dismissed by paying current – in the last 6 months.
- The tenant has not participated in an EDP in the last 12 months.

If the case is put into the EDP, a court-ordered payment plan is issued. Payments must be made to the landlord by cashier's check, certified check, or money order. Payments must be received by the landlord on or before the 5th day of each month included in the plan. The first payment from the tenant is 25% of the amount due. This is due the month following the return date. (For example, if the return date is February 12, the next payment is due by March 5.)

The second payment from the tenant is 25% of the amount due. This is due the second month following the return date. The third and final payment from the tenant is 25% of the amount due. This is due the third month following the return date. Ongoing rent must be paid by the tenant within 5 days of the due date set by the lease. If the tenant makes all payments as required by the payment plan, the lawsuit will be dismissed. If not, the landlord may seek a judgment of possession.

A tenant may participate in an eviction diversion program only once in any 12 month period of time.

Code of Virginia §§55-248.40:1, 55-248.40:2 & 55-248.40:3.

(4) Tenant Attorney's Fees in Poor Housing Condition Cases. Under current law, landlords usually may claim attorney's fees under the lease or by statute. Tenants have very few ways to do this. As a result, landlords can use the threat of attorney's fees in litigating with tenants. Starting July 1, 2019, attorneys who represent tenants and who win two types of cases involving poor housing conditions can get attorney's fees

- In a Tenant's Assertion, a tenant must be current in rent and stay current. The tenant also must give reasonable notice to the landlord, or have someone else do so, of the poor housing conditions. In addition, the tenant must wait a reasonable period of time before filing the Tenant's Assertion. If repairs are not made, the tenant may pay the next

month's rent into court and file a Tenant's Assertion. If the tenant wins the lawsuit, the tenant's attorney may get attorney's fees.

- In a defense to an eviction lawsuit for nonpayment of rent, the landlord must have been given notice of the poor housing conditions by the tenant, or someone else on behalf of the tenant, before the eviction lawsuit was filed. In addition, the tenant, if in possession, must pay the unpaid rent into court. If the tenant wins the lawsuit, the tenant's attorney may get attorney's fees.

Code of Virginia §§55-248.25 & 55-248.27.

(5) Extended Right of Redemption (Pay and Stay). Under current law, tenants get three chances to pay their rent late and stay. These chances end on the court date. Starting July 1, 2019, they will have a fourth and later chance.

- The first chance is within any grace period of the lease (if any). If the tenant pays the rent within the grace period, the tenant gets to stay. The tenant may do this any number of times.

- The second chance is after the grace period (if any) ends and before the landlord has filed an unlawful detainer (eviction) lawsuit. Usually this is the time during which the landlord has given the tenant a five day nonpayment notice. If the tenant pays the rent and the late fee during this time period, the tenant gets to stay. The tenant may do this any number of times.

- The third chance is after the landlord has filed an unlawful detainer (eviction) lawsuit and on or before the court date. This is called a redemption (pay and stay), or a redemption tender (offer to pay and stay).

A redemption means the eviction lawsuit must be dismissed as paid if the tenant pays the landlord, the landlord's attorney, or the court all amounts owed as of the court date. All amounts owed means all rent (including a new month's rent if that has come due), all late fees set forth in a written lease (including a new month's late fee if that has come due), court costs, and reasonable attorney's fees (if a landlord's attorney is involved).

A redemption tender means the tenant comes to court on the first court date and shows the judge a written commitment from a local government or non-profit agency to pay all or part of the redemption amount. If so, the judge must postpone the case ten days and allow the tenant to come back with the full redemption amount on that day. If so, the case is dismissed as paid. If not, the landlord gets an order of possession.

A tenant may do a redemption, or a redemption tender, only once in any 12 month period of time that the tenant continues to live in the same place.

- As of July 1, 2019, tenants will get a fourth and later chance to pay their rent late and stay, which is an extended right of redemption (extended right to pay and stay). If a judge decides in the landlord's favor, a judgment of possession is entered. After that, the landlord may

ask the court to issue a writ of eviction. This writ goes from the clerk to the Sheriff to the tenant. It authorizes the Sheriff to evict on a specific date.

Under the extended right of redemption, the tenant can pay the landlord, the landlord's attorney, or the court all amounts owed as of two business days before the Sheriff's scheduled eviction date. All amounts owed means all rent (including a new month's rent if that has come due), all late fees set forth in a written lease (including a new month's late fee if that has come due), court costs, Sheriff's fees, and reasonable attorney's fees (if a landlord's attorney is involved). Payment must be by cashier's check, certified check, or money order. If so, the Sheriff's eviction is cancelled.

A tenant may do a redemption, a redemption tender, or an extended redemption, only once in any 12 month period of time that the tenant continues to live in the same place.

Code of Virginia §§55-248.34:1

(6) Use Writ or Lose Writ. Under current law, once a landlord gets a judgment of possession, the landlord can use that for up to 12 months before getting the writ of eviction. This 12 month period, during which a landlord can trigger an eviction hangs, over the head of the tenant even if all rent has been paid current and the tenant is following the lease. Starting July 1, 2019, the timeframe is shortened to six months, giving both landlord and tenant greater certainty.

Under current law, a writ of eviction that is not executed by the Sheriff simply expires after 30 days. Due to this, landlords do not know whether the tenant actually was put out by the Sheriff. Starting July 1, 2019, a writ of eviction that is not executed by the Sheriff is vacated. This will let tenants who work things out with their landlord have the writ removed from their tenant record and not be a blemish.

Code of Virginia §§8.01-470 & 8.01-471.

(7) Access to Appeal. Under current law, to appeal an eviction judgment based on nonpayment of rent, the tenant must post an appeal bond for the amount of the money judgment for rent. Tenants also must post an appeal bond for up to 12 months future rent in advance. Usually courts require 3-4 months future rent. All this money must be paid within ten days of judgment. This estimate of future rent which could be due while the appeal is pending is not related to the actual rent due during this period. It is an impossible barrier to a tenant's appeal.

Starting July 1, 2019, to appeal an eviction judgment based on nonpayment of rent, the tenant still must post an appeal bond for the amount of the money judgment for rent, within ten days of judgment. But after that, the tenant must only pay ongoing rent as it becomes due.

Code of Virginia §16.1-107.

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