

# RECENT DEVELOPMENTS IN HOUSING LAW

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# Through Advocacy, Education, Litigation

*The Virginia Poverty Law Center (VPLC)  
breaks down systemic barriers keeping low-  
income Virginians in the cycle of poverty*

# PART ONE: AMENDMENTS TO VIRGINIA LANDLORD-TENANT LAW

**State Budget Protections, HB7001, Item 16.a**

**14-day Notice/Payment Plan, § 55.1-1245(F)**

**The Right of Redemption, § 55.1-1250**

**No Waiver of Rights Under Federal Service Member Relief Act, § 55.1-1208; §55.1-1310**

**Statutory Damages for Unlawful Exclusion, § 55.1-1243.1**

**Statement of Tenant Rights and Responsibilities for MH Residents, § 55.1-1303**

**Tenant's Remedy by Repair, 55-1244.1**

# STATE BUDGET PROTECTIONS

HB7001, EFFECTIVE UNTIL JUNE 30, 2022

(No) landlord shall terminate a residential tenancy, or take any action to obtain possession of a dwelling unit, for nonpayment of rent, if the tenant qualified for unemployment compensation, or experienced reduced income, increased costs or financial hardship during the coronavirus pandemic, **unless the landlord first took all the steps below.**

## **Before initiating eviction action, landlord must:**

1. Serve written notice on tenant that provides the tenant the Virginia Rent Relief Program website address and phone number and information on 211.
2. Apply for rental assistance on the tenant's behalf within 14 days of serving notice on the tenant unless tenant pays in full, enters into a payment plan or confirms that they have already applied.
3. Wait 45-days after the initial application (or 14 days after subsequent applications) is made, then may file if written approval of the rental assistance application hasn't been received.
4. But if tenant "refuses to cooperate...in providing information and documentation required to complete application, or if tenant is not eligible for rental assistance," landlord can evict.

**IMPORTANT:** These enhanced protections against eviction are in place un **June 30, 2022**

Notices served & UDs filed from August 10, 2021 through June 30, 2022 must comply with these provisions

# PAYMENT PLAN

HB1889; § 55.1-1245(F); EFFECTIVE UNTIL JULY 1, 2022



If tenant falls behind on rent, landlord must offer the tenant a payment plan. The tenant has 14 days to enter into the payment. If tenant does not, the landlord can file an eviction.



The payment plan must allow the tenant to pay the total amount due in equal monthly installments over a 6-month period.

If there are less than 6 months on the lease, payment period is for however many months are left on the lease.



Landlord cannot charge late fees during the payment plan period if the tenant continues to make payments on time.



As long as tenant continues to make full, timely payments, landlord cannot evict the tenant. If tenant misses a payment, landlord must send a new 14-day written notice before filing an eviction.

Notice must include the following language:

*“Any partial payment of rent made before or after a judgment of possession is ordered will not prevent your landlord from taking action to evict you. However, full payment of all amounts you owe the landlord, including all rent as contracted for in the rental agreement that is owed to the landlord as of the date payment is made, as well as any damages, money judgment, award of attorney fees, and court costs made at least 48 hours before the scheduled eviction will cause the eviction to be canceled, unless there are bases for the entry of an order of possession other than nonpayment of rent stated in the unlawful detainer action filed by the landlord.”*

# THE RIGHT OF REDEMPTION

HB2014; § 55.1-1250; EFFECTIVE JULY 1, 2021

- Starting July 1, 2021, tenants can use the “right of redemption” any number of times.
  - **Exception** = Landlords with four or fewer units can limit redemption to once per lease term with written notice to tenant.
- LL must include clear language explaining the right of redemption in the pay or quit notice.
- LL must give tenant exact amount needed to pay in order to cancel the eviction when tenant requests it.
- If tenant “redeems” the LL MUST cancel the eviction and have the judgment marked satisfied.
- If the landlord does not cancel the eviction despite knowledge of redemption is an “unlawful exclusion”.
- Tenant has until 48 hours before sheriff’s eviction to redeem.

# NO WAIVER OF RIGHTS UNDER SERVICE MEMBERS CIVIL RELIEF ACT

HB2161/SB1410; § 55.1-1208; §55.1-1310; EFFECTIVE JULY 1, 2021

## No waiver of service members' rights.



Landlords cannot include lease provisions which require tenants to waive their rights under the Servicemember Civil Relief Act (SCRA).

## Right to a continuance.



Among other things, the SCRA provides active duty servicemembers the right to a 90-day continuance of any eviction case filed against them.

# STATUTORY DAMAGES FOR UNLAWFUL EXCLUSION

HB1900/SB1215; § 55.1-1243.1; EFFECTIVE JULY 1, 2021

When a tenant has been unlawfully excluded, the tenant may recover \$5,000 statutory damages or four months' rent, whichever is greater, actual damages, and attorney's fees.

- Requires courts to schedule hearings on petitions for relief from an unlawful eviction within five days.
- If initial hearing is *ex parte*, full hearing must be held within 10 days.
- Applies to landlord, without first getting a court order, locking tenant out or terminating essential utility service, or taking action to make the premises unsafe for habitation.

Failure to cancel writ of eviction after redemption = unlawful exclusion. § 55.1-1250(D).



# STATEMENT OF TENANT RIGHTS & RESPONSIBILITIES

HB2175/SB1327; § 55.1-1303; EFFECTIVE JULY 1, 2021

Starting July 1, 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. Landlords under the Virginia Residential Landlord Tenant Act have been required to provide their tenants with a written statement of rights and responsibilities since July 1, 2020.

