

BASIC VIRGINIA LANDLORD-TENANT LAW

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April 2019

OUTLINE OF THIS TRAINING



- I. Sources of the Law**
- II. Leases**
- III. Fair Housing**
- IV. Tenant Selection Policies & Criminal History**
- V. Late Fees**
- VI. Security Deposits**
- VII. Nonpayment of Rent**
- VIII. Eviction Diversion Program**
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- XI. Landlord Access**
- XII. Landlord Barring Guests or Visitors**
- XIII. Landlord References & Release of Information**
- XIV. Where Tenants Can Get Help**

I. SOURCES OF THE LAW

VRLTA & VA Landlord & Tenant Law:



- **Effective July 1, 2017, all tenancies covered by VRLTA or VA LL-T Law.**
- **If landlord is a natural person, an estate, or a legal entity owning no more than 2 single-family residential dwelling units in its own name, may opt out of VRLTA & choose VA LL-T Law, if so stated in a written lease.**
- **Motels, if resided in more than 90 days or subject to written lease more than 90 days.**
- **If resided in less than 90 days, 5 day nonpayment notice before self-help eviction.**
- **Not apply to institutions, employees, zero rent tenants.**

I. SOURCES OF THE LAW



Manufactured Home Lot Rental Act (MHLRA):

- All manufactured home parks upon which 5 or more manufactured homes are located on a continual, non-recreational basis.
- Contains 19 sections and incorporates 26 sections from the VRLTA which apply only insofar as they are not inconsistent with the MHLRA.
- Most favorable provision of *either* the MHLRA *or* the VRLTA should apply

I. SOURCES OF THE LAW



The Lease:

- **Starting July 1, 2019, landlords must offer written leases. If no offer, the law sets out a specific lease that will apply:**
 - **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.**
 - **Security deposit can be no more than two months' rent.**
 - **Landlord and tenant still may enter into a written lease.**

I. SOURCES OF THE LAW



The Lease:

- Statute of Frauds requires lease for more than five years to be in writing.
- May be week-to-week, month-to-month, six months, one year, or any other length.
- Lease automatically may terminate at the end of a set term, or renew in absence of advance written notice of non-renewal:
 - Notice period may be 30, 60, 90 days.
 - Renewal may be month-to-month or on same terms & conditions.

I. SOURCES OF THE LAW



Federal Statutes & Regulations:

- Tenants have legal rights not enjoyed by tenants in private housing.
- Landlords' discretion concerning admission of tenants is limited.
- Tenants pay 30% of income for rent and utilities.
- Subsidized tenancies not time limited & tenants may be evicted only for good cause.
- Specific notices & pre-termination meeting to contest admission denial or subsidy termination or eviction required.



II. LEASES

- **Signing lease means tenant read it, understood it & agreed with it.**
- **If there is any difference between what is in writing & what is oral, what is in writing controls.**
- **If a lease says “joint & several liability,” landlord has many ways to collect rent:**
 - **Landlord may collect the rent from one tenant entirely.**
 - **Landlord may collect the rent from the other tenant entirely.**
 - **Landlord may collect some of the rent from each tenant, as long as landlord collects no more than the entire rent.**

Early lease termination by military personnel:



- **Active duty military may end lease early if:**
 - **Permanent transfer orders to move 35 miles or more.**
 - **Temporary transfer orders in excess of 3 months to move 35 miles or more.**
 - **Discharged or released from active duty.**
 - **Ordered to report to government quarters & loss of allowance for quarters.**
- **Tenant gives 30-60 day written notice of termination & copy of transfer orders.**
- **Tenant responsible for rent through date of termination.**
- **No liquidated damages**

Early lease termination for survivors of family abuse:



- **Tenant may end lease early if victim of family abuse and has obtained Protective Order or perpetrator convicted of crime of sexual assault.**
- **Tenant gives 30-60 day written notice of termination & a copy of Protective Order or criminal conviction order.**
- **Tenant responsible for rent through date of termination.**
- **No liquidated damages.**
- **Co-tenants remain responsible for lease balance. If perpetrator is sole remaining tenant, landlord may terminate lease & collect actual damages from perpetrator.**



If tenant has a lease for a set term, tenant may be able to end it early:

- **If landlord violated lease & violation can't be fixed, tenant can give 30 day notice to vacate.**
- **If landlord violated lease & violation can be fixed, tenant can give 21/30 day notice.**
- **If landlord has not violated lease, the lease may have rules about what tenant must do to end early.**
- **If landlord has not violated lease, tenant & landlord may agree in writing to end early, but landlord is not required to do this.**

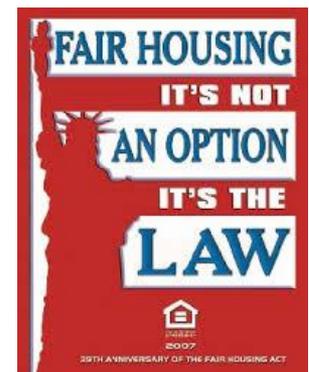


If none of these apply, tenant cannot force landlord to end lease early.

- **If tenant moves anyway, tenant must give 30 day advance written notice & can be held responsible for rent for the rest of the lease period.**
- **After landlord knows tenant is moving, landlord has duty to lessen the amount of lost rent by trying to find another tenant.**

III. FAIR HOUSING

- **The Federal Fair Housing Act prohibits discrimination in the sale, rental and other housing-related activities on the basis of race, color, religion, national origin, gender, disability or familial status.**
- **Virginia's Fair Housing Act adds elderliness as a protected category.**
- **Everybody is in at least 5 protected categories – race, color, religion, national origin, gender.**
- **Fair housing addresses both discriminatory effects (or disparate impact) and disparate treatment.**



IV. TENANT SELECTION POLICIES AND CRIMINAL HISTORY



- **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).**
- **Treating those with comparable criminal histories violates fair housing if provider treats them differently due to race, national origin or other protected category (disparate treatment).**

Disparate Impact



- **Racial & ethnic minorities have disproportionately high rates of arrest, conviction & incarceration.**
- **Blacks arrested at rate more than double their proportion of population.**
- **Blacks are 12% of total population and 36% of prison population.**
- **Hispanics are 17% of total population and 22% of prison population.**
- **Non-Hispanic Whites are 62% of total population and 34% of prison population.**
- **Local statistics generally do not vary markedly from these national statistics.**



Tenant Selection Policies

- **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.**



V. LATE FEES

- **Controlled by lease, not by Virginia law.**
- **Grace period not required, but usually 5 days.**
- **Courts usually allow late fee of 10% of the unpaid amount.**
- **Late fee must have rational relationship to actual arrears to be liquidated damages due to late payment.**
- **If no rational relationship, late fee is an unenforceable penalty clause.**
- **Courts usually do not allow a daily (or per diem) late fee.**

VI. SECURITY DEPOSITS



- **May not exceed two months rent.**
- **Within 5 days of move in, move-in inspection.**
- **Within 3 days of move out, move-out inspection.**
- **Return of security deposit not an issue until 45 days after tenant has moved.**
 - **Within 45 days, landlord must send security deposit, or a list showing how security deposit was used, or some combination.**
 - **If tenant disagrees, or if landlord sends nothing, tenant may sue landlord.**
- ***May not be used as last month's rent.***



VII. NONPAYMENT OF RENT

- **Under Virginia law, tenants get three chances to pay rent late and stay. Starting July 1, 2019, they will have a fourth chance.**
- **First chance is within grace period (if any) of lease. Tenant pays rent, and may do this any number of times.**
- **Second chance is after grace period ends and before landlord has filed eviction lawsuit. Usually this is the time during which landlord has given tenant a 5 day nonpayment notice. Tenant pays rent & late fee, and may do this any number of times.**

Right of Redemption



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

Right of Redemption



- **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, tenant must get receipts & come to court with them to be sure case dismissed as paid.

Extended Right of Redemption



- As of July 1, 2019, tenants have a fourth chance to pay rent late and stay – an extended right of redemption (extended right to pay and stay).
- If landlord wins the lawsuit, judge issues an order of possession. After that, landlord may ask the court to issue a writ of eviction.
- Goes from clerk to Sheriff to tenant & authorizes Sheriff to evict on a specific date.
- Sheriff must give tenant at least 72 hours advance notice of the eviction & usually gives about 7-10 days.