- 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.
- DHCD convened a working group that developed the statement of rights and responsibilities under the VRLTA and will convene another group to develop an MHLRA-specific statement.
- The Statement of Tenant Rights and Responsibilities for tenants under the VRLTA can be accessed here: <https://www.dhcd.virginia.gov/sites/default/files/Docx/landlord-tenant/statement-of-tenant-rights-and-responsibilities-vrlta.pdf>

# REMEDY BY REPAIR

VIRGINIA CODE 55.1-1244.1

**When there is a material noncompliance by the landlord creating a health or safety risk (including rodent infestation and lack of: heat, hot/cold running water, light. Electricity or adequate sewage disposal):**

- Tenant should notify landlord of the need for the repair in writing
- If landlord doesn't take reasonable steps to remedy the hazardous situation within 14 days of notice, tenant can have repair done by licensed contractor or exterminator and **deduct the actual cost from the rent up to the greater of \$1500 or one month's rent**
- A local government or non-profit may contract with the licensed contractor or exterminator to make repairs and tenant can still deduct the cost from rent

## RRP Navigators coming soon!

As part of a grant from DHCD, legal aid programs have hired RRP navigators to assist tenants in applying for rent relief.

# PART TWO: VIRGINIA RENT RELIEF PROGRAM

## RRP Updates

- Covers up to 15 months rent (including anything covered in the rental agreement), including 3 months prospective rent. Once ERA 2.0 money comes in, can cover up to 18 months. ERA 2.0 may be able to be used for related expenses such as security deposits – stay tuned!
- Tenants must demonstrate (self-certify) inability to make rent payments due to income loss, or additional expenses during COVID-19 pandemic, but DHCD uses that definition broadly.
- Tenant only needs to prove income once (don't need multiple documents)
- Households of three or less who access TANF, WIC, SNAP or LIHEAP do not need to provide additional income documentation. Need determination letter dated Jan. 1, 2020 or later.
- Households receiving a housing subsidy are eligible for RRP assistance.
  - However RRP can only pay for the tenant's portion of their arrears and the current month –not the prospective three months
  - These households are also required to complete an income recertification with their housing provider before assistance can be provided

# APPLYING FOR RENT RELIEF

THROUGH DHCD OR VIRGINIA HOUSING

## LANDLORD INITIATING

- Landlords apply through Virginia Housing
- Landlords must submit an application on behalf of a tenant who has fallen behind on rent within 14 days of giving tenant the late payment notice
- Tenant must cooperate with landlord by providing proof of income or receipt of unemployment benefits or public assistance
- Landlords can get assistance from Rent Relief Navigators at Catholic Charities and HOME
- Payment is made directly to landlord

# APPLYING FOR RENT RELIEF

DHCD OR VIRGINIA HOUSING

## TENANT INITIATING

- Tenant's household income must be at or below 80% Area Median Income
- Tenant's rent must be at or below 150% of area fair market rent
- (These are true regardless of whether landlord or tenant initiates)
- Landlord must provide W-9 (again, true regardless of who initiates application)
- Tenant applies through DHCD
- Link to tenant application portal: [Login - Application Identifier \(deval.us\)](https://deval.us)
- Link to see if tenant is eligible: [Virginia Rent Relief Program](#) (for use by landlords and tenants)

# PART THREE: CREATIVE ARGUMENTS IN LIEU OF TENANT PROTECTIONS

## How to keep tenants in their homes without COVID eviction protections?

Take a moment to jot down 3-5 legal theories to support that arguments that landlords must still cooperate with tenants in applying for/accept RRP funds.

# HOW TO KEEP TENANTS IN THEIR HOMES WITHOUT COVID EVICTION PROTECTIONS?

## 1. Source of Funds Discrimination:

Landlord's refusal to accept RRP assistance may violate the Source of Funds protections In the Virginia Fair Housing Act.

Under Virginia Fair Housing law, it is unlawful for a housing provider to “discriminate against in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in the connection therewith to any person because of...source of funds.” Va. Code Ann. § 36-96.3.

Starting July 1, 2021, refusal to accept rent relief funds may also violate a tenant’s right to redeem under Va. Code Ann. § 55.1-1250.

# HOW TO KEEP TENANTS IN THEIR HOMES WITHOUT COVID EVICTION PROTECTIONS?

## 2. Clean Hands Doctrine:

If a landlord refuses to cooperate with rent relief and sues the tenant for non-payment of rent, the tenant may be able to assert an affirmative defense of "unclean hands."

A person coming to court with a lawsuit or petition for a court order must be free from unfair conduct (have "clean hands" or not have done anything wrong) in regards to the subject matter of his claim. As an affirmative defense a defendant might claim the plaintiff has a "lack of clean hands" or "violates the clean hands doctrine" because the plaintiff has done something wrong regarding the matter under consideration. In the case of an unlawful detainer based on non-payment of rent, the landlord has denied the tenant of their right of redemption under Va. Code Ann. § 55.1-1250.



# HOW TO KEEP TENANTS IN THEIR HOMES WITHOUT COVID EVICTION PROTECTIONS?

## 3. Duty to Mitigate Damages:

A landlord's refusal to cooperate with RRP may, depending on the facts, constitute a failure to mitigate damages. This argument will not stop the judge from entering an order of possession but may limit the amount of the judgment.

- Mitigation of damages is an affirmative defense, and its burden is entirely on the contract breaker to show by a preponderance of the evidence that the claiming party had a duty and violated that duty.
- Compliance with a duty to mitigate damages is not an element of the underlying cause of action, but rather “mechanism for reducing the damages recoverable by the plaintiff.”

Middleburg Mall, Inc. v. Architectural Antiques, Ltd., 1990 WL 751327 (Va. Cir. Ct. 1990).

# QUESTIONS?



# Thank You!

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