Extended Right of Redemption



- **Tenant can pay landlord, landlord's attorney, or court all amounts owed as of *two business days* 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 by cashier's check, certified check, or money order. If so, Sheriff's eviction is cancelled.**
- **Confirm with both landlord and Sheriff.**

Redemption, Redemption Tender, or Extended Right of Redemption



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

Limitation on acceptance of rent:

- **Landlord's acceptance of rent without reservation, with knowledge of tenant's noncompliance, waives right to terminate lease.**
- **Even if rent accepted with reservation, tenant still has right of redemption, redemption tender and extended redemption.**
- **Notice must state payment accepted with reservation and does not waive landlord's right to evict.**
- **If landlord enters new written lease with tenant prior to eviction, an order of possession obtained prior to entry of new lease is not enforceable.**



Poor housing conditions may be a defense to non-payment of rent if:



- **Prior to UD, landlord served written notice by tenant or notified of violation.**
- **Landlord did not remedy after reasonable opportunity.**
- **Tenant, if in possession pays into court amount of rent found to be due & unpaid.**
- **Landlord may show conditions do not exist, conditions remedied, conditions caused by tenant, or tenant unreasonably refused entry to permit correction.**
- **Court may: order rent set-off, end lease, or refer matter to housing inspector.**

VIII. EVICTION DIVERSION PROGRAM



- **Starting July 1, 2020, tenants in Richmond, Petersburg, Hampton & Danville eligible for a mandatory pilot Eviction Diversion Program (EDP). Tenants must meet these rules:**

- **Nonpayment of rent is the only issue.**
- **Tenant comes to court on the 1st court date (return date) asks to be in the EDP.**
- **Landlord and tenant agree on amount due.**
- **On or before return date, tenant has paid the landlord or the court at least 25% of the amount due on the return date.**
- **Tenant testifies he or she has sufficient funds to make payments under the EDP.**

VIII. EVICTION DIVERSION PROGRAM



- **EDP rules (continued):**
 - **The tenant testifies why he or she fell behind in rent.**
 - **In the past 12 months, 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.**
 - **Tenant has not used right of redemption in the last 6 months.**
 - **Tenant has not participated in an EDP in the last 12 months.**

VIII. EVICTION DIVERSION PROGRAM



- **Court-ordered payment plan – to landlord by cashier’s check, certified check, or money order.**
- **Received on or before the 5th day of each month.**
- **First payment is 25% of the amount due, paid the month following the return date.**
- **Second payment is 25% of the amount due, paid the 2nd month following the return date.**
- **Third & final payment is 25% of the amount due, paid the 3rd month following the return date.**
- **Ongoing rent paid within 5 days of date set by the lease.**
- **If tenant makes all payments, case dismissed. If not, landlord may seek judgment of possession.**
- **EDP only once in any 12 month period of time.**

IX. REPAIRS

To get repairs, tenants must do four things:



- Be current in rent & stay current.
- Give written notice to landlord (or have someone else do so).
- Wait a reasonable period of time.
- If repairs not made after reasonable time, take the written notice & the next month's rent to General District Court & file a Tenant's Assertion.

Notice of Repairs:



- **Tenant should always notify landlord in writing of any repairs that need to be made.**
- **Even if oral notice is given, follow up with a letter confirming the conversation.**
- **Mail the letter by 1st class mail – not an email or text message.**
- **In addition, tenant can use certified mail, return receipt requested, for proof of letter being sent and received.**
- **Tenant should always make and keep copies of all letters sent.**

Time to Make Repairs:



- **If an emergency, such as lack of heat or water, landlord should fix within 1-3 days.**
- **Other repairs must be made within a reasonable time, usually 21 days.**
- **Tenant's letter should state repairs needed and a time by which to fix each problem.**
- **Tenant must give landlord access to make repairs, so letter should state what times of day are best, or how landlord can reach tenant for permission to enter the premises.**

If Repairs Not Made:



- **Tenant can file Tenant's Assertion.**
- **Must be completely current to landlord.**
- **Must pay next month's rent into court within 5 days of due date.**
- **Fill out Tenant's Assertion and Complaint (Form DC-429).**
- **Attach a copy repair letter to landlord and/or an inspection report**
- **List bad conditions on court form.**
- **Filing & service costs about \$58.**
- **May file for free with Petition for Proceeding in Civil Case without Payment of Fees or Costs (Form CC-1414).**

Must Name True Owner:



- **Fill in name & physical address of true owner of the property as Defendant-Landlord.**
- **May need a real property search. Google “real property search” & County/City name.**
- **If true owner is not a natural person – that is, a corporation or a limited liability company (LLC) – need name & physical address of the registered agent of the company.**
- **Call VA State Corporation Commission at 804-371-9733 or 866-722-2551.**
- **Fill in the name of the company as the Defendant-Landlord, and name & physical address of their registered agent.**

Must Ask for Relief:



May ask the judge to:

- **Order money in escrow released to tenant and/or landlord.**
- **Order escrow continued until repairs made.**
- **Order rent paid – whether to landlord or court – be reduced due to poor conditions.**
- **Order lease ended so tenant can move out without paying future rent.**
- **Issue any other Order required.**
- ***As of July 1, 2019, tenant attorney's fees.***

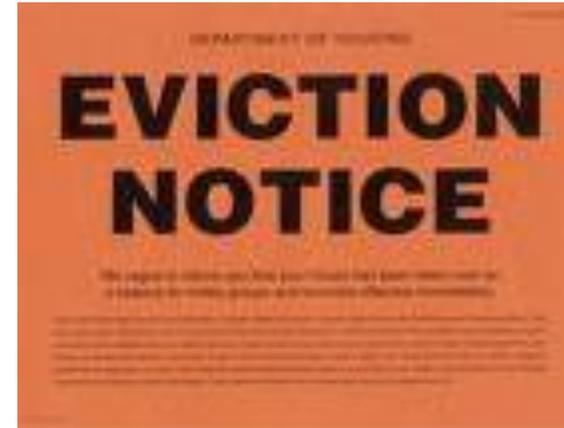
If escrow continues for 6 months & repairs not made, escrow released to tenant, and future rent continues to be paid to escrow.

- **No rent withholding in Virginia.**
- **No repair & deduct in Virginia.**
- **Tenant cannot just move out.**



X. EVICTION

Tenant does not have to move just because:



- **Landlord says so, orally or in writing.**
- **Landlord files a summons for unlawful detainer in court.**
- **Landlord goes to court & gets a judgment of possession.**
- **Landlord gets a Writ of Eviction after the judgment of possession.**
- **Writ of Eviction is served on the tenant by the Sheriff.**



Tenant must move only if:

- **Landlord files an unlawful detainer.**
- **Gets a judgment of possession.**
- **Gets a Writ of Eviction which is served on the tenant.**
- **The Sheriff waits at least 72 more hours before coming back to evict.**



Five Steps of an Eviction

(1) Written notice from landlord

- **Five day pay-or-quit for non-payment of rent.**
- **Thirty day notice to vacate in almost other cases:**
 - **If tenant can fix the problem, 21/30 day notice of remediable breach.**
 - **If tenant can't fix the problem (or if prior remediable breach notice), 30 day notice of non-remediable breach.**
- **Less than thirty day notice if tenant commits criminal or willful act that is a threat to health or safety.**

(2) Unlawful detainer filed after notice period has ended.

(3) Landlord goes to court & gets judgment of possession.

(4) Landlord gets Writ of Eviction.

- Writ may be issued immediately.
- Writ cannot be executed until 11 (or more) days later.

(5) Writ is served, Sheriff waits at least 72 hours, returns to evict & evicts only on date stated on Writ.



Tenant not to be evicted if survivor of family abuse:



- **Lease not terminate due to family abuse if:**
 - **Tenant provides to landlord written documentation as victim of family abuse & exclusion of perpetrator within 21 days.**
 - **Tenant notifies landlord of perpetrator's return within 24 hours (or within 7 days if had no knowledge).**
- **Otherwise, tenant responsible for co-tenants, occupants, guests & invitees on premises with tenant's consent, whether known or not.**

Appeal – The Rule, the Exception, the Exception to the Exception



- **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.**
- **Starting July 1, 2019, 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.**

Landlord may not:

- **Lock tenant out.**
- **Cut off utilities.**
- **Do a self-help eviction.**
- **If lock out, utility cut off, or self-help eviction, tenant has quick remedy in General District Court.**
- **Tenant's Petition for Relief from Unlawful Exclusion (Form DC-431).**
- **May ask for recovery of possession, resumption of interrupted utility, termination of rental agreement, actual damages and reasonable attorney's fees.**



Must Name True Owner:



- **Fill in name & physical address of true owner of the property as Defendant-Landlord.**
- **May need a real property search. Google “real property search” & County/City name.**
- **If true owner is not a natural person – that is, a corporation or a limited liability company (LLC) – need name & physical address of the registered agent of the company.**
- **Call VA State Corporation Commission at 804-371-9733 or 866-722-2551.**
- **Fill in the name of the company as the Defendant-Landlord, and name & physical address of their registered agent.**

If rental unit sold:

- Sale only affects who owns property, not who occupies property.
- Lease runs with the land & 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 & has the same rights & 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!*





If rental unit foreclosed on:

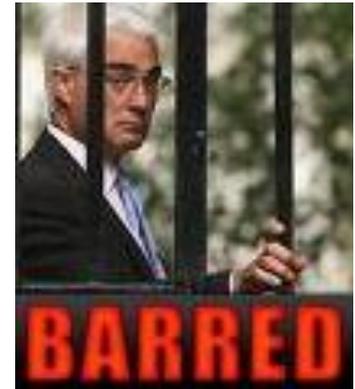
- **New owners must honor existing leases.**
- **Tenants with more than 90 days remaining on the lease may not be evicted until the end of their lease.**
- **The sole exception is a new owner who seeks to occupy the unit as a primary residence may end lease with at least 90 days notice.**
- **For tenants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



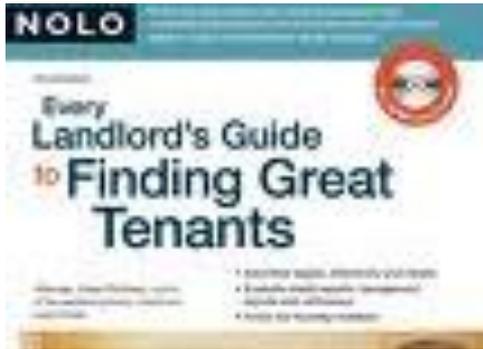
XI. LANDLORD ACCESS TO PREMISES

- **Tenant can't unreasonably withhold consent to the landlord to enter into the rental unit.**
- **Landlord may enter the rental unit without tenant's consent only in an emergency.**
- **Landlord may not abuse the right of access or use it to harass the tenant.**
- **Except in an emergency, landlord must give tenant notice of intent to enter & enter only at reasonable times.**
- **Unless impractical, landlord must give tenant at least 24 hours advance notice.**

XII. LANDLORD BARRING GUESTS OR VISITORS



- **Landlord may bar a tenant's guest by serving a written notice on the guest & the tenant.**
- **Notice must describe conduct of the guest which is the basis of the landlord's action.**
- **Guest's conduct must violate the lease, a local ordinance, or a state or federal law.**
- **Tenant may file a tenant's assertion to review landlord's action.**



XIII. LL REFERENCES & RELEASE OF INFORMATION

- Landlord may release information about a tenant if tenant gives written consent.
- If tenant has not given written consent, landlord may not release information unless it is:
 - A matter of public record.
 - A summary of tenant's rent payment record.
 - A remediable breach notice that was not remedied.
 - A non-remediable breach notice.
 - Requested by law enforcement or by subpoena.
 - Requested by a purchaser of the property.
 - Provided in an emergency.

XIV. WHERE TENANTS CAN GET HELP



- **Civil legal aid programs – 866-LEGLAID**
- **Eviction legal help line – 833-NOEVICT**
- **On-line *pro bono* question & answer website**
– **<https://Virginia.freelegalanswers.org>**
- **Legal information – www.VaLegalAid.org**
- **Pre-recorded legal information before 9:00 a.m., after 5:00 p.m., & all day on weekends & legal holidays – 866-534-5243**
- **VA Judicial System Self-Help website – <http://selfhelp.vacourts.gov>**
- **VA Law Help 2 Go – mobile friendly platform with legal information in video format – www.valawhelp2go.org or 703-293-5544**